
EMPIRE BCC GENERAL TERMS OF SERVICE:

Before using our Cloud Services (as defined below), please read these General Terms of Service (“**Terms**”). These Terms, and all documents referred to in them, and any amendment or addendum referencing these Terms entered by the parties, form a binding agreement between you and us (“**Agreement**”). Pursuant to these Terms, you and your Users will be provided with access to the Empire BCC Cloud Services in accordance with your Service Order or as may otherwise be ordered by you under this Agreement. ****If you have purchased your Entitlements from an Authorized Partner on a non-Empire BCC Service Order, the following sections do not apply to you: 2.3 (Service Levels), 4 (Fees & Reimbursements), 7.2 (Renewals) 7.3 (Add-Ons), 7.7 (Termination by Customer for Convenience), 8 (Hardware), 10 (Confidentiality), 11.1 (Hardware Warranty) and 14.1 (Customer Support).** Unless otherwise indicated on your Service Order, your Cloud Service include our SIP Services

DEFINITIONS: As used herein: “**Acceptable Use Policy**” means Empire BCC Acceptable Use Policy found at: <https://www.empire-team.com>. “**Applicable Law**” means all applicable laws, treaties, regulations, and conventions related to use of the Cloud Services, including without limitation those related to data privacy, call recording, unsolicited advertisements and telephone calls, international communications, and the exportation of technical or personal data. “**Authorized Partner**” means a third party we have authorized as a reseller of Entitlements. “**Cloud Services**” means any cloud services provided to you under this Agreement. “**Customer**”, “**you**” or “**your**” means the entity identified as the “**Customer**” in the Service Order. “**Customer Data**” means data in electronic form managed, transmitted, stored, or otherwise processed by the Cloud Services on behalf of Customer, or its Users, including without limitation Provisioning Information and User Content. Customer Data does not include Metadata or Confidential Information. “**Documentation**” means training, marketing, and demonstration materials, diagrams, test plans, and workflows provided by us in support of the Cloud Services. “**Early Termination Fee**” means an amount equal to all monthly recurring Service Fees for the terminated Cloud Services or Entitlements, multiplied by the number of months remaining in the Service Term, and if requested by us, the dollar value of any promotional credit awarded to you by us as set forth in any special promotions document, plus all applicable taxes. “**Emergency Services**” means an outbound voice call to the applicable public safety departments or emergency dispatch call centers in the User’s jurisdiction (e.g., dialing “911”). “**Entitlement**” means the right for a User to access and use specific Cloud Services (e.g. on a “named user” or “concurrent user” basis). “**Hardware**” means hardware detailed on your Service Order. “**Implementation Services**” means any Cloud Services related software or hardware installation, implementation, configuration or customization services, or any other professional services set out in a Service Order you have submitted directly to us. “**Initial Service Term**” means the initial period specified in the Service Order. “**Metadata**” means non-personally identifiable data or information that provides information about the use of the Cloud Services, Customer Data and/or Use Records. “**Empire-BCC**” “**we**”, “**our**” or “**us**” has the meaning set out in Section 15.1 (Empire-BCC Entity). “**Provisioning Information**” means information provided by you to us about a User which is used to provide/provision the Entitlements (e.g., first name, last name, username, IP address, phone number, phone extension, e-mail address). “**Service Activation Date**” means the date on which an Entitlement is first made available to you for use. In the event a Service Order includes multiple Sites and/or multiple Entitlements, the Service Activation Date will be the date the first Entitlement is available at a Site. Each Entitlement will be considered to have been “**first made available to you for use**” when a user profile has been provided to you. Entitlements added following activation of a profile will be considered to have been “first made available to you for use” as of the date added to your account. “**Service Fees**” means all monthly recurring service fees, nonrecurring fees, set-up fees, usage including overage based fees, rental fees, Hardware costs and Implementation Services fees and any other charges and fees which you have agreed to in a Service Order or SOW. “**Service Order**” means an ordering document signed and submitted by you to us or one of our Authorized Partners, detailing the Entitlements, Hardware and Implementation Services which you have ordered from us or our Authorized Partner, as applicable. “**Service Term**” means the Initial Service Term and Service Renewal Terms (as defined below), if any. “**SIP Services**” the session initiation protocol services over which voice communications are connected to the public switched telephone network and delivered to you. “**Site**” means a physical location associated to a specific street address where Services are being provided. “**SLA**” means our standard Service Level Agreement for the Cloud Services available at: <https://www.empire-team.com>. “**SOW**” means a statement of work which we may agree to perform for you from time to time. “**User**” means your employees, consultants, contractors, or agents who you have authorized to use an Entitlement in support of your internal operations and given user logins and passwords. “**User Content**” means the information shared amongst

EMPIRE BCC GENERAL TERMS OF SERVICE:

Users or transmitted/received by a User(s) to/from a third party(s), via the Cloud Services (e.g. chats, files, voicemails). “**Use Records**” means records pertaining to a User’s use of the Cloud Services (e.g. call log, chat log, shared files, presence history).

2. THE SERVICE AND USE OF THE SERVICE IN GENERAL

2.1 Initiation and Services. Provisioning of the Cloud Services will begin only after we receive and accept your Service Order. We will provide any implementation Services set out in the Service Order and/or any SOW. You agree that your purchase of the Entitlements is neither contingent upon our delivery of any future functionality or features, nor dependent upon any discussions, oral or written public comments made by us with respect to future functionality or features. Additional Entitlements can be added by you through the issuance of a new Service Order or self-provisioning, where available. You can also change the type of your Entitlements through the issuance of change orders.

