

# CLEARSWITCH TERMS AND CONDITIONS OF SERVICE

The following terms and conditions (as may be updated as provided below, the “Terms and Conditions”) govern your (you, in such capacity, “Customer”) purchase of certain services (the “Services”) via Clearswitch Consulting Group Inc. (and/or any of its subsidiaries or other affiliates, “Clearswitch”) web-based portal or API (application programming interface). If you are registering for a Clearswitch account or using the Services on behalf of an organization, then you represent that you have the authority to bind that organization to the Terms and Conditions and the remainder of the Agreement (as defined hereinafter), and that the term “Customer” will refer to such organization. THE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE FROM TIME TO TIME IN CLEARSWITCH’S SOLE DISCRETION WITH SUCH CHANGES BEING EFFECTIVE UPON POSTING AT <https://clearswitch.net>, link: “Terms of Service”.

The Terms and Conditions, together with Clearswitch’s Acceptable Use Policy (as it may be updated from time to time, the “AUP”, available at <https://clearswitch.net>), Clearswitch’s Privacy Policy (as it may be updated from time to time, and the “Privacy Policy”, available at <https://clearswitch.net>), and all other service orders for any Services (each a “Service Order”), supplements, exhibits, schedules, appendices or other attachments referenced or incorporated herein or entered into in connection with the provision of the Services are referred to herein sometimes as the “Agreement”. Clearswitch and Customer are sometimes collectively referred to herein as “Parties” and each individually sometimes as a “Party.”

BY REGISTERING FOR AN ACCOUNT OR USING THE SERVICES (THE FIRST DATE ON WHICH EITHER OCCURS, THE “EFFECTIVE DATE”), YOU (AND YOUR ORGANIZATION, IF APPLICABLE) AGREE TO BE LEGALLY BOUND BY THE AGREEMENT, INCLUDING ANY UPDATES. PLEASE REVIEW THE AGREEMENT CAREFULLY. ONCE ACCEPTED, THE AGREEMENT BECOMES A LEGAL COMMITMENT BETWEEN YOU AND CLEARSWITCH. IF YOU DO NOT AGREE TO BE BOUND BY THE AGREEMENT, YOU SHOULD NOT USE CLEARSWITCH’S SERVICES.

## 1. Interpretation.

In the event of any direct contradiction between the body of the Terms and Conditions and the terms of any Service Order, the terms of such Service Order shall control. In the event of any other direct contradiction between the Terms and Conditions and any other portion of the Agreement, the Terms and Conditions shall control.

## 2. Services Provided.

Clearswitch agrees to sell, and Customer agrees to purchase and pay for, those services (the “Services”) as may be requested by Customer in a Service Order; provided that Clearswitch, in its sole discretion, may accept or reject any such Service Order.

## 3. Term.

3.1. The Agreement is effective on the Effective Date and shall continue until the latest to expire of all Service Orders, or if there are no Service Orders, then the term of the Agreement shall be one (1) year from the date Services are first provided to Customer (the “Initial Term”). Each initial term specified in a Service Order is referred to herein as a “Service Order Initial Term”. The date of any Service Order is

referred to herein as the “Service Commencement Date” (unless another date is specified as the Service Commencement Date in such Service Order).

3.2. The Agreement renews automatically for successive twelve (12) month periods (each a “Renewal Term”) at the expiration of the Initial Term, unless cancelled (a) by either Clearswitch at any time giving at least thirty (30) days’ notice to Customer, (b) by Clearswitch immediately on notice to Customer in the event Customer or its affiliate is a competitor of Clearswitch as determined by Clearswitch in its sole discretion, or (c) by Customer giving at least ninety (90) days’ notice to Clearswitch prior to the expiration of the later of (i) the then-current Initial Term or Renewal Term, as applicable, or (ii) the last to expire of any then-current Service Order Initial Terms.

