



Voipia Networks, Inc. Residential Terms and Conditions of Service

This agreement ("Agreement") is between Voipia Networks, Inc. (Voipia) and an end user ("End User") of the Voipia Networks IP Phone Service. Any Voipia Networks phone services or communication products ("Services") provided to End User shall be governed by the terms and conditions herein.

BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ AND UNDERSTAND FULLY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. EMERGENCY SERVICES - 911 DIALING

1.1 Definitions

1.1.1 E-911

Enhanced-911 or E-911 enables calls to be routed to Public Safety Answering Points (PSAP) such that both the calling phone number and the address are immediately available to the PSAP operator.

1.2 Description of Voipia 911 Capabilities and Warning

END USER ACKNOWLEDGES THAT VOIPIA'S VOIP EQUIPMENT AND IP PHONE SERVICES DO NOT SUPPORT 911 EMERGENCY DIALING OR OTHER EMERGENCY FUNCTIONS IN THE SAME WAY THAT TRADITIONAL WIRELINE 911 SERVICES WORK. END USER AGREES TO NOTIFY ANY POTENTIAL USER OF THE SERVICES, WHO MAY PLACE CALLS USING END USER'S SERVICES, OF THE 911 LIMITATIONS DESCRIBED HEREIN:

Voipia's IP Phone Service leverages their underlying carrier's agreements with local PSAPs nationwide to support E-911. You acknowledge and understand that the Service supports E911 access to emergency services ONLY IF THE SERVICE IS OPERATED FROM THE SERVICE LOCATION OF RECORD, and then only if the user has an active connection to the service, in accordance with these Terms of Service.

1.3. Service Outage

1.3.1 Power Failure or Disruption

You acknowledge and understand that 911 dialing does not function in the event of a power failure or disruption. Should there be an interruption in the power supply, the Service and 911 dialing will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the Service or 911 dialing.

1.3.2 Broadband Service / ISP Outage or Termination / Suspension or Termination by Voipia

You acknowledge and understand that service outages or suspension or termination of service by your broadband provider and/or ISP or by Voipia will prevent ALL Service including 911 dialing.

1.3.3 Service Outage Due to Suspension of Your Account

You acknowledge and understand that service outages due to suspension of your account as a result of billing issues may prevent ALL Service, including 911 dialing.

1.3.4 Other Service Outages

You acknowledge and understand that if there is a service outage for ANY reason, such outage may prevent ALL Service, including 911 dialing. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

1.4 Failure to Designate the Correct Physical Address When Enrolling or Changing Your Address

Failure to provide the current and correct physical address and location of your Voipia equipment during enrollment or change of address will result in any 911 communication you may make being routed to the incorrect local emergency service provider and will likely prevent a timely response to your emergency. This must be the actual physical street address where you are located, not a post office box, mail drop or similar address. It is your responsibility to contact Voipia with a new address should you move the VoIP device.

1.5 Use of Service From Different Location

You acknowledge and understand that 911 dialing does not function properly or at all if you move or otherwise change the physical location of your VoIP Device to a different street address. Failure to provide the current and correct physical address and location of your VoIP equipment will result in any 911 dialing you may make being routed to the incorrect local emergency service provider. This emergency service provider may not be able to provide emergency services.

1.6 Alternative 911 Arrangements

You acknowledge that Voipia does not offer primary line or lifeline services. You should always have an alternative means of accessing traditional E911 services.

1.7 Softphones

Voipia 911 dialing cannot be used in conjunction with a VoIP Soft Phone application and is only available on Voipia-certified Devices or Equipment physically located at the End User's address of record.

