

TERMS OF SERVICE

Shoutpoint, Inc.

NOTE: These Terms of Service are updated and appended from time to time. To ensure that you have the most recent version, please visit the Shoutpoint Terms of Service webpage (shoutpoint.com/terms) and compare the "Last Updated" date with the one indicated below.

Last updated: October 16, 2017

These Terms of Service are intended to be a legally binding commitment ("Agreement"). This Agreement governs (i) your use of Shoutpoint's website, (ii) any Shoutpoint service that is ordered through Shoutpoint's website, and (iii) services ordered pursuant to a mutually executed Service Order (defined below) that references this Agreement.

In order to be eligible to use Shoutpoint's Services and to access any such Services (defined below), you must review and accept the terms of this Agreement by executing a Service Order or other document referencing these Terms of Service, by accepting a pop-up or other prompt informing you of these Terms of Service, or by any other mechanism provided from time to time.

This Agreement sets forth the terms and conditions by which Shoutpoint, Inc. ("**Company**") shall provide, and Customer accepts, the Services. If any term or condition set forth herein only applies to a Service not ordered by Customer, then such provisions shall have no application to Customer.

The specific quantity, type and rate for services to be provided hereunder shall either be (i) set forth on the Company's website, or (ii) set forth in one or more service orders submitted by Customer and accepted by Company (a "**Service Order**"). Upon proper execution of Service Orders by both Customer and Company, each Service Order shall be automatically incorporated into this Agreement.

This Agreement specifically does not govern any Company services that are the subject of a separate written and mutually executed agreement, unless this Agreement is expressly incorporated by reference therein.

Certain Definitions

Certain important definitions are provided below. Other defined terms are established elsewhere in the Agreement and are noted by being capitalized, in quotations marks and/or underlined.

"Company Property" means the Company Technology, the Company Services, the Company's websites, the Company's APIs, and any technical support provided by the Company to the Customer.

"Company Technology" means Company's proprietary technology, including the Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secrets and any related intellectual property rights throughout the world (whether owned by Company or licensed to Company from a third party) and also including any derivatives, improvements, enhancements or extensions of the foregoing conceived, reduced to practice, or developed during the term of this Agreement that are not uniquely applicable to Customer.

"Customer" means the individual accepting this Agreement or the entity represented by such individual.

“Customer Data” means all data that (i) Customer inputs into Company’s software for use of any Service hereunder, or (ii) is derived from Customer’s use of any Service hereunder, with the specific exception of purely diagnostic data, which Company may utilize in order to maintain, monitor, support and/or improve Company’s network and its Services.

“Customer Equipment” means the Customer’s computer hardware, not including stored data, and other tangible equipment; including, without limitation, one or more computer servers if provided by Customer or provided to Customer on a dedicated basis by Company.

“End User” means each employee, contractor, agent, client, or other person accessing the Company network or using the Services by or through Customer, or with Customer’s log-in information, whether authorized or not.

“Initial Term” is defined in Section 1.B.

“Privacy Policy” means the Company’s Privacy Policy in effect from time to time, the full terms of which are located at www.shoutpoint.com/privacy.

“Services” means the specific services provided by Company to a Customer pursuant to this Agreement; including, without limitation, all underlying software, APIs, programs, telecommunications, functions and features, and future upgrades thereof.

“Service Activation Date” means the earlier of: (i) the date on which the Company notifies Customer that the Services are ready for use; or (ii) Customer’s first use of any Service.

1. Acceptance and Provision of Services; Contract Term

A. Services

By accepting this Agreement and/or completing any applicable Service Order that references these Terms of Service, Customer is bound to the terms thereof during the Initial Term listed in the Service Order and for any Renewal Term or other extension. The Company is not obligated to provide any Services unless and until it indicates its acceptance of a Customer Service Order.

B. Term

The term for each Service will commence on the Service Activation Date and shall continue through expiration of the last effective Service Order, if any, or earlier termination in accordance herewith. Unless stated otherwise in the applicable Service Order, the initial Term shall month-to-month (the **“Initial Term”**).

C. Renewal Term

The term of each Service Order that specifies a specific term (i.e., not month-to-month) will renew automatically for subsequent terms equal in length to the Initial Term not to exceed one (1) year (each a **“Renewal Term”**) unless either party notifies the other in writing not less than thirty (30) calendar days prior to the end of the Initial Term (or Renewal Term, as applicable), that it wishes to terminate such Service. The termination of any individual Service or Service Order will not affect Customer’s obligations to accept and pay for all other contracted Services.