2.2 Use of the Service. During the Service Term, you and your Users may use the Cloud Services and Documentation solely for your internal business operations (and not for any form of redistribution or resale) in accordance with this Agreement and as set out in your Service Order. Notwithstanding the foregoing, where permitted by us, you may **(i)** in a given month, increase your number of Users above and beyond the number of Users set out in your Service Order provided that you pay us in arrears (as set out below) for such additional Users at our then current rate for such Entitlement, and **(ii)** as further detailed in Section 7.3, add additional Entitlements on a term coterminous with the Service Term in effect at the time. You agree to ensure all Users (and potential Users) are aware of (and expressly consent to) the limitations of Emergency Services using the Cloud Services prior to their use of the Cloud Services. You may use and reproduce the Documentation solely as necessary to support your and your User’s use of the Cloud Services.

2.3 Service Levels. We will deliver the Cloud Services in accordance with the SLA. In the event of a disruption or outage to the Cloud Services during the Service Term, your sole remedy, and our sole obligation, will be the service level credits and/or remedies, if any, set out in the SLA. Credits issued pursuant to the SLA will only be applied against future Service Fees. In no event will we be required to issue refunds for, or to make payments against, such credits.

2.4 Service Revisions. During the Service Term, we may add, reduce, eliminate or revise Cloud Services features and functionality (or upgrade the underlying platform used to provide the Cloud Services) at any time without prior notice to you. Notwithstanding the foregoing, where in our sole opinion, a change will cause a material detrimental impact on your use of the Cloud Services (a “**Detrimental Change**”), we will provide you thirty (30) days prior written notice (email or if an online portal is made available with the Cloud Services, posting notice at the portal to suffice). In the event of a Detrimental Change, you may, at no cost, terminate the affected Cloud Services by providing us with written notice of termination within thirty (30) days of receiving your notice of the Detrimental Change. If we do not receive notice of termination within thirty (30) days, you will be deemed to have accepted the change and/or charge.

2.5 Performance. You acknowledge and agree that the quality, performance and available features of the Cloud Services including Emergency Services and any Hardware may be affected, impaired and/or disrupted by the quality, speed and usage of your (and your Users’) broadband connection and/or third-party networks and will not function in the event of a power failure.

3. EMERGENCY SERVICES

3.1 Limitations Relative to Enhanced Emergency Services; Cost. You acknowledge and agree that the Emergency Services provided hereunder have limitations relative to the enhanced (or similar) emergency services that are available on most traditional telephone services. Subject to the limitations set out in this Agreement, Emergency Services can be accessed, free of charge.

3.2 Emergency Services Devices and Initiation: Emergency services will only function if your User(s) are using an approved device, equipment or software and after your Service Order has been processed and you have received

EMPIRE BCC GENERAL TERMS OF SERVICE:

an emergency service confirmation. If your Users use non-approved equipment or software or attempt to call Emergency Services prior to confirmation, the Emergency Services may fail or may be forwarded to a non-public, backup emergency answering service.

3.3 Emergency Services Registration. You acknowledge and agree that it may not be possible for emergency operators and authorities to identify the actual location of a User(s) who dials Emergency Services through the Cloud Services. Where you purchase Cloud Services that include our SIP Services, we will register the following as the addresses where your Users will use Cloud Services and to which Emergency Services should be dispatched by default: **(i)** the address(es) listed on your Service Order, and **(ii)** if an online portal is made available with the Cloud Services, the address(es) entered in the online portal. It is your responsibility to ensure that such default address(es) are accurate and, if changed, that you notify us of such changes either through our online portal, where available, or by contacting our support organization at least ten **(10)** days in advance. If emergency addresses registered are not accurate, emergency personnel (e.g. police, fire, ambulance) may be sent to the wrong address. In certain limited cases, an Emergency Services call may be routed to a wireless telephone emergency dispatch center that may not normally receive Emergency Services calls from the User's registered location instead of a "traditional" wireline Emergency Services dispatch center. In this case, emergency personnel will not have the User's registered location and/or phone number on file. Regardless of whether an emergency address has been registered, Users dialing Emergency Services should always be prepared to state their location and phone number promptly and clearly to ensure that emergency operators have complete and accurate information. If the User's registered address is different than the User's actual location, delays in handling of Customer's emergency call may be introduced and, consequently, result in fire, police or emergency personnel either not being able to find a User(s) location or significantly delay response time. Finally, you may incur additional costs, fines or other penalties, including service provider charges, resulting from improper dispatch of Emergency Services or calls to emergency service dispatchers where you and/or your Users have failed to update us with the User's correct address.

