

INGENIOUS TECHNOLOGY, LLC
dba Ingenious Smart Business Phones

Terms and Conditions

1. SCOPE.

- a. These Terms and Conditions herein are part of, and incorporated by reference into one or more Proposal(s) for Service, Service Order(s), Agreement(s)/Contract(s) entered into by INGENIOUS TECHNOLOGY, LLC (herein after referred to as; Ingenious) and Customer(s) (herein after referred to as; Customer or Customer(s)) identified in the Proposal(s) for Service, Service Order(s), Agreement(s)/Contract(s) and apply to Customer(s) use of all services(s), equipment and device(s) provided by Ingenious. Customer agrees to accept and abide by these Terms and Conditions for the duration of such Agreement(s)/Contract(s), as amended, supplemented or modified by Ingenious. By accepting any Proposal(s) for Service, Service order(s), Agreement(s)/Contract(s) or by using the service(s) provided by Ingenious, Customer acknowledges their consent to these Terms and Conditions as of the earliest date of Customer accepts or uses service(s) provided by Ingenious.
- b. Ingenious agrees to provide the services(s), equipment and device(s) as described in the applicable Proposal(s) for Service, Service Order(s), Agreement(s)/Contract(s) and Ingenious and Customer agree to abide by these Terms and Conditions.

2. LICENSE. Subject to the Terms and Conditions of the Proposal(s) for Service, Service Order(s), Agreement(s)/Contract(s), Ingenious grants to Customer a limited, non-transferable, non-exclusive license, without the right to sublicense, to access and use the Service(s) provided by Ingenious in their intended manner in accordance with the documentation provided to Customer, solely to support Customer's normal business operations. Customer shall not; (a) resell the Service(s); (b) modify, decompile, reverse engineer, disassemble, attempt to discover the source code of, or create derivative works based on, any of the Service(s) or any part thereof, including any Ingenious equipment or device(s) provided to Customer or; (c) disable or circumvent any access control or related device, process or procedure established with respect to the Service(s) or any part thereof. Upon expiration of a Service Term(s) or other termination of the service(s) Agreement(s)/Contract(s) for any reason, Customer's license to use the service(s) shall immediately terminate, and Customer shall cease all use of Ingenious service(s).

3. ORDERS(S) AND SERVICE(S).

- a. Only Service Order(s) submitted by an employee or authorized agent of Ingenious on behalf of a potential or existing customer in a manner prescribed by Ingenious will be accepted by Ingenious.
 - i. Upon acceptance by Customer, a Service Order(s) becomes a legally binding contract for the term defined in the Service Order(s)/Additional Service Order(s), Service Agreement(s)/Contract(s).
 - ii. Ingenious has no obligation to consider or accept any request for service(s) or Service Order(s)/Additional Service Order(s) of any potential or current customer.
 - iii. Any changes to a Service Order(s) will be submitted to Customer for acceptance, prior to the Service Order(s)/Additional Service Order(s) being processed and/or acted upon by Ingenious.

- iv. A purchase order or similar document will not be considered a Service Order(s), or additional Service Order(s). Such document(s) shall be regarded by Ingenious as being solely for the internal use of Customer(s).
- b. Customer agrees that acceptance of service(s) provided by Ingenious does not include a promise of suitability for a particular purpose, nor is it contingent upon, the delivery of any future service(s), functionality or feature(s), nor is it dependent upon any discussions between any parties, oral or written, or public comments made by Ingenious or its representative(s). Customer further agrees that provisioning of any service(s) by Ingenious, under any Service Order(s)/Additional Service Order(s) is subject to reasonable availability as determined by Ingenious, and that Ingenious, its contractor(s) or agent(s) may perform some or all of the service(s) agreed to.
- c. Customer also agrees to maintain adequate and active Internet Service Provider (ISP)/Wide Area Network (WAN) Connection and Local Area Network (LAN) connectivity, which is at all times acceptable to Ingenious and further agrees to secure increased Internet Bandwidth or a better-quality Internet Connection at the advice of Ingenious. Customer also agrees and understands that the service(s) Ingenious provides are dependent on the availability and adequacy of Customer's LAN and IPS/WAN network conditions. This includes LAN infrastructure and equipment such as routers, switches, network cabling and devices and electrical power. Customer further agrees to hold Ingenious, its employees, contractor(s) and agent(s) harmless for any loss of Ingenious service(s), due to degraded LAN/WAN Network condition(s).
- d. Customer represents that it is either the owner, tenant or other legal occupant of the all premises and locations where Ingenious service(s) are to be activated, and has secured the proper permission(s) of the building owner(s) for installation and permanent attachment of any equipment, wiring or device(s) deemed necessary by Ingenious to activate and provide the service(s) ordered and agreed to by Ingenious and Customer. Further, Customer shall secure all required licenses, permits, rights-of-way and other arrangements required by Federal, State or Local authority and/or law for the Ingenious service(s) ordered by Customer. Customer shall furnish, without charge to Ingenious, adequate access and space, electrical power and safe and suitable environmental conditions reasonably required and acceptable to Ingenious for activation and maintenance of the Ingenious services(s), equipment and device(s) ordered by Customer. At all times during which Ingenious provides service(s), Customer shall allow Ingenious, its contractor(s) or agent(s) reasonable access and right-of-way to all premises, sites and locations where Ingenious provided equipment or device(s), ordered by Customer is/is to be located.
- e. Customer shall provide and maintain current in writing, to Ingenious complete contact information (First and Last Name, email address and mobile phone number) for a member of Customer's staff who is designated as Telecom/Internet Primary and Secondary Point of Contact (P/SPOC) who each has the authority to act on behalf of Customer on all matters pertaining to services provided by Ingenious.
- f. Customer will further authorize and maintain current in writing a Billing Point of Contact (BPOC) for the receipt of Ingenious invoices and to make billing decisions and payments.
- g. Customer shall provide and maintain in writing, to Ingenious complete and current contact information (First and Last Name, email address and mobile phone number) for the Customer's Information Technology (IT) service(s) provider Point of Contact(s) and agree to accept financial responsibility for any additional or ongoing IT equipment or service(s) as determined necessary by Ingenious for activation and continuation of the Ingenious service(s) ordered to by Customer.

