

Reseller Terms and Conditions

1. **Program.** These Reseller Terms and Conditions (the “**Terms and Conditions**” and, collectively, with the Reseller Agreement, the “**Agreement**”) govern the respective rights and obligations of LocalVox Media, Inc. (“**Vivial**”) and the **Reseller** identified in the Reseller Agreement between the Parties or other program application completed by the Reseller and submitted to Vivial. These Terms and Conditions are incorporated by reference into the Reseller Agreement (“**Agreement**”), and apply to the Reseller’s participation in the program identified in the Agreement, and any other program in which Vivial may accept the Reseller’s participation. Vivial may modify these Terms and Conditions from time to time in its sole discretion, which modifications will be effective upon posting to Vivial’s web site.
2. **Defined Terms.** As used herein, each term defined in the Agreement shall have the meaning assigned thereto in the Agreement, unless expressly provided herein to the contrary.
3. **Confidential Information.**
 - A. “**Confidential Information**” means any confidential, proprietary or trade secret information of a Party to the Agreement to which the other Party may be provided, come into contact with, or have access to whether in written, graphic, machine readable, or other tangible form or is orally disclosed and which should reasonably have been understood by the receiving Party, because of (a) legends or other markings; (b) the circumstances of disclosure or access; (c) the nature of the information, regardless of form; or (d) any other form of indication or instruction, is confidential in nature. With respect to any Order, all Customer information is, and shall remain, the Confidential Information of Vivial.
 - B. *Exceptions.* Confidential Information shall not include any information that (a) was publicly known and made generally available prior to the time of disclosure by the disclosing Party, (b) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party, (c) is already in the possession of the receiving Party at the time of disclosure, (d) is obtained by the receiving Party from a third party without a breach of such third party’s obligations of confidentiality, or (e) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information. Any feedback, data, answers, questions, comments, suggestions, ideas, concepts, know-how, techniques or the like which Reseller provides to Vivial relating to the Agreement, Vivial or Vivial Services, shall be owned by Vivial, shall be the Confidential Information of Vivial and Vivial may choose to may use, disclose or publish any feedback, data, answers, questions, comments, suggestions, ideas, concepts, know-how or techniques contained in such information for any purpose whatsoever.
 - C. *Non-Use and Non-Disclosure.* Each Party shall (a) treat as confidential all Confidential Information of the other Party, (b) not disclose such Confidential Information to any third party, except on a “need to know” basis to third parties that have signed a non-disclosure agreement containing provisions substantially as protective as the terms of this Section, provided that the disclosing Party has obtained the written consent to such disclosure from the other Party, and (c) not use such Confidential Information except in connection with performing its obligations or exercising its rights under the Agreement. Each Party is permitted to disclose the other Party’s Confidential Information if required by law so long as the other Party is given prompt written notice of such requirement prior to disclosure and assists in obtaining an order or other form of protection to protect such information from public disclosure.
4. **Payment.**
 - A. *Payment Terms.* Vivial shall issue monthly invoices to Reseller for all Vivial Services ordered in the previous billing month. Reseller shall pay all undisputed amounts upon receipt of invoice. Any dispute as to payment amounts shall be made in good faith and will not excuse the disputing Party from paying any undisputed amounts of a payment which is due. All payments will be made in U.S. dollars. Reseller shall notify Vivial in writing of any dispute with any invoice (along with a reasonably detailed dispute description) within thirty (30) days from the date of the invoice. Reseller will be deemed to have accepted all invoices for which Vivial does not receive timely notice of dispute and to have waived any disputes, and shall timely pay all undisputed amounts due under these invoices. The Parties shall seek to resolve all disputes expeditiously and in good faith in accordance with the dispute resolution provisions set out herein. Notwithstanding anything to the contrary, Reseller shall continue performing its obligations under the Agreement during any dispute, including, without limitation, Reseller’s obligation to pay all due and undisputed invoice amounts.
 - B. *Credit Status.* Each Order placed with Vivial constitutes Reseller’s representation and warranty that Reseller has the financial ability to pay for the Order in accordance with the terms of the Agreement. Reseller shall furnish Vivial with such statements accurately and fairly evidencing Reseller’s financial condition as Vivial may, from time to time, reasonably request. Reseller shall notify Vivial immediately of any and all events that have had or may have a material adverse effect on Reseller’s business or financial condition, including any change in management, sale, lease or exchange of a material portion of Reseller’s assets, a change of control or ownership, or breach of any loan covenants or other material obligations of Reseller to its lenders. If, at any time, Vivial determines in its sole but reasonable discretion that Reseller’s financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Vivial’s other rights under the Agreement, at law or in equity, Vivial may without liability or penalty, take any of the following actions: (a) require cash in advance or a cash deposit equal to up to three (3) months’ anticipated charges; (b) reject any Order received from Reseller; (c) cancel any previously accepted Orders; (d) delay

