



Telecommunications II Corp.

## VOICE TERMS & CONDITIONS

THIS AGREEMENT ("Agreement") is between M2Ngage Telecommunications II Corp. ("we," "us," "Company" or "M2Ngage") and the user ("you," "user" or "Customer") of Signal Point's Business Voice over Internet Protocol (VoIP) service ("Service" or "Account"), which shall include any devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service as described further in Attachment 1 to this Agreement (such attachment, as modified from time to time in accordance with this Agreement, the "Service Description & Fee Attachment", and the services set forth in the Services Description & Fee Attachment, as so modified from time to time, the "Services"), and the Customer wishes to receive the Services. Accordingly, the parties agree as follows:

1. **Services** M2Ngage shall use commercially reasonable efforts to provide the Customer with the Services in accordance with the terms set forth in this Agreement and applicable attachments. Customer shall provide M2Ngage with any and all information necessary to activate Services and shall instruct its previous provider(s), if any, to assist in transferring services to M2Ngage. Failure to activate Services within thirty (30) days of execution of the Agreement shall result in a monthly administrative fee equal to fifty (50) percent of the monthly reoccurring charges due under this Agreement to be paid by Customer after thirty days, and every month thereafter, until the Service is activated, unless such delay is due solely to M2Ngage. For the purposes of this paragraph, an "activated" Service is one that is ready to be used by the Customer."

2. **Fees:** The Customer shall pay the Company service fees, installation fees, and equipment fees as set forth in Attachment 1 to this agreement (such attachment, as modified from time to time in accordance with this agreement, the "Service Description & Fee Attachment") or as provided elsewhere in the Agreement. In addition, the Customer shall pay all applicable governmental taxes, fees, and similar charges, which the Company will include in its periodic invoices to the Customer and any gross receipts surcharges imposed by the Company. Customer shall not be excused from payment due to claims of calls being fraudulent. If payment is not made when due on or before the 15<sup>th</sup> of the month, Customer shall be responsible for a 7.5% Surcharge, all reasonable costs of collection in addition to simple interest which shall accrue on the overdue balance at an interest rate of one and a half per cent (1.5%) per month or the maximum amount of interest which may legally be charged on an open account, whichever is less. Interest charges will be prorated on a daily basis for partial months, and on thirty (30) day month basis. Further, in the event of non-payment, the Company may suspend or terminate Services to Customer without any liability to the Company as permitted by applicable law.

### 3. BILLING AND PAYMENT:

3.1 Billing: Customer will be billed monthly in amounts based on the Service plan selected by the Customer. Any additional calls that are

not included in the monthly fee will be charged on a per minute usage basis at M2Ngage's prevailing rates as they may change from time to time. Billing will be rounded up to the nearest penny for each call. Usage charges will be billed on either a per-minute or per-message basis, as specified on the Customer's sales order form. Calls billed on a per-minute basis will be timed in one-minute increments and billed by rounding to the next whole minute.

3.2 Payment: You agree to pay by credit or debit card, and, in signing up for the Service, authorize M2NGAGE to charge your credit or debit card on or about the fifteenth day of each month for all applicable fees and charges, including but not limited to activation fees, monthly usage charges, equipment non-return fees, and shipping and handling charges. Further, Customer is responsible for, and shall pay, any applicable federal, state, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility, Communications or other taxes, VoIP Administration Fees, fees, or surcharges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your Account. ALL Bills are due upon receipt. If payment is not made by the 15<sup>th</sup> of the month when due hereunder, you shall be subject to a 7.5% Surcharge and simple interest shall accrue on the overdue balance at an interest rate of one and a half per cent (1.5%) per month or the maximum amount of interest which may legally be charged on an open account, whichever is less. Interest charges shall be prorated on a daily basis for partial months, and on thirty (30) day month basis. Further, in the event of non-payment, M2NGAGE may suspend or terminate service to Customer without any liability to M2NGAGE as permitted by applicable law. Any dispute related to payment must be made within thirty (30) days of the due date of the applicable invoice or be forever waived. Undisputed amounts must be paid prior to any dispute being filed. If the Parties cannot resolve a dispute within 30 days of receipt, or as mutually extended by the Parties, either Party may avail itself of the remedies provided in Section 17.

3.3 Equipment Non-Return Fee: If you received a Device(s) as part of your Service, you agree to return the Device(s) upon termination of the Service for any reason (regardless of whether termination is by you or M2NGAGE). If you fail to return the Device(s) upon termination of the Service, M2NGAGE will charge to you, per Device, an equipment non-return fee equal to the replacement cost of the device less any payments you made for the device (in the case of an equipment purchase).

