



## Hosted Phone Services—Terms & Conditions

The Terms and Conditions described herein, hereafter “Terms and Conditions,” apply to all CloudTalk Business products including all optional features and related services, hereafter referred to as “the Service,” as provided to a customer of CloudTalk Business, hereafter referred to as “the Customer.”

### Section 1: Payments and Charges

The Customer’s Initial Payment for the Service will be due upon the processing of the Customer’s order and may include a Deposit amount equal to 50% of all One Time Charges, which may include Hardware, Software, Installation and Setup Fees. This Deposit will be due prior to the Order being processed.

The Service Start Date is the date Services have been provisioned and are available for the Customers use. Any costs for new features, equipment, or services added to the Service between the receipt of the Deposit and the Customer’s Service Start Date will be billed on the most current available billing cycle and be due upon receipt.

On subsequent monthly intervals after the Service Start Date, the Customer will be charged the ongoing monthly charges, the cost of any overflow long distance used during the previous month, the monthly rental for any hardware being rented, not already included in the Service, and for any international calls not included in the calling plan. Included in the calling plans are calls to the Continental US, AK, CA and HI.

Once the allotted long distance minutes are used, each long distance call will be charged at \$.06 per minute. Minutes are pooled across all lines in the Service (number of lines x allotted minutes = total pool of long distance). Each line has unlimited local calling, it is the Customer’s responsibility to know if all calls are considered local by the local carrier as calls with a metro area may be considered toll call. Such local long distance calls would be charged against the available pool of long distance minutes.

### Section 2: Additional Charges and Price Changes

Calls from pay phones to any of the Customer’s toll-free numbers may carry a surcharge per call, mandated by the FCC, which is passed on to the Customer at cost. Customers will be notified in writing of any price changes. Continued use of the Service following notice of the price changes will constitute the Customer’s consent to such changes. available billing cycle and be due upon receipt.



## Hosted Phone Services—Terms & Conditions

# TERMS&CONDITIONS

### Section 3: Account Balance

Monthly rental/service fees are payable in advance of each month's Service; additional call charges and any other applicable charges are billed subsequent to the end of each month's Service. The Customer may choose to pay for the Service by either credit card or ACH direct payment only. All charges will be automatically deducted following the generation of any invoice. It is the Customer's responsibility to maintain sufficient balance on the provided credit card or bank account to allow for charges for the Services.

Any Customer disputes of the amounts invoiced or charged must be submitted in writing to CloudTalk Business within sixty (60) days of the date of the disputed charges and, if not so disputed, the Customer waives any objection and further recourse with respect to such charges.

The Customer understands and agrees that awaiting any pending credit(s) to the Customer's account is not sufficient cause to withhold payment for invoices. A late fee of 1.5% per month will be applied to any unpaid account balance. We reserve the right to disconnect the Service at any time without notice due to non-payment or unlawful or inappropriate use of the Service. All charges owed at the time of disconnection will be immediately payable. We will pursue collection for unpaid amounts on disconnected accounts. Reinstating any service deactivated for non-payment of fees shall result in a reinstatement fee up to \$25. In the event Service is disconnected due to non-payment, Customer grants CloudTalk Business access to premises to acquire any equipment provided for the delivery of services provided under this agreement.

### Section 4: Local Area Telephone Numbers

Local area telephone numbers are assigned according to the proximity of the address the Customer provides to CloudTalk Business. However, it is the Customer's responsibility to confirm whether the number(s) are in the local calling area of the Customer. CloudTalk Business does not assume responsibility for any of the Customer's advertising cost or long distance fees due to a number not being within the local area of callers to the Service. If CloudTalk Business is porting any of your local or toll-free numbers, we cannot be held liable for any errors or omission that may arise from the porting process. CloudTalk Business is providing new local or toll-free numbers, we cannot be held liable for any errors or omission that may arise from the number assignment process.

### Section 5: 911 Softphones and Mobile Devices

As a provider of phone service accessible via softphones and mobile devices, CloudTalk Business has a responsibility to inform its customers that, by not providing CloudTalk Business the Customer's current address, all 911 calls made through CloudTalk Business service from a softphone may not be transferred to an emergency center near the Customer. Instead, all 911



## Hosted Phone Services—Terms & Conditions

calls made through softphones will be transferred to an emergency center near the Customer's last registered address. For this reason, it is important for the Customer to provide CloudTalk Business with the Customer's current address every time the softphone or mobile device is used from a fixed location. CloudTalk Business cannot guarantee the quality of softphones and are considered "as-is no warranty". Service cannot be canceled per Section 12 as a result of soft phone quality related issues.