any further provision of Vivial Services to Reseller; (e) terminate the Agreement; and/or (g) accelerate the due date of all amounts owing by Reseller to Vivial. No actions taken by Vivial under this Section nor any failure of Vivial to act under this Section shall constitute a waiver by Vivial of any of its rights to enforce Reseller's obligations under the Agreement, including, without limitation, the obligation of Reseller to make payments as required under the Agreement.

- C. *Late Payments.* Except for invoiced payments that Reseller has timely and successfully disputed, Reseller shall pay interest on all amounts not paid within thirty (30) days of the date of invoice, calculated daily and compounded monthly, at the lesser of the rate of 1% per month or the highest rate permissible under applicable law. Reseller shall also reimburse Vivial for all costs and expenses incurred in collecting any late payments or unpaid invoices, including without limitation, attorneys' fees and expenses.
- D. *No Set-off Right.* Reseller shall not, and acknowledges that it has no right, under the Agreement, any Order, any other agreement, document or Law, to, withhold, offset, recoup or debit any amounts owed (or become due and owing) to Vivial or any of its affiliates, whether under the Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Vivial or any of its affiliates, whether relating to Vivial's or its affiliates' breach or non-performance of the Agreement, any Order, any other agreement between (a) Reseller or any of its affiliates and (b) Vivial or any of its affiliates, or otherwise.
- E. *Taxes.* Reseller shall be responsible for, and shall pay in a timely manner, all taxes and charges levied against Vivial or Reseller and related to the Agreement, excluding taxes on the income or property of Vivial. When Vivial has the legal obligation to pay or collect such taxes, Vivial shall invoice the appropriate amount to Reseller and Reseller shall pay such taxes to Vivial in accordance with the invoicing and payment terms of the Agreement. Where Vivial is billing and collecting from Customers, it shall be Reseller's obligation to instruct Vivial as to what taxes, if any, Reseller would like Vivial to include on Customer invoices. All payments by Reseller to Vivial will be made free and clear of, and without reduction for, any withholding taxes. Any taxes that are otherwise imposed on payments to Vivial will be the sole responsibility of Reseller. Reseller will provide Vivial with official receipts issued by the appropriate taxing authority or such other evidence as is reasonably requested by Vivial to establish that such taxes have been paid. In the event Vivial has not assessed any sales, transfer or other taxes assessed of Vivial related to the Agreement, it may, after the fact, invoice Reseller the applicable taxes, and Reseller agrees to pay such invoice in accordance with the payment terms set forth in the Agreement.