- h. Customer understands and agrees that any existing alarm system(s), credit card terminals, postage machines, elevator communications device(s), or other equipment that will need an “analog line” must be provided an alternative connection, which may require additional expense to Customer and that the cost of such equipment and/or service(s) is the responsibility of Customer.

4. COSTS AND PAYMENTS.

- a. Customer agrees to pay to Ingenious all amounts due as are specified in and these Terms and Conditions and each Ingenious invoice(s)/statement(s). NON-USE OF INGENIOUS SERVICE(S) WILL NOT BE CONSIDERED A SUFFICIENT CLAIM FOR CREDIT(S), REFUND(S) OR CANCELLATION OF ANY CUSTOMER ACCOUNT OR INGENIOUS SERVICE(S).
- b. Any Customer account which is fifteen (15) days or more past due is subject to late payment fee and/or collection action as allowed by law.
- c. Late payments are subject to a late payment charge, which is the lower of:
 - i. 1.5% per month.
 - ii. Maximum allowed by law.
- d. Customer shall reimburse Ingenious for any unpaid amount(s) including all costs and expenses incurred in any collection process(s), including reasonable administrative, legal and court costs.
- e. Ingenious reserves the right to restrict or suspend any or all service(s) until all past due accounts are made current.
- f. If any authority imposes a regulatory fee, surcharge, duty, tax or similar amount (*other than that based on the net income of Ingenious*), Customer agrees to pay, or to promptly reimburse Ingenious for, all such amounts.
 - i. There are three types of costs associated with the service(s) Ingenious provides. Non-Recurring Costs (NRC), Monthly Recurring Costs (MRC) and Variable Service Costs (VSC).
 - ii. NRC amounts may be paid by Credit Card, EFT/ACH draft from a business checking account or manually by business check.
 - iii. Payment of MRC and VSC amounts will be paid by pre-authorized automatic (AutoPay) debits to a credit card or an EFT/ACH draft from a business checking account.
 - iv. A monthly “Opt-Out” fee will apply if Customer chooses to pay MRC and VSC amounts by manual check. The amount of the “Opt-Out” fee will be specified in each Service Order(s), Service Agreement(s)/Contract(s) and will be included in each invoice(s) for as long as Customer chooses to “Opt-Out” of AutoPay.
 - v. A Customer who has chosen to pay manually and incurs three (3) or more late payments within any twelve-month period, must make all future payments by AutoPay.
- g. Non-Recurring Costs (NRC), Monthly Recurring (MRC) and Variable Service Costs (VSC) are itemized separately on each applicable Ingenious Invoice/Statement.
 - i. Non-Recurring Costs (NRC) are one-time charges billed in arrears and included in the next monthly invoice after service(s) activation. NRC amounts are due and payable on the first day of the Monthly Service Period after service(s) are activated or the cost is incurred by Customer.
 - ii. Monthly Recurring Costs (MRC) for service(s) are billed in advance and due and payable on the first day of each Service Period. A prorated portion (1/30th of the MRC per day) beginning on the day following the Service Activation Date through the last day of the current month will be due and payable on the first day of the first full Monthly Service Period.

- iii. Variable Service Costs (VSC) are billed in arrears. VSCs are typically for additional service(s) or usage beyond that allowed by a calling plan(s) or included in another billable service(s) VSC's such as, but not limited to Outbound Local and Long-Distance overages, International and Toll-Free usage, Directory Assistance and other variable service(s) are charged according to the current Ingenious rate(s). Rates for VSCs are subject to change and are not guaranteed by Service Order(s), Service Agreement(s)/ Service Contract(s). Variable Service Costs (VSC) are due on the first of the month following the month in which they are incurred or when invoiced, whichever is later.
 - h. Charges for Setup, Activation and Training (SAT) are Non-Recurring Costs (NRC) and charges for Administration, Support and Maintenance are Monthly Recurring Costs (MRC). Variable Service Costs (VSC) are neither Non-Recurring Costs (NRC) or Monthly Recurring Costs.
 - i. Charges for additional Ingenious service(s) provided during a subsequent service month are computed beginning on the first day of the first full-month the service is provided and invoiced on the first day of the first full month the additional Ingenious service(s) are active. Such subsequent services are provided at the amount contracted for the same service(s) if Customer is currently subscribed to that service(s) or the prevailing Ingenious rate for such service(s) at the time the subsequent service is activated and are contracted to be co-terminus with the existing Service Agreement(s)/Service Contract(s) for the customer or service address where delivered.
5. **TERM.** The Initial Term shall commence on the first day of the month following the month in which Initial Service(s) Activation occurs and shall continue from that date for the duration of term specified on the Initial Service Order(s)/Service Agreement(s)/Contract(s), or until earlier termination in accordance with Section 7 below. Subsequent Service Order(s)/Agreement(s)/Contract(s) shall be co-terminus with the Initial or Current Service Order(s)/Agreement(s)/Contract(s) for the primary Customer account, unless otherwise detailed in an applicable Service Order(s), Service Agreement(s)/Contract(s). After the Initial Service Term, Ingenious shall continue providing service(s) to Customer on a Month-to-Month basis without a guarantee of service cost(s) or rate(s).
6. **END OF TERM OPTIONS.** At the end of any contracted term for Ingenious service(s), Customer has the option of: (a) continuing Ingenious service(s) on a Month-to-Month basis as provided in the paragraph 5 above; (b) Receiving a "Technology Refresh" in consideration of agreeing to a new term contract for Ingenious service(s) of sixty (60) or more months; or (c) discontinuing Ingenious service(s) in accordance with 7,b,i below.
7. **TERMINATION OF A SERVICE AGREEMENT(S)/CONTRACT(S).**
- a. Termination, During the Initial Service Term.
 - i. During the Initial Service Term, Customer may terminate a Service Agreement(s)/Contract(s) in its entirety, upon sixty (60) days prior written notice to Ingenious, if Ingenious materially breaches these Terms and Conditions and the terms of a Service(s) Agreement/Contract(s) and does not cure such breach within sixty (60) days following receipt of written notice from Customer specifying in detail, the breach. In such case the Service Agreement(s)/Contract(s) shall terminate in its entirety on the day following sixty (60) days from the date such written notice is received by Ingenious or the date on which all equipment or device(s) provided to Customer by Ingenious has been returned to Ingenious. Ingenious reserves the right to charge back Customer for all equipment or device(s) that is not returned or at Ingenious' sole discretion, returned equipment which is incomplete, shows signs of damage or unreasonable wear and tear.

