

## COHERE UNIVERSAL TERMS AND CONDITIONS OF SERVICE

The Cohere Universal Terms and Conditions of Service set forth below (hereinafter referred to as the "Universal Terms" or "Agreement") apply to Customer's use of the Service and Equipment (as defined below) provided by Cohere Communications, LLC in the United States, Cohere Communications Ltd in Canada, and any Cloud Service (as defined below) provided by Cohere Cloud Services LLC (collectively referred to as "Cohere") as well as Customer's access to the Cohere website (the "Website"). The Service will be provided by Cohere Communications, LLC if ordered by Customer in the United States and by Cohere Communications Ltd if ordered by Customer in Canada. All Cloud Service will be provided by Cohere Cloud Services LLC.

### **CUSTOMER IS ADVISED TO READ SECTION 2(d) CAREFULLY BEFORE USING THE SERVICE. THIS SECTION EXPLAINS THE OPERATION AND LIMITATIONS OF VOIP E911 EMERGENCY CALLS.**

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**1. Definitions.** The following definitions apply to this Agreement:

**"Account"** means the account established by Customer for the use of the Service and/or Equipment.

**"Affiliate"** means any entity which directly or indirectly controls, is controlled by or is under common control with the subject entity. "Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Cloud Service"** means services made available to Customer and its Users on demand via the internet from Cohere's managed servers to provide access to hosted applications and services, e.g., online data storage and backup solutions, storage of web-based e-mail services, hosted office suites and document collaboration services, database processing, and managed technical support services.

**"Cohere"** means Cohere Communications, LLC for any Service (except Cloud Service) provided to Customer in the United States, Cohere Communications Ltd for any Service (except Cloud Service) provided to Customer in Canada, and Cohere Cloud Services LLC for the provision of any Cloud Service.

**"Colocation Service"** means the provision of designated space in a data center facility in which Customer rents space for Customer's servers and other computing hardware. The service might also include cooling, power, dedicated internet connection, and/or physical security and related support. Depending on Customer's requirements and space availability, space may range from a single rack-unit or server shelf to locked cabinets and custom-sized cage and/or private suites.

**"Contractor"** means a person or entity, other than Cohere, who is retained or used by Cohere to assist in the sales, marketing, delivery, installation, provision, maintenance, servicing, repair, or operation of any Cohere Service and/or Equipment.

**"Customer"** or **"you"** or **"your"** means the firm, corporation, or other entity which orders Cohere's Service and/or Equipment, and who is responsible for the payment of charges and for compliance with this Agreement.

**"Customer Equipment"** refers to equipment or wiring that Customer acquires from a source other than Cohere and is used in conjunction with any Service. Customer Equipment includes, without limitation, computers, networking devices, servers, and data communications hardware and software owned, leased, used, and/or maintained by Customer.

**"Data Backup Service"** means automatic secure backup of selected data file servers to off-site locations including associated installation and maintenance support.

**"Direct Inward Dialing"** or **"DID"** refers to a Service feature that allows callers from the PSTN to directly reach a specific network telephone number or User of the Service.

**"Disaster Recovery Service"** is a service which provides one or more of the following elements subscribed to by Customer in the event of a disaster: office accommodations (dedicated or shared) for a specified number of personnel; backup equipment as agreed to in writing; telephone, facsimile, and photocopy facilities; communications links

and internet access; and assistance in transferring Customer's operating systems and data to designated backup equipment to enable Customer to operate its computer system. It is Customer's responsibility to recover its data and applications unless specifically agreed to by Cohere in the Customer Service Order Agreement.

**"E911 Disclosure Notice and Acknowledgement"** or **"E911 Disclosure"** means the provisions set forth in the Cohere E911 Disclosure Notice and Acknowledgement posted on the Website at [www.coherecomm.com](http://www.coherecomm.com) and/or attached to and incorporated by reference into the Customer Service Order Agreement stating Cohere's policies regarding the availability and limitations of E911 Service with respect to Cohere's VoIP Service and as may be amended from time to time by Cohere. In the event of any conflict or inconsistency between the E911 Disclosure provisions set forth on the Website and the E911 Disclosure attached to any Customer Service Order Agreement, the E911 provisions set forth on the Website are the most current provisions and shall apply and govern this Agreement and any Customer Service Order Agreement.