### Section 6: Service Issues – Scope of Responsibility

In the event of any service issues, CloudTalk Business will assist the Customer with troubleshooting the problem's source. However, some elements key to proper performance, including LAN, wiring, power, firewall, CPE, and ISP, are beyond the scope of CloudTalk Business' responsibility to effect repairs. The sole exception to the above is in the case where CloudTalk Business is providing the Customer with a managed router, whereupon the CPE and ISP do fall within the scope of CloudTalk Business' responsibility. While CloudTalk Business will offer telephone support to the Customer in diagnosing service issues outside the direct scope of its responsibility, such as those listed above, their ultimate repair will remain the responsibility of the Customer, their Installer, and/or the Customer's 3rd-party IT vendor.

CloudTalk Business can travel on site to resolve issues outside the scope of our responsibility; such support would be subject to standard CloudTalk Business service call rates and charges. Some WAN issues, such as poor performance by Internet providers, are not the direct responsibility of CloudTalk Business. However, in these cases, CloudTalk Business will assist the Customer, their Installer, and/or the Customer's 3rd-party IT vendor in working with any such providers to eliminate these issues. CloudTalk Business can travel on site to resolve issues outside the scope of our responsibility; such support would be subject to standard CloudTalk Business Group service call rates and travel charges where applicable.

### Section 7: Lawful and Appropriate Use

It is specifically understood and agreed that the Customer shall be using the Service solely for lawful and appropriate purposes and the Customer hereby agrees to indemnify and hold CloudTalk Business harmless from any and all claims, damages, losses or liabilities of any nature whatsoever arising out of or concerning the Customer's use in any manner of the Service provided herein. In the event that CloudTalk Business is brought into or required to respond to any action arising from or concerning the Customer's activities, the Customer agrees to indemnify and hold CloudTalk Business harmless from all arbitration, court and attorney's costs and fees.

CloudTalk Business retains the right to immediately discontinue, disconnect, limit, or revoke the Service without warning to the Customer should the Customer, at the sole discretion and determination of CloudTalk Business, cause any type of activity or load which is incompatible with CloudTalk Business's network, causes quality of service issues, or otherwise impairs the



## Hosted Phone Services—Terms & Conditions

ability of CloudTalk Business to maintain or provide service to other customers. In the case that the Service is suspected of being misused by the Customer, including for fraudulent activity, CloudTalk Business reserves the right at its sole discretion to immediately terminate the Service and inform the authorities that the Service is believed to have been used for inappropriate business. CloudTalk Business shall not be liable for any direct or indirect damages resulting from a decision to discontinue, disconnect, limit, or revoke the Service with or without warning or for informing the authorities about the possibility of inappropriate business activities.

### **Section 8: Limited Warranty; Exclusions**

For equipment purchased directly from CloudTalk Business by the Customer, CloudTalk Business will pass on to the Customer any applicable manufacturer's warranty with respect to such equipment. For warranty repairs contact CloudTalk Business customer service.

EXCEPT AS PROVIDED ABOVE, CLOUDTALK BUSINESS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES MERCHANTABILITY, FITNESS OF THE SERVICE OR EQUIPMENT FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

IN ADDITION, CLOUDTALK BUSINESS DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, OMISSION, DEGRADATION OF VOICE QUALITY, OR LOSS OF CONTENT, DATA, OR INFORMATION.

ANY CLAIM AGAINST CLOUDTALK BUSINESS MUST BE MADE WITHIN ONE YEAR OF THE EVENT GIVING RISE TO THE CLAIM OR 90 DAYS FROM THE TERMINATION OF SERVICE, WHICHEVER IS EARLIER, AND CLOUDTALK BUSINESS SHALL HAVE NO LIABILITY THEREAFTER.

### **Section 9: Limitation of Liability**

The Service is not guaranteed. Liability for interruption of the Service and/or a lack of quality of the Service, including but not limited to errors and omissions relating to a directory listing and CNAM, shall be limited to a maximum of the sum of two months charges for the Service.