- ii. During the Initial Service Term, Ingenious may terminate the Service Agreement(s)/Contract(s) in its entirety, during the Initial Service Term, upon sixty (60) days prior written notice to Customer, if Customer materially breaches these Terms and Conditions or the terms of a Service Agreement(s)/Contract(s) and does not cure such breach within sixty (60) days following receipt by Customer of written notice specifying in detail the breach. In such case the Service Agreement(s)/Contract(s) shall terminate in its entirety on the day following sixty (60) days from the date such written notice is received by Customer. Unless, however, termination is for; (a) Customer's failure to comply with the Acceptable Use Policy (the "AUP") or; (b) Customer fails to make payment in accordance with Section 4 above, within five (5) days following Customer's receipt of written notice of such non-payment, in which case the Service Agreement(s)/Contract(s) will be immediately terminated, in its/their entirety without further notice to Customer. In lieu of termination as provided above, Ingenious may, at its sole discretion, elect instead to take remedial measures such as suspending or otherwise restricting Customer's access to Service(s) provided by Ingenious or suspending, restricting or terminating selected services which at Ingenious sole discretion are related to the breach or failure to comply or make payment. Suspension, restriction or termination of selected service(s) shall not prevent Ingenious from subsequently terminating the Service Agreement(s)/Contract(s) in its entirety, as a result of such breach or failure by Customer. Ingenious reserves the right to chargeback Customer for unreturned equipment or device(s) or in Ingenious sole discretion, returned equipment or device(s) which is incomplete or shows signs of damage or unreasonable wear and tear.

NOTICE: If Ingenious service is terminated prior to completion of a port-out of Customer telephone number(s) process, Customer acknowledges that such termination may result in the loss of Customer telephone number(s).

- b. Termination, After the Initial Service Term.
 - i. After the Initial Service Term, Customer may for any reason, terminate the Service Agreement(s)/Contract(s) in its entirety upon thirty (30) days prior written notice to Ingenious, in which case the Service Agreement(s)/Contract(s) shall terminate on the day following the later of; (a) the day service termination date requested by Customer written termination notice or; (b) the day service is actually transferred (all telephone numbers ported away from Ingenious), unless Customer specifically requests (in writing listing each telephone number) a service termination date that is prior to completion of the port-out process and acknowledges their understanding that such termination may result in the loss of the listed telephone numbers if their Ingenious service(s) are terminated prior to the completion of the port-out process.
 - ii. After the Initial Service Term, Ingenious may for any reason, terminate the Service Agreement(s)/Contract(s) in its entirety upon thirty (30) days prior written notice to Customer, in which case the Service Agreement(s)/Contract(s) shall terminate on the day indicated in the service termination notice from Ingenious. Unless, however, Customer; (a) fails to comply with the Acceptable Use Policy (the "AUP") or; (b) fails to make payment(s) in accordance with Section 4 within five (5) days following Customer's receipt of written notice of such non-payment, then Ingenious, in its sole discretion, may terminate the Service Agreement(s)/Contract(s) in its/their entirety without further notice to

Customer. In lieu of termination as provided above, Ingenious may, at its sole discretion, elect instead to take remedial measures such as suspending or otherwise restricting Customer's access to Service(s) provided by Ingenious. Ingenious reserves the right to chargeback Customer not returned or in Ingenious sole discretion, returned equipment or device(s) which is incomplete, shows signs of damage or unreasonable wear and tear.