1.8 Automated Number Identification

At this time, it may or may not be possible for the Public Safety Answering Point (PSAP) and the local emergency personnel to identify your phone number when you dial 911. Voipia's system is configured in most instances to send the automated number identification information; however, one or more telephone companies, not Voipia, route the traffic to the PSAP and the PSAP itself must be able to receive the information and pass it along properly, and PSAPs are not yet always technically capable of doing so. You acknowledge and understand that PSAP and emergency personnel may or may not be able to identify your phone number in order to call you back if the call is unable to be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

1.9 Automated Location Identification

When calling from a mobile VoIP phone it is impossible to pinpoint your exact location. You acknowledge and understand that you will need to state the nature of your emergency promptly and clearly, including your location, as PSAP and emergency personnel will NOT have this information. You acknowledge and understand that PSAP and emergency personnel will not be able to find your location if the call is unable to be completed, is dropped or disconnected, if you are unable to speak to tell them your location and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

1.10 Disclaimer of Liability and Indemnification. We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither Voipia nor its officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service. You shall defend, indemnify, and hold harmless Voipia, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

1.11 Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or terminating the Service.

2. RESIDENTIAL SERVICE

2.1 Term. Residential Service is offered on a monthly basis for a term that begins on the date that Voipia activates your Service and ends on the day before the same date in the following month. Subsequent terms of this Agreement automatically renew on a monthly basis unless you give us written notice of non-renewal at least thirty (30) days before the end of the monthly term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite thirty-days notice of termination prior to the expiration of the then-current term. Expiration of the term or termination of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

2.2 Residential Use of Service and VoIP Device. If you subscribe to Voipia's Residential Services, the Service and the VoIP Device are provided to you solely for Residential use. You shall not resell or transfer the Service or the VoIP Device to another party without our prior written consent. You are prohibited from using the Service or the VoIP Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify your Service if we determine, in our sole and absolute discretion, that your use of the Service or the VoIP Device is, or at any time was, inconsistent with normal Residential usage patterns. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service or the VoIP Device was inconsistent with normal Residential use.

2.3 Residential Unlimited – Normal Calling Usage. Residential Unlimited is an IP Phone Service product that is designed for reasonable personal residential use of End User only. As a baseline, a Residential Customer averages 500 minutes a month of calling over a 12 month period. End Users of Unlimited Plans shall not use the IP Phone Service for commercial or governmental purposes, or for profit or non-profit activities, including, but not limited to, home office, business, sales, tele-commuting, autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing or any other activity that would be inconsistent with personal residential usage. End User agrees to notify Voipia immediately if usage of the Unlimited Plan changes from personal residential to business use and to subscribe to a business plan. Voipia reserves the right to immediately terminate or modify the Services of any End User using Unlimited Plans if Voipia determines, in its sole discretion, that End User is not using the Unlimited Plans for End User's reasonable personal residential use. If Voipia determines that End User's calling patterns exceed reasonable personal residential use, End User will be required to switch to a Premium Unlimited Plan with higher rates for all periods in which your use of the Service or the VoIP Device was inconsistent with normal Residential use.

2.4 Prohibited Uses.

(a) Unlawful. You shall use the Service and the VoIP Device only for lawful purposes. We reserve the right to immediately terminate your Service and charge you all applicable termination charges if, in our sole and absolute discretion, we determine that you have used the Service or the VoIP Device for an unlawful purpose. In the event of such termination, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of your Service. If we believe that you have used the Service or the VoIP Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, Voipia will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others.

(b) Inappropriate Conduct. You shall not use the Service or the VoIP Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately terminate your Service if, in our sole and absolute discretion, we determine that you have used the Service or the VoIP Device in any of the aforementioned ways. In the event of such termination, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of your Service. If we believe that you have used the Service or the VoIP Device in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, Voipia will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others.

2.5 Use of Residential Service and VoIP Device by Customers Outside the United States. Although we encourage you to use of the Service to place calls to foreign countries from within the United States, we do not presently offer or support the Residential Service in any countries other than the United States and Canada. If you use the Residential Service or the VoIP Device outside of the United States or Canada, you will be solely responsible for any violations of local laws and regulations resulting from such use. We reserve the right to terminate your Service immediately if we determine, in our sole and absolute discretion, that you have used the Residential Service or the VoIP Device outside of the United States or Canada. Please also be aware that e911 services will not work properly outside of the United States.

