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**SINCE 1986**

**WEBSITE DEVELOPMENT ♦ INTERNET BANDWIDTH ♦ APPLICATION DEVELOPMENT ♦ VPN SOLUTIONS ♦ VOIP SERVICES ♦ SERVER COLOCATION**

The following terms and conditions of use are included by reference in all TLS Voice over IP contracts.

### **TERMINATION**

Upon expiration of the Service Term the Monthly Charge will revert to the prevailing month-to-month rate unless client renews this contract or terminates service at the expiration of the Service Term (Expiration Date) by providing written notice to TLS of their desire to so terminate at least thirty (30) days in advance of the Expiration Date.

Prior to the completion of the Service Term client may renew this contract at current prevailing rates without incurring early termination charges provided the new Service Term is for an equal or greater number of months than the original Service Term. In the event client terminates the service prior to the expiration of the Service Term, client will be liable for an early termination charge, which will be equal to the current monthly charge for the total number of MONTHS REMAINING in the Service Term.

TLS may terminate this contract in whole or in part for the Client's refusal in any material respect to perform its obligations under this contract, or the violation of any material terms or conditions of this Contract, provided however, that TLS notify the Client in writing (including electronic mail).

### **TEMPORARY SUSPENSION**

Client agrees and acknowledges that unless and until past due invoices are paid in full, TLS reserves the right, in its sole discretion to suspend all services pending receipt of payment. Service will be restored within 24 hours of receipt of payment plus a re-connect charge of forty dollars (\$40.00) per incident. A fee of forty dollars (\$40.00) will be charged to the client's account for any check returned to TLS unpaid. In the event of non-payment of the Monthly Charges, Client agrees to pay all reasonable attorney fees related to collection of payments described in this contract.

### **NON-TRANSFERABLE**

The client may not sell, resell, assign, or transfer these services or this contract without the prior written consent of TLS. This includes resale of service(s), either in whole or in part.

### **TLS LIMIT OF LIABILITIES**

TLS is responsible only for the maintenance and operation of equipment owned by TLS and is not responsible for the performance of any equipment that is not owned by TLS. In no event shall TLS be liable for any direct, indirect, consequential, incidental or acts of God whatsoever. This includes but is not limited to damages for loss of profits, interruption of service or loss of data arising out of the use or inability to use TLS service, even if TLS has been advised of the possibility of such damages. In the event of an interruption in service, which is not due to the negligence or willful act of Client or his assigns, the maximum liability of TLS for failure to perform or provide the services it has agreed to perform and provide hereunder will not exceed a credit to the client's account for the total number of days the client's service was interrupted. The failure of TLS to enforce this Agreement, for whatever reason, shall not be construed as a waiver of any right to do so at any time. The Client agrees that, if any portion of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

### **DISPUTE RESOLUTION**

If the Client has any dispute or seeks any cure (including billing issues) regarding this Agreement, it shall notify TLS via TLS's standard Client service interfaces (phone, email, US Mail) regarding the nature and basis of the dispute or requested cure within 30 days of the disputed event or statement date, or the dispute/cure shall be waived. Both TLS and the Client shall diligently work toward resolution of all issues. The Agreement and the relationship between the parties shall be governed by the laws of the State of Indiana, County of Bartholomew without regard to its conflict of law provisions. The parties agree to submit to the exclusive jurisdiction of the courts located within the state of Indiana. County of Bartholomew. If any provision of the Agreement is found by a

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court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. Client agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

### **CLIENT USE AND ACTIVITY**

Client is responsible for payment of all fees, surcharges and taxes associated with the services provided herein.

The use of the Services for any activity that violates any local, state, federal or international law, order or regulation is a violation of this Agreement. Prohibited activities include, but are not limited to:

- Posting or disseminating material that is unlawful (such as child pornography or obscene material).
- Disseminating material that violates the copyright or other intellectual property rights of others. The Client assumes all risks regarding the determination of whether material is in the public domain.
- Pyramid or other illegal soliciting schemes.
- Any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

The Client is responsible for any misuse of the Services that have been contracted for, even if a friend, family member, guest, or employee of Client committed the inappropriate activity with access to the Client's account.

The Client must take steps to ensure that others do not gain unauthorized access to the Services. The Services may not be used to breach the security of another Client or to attempt to gain access to any other person's computer, software or data, without the knowledge and consent of such person. They also may not be used in any attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for the Client, logging into or making use of a server or account the Client is expressly authorized to access, or probing the security of other networks. Use or distribution of tools designed for compromising security, such as password guessing programs, cracking tools, packet sniffers or network probing tools, is prohibited.

