



End User License Agreement and Terms of Service

Please read this End User License Agreement and these Terms of Service ("Terms and Conditions") carefully before installing or using any Optivon software applications or services. There are a few important points that we need to emphasize:

- These Terms and Conditions are an integral part of the agreement ("Agreement") between Optivon, Inc., a corporation established under the laws of the Commonwealth of Puerto Rico ("OPTIVON"), and the customer ("Customer" or "You") of the OPTIVON services. Any OPTIVON services or products (collectively, the "Services") provided by OPTIVON to Customer shall be governed by the terms and conditions herein. By ordering, purchasing or using the Services, CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. They affect the legal rights between Customer and OPTIVON by, among other things, (1) requiring a specific process for dispute resolution, (2) charging an EARLY TERMINATION CHARGE and DISCONNECTION FEE; and (3) LIMITING OPTIVON's LIABILITY UNDER THE AGREEMENT.
- THE SOFTWARE APPLICATION PRODUCTS ("Applications") ARE NOT INTENDED, DESIGNED OR FIT FOR ACCESS TO EMERGENCY SERVICES. There are important differences between traditional telephone services and the Applications. It is your responsibility to obtain, separately from the Applications, traditional wireless (mobile) or fixed line telephone services that offer access to emergency services. The Applications are not a replacement for your primary telephone service.
- IF YOU USE THE ACCESSION COMMUNICATOR PRODUCT YOU MUST ACCEPT THE TERMS OF THAT PRODUCT PRIOR TO ITS USE. A COPY OF THE TERMS OF THE ACCESSION PRODUCT IS AVAILABLE AT <http://www.optivonpr.com/legal/>.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL, OR USE ANY OPTIVON SOFTWARE APPLICATIONS OR SERVICES, INCLUDING THE OPTIVON WEBSITE ("WEBSITE").

BY DOWNLOADING, INSTALLING, OR USING ANY OPTIVON SOFTWARE APPLICATIONS OR SERVICES, YOU AGREE TO ABIDE BY AND COMPLY WITH THIS AGREEMENT, AND YOU AFFIRM THAT YOU EITHER ARE OVER THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE, ARE AN EMANCIPATED MINOR, OR POSSESS LEGAL PARENTAL OR GUARDIAN CONSENT, AND THAT YOU ARE FULLY ABLE AND COMPETENT TO ENTER INTO THE TERMS, CONDITIONS, OBLIGATIONS, AFFIRMATIONS, REPRESENTATIONS, AND WARRANTIES SET FORTH IN THIS AGREEMENT.

YOU UNDERSTAND THAT 911 SERVICE IS ONLY PROVIDED BY OPTIVON IP DESK PHONES AND SIP TRUNKING SERVICES. YOU FURTHER UNDERSTAND THAT 911 SERVICE IS NOT PROVIDED OR AVAILABLE ON THE OTHER OPTIVON SOFTWARE APPLICATIONS AND SERVICES (INCLUDING WITHOUT LIMITATION SOME SOFTPHONES). IF YOU SUBSCRIBE TO ONE OF THE OTHER OPTIVON SOFTWARE APPLICATIONS OR

SERVICES (OR YOUR SOFTPHONE DOES NOT PROVIDE E911), YOU MUST MAKE ALTERNATIVE ARRANGEMENTS TO PLACE 911 CALLS, SUCH AS USING A TRADITIONAL WIRELINE OR CELLULAR TELEPHONE, AND YOU SHOULD NOT RELY ON OPTIVON TO CALL 911.

YOU UNDERSTAND THAT THE OPTIVON MOBILE APPLICATION USES YOUR DEVICE'S DIALER AND CELLULAR TELEPHONE SERVICE TO MAKE 911 CALLS. IF YOUR DEVICE DOES NOT HAVE CELLULAR TELEPHONE SERVICE, YOU WILL NOT BE ABLE TO CALL 911 FROM THE OPTIVON MOBILE APPLICATION.

OPTIVON SOFTWARE APPLICATIONS AND SERVICES ARE INTENDED FOR GENERAL BUSINESS USE ONLY. THEY ARE NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE OR RESALE AS EQUIPMENT OR SERVICES IN ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE (E.G., EMERGENCY MEDICAL CARE, HAZARDOUS ACTIVITIES) OR IN WHICH THE FAILURE OF THE SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. OPTIVON SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES OR SERVICES.

This Agreement governs your use of the Services, including, but not limited to, the Cloud PBX, Cloud ACD, SIP TRUNKING, Wire Area Network (WAN) components, information services, VoIP Interconnected service, Internet access, and the OPTIVON Website, and the OPTIVON software applications ("Applications"). This Agreement and the legal entity you represent by signing the service agreement or signing up by means of the OPTIVON web site for any Service, using the Service, or downloading, installing, or using any Applications ("You"). If You are an individual entering this Agreement on behalf Your company, Customer represent and warrant that You have the authority and are competent to do so.

1) Definitions:

- a) "Account Information" shall mean information supplied by the Customer in the Service Order, CPNI Authorization Form, LNP Form, and other forms that Optivon may ask Customer to fill from time to time, including, but not limited to, telephone numbers, names, hours, or other items.
- b) "Affiliate" shall mean an entity that now or in the future, directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement.
- c) "Completion Notice" shall mean a written notice from Optivon that the Service ordered has been installed by Optivon pursuant to the Service Order, and has been tested and is functioning properly.
- d) CPNI Form – The CPNI form contains Customer Proprietary Network Information as defined by the Federal Communications Commission (47 U.S.C. § 222(h)(1)).
- e) "Customer Data" means any data, information or other materials of any nature whatsoever provided to Optivon by Customer in the course of implementing or using the Services.
- f) "Documentation" means user manuals and other documentation relating to the Services, which are made available to Customer by Optivon, in the form of recorded documentation on optical or magnetic media, accessible via the Internet or in the form of printed media.
- g) "Effective Date" of this Agreement shall be the earlier of the date the Service Order is signed, the services downloaded or the Service Commencement Date.
- h) "Excused Outage" shall mean any outage, unavailability, delay or other degradation of Service related to, associated with or caused by scheduled maintenance (as described in Section

17 hereof), actions or inactions of Customer or its end users, Customer provided power or equipment or an event beyond the control of Optivon as defined in Section 25.

i) "Information Service" shall mean "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." as defined in 47 U.S. Code § 153 (24).

j) "Initial Payment" means the initial payment set forth in the Service Order consisting of activation fees, the fees for Implementation Services, Equipment and shipping charges (if any), the Service Fees for the first month and other related taxes and fees.

k) "Interconnected VoIP service" shall have the meaning given in 47 U.S. Code § 93.

l) LNP Form. The LNP Form contains information required to port in numbers from local carriers. Local Number Portability is established in Section 251(b)(2) of the Communications Act of 1934, as amended.

m) "Off-Net" shall mean Service that originates from or terminates to any location that is not on the Optivon network.

n) "On-Net" shall mean Service that originates from and terminates to a location that is on the Optivon network.

o) "Service" shall mean any Optivon service described in a quotation, proposal and/or in the Optivon services web page <http://www.optivon.com/services.html> and identified on a particular line item of a Service Order.

