

DISCLAIMERS / LIMITED LIABILITY / LEGAL NOTICES

This document is incorporated by reference into the Terms and Conditions of Service for (“Agreement”) agreed to by Client when signing the Service Order(s).

A material default of the Agreement leading to its termination after any applicable cure period may arise as follows (without limitation):

- (i) Any failure by Client to pay any sums which Client is obligated to pay under the Agreement within seven (7) calendar days of written notice that such sum is due; or
- (ii) Any unauthorized disclosure or use regarding the Equipment, Software or Service (as defined in the Agreement and this Disclaimers/Legal Notices document); or
- (iii) Any material default by either party of an obligation, covenant or condition hereunder, which is not cured within thirty (30) calendar days after the defaulting party receives written notice of such default ; or
- (iv) Any event which would constitute a material default or breach of any agreement between the parties, which is not cured within the time permitted for such cure therein, if any. Intercom may also terminate this Agreement immediately upon written notice in the event that Client becomes insolvent or is reasonably believed by Intercom to be about to become insolvent. Notwithstanding the foregoing, Intercom shall have thirty (30) days to cure any failure, shortcoming and/or inadequacy of the Service (as defined in the Agreement) and any such failure shall not be a material default under the Agreement during the applicable cure period. Our right to terminate this Agreement hereunder shall include the right to terminate the Service without additional notice to Client.

Intercom shall not incur any liability, other than as expressly set forth in the Agreement, for any damage, loss (including, without limitation, any loss of prospective profits or anticipated sales) or expenses of any kind (including, without limitation, damages that are direct, indirect, foreseeable or unforeseeable) suffered or incurred by the other party in connection with this Agreement, as well as the termination or the expiration of the Agreement. Client waives the benefit of any law or regulation or legal ruling that would otherwise entitle Client to compensation arising from the termination, expiration or failure to renew the Agreement, and Client represents and warrants that such waiver is irrevocable and enforceable by Intercom.

The Services provided by Intercom to Client under the Agreement is provided on an “AS IS” basis and INTERCOM MAKE NO REPRESENTATIONS, WARRANTIES, OR GUARANTIES, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PROVIDED UNDER THE AGREEMENT, INCLUDING THE FITNESS OF THE SERVICES FOR ANY PARTICULAR PURPOSE.

Please be advised that Intercom makes the following disclaimers with regard to the provision of service under the Agreement:

1. Except as otherwise expressly provided in this document and the Agreement, Intercom makes no representations or warranties of any kind, whether expressed or implied, for the service Intercom provided, including, but not limited to warranties of merchantability or of fitness for a particular purpose, or of the non-infringement of the system or services provided under the Agreement.

2. Intercom shall not be liable to Client for any loss or damage incurred by Client due to Intercom's ordinary negligence, or circumstances beyond Intercom's control. Intercom shall indemnify Client for any direct loss or damage incurred by Client due to Intercom gross negligence, or willful acts or omissions, provided, however, that (i) Client submits a report to Intercom in writing via certified mail, within 10 days of the occurrence of a negligent or willful act or omission on the part of Intercom, which report shall explain the circumstances in detail; and (ii) Intercom, at its sole discretion, after investigation, notify Client that Intercom agrees that the circumstances described in the written notice constitute a grossly negligent or willful act or omission on Intercom's part. In the event Intercom determines that the circumstances described in such notice do in fact constitute a grossly negligent or willful act or omission on Intercom's part, Intercom, in Intercom's sole discretion, shall issue a credit to Client against future payments for damages incurred by Client as a result of any such negligent or willful act or omission and shall relieve Client of any further liability with respect thereto; provided, however, that in no event shall Intercom be liable to Client for any amounts in excess of the fees paid by Client to Intercom for the calendar month in which such grossly negligent or willful act or omission occurred.

3. In no event shall Intercom be liable to Client or Client's customers or affiliates for any direct or indirect consequential (including, without limitation, damages for any lost revenue, lost profits or loss of customers, goodwill, or data, or loss or business opportunity), special, incidental, punitive, or any other damages, whether or not foreseeable or disclosed by Client to Intercom.

4. Intercom shall be excused from performance and shall not be liable to Client for any losses, damages or expenses incurred or suffered by Client arising out of any circumstances or events beyond Intercom's reasonable control, including, without limitation, accidents, interruptions of service, obstructions, disruptions, or delays in transmission, acts of God, civil authorities, hackers, acts of terrorism, electrical or power outages, strikes or slowdowns or other labor disputes, epidemics, government emergency, shutdown or nationalization, war, riot or political insurgency, theft, negligent acts or omissions of Client or a third party, or a breakdown of essential machinery or transportation, or any other cause whatsoever beyond the direct control of Intercom (defined in this document as a "Force Majeure Event").

5. Intercom is not responsible for any loss of data, security breaches, fraud, omissions, errors, mis-configurations, service interruptions, slowdowns, freezes, breakdowns, or diminishment of any kind resulting from, caused by or attributed to: (i) Intercom, Client, intervening network, or by any third party, or (ii) Client's ability to access, whether or not Client accesses in fact, the configuration files of hardware sold, leased, rented, loaned, or transferred in any other manner by Intercom to Client. Any and all resettings, recalibrations, backups, duplications, or security measures concerning Client's or Client's users' data, system, or network is the sole responsibility of Client. Client is responsible for maintaining and securing any current backup copies of all programs and data. In no event shall Intercom be liable for any loss of data, loss of profit, actual or potential, cost or cover or other special, incidental, consequential or indirect damages arising from or related to the Agreement between Intercom and Client, regardless of the theory of liability, even if Intercom has been advised of the possibility of such damages. Client shall indemnify and hold Intercom harmless from all claims or damages resulting from or caused by Client's conduct, fault, negligence, and/or failure to perform Client's responsibilities. Client's damages, of any type, and Client's sole remedy for any claim arising under or related to this Agreement, shall be limited to the scope of the relief described in the Service Level Agreement described on Intercom's website at http://www.INTERCOM.com/site_docs/INTERCOMSLA.pdf

6. Intercom does not guarantee or warranty the availability, reliability, speed, or security of any Service, and nothing stated herein shall be construed to indicate the same. Client may request Intercom to enable or configure various security features, including, but not limited to, firewall capabilities of any equipment, or a virtual private network, whether sold, rented, leased, loaned, or transferred by any other means from Intercom to Client. When Intercom enables or configures security features, Intercom is doing so according to specifications provided by Client. Client agrees that Intercom is not responsible for any mis-configuration of the security features, that Intercom is not liable for any breaches of security that may occur before or after such configuration, nor shall Intercom be held liable for any consequential damages to Client's network or other property, real, personal or intellectual, in accordance with the warranty disclaimers herein. Client maintains full responsibility for Client's own security. Intercom is simply the agent in activating various security features according to Client's directions. Client agrees that since Intercom is not the manufacturer of such equipment, VPN, or other security product, and since Intercom is not maintaining or providing any type of support related to the security products, that Client shall refer all grievances, complaints, comments, claims, liabilities, etc. arising out of or related to the functioning, malfunctioning, interruptions, obstructions, mis-configuration, etc. of said security products or features to the manufacturer(s) of the same, in accordance with the indemnification and warranty disclaimer provisions of the underlying Agreement between Client and Intercom. It shall be in Intercom's sole discretion to decide which geographic areas Intercom will service generally, and which specific locations within any geographic area Intercom will provide service to. Intercom reserves the sole and exclusive right to determine the expansion or contraction of its geographic service area and the right to maintain, reconfigure, or discontinue any Service.

7. Furthermore, Client expressly understands and acknowledges that Intercom is a "Service Provider," as defined in Section 512 (k) (1) of the United States Copyright Act (Section 17 of United States Code), and therefore entitled to all of the safe-harbor provisions delineated thereby.

8. Client also understands that Intercom's performance is dependent in part on third party actions, including, without limitation, those of Client and Client's partners, and/or affiliates, and those of Intercom's suppliers, affiliates and partners ("Third Party Acts and Omissions"). Accordingly, any performance to be rendered by Intercom under the Agreement with Client shall be delayed or waived to the extent required by such Third Party Acts and Omissions. Intercom shall not be liable for Third Party Acts or Omissions, and Client understands that certain parts of the telecommunications infrastructure are not owned or controlled by Intercom but rather by Third Parties over which Intercom has no control or power.

9. Client assumes sole and exclusive responsibility for procuring general business and equipment insurance, and for the payment of any taxes and expenses arising from the conduct of Client's business, and shall indemnify and hold Intercom harmless from the same.

10. Additionally, Client hereby agrees to indemnify and hold Intercom harmless against any and all loss, cost, expense, damage, claim, cause of action, or liability, including attorney's fees, resulting from any legal, equitable and/or other proceeding Intercom may have to undergo to recover any equipment, to collect costs of repair or replacement of damaged equipment, or to collect fees due to Intercom under this Agreement. With respect to Colocation, Client hereby agrees to indemnify and hold Intercom harmless against any and all loss, cost, expense, damage, claim, cause of action, or liability, including attorney's fees, resulting from any proceeding Intercom may have to undergo to recover the equipment or space.

Also please note that Intercom reserves the right to suspend service as follows:

- (i) Intercom is required to do so by or pursuant to the law or by a competent authority, or by reasons of a Force Majeure Event, or;
- (ii) Intercom determines that Client fails to meet essential obligations under the Agreement, including but not limited to Client's payment obligations, and Client fails to remedy such failure within fourteen (14) days after receipt of written notice thereof.

Client and Intercom agree and acknowledge that suspension of service pursuant to the above shall not constitute Intercom's failure to comply with any of Intercom's obligations under the Agreement including, without limitation, any failure to provide the service in accordance with the Agreement. Intercom shall promptly inform Client in writing to the extent possible, should Intercom suspend service. Suspension of service shall not relieve Client of Client's obligation to pay (a) any and all applicable fees arising under subpart (ii) above, (b) any applicable late fees, and (c) any fees that Intercom elects to accelerate in accordance with the Agreement; provided however that Client shall not be obligated to pay any such fees during a period of service suspension arising under subpart (i) above. Unless the Agreement has been terminated by one of the parties during the suspension of service, Intercom shall resume the provision of service when continuation of any service suspension in accordance with this paragraph is no longer justified pursuant to subpart (i) or subpart (ii) above, as applicable.

Finally, by signing the Service Order, Client affirms that Client has read and understands all of the provisions incorporated into the Agreement between Client and Intercom, which are referenced in the Agreement and appear on this website.