4. **SERVICE LIMITATIONS:** The Company's ability to provide the Services depends on the continuing supply of electrical power to the Customer, and the continuing availability and operation of the broadband connection. The Customer understands and acknowledges that the Company will not provide the Services, and will not have any liability or obligation to the Customer for the failure to provide the Services, upon the occurrence and during the continuance of a power

outage or a disruption or other failure in the operation of the broadband connection. A power failure or disruption may require the Customer to reset or reconfigure equipment, including your device or any connecting equipment in your transmission path, prior to using the Service. In addition, the Customer understands and acknowledges that the Company will not have any liability or obligation to the Customer for any damages (including, without limitation, damages from disruption of **911 or other emergency services**, security system, monitoring, or emergency medical alert service, as well as any incidental and consequential damages) resulting from the failure to provide Services upon the occurrence and during the continuance of a power outage and/or a disruption or other failure in the operation of the broadband connection, including due to lack of payment...

Service is for for domestic or international calls from the continental U.S. only. Service cannot be used to place 700, 800, 900, or 976-numbers, operator-assisted, third party billed or collect calls. M2NGAGE is not responsible for lost or stolen cards, activation codes or Service. Due to the portable nature of the Service, M2NGAGE reserves the right to block or terminate Service without notice if M2NGAGE believes Service is being used for fraudulent or illegal purposes. M2NGAGE may deny or limit use of the Service for any lawful reason. M2NGAGE makes no warranties or representations, express or implied, about the Service and disclaims any implied warranties. M2NGAGE's liability for any claim or dispute is limited to the face value of the Service. In no event will M2NGAGE be liable for any indirect, special, incidental, consequential, exemplary, or punitive damages of any kind. No dispute or claim may be brought as a class action and you may not act as a class representative or participate as a member of a class of claimants with respect to this Service. Due to regulatory changes, country availability is subject to change without notice.

The Service and Device are provided to you as a business user for the use of your business only. This means that your Service (including the device) may not be resold or transferred to any other person or entity for any purpose. You agree that the Services are for ordinary and usual office voice communications and do not confer the right to use the service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting, fax blasting, or any type of automated or continuous use. M2NGAGE reserves the right to immediately terminate or modify the Service, if M2NGAGE determines, in its sole discretion, that Customer's Service is being used for any of the aforementioned prohibited activities, in accordance with applicable agreements, and laws regarding such use.

You acknowledge and agree that your Services are offered on a bundled basis (including local, toll, long distance and international service) and cannot be separated. You acknowledge that these services (local, toll, and long distance) are not available individually, and to maintain each of the services in the bundle, you must maintain the others on the same service line. Should you wish to change any of these service providers from M2NGAGE, you will terminate your Service with M2NGAGE.

All features of this Service (including, but it no way limited to Free 4-1-1 Directory Assistance), are subject to availability, class of service, suitability of Customer's broadband connection and Customer's available bandwidth at the time of attempted use by Customer. Features may be discontinued and/or currently free-of-charge features may be reclassified as Advanced (chargeable) Features at any time.

**5. Term of Services** The Company shall provide the Services from the completion of the installation referred to in section for a minimum period referenced on the Service Agreement. Unless notified in writing 60 days prior to expiration of the initial term, this agreement will automatically renew for a subsequent 12 months. The Company may discontinue the Services or any portion thereof, upon thirty (60) days notice. Should Customer cancel Services the Customer that desires to terminate service must i) Notify M2ngage 60 days prior to termination. ii) If a Customer terminates prior to the end of their contract, payment in full for the remaining term must be paid in full upon termination and if the Customer subsequently request the M2NGAGE to temporarily reactivate the Service(s) or postpone the proposed termination date, M2NGAGE may, in its sole discretion do so provided Customer shall pay any and all charges associated with the Service(s) at rates currently in the Agreement plus a twenty (20) percent premium fee in addition to such monthly charges.

**6. Manner of Use of Services by Customer** The Customer shall not utilize the Services in a manner that results in a violation of law, breach of agreement with, breach of duty or damage to, or violation of the rights of, any third party. This means you agree not to use the Service for transmitting or receiving any communication or material of any kind, when, in M2NGAGE's sole judgment, the transmission, receipt or possession of such communication could reasonably constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. M2NGAGE reserves the right to suspend or terminate your service immediately and without advance notice if M2NGAGE, in its sole discretion, believes that you have violated the above restrictions. You are responsible for any and all use of the Service and/or Device by any person making use of the Service or Device provided to you and agree to indemnify and hold harmless M2NGAGE against any and all liability for any such use that fails to comply with this Section 6. If M2NGAGE, in its sole discretion, believes that you have violated the above restrictions, M2NGAGE may forward the objectionable material, as well as your communications with M2NGAGE and your personally identifiable information to the appropriate authorities for investigation and prosecution.