3.4 Emergency service limitations: Emergency Services will not function if **(a)** a VoIP device fails or is not configured properly, **(b)** the Cloud Services are not working for any reason including without limitation a power outage, broadband service outage, network congestion, suspension or disconnection of your Cloud Services, broadband connection failure, use of a non-native telephone number, electrical power loss, or your failure to meet our minimum technical service requirements, if applicable, or **(c)** where your Cloud Services do not include our SIP Services, failure or disconnection of third party SIP Services. Following a power outage, you or your Users may need to reset or reconfigure your equipment prior to being able to use the Cloud Services, including dialing Emergency Services. Emergency operators and/or authorities may be unable to identify a User's phone number in order to call them back if **(i)** their call is unable to be completed, is dropped or is disconnected, **(ii)** the User is unable to communicate their phone number, or **(iii)** the Cloud Services are not operational for any reason. In such circumstances, and provided the Cloud Services are available, the User should redial Emergency Services. When calling Emergency Services Users should not hang up until told to do so by emergency operators as emergency operators and authorities may also be unable to hold the line open in the event the User hangs up. You further acknowledge and agree (and you will cause your Users to do same) that we do not have any control over whether, or the way, emergency calls using the Cloud Services are answered or addressed by any local emergency response center and we rely on third parties to assist us in routing emergency calls to local emergency response centers. Emergency services are available only within the jurisdiction in which the User is registered and the Cloud Services cannot be used to make emergency calls outside of same.

3.5 Emergency Notifications. When you purchase Cloud Services that include our SIP Services for use, the Cloud Services are capable of being configured to provide a notification to another person or location that 911 has been dialed, without an improvement to the hardware or software of the Cloud Services, we will configure the Cloud Services to provide such a notification to the User(s)/Sites(s) which you identify and provide to us. You acknowledge and agree that you are solely responsible for **(i)** selecting the User(s)/Sites(s) to receive such emergency notifications, **(ii)** ensuring that such User(s)/Sites(s) remain accurate, and **(iii)** notifying us of required changes to the User(s)/Sites(s) either through our online portal, where available, or by contacting our support organization **at least ten (10) days in advance.** If the Cloud Services are being configured for use by your Users across multiple Sites and you select

EMPIRE BCC GENERAL TERMS OF SERVICE:

Users at multiple Sites to receive emergency phone alerts, you acknowledge and agree that it is possible that an emergency phone alert may be answered by a User at a different Site than the caller. You represent, warrant and covenant that you will train your Users to handle emergency events including without limitation by creating and maintaining robust policies and procedures to ensure that an appropriate person at the Site where each emergency call is initiated is made aware of the call regardless of where the alert is answered. Should you request that we disable such notifications, you agree to indemnify, hold harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a third-party Claim made or brought against us arising from or relating to us having disabled such notifications.

3.6 Third Party Disclaimer. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center, as well as any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result.

3.7 Acceptance of Limitations. By accepting this Agreement, you acknowledge that you have received the information regarding the limitations of our Emergency Services, understand them, and assume the risks associated with such limitations. Where your Cloud Services do not include our SIP Services, you should consult your SIP Services provider to further understand Emergency Service limitations.

4. FEES & REIMBURSEMENTS

4.1 Service Fees, Invoicing and Payment. As of the Service Activation Date, you agree to pay all Service Fees for Cloud Services made available to you and/or your Users during the Service Term. You will be invoiced in advance for non-usage-based Service Fees and in arrears at the end of each month for usage-based Service Fees. Entitlements added to the Service Order during the Service Term will be invoiced in the month following the Service Activation Date for same on a pro-rated basis for the remainder of the Service Term, unless otherwise agreed by us. Service Fees are due on the date set out in your invoice and are payable in the currency specified on your Service Order. Invoices will be deemed correct and binding on you unless we receive a dispute of charges, in writing, within thirty (30) days of an invoice being issued. To the extent you dispute, in good faith, any amount included in our invoice, the parties shall use reasonable efforts to resolve and settle such dispute within thirty (30) days of your written notice to us. Upon request of the other, each party will promptly provide full supporting documentation concerning any disputed amount. For clarity, you shall pay all undisputed amounts in our invoice but will have no obligation to make any payment of disputed charges on the invoice during the time it is subject to a good-faith dispute. Based on our reasonable determination, once the dispute is resolved you will pay the resulting agreed upon amount.

4.2 Taxes. Unless otherwise stated in the Service Order, all Service Fees are exclusive of tax. Unless you provide us a tax exemption prior to us invoicing you, you shall pay all applicable taxes and governmentally imposed fees arising from your purchase under this Agreement (excluding taxes on our net income). You acknowledge and agree that in the event any governmental agency revises or imposes taxes or regulatory fees of any kind, including, without limitation, emergency service access fees, universal service fees, and regulatory recovery fees on the Cloud Services or Hardware provided hereunder, that we reserve the right to pass on all such taxes to you without notice.

4.3 Credit Worthiness. Subject to credit review, you may be required, upon our request, to make an advance payment or deposit to us for Service Fees.

5. CUSTOMER RESPONSIBILITIES & RESTRICTIONS

5.1 Service Rules of Use. You will: (1) comply, and cause your Users to comply, with both this Agreement including without limitation Applicable Law; and (2) obtain all permits, licenses and authorizations or certificates that may be required in connection with your activities pursuant to this Agreement. You shall not: (a) use the Cloud Services for service bureau or time-sharing purposes or in any other way which allows third parties other than Users to exploit the Cloud Services; (b) provide Cloud Services passwords or other log-in information to any third parties other than Users; (c) share non-public Cloud Services features or content with any third party; and (d) access the Cloud Services in order to build a similar or competitive product or service. Under no circumstances will you take any action(s) that could result in harm or damage to our (or any third party's) network or premises, or to any of our other customers.