p) "Service Commencement Date" Optivon will use commercially reasonable efforts to complete installation and testing of the Product on or before the Service Commencement Date specified in the Service Schedule(s). Upon satisfactory completion of Optivon testing, Optivon will provide Customer with access to the Service and Customer shall have a period of time not to exceed three (3) days to conduct such testing as it reasonably deems necessary to ensure that the Service conforms in all material respects to the material specifications set forth in the relevant Service Orders. If Customer fails to notify Optivon within this time period of any deficiencies, the Service will be deemed accepted. The "Service Commencement Date" whereupon the Term of any Service Order commences, shall be the earlier of (i) completion of testing and acceptance of Service by Customer, (ii) if Customer has identified deficiencies, then the first date upon which Product conforms in all material respects with the relevant specifications, or (iii) the date Customer begins using the Service.

q) "Service Fee" or "Service Fees" means the monthly or annual fees set forth in the Service Order to be paid by Customer to Optivon as consideration for Optivon's provision to Customer of the Services.

r) "Service Levels" shall mean the specific remedies Optivon provides regarding installation and performance of Service as set forth in the Service Level Agreement attached hereto as Exhibit Two.

s) "Service Order" shall mean a request for Service submitted by Customer in the form designated by Optivon which was produced in accordance with information and instructions provided by the Customer by telephone, fax or electronic communication.

t) "Service Plan" means the monthly, annual or longer term subscription plan a Customer agrees to in the Service Order.

u) "Service Term" shall mean the duration of time (measured starting on the Service Commencement Date) for which Service is ordered, as specified in the Service Order. The initial term of this Agreement ("Initial Term") begins on the Commencement Date and continues in force and effect for the term of service agreed upon in the Service Order. The Service Term shall continue on a year-to-year basis after expiration of the stated Initial Service Term, until terminated by either party with thirty (30) days' written notice to the other prior to the expiration of the Service Term.

v) "Software" means any proprietary software (including any documentation relating to such software) owned by, licensed by, or which Optivon has a right to sublicense under this Agreement, which software is either provided to Customer under this Agreement or is used in or used to provide the Services.

w) "Customer Acceptance" shall mean the acceptance by the Customer that the products and services were delivered as specified in the Service Order and that Customer accepts the terms and conditions of this Agreement and of the Service Order. Activating or using Optivon services constitutes acceptance of the terms and conditions of this Agreement.

x) "Customer Premises" shall mean the location or locations occupied by Customer to which Service is delivered.

y) "Users" means a Customer employee or contractor who may use the Services, the total number of Users being the maximum number of personnel who may use the Services at any one time.

2) **Proposal for Products and Services:** Any proposal and/or order form made by any representative of the company shall not be considered valid or binding upon Optivon until such time as it has been duly accepted and executed by an authorized Optivon officer.

3) **Products and Services:**

a) Upon Acceptance of this Agreement Optivon will grant Customer a personal, non-exclusive, non-sublicensable, non-assignable, non-resellable, non-transferable, revocable license and right to use the Services and Applications in strict accordance with this Agreement for which Customer elects to contract with Optivon as indicated in the Service Order. Optivon may rely on the Account Information to be utilized in conjunction with the Service. Customer represents that the Account Information will be accurate and complete and agrees that it is under a continuing obligation to maintain such accuracy and completeness. Customer agrees that if it provides information, including Account Information that is in any respect inaccurate, incomplete, false or misleading Optivon may, in its sole discretion, suspend or terminate Customer's Account. Customer may not distribute, copy, reproduce, translate, modify, adapt, reverse engineer, de-compile or disassemble any aspect of the Service or its associated software.

b) Optivon, in its sole discretion, reserves the right to add, remove, or modify features or functions, or to provide fixes, updates and upgrades, to the Applications and Services. Customer acknowledges and agrees that Optivon has no obligation to make available to Customer any subsequent versions of the Applications or Services without liability to Customer. You also agree that Customer may have to enter into a renewed version of this Agreement if Customer wants to download, install, or use a new version of the Software. In addition, Customer and Optivon acknowledge that no Third-Party has any obligation whatsoever to furnish maintenance or support services with respect to the Applications or Services and that Optivon is solely responsible for the provision of maintenance and support as provided in this Agreement and to the extent such maintenance and support is required under applicable law. Customer is responsible for creating back-up copies of its information stored on the Services.

c) Customer acknowledges and agrees that Optivon's obligations to provide the Services are expressly conditioned upon (i) Customer's payment of all Service Fees as and when due, and (ii) Customer adherence to the technical requirements for the Services set forth in the Documentation for the Services made available to Customer by Optivon, as the same may be updated by Optivon from time to time.

4) **Account Activation:**

(a) Customer's Account will be activated on the Service Commencement Date. Optivon may withhold the account activation subject to verification of Customer's Account Information and credit review.

(b) Customer understands and agrees that (a) Optivon may from time to time need to change the number assigned to Customer (due to an area code split or for any other reason outside of Optivon's control, such as an order issued by a government entity with competent authority) and (b) following the termination of Customer's Account for any reason Customer will no longer have access to such number. In either case, such phone number may be re-assigned immediately to another customer. CUSTOMER AGREES THAT OPTIVON WILL NOT BE LIABLE FOR DAMAGES (INCLUDING WITHOUT LIMITATION CONSEQUENTIAL OR SPECIAL DAMAGES) ARISING OUT OF ANY SUCH RE-ASSIGNMENT AND HEREBY WAIVES ANY CLAIMS WITH RESPECT TO ANY SUCH RE-ASSIGNMENT, WHETHER BASED ON CONTRACT, TORT OR OTHER GROUNDS, EVEN IF OPTIVON HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

(c) Optivon shall comply with the general rules of the telecommunications industry with respect to toll-free number portability, including but not limited to (i) the Federal Communications Commission's ("FCC") toll-free number portability policies and rules, and (ii) the Industry Guidelines for Toll-Free Number Administration sponsored by ATIS, as either of the foregoing may be amended from time to time. Optivon shall also comply with all applicable rules and guidelines concerning Local Number Portability ("LNP"). In the event that Customer should elect to obtain services from a different service provider for any reason, whether during or following termination of this Agreement, within commercially reasonable time of Customer's request, Optivon shall take all necessary actions, consistent with the terms of the relevant tariffs with respect to local number porting, as well as rules, regulations, and availability of the porting service, as may be required to allow such porting to another service provider.

5) **Credit Approval and Deposits.** Customer will provide Optivon with credit information as requested, and delivery of Service is subject to credit approval. Optivon may require Customer to make a deposit or deliver another form of security as a condition to (a) Optivon's acceptance of any Customer Order and/or (b) Optivon's continuation of any Service in the event that (i) Customer fails to make payment to Optivon of any undisputed amount when due, or (ii) Customer has a material, negative change in financial condition (as determined by Optivon in its reasonable discretion). Any deposit will be limited to two (2) month's estimated charges for Service and will be due upon Optivon's written request. Any deposit will be held by Optivon as security for payment of Optivon's charges. When Service to Customer is terminated, the amount of the deposit will be credited to Customer's account and any remaining credit balance will be refunded. Any deposit paid by Customer pursuant to this Section 5 will be held by Optivon in accordance with the applicable law governing such deposit.

6) **Term:** This Agreement shall become effective on the Effective Date and shall continue for the Initial Term and all renewals, unless earlier terminated as provided herein. At the end of the Initial Term, the Agreement shall automatically renew for an additional twelve-month term of service", and shall be renewed at the end of each Renewal Term for an additional one-year Renewal Term, at the then-current rates unless Customer provides thirty (30) days' prior written notice to the other

party of intention to cancel the Service. Instead of renewal under this Section 6 or cancelation, a Customer shall have the option, upon expiration of the Initial Term or any Renewal Term, to renew the Agreement on a month-to-month basis at the month-to-month list price offered for the Services. Customer will be converted to a month-to-month basis if Customer provides to Optivon, at least thirty (30) days prior to the end of the Initial Term or applicable Renewal Term, notification of intention to convert to month-to-month service. Except as otherwise set forth herein, Customer shall pay all charges for the Services through the end of the Service Term. To the extent that the Service Term for any Service extends beyond the Initial Term or Renewal Term, then this Agreement shall remain in full force and effect for such Service until the expiration or termination of such Service Term.

7) TERMINATION.

a) **Monthly Plan Customers.** For Customers that elect Month-to-Month Service Plans, the Customer may cancel or terminate the use of the Services with or without cause at any time by notifying Optivon, subject to the restrictions and fees provided in this Agreement and any additional agreements governing the Services.

b) **Annual Plan Customers.** For annual plans customers, the Customer is purchasing the Service for the full length of the applicable Term. You have ninety (90) days from the Effective Date to cancel the Initial Term without penalty with or without cause by notifying Optivon in writing. In the event that Customer decides to cancel the Services during this initial 90-day period, the Customer shall be liable only for the pro-rata portion of the Services and any related costs incurred until the date of cancellation. Either party may terminate the Agreement upon thirty (30) days' notice of termination to the other party. However, in the event of termination under this Section 7.b by Customer after the first 90 days of the Effective Date during the Initial Term or any Renewal Term or if Optivon terminates this Agreement for just cause prior to the expiration of the Service Term for any Service, an early termination charge will apply for the unexpired portion of the Service Term and disconnection fees and other charges may also apply; provided however that no charge for the remaining portion of the Service Term shall apply if such termination by Customer is prompted by changes in the Service introduced by Optivon and not accepted by Customer. Upon termination, flat monthly fees shall not be subject to proration for the unused portion of monthly service. Any Equipment returned in conjunction with a cancelled Service Order or termination under this clause may also be subject to a restocking fee. If Customer transfers or ports a Number or Ported Number to another service provider, Customer must notify Optivon in order to cancel any Services related to such Numbers or Ported Numbers or service charges will continue. In addition, Customer will not be entitled to a refund for any unused portion. The parties acknowledge that the cancellation or termination charges set forth in this Section 7.b are a genuine estimate of the actual damages that Optivon will suffer and are not a penalty.

c) Upon any termination or suspension of the Services, Optivon may immediately deactivate or delete Customer's account and all related information and files in Customer's account and/or restrict any further access to such files, information, or the Applications or Services. Optivon shall not be liable to Customer or any third party for any reason for terminating or suspending Customer's use or access to the Applications or Services. If Customer or Optivon terminate or suspend Customer's right to use the Services, Customer shall not be entitled to any refund or pro ration of any pre-paid amounts, plan credits, or other amounts paid to Optivon prior to the termination or suspension date.

d) A Customer may not reduce the number of licenses, lines or seats, or the number of services, provided under a Service Plan during the Initial Term or any Renewal Term without Optivon's consent unless otherwise provided in the Agreement. Any reduction in the number of licenses, lines or seats under a Service Plan shall be treated as a termination of Service under this Section 7 with respect to those licenses, lines or seats. Any reduction or downgrading of Services shall be treated as a termination of Service under this Section 7 with respect to the applicable Services. Optivon's acceptance of any proposed reduction in licenses, lines, seats or Services shall not release

customer from its obligations to pay applicable fees and charges under this Section 7 unless Optivon expressly agrees in writing to waive such fees and charges.

8) **Use of Services:**

a) Customer understands and agrees that it will be financially responsible for all outstanding fees and charges relative to the use of the Service, whether or not such usage was authorized or unauthorized usage. Without limiting the foregoing, Customer understands that anyone to whom Customer provides its user name and/or password will be able to use Customer's Account, Web Portal, voice mail, or other functions of the Service, and Customer shall be fully liable to Optivon for all charges resulting from such usage.

b) Except as otherwise expressly provided herein, Customer shall be responsible for all costs, expenses, claims or actions arising from calls on Customer's Account, including (i) any such calls the purpose of which is theft or unauthorized usage of communications services or misleading or fraudulent communications of any nature (including, without limitation, including any calls related to unauthorized access to Customer's telecommunications equipment or communications intended to effect theft through unauthorized use of calling cards) and (ii) all unauthorized or fraudulent communications on pay-per-call numbers, information service calls, directory assistance calls or the like for which Optivon is billed that are passed through to the Customer (collectively, "fraudulent calls"). Customer shall not be excused from paying Optivon for any Services provided to Customer or any portion thereof on the basis that fraudulent calls comprised a portion of the Services. In the event Optivon discovers fraudulent calls being made (or reasonably believes fraudulent calls are being made), Optivon shall immediately notify Customer. Notwithstanding the foregoing, nothing contained herein shall prohibit Optivon from taking immediate action (within one (1) hour of Optivon's first attempt to notify Customer) that is reasonably necessary to prevent such fraudulent calls from taking place, including without limitation, denying any Services to particular ANIs or terminating any Services to or from specific affected locations. REGARDLESS OF WHETHER OR NOT OPTIVON BLOCKS SERVICE, CUSTOMER SHALL STILL BE FULLY LIABLE FOR ALL FRAUDULENT CALLS MADE. If fraudulent calls are determined to have originated on Optivon's network and the Customer, its employees or agents were not involved in the fraudulent calls, the Customer will not be held responsible for such calls, if Optivon reasonably determines that such calls are in fact fraudulent in nature.

9) **Hosting Services.** Customer may also be purchasing Optivon's hosting services (the "Hosting Services"), which may be purchased separately. Customer grants to Optivon and its suppliers a non-exclusive, worldwide, and royalty-free license for the term of this Agreement to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Customer's content as necessary for the purposes of rendering and operating the Hosting Services under this Agreement. If Customer provides Optivon with material that Customer wishes Optivon to host (e.g., custom music for Customer's music on hold) (the "Custom Materials"), Customer represents and warrants that Customer has obtained and will maintain all necessary and appropriate rights, approvals and/or licenses for use of the Custom Materials. Customer agrees to indemnify and hold Optivon, its officers, directors, employees, affiliates, suppliers and shareholders harmless for all third-party claims arising out of use of the Custom Materials. Customer expressly: (a) grants to Optivon and its suppliers a license to cache materials distributed or made available for distribution via the Hosting Services, including content supplied by third parties, and (b) agrees that this caching is not an infringement of any of Customer's intellectual property rights or any third party's intellectual property rights. Customer shall indemnify and hold harmless Optivon (including its attorneys' fees and expenses) in connection with any claim or violation of any intellectual property rights in related to materials distributed or make available for distribution via the Hosting Services.

10) **Equipment:** In conjunction with the services ordered, Optivon may provide Customer with Customer Premises Equipment (CPE). If Customer has been provided with equipment from Optivon, then the Customer must install Equipment in accordance with instructions provided by

Optivon (or its third party vendor) or will be installed by Optivon, as specified in the Proposal or Service description. In addition, Optivon Equipment must be used solely for the purpose of Service utilization. Should Customer elect to provide own equipment for service, where permitted, Customer is solely responsible to obtain, use and operate any equipment not provided by Optivon that may be used in association with the Service and agrees that Optivon may not be able to provide information, service, or support for said equipment. Customer shall allow Optivon reasonable access to the Equipment, as required, to provide Service ordered by Customer. All Equipment acquired from Optivon is subject to the terms and conditions set forth in the Manufacturer's or Publisher's warranty, end-user license, or agreement applicable to such Equipment, with no warranty of any kind from Optivon. Customer shall reimburse Optivon, on a time and materials basis as documented in an invoice, for the entire cost to repair and/or replace any of the Equipment in the event that equipment requires replacement due to (a) misuse, (b) failure to exercise reasonable care, (c) altering original Optivon configuration, (d) damage, (e) theft, or (f) disaster. Customer will not receive compensation for downtime associated with equipment failure, replacement or repair. Optivon's liability is strictly limited to the pro-rata reduction of Optivon charges. If service is terminated for any reason, Customer must return all Optivon-provided equipment within 30 days of termination or purchase the equipment from Optivon outright. Should the Customer request to purchase the equipment or fail to return equipment within 30 days of the termination of service, Optivon will invoice the Customer for the current value of the equipment. Equipment valuation is at the sole discretion of Optivon.

Customer understands that any VoIP Equipment provided as part of its Cloud PBX, Cloud ACD, or other VoIP Service it purchases through Optivon, a dealer or fulfillment partner is only designed to work with Optivon's Cloud Services. If Customer or Optivon terminates VoIP Services for any reason, Customer will not be eligible for a refund (either full or partial) for any fees paid by Customer for VoIP Equipment.

11) **Account Charges**: Customer will be charged a one-time initial "Non-Recurring Charge," and a monthly bill for the Services provided each calendar month and bill all charges invoiced to Customer's account for the Services. Likewise, Customer may be charged non-recurring charges for other services requested as part of the Services. Such charges shall include activation fees, monthly Service Fees, shipping charges, disconnection fees, Equipment charges, toll charges, taxes and any other applicable charges. The first month's Service Fee shall be prorated to take into account any partial calendar month that may occur as the result of the date monthly Service Fees are initiated.

12) **Product Marketing**: With respect to its advertising, offering, or sale of Applications, Services, or any other products, Optivon attempts to describe its products as accurately as possible. Nevertheless, Optivon does not warrant that any descriptions, pricing, availability, or other information relating to the advertising, offering, or sale of Services (collectively, "Product Information") from its Website, marketing materials, promotional flyers, advertisements, or other printed or electronic materials (collectively, "Product Materials") is accurate, complete, reliable, current, or error-free. Despite our efforts, it is possible that Product Information may be mispriced, described inaccurately, or that the Product may be unavailable. In the event Optivon determines that a Product is mispriced, described inaccurately, or unavailable, Optivon reserves the right to take any action it deems reasonable and necessary to rectify the error, including without limitation, canceling Customer's Account or subscription to the Services. Customer agrees to notify Optivon immediately if Customer becomes aware of any pricing or descriptive errors or inconsistencies with any Products Customer orders through the Product Materials and comply with any corrective action taken by Optivon.

13) **Terms of Payment**:

(a) All monthly invoices shall be delivered to Customer electronically over the Internet. Monthly Service Fees are paid in advance of each month's Service; toll charges and any other applicable

charges are billed subsequent to the end of each month's service. Customer shall be required to pay all monthly Service charges as stated by Optivon, including applicable taxes, surcharges, assessments, government fees and charges for any special or enhanced services used by Customer. If Customer disputes any portion of the invoice, Customer shall bring the dispute to the attention of Optivon in writing within 10 days of the date of the invoice. The failure of the Customer to send a written notice of dispute within this time period shall be deemed a waiver by the Customer of the right to dispute any portion of the invoice. If the dispute relates to a portion of the invoice, the Customer shall be required to make payment of the undisputed balance within the time period set forth above. Customer shall send all billing disputes to accountspayable@optivon.net.

(b) If Customer fails to make payment of the invoice within the time period set forth above, Optivon shall have the right, at its sole discretion, to suspend or terminate the Service, upon twenty-four (24) hours' notice to the Customer. Customer shall be responsible for payment of the balance outstanding related to the Service, up to the time of suspension or termination, prior to reactivating the Service. A fee will also be charged to activate a suspended account. No suspension or termination of the Services or of this Agreement shall relieve Customer from paying any amounts due hereunder. Past due amounts bear interest at a rate of 1.5% per month (or the highest rate allowed by law, whichever is less) beginning from the date first due until paid in full.

14) PROHIBITED USES:

a) **GENERAL.** Any use of the Services or any other action that causes a disruption in the network integrity, or threatens or compromises the security of Optivon, its vendors, or the Services whether directly or indirectly, is strictly prohibited and permits Optivon to terminate the Services and the Agreement without prior notice at the sole discretion of Optivon. Customer will not use the Services in ways that violate requirements in applicable agreements (including but not limited to privacy and security requirements imposed by Customer's financial institutions such as the Payment Card Industry Data Security Standard), violate applicable laws (including but not limited to laws prohibiting transmission of unsolicited fax advertisements or laws on obtaining third party consent for call recording), infringe the rights of others, or interfere with the users, Agents, services, or equipment of the network. Customer shall not use the Services to send unsolicited commercial e-mail ("UCE") to any person (UCE includes any e-mail that is sent to a person whom Customer has no prior business relationship or who has not consented to receiving the communication, and any other e-mail communication that violates any Applicable Law prohibiting the transmission of spam). Optivon shall have the right, in its sole, but reasonably exercised discretion, not to accept, transmit or deliver any messages and/or content that it reasonably believes contains inappropriate content or that is, or could reasonably become, the subject of any legal, regulatory, or other governmental proceeding or process, including without limitation a law enforcement proceeding, process, or inquiry. Customer acknowledges that neither Optivon nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Services. Any use found to be inconsistent with the restrictions of this Section 14 will result in termination of the Services without prejudice to any other remedies Optivon may have. Optivon may request a valid business license from Customer upon reasonable suspicion of misconduct by Customer, and failure to provide a valid business license may result in termination of Service.

b) **REASONABLE BUSINESS USE.** Customer agrees, represents, and warrants that it is purchasing the Services and the Equipment (if any) for its own internal use only, and shall not resell, transfer or charge for the Services or the Equipment without the advance express written permission of Optivon. Optivon's Service Plans that offer unlimited minutes of PSTN calls ("Unlimited PSTN Plans"), unlimited faxing or unlimited Text Messages are for reasonable business use of Customer only. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous or extensive chat, continuous connectivity, fax or Text Message broadcast or blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations (except with respect to Customer's use of subscribed to VCC Services), junk or Text Message faxing, fax spamming, calling/faxing/Text Messaging any person (through the use of distribution lists or otherwise) who

has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer will not use the Services to send unsolicited commercial e-mail or Text Messages to recipients outside Customer's organization. Customer shall not transmit through the Services any unlawful, harassing, defamatory, abusive, threatening, harmful, vulgar, obscene, indecent, or otherwise objectionable communications or material of any kind or nature. Customers further agree not to transmit any material that encourages conduct that could constitute a criminal offense, violate the intellectual property rights of others, give rise to civil liability or otherwise violate any applicable local, state, national or international statute, regulation, or other law. Without limiting any other remedies hereunder, Optivon reserves the right to immediately terminate or modify the Services of any Customer using Unlimited PSTN, fax or texting Service Plan if Optivon determines, in its sole discretion, that Customer is not using such plan for Customer's reasonable business use.

c) If subscribed to Unlimited Plans, Customer shall not perform Trunking or forwarding with the Services or the numbers to (an)other phone number(s) capable of handling multiple simultaneous calls, or to a private branch exchange (PBX) or a key system. Customer shall not do spamming or blasting (e.g., sending one hundred (100) or more bulk and/or junk voicemail or faxes simultaneously), bulk call-in lines (e.g., customer support or sales call centers, "hotlines", 900 numbers, sports-line numbers, etc.), or auto-dialing or "predictive" dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls).

d) **TEXT MESSAGES.** With respect to any texting, Text Messages or other mobile messaging Services, Customer shall not use the Services in violation of the Mobile Marketing Association Guidelines or any network/wireless carrier requirements, conditions or codes of practice. All Text Messages are subject to Optivon's policies and conditions, including without limitation the provisions of this Section 14(Prohibited Uses) and the maximum permissible Text Message length. Optivon reserves the right to segment, truncate, or otherwise reduce the length of any Text Message or to refuse to transmit and/or deliver a Text Message that does not comply with Optivon or any third party network operator's policies or conditions.

15) **Confidentiality:**

(a) Optivon shall treat all messages and Customer Account information as confidential. Optivon shall not intentionally disclose any messages to any unauthorized person or organization; provided however, Optivon shall not be responsible for any inadvertent disclosure. Optivon shall have the right to cooperate with all law enforcement agencies or organizations, and may disclose to them whatever information is requested by them in the performance of their official duties (which Optivon may assume without independent inquiry), without prior notice to the Customer of such requests.

(b) Customer authorizes Optivon to monitor and record Customer's calls to Optivon concerning the Account or the Service for quality control purposes. Customer expressly consents and agrees that Optivon may contact Customer from time to time by means of (a) automatic dialing equipment, (b) e-mail or wireless text message, or (c) Optivon's voicemail box.

16) **Service Level Credits.** In the event Optivon does not achieve a particular Service Level in a particular month, Optivon will issue a credit to Customer as set forth in the applicable Service Level Agreement upon Customer's request. Optivon's maintenance log and trouble ticketing systems will be used for calculating any Service Level events. To request a credit, Customer must contact Optivon Customer Service Department or deliver a written request (with sufficient detail necessary to identify the affected Service) within thirty (30) days of the end of the month for which a credit is requested. Optivon Customer Service may be contacted by email at Director of Customer Service, Optivon, Inc. 27 Calle Gonzalez Giusti, Edificio Tres Rios, STE 100, Guaynabo, PR 00968 or calling the numbers as published at www.optivon.com. In no event shall the total amount of credits issued to Customer per month exceed 50% of total amount invoiced to Customer for the affected Service for that month.

17) **Scheduled Maintenance.** Scheduled maintenance of the Optivon network will not normally result in Service interruption or outage. However, in the event scheduled maintenance should require a Service interruption or outage, Optivon will exercise commercially reasonable efforts to (i) provide Customer with forty eight (48) hours' prior written notice of such scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer's services that may be caused by such scheduled maintenance, and (iii) to perform such schedule maintenance during the non-peak hours of 12:00 a.m. (midnight) until 6:00 a.m. local time.

18) **EMERGENCY SERVICES - 911 DIALING.** Optivon complies with the FCC Requirement to provide 911 service and has the requisite direct links to the local Public Safety Answering Point (PSAP) to route 911 calls. Nonetheless, due to over-abundance of caution, we are hereby informing you that, under certain circumstances, when 911 is dialed E911 service may not be available, or the E911 service may be in some way be limited. These circumstances include:

(a) In some circumstances when 911 is dialed from a phone connected to an Internet phone service, E911 service may not be available. These circumstances include:

- When the location of your IP Phone device is at a physical address other than the one you listed when you activated your account.
- When you use a non-native telephone number in the IP Phone at your original physical address.
- When your broadband phone device fails or is not configured properly.
- When there is an electrical power outage, service outage or suspension/disconnection of Optivon service due to billing or other issues.
- When there is a delay in the provision of Optivon service ("dial tone") at the physical address provided at the time of account activation.
- When a change of address has been reported, but not yet been updated on the Optivon account.
- When the local PSAP receiving Optivon E911 emergency service calls does not have a system configured for E911 services that enables the operator to capture and/or retain automatic number or location information.
- When there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere herein.

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 Optivon 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 unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless Optivon, 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.

- Because Customer's address does not necessarily correspond with Customer's telephone number, Customer must provide Optivon with the street address(es) where Customer will be using Optivon's VoIP Service ("Registered Location(s)") when Customer sign up for service.

- If Customer relocates any equipment (PC with softphone, IP phone, or ATA with traditional phone) that Customer use to access the VoIP Service, Customer must update Customer's Registered Location(s). If Customer do not update Customer's Registered Location(s), any 911 calls Customer make using the VoIP Service will be routed based on Customer's previously provided Registered Location and therefore may not be routed to the appropriate PSAP for Customer's new location.
- In addition, because the VoIP Service will, where possible, automatically transmit Customer's Registered Location to the PSAP, Customer must update Customer's Registered Location to ensure that the VoIP Service transmits accurate location information to the PSAP.
- Once Customer notifies us of a change in Customer's Registered Location, there may be a delay in making the new Registered Location available to properly route 911 calls and advise PSAPs of Customer's new Registered Location.
- In some parts of the country where direct routing to PSAPs is not available for VoIP 911 Service, the Service will route Customer's call to the National Emergency Call Center where trained agents will ask for the name, location, and telephone number of the person calling 911 and will contact the appropriate PSAP to send help. The call center will not automatically receive Customer's address and telephone number. In these situations, public safety response times may be delayed. As a result, there may be an additional delay before emergency services arrive.

Loss of Electrical Power. Unless Customer have a backup system to power Customer's wired broadband Internet connection and any equipment (PC with softphone, IP phone, ATA with traditional phone) that Customer use to access Customer's VoIP Service, Customer will not have phone service or 911 service during any power outage.

Registration of Physical Locations Required. As discussed above, Customer must register the Registered Location where Customer will be using VoIP service for each VoIP phone line Customer use from Optivon (e.g., if Customer purchase Optivon Cloud PBX or Cloud ACD with three VoIP lines, Customer must provide a Registered Location for each of the three VoIP lines). Optivon will obtain Customer's Registered Location as part of the service initiation process and will not provide VoIP Service until Customer have provided Customer's initial Registered Location. However, Customer must update Customer's Registered Location when Customer uses Customer's VoIP Service from a new location. Regardless of what address Customer register, in some circumstances, such as unavailability of direct routing to PSAPs or the use of portable devices to access the VoIP Service, emergency calls will be routed to the National Emergency Call Center.

Customer agrees to provide true, accurate, current, and complete Registered Location information to Optivon as part of the service initiation process and to update as soon as possible Customer's Registered Location with true, accurate, current, and complete information whenever Customer uses Customer's VoIP Service from a new location. If Customer provides Registered Location information that is, or that Optivon suspects to be, false, inaccurate, not current, or incomplete, Optivon has the right to suspend or terminate the Services and refuse any and all current or future use of all Services, or any portion thereof. Optivon will not, however, disable Customer's ability to make a 911 call during any service suspension.

Customer may update Customer's Registered Location by logging on to Customer's Account settings page or contacting Optivon's customer service. For purposes of 911 Dialing, Customer may only register one Registered Location for each VoIP line.

Notify All Users of 911 Limitations. Customer should inform all business colleagues, household residents, guests, and other persons who may be present at the physical location where Customer utilize the VoIP Service that 911 may not be available or may be in some way limited in comparison to traditional 911 service. Optivon will provide Customers to VoIP services for which E911 service is provided stickers warning that "E911 Service May Be Limited or Not Available" for use with any VoIP equipment by mailing stickers to Customers upon Service initiation. It is Customer's responsibility to place these stickers on the equipment Customer use to access VoIP Service. If

Customer have not received a sticker, or Customer require additional 911 stickers, please contact customer support at 888-898-4591.

(b) Software Based Phone ("Soft Phone") – e911 Calling Not Available. Optivon may make available to Customer a Soft Phone, which allows Customer to receive phone calls through a software program that runs on Customer's personal computer ("PC"). Customer will NOT be able to place outgoing calls using the Soft Phone, including calls made to emergency services through 911, e911 or the emergency numbers. In addition, even if Customer purchases Optivon's separate outbound Soft Phone service, Customer will NOT be able to make calls to emergency services using e911 services. Optivon strongly recommends that Customer has, at all times, access to a standard telephone or a cellular phone to place emergency phone calls whenever Optivon's outbound Soft Phone service is being used.

19) **Acceptable Use Policy; Content:**

(a) Customer is solely responsible for the content of its Account and all communications thereunder.

(b) Customer acknowledges that there is content on the Internet or otherwise available through the Services which may be offensive, or which may not be in compliance with all local laws, regulations and other rules. For example, it is possible through the use of the Services to obtain access to content that is pornographic, obscene, or otherwise inappropriate or offensive, particularly for children. Optivon assumes no responsibility for and exercises no control over any content not created by Optivon, including without limitation the content contained on the Internet or otherwise available through the Services. In particular and without limiting the generality of the foregoing, Optivon neither censors nor monitors the legality of any such content. All content accessed or received by Customer through the Services is accessed and used by Customer at Customer's own risk, and Optivon and its employees, agents, contractors and representatives shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to the access to or the receipt of such content by Customer.

(c) Optivon has no obligation to monitor the Services content. However, Customer acknowledges and agrees that Optivon has the right to monitor content electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other governmental request, to operate the Services properly or to protect itself or its Customers. Optivon reserves the right to refuse to post or to remove any information or materials, in whole or in part, that in its sole discretion, are unacceptable, undesirable, or in violation of this Agreement.

(d) Customer acknowledges and agrees that Optivon exercises no control over the content of messages sent or received by Customer, and Optivon's sole obligation with respect to such messages is to transmit them to the person or persons designated by the sender, or where necessary, to the network of another carrier. Optivon is not responsible and shall not be liable for the content of any message sent or received by Customer. Customer will indemnify Optivon and hold Optivon harmless from any and all liabilities, losses, damages, injuries, claims, suits, judgments, settlements, awards, costs, charges and expenses of any kind, including but not limited to any fees, costs, charges and expenses, arising from the content of any such message, including without limitation claims for defamation, harassment, or violation of any person's privacy rights.

(e) Our goal at Optivon is to provide a high quality service to our customers. To ensure our high standards are met, we have certain responsibilities regarding the use of our network. Activities described below includes activities which Optivon considers to be violations of the terms of the Service Agreement and which are therefore prohibited. The examples listed are not exhaustive and may change from time to time. They are provided solely for guidance to Optivon's customers. If you are unsure whether any contemplated use or action is permitted, please contact us for assistance. Please be advised that Optivon intends to exercise its rights under the Terms of Service to

immediately terminate service, without notice, to any account which has been used in a manner that is disruptive or is otherwise in violation of the Terms of Service. Actions which Optivon considers violations of the Terms of Service include the following:

- **System and Network**
 - Attempts to obtain unauthorized access, such as attempts to circumvent user authentication or security of any host, network or account (“cracking”). This includes accessing data not intended for the customer, logging into a server or account the customer is not expressly authorized to access or probing the security of other networks.
 - Attempts to interfere with service to any user, host, or network. This includes “denial of service” attacks, “flooding” of networks, deliberate attempts to overload a service and attempts to “crash” a host.
 - Use of any kind of program/script/command designed to interfere with a user’s terminal session.

- **Email**
 - Undertake any action that interferes with either the provision of Optivon services to any other person.
 - Interference with any other person’s use of Optivon’s services or the impairment of the quality of the service.
 - Take any action that affects the privacy of any communications effected over the Optivon system.
 - Harassment, whether through language, frequency, or size of messages.
 - Sending email to any person who does not wish to receive it. If a recipient asks to stop receiving email, the customer must not send that person any further email.
 - Sending unsolicited bulk mail messages (“junk mail” or “spam”) which, in Optivon’s sole judgment, is disruptive or generates a significant number of user complaints. This includes bulk mailing of commercial advertising, informational announcements and political tracts.
 - Forwarding or otherwise propagating chain letters and pyramid schemes, whether or not the recipient wishes to receive such mailings.
 - Malicious email such as “mailbombing” or flooding a user or site with very large or numerous pieces of email.
 - Accounts may not be used to collect replies to messages sent from another Internet Service Provider where those messages violate this Acceptable Use Policy or the Acceptable Use Policy of that other provider.
 - Intrusion into any part of the Optivon System or the Services provided without express written authorization from an Optivon officer or a court order.
 - Tampering with the security of any part of the Optivon system for any purpose.

20) **Storage Space Limitations:** The amount of e-mail, fax, and voice-mail storage space per Customer is limited. Some e-mail, fax-mail, or voice-mail messages may not be processed due to space constraints or outbound message limitations. However, if additional unallocated storage space is available on the Service, Optivon will use commercially reasonable efforts to temporarily allocate a portion of such additional storage space to Customer’s Account to satisfy Customer’s immediate storage space requirements. Customer will be charged for all additional storage space allocated to Customer’s Account in accordance with the rates in effect from time to time. Customer agree that Optivon is not responsible or liable for the deletion or failure to store messages or other information.

21) **Copyright and Trademark Notice:** The trademarks, service marks and logos (the “Trademarks”) used by Optivon and displayed on Optivon’s web site (the “Site”) or documentation are registered and common law trademarks of Optivon and others. Nothing contained in the Site or elsewhere should be construed as granting Customer any license or right to use any

Trademark without the written permission of Optivon or such third party that may own the Trademarks. Customer's use of the Trademarks or any other Site content is strictly prohibited. Materials may be made available via the Service by third parties not within our control. We are under no obligation to, and do not, review content transmitted, sent, or received using the Applications or Services for purposes of determining copyright infringement. However, Optivon reserves the right to terminate access to its Applications or Services if a user infringes on others' copyrights, and will, in appropriate circumstances, terminate access to the Applications or Services if Optivon determines that a user is a repeat infringer. Pursuant to Title 17, Section 512 of the United States Code, all claims of copyright infringement for any material Customer believe to reside on Optivon's Applications or Services should be provided in writing to Optivon's Legal Department at Optivon's current address as posted on Optivon's Website.

22) **Non-disparagement:** Customer agrees not to directly or indirectly through a third party engage in any conduct or make any communication (public or private) that disparages Optivon or the Applications or Services in any way. Such communications include, but are not limited to, publishing, posting, printing, disseminating, or otherwise making such disparaging statements on or through the Internet, in any blog, or through any other form of social media. Customer further agree not to solicit or encourage, directly or indirectly, any such statements, comments, or communications by any third-party. In accordance with the termination provisions below, Optivon may terminate Customer's access to the Applications or Services if Customer breaches the requirements of this section.

23) **DISCLAIMERS, LIMITATION OF LIABILITY:** THE SERVICE IS PROVIDED "AS IS" AND OPTIVON MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS TO CUSTOMER REGARDING THE SERVICE, ITS USE, CONDITION OR OPERATION. OPTIVON MAKES NO WARRANTY WHATSOEVER THAT ACCESS TO OR USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. OPTIVON EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. OPTIVON SHALL NOT BE LIABLE FOR ANY ACTS, ERRORS, OR OMISSIONS BY IT OR ITS EMPLOYEES OR AGENTS, EXCEPT FOR CONDUCT CONSTITUTING GROSS NEGLIGENCE. IN ANY EVENT OPTIVON'S SOLE LIABILITY HEREUNDER TO THE CUSTOMER FOR ANY AND ALL DAMAGES OF ANY NATURE WHATSOEVER SHALL NOT EXCEED THE FEES AND COSTS PAYABLE BY THE CUSTOMER TO OPTIVON FOR THE PAYMENT PERIOD IN WHICH THE CONDUCT GIVING RISE TO THE CLAIM TOOK PLACE. NEITHER OPTIVON NOR ITS VENDORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OPTIVON'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF OPTIVON'S OR ITS VENDORS' NEGLIGENCE. NEITHER OPTIVON NOR ITS VENDORS WILL BE LIABLE FOR MALFUNCTIONS OR FAILURES RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, ALTERATION, MODIFICATION, IMPROPER INSTALLATION, OR REPAIRS BY ANYONE OTHER THAN OPTIVON. NEITHER OPTIVON NOR ITS VENDORS WILL BE LIABLE FOR DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE SERVICES RESULTING FROM CUSTOMER'S EQUIPMENT, USE OF THE INTERNET, OR TELECOMMUNICATIONS SYSTEMS NOT UNDER OPTIVON'S CONTROL, AND OPTIVON SHALL HAVE NO LIABILITY FOR ANY SUCH DELAYS OR INTERRUPTIONS. NOTWITHSTANDING THE ABOVE, IN NO EVENT SHALL OPTIVON OR ITS EMPLOYEES OR AGENTS BE LIABLE TO THE CUSTOMER FOR: (A) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, LOST PROFITS OR LOSS OF REVENUES ARISING EITHER DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE, OR FAILURE TO PERFORM, ANY SERVICE, INCLUDING INABILITY TO BE ABLE TO DIAL 911 OR TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE

SERVICE; (B) ANY PUNITIVE OR EXEMPLARY DAMAGES; (C) ANY DAMAGES FOR, BASED UPON, OR ARISING OUT OF ANY CAUSE NOT WITHIN OPTIVON'S CONTROL, INCLUDING WITHOUT LIMITATION, NATURAL DISASTERS, WEATHER CONDITIONS, CIVIL DISTURBANCES, MATERIAL SHORTAGES, ELECTRONIC OR MECHANICAL FAILURES, OR PROBLEMS WITH OR THE INTERRUPTION OF, TELEPHONE SERVICE.

24) **EXCLUSIVE REMEDY**. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR FAILURE OF THE SERVICES OR EQUIPMENT, WHICH OPTIVON SHALL BE ENTITLED TO ELECT, IS REPAIR, REPLACEMENT, CREDIT OR, REFUND. OPTIVON MAY ELECT TO PROVIDE A REFUND IN LIEU OF CREDIT, REPLACEMENT OR REPAIR.

25) **Indemnification**: The Customer agrees to defend, indemnify and hold Optivon, its affiliates, employees, agents and other Customers harmless against any and all liabilities, losses, damages, injuries, claims, suits, judgments, settlements, awards, costs, charges and expenses, including but not limited to any fees, costs, charges and expenses incurred by Optivon for investigation, defense and resolution for, based upon, or arising out of the performance or failure to perform any service under or pursuant to this Agreement.

26) **Excusable Service Interruption**: Notwithstanding anything to the contrary contained in this Agreement, Optivon shall not be liable for loss or damage or deemed to be in breach of this Agreement due to Optivon's failure or delay of performance, wholly or in part, under this Agreement if such failure or delay of performance is due to causes beyond Optivon's reasonable control ("Excusable Service Interruption"). Any delay resulting from an Excusable Service Interruption shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. "Excusable Service Interruption" means any failure or deficiency that interrupts the Optivon Service, such as: Force Majeure; scheduled maintenance and emergency maintenance and upgrades; DNS issues outside the direct control of Optivon; false SLA breaches reported as a result of outages or errors of any Optivon measurement system; Customer's acts or omissions (or act or omissions of others engaged or authorized by Customer), including without limitation, any negligence, willful misconduct, or use of the Services or Optivon facilities in breach of Optivon's Terms and Conditions of Service or Optivon's Acceptable Use Policy; or unavailability of required Customer personnel, including the failure of Customer to provide Optivon with accurate, current contact information. "Force Majeure" means disruption to the Service provided by Optivon because of something abnormal and unforeseeable by the parties and beyond Optivon's reasonable control, including, without limitation, acts of God, fire, flood, explosion, storm, atmospheric conditions such as rain fade or other catastrophic event; strikes or work stoppages; lockouts; interruption of or delay in transportation; unavailability of or interruption or delay in telecommunications or third party services; failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Service; failure of access circuits to the Optivon facilities, unless such failure is caused solely by Optivon; acts of any government authority or of any civil or military authority including regulatory mandates; national emergencies, cable cut(s); sabotage; insurrections; riots; terrorist acts; vandalism; wars; embargo; national emergencies; and unforeseen acts of third parties that cannot be avoided by acts of due care. Any delay resulting from a Force Majeure Event shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

27) **Ownership and Property Rights**: All technologies, software, hardware, operating applications, procedures, scripts, telephone numbers, or other materials of any nature or type prepared, furnished, or utilized by Optivon, other than those items furnished by the Customer to Optivon, shall be considered the sole and exclusive property of Optivon and shall be retained by Optivon upon the termination of this Agreement. In the event that any items of Optivon property are in Customer's possession, Customer will immediately return the same to Optivon upon termination of this Agreement or at Optivon's request. Customer acknowledges and agrees that any and all patents, copyrights, trademarks, service marks, trade secrets, and all other intellectual property rights in the Applications and Services are and shall remain the sole and exclusive property of Optivon and its licensors. Nothing in this Agreement intends to or shall grant, transfer,

or assign any intellectual property rights to, or vest any intellectual property rights in, Customer. Customer is only entitled to the limited use of the rights expressly granted to Customer in this Agreement. Customer will not take any action to jeopardize, limit, or interfere with the intellectual property rights. Customer acknowledges and agrees that any unauthorized use of the intellectual property rights is a violation of this Agreement, as well as a violation of applicable intellectual property laws. Customer acknowledges and understands that all title and rights in and to any third party content that may be accessed through the Applications or Services is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties. Customer agrees not to undertake, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Applications or Services, or any parts thereof. Customer agrees not to intercept, capture, emulate, decrypt, or redirect the communications protocols used by Optivon for any purpose, including without limitation causing the Applications to connect to any computer server or other device not authorized by Optivon or in a manner not authorized by Optivon.

28) **Usage and Other Information:** Upon signing up for the Service and at subsequent times as requested by Optivon, Customer agrees to provide to Optivon the Customer's true, accurate, current, and complete personal name and/or business name, administrator name, billing address, shipping address, the addresses where the Services will primarily be used, 911 registered address for each applicable device, email address, contact phone number, credit card information, and other data which may be necessary to administer the Customer's Optivon account ("Account") (collectively, "Registration Data"). Customer represents and warrants that the information Customer provides is accurate, current, and complete, and agrees to promptly update any of the information if it changes. If Customer provides Registration Data that is, or that Optivon suspects to be, false, inaccurate, not current, incomplete, fraudulent, or otherwise unlawful, Optivon has the right, in its sole discretion, to suspend or terminate the Service and refuse any and all current or future use of all Services by Customer, Customer's business(es), affiliates and all users of Customer's Account. At all times, Customer shall maintain and promptly update Registration Data. Upon completion of all Registration Data and acceptance of this Agreement, Optivon will provide Customer with, as applicable, a password(s), user ID(s), PIN(s), telephone number(s), other account information. Through this control panel the Customer will make all changes necessary on the itineraries, greetings and instructions that Optivon representatives are to follow. The control panel is accessible through the Internet, at Customer's sole cost.

29) **Technical Support:** Optivon provides technical support to Customers via on-line chat, e-mail and, for some Service Plans, via telephone for the Services and the Equipment provided hereunder. Support for other applications and uses is not provided or implied and except as stated in this Section, Optivon has no obligation to provide additional technical support.

30) **Assignment:** This Agreement is binding on the parties hereto and their respective successors and assigns. Customer shall not assign its rights, duties, or obligations under this Agreement without the written consent of Optivon. Optivon may, without obtaining any further consent from the Customer, assign any of its rights, privileges or delegate any of its obligations under this Agreement.

31) **Notices:** Optivon communicates with Customers primarily via email. Notices to Customer shall be sent to the email address specified by Customer at the time Customer ordered the Services or as subsequently specified by Customer ("Email Address"). Customer is responsible for providing Optivon with a valid Email Address and notifying Optivon of any Email Address changes. Customer agrees that sending a message to the Email Address is the agreed upon means of providing notification except as otherwise expressly provided in this Agreement. Email is used to communicate important information about the Services, billing, changes to the Services and other information. The information is time-sensitive in nature. It is required that Customer read any email sent to the Email Address in a timely manner in order to avoid any potential interruption in the Services provided hereunder. All notices and communications required or permitted to be sent to

Optivon under this Agreement shall be in writing and sent to the following address or email address: Director of Customer Service, Optivon, Inc. 27 Calle Gonzalez Giuati, Edificio Tres Rios, STE 100, Guaynabo, PR 00968 -or- notice@optivon.net. Any notice delivered by electronic means shall be deemed effective on the first calendar day following the date of such electronic mailing.

32) **Severability:** No term or provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall affect the validity or enforceability of the remaining terms and provisions of this Agreement. Any term found to be invalid or unenforceable shall be deemed as severable from the remainder of the Agreement.

33) **Third Party Beneficiaries.** This Agreement shall be binding upon, inure solely to the benefit of and be enforceable by each party hereto and their respective successors and assigns hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

34) **Independent Contractor:** Nothing contained in this Agreement shall be construed or interpreted by the parties hereto, or by any third party, as creating a relationship of principal and agent, partnership, joint venture, or any other relationship between Optivon and the Customer, other than that of independent contractors contracting for the provision and acceptance of Services. Without limiting the generality of the foregoing, each party will be responsible for hiring, supervising and compensating its own employees and for providing benefits to and withholding taxes for such employees.

35) **Dispute Resolution:** All disputes under this Agreement shall follow the following resolution process: The parties, through executive officers with authority to resolve disputes, shall initially meet and seek to negotiate a resolution of the dispute within thirty (30) days of the date on which a party first gives written notice of a dispute to the other party. If such negotiations are unsuccessful in effecting a resolution within the thirty (30) day period, and such negotiation period is not extended by mutual agreement of the parties, then the dispute shall be resolved by recourse to the Court of First Instance of the Commonwealth of Puerto Rico, San Juan Part.

36) **Insurance.** If the Equipment installed by Optivon at Customer's premises exceeds a replacement value of \$5,000 and upon written notice by Optivon, Customer shall obtain and maintain for the Term of the Agreement at its own expense, property damage and liability insurance and insurance against loss or damage to the Equipment (including so-called extended coverage), as a result of theft and such other risks of loss as are normally maintained on Equipment of the type hereunder by company's carrying on the business in which Customer is engaged, in such amounts, in such form and with such insurers as shall be satisfactory to Optivon. Each insurance policy will name Customer as insured and Optivon as an additional insured and loss payee thereof as Optivon's interests may appear, and shall provide that it may not be canceled or altered without at least thirty (30) days prior written notice thereof being given to Optivon or its successor and assigns.

37) **Governing Law:** This Agreement is entered into in the Commonwealth of Puerto Rico and shall be interpreted, construed and enforced in accordance with and governed by the laws of the Commonwealth of Puerto Rico without reference to conflict of law principles thereof. In any action to enforce this Agreement the prevailing party will be entitled to the payment of all costs and attorney fees paid or incurred in such action.

38) **Entire Agreement:** This Agreement, along with the Optivon policies referenced herein, represents the entire agreement of the parties to this Agreement and supersedes all negotiations, representations, prior discussions or preliminary agreements between the parties. No statements, warranties, or representations of any kind that are not contained in this Agreement shall in any way bind the parties. Any amendments or modifications to this Agreement must be in writing and approved by both parties.

39) **NO WAIVER.** The failure of Optivon to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision.

40) **HEADINGS.** The headings in the Agreement are solely for the convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.



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