## **4. Charges; Billing; Payment.**

4.1. Pricing for Services will be provided on a per-product basis.

4.2. Commencing on the Service Commencement Date, Customer will pay the applicable charges for each Service as specified in the applicable Service Order. Customer is responsible for all Taxes (as defined in Section 5.1) associated with such charges, as well as any payphone, toll-free origination, SMS/MMS carrier fees, or other charges should they arise or be billed by any underlying carrier or provider (each a “Pass-Through Charge”); further, a Pass-Through Charge shall be separate from and not counted towards any minimum revenue commitment, as applicable. Monthly recurring charges (“MRCs”) will be invoiced on a monthly basis in advance. Non-recurring charges will be invoiced in advance and are due prior to the Service Commencement Date. Customer shall maintain sufficient funds on deposit with Clearswitch to pay any charges when incurred (unless otherwise set forth in any Service Order, the “Due Date”), and Customer hereby authorizes Clearswitch to immediately deduct from such deposit the amount of any charges when incurred by Customer. If funds on deposit become at any point insufficient to all charges due and owing, then Customer shall immediately deposit an amount required to zero out such insufficiency with Clearswitch. Clearswitch reserves the right to suspend all Services in the event Customer has a negative balance on deposit with Clearswitch.

4.3. Any billing dispute or request for a billing adjustment by Customer must be made in good faith and in writing within fifteen (15) days of the invoice date. Any such request shall include detailed documentation to establish the basis for any adjustment. Customer agrees to pay the undisputed portion of the invoiced amount within the time frames set forth in Section 4.2 or a late payment charge equal to the lesser of 1.5% per month or the maximum amount allowable under applicable law on all outstanding past due amounts will be imposed. The Parties shall negotiate in good faith to resolve any billing dispute for a period of thirty (30) days. If the dispute is resolved in favor of Clearswitch, or if Parties fail to mutually resolve the dispute within such thirty (30) days, Customer shall pay the disputed amount previously withheld, within five (5) days following such resolution or failure to resolve, as applicable. If the dispute is resolved in Customer’s favor, then any resulting amounts due to Customer shall be applied as a credit against a subsequent Customer invoice. Customer agrees to pay on demand all reasonable out-of-pocket costs of collection under the Agreement, including reasonable attorneys’ fees, whether or not any action is instituted by Clearswitch in its discretion.

4.4. In the event charges due pursuant to any invoice are not paid in full by the Due Date, Clearswitch shall have the right to suspend all or any portion of the Services to Customer immediately until such time as Customer has paid in full all charges then due including any late fees or penalties.

4.5. Clearswitch may, upon written notice, impose a monthly credit limit based on information found in a credit report (the “Monthly Credit Limit”). If such Monthly Credit Limit is put in place, Customer may not use any Service or combination of Services if such usage will result in the recurring charges

applicable to such Service(s) in any month exceeding the Monthly Credit Limit. If Customer is delinquent in the payment of fees as set forth herein or if Customer's overall financial condition changes adversely (in Clearswitch's reasonable business judgment), Clearswitch reserves the right to require Customer to provide as security a cash deposit or letter of credit in an amount determined by Clearswitch in its sole discretion, and, in such event, Customer shall provide such security within ten (10) days following Clearswitch's written request therefor.

4.6. Clearswitch shall have the right to offset against any obligations owed to Customer any obligations owed by Customer for the provision and/or purchase of Services regardless of whether the obligation arose under this or any other current or future agreement or tariffed offering.

## **5. Taxes and Tariffs.**

5.1. Customer shall be responsible for and pay any and all applicable foreign, national, provincial, state and local taxes, including without limitation, all use, sales, value added, surcharges, excise, franchise, property, commercial, gross receipts, license, privilege or other similar taxes, levies, surcharges, duties, fees, or other tax related surcharges, whether charged to or against the terminating party or the originating party, with respect to Customer's use of the Services ("Taxes").

5.2. Clearswitch reserves the right to require the submission of certifications of exemption from any Taxes from which Customer asserts itself to be exempt, along with any updated certifications required by Clearswitch, from time to time in Clearswitch's sole discretion, for any such asserted exemption to be implemented on any invoice. Notwithstanding Clearswitch's prior acceptance of any such certificate and in any case, Customer shall indemnify and hold Clearswitch harmless from and against all claims, expenses, liabilities, losses or other damages (including attorneys' fees and expenses) relating to any Taxes.

5.3. Customer shall be responsible and pay any and all state and federal tariffs applicable to the Services.

## **6. Termination and Termination Charges and Related Matters.**

6.1. Clearswitch may terminate the Agreement, any Service, or both, immediately if Customer (a) fails to make any payment due under the Agreement, (b) fails to provide security or additional security within the timeframe, or (c) fails to promptly cure any fraudulent activity.