EMPIRE BCC GENERAL TERMS OF SERVICE:

5.2 Unauthorized Access and Investigations. You will, and you will cause your Users, to take all reasonable steps to prevent (1) unauthorized access to, or improper or fraudulent use of, your account, your Hardware and the Cloud Services, and (2) a breach of your security (each an “**Incident**”). You will immediately notify us of any known or suspected Incident and will use best efforts to stop an Incident. If we suspect, or become aware of, an Incident, we may investigate, and you will cooperate in any such investigation. We reserve the right to inform any applicable government of the investigation. We shall not be liable to you for any damages whatsoever resulting from an Incident.

5.3 Customer Responsibilities/Liabilities. You are responsible for: (a) any customer responsibility requirements detailed in a Service Order; (b) ensuring that the configuration of the Cloud Services, including any roles and permissions assigned therein, continually meet security and compliance requirements; (c) Customer Data; and (d) use of your Cloud Services account, whether authorized or not.

6. CUSTOMER DATA

6.1 Instructions. You instruct us to process Customer Data and Use Records in accordance with the terms and conditions of this Agreement. We will only use and disclose Customer Data and Use Records to provide, bill, optimize, improve, support, troubleshoot, and maintain the Cloud Services and /or Hardware and to comply with Applicable Law, or a binding order of a court or governmental body (or other legal process). In doing so, you acknowledge and agree that we may process Customer Data and Use Records on a global basis. Notwithstanding anything in this Section 6 (Customer Data), we reserve the right to use, and to disclose Customer Data and Use Records to third parties: if we determine, in our reasonable judgement, that such use or disclosure is necessary (a) to protect the safety of a customer, a user, or a third party; (b) to provide an emergency warning; (c) for the provision of Emergency Services; (d) to investigate suspected fraud or other illegal activity; (e) subject to Section 6.3 (Court Orders, Subpoenas and Additional Disclosures), as a result of a legal or governmental demand including without limitation by a criminal enforcement agency or regulatory body; or if you have provided consent. You represent, warrant and covenant that you and your Users have all rights and consents (and have made all requisite disclosures) necessary: for us to process Customer Data and Use Records for the purposes set forth in this Agreement; and for us to provide Customer Data and Use Records to our affiliates and third-party service providers as necessary for the performance of this Agreement on a global basis. You further acknowledge and agree that we may aggregate. Customer Data and Use Records with data from other customers, and at our sole discretion use, disclose and commercially exploit such aggregated data in an anonymized form.

6.2 Accuracy & Retention. You are solely responsible for Customer Data provided to us and you represent and warrant that all information you provide to us will be true. You acknowledge and agree that: the Cloud Services provide a passive conduit for User Content, and you (and not us) are solely responsible for such User Content; and the Cloud Services are not intended for long-term storage of Customer Data. We only retain Customer Data and Use Records for as long as reasonably necessary to provide the Cloud Services and to comply with Applicable Law and will delete (i.e. putting beyond practicable use) in accordance with our data retention policy. Subject to any data retention requirements under Applicable Law and any written data retention commitment we make to you, we reserve the right to periodically permanently delete Customer Data and Use Records from the Cloud Services including without limitation where your account is delinquent, suspended, or has been terminated for more than thirty (30) days. Notwithstanding anything herein, should we become aware of any User Content which violates this Agreement, we reserve the right to delete such User Content immediately and without notice.

6.3 Court Orders, Subpoenas and Additional Disclosures. Unless prohibited by Applicable Law, we will give you reasonable notice of any legal or governmental demand for disclosure or movement of Customer Data or Use Records, or redirect any such demand to you, to allow you to seek a protective order or otherwise to contest such required disclosure or movement at your sole expense, prior to making any disclosure or movement.

6.4 Excluded Data. Except where we have provided you with express written authorization, you represent and warrant that you and your Users have not and shall not upload or transmit to the Cloud Services, any data which is specifically regulated other than by general application data privacy laws (“**Excluded Data**”) including without limitation as a “**special category**” of personal data.

EMPIRE BCC GENERAL TERMS OF SERVICE:

7. TERM, TERMINATION AND SUSPENSION

7.1 Term. This Agreement takes effect upon execution of the Service Order and continues until termination of the Service Term. The Initial Service Term shall begin on the Service Activation Date.

7.2 Renewals. Following the Initial Service Term or any renewal, unless either party notifies the other party (in writing at least forty-five (45) days prior to the expiration of the then current Service Term) that it does not wish to renew its Entitlements, the Entitlements (including any Entitlements added or changed and in effect at the time of renewal) shall automatically renew at the rate set out in the Service Order for an additional term of the same duration as the Initial Service Term or previous renewal (each, a “**Service Renewal Term**”).

7.3 Add-Ons or Changes. If, during the Service Term, you add any Entitlements (including without limitation services at a different Site) or change the types of your Cloud Services, the amount of your monthly recurring charges shall be adjusted accordingly. The Service Term for any additions or changes shall be coterminous with the Initial Service Term, or any Service Renewal Term in effect at the time, and the terms of this Agreement shall apply.