- c. Upon any termination of the Service Agreement(s):
 - i. All outstanding Service Agreement(s)/Contract(s) immediately terminate, (a) Customer shall promptly pay all amounts due, including all regulatory taxes, fees and surcharges, and applicable administrative, legal or court cost amounts owed to Ingenious.
 - ii. Customer shall cease all use of Ingenious services(s), equipment and device(s), and return all such equipment to Ingenious. Charges for service(s) will continue to accrue until all equipment provided by Ingenious is in the possession of Ingenious Technology, LLC. Ingenious reserves the right to chargeback Customer for unreturned equipment or device(s) or in Ingenious sole discretion, returned equipment or device(s) which is incomplete or shows signs of damage or unreasonable wear and tear.
 - iii. Ingenious may, at its discretion, remotely disable equipment or device(s) related to the Service(s) and may cancel telephone lines, numbers and associated routing of the service(s) covered under any and all affected Service Order(s), Service Agreement(s) or Contract(s).
 - iv. In the event of termination during the Initial Service Term by Ingenious for Customer's breach or during the Initial Service Term by Customer for any reason other than if Ingenious materially breaches, customer hereby agrees and acknowledges that, notwithstanding the termination of service(s), customer shall be obligated to pay in full all costs set forth in each Service Order(s), Service Agreement(s)/Contract(s) or Ingenious Invoice(s) for the duration of the entire contracted service term(s) applicable to such Service Order(s), Agreement(s) or Contracts(s) including all applicable, regulatory taxes, fees and surcharges and applicable administrative, legal or court costs otherwise owed to Ingenious. Sections 1-2 and 16-32 shall survive any termination or expiration of the Service Agreement(s) or Contract(s).
 - v. Customer understands and acknowledges that if Ingenious service(s) are terminated by Ingenious or Customer prior to a proper porting of telephone number(s) to another carrier, any such telephone numbers associated with Ingenious service(s) may be lost and cannot be recovered after termination.
- 8. EARLY TERMINATION.** Termination of any contract for Ingenious service(s) as provided by paragraph 7 above, except in the case of breach by Ingenious, will require that all remaining amounts due to Ingenious through normal expiration of all current contract(s) be immediately due in full to Ingenious. Such due amounts are considered by Ingenious actual damages and not to be considered a penalty.
- 9. REDUCTION OF SERVICE(S).** Any reduction in the service(s) being requested by Customer must be made in writing to Ingenious and will be approved on a case-by-case basis by Ingenious. Should the requested reduction in Ingenious service(s) approved by Ingenious, result in a 10% or more reduction in Customer's current MRC, Ingenious reserves the right to adjust the rates for remaining Ingenious service(s) or terminate the current contract(s) and require Customer to recontract for a minimum of thirty-six (36) months for the reduced service(s) being provided by Ingenious.
- 10. SERVICE LEVEL AGREEMENT (SLA).**

- a. Ingenious warranties service(s) availability of 99.99% during any Monthly Service Period. Ingenious Network Unavailability is determined when Customer is unable effectively make or receive phone calls, not due to a WAN or LAN issue.
- b. Customer may request in writing, credit for Cumulative Network Unavailability during any single Monthly Service Period.
- c. Credit(s) will be calculated as determined by Ingenious, using the table below, by applying the Credit Percentage for the appropriate Cumulative Network Unavailability to the Monthly Recurring Cost (MRC) of the affected Monthly Service Period.
- d. Credit(s) as determined by Ingenious, will be issued to Customer on the invoice on a next or subsequent Monthly Service Period following the month in which a request is received by Ingenious.

<u>CUMULATIVE NETWORK UNAVAILABILITY</u>	<u>CREDIT PERCENTAGE</u>
Less than 15 minutes is 99.99% Network Availability	No Credit
1- 2 hours	5% of MRC
Greater than 2 hours, up to 10 hours	10% of MRC
Greater than 10 hours up to 24 hours	20% of MRC
Greater than 24 hours up to 72 hours	30% of MRC
Greater than 72 hours	40% of MRC

- e. Customer LAN or Infrastructure and/or Internet Service Provider (ISP) degradation or outage will not be considered Cumulative Network Unavailability, nor invoke the Response and Resolutions standards below.

11. RESPONSE AND RESOLUTION. Ingenious Administration, Support and Maintenance Response and Resolution Standards are:

- i. **PRORITY** – Ingenious service-wide or large impact performance issues or High Availability Activities such as Police, Fire, Health Emergency or Municipal Emergency Management, Available 24 hours a day, 7 days a week, 365/366 days a year, both On-Site and Remote. Response Time is 15-25 minutes. On-Task Time is 30-60 minutes. Estimated Time to Repair (ETR) is 1-2 hours or less.
- ii. **ROUTINE** – For all other matters. Available both On-Site and Remote from 8:00 AM to 5:00 PM, Monday through Friday, except holidays. Response time is 60-120 minutes. On Task Time is 2-4 Hours. Estimated Time to Repair (ETR) is 8-48 Hours.
- iii. **TRAINING & HELP DESK** – Performed both Remotely and On-Site, Training is Scheduled and Live Help Desk Support is available 8:00 AM through 5:00 PM, Monday through Friday, except holidays. Online Help is always available at www.ingeniousmartbusinessphones.com/resources This knowledge base is updated frequently to incorporate field experience and client feedback.

12. SCHEDULED MAINTENANCE. Ingenious will scheduled maintenance periods and provide Customer a minimum of 24 Hours’ notice prior any such maintenance that requires an On-Site Visit or that could impact Customer’s service(s).