5. Termination.

- A. *Termination for Cause.* If Reseller fails to make any undisputed payment to Vivial when due, time being of the essence, Vivial may suspend Reseller's and Reseller's Customers' access to the Vivial Services if such payment is not made within three (3) Business Days following written demand for payment. For purposes of the Agreement, "**Business Days**" shall exclude Saturday, Sunday and all legal holidays. If either Party fails to perform any of its material obligations under the Agreement, including, without limitation, payment, the other Party may terminate the Agreement by giving ten (10) days prior written notice, provided that the matters set forth in such notice are not cured to the other Party's reasonable satisfaction within the 10-day period. If either Party commits or suffers (voluntarily or involuntarily) an act of bankruptcy, receivership, liquidation, or similar event, the other Party may immediately terminate the Agreement.
- B. *No Liability for Termination.* Except as required by law, in the event of termination of the Agreement by either Party in accordance with any of the provisions of the Agreement, neither Party will be liable to the other, because of such termination, for compensation, reimbursement, or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases, or commitments in connection with the business or goodwill of Vivial or Reseller. Termination will not, however, relieve either Party of obligations incurred prior to the effective date of the termination.
- C. *Effects of Termination.* Upon termination, Reseller's rights under the Agreement will immediately terminate and Reseller shall immediately cease all marketing and promotion of the Vivial Services. In no event will any termination relieve Reseller of its obligation to pay any amounts related to Vivial Services ordered by Reseller prior to the date of termination. Vivial shall continue to provide the Vivial Services to any Customer for the duration of that Customer's Advertising Order that includes Vivial Services, but contingent upon and only so long as Reseller continues to pay Vivial during that agreement term.
- D. In the event Vivial's right to suspend Reseller's and Reseller's Customers' access to Vivial Services is available as set forth in Subparagraph A above, Vivial shall have the right, but not the obligation, to take assignment of any or all Advertising Orders then in place between Reseller and Customers, and Reseller consents to such assignment, for the Vivial Services and to collect directly from such Customers any amounts due by Customer to Reseller as they become due and owing in exchange for Vivial continuing the Customer's access until Reseller cures any breach within the 10-day cure period set forth in Subparagraph A above. In the event of any termination of the Agreement for cause by Vivial, Vivial shall have the right, but not the obligation, to take continued or final assignment of all Advertising Orders then in place between Reseller and Customers for the Vivial Services or to terminate such contracts and enter into new relationships between Vivial and such Customers. Reseller shall cooperate with Vivial to effectuate any such assignment or transfer of Customer relationships, which cooperation by Reseller shall include, at a minimum (i) the provision by Reseller to Vivial of all Customer statements of account showing billing and payment history; (ii) copies of Customer contracts and any other relevant information or documentation reasonably requested by Vivial; and (iii) Reseller's execution of an Agreement of Assignment as requested by Vivial.

- 6. **Limited Warranty.** Vivial represents and warrants to Reseller that Vivial will provide the Vivial Services in connection with the Orders in the same manner as Vivial provides the Vivial Services to other customers at the same level and type of service. THE SERVICES

AND ALL UNDERLYING COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. VIVIAL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. UNLESS EXPRESSLY SET FORTH IN THE AGREEMENT, VIVIAL MAKES NO, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, OR OTHERWISE WITH RESPECT TO THE SERVICES OR THE FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE THEREOF. VIVIAL RESERVES THE RIGHT TO REMOVE CUSTOMER CONTENT OR DECLINE ANY SERVICE TO THE EXTENT THE CUSTOMER CONTENT OR CUSTOMER'S USE OF THE SERVICE DOES NOT COMPLY WITH THE TERMS OF THE AGREEMENT, ANY APPLICABLE LAWS OR VIVIAL EDITORIAL STANDARDS OR THOSE OF VIVIAL'S VENDORS; PROVIDED, HOWEVER, THAT RESELLER MAY NOT EXPRESSLY OR IMPLIEDLY RELY UPON VIVIAL'S APPROVAL TO SUPPORT ITS COMPLIANCE WITH ANY APPLICABLE LAW, RULE OR REGULATION. NOTHING CONTAINED IN THE FOREGOING SHALL SHIFT THE ULTIMATE LEGAL OR REGULATORY COMPLIANCE OBLIGATION IN ANY MANNER WHATSOEVER FROM RESELLER, OR ANY CUSTOMER, TO VIVIAL, IT BEING MUTUALLY INTENDED THAT SUCH OBLIGATION IS AND SHALL REMAIN SOLELY WITH RESELLER. VIVIAL IS NOT PERMITTED TO PROVIDE, AND DOES NOT PROVIDE, LEGAL ADVICE, AND RESELLER IS SOLELY RESPONSIBLE FOR COMPLIANCE OF ANY RESELLER PROVIDED ADVERTISING AND USE OF THE SERVICES IN COMPLIANCE WITH ALL LOCAL, STATE AND FEDERAL LAWS AND REGULATIONS AND PROFESSIONAL RULES AND REGULATIONS APPLICABLE TO THE CUSTOMER AND CUSTOMER'S EMPLOYEES, CONTRACTORS AND REPRESENTATIVES. RECORDED CALLS MAY NOT MEET HIPAA REQUIREMENTS AND MAY NOT BE PRIVILEGED UNDER APPLICABLE LAW.