If any problems arise with the service provided herein, Client must notify TLS in writing and/or Electronically and provide TLS a reasonable period of time to address and correct the problem. The Client may not disrupt the Services. The Services also may not be used to interfere with computer networking or telecommunications services to any Client, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host. The transmission or dissemination of any information or software that contains a virus or other harmful feature is prohibited. The Client is solely responsible for the security of any device the Client chooses to connect to the Services, including any data stored on that device. TLS recommends that any files or services the Client chooses to make available for remote access be protected with a strong password (at least 8 characters and use of both numbers and letters) or as otherwise appropriate.

Neither TLS nor any of its distribution affiliates can assume any responsibility for the content contained on the Internet or otherwise available through the Services. The Client must assume the risk of accessing content through the Service, and neither TLS nor any of its distribution affiliates shall have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content.

The Client is solely responsible for any information that the Client publishes on the web or other Internet services. The Client must ensure that the recipient of the content is appropriate. TLS and its distribution affiliates reserve the right to refuse to post or to remove any information or materials, in whole or in part, that it, in its sole discretion, deems to be offensive, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful.

TLS has no obligation to monitor transmissions made on the Services. However, TLS has the right to monitor such transmissions from time to time and to disclose the same in accordance with this Agreement.

**By using the Services to reproduce, publish, display, or transmit and distribute content, the Client is warranting that the content complies with this Agreement.**

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The Services may not be used to send unsolicited bulk or commercial messages. This includes, but is not limited to, bulk mailing of commercial advertising, informational announcements, charity requests, petitions for signatures, and political or religious messages.

The Services may not be used to collect responses from unsolicited email sent from accounts on other Internet hosts or email services which violates this Agreement or the acceptable use policy of any other Internet service provider. Moreover, unsolicited email may not direct the recipient to any web site or other resource that uses the Services.

The Client may not reference the TLS network (e.g. by including "Organization: TLS" in the header or by listing an IP address that belongs to the TLS network) in any unsolicited email even if that email is not sent through the TLS network. "Mail bombing" is prohibited. That is, the Client may not send numerous copies of the same or substantially similar messages, nor may the Client send very large messages or files to a recipient with the intent to disrupt a server or account. The propagation of chain letters is similarly prohibited, whether or not the recipient wishes to receive such mailings.

The TLS network is not responsible for the forwarding of email sent to any account that has been suspended or terminated. Such email will be returned to sender, ignored, deleted, or stored temporarily at the sole discretion of TLS.

The services may not be used to perform chat "flooding." Flooding is defined as deliberately repeating actions in quick succession in order to fill the screens of other Internet users with text.

#### **FORCE MAJEURE (EVENTS BEYOND OUR CONTROL).**

TLS shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties of TLS that may occur in spite of TLS's best efforts.

#### **TLS AS AN INDEPENDENT CONTRACTOR**

TLS and CLIENT agree and acknowledge that TLS' relationship with CLIENT is and will be that of an independent contractor and nothing in this agreement is intended to or should be construed to create a partnership, joint venture or employment relationship.

#### **MAINTENANCE**

From time to time, TLS may conduct routine tests, maintenance, upgrades or repairs on any part of the TLS network and TLS shall use its best efforts to give the client prior notice thereof.

#### **MISCELLANEOUS**

TLS shall be entitled to recover any and all costs incurred in enforcing the terms of this Contract, including but not limited to all court costs and attorney fees.

#### **911 AND SERVICE REQUIREMENTS**

- a. 911. Client acknowledges that TLS's Services do not support traditional 911 emergency dialing, whereby calls are automatically routed to an emergency 911 operator with the caller's address appearing on the operator's computer. TLS does offer limited 911 services in which end user 911 dialed calls are routed to the nearest Public Safety Answering Point office (PSAP). Typically, these calls are answered by the front desk of the PSAP and then routed to an emergency operator at that location. However, some PSAP offices will not accept calls in this manner. End-User agrees to notify, as appropriate, any of its users of the services who may place calls using Client's phone services. TLS advises Client to maintain an alternative means of accessing traditional 911 services such as traditional telephone lines or cellular telephone services.
- b. Outages due to Electrical, Internet or other General Failures. Client acknowledges that the Services will not function in the absence of electrical power, access to the Internet or other general failures associated with the VOIP network. Client acknowledges that the Services will not function if there is an interruption of Client's broadband or high-speed Internet access service.
- c. Non-Voice Systems. Client acknowledges that the Services are not set up to function with out-dialing systems including home security systems, medical monitoring equipment, satellite

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television systems and some facsimile systems. By consenting to these terms and conditions, Client waives any claim against TLS for interruption or disruption of such systems by the Services.