13. EQUIPMENT.

- a. Only equipment or device(s) provided by Ingenious will be provisioned to or activated on the Ingenious Network.
- b. Customer is expressly forbidden from attempting to connect or actually connecting to the Ingenious Network any equipment or device(s) or to allow others to connect or attempt to connect equipment or device(s) that are not provided by Ingenious.
- c. Customer agrees that Ingenious retains exclusive physical and monetary ownership of all equipment and device(s) provided by Ingenious and located at Customer's site(s) or in the possession of Customer for the purpose of delivering Ingenious service(s) including all hardware, software, copyrighted materials or intellectual property and the rights therein or thereto except as otherwise expressly provided.
- d. Customer also agrees that Ingenious may from time-to-time substitute equipment or device(s) provided as replacement(s) so long as the substituted equipment or device(s) is of equal or better value as that which is replaced.
- e. Customer agrees that neither Customer nor any third party shall assume, obtain or have any expressed or implied rights in or to any part of the Ingenious service(s) or the equipment and device(s) that Ingenious provides. All rights expressly not granted by Ingenious are reserved by Ingenious. Specifically, Customer may not;
 - i. Attempt to sell, remarket, change or encumber Ingenious service(s), equipment or device(s).
 - ii. Add to, modify, or interfere with Ingenious service(s), equipment or device(s), or allow any third party (other than those authorized by Ingenious) to do so.
 - iii. Customer shall take such action (including, but not limited to, the execution, acknowledgment, delivery and assistance in preparation of documents or the giving of testimony) as may be requested by Ingenious to evidence, confirm and put third parties on notice of Ingenious' interests in the Ingenious service(s) equipment and device(s), including without limitation, the filing of financing statements under the Uniform Commercial Code.
 - iv. Customer hereby agrees and acknowledges that, upon termination of service(s), Ingenious shall be granted access to Customer property(s), premises, site(s), rooms and spaces where any Ingenious equipment or device(s) are located within five (5) business days following the termination of the Service(s).
 - v. Additionally, Customer will return or make available for removal all equipment and device(s) that Ingenious has provided, in the same condition as when originally provided by Ingenious, ordinary wear and tear excepted.
 - vi. Customer agrees to be liable for the costs, as determined by Ingenious, to repair or replace any Ingenious provided equipment in control or possession of Customer, that is incomplete, lost, damaged or destroyed intentionally or unintentionally, by Customer or any other party (except those authorized by Ingenious).
 - vii. Customer agrees to maintain causality insurance sufficient to cover the stated value of all equipment and device(s) provided by Ingenious (as listed on the most recent Ingenious Technology LLC invoice) at the Customer's property(s), premises, site(s), rooms and spaces. Customer will provide, Ingenious with a

Certificate of Liability and Casualty Insurance which specifically names Ingenious Technology LLC as the certificate holder.

14. SETUP AND ACTIVATION.

- a. Ingenious will deliver, setup, activate and maintain all service(s) at Customer site(s), including all equipment and devices required for providing the service(s) ordered and contracted by Customer. Customer agrees and acknowledges that Ingenious or an Ingenious employee, contractor or agent may actually perform any or all of the setup, activation and maintenance of the Ingenious service(s).
- b. Customer will be responsible for preparing and providing their site(s) for setup, activation and maintenance of the Ingenious equipment and device(s) by providing acceptable space, foundations, heating, cooling and electrical power, and for affording Ingenious employees, contractor(s) or agent(s) reasonably acceptable access to the premises/site(s) where Ingenious equipment and device(s) are located.
- c. Except in the case of an urgent service need, Ingenious will provide a reasonable amount of advance notice to Customer prior to needing to access Customer's premises/site(s) for maintenance of Ingenious service(s), equipment and device(s)
- d. The activation of service(s) shall be considered complete and accepted by Customer when the Customer is able to make and receive phone calls. Configuration changes will not be considered reason for non-acceptance by the Customer unless Customer provides a Notice of Non-Acceptance in writing, within five (5) days of activation of any service. Such notice will adequately describe the specific service and reason(s) for non-acceptance and specific action(s) requested by Customer. Upon receipt of such written notice from Customer, Ingenious may, in its sole discretion immediately terminate such service(s) and remove all equipment and device(s) relating to the Ingenious service(s) or begin remediation of the specific reason(s) cited by Customer in the Notice of Non-Acceptance. Should acceptable remediation not be achieved within fifteen (15) days after receipt of the Notice of Non-Acceptance by Ingenious, Ingenious will return to Customer all amounts paid by Customer to Ingenious, provided, however, that Ingenious may retain from such returned amount the total of actual cost(s) incurred by Ingenious since inception of the Customer contract(s) with Ingenious.

15. CUSTOMER OWNED-SUPPLIED EQUIPMENT OR SERVICE(S). At all times while Ingenious is providing service(s) to Customer, Customer will ensure that all network equipment and service(s) not provided by Ingenious are in proper working order. Customer takes full responsibility for any service degradation or outages, or loss of business caused by equipment or service(s) installed, provided or maintained by a party(s) other than Ingenious, including customer's employees, contractors and agents. This includes equipment and service(s) installed, provided or maintained Customer's Internet Service Provider(s) (ISP) and Local Area Network (LAN) provider(s). If such equipment fails to allow proper operation of Ingenious service(s), Customer agrees to promptly work with and hold the respective party(s) responsible for correcting any/all technical issue(s) pertaining to the Customer's WAN/LAN and when requested, to coordinate their resolution with Ingenious. If on request by Ingenious, Customer fails to act in a timely or adequate manner, or if the responsible party(s) fail to act in a timely and adequate manner to correct issues, make repair(s) or replace equipment that may be

preventing Ingenious from delivering service(s) to Customer, Customer understands and agrees that Customer is required to remain current payment for Ingenious service(s) in accordance with Sections 4 and 7 of these Terms and Conditions and may be subject to charges by Ingenious for time and materials expended by Ingenious to correct such issue(s) caused by or due to action(s) or inaction(s) of Customer or the LAN provider(s) or WAN/ISP.