6.2. Either Party may terminate the Agreement, any Service Order, or both, immediately on notice, if the other (a) commits a material breach of the Agreement, which is capable of remedy, and fails to remedy the breach within the Remedy Period (as defined hereinafter), or (b) commits a material breach of the Agreement which cannot be remedied. Any termination of the Agreement or Service Order shall take effect upon delivery of written notice to the breaching party that it failed to cure such non-performance or breach. The "Remedy Period" means, in the case of Customer, ten (10) days, and in the case of Clearswitch, ninety (90) days.

6.3. Customer acknowledges that in the event of expiration or termination of the Agreement or any Service Order, Clearswitch has no obligation to continue to provide any Services to Customer. Customer further agrees that it will immediately effect an orderly and timely transition of services to another provider and/or route.

6.4. At any time when Customer's aggregate outstanding balance with Clearswitch is no more than \$2 USD (and Customer is not subject to any minimum commitment or other MRCs with Clearswitch),

Customer may deactivate Customer's account, and Clearswitch will suspend any access to the Services, as well as collection of any amounts owed, until such time as Customer reactivates Customer's account. The Term of the Agreement shall continue in accordance with the terms set forth herein and in any Service Orders during any such suspension.

6.5. From time to time, Clearswitch may, but is not obliged, to grant to Customer certain promotional, usage or other credits. If Customer does not use such credits within six months after such credits have been granted, Clearswitch reserves the right to withdraw such credits without any liability.

## **7. No Warranties and Limitation of Liability.**

7.1. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES, EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7.2. IN NO EVENT SHALL CLEARSWITCH, ITS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, INCLUDING ANY DAMAGES ARISING FROM ANY NEGLIGENT ACT OR INADVERTENT OMISSION, WHETHER IN CONTRACT, TORT OR UNDER LAW, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CLEARSWITCH BE LIABLE FOR DAMAGES IN AN AMOUNT IN EXCESS OF THE AMOUNT THAT CLEARSWITCH CHARGED OR WOULD HAVE CHARGED FOR SUCH SERVICES IN THE SIX MONTHS PRIOR TO WHEN THE CLAIMS FIRST AROSE OR \$10,000, WHICHEVER IS LESS.

7.3. IN NO CIRCUMSTANCES SHALL CLEARSWITCH, ITS SUBCONTRACTORS, VENDORS OR AGENTS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE: (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, 'DENIAL OF SERVICE' ATTACKS, DNS SPOOFING ATTACKS AND/OR OTHER HACKING ATTACKS OF A SIMILAR NATURE, OR (C) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS.

## **8. Force Majeure.**

Clearswitch shall not be held responsible for any delay or failure in performance of any part of the Agreement to the extent such delay or failure is caused by: fire; flood; earthquake; the elements; lightning; explosion; war; act of terrorism; strike; embargo; labor dispute; utility curtailments; power failures; government requirement; civil or military authority; act of god or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers (other than the parties themselves); acts or failures to act of any governmental authority; computer viruses or worms; 'denial of service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature or any other causes beyond its reasonable control, whether or not similar to the foregoing.

## **9. Updates.**

9.1. Clearswitch may, at its sole discretion and without liability, change or modify the features, protocols and functionalities of its portal, API, network, any interconnection point or any portion of any Service or modify or replace any hardware or software in its network or in equipment used to deliver any Service.

9.2. Clearswitch reserves the right to modify Clearswitch's network, system configurations or routing configurations.

## **10. Compliance with the AUP.**

10.1. Customer shall comply with the AUP, and shall cause its customers and end users to comply with the AUP. Customer shall indemnify and hold Clearswitch harmless from and against all claims, expenses, liabilities, losses or other damages (including attorneys' fees and expenses) arising in favor of any person, firm or corporation relating to violation of the AUP. Clearswitch may cancel or suspend the provision of, or move to a different platform, the whole or any part of any Service which is determined to be a violation of, or no longer permitted under, any aspect of the AUP.

10.2. Clearswitch reserves the right, at its sole discretion, to monitor Customer's traffic patterns, and to determine if a Service is being used in violation of the AUP. Violation of the AUP may result in civil or criminal liability, and Clearswitch in its sole discretion, in addition to any remedy that it may have at law or in equity, may immediately terminate permission for Customer to use the Services, or any portion of the Services, and may charge Customer any applicable rates and cancellation or termination fees. In addition, Clearswitch may investigate incidents that are contrary to the AUP and provide requested information to third parties who have provided notice to Clearswitch stating that they have been harmed by Customer's failure to abide by the AUP or the rest of the Agreement. Clearswitch may bring legal action to enjoin violations and/or collect damages caused by any violation of any part of the AUP. Any violations or attempted violations of the AUP by Customer (or its customers or end users, or any third party on behalf of any of the foregoing) will constitute a violation of the AUP by Customer and a material breach of the Agreement. Clearswitch's failure to enforce this policy in every instance in which it might have application does not amount to a waiver of Clearswitch's rights.