Service and device and any firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the equipment, and all Services, information, documents and materials provided or offered by M2NGAGE are protected by trademark, copyright, or other intellectual property laws and international treaty provisions. All M2NGAGE websites, corporate

names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") are and shall remain the exclusive property of M2NGAGE and nothing in this Agreement shall grant you the right or license to use such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the equipment, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and that the equipment is exclusively for use in connection with the Service. If you decide to use the Service through an interface device not provided by M2NGAGE, which M2NGAGE reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface equipment with the Service and you will indemnify and hold harmless M2NGAGE against any and all liability arising out of your use of such interface device with the Service. The failure of your equipment to be compatible with the Service shall not excuse you for your obligations under the Agreement. You agree not to change the electronic serial number or equipment identifier of any equipment without express permission from M2NGAGE in each instance.

7. **Content:** For the purpose of this paragraph, a "User" means any person, whether authorized or unauthorized, using your Service and/or Device provided to you. You are liable for any and all liability that may arise out of the content transmitted by or to you or by or to any Users using the Services. You shall assure that your or any other User's use of the Services and content will at all times comply with all applicable laws, regulations, and written and electronic instructions for use. M2NGAGE reserves the right to terminate or suspend affected Services, and/or remove your or any other Users' content from the Services if M2NGAGE determines that such use or content does not comply with the requirements set forth in this Agreement, or interferes with M2NGAGE's ability to provide Services to you or others, or receives notice from anyone that your or any other Users' use or Content may violate any laws or regulations. M2NGAGE's actions or inaction under this Section shall not constitute review or approval of your or any other Users' use or Content. You will indemnify and hold M2NGAGE harmless against any and all liability arising from the content transmitted by or to you or by or to any other Users using the Services.

8. **Access to Customer Premises** From time to time at the Company's request, the Customer shall afford the Company and its agents and representative's reasonable access to its premises for purposes of enabling the Company to perform its obligations under this agreement.

9. **Limitation of Liability:** M2NGAGE shall not be liable for any delay or failure to provide the Service, including 911 dialing and related services, at any time or from time to time, or for any interruption or degradation of voice quality caused by any of the following: 1.) act or omission of an underlying carrier, service provider, vendor, or other third party; 2.) equipment, network or facility failure; 3.) equipment, network, or facility upgrade or modification; 4.) force majeure events

such as but not limited to, acts of god, strikes, fire, war, riot, government actions; 5.) equipment, network, or facility shortages; 6.) equipment or facility relocation; 7.) service, equipment, network or facility failure caused by the loss of power to Customer; 8) your failure to provide an accurate address at which you plan to use the Service and where you want emergency service personnel to respond when you dial 911 (if you are in a geographic region in which 911/E911 is available); 9) or 10.) any other cause beyond M2NGAGE's control, including without limitation, the failure of incoming or outgoing communications, the inability of communications to be connected or completed, including 911 dialing, or degradation of voice quality. Should any liability result despite the language in this section, M2NGAGE's liability for any failure or mistake shall in no event exceed Service charges with respect to the affected time period

10. **No Special Damages** Notwithstanding any other provision of this agreement, neither party shall be liable for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data, or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary, or punitive damages arising out of the performance or failure to perform under this agreement. Notwithstanding anything to the contrary, liability for any failure or mistake by the Company shall in no event exceed charges for the Services with respect to the affected time period.

No Consequential Damages: In no event shall M2NGAGE, its officers, directors, employees, affiliates, agents, or any other service provider who furnishes services to Customer in connection with this Agreement or the Service be liable for any incidental, indirect, special, punitive, exemplary or consequential damages, or for any damages, including but not limited to loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use the Service, including unavailability of 911 dialing service, or access to emergency service personnel through the Service. The limitations set forth herein apply to claims founded in breach of contract, breach of warranty, products liability, tort, and any and all other theories of liability, and apply whether or not M2NGAGE was informed of the likelihood of any particular type of damages.