2.6 Copyright; Trademark; Unauthorized Usage of VoIP Device; Firmware or Software.

(a) Copyright; Trademark. The Service and VoIP Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the VoIP Device, and all Services, information, documents, and materials on our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of our websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") are and will at all times remain our exclusive property. Nothing in this Agreement grants you the right or license to use any of our marks.

(b) Unauthorized Usage of VoIP Device; Firmware or Software. You have not been granted any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the VoIP Device, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You expressly agree that the VoIP Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the VoIP Device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. You hereby represent and warrant that you possess all required rights, including software and/or firmware licenses, to use any interface device that we have not provided to you. In addition, you shall indemnify and hold us harmless against any and all liability arising out of your use of such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

2.7 Tampering with the VoIP Device or Service. You shall not change the electronic serial number or equipment identifier of the VoIP Device or to perform a factory reset of the VoIP Device without our prior written consent. We reserve the right to terminate your Service if we believe, in our sole and absolute discretion, that you have tampered with the VoIP Device. In the event of such termination, you will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

2.8 Theft of Service. You shall notify us immediately, in writing or by calling our customer support line, if the VoIP Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a VoIP Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service.

2.9 Telephone Number.

Telephone numbers provided by Voipia ("Number") to the End User shall be leased and not sold. End User is not to use the Number with any other VoIP Device other than a Voipia certified VoIP Device without the express written permission of Voipia Networks. Voipia Networks reserves the right to change, cancel or move the Number at its sole discretion. If, however, the End User chooses to 'port' their existing phone number into the Voipia Networks IP Phone service, the End User shall also be able to 'port' the number out of the Voipia Networks network upon termination of service if the End User has maintained an account in good standing with Voipia Networks.

2.10 Service Distinctions. The IP Phone Service is not a wireline telecommunications service, and we provide it on a best effort basis. Important distinctions exist between wireline telecommunications service and IP Phone Service offering that we provide. The Service is subject to different regulatory treatment than wireline telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

2.11 Ownership and Risk of Loss. An approved VoIP Device will be provided to the End User through purchase or rental. End User will be responsible for the VoIP Device during the Term of Service with Voipia Networks and bear all risk of loss of, theft of, casualty to or damage to the VoIP Device, from the time it is shipped to the End User.

2.12 No 0+ or Operator Assisted Calling; May Not Support x11 Calling. The Residential Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Residential Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

2.13 No Directory Listing – Residential Subscribers. The phone numbers you obtain from Voipia for Residential Subscribers will not be listed in any telephone directories. Phone numbers transferred from your local phone company may, however, be listed.

2.14 Incompatibility with Other Services.

(a) Non-Voice Systems. End-User acknowledges that the Services are not set up to function with out-dialing systems including home security systems, medical monitoring equipment, satellite television systems and some facsimile systems. By consenting to these terms and conditions, End-User waives any claim against Provider for interruption or disruption of such systems by the Services.

(b) Certain Broadband and Cable Internet Services. IP Phone Service is dependent on a quality Internet Connection. For most Residential locations, the End User provides their own Internet Connection for the IP Phone Service to work over. End User acknowledges that the quality of the Residential Service may be affected from time to time by their Internet Connection. End User further acknowledges that some providers of broadband service may provide routers that affect or prevent the transmission of communications using the IP Phone Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

2.15 Equipment.

(a) To provide the Services, Voipia Networks may provide Equipment to End User. All Equipment shipments are F.O.B. Voipia Network's facility. Voipia Network's liability for delivery shall cease, and title (if applicable) and all risk of loss or damage shall pass to End User upon delivery to carrier. End User will be provided a twelve (12) month manufacturer's warranty from the date of purchase of Equipment or Service. End User shall be required to obtain authorization from Voipia Networks to return any Equipment. Voipia Networks will provide replacement Equipment only if the Equipment is deemed to be defective and covered under the warranty. Voipia Networks will not cover replacement for lost, stolen, mistreated or modified equipment. Equipment returned by End User that is not covered under warranty may be refused by Voipia Networks, and End User will be responsible to pay return shipping charges.

(b) If End User receives cartons and/or equipment that is visibly damaged, End User must note the damage on the carrier's freight bill or receipt and keep a copy. In such event, End User must keep the original carton, all packing materials and parts intact in the same condition in which they were received from the carrier and contact Voipia Network's customer care department immediately. To obtain a return authorization number, End User must contact billing@voipia.net.

3. CHARGES; PAYMENTS; TAXES; TERMINATION

3.1 Billing. When the service is activated, you must provide us with a valid email address and a credit or debit card number from a card issuer that we accept. We reserve the right to stop accepting credit or debit cards from one or more issuers. If your credit or debit card expires, you close your account, your billing address changes, or your credit or debit card is canceled and replaced on account of loss or theft, you must advise us at once. We will bill all charges, applicable taxes and fees monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears) to your credit or debit card, including but not limited to:

- activation fees
- monthly Service fees
- international usage charges
- equipment purchases and/or rental
- termination fees; and shipping and handling charges.

The amount of such fees and charges shall be published on our website and may change from time to time. Notification of monthly invoices will be sent to you via your email address on file with us. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$100. Any usage charges will be billed in increments that are rounded up to the nearest minute except as otherwise set forth in the rate schedules found on our website.

3.2 Billing Disputes. You must notify us in writing within seven days after receiving your credit or debit card statement if you dispute any Voipia charges on that statement or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to:

Billing Department
Voipia Networks, Inc.
3941 Park Drive, # 20-133
El Dorado Hills, CA 95762
-or- billing@voipia.net

3.3 Payment and Collection:

(a) Payment. We only accept payment by credit or debit card. Your subscription to the Residential Service authorizes Voipia to charge your credit or debit card for all charges related to the activation, use, and possible termination of the IP Phone Service. We may terminate your Service at any time in our sole and absolute discretion if any charge to your credit or debit card is declined or reversed, your credit or debit card expires, and you have not provided us with a valid replacement credit or debit card or in case of any other nonpayment of account charges.

(b) Collection. If your Service is terminated, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

3.4 Termination; Discontinuance of IP Phone Service. We reserve the right to suspend or discontinue the Service generally, or to terminate your IP Phone Service, at any time in our sole discretion. If we discontinue the Service generally, or terminate your Service without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated on account of your breach of any provision of this Agreement, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus the termination fee, if applicable, all of which will immediately become due and payable.

3.5 Taxes. You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the IP Phone Service or a VoIP Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your credit card as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemptions will only apply from and after the date we receive such certificate.

3.6 Number Porting Cancellation Fee You will be charged a Cancellation fee if you cancel or reverse a scheduled Port Request. When porting a phone number to Voipia, if the request is scheduled and then canceled before the port is completed, a Fee may apply. Cancellations with more than 48 hours before FOC will be billed at \$20.00 per telephone number. Cancellations with less than 48 hours before FOC will be billed at \$75.00 per telephone number. Once ported, Customer initiated reverse or snap-backs will be billed \$250.00 per telephone number.

3.7 Payphone Charges. If you add a Voipia Toll Free Number to your account or any toll free feature that we offer in the future, we will be entitled to recover from you any charges imposed on us either directly or indirectly in connection with toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent, or in such other fashion as we deem appropriate for the recovery of these costs.

3.8 Charges for Directory Calls (411). We will charge you \$1.00 for each call made to directory assistance.

3.9 Charges for International Calls. International calling is not enabled by default. You will need to contact Voipia by phone or email, and request that it is enabled for your account. Any charges incurred for International Calls must be paid to continue service.

4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

4.1 Limitation of Liability. We will not be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party
- equipment, network or facility failure
- equipment, network or facility upgrade or modification
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, terrorism and government actions
- equipment, network or facility shortage
- equipment or facility relocation
- service, equipment, network or facility failure caused by the loss of power to you
- outage of, or blocking of ports by your ISP or broadband service provider or other impediment to usage of the Service caused

by any third party

any act or omission by you or any person using the Service or Device provided to you

or any other cause that is beyond our control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded. Our aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period.

4.2 Disclaimer of Liability for Damages. IN NO EVENT WILL VOIPIA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

4.3 Indemnification and Survival.

(a) Indemnification. You shall defend, indemnify, and hold harmless Voipia, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with any Voipia Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party or user of a Voipia Service, including, without limitation, 911 Dialing, or a VoIP related Device.

(b) Survival. The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

4.4 No Warranties on Service. VOIPIA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER VOIPIA NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE 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 VOIPIA'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY VOIPIA OR VOIPIA'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

4.5 Device Warranties.

(a) Limited Warranty. Except as set forth herein, if you received the Device new from us and the Device included a limited warranty at the time of receipt, you must refer to the separate limited warranty document provided with the Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation.

(b) No Warranty. If your Device did not include a limited warranty from us at the time of receipt, you will accept the Device "as is". You are not entitled to replacement, repair, or refund in the event of any defect.

(c) Residential Customer Limited Warranty. For Residential Customers only, we will provide a limited warranty on the Device as to manufacturing defects only for a period of one (1) year from the date of purchase. This Residential Customer limited warranty does not apply to any defect or failure other than a manufacturing defect, and, without limiting the generality of the foregoing, does not apply to any defect caused by damage in transit, retailer handling or Residential Customer handling. A Residential Customer's sole remedy for any breach of this Residential Customer limited warranty is to obtain a repaired or replacement VoIP Device, by following the return procedures set forth in Section 2.15. Residential Customer must include with the returned VoIP Device a letter stating that the Customer is returning the VoIP Device for warranty repair or replacement and stating the nature of the defect. The Residential Customer limited warranty will also apply in lieu of the limited warranty included with the VoIP Device if such included limited warranty is less favorable to Customer than that contained herein.

(d) Disclaimer. OTHER THAN WARRANTIES AS TO THE VOIP DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RESIDENTIAL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

4.6 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.

4.7 Content. You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or VoIP Device (each such person, a "User"). You shall assure that your and your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to terminate or suspend your Services and remove your or your Users' content from the Service, if we determine, in our sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with our ability to provide IP Phone Services to you or others. Our action or inaction under this Section will not constitute any review or approval of your or Users' use or content.

5. MISCELLANEOUS

5.1 Governing Law. The Agreement and the relationship between you and Voipia Networks shall be governed by the laws of the State of California without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 5.2, End User and Voipia Networks agree to submit to the exclusive jurisdiction of the courts located within the state of California, to the extent possible in El Dorado County, and waive any objection as to venue or inconvenient forum. End User agrees 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.

5.2 Mandatory Arbitration and No Jury Trial. Any dispute or claim between End User and Voipia Networks arising out of or relating to the IP Phone Service or VoIP Equipment 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 arbitration shall take place in El Dorado County, California and shall be conducted in English. The arbitrator's decision shall follow the plain meaning of the relevant documents and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. 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 any class action of any kind in court or in 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.

5.3 No Waiver of Rights. Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

5.4 Phone Numbers and Web Portal Discontinuance. Upon expiration, cancellation or termination of the IP Phone Services, End User shall relinquish and discontinue use of any phone numbers, voicemail access numbers, and/or web portals assigned to the End User by Voipia Networks and/or its vendors.

5.5 Software Copyright. Any software used by Voipia or its vendors and underlying carriers to provide the IP Phone Service or other Voipia Services and any software provided to the End User in conjunction with providing said Services are protected by copyright law and international treaty provisions. End user may not copy the software or any portion of it.

5.6 Technical Support. Voipia provides technical support to End Users via telephone and e-mail for the Services and the Equipment provided hereunder. Support for other applications and uses is not provided or implied.

5.7 Severability. If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

6. FUTURE CHANGES TO THIS AGREEMENT

We may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted on www.voipia.net. Such changes will become binding on you on the date they are posted to our website and no further notice by us is required upon your continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device and also supersedes any written terms provided to Retail Customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of the Device.

7. PRIVACY

Voipia Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Voipia is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to our Privacy Policy at www.voipia.net for additional information.

8. ENTIRE AGREEMENT The terms and conditions of this Agreement constitute the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to the Services. This agreement shall be binding upon the heirs, successors, and assigns of Voipia Networks and End User.