## **11. Other Terms.**

11.1. Customer is solely responsible for ensuring that Customer possesses appropriate software and hardware and other technology to benefit from any portion of the purchased Services. Clearswitch shall be reasonably responsive in answering questions pertaining to what may constitute such appropriate software, hardware and/or other technology.

11.2. Customer is solely responsible for (a) content of information and communications transmitted using the Services, and (b) use and publication of communications and/or information using the Services. Customer understands and agrees that Clearswitch is only a conduit for the transmission of Customer and third-party information, and that Clearswitch neither initiates the transmission of information, selects the receivers of the transmission, nor selects nor modifies the information contained in the transmission.

11.3. Customer is solely responsible for complying with protocols specified by Clearswitch on its portal and Clearswitch shall have no liability for Customer's failure to so comply.

11.4. Customer will ensure that neither the Customer nor any party with whom it does business will commence or implement any Local Number Portability (Port Out or Port In) process or authorization without the express, written consent of Clearswitch. Subject to applicable law, Customer shall pay all fees associated with any Port Out process in advance.

11.5. The Parties will mutually agree on the points of demarcation or interconnection for all Services, as and to the extent applicable.

11.6. Clearswitch shall not be liable for any inaccuracy in any data or records pulled from any database not maintained by Clearswitch, including, without limitation, the LERG (Local Exchange Routing Guide), CNAM (Caller ID Name) and the SCP (Service Control Point) or any other similar database for purposes of determining LRN (Location Routing Number).

11.7. Customer will have the sole responsibility to input, validate and maintain accurate information with respect to Customer's end users, customers and/or subscribers. Customer will furthermore be solely responsible for any and all support of and for Customer's end users, customers, and/or subscribers as it relates to the Services.

11.8. Customer acknowledges that, as between the Parties, Clearswitch is the sole owner of any intellectual property arising out of or related to the Services, and hereby assigns to Clearswitch any jointly-developed intellectual property developed by the Parties or, in the event that such assignment is unenforceable for any reason, hereby grants to Clearswitch a perpetual, universal, royalty-free, freely assignable and sublicensable license to use any such jointly developed intellectual property.

11.9. Customer hereby acknowledges that, because the provision of the Services may involve the interaction of various communications services, Clearswitch cannot guarantee the delivery, accuracy, content, availability or performance of the Services. Similarly, because Clearswitch cannot guarantee the content transmitted over the Services, the content may include unsolicited commercial text or email messages ("Unsolicited Content"). Customer hereby provides its express acknowledgement of and consent to the receipt of Unsolicited Content under the TCPA and other applicable consumer protection laws. Further, Customer will and will require its customers to obtain producible documentation sufficient to demonstrate that it has made a clear and conspicuous disclosure to any recipients of any message that such recipients may receive Unsolicited Content, and that such recipients have unambiguously consented to receive such message as required by the TCPA and other applicable consumer protection laws.

11.10. Customer hereby, on its behalf and on behalf of the End-Users (as defined hereinafter) (Customer, together with the End-Users, being referred to hereinafter as the "Appointing Parties", and each, an "Appointing Party"), hereby makes, constitutes and appoints Clearswitch, with full power of substitution and re-substitution, each Appointing Party's true and lawful attorney-in-fact for the Appointing Party and in the Appointing Party's name, place and stead and for the Appointing Party's use and/or benefit, to sign, execute, certify, acknowledge, swear to, file and record all agreements, certificates, instruments and other documents with or for the benefit of any third party as may be required to provide the Services, including, without limitation, any letters of authorization with respect to the porting of any telephone number(s). If Customer is not an End-User, Customer hereby covenants and agrees to obtain identical powers of attorney from each and every of its customers, and to the extent such customers of Customer are not End-Users, to cause such customers to (a) obtain identical powers of attorney from each and every of their customers, as well as (b) to cause such customers to covenant that they will include a covenant identical to this one in their contracts with such customers. Customer hereby represents and warrants that the powers of attorney granted by the Appointing Parties in this paragraph are enforceable in accordance with their terms, except to the extent as may be limited by applicable law or regulation. As used herein, the "End-Users" (each, an "End-User") means those

natural persons and/or entities who ultimately use or are intended to ultimately use or benefit from the Services.