7. Reseller's Representations and Warranties. Reseller hereby represents and warrants to Vivial as follows: (a) Reseller has the full right, power and authority to enter into the Agreement and to grant the licenses and related rights granted herein; (b) Reseller has acquired any and all third party clearances, permissions, licenses, and rights that are necessary in connection with Vivial's exercise of all rights and licenses granted herein; (c) there are no pending or threatened lawsuits, claims, disputes or actions adversely affecting Reseller's ability to perform its obligations hereunder; (d) Reseller's and Customers' trademarks, trade names, logos, pictures, content or other intellectual property of any kind or character used in connection with the Agreement and the provision of Vivial Services do not infringe, violate or misappropriate any patent, copyright, trademark, service mark, copyright, trade secret or other intellectual property or proprietary right of any third party; (e) all information regarding Reseller provided to Vivial is true and correct in all material respects; (f) Reseller shall comply with all applicable laws, rules and regulations in the conduct of its business; (g) Reseller shall not make any representations or warranties concerning the Vivial Services except those that have been expressly authorized herein; (h) Reseller shall not distribute any documents or materials describing the Services except those that have been approved or provided to Reseller by Vivial for use; and (i) in performing all activities related to the Agreement, Reseller shall perform in a professional and workmanlike manner consistent with industry standards.

8. LIMITATION OF LIABILITY.

- A.** VIVIAL WILL NOT BE LIABLE TO RESELLER (NOR TO ANY PERSON OR ENTITY CLAIMING RIGHTS DERIVED FROM RESELLER'S RIGHTS) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING COST OF COVER, LOST REVENUES, GOODWILL OR PROFITS OR LOSS OF BUSINESS OR DATA, ARISING OUT OF OR RELATING TO THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, VIVIAL SERVICES, ANY ADVERTISING ORDERS AND/OR ANY ORDERS, REGARDLESS OF WHETHER VIVIAL WAS ADVISED, HAD OTHER REASON TO KNOW, OR KNEW OF THE POSSIBILITY THEREOF. RESELLER SHALL HAVE NO RECOURSE AGAINST VIVIAL OR ITS DESIGNEES FOR ANY ALLEGED OR ACTUAL INFRINGEMENT OF RESELLER'S PROPRIETARY RIGHTS BY THIRD PARTIES OR FOR LOSS OR HARM DUE TO UNAUTHORIZED USE OF RESELLER'S OR ITS CUSTOMERS' ADVERTISING OR ANY CUSTOMER CONTENT BY THIRD PARTIES.
- B.** IN ANY EVENT, VIVIAL'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT, WHETHER THE CAUSE OF ACTION ARISES IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE LESSER OF: \$100,000, THE AGGREGATE AMOUNT PAID BY RESELLER HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY, OR THE INVOICED AMOUNT FOR ANY SUBJECT VIVIAL SERVICES.
- C.** VIVIAL CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. VIVIAL WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.
- D.** EACH PROVISION OF THE AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THE AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY VIVIAL TO RESELLER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THE AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF PORTIONS OF AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.
- E.** ANY CLAIM RESELLER MAY HAVE, REGARDLESS OF FORM, ARISING UNDER, BY REASON OF, OR IN CONNECTION WITH OR RELATED TO THE AGREEMENT MUST BE MADE WITHIN 180 DAYS FROM THE DATE THE CLAIM AROSE; OTHERWISE, RESELLER SHALL BE DEEMED TO HAVE WAIVED SUCH CLAIM.