16. CONFIDENTIALITY. Ingenious and Customer each agree to use reasonable efforts to protect and maintain in confidence the others information and to not use or disclose any portion of the other Party's Confidential Information to Third Parties, except with prior approval or as reasonably necessary to perform their duties under an Ingenious Service Order(s), Agreement(s) or Contracts(s) or as expressly authorized in these Terms and Conditions. As used herein, "Confidential Information" means all confidential or proprietary information of Ingenious or Customer, its employees, suppliers, contractors or agents disclosed as part of any Service Order(s), Agreement(s) or Contracts(s) jointly entered in to. Ingenious and Customer agree that, upon termination of the Service Order(s), Agreement(s) or Contracts(s), each will return any Confidential Information received from the other. The Confidential Information shall remain the sole property of the disclosing party, and no license is granted to the recipient under any intellectual property rights or other proprietary rights. Ingenious and Customer each agree to use reasonable efforts not disclose or use the other's Confidential Information for any purpose other than that allowed by law or these Terms and Conditions, except with prior written permission of the other. If Ingenious or Customer is compelled by law to disclose Confidential Information of the Customer, Ingenious or Customer shall to the extend practical, and legally permitted, provide the other with prior written notice of such compelled disclosure and reasonable assist the other, if desired, in contesting the disclosure. Ingenious and Customer agree that monetary damages for breach of confidentiality hereunder may not be adequate and that, if necessary, Ingenious or customer shall be further entitled to seek injunctive relief. Confidential Information shall not include information which is:

- a. Generally known to the public before disclosure.
- b. Has become known publicly, without fault to Ingenious or Customer.
- c. Has been subsequently disclosed to the public by Ingenious or Customer.

17. REMOTE SYSTEM MONITORING. Customer acknowledges and agrees that Ingenious will remotely monitor any and the Ingenious Service(s), equipment and device(s) software used to provide service(s), maintain quality of the service(s), monitor and generate call volume and usage statistics and ensure Customer's compliance with the AUP.

18. WARRANTIES. Ingenious and Customer warrant and covenant that; it has obtained all authorization(s), consents, and permissions necessary to perform its duties and to satisfy its obligations under the Service Order(s), Agreement(s) or Contracts(s) to fully and consistently comply with all applicable laws, and acceptance of a Service Order(s), Agreement(s) or Contracts(s) will constitute valid and binding obligations of Customer, enforceable against it in accordance with these Terms and Conditions and it shall comply with the policies set forth in the AUP, and the Service Order(s), Service Agreement(s) or Contract(s). Ingenious warrants that the Service(s) will be performed with reasonable skill and care in a professional and workmanlike manner and that it will use reasonable efforts to restore service(s) in the event of failure. THIS SECTION REPLACES AND IS IN LIEU OF ALL OTHER WARRANTIES OR

CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED, EXPRESSED OR OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. INGENIOUS DOES NOT WARRANT ANY PARTICULAR RESULTS THAT MAY BE OBTAINED BY THE USE OF INGENIOUS SERVICE(S) OR THAT THE SERVICE(S) OR ASSOCIATED SYSTEMS, EQUIPMENT AND DEVICE(S) WILL OPERATE A MANNER AS EXPECTED BY CUSTOMER. While Ingenious may implement certain agreed upon security measures for Customer, Ingenious does not warrant secure operation of the service(s) or that it will be able to prevent service disruptions or unauthorized access.

- 19. REQUIRED NOTIFICATION REGARDING E911 SERVICE.** *The Federal Communications Commission (FCC) requires an Internet telephone service Provider (ITSP) like Ingenious to inform all subscribers that, under certain circumstances, when 911 is dialed from a phone connected to an internet phone service, such as Ingenious; Emergency Service(s) may not be accessible or information provided to Emergency Service(s) may be limited. Further, you are hereby advised that the E911/911 service provided by Ingenious (1) will not function with the loss of local electrical power; (2) will not function if the internet connection to which the Ingenious service is connected is not fully operational; (3) may not transmit the correct physical address for any E911 call if you provided an incorrect physical address to Ingenious, or the phone that an Emergency Call is made from has been moved from where it was original physical location where Ingenious activated it or due to delays in recording or updating the physical address information into the E911 database; (4) will not function or may transmit incorrect physical location information if the phone equipment is at a remote location and such location has not been reported to Ingenious as may be the case when subscribing to Ingenious remote phone service or a mobile device application service(s); (5) may not function if the phone equipment is improperly configured based on any of the conditions above; (6) may not be able to be received and/or acted upon by an Emergency Call Center (Public Service Answer Point (PSAP) due to technical issues; (7) may be affected by other factors, such as network congestion or the quality of an internet connection or general conditions on the internet. Your signature on any Ingenious Service Order(s), Service Agreement(s) or Contract(s) serves as your acknowledgement that Ingenious has advised you of these potential Emergency Service (E911/911) risks and limitations as required by the FCC. Additionally, you acknowledge and agree to hold harmless Ingenious, its owners, employees, contractors or agents for any injury or death to persons or animals, damage or vandalism to property, loss of income, profits (actual, claimed or perceived) or any other loss(s) that may arise from a lack of availability or proper reporting of an Emergency Call using the Ingenious Network.*
- 20.** Ingenious Network is fully E911/911 Compliant provided that endpoint(s) are physically located that Ingenious has them provisioned for. In order to maintain Full E911/911 compliance, and timely and accurate Emergency Call Reporting, Customer must not move or disconnect an Ingenious phone from the physical location where Ingenious originally provisioned/activated it. Should Customer allow any Ingenious phone be moved by anyone other than an Ingenious authorized representative, the potential for inaccurate routing and/or reporting of an Emergency Call may occur. Customer acknowledges that should such an event occur, a **\$200.00 per call** fee may be assessed and be payable by Customer.
- 21. PATENTS AND COPYRIGHTS.** If an unaffiliated third-party claims that any of the Service(s), Equipment or device(s) provided by Ingenious infringes on that party's U.S. copyright or patent,