11.11. Customer agrees that when it is acting as an upstream provider originating traffic (hereinafter referred to as an “Originating Provider”) or passing traffic through (hereinafter referred to as a “Transit Provider”), if it receives a request from a traceback administrator authorized by US Telecom’s Traceback Group for information about suspicious robocalls that have been sent to a downstream provider (hereinafter referred to as a “Traceback Request”), Customer will promptly respond to the Traceback Request in good faith. Customer agrees that its response shall indicate if it is in the call path as the Originating Provider of the calls (i.e., Customer received the calls from Customer’s End-User) or (ii) a Transit Provider (i.e., Customer received the calls from another voice provider). The response shall also identify the source of the calls. Customer agrees to share this information without requiring a subpoena or other formal demand or request.

11.12. If Customer resells Termination service to a telecom service provider, Customer agrees that, within three (3) months of Customer’s execution of this Agreement, Customer will include the terms of Section 11.11 in its entirety in each of its agreements with its upstream providers.

11.13. Clearswitch may provide interstate/intrastate designations in certain CDR reports, however, such designation is for convenience only and Customer expressly releases Clearswitch from any liability associated with the use of such terms as terms of art and Clearswitch expressly disclaims any implied representations regarding such terms and designations.

## **12. Telephony Services.**

This Section applies to telephony Services. All calls to the U.S. and Canada are billing in thirty second increments with a sixty second minimum. Clearswitch will make available to Customer reasonably requested DID and toll-free telephone numbers where Clearswitch has access to such numbers. A “Short Duration” call is a call that is six (6) seconds or less in duration (note that durations for Short Duration traffic are subject to change or may be different based on jurisdiction). Customers may not in any circumstances exchange “Short Duration/Dialer”. If customers are found to be exchanging “Short Duration/Dialer” they will have their account terminated immediately.

## **Messaging Services.**

This Section applies in the event that Customer is purchasing messaging (SMS/MMS) Services.

13.1. Customer acknowledges and agrees that messages to or from Customer or Customer’s end users, customers and/or subscribers may be blocked by carriers or other service providers for reasons known or unknown to Clearswitch; Clearswitch is under no obligation to investigate or remedy any such blockage for Customer or any of Customer’s end users, customers or subscribers. Clearswitch and its vendors do not guarantee delivery, regardless of the reason, of any messages. Customer is responsible for maintaining continuous availability to receive messages from Clearswitch via IP connectivity.

13.2. The following applies only if Customer uses Short Codes (as defined hereinafter). A “Short Code” is a 5- or 6- digit number that represents either the originating or terminating end of an SMS conversation. Short Codes are associated with one or more Campaigns (as defined hereinafter). A “Campaign” is an SMS-based one-way or two-way conversation that a user “opts in” to receive; Campaigns are assigned to one or more Short Code(s). Clearswitch may, in its discretion, approve or reject any Campaign, and suspend any portion of the services pertaining to any rejected Campaign.

13.3. Customer's use of SMS/MMS Services must comply with any applicable Messaging Principles (as defined below) and all applicable laws. Customer will be solely responsible for the evaluation and qualification of Customer's actual and prospective end users' use cases to ensure such use cases follow applicable Messaging Principles. Customer will be solely responsible for compliance by Customer (and by Customer's end users) with any applicable Messaging Principles applicable to any utilization of SMS by Customer, Customer's end users, or any other person or entity to which Customer provides any services utilizing SMS. Any SMS message that does not comply with the Messaging Principles and/or applicable laws constitutes a violation of the AUP. Clearswitch reserves the right to take any action necessary for Clearswitch to comply with any applicable Messaging Principles. "Messaging Principles" shall mean each of the following: (i) the messaging principles and best practices as promulgated by the Cellular Telecommunications Industry Association (CTIA) from time to time and (ii) any messaging principles and/or acceptable use policies of any applicable upstream vendor or provider of such services. In the event of any conflict between Messaging Principles and this Agreement, the terms of this Agreement shall be controlling.

## **13. E911 Services.**

This Section applies in the event that Customer is purchasing E911 Services.

### **14.1. Certain Definitions.**

"Automatic Number Identification" or "ANI" means the telephone number associated with the access line or its equivalent from which an E911 emergency services call originates.