- 9. INDEMNIFICATION.** Reseller shall defend, indemnify and hold harmless Vivial, its affiliates and their respective present, former and future officers, directors, employees, representatives and agents, and their respective heirs, legal representatives, successors and assigns (collectively the "**Vivial Indemnitees**"), from and against any and all losses, damages, costs, liabilities and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees and expenses) which any of the Vivial Indemnitees may suffer, incur or sustain resulting from or arising out of: (i) Reseller's breach of the Agreement, including any representations and warranties contained herein; (ii) services provided by the Reseller to any Customer; (iii) any actual or alleged claim that content provided by Reseller or Customer for use with the Vivial Services violates or infringes upon any intellectual property right of any third party; (iv) actual or alleged claims or actions of third parties alleging unfair or deceptive trade practices or false advertising in connection with statements or claims made by Reseller pertaining to Vivial Services; and (v) any claim by a Reseller Customer against Vivial relating to or arising out of the Vivial Services.
- 10. Independent Contractors.** The relationship of the Parties established by the Agreement is that of independent contractors, and nothing contained in the Agreement should be construed to give either Party the power to (a) act as an agent or (b) direct or control the day-to-day activities of the other. Under no circumstances shall Reseller imply, represent or refer to themselves as Vivial or an employee of Vivial. Financial and other obligations associated with each Party's business are the sole responsibility of that Party. Nothing in the Agreement shall create a joint venture, joint enterprise or partnership, or any relationship other than that of independent contractors, which is the only relationship intended by the Parties.
- 11. Notices.** Any notice required or permitted to be given under the Agreement will be effective if it is in writing and given by (i) personal delivery; (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, return receipt requested, to the appropriate Party at the address set forth in the Agreement and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given two (2) business days following the date of mailing, one business day following delivery to a courier or immediately upon delivery in person.
- 12. Force Majeure.** Neither Party is liable for any default or delay in the performance of any of its obligations under the Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such Party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such Party to perform its obligations hereunder.
- 13. Governing Law and Dispute Resolution.** The laws of the State of New York govern the Agreement without giving effect to provisions related to choice of laws or conflict of laws. ANY DISPUTE ARISING OUT OF OR RELATING TO THE AGREEMENT (OTHER THAN CLAIMS WE MAY HAVE TO COLLECT AMOUNTS OWED BY RESELLER TO VIVIAL) SHALL FIRST BE SUBMITTED TO MEDIATION BY JAMS OR THE AMERICAN ARBITRATION ASSOCIATION IN NEW YORK CITY ("**MEDIATION**"). IN THE EVENT THAT THE DISPUTE IS NOT RESOLVED BY MEDIATION, THEN IT SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS THEN-PREVAILING COMMERCIAL RULES. EACH PARTY WILL BEAR THE COST OF PREPARING AND PROSECUTING ITS CASE. THE ARBITRATOR SHALL HAVE NO POWER OR AUTHORITY TO ALTER OR MODIFY THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE LIMITATIONS OF LIABILITY SET FORTH HEREIN. ALL CLAIMS MUST BE ARBITRATED INDIVIDUALLY, AND THERE WILL BE NO CONSOLIDATION OR CLASS TREATMENT OF ANY CLAIMS. THIS PARAGRAPH IS SUBJECT TO THE UNITED STATES ARBITRATION ACT. THE ARBITRATOR SHALL APPLY THE SUBSTANTIVE LAW OF THE STATE OF NEW YORK AND SHALL LIMIT ANY REMEDIES TO THOSE PROVIDED IN THE AGREEMENT.
- 14. Copyright and Trademark Issues.** In the event of any alleged copyright or trademark infringement related to the Agreement, Vivial may, in its sole discretion, take any of the following actions: (i) issue a warning; (ii) suspend or terminate Vivial Services; (iii) impose additional fees or charges; (iv) remove the offending content; or (v) take any other action Vivial deems reasonable and allowed by law. Vivial reserves the right to cooperate with any third-party investigations of alleged illegal or improper activity related to the Vivial Services and to monitor any Vivial Services using network facilities, including efforts to prevent the introduction of viruses or other hostile code or to ensure compliance with laws and our guidelines, procedures and technical requirements. Reseller shall immediately provide written notice to Vivial of any alleged intellectual property infringement related to the Agreement or the Vivial Services.
- 15. Vivial Acceptable Use Policy.** Reseller will abide by and utilize all Vivial provided services only in accordance with Vivial's Acceptable Use Policy (the "**Acceptable Use Policy**") that Vivial posts on its Web site (www.Vivial.net), as such Acceptable Use Policy may be changed by Vivial from time to time. The Acceptable Use Policy is hereby incorporated herein and made a part hereof by this reference. Reseller shall impose the Acceptable Use Policy on its customers and end users to the extent necessary to ensure their compliance. Reseller shall familiarize itself with the Acceptable Use Policy and periodically access Vivial's Web site to determine if Vivial has made any changes thereto.