7.4 Service Suspension. Except to the extent precluded by applicable law, we may at our sole discretion, and without prior notice to you, suspend your (or any of your Users’) Cloud Services without liability if: (i) we reasonably conclude that you or a User(s) has conducted itself in a way: (a) that is not consistent with our Acceptable Use Policy or the Documentation; (b) that subjects us to potential liability or interferes with our other customer’s use of the Cloud Services; or (c) that breaches the Agreement; (d) we deem it reasonably necessary to do so to respond to any actual or potential security concern; (e) any underlying arrangement with our operators or suppliers is terminated or suspended for whatever reason; (f) you fail to cooperate with any investigation; (g) we are conducting scheduled or emergency maintenance; (h) it is necessary to protect our networks or customers; or (i) it is necessary to comply with Applicable Law.

7.5 Termination by Empire BCC. In addition to our suspension rights set out in Section 7.4 above, we may terminate this Agreement: upon thirty (30) days’ prior written notice if: (a) you (or any User) breach the Agreement and such breach remains uncured at the expiration of such period; or (b) you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (c) with immediate effect if any legal or regulatory change is introduced which affects our ability to provide the Cloud Services and/or Hardware, including but not limited to any new authorization or license becoming necessary or any existing authorization or license under which we operate expiring or being revoked, and with immediate effect if your account is suspended and such suspension is not your first suspension. In the event Empire BCC terminates, you agree to pay us, within thirty (30) days of the effective date of termination, the Early Termination Fee. The parties agree that the Early Termination Fees are a reasonable estimate of anticipated actual damages and not a penalty.

7.6 Termination by Customer for Breach. You may terminate this Agreement upon thirty (30) days’ prior written notice if we materially breach the Agreement and such breach remains uncured at the expiration of such period.

7.7 Termination by Customer for Convenience. You may terminate this Agreement, or a portion of Entitlements, for your convenience prior to the expiration of this Agreement provided you request such termination in writing to us and pay us, within thirty (30) days of the effective date of termination, the Early Termination Fees. The parties agree that the Early Termination Fees are a reasonable estimate of anticipated actual damages and not a penalty. For clarity, if you terminate the Agreement, all of your Entitlements will be deemed to have been also terminated by you.

7.8 Effect of Termination. Termination of the Agreement will result in termination of the Service Term. Upon termination of the Agreement, you shall cease all use of the applicable Cloud Services and delete, destroy, or return to us all copies of the applicable Documentation in your possession or control. Except as required by law, we will promptly, and in any event in no less than ninety (90) days, delete (i.e. putting beyond practicable use) Customer Data and Use Records. We may retain billing records (and breakdowns) for at least twelve (12) months following termination. You shall immediately return, at your cost, all rental Hardware to us in accordance with the directions we provide to you.

EMPIRE BCC GENERAL TERMS OF SERVICE:

8. HARDWARE

8.1 Delivery. Where applicable, we will deliver hardware. shipping point on the date mutually agreed between us and you. Unless stated otherwise herein, we may substitute Hardware, or any component thereof, listed in your Service Order with comparable new equipment of equivalent functionality.

8.2 Title, Risk of Loss and Security Interest. Where you purchase Hardware from us without third party financing: **(i)** title and risk of loss to the Hardware will pass to you upon shipment, and **(ii)** you grant to us a security interest in the Hardware until you have paid us in full for it (and you authorize us and shall assist us, as necessary, to file any forms necessary for us to perfect our security interest in the Hardware.) In the event you elect to finance your purchase using a third-party financier, title shall pass to such third-party financier upon payment in full for the hardware, unless the parties agree otherwise. You agree to maintain adequate commercial general liability insurance to reimburse us for the replacement cost (i.e. non-depreciated cost) of any Hardware lost, damaged or destroyed while in your control and you agree to furnish a copy of your insurance to us on request. We reserve the right to provide rental Hardware which is new or is remanufactured and certified to meet Hardware specifications. In no event will you export rented Hardware (or use rented Hardware) outside of the jurisdiction the rental Hardware is intended to be used in as specified on your Service Order.

9. IP & FEEDBACK

9.1 Ownership. Subject to the limited rights expressly granted hereunder, we reserve all right, title and interest in and to: **(i)** the Cloud Services; **(ii)** all Documentation and any Confidential Information provided or disclosed to you and your Users; **(iii)** any and all derivatives, enhancements or improvements thereof; and **(iv)** any and all intellectual property rights contained in the foregoing **(i)**, **(ii)**, and **(iii)**. No rights are granted to you except as expressly set out in this Agreement.

9.2 Feedback. You and your Users may provide us with feedback on, and/or suggestions for improvements (or other changes) to, the Cloud Services, Documentation, Confidential Information or other Empire BCC technology (individually and collectively “Feedback”). Even if you designate such Feedback as confidential, we will not be bound by any confidentiality obligations in respect of such Feedback. You hereby grant us a worldwide, irrevocable, perpetual, sublicensable license to use, and commercially exploit, Feedback in any manner. You will not knowingly provide us Feedback that is subject to third party intellectual property rights.

10. CONFIDENTIALITY

10.1 Confidentiality. As used herein, “**Confidential Information**” means all confidential or proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”) that is designated in writing as confidential or that in the circumstances is, or ought to be known, to be confidential or proprietary. Confidential Information shall not include Customer Data, Use Records, or information which: **(i)** is known publicly; **(ii)** is generally known in the industry before disclosure; **(iii)** has become known publicly, without fault of the receiving Party, subsequent to disclosure by the Disclosing Party; or **(iv)** has been otherwise lawfully known or received by the Receiving Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party’s prior written permission. The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it always protects the confidentiality of its own (exercising at least a reasonable degree of care in the protection of Confidential Information). If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. The Receiving Party agrees that monetary damages for breach of confidentiality may not be adequate and that, if necessary, the Disclosing Party shall be further entitled to seek injunctive relief.