"Automatic Location Identification" or "ALI" means the automatic display at the PSAP of the caller's telephone number, the address/location of the telephone and, in some cases, supplementary emergency services information.

"E911 Service" (also referred to as "E911" or "Enhanced 911 Service") means a telephone exchange communications service whereby a PSAP answers telephone calls placed by end users dialing the number 911.

"E911 Authority" means a municipality or other state or local government unit, or an authorized agent of one or more municipalities or other state or local government units to whom authority has been lawfully delegated to respond to public emergency telephone calls, at a minimum, for emergency police and fire services through the use of one telephone number, 911. For clarity, an E911 Authority may be an individual PSAP, or an entity responsible for the management and operation of multiple PSAPs within a given geographic area.

"NENA" means National Emergency Number Association.

"NENA Company ID" means the three to five (3 to 5) character identifier obtained by Customer from NENA (the National Emergency Number Association). The NENA Company ID allows the PSAP to identify the switching carrier for the caller, and to determine the 24 x 7 number of the entity for emergency contact needs.

"PSAP" means an answering location for E911 calls originating in a given area. The E911 Authority may designate a PSAP as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs answer calls; secondary PSAPs receive calls on a transfer basis. PSAPs are public safety agencies such as police, fire, emergency, medical, etc., or a common bureau serving a group of such entities.



14.2. Customer only will use E911 Services for Approved Uses (as defined hereinafter). “Approved Uses” means the provision of E911 Services to (i) end users who principally utilize such services at such end user’s residence and occasionally at other locations, whether due to an end user’s use of mobile devices in connection with such services or otherwise; (ii) end users that are enterprises that use either an on-site or hosted private branch exchange during customary business hours and should reasonably be expected to have reasonably customary 911 usage patterns due to the nature of such enterprise’s business or operations; (iii) end users that operate non-emergency call center(s) that should reasonably be expected to have only occasional use of 911 due to the nature of such call center’s business or operations (central station alarm and other similar call centers that direct calls to emergency services do not constitute “Approved Uses”); and (iv) end users that operate call center(s) that support the deaf and/or hard of hearing community, which are more commonly known as “relay services.” For clarity with respect to clause (ii), enterprises that (X) use either an on-site or hosted private branch exchange but operate outside customary business hours, including, without limitation, assisted living facilities, nursing homes and other similar facilities, and to which clauses (iii) and/or (iv) above do not apply; or (Y) should not reasonably be expected to have reasonably customary 911 usage patterns due to the nature of such enterprise’s business or operations do not constitute “Approved Uses”.

14.3. Clearswitch will provide the PSAP only such name, address and telephone number information as Customer will provide to Clearswitch, and Clearswitch will only pass to the PSAP such information, including ALI and/or ANI data, as Customer’s facilities, network or station equipment will make properly available to Clearswitch’s network and equipment for transmission to the PSAP.

14.4. Customer must instruct end users not to block their telephone number on their handsets when calling 911. Customer will maintain a NENA Company ID and remain in good standing with NENA standards, including, but not limited to the requirement that Customer will have live technical assistance available on a 24-hour, 7 day a week basis, to permit any PSAP to contact Customer for information that may assist with call trace, hostage situations, investigation of prank calls, etc. For each telephone or DID (direct-inward-dial) number for which Customer desires Services, Customer must provide Clearswitch with a correct and valid emergency response address for that number. The address information provided must include sufficient information to enable emergency responders to locate the calling party and must comply with any multiline telephone system requirements applicable to Customer. For example, if applicable pursuant to any applicable multiline telephone system requirements, if the subscriber or end user’s location is a multi-story building, Customer must provide floor and suite number in addition to address information. Customer is solely responsible to promptly update this information whenever necessary to reflect changes. Customer will provide ANI with every subscriber and/or end user call presented to Clearswitch for processing. Clearswitch will have no obligation to provide Services with respect to any subscriber or end user call that does not include ANI and will not be liable for any claims arising from any efforts undertaken by Clearswitch to provide Services under such circumstances.

14.5. Customer will inform any party using (or any party that might use) the Services of the difference between traditional 911 and VoIP 911 service in compliance with all applicable laws and/or other governmental requirements imposed or required by any governmental authority, including, without limitation, the FCC.