2. Fees and Payment Terms

A. Fees

Customer will pay all fees and expenses due according to the prices set forth on any applicable **“Pricing Page”** on Company’s website, or as otherwise established in a Service Order.

B. Fee Adjustments

In the event that circumstances outside the control of the Company cause a material increase in the Company's cost to provide the Services, the Company may increase its prices immediately upon prior notice to the Customer. If any change in fees causes a material and adverse effect to the terms of the Services provided to the Customer, then within ten (10) calendar days from the date of the foregoing notice from Company, Customer must provide written notice to Company that it rejects the changed fees. Within ten (10) calendar days thereafter, Company shall elect either to continue to provide the Services under the prior terms or terminate the applicable Service Order and/or the provision of Services hereunder, which decision shall be effective ten (10) calendar days after notice of same to Customer.

C. Payment Terms

Unless established otherwise in an applicable Service Order, all Services provided hereunder shall be prepaid.

D. Late Payments

All late payments shall incur a penalty of five percent (5%) of the late amount and shall incur interest at the rate of ten percent (10%) per annum or, if lower, the highest rate allowed by applicable law. For Services that must be prepaid, all Services shall cease when Customer's account balance reaches zero (0). For all non-prepaid Services, Company will notify Customer on the first occasion each calendar year that the account becomes delinquent and Customer shall have three (3) days to cure the payment default. In all other instances, Company may immediately terminate this Agreement and cease all Services provided hereunder and under any Service Order.

E. Taxes; Surcharges

Unless otherwise stated in an applicable Service Order, all fees charged for Services are exclusive of applicable taxes, regulatory surcharges (e.g., directory assistance, operator assistance, pay phones, etc.) and similar taxes or regulatory fees now in force, enacted or imposed in the future on the transaction or use or delivery of the Services, all of which Customer will be responsible for and will pay in full, except for taxes solely based on Company's net income. For customers who remit taxes and surcharges directly to taxing authorities, Shoutpoint will accept a resale certificate in lieu of tax payment.

F. Deposits

Company may require a Customer deposit ("**Deposit**") to secure Customer's financial obligations under this Agreement; including, without limitation the payment of all fees, penalties, interest, indemnification obligations, and similar amounts. If a Deposit is required, it shall be set forth in the applicable Service Order and the payment of such Deposit shall be a condition precedent to Company's obligations hereunder.

3. Confidential Information

A. Nondisclosure of Confidential Information

Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, vendors, employees, customers, technology, products, and other information held in confidence by the other party (collectively, "**Confidential Information**"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information includes all Company Technology, the terms and conditions contained in any applicable Service Order, and Customer Data (which data is owned by and always the Confidential Information of Customer). Customer agrees that it (i) will not use any of Company's Confidential Information in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this Agreement, (ii) nor will it disclose any of Company's Confidential Information to any third party (except as required by law or out of reasonable necessity to its attorneys, accountants and other advisors bound by confidentiality). Customer will take commercially reasonable precautions to protect the confidentiality of Company's Confidential Information that are

at least as stringent as it takes to protect its own Confidential Information. Company will treat Customer's Confidential Information in accordance with its Privacy Policy.

B. Exceptions

Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party, directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party, directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without use of, or reference to, the Confidential Information of the disclosing party. Customer may disclose Company's Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives Company reasonable prior written notice sufficient to permit Company to contest such disclosure. Company may disclose Customer's Confidential Information in accordance with the Privacy Policy. The party asserting one of the foregoing exceptions has the burden of proving such exception.

4. Ownership of Intellectual Property and Data

A. Intellectual Property

This Agreement does not transfer to Customer any Company Technology, and all right, title and interest in and to Company Technology will remain the sole property of the Company. Similarly, this Agreement does not transfer to Company any Customer Data, and the right, title and interest in and to Customer Data will remain the sole property of Customer. Company and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets of the other party.

B. Licenses

Company agrees that, if in the course of accessing and using the Services, it is necessary for Customer to use certain items of Company Technology, then Customer is hereby granted a limited, nonexclusive, personal, royalty-free license, during the term of this Agreement, to use the Company Technology solely for purposes of accessing and using the Services. Customer shall have no right to use the Company Technology for any purpose other than accessing and using the Services in accordance with this Agreement. Customer agrees that, if in the course of providing the Services and any related customer support, it is necessary for Company to access certain items of Customer Data, then Company is hereby granted a limited, nonexclusive, personal, royalty-free license, during the term of this Agreement, to access the Customer Data solely for such purpose. Company shall have no right to access or use the Customer Data for any purpose other than providing the Services and related customer support in accordance with this Agreement.