### **BILLING, CHARGES AND PAYMENT**

a. Credit Terms. All Services provided to Client and covered by this Agreement shall at all times be subjected to credit approval or review by TLS. Client will provide such credit information or assurance as is requested by TLS at any time. TLS, in its sole discretion and judgment, may discontinue credit at any time without notice.

b. Billing. TLS will send or make available to Client a monthly on-line invoice for the Services and bill all charges invoiced to Client's account via the TLS's normal monthly procedures which are available by contacting TLS's billing department. Such charges shall include activation fees, monthly service fees, shipping charges, disconnection fees, equipment charges, toll charges, taxes and any other applicable charges. Monthly service fees are paid in advance of each month's service; toll charges and any other applicable charges are billed at the end of each month's service. TLS reserves the right to charge the Client for toll charges at any time if Client's cumulative toll charges for the current month exceed two hundred and fifty dollars (\$250.00). Billing for monthly service fees commences upon purchase of the Services, and the first month's monthly service fee shall be prorated to take into account any partial month that may occur as the result of the date monthly service fees are initiated. Thereafter, billing for monthly phone services will occur in advance of the month the Services are provided, whereas billing for any toll or long distance charges will occur in arrears.

c. Late/Non Payment. If any charges for the Services are due but unpaid for any reason including, but not limited to, non-payment or declined Client credit card charges, TLS may suspend or terminate the Services and all accrued charges shall be immediately due. TLS may charge Client interest (1.5% per month) on those charges and a late fee of ten percent (10%) of the past-due balance. If Client fails to pay TLS within thirty (30) days of billing date, TLS has the right to disconnect the Services without notice and/or send to collection. Upon disconnect, Client agrees to immediately pay all amounts owed to TLS. TLS reserves the right to charge Client a fifty dollar (\$50.00) re-establishment of service fee.

d. Taxes. Prices for the Services do not include any applicable customs duties, sales, use, value added, excise, federal, state, local, public utility or other similar taxes. All such taxes shall be paid by Client and will be added to any amounts otherwise charged to Client unless Client provides TLS with an appropriate exemption certificate. If any amounts paid for the Services are refunded by TLS, applicable taxes may not be refundable. At the present time, under the terms of TLS's Voip phone service, federal excise taxes are applicable, as are sales taxes on the ATA device should Client choose to purchase.

e. Credits. Client acknowledges and agrees that the Services are provided "as is, where is." Credit allowances are under the sole discretion of TLS.

f. Discounts. From time to time in its sole discretion, TLS may offer promotions or discounts of activation or other fees. Any promotion or discount codes must be entered by Client upon purchase of the Services. End-User shall not be entitled to a subsequent credit for such promotions or discounts, if not requested at the time of account creation or change of service.

g. Billing Disputes. Client must dispute any charges for the Services within thirty (30) days of receipt of the monthly or on-line invoice or Client waives any objection.

### **TELEPHONE NUMBER**

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

### **TOLLS**

If applicable, every call to or from the TLS approved equipment using the VoIP Services that originates or terminates in the Public Switched Telephone Network ("PSTN") is subject to the then-applicable toll charges that

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are associated with the respective Plan ordered by Client. Every call to or from TLS approved equipment using the Services that originates or terminates with a SIP service TLS that is not affiliated or associated with TLS will also count as PSTN minutes and be subject to the then-applicable toll charges that are associated with the respective Plan ordered by Client. As applicable, domestic long distance calls are billed in six (6) second increments. As applicable, calls to a phone number outside the United States and Canada to a non-TLS account will be charged at the current rates. The duration of each call from the US to international destination is to be calculated in six (6) second increments after a thirty (30) second minimum. As applicable, calls to Mexico are rounded to the minute.