Ingenious will, at its expense, defend Customer against that claim and pay all costs, losses, damages, attorney costs and all associated settlements that a court finally awards. If such a claim is made or appears likely to be made, Customer agrees to permit Ingenious to enable Customer to continue to use the affected Service(s), Equipment or device(s), or to modify them to make them non-infringing, or to replace them with other service(s), equipment or device(s) that is substantially a functional equivalent. If Ingenious determines that none of these options is reasonably available, then Ingenious may immediately terminate the Service Agreement(s) in whole or with respect to the specific affected Service(s), equipment or device(s) and no further payment obligations shall be due Ingenious or from Customer. THIS IS INGENIOUS'S ENTIRE OBLIGATION AND LIABILITY REGARDING INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

Notwithstanding the foregoing, Ingenious will have no responsibility to provide (a) any additional or replacement Service(s), equipment or device(s) after Ingenious has notified Customer to discontinue use, or (b) provide alteration modification of the Service(s), equipment or device(s) to continue the agreed upon service(s).

22. CUSTOMER INDEMNITY. Customer will, at its expense, defend Ingenious against all claims by third-parties arising from or related to Customer's use or misuse of the Service(s), equipment or device(s) and Customer shall pay costs, losses, damages, and reasonable administrative and legal costs that a court may finally award as well as all associated settlements.

23. INDEMNIFICATION PROCEDURE. The indemnification obligations under Sections 22 above are conditioned on the indemnifying Party receiving (a) prompt written notice of the claim, (b) the necessary assistance, information and authority to defend the claim and perform its obligations, and (c) control of the defense and settlement of such claim and all associated negotiations. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought under Sections 21 or 22 by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

24. LIMITATION OF LIABILITY. In no event will the Ingenious total, aggregate liability arising from or related to the Service Order(s), Service Agreement(s) or Contract(s), including for negligence, strict liability, breach of contract, misrepresentation, and other contract or tort claims), exceed the lesser of (a) the amount of direct damages actually incurred by Customer or (b) the amount of Service Costs paid to Ingenious for the specific service under which the damages arose during the six (6) months immediately preceding the earliest event giving rise to the damages. UNDER NO CIRCUMSTANCES SHALL INGENIOUS, ITS OWNERS, EMPLOYEES, CONTRACTOR, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY OF THE FOLLOWING: (a) THIRD PARTY CLAIMS OTHER THAN THOSE IDENTIFIED IN SECTION 21, (b) LOSS OR DAMAGE TO ANY RECORDS, DATA OR VOICE, (c) ANY DAMAGES CAUSED BY DELAY IN DELIVERY, INSTALLATION, OR SERVICE(S) HEREUNDER, (d) ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON OTHER THAN INGENIOUS, ITS EMPLOYEES, CONTRACTORS AND AGENTS, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO NETWORK

CONDITIONS, COMPUTER VIRUSES, WORMS, SABOTAGE, DENIAL OF SERVICE ATTACKS (DOS), DNS/DID SPOOFING ATTACKS AND/OR OTHER ATTACKS OF A SIMILAR NATURE, OR (e) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES (INCLUDING LOST PROFITS AND LOST SAVINGS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 25. COMPLIANCE WITH LAWS.** The Service(s) are provided solely for lawful purposes and use. Without limiting the other terms of any Service Order(s), Service Agreement(s) or Contract(s), Customer shall be solely responsible for, and agrees to comply with, all laws, statutes, ordinances and/or regulations (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, false advertising, privacy and data protection, and publicity) (collectively, "Laws") applicable to Customer's business and its use of the Service(s). Customer agrees that Ingenious may in its sole discretion make changes to any of the Service(s) from time-to-time as may be reasonably necessary or appropriate for Ingenious to comply with applicable Laws or regulations. Customer further agrees that if a change in applicable Laws makes the continued performance of the Service Order(s), Service Agreement(s) or Contract(s) (or any part thereof), in the sole reasonable discretion of Ingenious, unduly burdensome or unlawful, Ingenious, may at any time, terminate the Service Order(s), Service Agreement(s) or Contract(s) in whole or in part.
- 26. COMPLETE AGREEMENT.** The Terms and Conditions (T&C) listed herein, and the Acceptable Use Policy (AUP) are collectively the complete agreement between Ingenious and Customer regarding its subject matter, superseding any prior oral or written communications. To be effective, amendments or changes to a Service Order(s), Service Agreement(s) or Contract(s) must be in mutually executed writings.
- 27. INDEPENDENT CONTRACTORS.** Both, Ingenious and Customer are independent contractors for all purposes under any and all Service Order(s), Agreement(s) or Contract(s). Neither Party has the authority to bind the other to or incur any obligation on behalf of the other, or to represent itself as the other's agent, or in any way that might result in confusion as to the fact that both Ingenious and Customer are separate, distinct legal entities.
- 28. GOVERNING LAW; SEVERABILITY.** The Service Order(s), Service Agreement(s) or Contract(s) shall be governed in all respects by the laws of the State of New York, County of Erie and without regard for choice-of-law rules or principles. Any dispute arising out of or related to any Service Order(s), Agreement(s) or Contract(s) shall be resolved only in the state or federal courts having jurisdiction in the Town of Tonawanda, New York. If any provision is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law; the remainder of any Service Order(s), Agreement(s) or Contract(s) shall remain in full force and effect throughout the term of such Service Order(s), Service Agreement(s) or Contract(s).
- 29. NOTICES.** All notices will be personally sent or delivered by certified or registered mail, return receipt requested, or by nationally recognized overnight express courier, to Ingenious Technology LLC, ATTN: Legal Department, 1868 Niagara Falls Blvd., Suite 200A, Tonawanda, New York 14150, or such other address as a party may specify in writing. Such notices will be effective upon receipt, which may be shown by confirmation of delivery.
- 30. NO WAIVER.** The waiver by Ingenious or Customer of any breach of the agreement by the other in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind. The failure of either Ingenious or Customer to exercise any rights in a particular

instance will not operate as a waiver of right to exercise the same or different rights in any subsequent instance.

- 31. ASSIGNMENT.** Customer may not assign or otherwise transfer any Service Order(s), Agreement(s) or Contract(s) without the prior written consent of Ingenious. Any Service Order(s), Agreement(s) or Contract(s) shall be binding upon and inure to the benefit of Ingenious and Customer's successors and permitted assigns.
- 32. FORCE MAJEURE.** Neither Party shall be liable for any delay or failure due to force majeure and other causes beyond its control, including for acts of God, labor disputes, changes in government policy/law, war, epidemics, acts or omissions of vendors or suppliers, disruptions caused by failures of the Internet Service Provider(s), Local Area Network (LAN) provider(s), including those providing electricity, telecommunications links and/or essential connectivity, or other occurrences which are beyond the reasonable control of Ingenious or Customer. This provision shall not apply to any of Customer's payment obligations. Failure of either party to perform because of the occurrence of an event of force majeure lasting more than forty-five (45) days will, upon twenty-four (24) hours' written notice to the other, represent a ground for termination only of the Service(s) affected by such event (and not of the entire Service Order(s), Service Agreement(s) or Contract(s)).
- 33. DEFINITIONS.**
- a. "AUP" means Ingenious System's Acceptable Use Policy. This policy prohibits use of the ingenious Smart Business Phones Service for predictive (non-human) dialing, the creation of SPAM, or any attempt to tamper, probe, or scan the Ingenious network, service(s), equipment or device(s). See Section 34 of these Terms and Conditions for the complete Acceptable Use Policy (AUP).
 - b. "Confidential Information" means non-public information that a party provides and reasonably consider to be of a confidential, proprietary or trade secret nature, including but not limited to the Service Order(s), Service Agreement(s) or Contract(s), as well as Ingenious and its licensors/licensees, marketing, engineering and other plans, financial statements and projections, customer and supplier information, research, designs, plans, compilations, methods, techniques, processes, procedures, and know-how, whether in tangible or intangible form, and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically, or in writing. Confidential Information shall not include Non-Confidential Information.
 - c. "Non-Confidential Information" means information which: (a) is, as of the time of its disclosure or thereafter becomes part of the public domain through no fault of the receiving party; (b) can be demonstrated by credible evidence; (c) as rightfully known to the receiving party prior to the time of its disclosure, or (d) to have been independently developed by the receiving party; (e) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (f) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, provided that the receiving party has provided prompt written notice and assistance to the disclosing party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy to protect against disclosure.
 - d. "Service Activation Date" is the date which Ingenious Service(s) are in effect at Customer's location/site(s) and Customer is able to utilize the Ingenious Smart Business Phones Service to make and receive calls as covered by an applicable Service Order(s), Service Agreement(s) or Contract(s). Customer will not be invoiced for service(s) on connected on the Activation Date. Billing commences the day following the Service Activation Date.
 - e. "Third Party Products" means, collectively, any non-Ingenious organization, software, products or service(s).

34. ACCEPTABLE USE POLICY (AUP). You and anyone you allow access to your Ingenious Network Service(s) are prohibited from violating, or attempting to violate, the security of the Ingenious Service(s) and Ingenious equipment or device(s). Any such violations may result in criminal and civil liabilities to Customer. Ingenious will investigate any alleged violations, and, if an AUP or criminal violation is suspected, Ingenious will take appropriate action to include cooperating with law enforcement agencies in their investigations. Violations of the security of Ingenious Service(s) and/or Ingenious equipment or device(s) include, without limitation, the following:

- a. Using or attempting to use the Ingenious Service(s), equipment or device(s) to create or distribute SPAM, make phone calls or sending messages that are prohibited by local, state or federal law or for any other similar purpose that is not expressly permitted by Ingenious.
- b. Logging into an Ingenious Account or Network that Customer is not authorized to access.
- c. Accessing data, equipment, network service(s) or taking any action to obtain service(s) not intended or authorized for Customer use.
- d. Attempting to probe, scan, or test the vulnerability of any system, subsystem or network tampering, hacking, modifying or otherwise corrupting or breaching security or authentication measures, or: transmitting material that contains virus's computer programming routines or engines with the intent or effect of damaging, destroying, disrupting or otherwise impairing a computer's functionality or the operation of Ingenious service(s), equipment or device(s) owned or used by Ingenious. Interfering with, intercepting or expropriating any system, data or information; or interfering with service to any user, host, or network or "crashing" any computer system.

CONFIDENTIAL: Ingenious, 1868 Niagara Falls Blvd., Suite 200A, County of Erie, Tonawanda, New York 14150 (1 January 2021)