- 16. International Restrictions.** Reseller may not export, re-export, transfer or make available, whether directly or indirectly, any Vivial Services, other regulated item or information to anyone outside the United States in connection with the Agreement. Reseller acknowledges that Vivial is subject to certain United States laws, including but not limited to the Foreign Corrupt Practices Act of 1977 and any amendments thereto, which apply to activities carried out on Vivial's behalf outside the United States.
- 17. Miscellaneous.** Except as otherwise expressly provided in the Agreement, nothing in the Agreement is intended, nor shall anything herein be construed to confer any rights, legal or equitable, in any person other than the Parties hereto and their respective successors and permitted assigns. The remedies provided to the Parties under the Agreement are cumulative and will not exclude any other remedies to which a Party may be lawfully entitled. The waiver by either Party of any breach of the Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation under the Agreement shall not be a waiver of such Party's right to demand strict compliance in the future, nor shall the same be construed as a novation of the Agreement. If a provision of the Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall: (i) be reduced to the minimum extent necessary to be legal and valid, as long as the revised provision remains consistent with the intent of the Parties expressed herein; or, (ii) if the foregoing is not possible, deemed to be severed and deleted. Neither such revision nor such severance and deletion shall affect the validity of the remaining provisions of the Agreement. The Parties have had an equal opportunity to participate in the drafting of the Agreement and all incorporated terms and attachments. The Agreement shall not be construed in whole or in part against the Party on whose behalf it was drafted solely because of the fact that Party drafted it. Reseller acknowledges that Vivial may record or monitor phone calls related to the Agreement for any lawful purpose, including, but not limited to, to ensure quality of service. When and where available, Reseller consents to conducting business electronically in accordance with Vivial's approved format. Reseller is solely responsible for maintaining and ensuring the security of any and all passwords obtained. All application and data comprising the Vivial Services are hosted and maintained within a secure environment. Unless otherwise indicated by Vivial, network connections are not currently provisioned using an encrypted link. The headings appearing at the beginning of sections contained in the Agreement have been inserted for identification and reference purposes only and shall not be used to construe or interpret the Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders. The Agreement, including any exhibits, is the final and complete expression of all agreements between these Parties and supersedes all previous oral and written agreements regarding these matters. The Agreement may be amended only by a written agreement signed by the Party against whom enforcement is sought. The exhibits referred to in the Agreement are incorporated by this reference as if fully set forth here.