

DISCLAIMERS / LIMITED LIABILITY / LEGAL NOTICES

This document is incorporated by reference into the Terms and Conditions of Service for Broadband Internet Access (“Agreement”) that You read, understand, sign and eventually forward to Us. For purposes of this document, “We,” “Us” or “Our” shall mean Intercom Online (referred to as INTERCOM in the Agreement) and “You” shall mean You the client, who is referred to as CLIENT in the Agreement.

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 You to pay any sums which You are 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 You and Us, which is not cured within the time permitted for such cure therein, if any. We may also terminate this Agreement immediately upon written notice in the event that You become insolvent or are reasonably believed by Us to be about to become insolvent. Notwithstanding the foregoing, We shall have thirty (30) days to cure any failure, shortcoming and/or inadequacy of the Service (s 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.

We 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. You waive the benefit of any law or regulation or legal ruling that would otherwise entitle You to compensation arising from the termination, expiration or failure to renew the Agreement, and You represent and warrant that such waiver is irrevocable and enforceable by Us.

The Services provided by Us to You under the Agreement is provided on an “AS IS” basis and WE 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 We make 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, We make no representations or warranties of any kind, whether expressed or implied, for the service We

provide, 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 We provide by under the Agreement.

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

3. In no event shall We be liable to You or Your customers 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 You to Us.

4. We shall be excused from performance and shall not be liable to You for any losses, damages or expenses incurred or suffered by You arising out of any circumstances or events beyond Our 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 You or a third party, or a breakdown of essential machinery or transportation, or any other cause whatsoever beyond the direct control of Us (defined in this document as a "Force Majeure Event").

5. We are not responsible for any loss of data, security breaches, fraud, omissions, errors, mis-configurations, service interruptions, slowdowns, freezes, breakdowns, or diminishments of any kind resulting from, caused by or attributed to: (i) Us, You, intervening network, or by any third party, or (ii) Your ability to access, whether or not You access in fact, the configuration files of hardware sold, leased, rented, loaned, or transferred in any other manner by Us to You. Any and all resettings, recalibrations, backups, duplications, or security measures concerning Your or Your users' data, system, or network is the sole responsibility of You. You are responsible for maintaining and securing any current backup copies of all programs and data. In no event shall We 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 Us and You, regardless of the theory of liability, even if We have been advised of the possibility of such damages. You shall indemnify and hold Us harmless from all claims or damages resulting from or caused by Your conduct, fault, negligence, and/or failure to perform Your responsibilities. Your damages, of any type, and Your 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 Our website at http://www.intercom.com/site_docs/IntercomSLA.pdf

6. We do not guarantee or warranty the availability, reliability, speed, or security of any Service, and nothing stated herein shall be construed to indicate the same. You may request Us 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 Us to You. When We enable or configure security features, We are doing so according to specifications provided by You. You agree that We are not responsible for any mis-configuration of the security features, that We are not liable for any breaches of security that may occur before or after such configuration, nor shall We be held liable for any consequential damages to Your network or other property, real, personal or intellectual, in accordance with the warranty disclaimers herein. You maintain full responsibility for Your own security. We are simply the agent in activating various security features according to Your directions. You agree that since We are not the manufacturer of such equipment, VPN, or other security product, and since We are not maintaining or providing any type of support related to the security products, that You 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 You and Us. It shall be in Our sole discretion to decide which geographic areas We will service generally, and which specific locations within any geographic area We will provide service to. We reserve the sole and exclusive right to determine the expansion or contraction of it Our geographic service area and the right to maintain, reconfigure, or discontinue any Service.

7. Furthermore, You expressly understand and acknowledge that We are 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. You also understand that Our performance is dependent in part on third party actions, including, without limitation, those of You and Your partners, and/or affiliates, and those of Our suppliers, affiliates and partners (“Third Party Acts and Omissions”). Accordingly, any performance to be rendered by Us under the Agreement with You shall be delayed or waived to the extent required by such Third Party Acts and Omissions. We shall not be liable for Third Party Acts or Omissions, and You understand that certain parts of the telecommunications infrastructure are not owned or controlled by Us but rather by Third Parties over which We have no control or power.

9. You assume 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 Your business, and shall indemnify and hold Us harmless from the same.

10. Additionally, You hereby agree to indemnify and hold Us 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 We may have to undergo to recover any equipment, to collect costs of repair or replacement of damaged equipment, or to collect fees due to Us 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 We reserve the right to suspend service as follows:

- (i) We are 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) We determine that You fail to meet essential obligations under the Agreement, including but not limited to Your payment obligations, and You fail to remedy such failure within fourteen (14) days after receipt of written notice thereof.

You and We agree and acknowledge that suspension of service pursuant to the above shall not constitute Our failure to comply with any of Our obligations under the Agreement including, without limitation, any failure to provide the service in accordance with the Agreement. We shall promptly inform You in writing to the extent possible, should We suspend service. Suspension of service shall not relieve You of Your obligation to pay (a) any and all applicable fees arising under subpart (ii) above, (b) any applicable late fees, and (c) any fees that We elect to accelerate in accordance with the Agreement; provided however that You 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, We 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 Agreement, and forwarding a signed copy to Us, You affirm that You have read and understand all of the provisions incorporated into the Agreement between You and Us, which are referenced in the Agreement and appear on this website.