11. WARRANTIES & DISCLAIMERS

11.1 Hardware Warranty. All Hardware components will be free from defects in material and workmanship

EMPIRE BCC GENERAL TERMS OF SERVICE:

under normal use and will perform in substantial compliance with the manufacturer's specifications for the applicable warranty period. The exclusive remedy and recourse for you under this Hardware warranty is for us, at our election, to repair, replace or modify the defective parts. We may utilize remanufactured, certified parts that meet the specifications. Such replacement parts will be covered for the remainder of the existing Hardware warranty. Any part removed shall become our property. For Hardware you purchase, the Hardware warranty set out in this Section 11.1 shall be valid for a period of twelve (12) months following shipment of the Hardware to you. For Hardware you rent, the Hardware warranty shall be valid during the Service Term. The foregoing Hardware warranty shall become void if one of the following occurs: (i) the Hardware 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 us or our authorized dealer; (ii) work is performed on the Hardware by anyone not authorized by us; (iii) the Hardware is installed or used in combination or in assembly with products that are either not approved by us or not compatible with the Cloud Services. The Hardware warranty excludes parts you have supplied and expendable or personal use items such as batteries, headsets, paper, cabling or non-Empire BCC telephone sets. Warranties are predicated on us receiving timely written notice of any nonconformity with as much specificity as is known and as soon as you become aware of such nonconformity, but in any event prior to the expiration of the relevant warranty period. We shall have the right to inspect and test the Hardware and the associated local area network and communications infrastructure to determine, in our reasonable discretion, whether the nonconformity is covered under the applicable warranty.

11.2 Disclaimer of Warranties. Except as expressly provided herein, (i) You acknowledge and agree that the Cloud Services and Hardware are provided on an "as is", and "as available" basis; and (ii) we expressly exclude all implied warranties, terms and conditions including but not limited to fitness for purpose, satisfactory quality or non-infringement of title to the maximum extent permitted by law. We do not warrant that (a) the Cloud Services or the Hardware will meet your requirements or that the operation of the Cloud Services and the Hardware will be uninterrupted or error-free; (b) the Cloud Services or the Hardware will prevent toll fraud, unauthorized access, loss or theft of electronic data, or invasion of privacy; (c) all errors in the Cloud Services and Hardware can be corrected; (iv) Customer Data will not be lost or corrupted; (d) Emergency Services will not fail, including but not limited to, in those circumstances in which you are using call forwarding, call redirection or blocking services, where the call fails to be delivered or is dropped for any reason where there is network congestion, device misconfiguration, power loss, broadband outages, third-party interference, where you have not paid your bill, and/or when the emergency callback number is configured to ring a phone at a different location than the User' VoIP device; or (e) enhanced Emergency Services, if available, will not revert back to traditional Emergency Services. It is your sole responsibility to back up Customer Data.

11.3 No Hazardous Environments. You acknowledge and agree that neither the Cloud Services nor the hardware are sufficiently fault-tolerant for life safety operations, and neither is designed, manufactured, or intended for use in or in conjunction with control equipment in hazardous environments, including without limitation the operation of nuclear facilities, aircraft navigation or critical communications systems, air traffic control, transportation control, or life support devices. You will not use the Cloud Services or Hardware for any purpose listed in this Section 11.3 and any attempt to do so will be at Customer's own risk.

12. LIMITATION OF LIABILITY

12.1 LIMITATION, EXCLUSION AND APPLICATION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL WE BE LIABLE FOR THE FOLLOWING DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES, THE CUSTOMER DATA, THE CLOUD SERVICES INCLUDING WITHOUT LIMITATION USE AND/OR FAILURE OF EMERGENCY SERVICES OR THE CONDUCT OF ANY LOCAL EMERGENCY RESPONSE SERVICE CENTER OR NATIONAL EMERGENCY RESPONSE SERVICE CENTER, OR HARDWARE: ALL INDIRECT, ECONOMIC, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL AND PUNITIVE DAMAGES; AND ALL DAMAGES FOR LOST PROFITS, REVENUE OR EARNINGS, LOST, HACKED OR CORRUPTED DATA, UNAUTHORIZED ACCESS TO DATA OR THE CLOUD SERVICES,

EMPIRE BCC GENERAL TERMS OF SERVICE:

DELAYS OR FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED SAVINGS AND COST OF SUBSTITUTE SOFTWARE, HARDWARE OR SERVICES; (II) IN NO EVENT SHALL OUR TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES, THE CUSTOMER DATA, THE CLOUD SERVICES INCLUDING WITHOUT LIMITATION USE AND/OR FAILURE OF EMERGENCY SERVICES OR THE CONDUCT OF ANY LOCAL EMERGENCY RESPONSE SERVICE CENTER OR NATIONAL EMERGENCY RESPONSE SERVICE CENTER, AND ANY HARDWARE EXCEED THE AMOUNTS RECEIVED BY EMPIRE BCC FROM YOU (OR FROM YOUR AUTHORIZED RESELLER) FOR THE ENTITLEMENTS IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO THE LIABILITY; AND (III) THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY: (A) WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OF LIABILITY; (B) WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR POSSIBILITY HAS BEEN DISCLOSED TO US; AND (C) TO US, OUR AFFILIATES, AND THEIR RESPECTIVE SERVICE PROVIDERS AND SUPPLIERS, SUCCESSORS AND ASSIGNS AND (D) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

12.2 Time Limit. No action arising out of this Agreement may be brought by Customer more than eighteen (18) months after the cause of action has arisen.