**"Equipment"** means equipment at Customer's location(s) that is directly provided or maintained by Cohere and used in conjunction with the provision of any Service. Equipment does not include any Customer Equipment.

**"Internet Protocol"** or **"IP"** refers to a standard protocol designed for use in interconnected systems of packet-switched computer communication networks.

**"Priority One Service"** means proactive workstation and file server management including antivirus and malware protection, automatic software license renewal, operating system updates, patches and service pack applications, storage capacity reporting and maintenance, disk defragmentation and temporary file, 24/7/365 status monitoring and alert notification with remote support and, if ordered by Customer, onsite dedicated support.

**"Public Switched Telephone Network"** or **"PSTN"** refers to the traditional circuit switched local telephone network, which connects telephone users with each other for the purpose of communications. In common usage, the term PSTN may also include local wireless networks.

**"Service"** refers to the services provided to Customer by Cohere, including voice, data, Cloud Service, Priority One Service, Data Backup Service, Colocation Service, Disaster Recovery Service, and all other types of communications and other services. The specific services to be provided by Cohere to Customer are listed in the Customer Service Order Agreement executed by Customer and Cohere and may be described in detail on the Website.

**"Service Activation Date"** for each Service means the earlier of (a) the date that Customer is notified that the Service has been installed or is ready to be installed (for purpose of this definition, written notification by email to Customer's designated contact will constitute valid written notice); (b) the date that Customer has committed to accept the installation of the Service at any Customer location; (c) the date the Service is made available to Customer. In a situation where Customer has ordered both voice and data services from Cohere and data services are made available for Customer's use prior to voice services, the data services are being provided by Cohere subject to the terms and conditions of this Agreement and Customer shall be financially responsible for paying for all such data services at each

location in accordance with the terms of this Agreement but the Service Activation Date shall still be determined based on the earlier of the date when voice communications service was first installed or ready to be installed by Cohere or the date that Customer has committed to accept the installation of the voice communications service.

**"User"** means any person or entity that obtains or uses any Cohere Service and/or Equipment provided under this Agreement and/or any Customer Service Order Agreement, regardless of whether such person or entity is authorized by Customer.

**"Voice over Internet Protocol" or "VoIP"** refers to a technology that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology.

**"Website"** means the Cohere website identified by the domain name www.cohererecomm.com, along with any content set forth therein, as updated from time to time by Cohere in its sole discretion.

## 2. Terms and Conditions.

**(a) Acceptance.** By ordering, activating, using, or paying for any Service and/or Equipment, Customer agrees to be bound by this Agreement. Cohere reserves the right, with or without notice, to amend or modify the Universal Terms, and Customer agrees to be bound by any amendment or modification. The E911 Disclosure is incorporated into this Agreement by reference. Modifications or amendments to the Universal Terms shall be effective at the time they are posted on the Website. To the extent Customer orders Cloud Service, Priority One Service, Data Backup Service, Colocation Service, and/or Disaster Recovery Service, the terms and conditions set forth in Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E, respectively, shall also apply and govern Cohere's provision and Customer's use of any such service(s). Each exhibit shall neither apply nor have any force or effect unless Customer orders the specific service(s) as set forth in a Customer Service Order Agreement or other written agreement executed by Cohere and Customer. Exhibits A, B, C, D, and E are posted on the Cohere Website at www.cohererecomm.com.

**(b) Use.** Customer is responsible for all use of the Service and Equipment associated with the Account. Customer accepts full responsibility and liability for such use. The Service and Equipment provided under this Agreement may be used for any lawful purpose for which they are technically suited. Customer agrees not to utilize the Service or Equipment for any unlawful purpose. Customer shall not use any Service for transmitting or receiving any communication or material of any kind when the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national, or international law, or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. Cohere, in its sole discretion, may terminate Service immediately and without advance notice if Customer violates any of the above restrictions, leaving Customer responsible for the all charges as set forth in Section 3(b).

**(c) Fraud.** Customer agrees to notify Cohere promptly if it becomes aware of any fraudulent or unauthorized use of its Account, Service, and/or Equipment. Cohere shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Customer's Account or Service, and the payment of all charges to Customer's account shall be and remain the responsibility of Customer.

**(d) Limitations of E911 Service.** By using the VoIP Service and/or Equipment, Customer acknowledges the limitations of Cohere E911 Service as described in the E911 Disclosure, as well as those set forth below. Customer agrees and acknowledges that while some individual services offer access to E911 Service, others may not. Customer is advised to thoroughly understand the Cohere E911 Service and the options available. By accepting these Universal Terms, Customer acknowledges that it has received the information regarding the limitations of Cohere E911 Service, has read, understands, and agrees to the terms and conditions of the E911

Disclosure, and assumes the risks associated with the Cohere E911 Service limitations. Cohere may disclose to the Federal Communications Commission that Customer has acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement.

**(e) Availability.** The Service and Equipment are offered subject to the availability of the necessary facilities, services, and equipment, and subject to the provisions of this Agreement. Cohere shall be not be responsible or liable for any delay(s) in installing or providing any Service or Equipment ordered by Customer. To the degree Customer orders any broadband circuit from Cohere and the specific circuit bandwidth and/or speed requested by Customer is unavailable at the designated Customer location, Cohere will make commercially reasonable efforts to provide the closest bandwidth and/or speed available under the circumstances and the provision of such reduced bandwidth and/or speed shall not constitute a default or breach of this Agreement or be grounds for Customer to terminate the Agreement or any Customer Service Order Agreement ("Service Order"). If the requested bandwidth and/or speed is unavailable at all or unavailable at the price designated by Cohere in the Service Order, Customer, by giving Cohere written notice within ten (10) business days of being notified by Cohere that the requested bandwidth and/or speed is unavailable at all or unavailable at the price quoted in the Service Order, has the right to terminate the order for the specific broadband circuit ordered by Customer. If, within the enumerated ten (10) business day time period, Customer fails to provide written notice of termination of the specific broadband circuit ordered by Customer, Customer shall be deemed to have waived its right to terminate the broadband circuit. If the broadband circuit is available at the bandwidth and speed ordered by Customer but not at the price quoted in the Service Order and Customer has not terminated broadband circuit in accordance with the written notice requirements of this Section 2(e), Customer agrees to execute an addendum to the Service Order to reflect the revised price, bandwidth, and/or speed, as applicable.

**(f) Compatibility.** The Service and Equipment may not be compatible with Customer Equipment, and Cohere is not required to maintain or repair Customer Equipment, or modify the Service to make it compatible with Customer Equipment.

**(g) Right to Suspend.** Cohere reserves the right to suspend, limit or discontinue offering or providing Service, when necessitated by conditions beyond its control, when Customer or any User is using the Service in violation of the provisions of this Agreement, or when Customer or any User is using the Service in violation of the law.

**(h) Limitations of Service and Equipment.** Customer or any User may not be able to utilize the Service and/or Equipment, if: (i) the Equipment or Customer Equipment fails; (ii) the power required to operate Customer's or any User's computer, router, or modem, if applicable, fails; (iii) Customer's or any User's computer experiences hardware or software problems and/or viruses; (iv) in situations where Cohere is not the Internet service provider, Customer's or any User's Internet service provider fails to provide adequate services for any reason; (v) Customer's or any User's hardware or software is improperly installed; or (vi) Customer or any User is blocked or otherwise unable to access the Cohere network. By using the Service and/or Equipment, Customer and its Users acknowledge that the Service and/or Equipment may be limited in certain circumstances and may not be available 100% of the time. Cohere will not be liable for errors in transmission or for failure to establish connections. In addition, Customer acknowledges and agrees that the Service and/or Equipment may not be compatible with certain fax machines or firewalls.

**(i) Customer Responsibilities.** By using the Service and/or Equipment, Customer and all of its Users acknowledge that there are certain rules and regulations that may apply to the location(s) from which Customer and its Users are utilizing the Service, and that such rules and regulations may be materially different from jurisdiction to jurisdiction. Customer, on behalf of itself and all Users at Customer's premises agrees to abide by all rules and regulations, including the exportation of data from the U.S. or other applicable jurisdictions. With respect to Customer's use of the Service and/or any Equipment as well as any Customer Equipment, Customer shall be responsible for

any claim or damages arising from or related to: libel; slander; invasion of privacy; infringement or unauthorized use of any copyright, trademark, trade name, service mark, or any other intellectual property right; interference with or misappropriation or violation of any proprietary or creative right; and any injury to any person, property, or entity arising out of the material, data, information, or other content used, received, or transmitted by Customer or any User; any act, error, or omission by Customer or any User. Customer shall also be responsible and liable for any personal injury, property damage, or death of any person caused, directly or indirectly, by Customer, any User, or any Customer employee, agent, or contractor, arising from or related to the installation, maintenance, location, condition, operation, failure, presence, use, or removal of the Service, Equipment, or any Customer Equipment.

**(j) Services.** For Cohere's provision of voice and/or data services, Customer acknowledges and agrees that Cohere does not have complete management and control nor can Cohere prioritize voice traffic over other types of traffic (data, video, etc.) on any service or circuit which routes traffic through the public internet. Accordingly, Cohere shall not be responsible for any service interruption, degradation, delay, transmission error, operational failure, and/or unavailability (individually and collectively referred to as "Service Problem") at any location where Customer orders or uses an unmanaged service. For purposes of this Agreement, an "unmanaged service" means any Customer service or circuit (e.g., T-1, DSL, cable, Ethernet) which, instead of routing voice and data traffic directly to Cohere's data center, routes traffic over the public internet before it is sent to a Cohere data center. Although Cohere agrees to take commercially reasonable efforts to work with Customer to try to identify, address, and resolve any Service Problem on an unmanaged service ordered by Customer, Cohere is unable to control the reliability or quality of traffic routed on an unmanaged service. Cohere is not responsible for any Service Problem experienced by Customer at any location where Customer orders or uses an unmanaged service. Customer shall not be entitled to any service credits or any other remedy, including, without limitation, a termination right under Section 3(c), for any Service Problem on any unmanaged service.

**(k) Information and Installation Responsibilities.** For Cohere's provision of voice and/or data services, Customer acknowledges and agrees that the Service may be comprised of multiple circuits and/or services ordered from Cohere for installation at one or more designated Customer locations. The estimated in service date (EISD) for each Service and circuit ordered by Customer for each Customer designated location will be sent by Cohere to Customer after Customer's execution of the Customer Service Order Agreement. Customer agrees and acknowledges that, in order for Cohere to install the Service at each designated Customer location as of the EISD, Customer is obligated to provide to Cohere requested information (e.g., complete list of telephone numbers to be ported to the Cohere network, exact location of circuit installation and designated demarcation point, site survey information, equipment information, etc.) and documentation (e.g., completed and signed Letter of Agency) in a timely manner. Once the EISD for each service and circuit ordered for each designated Customer location has been sent to Customer, if, for any reason, Customer (i) fails to provide any requested information and/or documentation to Cohere in a timely manner; and/or (ii) subsequently cancels or requests that the EISD for any service or circuit be moved to a later date, then Customer shall remain responsible and agrees to pay for all applicable monthly recurring charges, non-recurring charges, and any other applicable charges and fees (as described in the Customer Service Order Agreement executed by Customer) as well as applicable taxes for each service and circuit ordered by Customer as if the service and circuit was installed as of the EISD. Customer's financial obligation to pay shall apply irrespective of Customer's reason for failing to provide requested information and/or documentation in a timely manner or reason for cancelling or requesting a delay in any EISD and irrespective of whether the Cohere service and/or circuit ordered by Customer is actually installed and used by Customer as of the EISD. The foregoing payment obligation as of the EISD shall not apply if

the EISD is missed or delayed as a direct result of any delay in installing a circuit or service caused by Cohere or any Cohere service or equipment provider. In such situation, Customer's payment obligations shall commence on the date when the service is actually installed by Cohere or would have been installed except to the extent any delay is caused by Customer's (a) failure to provide any requested information and/or documentation to Cohere in a timely manner as describe above; and/or (b) cancellation or request that the EISD for any service or circuit be moved to a later date.