## **14. Toll Free Services.**

This Section applies in the event that Customer is purchasing Services with a toll-free traffic component (i.e., toll-free termination Services, toll-free origination Services, toll-free messaging services). Clearswitch shall act as the party responsible for managing and administering the account records in the Toll-free Service Management System Database (the “Responsible Organization”). Clearswitch’s responsibilities as the Responsible Organization are limited to coordinating data entry, record changes,

trouble acceptance and troubleshooting referrals and clearances. Customer agrees, from time to time, to take such actions as may be reasonably requested by Clearswitch to ensure that Clearswitch is in compliance with all of its governmental and industry requirements in its capacity as the Responsible Organization. As the Responsible Organization, Clearswitch is limited in the number of toll-free reservations it may hold. Reservations are on a first-come, first-served basis. Clearswitch will not be responsible for any toll-free reservation unavailability as a result of Clearswitch being at capacity with respect to toll-free reservations. In addition to the terms set forth in the AUP, Customer is strictly prohibited from using toll-free Services for 911 or other emergency service communications.

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS CLEARSWITCH AGAINST ANY AND ALL CLAIMS, EXPENSES, LIABILITIES, LOSSES OR OTHER DAMAGES (INCLUDING ATTORNEYS' FEES AND EXPENSES) RESULTING FROM THE FAILURE OF CUSTOMER TO COMPLY WITH THIS PARAGRAPH.

## **15. Database Services.**

This Section applies in the event that Customer is purchasing LRN (Location Routing Number) or other database Services (i.e., Services relying on the LERG, CNAM and/or SCP, or similar databases).

Customer hereby represents and warrants that (a) Customer shall access and/or use such Services solely for purposes of (i) routing, rating or billing telephone calls, or (ii) performing network maintenance in connection with the provision of telecommunications-related services; and (b) Customer has signed an NPAC (Number Portability Administration Center) user agreement for acceptable use of data in all regions. Notwithstanding anything to the contrary in the Agreement, in the event Clearswitch's agreement with NPAC is terminated for any reason, Clearswitch may terminate the Services by giving Customer written notice of such termination. Customer acknowledges and agrees that Customer does not have any right, title, or interest to any data contained within any database associated with the Services.

## **16. Confidential Information.**

17.1. For the purposes of the Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by one Party ("Discloser") to the other Party ("Recipient") and identified in writing by the Discloser as Confidential Information in accordance with this Section. Confidential Information does not include information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) that is or becomes publicly known or available through no breach of the Agreement by the Recipient; (c) that is or becomes rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) that is or becomes independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. Notwithstanding the foregoing, (i) nonpublic information regarding the Services, including, without limitation, unpublished pricing, shall constitute Clearswitch's Confidential Information and (ii) the identity and/or intellectual property of Customer's customers and/or any end user shall not constitute Confidential Information.

17.2. For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in the Agreement or by agreement of the Discloser, the Recipient agrees: (a) to use it only for the purpose of performing under the Agreement, and (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under the Agreement.

17.3. This Section 17 supersedes any prior non-disclosure or confidentiality agreement or any agreement containing such terms between the Parties. Notwithstanding the foregoing, any non-disclosure or confidentiality agreement entered into by the Parties in advance of the Agreement will remain effective

according to its terms with respect to any information exchanged by the Parties prior to the Effective Date.

17.4. Notwithstanding the foregoing Sections 17.1 - 17.3, nothing herein limits (i) Clearswitch's ability to comply with any governmental requirement or request, including, without limitation, responding to any subpoenas, or (ii) Clearswitch's ability to use Customer account detail and other information to improve the Service or develop new services.

## **17. General.**

18.1. The Agreement shall be exclusively governed by the laws of the State of Illinois, without regard to its conflicts of laws principles.

18.2. Any dispute arising out of the Agreement that cannot be resolved between the parties, must be submitted to binding arbitration in Chicago, Illinois, USA in accordance with the rules established by the American Arbitration Association ("AAA"). The decision of a sole arbitrator shall be binding on all parties. Either Party may initiate arbitration by providing written demand for arbitration, a copy of the Agreement and the administrative fee required by the AAA Rules to the AAA located in Chicago, Illinois. A copy of the notice shall also be provided to the other Party. The remaining cost of the arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties unless the arbitrator's award provides otherwise.

18.3. Except for claims for indemnification, no action or proceeding against Clearswitch will be commenced more than one (1) year after the Service which is the basis for the action or proceeding is rendered, and each party acknowledges that this limitation constitutes an express waiver by it of any rights under any applicable statute of limitations which would otherwise afford additional time.