13. INDEMNIFICATION

13.1 Our Indemnification Obligations. Subject to 13.2, we will indemnify, hold harmless and defend you against any loss, damage or cost (including reasonable legal fees) incurred in connection with claims, actions, demands, suits, or proceedings (each a “**Claim**”) made or brought against you by a third party alleging that the Cloud Services and/or the Documentation infringes a valid United States, Canadian, United Kingdom or European intellectual property right other than a patent reading on a standard (e.g. IEEE) whether essential or not. This section 13.1 shall not apply to any Claim resulting from: (a) the combination of the Cloud Services with any hardware, software, system, or service which is not owned, supplied, and/or developed directly by us; (b) our implementation of any design you provide us; (c) your failure to implement corrections or modifications provided by us if implementation would prevent the infringement, or (d) your alteration or modification of the Cloud Services. This Section 13.1 states our sole liability and your exclusive remedy for any Claims covered under this Section 13.1 (Our Indemnification Obligations). In the event of an intellectual property right Claim, we may in our sole option and without further obligation to you either (a) obtain the right for you to continue using the Cloud Services and/or Documentation; (b) replace or modify the Cloud Services and/or Documentation so that it becomes non-infringing; or (c) if such remedies are not reasonably available, terminate this Agreement.

13.2 Customer’s Indemnification of Empire BCC. You agree to indemnify, hold harmless and if requested by us, defend us against any loss, damage or costs (including reasonable legal fees) incurred in connection with a third party Claim made or brought against us arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct by you or any User; (ii) you or a User’s use of the Cloud Services or Hardware; (iii) your, or any User’s, breach of Applicable Law; (iiii) Customer Data and (iiiii) your failure to properly inform Users of the Cloud Services’ emergency service limitations.

13.3 Mutual Provisions. Each party’s indemnity obligations are subject to the following: (i) the indemnified party promptly notifying the indemnifier in writing of the Claim provided that any failure by the indemnified party to promptly notify the indemnifying party will not relieve the indemnifying party of its obligations except to the extent that indemnifying party is materially prejudiced by the delay; (ii) the defending party shall have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that except to the extent we are defending a claim against us, the defending party may not settle any Claim unless it unconditionally releases the aggrieved party of all liability and obligation; and (iii) the indemnified party, at the indemnifier’s cost, providing reasonable assist in the defense of such Claim. If we have requested you to defend a claim, and we, at any time, have a reasonable basis to believe that you cannot or may not be able to fulfill your obligations under this Section 13, then,

EMPIRE BCC GENERAL TERMS OF SERVICE:

without limiting your obligations under this Section 13, we shall be entitled to provide you notice to that we have decided to become the defending party, and thereafter to assume control of the defense and/or settlement of any such claim. Once we have notified you that we will be seeking an indemnity, unless otherwise expressly agreed in writing, all communications (including the notice) will be deemed our confidential information, which you may not disclose to any third party, other than your legal advisors, without our prior express written permission, and in addition, all communications in respect of any such claim shall be subject to common interest privilege.

14. CUSTOMER SUPPORT

14.1 Customer Support. Support may vary depending on the Cloud Services you order. We will provide you with support as described at <https://www.empire-team.com>, as may be updated from time to time.

15. GENERAL

15.1 Empire BCC Entity. “**Empire BCC**”, “**we**”, “**our**” and “**us**” means the following, where your Primary Jurisdiction is in: Canada or the United States of America.

15.2 Affiliates. We may use (and disclose Customer Data and Use Records to) one or more global affiliate(s), partners and/or service providers in order to perform our obligations under this Agreement.

15.3 Changes. We may make changes to this Agreement and any document referred herein from time to time by posting a new version at <https://www.empire-team.com>. The changes will become effective and will be deemed accepted by you on the date the new version is posted, except that if we modify the Agreement in a manner which in our sole opinion is likely to cause a material detrimental impact on you (e.g. if we significantly reduce your rights or increase your obligations) and our change is not in response to a change in legal or regulatory requirements, or a material change in our business, the changes will become effective thirty (30) days after we provide you written notice (invoice, email or if an online portal is made available with the Cloud Services, posting notice at the portal, to suffice). However, if during the thirty (30) day notice period, you provide us with a written objection directly or through your Authorized Partner, the changes will not become effective until the beginning of your next Service Renewal Term. Nothing in this Section 15.3 will relieve you of payment of any already incurred Service Fees.

15.4 Use Outside of Primary Market. While Cloud Services are intended for use within the jurisdiction identified on your Service Order (your “**Primary Jurisdiction**”), cloud services are nomadic by nature and may be globally accessible via a broadband Internet connection. You acknowledge that (i) regulation of IP-based telephony services vary significantly from jurisdiction to jurisdiction, (ii) certain internet service providers (ISPs) may impose contractual restrictions on the use of their services for IP-based telephony, and (iii) Emergency Services may not operate outside of the Primary Jurisdiction. Before using our Cloud Services in a jurisdiction outside your Primary Jurisdiction, you should consult with local counsel for advice regarding your use of such. You shall be solely responsible and liable for any violation of local law or breach of third-party contract terms resulting from such use, regardless of whether we have consented to such use.