### **PROHIBITED USES**

Any use of the Services or any other action that causes a disruption in the network integrity of TLS or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of the Services. End-User understands that neither TLS nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Services. Client agrees that it 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 network. Client agrees and represents that it is purchasing the Services and/or the Equipment for its 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 TLS. Use of service shall not include certain activities including, but 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 residential or small business usage, unless specifically agreed to otherwise in writing by TLS and Client.

### **UNLIMITED MINUTE USAGE PLANS; CHANGES TO THE AGREEMENT, SERVICES OR PLAN**

TLS reserves the right to review usage of unlimited minute usage plans to ensure that there is no end-user abuse of such plans. Client agrees to use unlimited minute plans for normal voice calls and will not employ methods or devices to take advantage of unlimited plans by using service excessively or for means not intended by TLS. TLS may terminate service immediately if, in its sole discretion, Client is abusively using the unlimited minute plan. TLS reserves the right to make changes to the terms and conditions of this Agreement, the Services and/or the Plan ("Change of Service"). In the event of a Change of Service, TLS will post to the website currently located at <http://www.tls.net>. Notice will be considered received by Client and such changes will become binding to Client s, on the date the changes are posted to the website ("Change Date"), and no additional notice will be required. TLS will post all changes thirty (30) days in advance of the effective date of change, with the exception of international calling rates, which require only 24 hours notice. If Client does not send TLS notification of its desire to terminate this agreement or uses the Service after the Change Date, Client is deemed to have accepted and consented to the change of terms and conditions of the Service. If Client does not consent to the change of service and terminates this agreement, Client will be responsible for any sums due hereunder in addition to any applicable Disconnection Fee. Client may request a Plan change at anytime, subject to any applicable change of service fee and additional terms and conditions. For a Plan change to a plan that requires a purchase of the Equipment, an equipment charge may apply. TLS may decrease prices for the Services or Plans without providing any prior notice to Client.

### **PRIVACY**

TLS utilizes the public Internet and third party networks to provide voice and video communication services. Accordingly, TLS cannot guarantee the security of voice and video communications of Client. TLS is committed to respecting Client 's privacy. Once Client chooses to provide personally identifiable information, it will only be used in the context of the Client 's relationship with TLS. TLS will not sell, rent, or lease Client's personally identifiable information to others. Unless required by law or subpoena or if Client's prior permission is obtained, TLS will only share the personal data of Client with business partners that are acting on TLS's behalf to complete the activities described herein. Such TLS entities and/or national or international business partners are governed by TLS's privacy policies 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, TLS may disclose personally identifiable information.

### **INDEMNIFICATION**

Client agrees to defend, indemnify and hold TLS, its affiliates and its vendors harmless from any claims or damages relating to this Agreement.

### **DISCLAIMER OF CONSEQUENTIAL DAMAGES**

In no event shall TLS or its vendors be liable for any special, incidental, indirect, punitive or consequential

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damages or for any damages, including but not limited to loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use services or products provided hereunder whether due to a breach of contract, breach of warranty, the negligence of TLS or its vendors or otherwise.

#### **PHONE NUMBERS AND WEB PORTAL DISCONTINUANCE**

Upon expiration, cancellation or termination of the Services, Client shall relinquish and discontinue use of any Numbers, voice mail access numbers and/or web portals assigned to Client by TLS or its vendors.

#### **WARRANTY AND LIABILITY LIMITATIONS**

TLS makes no warranties, express or implied, including, but not limited to, and implied warranties of merchantability or fitness for a particular purpose. Neither TLS nor its vendors will be liable for unauthorized access to TLS's or Client's transmission facilities or premise equipment or for unauthorized access to or alteration, theft or destruction of Client's data files, programs, procedures or information through accident, fraudulent means or devices, or and other method, regardless of whether such damage occurs as a result of TLS's or its vendors' negligence. Any claim against TLS must be made within 90 days of the event of the claim and TLS has no liability thereafter. TLS's liability is limited to repair, replacement, credit or refund. TLS may elect to provide a refund in lieu of credit, replacement or repair. All warranties cover only defects arising under normal use and do not include malfunctions or failures resulting from misuse, abuse, neglect, alteration, modification, improper installation, or repairs by anyone other than TLS. In no event shall TLS's total liability hereunder exceed the amounts paid by the Client to TLS in the prior twelve (12) months from the date of claim.

#### **SOFTWARE COPYRIGHT**

Any software used by TLS in connection with the Services and any software provided to Client in conjunction with providing the Services are protected by copyright law and international treaty provisions. Client may not copy the software or any portion of it.

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