18.4. All notifications, requests, demands and other communications required or permitted under the Agreement ("Notices") will be in writing and addressed to, in the case of Clearswitch, the recipient Party at the address(es) specified below or, in the case of Customer, to an address (including an email address) associated with Customer's account with Clearswitch. If to Clearswitch:

c/o Clearswitch Consulting Group Inc.

328 Commissioners Rd W, Suite 1007

London, Ontario N6J 1Y3

CANADA

Email: [hello@clearswitch.net](mailto:hello@clearswitch.net)

18.5. Nothing contained herein shall constitute this arrangement to be a joint venture or a partnership between Clearswitch and Customer. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party. Clearswitch has no relationship with or obligation to any of Customer's end users, customers, subscribers, or any other person or entity to which Customer provides any services (including any Services), none of whom is a third-party beneficiary of the Agreement or any portion hereof.

18.6. Customer may not assign its rights or obligations under the Agreement without the prior written consent of Clearswitch. Any transaction or series of transactions which will result in the individual(s) and/or entities that held or controlled Customer prior to such transaction and/or series of transactions ceasing to hold or control at least 50% of Customer shall be deemed an assignment for purposes of the

first sentence of this Section 18.6. Clearswitch may freely assign its rights and/or obligations or any portion of them to any affiliate or third party.

18.7. Notwithstanding anything to the contrary, Customer agrees that Clearswitch may use and process data, information, and content (including personal data) (such data, information, and content, "Content") provided by Customer in connection with the Agreement or the Services contemplated herein, consistent with applicable law and regulation. Purposes for such usage and processing including, but not limited to, operating, analyzing, and improving the Services, promoting the Services, or developing new technologies and services for Clearswitch are each deemed to be in connection with the Agreement and the Services contemplated herein. Customer confirms that it has obtained all necessary consents to such processing and usage from the data subjects concerned.

18.8. Neither Party will publish or use any advertising, sales promotions, press releases or other publicity which uses the name, logo, trademarks or service marks of the other without the prior written approval of the other; provided that, notwithstanding anything to the contrary set forth herein, Clearswitch may publicly disclose that Customer is a customer of Clearswitch and the nature of Customer's use case for the Services, including, without limitation, the identity and intellectual property of Customer's customers and/or end users, and may use Customer's logo to so identify Customer, including on Clearswitch's website.

18.9. If any provision of the Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

18.10. Termination of the Agreement shall not affect either Party's accrued rights or obligations under the Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after the Agreement has ended.

18.11. A waiver by Clearswitch of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition in the future. No waiver by Clearswitch of any breach of this Agreement shall be considered valid unless in writing. The failure or delay of Clearswitch in exercising any of its rights under this Agreement shall not constitute a waiver of Clearswitch's rights.

18.12. Except as may otherwise be provided herein, the assertion by a Party of any right or the obtaining of any remedy hereunder shall not preclude such Party from asserting or obtaining any other right or remedy, at law or in equity, hereunder.

18.13. The Agreement may be executed by facsimile and/or other electronic signature and may be executed in one or more counterparts, each of which counterparts shall be deemed an original, but all of which together shall constitute one, and the same, agreement.

18.14. Customer expressly requests to receive information via phone call, SMS/text message and/or email, even if Customer is listed on any internal state or federal Do-Not-Call Registry list. Consent is not a requirement to purchasing Services; Customer may opt-out by replying "STOP" to any message received and may request additional assistance by replying "HELP". Customer may receive up to 10 messages per month. Message and data rates may apply.

18.15. The parties waive any right to assert any claims against the other party as a representative or member in any class or representative action, except where such waiver is prohibited by law or deemed by a court of law to be against public policy. To the extent either party is permitted by law or court of law to proceed with a class or representative action against the other, the parties agree that: (i) the

prevailing party shall not be entitled to recover attorneys' fees or costs associated with pursuing the class or representative action (notwithstanding any other provision in this Agreement); and (ii) the party who initiates or participates as a member of the class will not submit a claim or otherwise participate in any recovery secured through the class or representative action.

18.16. The Agreement (including, without limitation, the Terms and Conditions, the AUP, the Privacy Policy, the Cookie Policy and any and all Service Orders, supplements, exhibits, schedules, appendices or other attachments referenced or incorporated herein or entered into in connection with the purchase of the Services) represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, written or oral.