5. DISCLAIMER OF WARRANTIES

THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS SOLE RISK. COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, WHETHER EXPRESS AND IMPLIED; INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FURTHER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. TO THE EXTENT THESE DISCLAIMERS CONFLICT WITH APPLICABLE LAW IN ANY GOVERNING JURISDICTION, THEN THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW AND ALSO SUBJECT TO THE LIMITATION OF LIABILITIES SET FORTH HEREIN BELOW.

6. Restrictions on Use of Service; Certain Laws

A. Use of Services

Customer, on behalf of itself and each End User, covenants to use the Services only in a lawful manner, in accordance with this Agreement and in a manner that does not interfere with the contracts, business or operations of any third party. Neither Customer nor any End User shall use the Services in a fraudulent, harassing, discriminatory, libelous, defamatory or otherwise harmful manner. Customer, on behalf of itself and each End User, will comply at all times with all applicable laws and regulations. In the event of a failure to comply, Customer and each End User will be subject to immediate suspension or termination of Services, at the sole discretion of Company. Notwithstanding any suspension or termination of the Service due to violation of this paragraph, Customer shall continue to pay all fees as set forth on all Service Orders. Customer will provide Company with twenty-four (24) hour contact information for notification of violations hereunder. Customer acknowledges that Company exercises no control over the content of the information passing through the Customer's and each End User's websites and that it is the sole responsibility of Customer to ensure that the information it and all End Users transmit and receive complies with the covenants contained in this paragraph. Although Company does not have a policy of monitoring its customers' specific use of the Services (e.g., listen to voice files; review caller ids, destination numbers or agent numbers; etc.), Company reserves the right to monitor and/or record any aspect of Customer's use of the Services for quality assurance, and to ensure compliance with this Agreement and applicable laws. Customer, for itself and each End User, acknowledges and consents to such monitoring and/or recording, and covenants to advise End Users of the fact that such monitoring and recording may occur.

B. End Users; Security

Customer shall be completely liable for each End User's use and/or misuse of the Services. No End User shall be a third party beneficiary of this Agreement and Company owes no obligations to Customer's clients. Customer is solely responsible for maintaining the confidentiality of its password and account information, and all actions of persons using such password and account information. Customer is solely responsible for the security, privacy, and protection of its network, hardware, software, firmware, and other similar items. Customer shall configure its systems in order to provide the maximum possible security and accountability. Company is not liable for any damage caused by such system configurations, regardless of whether such configurations have been requested, approved or authorized by Company. Customer shall promptly notify Company in writing of any instance that Customer discovers that this Agreement has been violated, including, without limitation, if anyone accesses the Services through Customer's account but without authorization. If Company notifies Customer of any violation of this Agreement or any unauthorized use of Customer's account, Customer shall promptly investigate such report and resolve such violation.

C. AWARENESS OF CERTAIN LAWS

PRIOR TO ACCESSING THE COMPANY NETWORK OR USING ANY OF THE SERVICES, CUSTOMER (INCLUDING, WITHOUT LIMITATION, EACH END USER) IS, AND SHALL REMAIN, AWARE OF THE LEGALITIES OF ALL INTENDED USES OF THE SERVICES. WITHOUT IN ANY WAY LIMITING THE GENERAL NATURE OF THE REPRESENTATIONS AND WARRANTIES SET FORTH BELOW, THE COVENANT IN THE PRECEDING SENTENCE OR THE COVENANTS CONTAINED IN SECTION 6.A. ABOVE, CUSTOMER, FOR ITSELF AND EACH END USER, AGREES THAT IT IS AWARE OF THE LAWS AND REGULATIONS CONTAINED ON THE FOLLOWING WEBSITES OR OTHERWISE REFERENCED BELOW, INCLUDING, WITHOUT LIMITATION:

<http://www.donotcall.gov> (DO NOT CALL REGISTRY, AS WELL AS ANY APPLICABLE STATE DO NOT CALL REGISTRY OR RELATED RESTRICTIONS)

<http://www.ftc.gov> (FEDERAL TRADE COMMISSION AND TELEMARKETING SALES RULE)

<http://www.fcc.gov> (FEDERAL COMMUNICATIONS COMMISSION AND THE TELEPHONE CONSUMER PROTECTION

ACT)

APPLICABLE FEDERAL AND STATE VOICE RECORDING LAWS. IF CUSTOMER OR ANY CUSTOMER PARTY UTILIZES ANY OF THE SERVICE'S CALL RECORDING FEATURES, THEN IN ADDITION TO ANY OTHER LEGAL REQUIREMENTS, CUSTOMER SHALL, AND SHALL CAUSE EACH END USER TO, COMPLY WITH ALL APPLICABLE LAWS CONCERNING THE RECORDING OF CONVERSATIONS WHERE THERE IS A REASONABLE EXPECTATION OF PRIVACY BY ANY PARTY.