15.5 Notices. Except as otherwise set out in this Agreement, any notice provided hereunder shall be in writing and delivered by hand or sent by registered mail or courier to the address set out below and will be effective and deemed delivered upon receipt. Notwithstanding the foregoing, we may send you notice by electronic means, such as .pdf email, which shall be deemed delivered on the business day following the day on which it was sent. If to us, the address set out in Section 15.1 with a copy to our accounting department. If to you, the address will be the address set out in your Service Order or the online portal, where available.

15.6 Number Porting. If your Cloud Services include our SIP Services, number portability may be available. In cases where number portability is available, we will take commercially reasonable steps to transfer the number in accordance with standard porting procedures between communications providers in your jurisdiction provided that your account contains accurate and complete information and is in good standing, including payment for all Service Fees. For clarity, porting a number to another service provider shall not release you of any fees otherwise due under this agreement.

15.7 Publicity. Neither party shall use the name of the other party in publicity, advertising, or similar activity,

EMPIRE BCC GENERAL TERMS OF SERVICE:

without the prior written consent of the other, except you agree that we may profile you, or disclose that you are our customer, in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as we may deem appropriate.

15.8 Force Majeure. We will not be liable for any failure or delay in our performance under the Agreement, due to any cause beyond our reasonable control, including any act of war, act of God, earthquake, flood, embargo, riot, sabotage, terrorist attack, cyber-attack (hacking and DDOS), acts of public enemies, civil disturbances or general restraint or arrest of government and people, boycott, strike (including a general strike), lockout or other similar industrial disturbance, service interruption by a telecommunications services provider, or connectivity delays with internet providers outside of our reasonable control.

15.9 Assignment. You may not assign your rights or delegate your duties under the Agreement either in whole or in part without our prior written consent, which will not be unreasonably withheld. The Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

15.10 Severance. To the extent that any portion or provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that portion or provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement, nor shall it affect the validity, lawfulness or enforceability of that portion or provision in any other jurisdiction.

15.11 No Waiver. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

15.12 Applicable Law and Dispute Resolution. This Agreement is to be governed by and construed under the laws specified below, excluding any body of law governing conflicts of laws governing Ontario and disputes arising out of or in connection with this agreement are to be resolved in accordance with the following: **(i)** where your Primary Jurisdiction is in Canada, the laws of the Province of Ontario, Canada. The courts of the Province of Ontario will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the Parties hereby agree to submit to the jurisdiction of the courts of Province of Ontario; **(ii)** where your Primary Jurisdiction is in the United States of America (including its territories, protectorates or overseas regions).

15.13 No Jury Trial. The Parties specifically agree that disputes shall not be resolved by jury trial and hereby waive all rights to a trial by jury in any matter related to or arising from this Agreement. No dispute between the Parties, or involving any person but you, may be joined or combined, without our prior written consent.

15.14 Entire Agreement. This Agreement is the complete agreement and understanding of the parties with respect to the subject matter hereof and supersedes any other agreement or understanding, written or oral, between the parties with respect to the subject matter hereof. Neither party has entered into this Agreement in reliance upon (and shall have no liability in respect of) any term or representation other than those expressly set out in this Agreement (provided that nothing in this Agreement shall limit either party's liability for fraudulent misrepresentation). Additional terms and conditions may be presented to you by an Empire BCC authorized partner. Without limiting the generality of the foregoing, you acknowledge and agree that any additional terms provided by a Empire BCC authorized partner do not form part of this Agreement and do not bind us in any way, including terms for services provided directly by such partner or any terms that purport to modify this Agreement. In the event of an inconsistency between these Terms and the Service Order, these Terms shall govern. Both parties represent and warrant that they have full corporate power and authority to execute this Agreement and to perform their obligations hereunder and that each person whose signature appears, and any Service Order (and the Terms (if applicable)) is duly authorized to execute such document on behalf of the respective party.

15.15 Surviving Provisions. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance, cancellation or termination of this Agreement. Without limiting the generality of the foregoing, 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 and will survive the termination of the Agreement and will apply even if the Agreement is found to have failed of its essential purpose.

EMPIRE BCC GENERAL TERMS OF SERVICE:

16. JURISDICTION SPECIFIC TERMS

16.1 Canada. The following shall apply in respect of Cloud Services intended for use in Canada (as set out in your Service Order) **(i)** Customer Data and Use Records may be processed and/or stored in the United States and may be accessed by the courts, law enforcement and national security authorities of the United States in accordance with Applicable Law; **(ii)** VoIP 9-1-1 service has certain limitations relative to Enhanced 9-1-1 service that is available on most traditional telephone service; **(iii)** Empire BCC may disclose to the CRTC that you have acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement; and **(iv)** you will not use our network or the Cloud Services to export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside of Canada or the U.S. without first complying with all export control laws and regulations which may be imposed by the Canadian and U.S. Government and any country or organization of nations to whose jurisdiction Customer is subject.

16.2 United States. The following shall apply in respect of Cloud Services intended for use in United States (as set out in your Service Order): Empire BCC may disclose to the FCC that you have acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement.