

# TERMS OF SERVICE FOR TELONIUM COMMUNICATIONS, LLC

Revision 1.0, November 2010

These Terms of Service for Telonium Communications, LLC. (this "Agreement") is a legal agreement between you (either an individual or an entity that you are representing, hereinafter "you") and Telonium Communications, LLC and its suppliers and licensors (collectively "Telonium") for the Telonium Services ("Services"). Your use of the Services constitutes your agreement to the terms of this Agreement and you acknowledge that Telonium would not agree to provide the Services without that assent. The Services include new products, product changes, upgrades, support and other services. You may only receive the Services if you are a Service subscriber in good standing with a valid, authorized payment method on file with Telonium. You understand that you must obtain your own Internet connection in order to use the Services. We do not control your Internet access or the quality of your Internet connection. WE ARE NOT RESPONSIBLE FOR ANY THIRD PARTY PRODUCTS OR SERVICES, OR FOR PROBLEMS IN THE SERVICES CAUSED BY YOUR INTERNET CONNECTION OR THIRD PARTY PRODUCTS OR SERVICES NOR WILL WE CONTACT ANY OF THESE PROVIDERS ON YOUR BEHALF.

Unlimited calling applies only to calls made within the 48 states of the United States. Calls to Alaska, Hawaii and all international calls are subject to additional charges.

Additional Telonium Services can be purchased by users you designate as administrators through the Telonium user interface or by calling Telonium Customer Care. You hereby authorize those users with administrative privileges to (i) add these Services to your Telonium account and (ii) commit you to pay for these Services on a recurring monthly basis. You further authorize Telonium to obtain payment of your then-current statement balance from you each month from your credit card account.

## 1. PAYMENT & SERVICES.

### 1.1 Automatic Monthly Billing.

The Services are provided on a monthly basis, with an automatic monthly renewal unless you give us notice of cancellation in accordance with the requirements of Section 2 below. You agree to pay Telonium the recurring monthly service charges, set-up charges and usage charges, if applicable, for your use of the Services plus any applicable taxes as set forth in Section 1.4 below.

### 1.2 Payment Processing.

You agree to provide us with a valid email address and a valid payment method. You must advise us immediately if your email address changes and/or payment method changes or expires. Failure to comply may result in the immediate termination of Services. You authorize Telonium to automatically bill the credit card you provided, until you cancel the Services in accordance with the requirements of Section 2 below. You agree that Telonium may receive updated information about your account from the financial institution issuing your credit card.

### 1.3 Fee Payments & Late Charges.

Except for usage based fees, all fees are due in advance on the first day of each billing period. All usage based charges (including charges for calls to Alaska, Hawaii and international calls) and any other non-recurring charges are due and payable in arrears on the first day of each billing period following the month they were incurred. You agree to pay for all equipment and set up fees at the time you request the Services. You agree to pay for the first month of Services upon your request for such Services. All payments, including payments paid in advance, are completely non-refundable. Failure to pay in full will result in immediate account suspension and Telonium shall have no liability for such suspension under any circumstances. Accounts will be reactivated, at Telonium's sole discretion, only when the account balance is paid in full. Telonium will assess an additional 1.5% (or the highest amount allowed by law, whichever is higher, per month late charge if your payment is more than 30 days past due. Telonium may modify the Service fees at any time, but will provide at least thirty (30) days advance notice by postal mail, email or by publishing the new Service fees on the Telonium website. In the event that you present a check to Telonium for payment that is returned by your bank for non-sufficient funds, you shall pay a processing fee of \$50. You are responsible and liable for any fees, including attorney and collection fees, that Telonium may incur in its efforts to collect any remaining balances from you. You also agree that you will be billed for and will pay any outstanding balances if you cancel the Services.

During any period of suspension for non-payment, Services will be unavailable to you until the account balance is paid in full. In the event that Telonium is providing data backup service, call recording service, or any other service for which Telonium is collecting or providing data, to you during a period of suspension, you will be unable to backup new data or record calls and you will be unable to access any data or recordings that have previously been stored by Telonium.

### 1.4 Taxes.

Prices for the Services do not include any customs duties, sales, use, value added, excise, federal, state, local, public utility, universal service or other similar taxes. All such taxes shall be paid by you and will be added to any amounts otherwise charged to you unless you provide Telonium with an appropriate exemption certificate. If any amounts paid for the Services are refunded by Telonium, applicable taxes may not be refundable.

#### **1.5 Invoice Discrepancies & Currency Conversion.**

We deliver all invoices through email only. You agree to notify Telonium about any billing problems or discrepancies within 30 days after they first appear on your account statement. If you do not bring them to Telonium's attention within 30 days, you agree that you waive your right to dispute such problems or discrepancies. All transactions are charged in U.S. dollars (USD). Please remember that orders placed with us will be converted from USD to your currency by your credit card company when they process the transaction. Telonium cannot be held responsible for any adverse currency fluctuations.

#### **1.6 Release of Numbers.**

You acknowledge that in the event of any account termination or cancellation, all numbers associated with your account are released and may not be available to you upon your reactivation.

#### **1.7 Regulatory Recovery Fee.**

A Regulatory Recovery Fee of \$1.50 will be charged monthly to offset costs incurred by Telonium in complying with inquiries and obligations imposed by federal, state and municipal regulatory bodies/governments and the related legal and billing expenses. This fee is not a tax or charge required or assessed by any government. The Regulatory Recovery Fee will apply to every phone number assigned, including toll free and virtual numbers.

#### **1.8 Unlimited Voice Services.**

Unlimited voice services are provided solely for live dialog between two individuals. Unlimited voice services may not be used for monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which do not consist of uninterrupted live dialog between two individuals. If Telonium finds that you are using an unlimited voice service offering for other than live dialog between two individuals, Telonium may, at its option, terminate your service or change your plan to one with no unlimited usage components. Telonium will provide notice that it intends to take any of the above actions, and you may terminate the agreement. Notwithstanding the foregoing, you shall be entitled to use Telonium conference calling services such as three way calling and Telonium -provided conference calling bridges.

#### **1.9 Metered Usage.**

There are certain calls which will incur additional usage charges, such as calls to Alaska, Hawaii and international calls. In addition, certain features such as call forwarding from auto attendants to an outside number, calls to a queue, and each line on a conference bridge will all incur charges at the then current rate established by Telonium. Metered usage is billed in full-minute increments, and actual usage is rounded up to the next full increment at the end of each call for billing purposes.

#### **1.10 Ancillary Services.**

List and publish and caller name identification (i.e., caller ID with name) Services are provided by Telonium are based on availability of such Services from Telonium's underlying providers. We do not guarantee that such Services are available for all numbers in all serving areas.

Each voicemail message recorded by Telonium shall be retained for a minimum of three (3) months from the date the message was recorded.

Telonium retains the right to purge all voicemail messages after this minimum retention period.

Certain Services provided by Telonium shall be subject to separate end-user license agreements ("EULA"). The terms of such EULAs shall be binding upon the parties to this Agreement. If any such EULAs, or any provisions in such EULAs, are held to be unenforceable for any reason, the terms of this Agreement shall apply with respect to the supply of that Service.

Telonium may introduce new ancillary Services to new and existing customers. Such ancillary Services may sometimes be offered on a trial basis for a specified period of time during which no fees shall apply to Customer. In some cases, the terms of the free trial may involve an automatic re-enrollment at the end of the trial unless the customer opts out of the trial and/or cancels the service during the term of the free trial. In no event shall Telonium impose service fees on Customer for ancillary services without providing customer the opportunity to opt-out of the trial and/or to cancel the ancillary Service during a no-cost trial period.

#### **1.11 Notices from Telonium.**

Telonium may provide you notice under this Agreement either by written document, email, voice mail or by publishing the information on the Telonium website.

## **2. CANCELLATION OF SERVICES.**

You may cancel the Services at any time by providing Telonium with a notice of your intent to cancel at least 72 hours in advance by completing the input form located at [mylab.telonium.com](https://mylab.telonium.com). YOU MAY ONLY CANCEL SERVICES BY COMPLETING THIS FORM. TELONIUM WILL NOT ACCEPT CANCELLATION VIA TELEPHONE, EMAIL, FAX OR OTHER METHODS. FAILURE TO CANCEL SERVICES IN ACCORDANCE WITH THIS SECTION WILL RESULT IN ONGOING SERVICE FEES. You acknowledge that the cancellation will be effective 72 hours after you provide notification to Telonium via the cancellation form. Telonium will provide you with email confirmation of both your request to cancel Services and the actual cancellation of Services. If you do not receive a confirmation of your request to cancel after submitting the form or if you do not receive a confirmation of Service cancellation, you must notify Telonium by sending an email to [accounting@telonium.com](mailto:accounting@telonium.com) or contacting Telonium Customer Care by telephone. You will not receive any refund or partial refund or any credits for any charges already billed to your account. In the event you signed up for a minimum commitment period, you will be responsible for all charges for the entire minimum commitment period, all such fees will immediately accelerate and you authorize Telonium to immediately bill all these fees to your payment method. You understand and agree that cancellation of your subscription is your sole right and remedy with respect to any dispute with Telonium. This includes, but is not limited to, any dispute related to, or arising out of: (1) any term of this Agreement or Telonium's enforcement or application of this Agreement; (2) any policy or practice of Telonium, including any Telonium Privacy Policy, or Telonium's enforcement or application of these policies; (3) the amount or type of fees, applicable taxes, billing methods, or any change to the fees, applicable taxes, or billing methods.

In the event that you subscribe to ancillary services provided by Telonium, your election to cancel telephone service with Telonium shall also cancel such ancillary Services. In the event that Telonium is providing data backup, voicemail recording, call recording, or other such ancillary service to you, all of your data, including all recordings, will be deleted on or after the date that you cancel such service, without further notice to you. In the event that you cancel an end user account within the online Web user interface (located at <https://mylab.telonium.com>), the user data associated with such account on the ancillary service will be automatically deleted.

## **3. TELONIUM'S RIGHT TO TERMINATE OR MODIFY SERVICES.**

Telonium may modify the terms of this Agreement or the Services, including but not limited to the price, content or nature of the Services, upon notice to you. Your continued use of the Services constitutes your agreement to those modified terms of this Agreement and you acknowledge that Telonium would not agree to provide the Services without that assent. In the event Telonium modifies the Agreement or the Services, you may terminate the Services as provided in Section 2, above. Telonium may terminate this Agreement and any Services at any time upon notice to you, provided that you will be entitled to receive the Services for any period for which you have already paid, or a pro-rata refund at Telonium's sole discretion. This Agreement will automatically terminate if you fail to comply with any term. No notice shall be required from Telonium to effect such termination. Upon any termination of this Agreement (whether by you or Telonium), you shall immediately discontinue use of the Services. Your obligation to pay accrued charges and fees shall survive any termination of this Agreement.

In the event that Telonium terminates this Agreement, the Services, or any ancillary Services, all of your data, including all recordings, will be deleted on or after the data that Telonium cancels such services, without further notice to you.

## **4. SERVICE USE RESTRICTIONS.**

### **4.1 Compliance with Laws.**

You agree that you shall only use the Services in a manner that complies with all applicable laws in the jurisdictions in which you use the Services, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights and restrictions concerning call recording, call monitoring, call interception and/or direct marketing or telemarketing. Telonium may provide you with guidelines regarding compliance with applicable regulation(s); however, you are solely responsible for ensuring that your use of the Services is in compliance with such regulations. You may only use the Services for your own use. You may not use the Services in any way to provide, or as part of, any commercial service or application or in any way interfere with the users, services or equipment of the network. You may not attempt to, in conjunction with any device, software program or service, circumvent technological measures employed to control access to the Service. In addition to any other remedies available in equity or law to Telonium, failure to comply with any of the terms and conditions in this Section 4 (Service Use Restrictions) shall result in immediate termination of the Services.

### **4.2 Fair Use.**

While most reasonable uses of our Services in connection with the terms of this Agreement are permitted by Telonium, there are certain uses that cause extreme network capacity issues and interference with the network. Any use of the Services or any other action that causes a disruption in the network integrity of Telonium services or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of the Services. Examples of such prohibited uses include, but are not limited to, any autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing or any other activity that would be inconsistent with small business usage. You agree that you will NOT use the Services in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the Services. You agree and represent that you are purchasing the Services and/or the equipment for your own internal use only, and shall not resell, transfer or make a charge for the Services or the equipment without the advance express written permission of Telonium.

Telonium reserves the right to review usage of unlimited minute usage plans to ensure that you are not abusing such plans. You agree to use unlimited minute plans for normal voice or fax calls and will not employ methods or devices to take advantage of unlimited plans by using the voice or fax services excessively or for means not intended by Telonium. Telonium may terminate service immediately if it determines, in its sole discretion, you are abusing the unlimited minute plan.

For purposes of this policy and your plan, "unlimited usage" means the combined number of inbound and outbound voice minutes and fax pages, but excluding all advertising and informational messages sent to you directly by Telonium, as determined by us in our sole discretion. We reserve the right to at anytime enforce this policy in accordance with its terms. IN ANY EVENT, IF THE AVERAGE VOICE USAGE EXCEEDS 3,000 MINUTES PER LINE WITHIN A SINGLE ACCOUNT IN ANY THIRTY DAY PERIOD OR YOU EXCEED THE COMBINED USAGE OF 500 FAX PAGES IN ANY THIRTY DAY PERIOD (OR THE EQUIVALENT LEVEL OF PRO-RATA USAGE OVER A SHORTER PERIOD), SUCH USE SHALL BE DEEMED ABUSIVE.

## **5. PERSONAL INFORMATION AND PRIVACY.**

Telonium utilizes the public Internet and third party networks to provide voice and data services. Accordingly, Telonium cannot guarantee the security of your voice and data communications. Telonium is committed to respecting your privacy. If you choose to provide personal information, it will only be used in the context of your relationship with Telonium. Telonium will not sell, rent, or lease your personal information to others. Unless required by law, subpoena, court order, warrant or other valid government request, Telonium will only share the personal information you provide with other Telonium entities and/or business partners that are acting on Telonium's behalf to perform the activities described herein and in accordance with the Telonium Privacy Policy, located at <http://www.telonium.com/privacy.pdf>. Such Telonium entities and/or national or international business partners are subject to Telonium's Privacy Policy with respect to the use of this data. Upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, Telonium may disclose personally identifiable information.

## **6. E-MAIL NOTIFICATION.**

To let you know what new Services are available from time to time, Telonium may send you and your employees emails describing the latest Services, how to access the Services and changes to the Services. You agree that as a Service subscriber, Telonium may send you such emails to the addresses you provide. Because these emails are necessary for you to receive the Services, you will receive these emails even if you have opted out of receiving other email from Telonium. If you do not want to receive these emails, you may cancel the Service at any time as provided in this Agreement.

## **7. PORTED TELEPHONE NUMBERS ON SERVICE DISCONNECTION.**

### **7.1 Single line Accounts.**

You may be able to take, or "port," your current telephone number(s) to another service provider. You will remain responsible for all charges and fees until you notify Telonium of your election to cancel services in accordance with Section 2. If a port is unsuccessful for any reason, your Service and your Agreement with us will not terminate, you will remain a Telonium customer, and you will continue to be responsible for all charges and fees associated with your Telonium Service.

### **7.2 Multiple-line Accounts.**

If you request that a new service provider port a number from us and you have multiple numbers assigned to your account and/or additional equipment on your account, you are required to inform us of your intent to terminate all the Services on your account, prior to the successful completion of the requested port or we will select at our sole discretion the most appropriate billing plan for any remaining numbers and/or devices on your Telonium account, and you will continue to be responsible for all the charges and fees associated with the remaining Services on

your Telonium account. Once the port of the requested number is completed, you will remain responsible for all charges and fees through the end of that billing cycle. You will remain responsible for all charges and fees until you notify Telonium of your election to cancel services in accordance with Section 2.

### **7.3 Request for Telonium to Port numbers.**

If you request that Telonium port a number from an existing service provider to Telonium, Telonium will use commercially reasonable efforts to assist you in porting that number. You acknowledge that service providers require verification of identity, as well as authorization and other reasonable information in order to port any numbers to Telonium. You must correctly complete a letter of authorization, provide us with a copy of your most recent bill from such service provider, as well as provide us with any other information required by such service provider to port your number. Failure to provide any information requested by Telonium or the third party service provider will delay the porting of the number to Telonium. Telonium shall not be responsible for any delay in the port of your number and will not provide credit for any such delays.

In some cases, Telonium may permit you to submit documentation required to port numbers using a web-enabled user interface. You have the ability to obtain a printed copy of all porting documentation at no cost to you from the interface or by contacting Telonium Customer Care. Telonium will provide copies of the forms by facsimile or email. No additional software or hardware are required. You may withdraw your consent to submit your porting request electronically by contacting Telonium Customer Care prior to our submitting the porting request to our partner. Your consent to electronic submission applies only to the specific porting request you submit through web-enabled interface.

## **8. DISCLAIMER OF WARRANTY & LIMITATION OF LIABILITY.**

THE SERVICES ARE PROVIDED AS-IS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TELONIUM FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE USE OF THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TELONIUM OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES EVEN IF TELONIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH TELONIUM RELATED TO THIS AGREEMENT OR THE SERVICES/CONTENT SHALL BE CANCELLATION OF THE SERVICES. IN THE EVENT A COURT AWARDS DIRECT DAMAGES DESPITE THE FOREGOING, SUCH DAMAGES SHALL NOT EXCEED THE LESSER OF \$250.00 OR THE AMOUNT YOU PAID TO TELONIUM WITHIN THE LAST SIX MONTHS. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TELONIUM DOES NOT ENDORSE, WARRANT OR GUARANTEE ANY CONTENT PROVIDED BY OR THROUGH TELONIUM.

## **9. INDEMNIFICATION.**

You agree to hold harmless, indemnify and defend Telonium, its officers, directors and employees, from and against any losses, damages, fines and expenses (including attorneys' fees and costs) arising out of or relating to any claim that you have violated any term of this Agreement, including, without limitation, the requirements set forth in Section 4.1 of this Agreement.

## **10. NO ASSIGNMENT.**

This Agreement is personal to you (or the company which you represent), and may not be assigned without Telonium's express written consent. If you are agreeing on behalf of a company, you represent that you are authorized to bind the company under this Agreement.

## **11. OTHER IMPORTANT PROVISIONS.**

### **11.1 Dispute Resolution.**

**Purpose.** If you have a Dispute (as defined below) with Telonium that cannot be resolved through an informal dispute resolution with Telonium, you or Telonium may elect to arbitrate that Dispute in accordance with the terms of this Dispute Resolution provision rather than litigate the Dispute in court. Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury.

**Definitions.** The term "Dispute" means any dispute, claim, or controversy between you and Telonium regarding any aspect of your relationship with Telonium, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent

inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Dispute Resolution provision (with the exception of the enforceability of the class action waiver clause provided in this paragraph). “Dispute” is to be given the broadest possible meaning that will be enforced. As used in this Dispute Resolution provision, “Telonium” means Telonium Communications, LLC., and its parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents.

***Initiation of Arbitration Proceeding/Selection of Arbitrator.*** If you or Telonium elect to resolve your Dispute through arbitration pursuant to this Dispute Resolution provision, the party initiating the arbitration proceeding may initiate the arbitration proceeding with American Arbitration Association (“AAA”), 335 Madison Ave., Floor 10, New York, NY 10017-4605, 1-800-778-7879, [www.adr.org](http://www.adr.org) under the Commercial Arbitration Rules of the AAA.

***Arbitration Procedures.*** Because the Service(s) provided to you by Telonium concerns interstate commerce, the Federal Arbitration Act (“FAA”), not state arbitration law, shall govern the arbitrability of all Disputes. However, applicable federal law or the law of the state where you receive the service from Telonium may apply to and govern the substance of any Disputes. Any state statutes pertaining to arbitration shall not be applicable under this Dispute Resolution provision.

If there is a conflict between this Dispute Resolution provision and the rules of the arbitration organization chosen, this Dispute Resolution provision shall govern. If the arbitration organization that you select will not enforce this Dispute Resolution provision as written, it cannot serve as the arbitration organization to resolve your dispute with Telonium. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will enforce this Dispute Resolution provision as written. If there is a conflict between this Dispute Resolution provision and the rest of this Agreement, this Dispute Resolution provision shall govern.

A single arbitrator will resolve the Dispute. You should know that participating in arbitration may result in limited discovery depending on the rules of the arbitration organization that is chosen to resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information.

The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.

If an award granted by the arbitrator exceeds \$75,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The members of the three-arbitrator panel will be selected according to the rules of the arbitration organization. The arbitration organization will then notify the other party that the award has been appealed. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party’s notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

Restrictions: YOU MUST CONTACT US WITHIN THREE (3) MONTHS OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE, OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.

ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS SIMILARLY SITUATED UNLESS THE STATUTE UNDER WHICH YOU ARE SUING PROVIDES OTHERWISE.

ALL PARTIES WAIVE ANY CLAIM TO INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR MULTIPLIED DAMAGES ARISING FROM OR OUT OF ANY DISPUTE WITH TELONIUM UNLESS THE STATUTE UNDER WHICH THEY ARE SUING PROVIDES OTHERWISE.

***Location of Arbitration.*** The arbitration will take place in the City of Atlanta, State of Georgia.

**Payment of Arbitration Fees and Costs.** THE PARTY INITIATING THE ARBITRATION WILL ADVANCE ALL ARBITRATION FILING FEES AND ARBITRATOR'S COSTS AND EXPENSES. EACH PARTY IS RESPONSIBLE FOR ALL ADDITIONAL COSTS SUCH PARTY INCURS IN THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' OR EXPERT WITNESSES. IF THE ARBITRATION PROCEEDING IS DECIDED IN FAVOR OF THE PARTY INITIATING THE ARBITRATION, THE OTHER PARTY SHALL REIMBURSE THE FEES AND COSTS ADVANCED ONLY UP TO THE EXTENT AWARDABLE IN A JUDICIAL PROCEEDING. IF THE ARBITRATION PROCEEDING IS NOT DETERMINED IN FAVOR OF THE PARTY INITIATING THE ARBITRATION, THE OTHER PARTY SHALL NOT BE REQUIRED TO REIMBURSE THE OTHER FOR ANY OF THE FEES AND COSTS ADVANCED BY TELONIUM. IF A PARTY ELECTS TO APPEAL AN AWARD TO A THREE-ARBITRATOR PANEL, THE PREVAILING PARTY IN THE APPEAL SHALL BE ENTITLED TO RECOVER ALL REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THAT APPEAL. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARBITRATION PROVISION, TELONIUM WILL PAY ALL FEES AND COSTS THAT IT IS REQUIRED BY LAW TO PAY.

**Severability.** If any clause within this Dispute Resolution provision (other than the class action waiver clause identified above) is found to be illegal or unenforceable, that clause will be severed from this Dispute Resolution provision, and the remainder of this Dispute Resolution provision will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Dispute Resolution provision will be unenforceable, and the dispute will be decided by a court.

In the event this entire Dispute Resolution provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found by a court to be excluded from the scope of this Dispute Resolution provision, you and Telonium have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

**Exclusions from Arbitration.** YOU AND TELONIUM AGREE THAT THE FOLLOWING WILL NOT BE SUBJECT TO ARBITRATION: (1) ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS; AND (2) ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF A SERVICE.

**Continuation.** This Dispute Resolution provision shall survive the termination of your customer relationship with Telonium.

SPECIAL NOTE REGARDING ARBITRATION FOR CALIFORNIA AND/OR WASHINGTON STATE CUSTOMERS:

### **11.2 Complete Agreement.**

This Agreement shall constitute the complete and exclusive agreement between us, notwithstanding any variance with any purchase order or other written instrument submitted by you, whether formally rejected by Telonium or not. The acceptance of any purchase order is expressly made conditional on your consent to the terms set forth herein and any additional terms in your purchase order or similar document shall be null and void. The terms and conditions contained in this Agreement may not be modified by you except in a writing duly signed by you and an authorized representative of Telonium. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Telonium is not liable for editorial, pictorial, or typographical errors in this communication.

### **11.3 Equipment.**

You may be required to purchase telecom equipment in order to utilize the Services. Procuring and maintaining that equipment is your sole responsibility. Telonium may, at your request, facilitate the provision of equipment from a third party supplier or resell certain equipment. While we suggest and resell some equipment brands and facilitate your purchase of some equipment as an accommodation, the original equipment manufacturer and not Telonium shall be responsible for any equipment defects, if applicable. Telonium will pass through all original equipment manufacturer warranties for the equipment to you. Telonium shall have no liability to you of any nature regarding such equipment. Please check the equipment provider's website for warranty, return rules and other terms and conditions applicable to such third party equipment supplier. Equipment may not be returned to Telonium for any reason. ALL EQUIPMENT SALES ARE FINAL.

## **12. EMERGENCY SERVICES- 911 DIALING & NON-VOICE SYSTEMS.**

### **12.1 Non-Availability of Traditional 911 or E911 Dialing Service.**

You acknowledge and understand that the Service does NOT support traditional 911 or E911 access to emergency services. Telonium does offer a limited 911-type service and that service is different in a number of important ways (some, but not necessarily all, of which are described in this

Agreement) from traditional 911 service. You agree to inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service of the non-availability of traditional 911 or E911 dialing from your Telonium Service and equipment.

## **12.2 Description of 911-Type Dialing Capabilities - Activation Required.**

Telonium does offer a 911-type dialing service in certain areas within the U.S. (but may not offer such service in certain areas of the U.S. or non-U.S. locations) that is different in a number of important ways from traditional 911 services. Unless you make changes within the Telonium online web user interface (located at <https://mylab.telonium.com>), when you dial 911, your call is routed from the Telonium network to the Public Safety Answering Point (PSAP) or local emergency service personnel designated for the address that you listed at the time of activation. You acknowledge and understand that when you dial 911 from your equipment it is intended that you will be routed to the general telephone number for the PSAP or local emergency service provider (which may not be answered outside business hours), and may not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing. You acknowledge and understand that your 911 call may not be routed to a PSAP but instead may be routed to a central call center where you will have to provide your location. Telonium relies on third parties for the forwarding of information underlying such routing, and accordingly Telonium and its third party provider(s) disclaim any and all liability or responsibility in the event such information or routing is incorrect. As described herein, this 911-type dialing currently is NOT the same as traditional 911 or E911 dialing, and at this time, does not necessarily include all of the capabilities of traditional 911 dialing. Neither Telonium 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 911 dialing. You agree to indemnify and hold harmless Telonium and its third party provider from any claim or action arising out of misroutes of 911 calls, including but not limited to your failure to follow correct activation procedures for 911 calling or your provision to Telonium of incorrect information in connection therewith.

As described above, all calls dialed by handset extensions included in your account with Telonium will be routed from the Telonium network to the PSAP or local emergency service personnel designated for the address that you listed at the time of activation. In the event that your equipment is used in multiple locations, or in the event that one or more items of equipment are used in multiple locations, end users designated as administrators on your account may, at your option, create additional service locations and associate your equipment to specific locations for the purposes of routing calls to the local PSAPs for such locations. Individual end users may assign and re-assign their current location on an as-needed basis. Those updates can be made within the Telonium online web user interface (located at <https://mylab.telonium.com>). It is your sole responsibility to make these changes and to ensure that all household residents, guests and other third persons who may be present at the physical location(s) where you utilize the Service are aware of this option.

## **12.3 Service Outage.**

### **12.3.1 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 you to reset or reconfigure equipment prior to utilizing the Service or 911 dialing.

### **12.3.2 Broadband Service / ISP Outage or Termination / Suspension or Termination by Telonium.**

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

### **12.3.3 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 will prevent ALL Service, including 911 dialing.

### **12.3.4 Other Service Outages.**

You acknowledge and understand that if there is a service outage for ANY reason, such outage will 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.

### **12.3.5 Limitation of Liability and Indemnification.**

You acknowledge and understand that Telonium's liability is limited for any Service outage and/or inability to dial 911 from your line or to access emergency service personnel, as set forth in this document. You agree to defend, indemnify, and hold harmless Telonium, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees)

by, or on behalf of, you or any third party or user of your Service relating to the absence, failure or outage of the Service, including 911 dialing and/or inability of you or any third person or party or user of your Service to be able to dial 911 or to access emergency service personnel.

**12.4 Failure to Designate the Correct Physical Address When Activating 911 Dialing.**

Failure to provide the current and correct physical address(es) and location(s) of your equipment will result in any 911 communications you may make being routed to the incorrect local emergency service provider. This must be the actual physical street address where the equipment is located, not a post office box, mail drop or similar address.

**12.5 Requires Notification if You Change Your Number or Add or Port New Numbers.**

You acknowledge and understand that 911 dialing does not function if you change your phone number or (for such newly added or ported numbers) if you add or port new numbers to your account, unless and until you have successfully notified Telonium of the correct address for your changed, newly added or newly ported number.

**12.6 Requires Notification if You Move or Change 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 equipment to a different street address, unless and until you have successfully notified Telonium of such change in location and the correct address or made appropriate updates on the Telonium online web user interface (located at <https://mylab.telonium.com>). Failure to provide the current and correct physical address(es) and location(s) of your equipment will result in any 911 dialing you may make being routed to the incorrect local emergency service provider.

**12.7 Possibility of Network Congestion and/or Reduced Speed for Routing or Answering 911.**

Due to the technical constraints on the manner in which it is possible to provide the 911 dialing feature for the Services at this time, you acknowledge and understand that there is a greater possibility of network congestion and/or reduced speed in the routing of a 911 communication made utilizing your equipment as compared to traditional 911 dialing over traditional public telephone networks. You acknowledge and understand that 911 dialing from your equipment will be routed to the general telephone number for the local emergency service provider (which may not be answered outside business hours), and will not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls at such local provider's facilities when such calls are routed using traditional 911 dialing. You acknowledge and understand that there may be a greater possibility that the general telephone number for the local emergency service provider will produce a busy signal or will take longer to answer, as compared to those 911 calls routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing. You acknowledge and accept that Telonium relies on third parties for the forwarding of information underlying such routing, and accordingly Telonium and its third party provider(s) disclaim any and all liability or responsibility in the event such information or routing is incorrect. Telonium or its officers or employees, may not 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 911 dialing unless it is proven that the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct on the part of Telonium.

**12.8 Automated Number Identification.**

At this time in the technical development of Telonium 911 dialing, 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. Telonium's system is configured in most instances to send the automated number identification information; however, one or more telephone companies, not Telonium, 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.

**12.9 Automated Location Identification.**

At this time in the technical development of Telonium 911 Dialing, it is not possible to transmit identification of the address that you have listed to the Public Safety Answering Point (PSAP) and local emergency personnel for your area when you dial 911. 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.

**12.10 Alternative 911 Arrangements.**

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

You acknowledge that the equipment and Services do not support 911 emergency dialing or other emergency functions. You agree to notify any user of the Services, who may place calls using your phone services, of the 911 limitations. Telonium advises you to maintain an alternative means of accessing traditional 911 services such as traditional telephones and cellular phones.

#### **12.11 Non-Voice Systems.**

You acknowledge 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. You have no claim against Telonium for interruption or disruption of such systems by the Services.

#### **12.12 Force Majeure.**

Telonium is not responsible or liable to you for its failure to perform any of its obligations contributed to by causes or circumstances beyond its reasonable control including, without limitation, Internet outages, communications and cable outages, failure of third party services or products that interface or interact with the Services, labor strikes, lockouts, supply shortages, earthquake, fire, flood, war, act of God, criminal acts (e.g. computer hacking that circumvents reasonable security measures), bankruptcy of merchants or licensees, or any acts of governmental bodies or authorities.

### **13. CONSENT TO USE OF ELECTRONIC SIGNATURES AND RECORDS**

As a convenience and courtesy to you, Telonium provides access to its Services online which may require you to enter into agreements or receive notices electronically. Accordingly, you acknowledge and agree that by clicking "I Agree" or "I Accept" anywhere on a Telonium website:

- 13.1 You agree to conduct electronically the particular transaction into which you thereby enter including, without limitation, entering into this Agreement;
- 13.2 You have read and understand the electronic copy of electronic contracts, notices and records, including, without limitation, this Agreement, and any policies and any amendments hereto or thereto;
- 13.3 You agree to, and intend to be bound by, the terms of the particular transaction into which you thereby enter;
- 13.4 You are capable of printing or storing a copy of electronic records of transactions into which you enter including, without limitation, this Agreement and any amendments hereto; and,
- 13.5 You agree to receive electronically information about the Services and other electronic records into which you thereby enter including, without limitation, this Agreement.

### **14. VENUE/GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia without regard to conflicts-of-laws principles. By using the Services, you hereby agree that the exclusive jurisdiction for any and all disputes regarding these Terms shall lie in the federal, state, and local courts of Atlanta, Georgia.