APPLICABLE FEDERAL AND STATE PRIVACY LAWS. CUSTOMER, FOR ITSELF AND EACH END USER, SHALL COMPLY WITH ALL FEDERAL AND STATE LAWS RELATING TO THE MAINTENANCE, SECURITY AND USE OF A PERSON'S PRIVATE INFORMATION; INCLUDING, WITHOUT LIMITATION, PERSONALLY IDENTIFIABLE INFORMATION.

7. Limitations of Liability

COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGE TO, OR LOSS OF, ANY CUSTOMER EQUIPMENT, SOFTWARE, FIRMWARE OR DATA, RESULTING FROM ANY CAUSE OTHER THAN FROM THE WILLFUL MISCONDUCT OF COMPANY. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER (INCLUDING ANY END USER OR ANY OTHER PERSON ACCESSING THE SERVICES BY OR THROUGH CUSTOMER) FOR ANY PUNITIVE, INDIRECT, CONSEQUENTIAL, SPECIAL, OR OTHER SIMILAR DAMAGES; INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOST SALES, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF COMPANY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE LEGAL THEORY, WILL COMPANY'S LIABILITY TO CUSTOMER FOR DIRECT DAMAGES, COSTS OR OTHER LIABILITIES EXCEED THE CUMULATIVE AMOUNT OF FEES PAID BY CUSTOMER HEREUNDER DURING THE (THREE) 3-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE SUCH CLAIM AROSE. THE PARTIES ACKNOWLEDGE THAT COMPANY HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

8. Indemnification

Customer shall indemnify and hold harmless Company, Company's affiliated entities, and each of their respective officers, directors, employees, and agents (each, a "Company Party" and together the "Company Parties"), and shall defend, at Customer's expense, and pay the cost of any damages, settlement, award or other costs or expenses (including reasonable attorneys' fees and all related costs) arising out of, or in connection with, any investigation, actual or threatened claim, suit, action or proceeding by any person or authority arising out of Customer's or any End User's (i) violation, or alleged violation, of any representation, warranty or covenant contained herein, (ii) use of the Services, (iii) accessing the Company's network, or (iv) other acts or omissions. In the event that any Company Party is required to respond to a third party or law enforcement subpoena that relates to Customer or any End User's data or use of the Services, Customer shall promptly reimburse such Customer Party for its reasonable expenses (including attorney's fees) incurred in complying with such subpoena.

Any affected Company Party shall, promptly after receipt of notice of any investigation, claim, threat thereof, or the commencement of any action against such Company Party in respect of which indemnity may be sought, notify the Customer of the same; provided that the failure of a Company Party to notify the Customer shall not relieve the Customer from any liability which it may have to an Company Party on account of the indemnity agreement

contained in the prior paragraph, unless the Customer was materially prejudiced by such failure, and in no event shall relieve the Customer from any other liability which it may have to such Company Party. If any such claim or action shall be brought against a Company Party, it shall notify the Customer thereof and the Customer shall be entitled to participate therein and to assume the defense thereof with counsel reasonably satisfactory to the Company Party. If the Customer assumes the defense thereof, it may not agree to any settlement of any such claim or action as the result of which any remedy or relief shall be applied to or against the Company Party (even if Customer is paying it), without the prior written consent of the Company Party, which may be given or withheld in such Company Party's sole discretion. In any action hereunder as to which the Customer has assumed the defense thereof with counsel reasonably satisfactory to the Company Party, the Company Party shall continue to be entitled to participate in the defense thereof, with separate counsel of its own choice, and the Customer shall continue to be obligated hereunder to reimburse the Company Party for the costs of such separate counsel. If any Company Party employs such separate counsel it will not enter into any settlement agreement which is not approved by the Customer, in Customer's reasonable discretion.

9. Termination

A. For Cause; For Convenience

(I) By Either Party. Either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) calendar days after receipt of written notice of the same, except in the case of Customer's failure to pay fees, which must be cured within three (3) calendar days after receipt of written notice from Company.

(II) By Company. Company may also suspend or terminate its Services, in its sole discretion, immediately and without prior notice for cause under the following circumstances (each such instance, in addition to 9.A.(I)(a) above, being "For Cause"):

- (a) Company has reason to believe that Customer or any End User has violated or is violating any restriction contained in Section 6 of this Agreement,
- (b) the Services have become illegal or impractical for any legal or regulatory reason, as determined in Company's reasonable discretion, or
- (c) Customer becomes the subject of a voluntary or involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

B. Effect of Termination

Upon the effective date of termination of this Agreement, Company will immediately cease providing the Services; and any and all payment obligations of Customer under this Agreement for Services provided through the date of termination will immediately become due and payable. In the event Company terminates this Agreement "**For Cause,**" Customer shall pay Company as liquidated damages the recurring monthly fees owed by Customer to Company under any Service Order, if any, multiplied by the total number of months remaining in the current term. Upon the written request of a party, the other party will promptly return, or certify the destruction of, all Confidential Information of the requesting party then in its possession, and will not make or retain any copies of such Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement.

C. Survival

Sections 2 (to the extent that all such fees have not been paid upon termination), 3, 4, 5, 7, 8, 9 and 10 shall survive the expiration or earlier termination of this Agreement.

10. Miscellaneous

A. Force Majeure

Except for Customer's obligation to make payments to Company, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the acts or omissions of Company), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses commercially reasonable efforts to promptly correct such failure or delay in performance. If Company is unable to provide Service(s) for a period of thirty (30) consecutive calendar days as a result of a continuing force majeure event, Customer may cancel the Services.

B. Marketing

Customer agrees that, during the term of this Agreement, Company may publicly refer to Customer, orally and in writing, as a customer of Company.

C. Government Regulations

Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

D. No Third Party Beneficiaries

Company and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement; including, but not limited to, the insurance providers for either party and End Users.

E. Arbitration

Notwithstanding any other provision of this Agreement, all questions and disputes with respect to the rights and obligations of the parties arising under the Agreement shall be resolved by arbitration in accordance with this paragraph and the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The parties agree that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement or the Services. The parties shall only submit their own individual claims in arbitration and will not seek to represent the interests of any other person. The parties agree that each will not assert class action or representative action claims against the other in arbitration or otherwise.

The parties may agree on a single arbitrator. If they cannot agree on a single arbitrator within five (5) days of demand for arbitration, then there shall be three (3) arbitrators; one named by each party within three (3) days of the deadline for selecting a single arbitrator, and a third chosen by the two party-appointed arbitrators. Prior to the commencement of hearings, each of the arbitrators appointed shall provide an oath or undertaking of impartiality. The arbitrators shall be selected from a panel of persons who have been members of the California state bar for at least ten (10) years and have extensive experience in business law or business litigation. The arbitration shall take place in Orange County, California applying the internal laws of the State of California. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Agreement. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute and as set forth in the following sentence. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and reasonable attorneys' fees.

F. Severability; Waiver

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to applicable law, then the remaining provisions of this Agreement will remain in full force and effect. No delay in declaring a breach of this Agreement or pursuing any available remedy shall constitute a waiver of any breach or any provision hereof. All waivers must be in writing and signed by the waiving party. The waiver of any breach of this Agreement will not constitute a waiver of any subsequent breach, and will not act to amend or negate the rights of the waiving party.

G. Assignment

Upon the prior written notice to Company, Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets provided the assignee's financial condition and credit rating is comparable to or better than that of Customer and (as would be reasonably determined) the proposed assignee is not one of the Company's competitors. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Company, and any attempted assignment or delegation without such consent will be void. Company may assign this Agreement in whole or part as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Company also may delegate the performance of certain Services to third parties, including Company's wholly owned subsidiaries, provided Company controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

H. Notice

Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Service Order or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered or delivery is refused.

I. Relationship of Parties

Company and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Company and Customer. Neither Company nor Customer has the power or authority to bind the other or incur obligations on the other party's behalf.

J. Entire Agreement; Amendments

This Agreement, any applicable Service Order, Company's Privacy Policy and any applicable Service Level Agreement, as modified from time to time in accordance with their respective terms, constitute the complete and exclusive Agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and Agreements, written and oral, regarding such subject matter. This Agreement may be amended from time to time by the Company and such amendments shall be effective upon the earlier of (i) Company's communication of the new Terms of Service to the affected party, or (ii) the affected party's use of the website or any Service after the modified Terms of Service have been posted on the Company website.