CloudTalk Business Group reserves the right to interrupt the Service for maintenance and systems upgrades at its discretion. CloudTalk Business shall not be liable for any delay in the Service or performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, power failure,



## Hosted Phone Services—Terms & Conditions

equipment failure, interruption of broadband or high-speed internet access, late delivery by suppliers, or other causes beyond the reasonable control of CloudTalk Business.

IN NO EVENT SHALL CLOUDTALK BUSINESS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE OR EQUIPMENT PROVIDED HEREUNDER, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF CLOUDTALK BUSINESS OR OTHERWISE, EVEN IF CLOUDTALK BUSINESS IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

### **Section 10: Changes to Service and Terms and Conditions**

CloudTalk Business reserves the right to make changes to these Terms and Conditions or the Service as a result of changes in applicable regulations or for other reasons in CloudTalk Business' reasonable discretion. In the event of such changes the Customer will be notified in writing and the Customer's continued use of the Service following notice of the changes will constitute the Customer's consent to such changes.

### **Section 11: Right to Identify Customer**

It is specifically agreed that CloudTalk Business may identify the Customer as a customer of CloudTalk Business and include the Customer's name and any applicable logo in CloudTalk Business' marketing materials that identify CloudTalk Business' customers. Customer may request at any time that CloudTalk Business not use the Customer's identity in marketing material at any time.

### **Section 12: Contract Term and Cancellation**

You are entering into a "Term" agreement to maintain the Services for the period of time indicated on the "Order" that was signed to establish the Service. If you cancel the Services without replacing or upgrading services of an equal or greater value, you will be charged an Early Termination Charge. The Early Termination Charge will be 100% of the remaining number of months left in the Service Term multiplied by the Monthly Recurring Total of the Services. The Term shall begin on the Service Start Date. Customer may cancel this agreement within the first ninety (90) days of the Service Start Date without incurring Early Termination Charges.

If customer experiences service interruptions or service-related problems that CloudTalk Business is unable to correct within thirty (30) days of written notice by Customer, the Customer can cancel without incurring Early Termination Charges. Hardware and other one-time charges will not be refunded or credited if Services are canceled, once such hardware is delivered to Customer site.



## Hosted Phone Services—Terms & Conditions

*Services shall continue under the terms and conditions of the agreement, after expiration of the Term, on a month to month basis with the Services priced at CloudTalk Business' then current monthly rates until each respective service is canceled by either Party upon thirty (30) days written notice to the other Party. Customer must provide thirty (30) days prior written notice for any termination of any circuit, facility and/or service.*

### **Section 13: Governing Law and Venue**

These Terms and Conditions shall be governed by the laws of the State of Arizona and any disputes or controversy arising hereunder shall be arbitrated or adjudicated in Maricopa County, State of Arizona. The Customer hereby consents to personal jurisdiction for all claims of any nature concerning the Customer and CloudTalk Business in Scottsdale, Arizona and specifically consents to service of process being effectuated by certified mail at the Customer's address. In the event that any action is brought to enforce or construe any of these Terms and Conditions, or for the breach of these Terms and Conditions, or concerning the indemnification clause contained herein, the prevailing party shall be entitled to recover, in addition to all other damages, reasonable attorney's costs and fees.

### **Section 14: Entire Agreement**

These Terms and Conditions contain the entire understanding and agreement of the parties with respect to its subject matter and supersede all prior understandings or agreements regarding such subject matter. In the event of any conflict between these Terms and Conditions and the terms of any purchase order or acknowledgment, these Terms and Conditions shall control.

### **E911 Disclaimer**

The Federal Communications Commission ("FCC") requires CloudTalk Business Group, like all Voice Over Internet Protocol ("VoIP") service providers, to inform its customers of any differences between the E911 access capabilities available with Hosted VoIP, as compared to the E911 access capability available with traditional telephone service.

A copy of this FCC order is available at <http://www.fcc.gov/cgb/voip911order.pdf> and we ask that you carefully read this E911 Disclosure Addendum and understand how these differences affect your ability to access E911 services. If you have any questions or concerns about the information contained in this notice, or if you do not understand anything discussed in this notice, please contact our CloudTalk Business Customer Service at (480) 941-8280 during the hours of 8 a.m. to 5 p.m. Arizona time, Monday – Friday or email us at [service@clouddtalkbusiness.com](mailto:service@clouddtalkbusiness.com).