11. **Disclaimer of Warranties** THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY SCHEDULE TO THIS AGREEMENT. M2NGAGE makes no warranties, express or implied, including but not limited to, any implied warranties of merchantability or fitness of the Service or the Device for a particular purpose. M2NGAGE does not warrant that the Service, including the 911 dialing component (when available), will be free of failure, delay, interruption, error, and degradation of voice quality or loss of content, data or information. Neither M2NGAGE nor its officers, directors, employees, affiliates or agents or any other service provider or vendor who furnishes services or products to Customer in connection with this Agreement or the Service will be liable for unauthorized access to M2NGAGE's or Customer's transmission

facilities or premises equipment or for unauthorized access to, or alteration, theft or destruction of, Customer's data files, programs, procedures or information through accident, fraudulent means or devices or any other method, regardless of whether such damage occurs as a result of M2NGAGE or its service provider's or vendors' negligence. Statements and descriptions concerning the Service or Device, if any, by M2NGAGE or M2NGAGE's agents or installers are informational and are not given as a warranty of any kind.

**12. Indemnification** Customer agrees to defend, indemnify, and hold harmless M2NGAGE, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) by, or on behalf of, Customer or any third party or user of Customer's Service, relating to this Agreement, the Service, including 911 dialing, or the Device. This paragraph shall survive termination of this Agreement.

**13. Amendment** The Company may, in its sole and absolute discretion, amend the Services Description Attachment and/or the Fee Attachment. No such amendment, however, shall affect the parties' liabilities or obligations otherwise in effect, until and unless the Customer executes and delivers an instrument in writing agreeing to be bound by such amendment. Rate changes shall be effective upon thirty (30) days prior written notice to Customer.

**14. Entire Agreement:** This Agreement, the 911/E911 agreement, any Terms of Services or other rules now or hereafter specified by M2NGAGE for the Service, shall constitute the entire agreement between M2NGAGE and Customer with respect to the subject matter hereof, and supersedes all previous written agreements between M2NGAGE and Customer with respect to the services provided hereunder. Acceptance of the Service shall constitute acceptance of the terms and conditions herein.

**15. Notices** All notices, requests, consents, and other communications provided for in this agreement shall be in writing and shall be (a) delivered in person, (b) sent by first-class, registered or certified mail, postage prepaid, (c) by email to the email address provided by Customer, or (d) sent by reputable overnight courier service, fees prepaid, to the recipient at the address set forth below, or such other address as may hereafter be designated in writing by such recipient. Notices shall be deemed given upon personal delivery, four calendar days following deposit in the mail as set forth above, or one business day following deposit with an overnight courier service.

Except where expressly prohibited by law, the Customer agrees to accept notices to this agreement electronically, either by email or web site posting. Notices to Customer of any changes to these "Terms and Conditions of Service" shall be considered given when posted to the "Service Announcements" section of the M2NGAGE Web Site. Notice will be considered received by Customer, and such changes will become binding on Customer, on the date posted to the M2NGAGE Web Site, and no further notice by M2NGAGE is required.

**16. Governing Law** This agreement shall be governed by and construed in accordance with the laws of the state of New York and all applicable federal laws. This governing law provision applies no matter where you reside, or where you use or pay for the services.

## 17. Resolution of Disputes

**17.1 Mandatory Arbitration:** Any dispute or claim between Customer and M2NGAGE arising out of or relating to the Service or Device provided in connection with this Agreement shall be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; (ii) award punitive or exemplary damages; or (iii) order discovery. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join a punitive or certified class action to arbitration or seek to consolidate or bring previously consolidated claims in arbitration. Customer acknowledges that this arbitration provision constitutes a waiver of any right to a jury trial.

**17.2 No Waiver/Severability:** The failure of M2NGAGE to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

**18. Privacy:** Because the Service may utilize, in whole or in part, the public Internet and third party networks to transmit voice and other communications over which M2NGAGE has no control, M2NGAGE is not liable for any lack of privacy that may be experienced with regard to the Service.

**19. Configuration of Company's Local Area Network (LAN) Equipment** The Company will configure Customer's LAN (Local Area Network) including any equipment included in this agreement to optimize the performance of the Managed PBX system. Any modifications to the equipment and/or network performed by non-Company personnel will not be the responsibility of the Company. In the event that the Company is required to provide support to resolve any issues that affect service or operation of the system as a result of modifications by non-Company personnel, the Company may, at its option, charge Customer for such support. Support will be billed at the Company's then current rates for support, including any minimum charges.

**20. Customer Provided LAN Equipment** Should Customer choose to provide their own LAN equipment, the Company requires the Customer to certify that their network and equipment meets all of the Company's Network requirements for proper system operation. In the event that a problem occurs and the Company is required to provide support to resolve problems, which result from Customers LAN not working or meeting requirements, the Company may, at its option, charge Customer for such support. Support will be billed at the

Company's then current rates for support, including any minimum charges.

**21. No Third Party Beneficiaries:** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.