The FCC's E911 VoIP decision also requires CloudTalk Business Group to obtain and keep a record on file showing that your company has received and understood this E911 Disclosure Addendum. Please respond IMMEDIATELY to this Addendum. If you fail to acknowledge to the 911 disclaimer,



## Hosted Phone Services—Terms & Conditions

we may be required by the FCC Order to suspend your service until we do receive your acknowledgment.

By using CloudTalk Business Group Hosted Phone Services, you agree to the terms of this 911 Disclaimer in the CloudTalk Business Quote and Order, and you are affirmatively acknowledging that (1) you have read and understood this E911 Disclosure Addendum, (2) you understand that you may not be able to contact emergency services by dialing 9-1-1 using Hosted VoIP, and (3) you understand that you must inform users of Hosted VoIP that they may not be able to contact emergency services by dialing 9-1-1 using Hosted VoIP.

You may obtain a copy of the FCC regulation and accompanying E911 VoIP decision in Docket No. 05-196 at the following link: <http://www.fcc.gov/cgb/voip911order.pdf>.

### **HOSTED VOIP E911 SERVICES MAY NOT OPERATE DURING A POWER OUTAGE.**

Although the Integrated Access Device (“IAD”) CloudTalk Business placed on your premises may be equipped with back-up battery power, in the event of a commercial power outage lasting longer than the IAD battery life, the IAD will lose power, causing a loss of voice and data service, including access to E911 services. Once power service is restored, you may be required to reset or reconfigure your equipment before you will be able to use Hosted VoIP to contact E911 services. You are responsible for providing an interruptible backup power supply if you wish to ensure continued operation of electrical equipment in the event of a power outage.

### **HOSTED VOIP E911 SERVICES WILL NOT OPERATE IF YOUR BROADBAND CONNECTION IS DISRUPTED OR HOSTED VOIP HAS BEEN SUSPENDED FOR ANY REASON, INCLUDING, FOR EXAMPLE, NON-PAYMENT.**

Once your broadband connection and Hosted VoIP have been restored, you may be required to reset or reconfigure your equipment before you will be able to use Hosted VoIP service to contact E911 services.

### **YOU MUST PROVIDE CLOUDTALK BUSINESS WITH YOUR CORRECT SERVICE ADDRESS OR HOSTED VOIP E911 SERVICES CALLS MAY BE ROUTED TO EMERGENCY PERSONNEL WHO WILL NOT BE ABLE TO ASSIST YOU.**

If you notice that the service address information identified in your contract or bill is inaccurate, you can make corrections by calling CloudTalk Business Customer Service at (480) 941-8280 during the hours of 8 a.m. to 5 p.m. Arizona time, Monday – Friday or email us at [service@cloudtalkbusiness.com](mailto:service@cloudtalkbusiness.com).



## Hosted Phone Services—Terms & Conditions

**HOSTED VOIP E911 SERVICES CALLS MAY NOT COMPLETE OR MAY BE ROUTED TO EMERGENCY PERSONNEL WHO WILL NOT BE ABLE TO ASSIST YOU IF YOU DISABLE, DAMAGE OR MOVE THE IAD TO A LOCATION OTHER THAN THE SERVICE ADDRESS YOU PROVIDED TO CLOUDTALK BUSINESS WHEN SERVICE WAS INITIATED.**

If you wish to move to a new service address or report damage to your IAD, please call CloudTalk Business Customer Service at (480) 941-8280 during the hours of 8 a.m. to 5 p.m. Arizona time, Monday – Friday or email us at [service@cloudtalkbusiness.com](mailto:service@cloudtalkbusiness.com).

**HOSTED VOIP E911 SERVICES CALLS MAY BE DELAYED OR DROPPED DUE TO NETWORK ARCHITECTURE.**

Due to network congestion or problems, calls to E911 services made using Hosted VoIP may be dropped, in which case you will not be connected to emergency services, or your E911 calls may take longer to connect than E911 calls made using traditional telephone service.

**IN ADDITION, YOU SHOULD MAINTAIN ALTERNATE MEANS OF CONTACTING E911 SERVICES AND YOU MUST INFORM YOUR HOSTED VoIP USERS OF THESE ALTERNATE MEANS.**

TERMS&CONDITIONS