**(l) Required Maintenance.** Cohere reserves the right to perform maintenance on or upgrade its network, its infrastructure, the Website, the Service and/or Equipment, and Customer's Account, without prior notice or liability, even if such actions cause a partial or full disruption of the Service; provided, however, and subject to Cohere's business needs, Cohere will use commercially reasonable efforts to perform maintenance on and upgrades to its network and the Service in a manner so as to avoid unduly interfering with Customer's use of the Service. Cohere may, in its sole discretion, add, change or delete features of the Website, features or functionality of the Service and Equipment, or features of Customer's Account.

### 3. Term and Termination.

**(a)** Unless otherwise terminated pursuant to this Agreement, each Service ordered by Customer is offered for an initial term of service (the "Initial Term") specified in the Customer Service Order Agreement ("Service Order"), which begins on the Service Activation Date and shall be for a minimum of twelve (12) months and could be longer depending on the length of term selected by Customer in the Service Order. Unless Customer notifies Cohere within three (3) days of the Service Activation Date that a Service is not working properly, the Service will be deemed accepted and billing will be effective as of the Service Activation Date. If Cohere cannot complete installation of a Service due to any Customer delay or inaction or Customer providing inaccurate information, Cohere may begin charging Customer for the Service and Customer shall pay such charges which will appear on Customer's first invoice. If Customer orders installation of a Service at more than one location, the Initial Term for all Customer locations shall begin on the Service Activation Date at the last location where the Service is installed. For avoidance of doubt, Customer shall be and remain financially responsible for paying for Cohere Service at each designated Customer location where Cohere Service is installed but the Initial Term for all Customer locations shall not begin until the Service Activation Date for the applicable Service at the last location where the Service is installed as set forth in any Customer Service Order Agreement or Customer Service Order Agreement Addendum signed by Customer within ninety (90) days of submission of the first Customer Service Order Agreement. Customer agrees and acknowledges that, for multi-location Service Orders, the Initial Term for those Customer locations installed prior to the last Customer location will be longer than the Term Commitment set forth in the original Customer Service Order Agreement. Following expiration of the Initial Term, this Agreement and the Service Order for each Service ordered by Customer shall automatically renew for successive terms that are identical in length to the Initial Term (each, a "Renewal Term") unless and until either party notifies the other party in writing at least ninety (90) days prior to the end of the Initial Term or any Renewal Term that it does not wish to renew the Service Order. If Customer provides Cohere with ninety (90) days prior written notice of its intent not to renew the Initial Term or any Renewal Term in accordance with this Section 3(a), Customer agrees and acknowledges that Cohere, upon receipt of such written notice from Customer, shall have the right to: (i) request and receive pre-payment for all amounts that Customer might owe for the remainder of the Initial Term or Renewal Term that is not being renewed; and (ii) charge Customer at Cohere's prevailing professional services rates for any services provided by Cohere to Customer for discontinuing Customer's use of the Service and assisting with migrating Customer to another vendor. If, during the Initial Term or any Renewal Term, Customer adds any additional services or incremental Users to its use of any Service, the amount of Customer's monthly recurring charges shall, in accordance with Cohere's prevailing rates at the time, increase the sum set forth in the original Customer Service Order Agreement. The term for any such additional services shall be commence on the Service Activation Date

for the additional services and remain in effect for the remaining length of the unexpired Initial Term or Renewal Term for the ordered Service then in effect at the time Customer adds any additional services. To the extent that the parties agree in writing to extend the term for any additional services beyond the Initial Term or any Renewal Term, the terms and conditions of this Agreement shall remain in full force and effect with respect to such additional services until the expiration of the term for such additional services.

**(b) Early Termination.** (i) If this Agreement or any Service Order is terminated by Customer prior to the expiration of the Initial Term or any Renewal Term for any Service and such termination is not due to Cohere's uncured breach as set forth in Section 3(c) or if Cohere terminates this Agreement or any Service Order pursuant to Section 2(b) or 3(c) due to Customer's uncured breach, Customer shall pay to Cohere an early termination charge, which Customer agrees is reasonable, equal to: (1) all non-recurring charges set forth in the Service Order; **plus** (ii) one hundred percent (100%) of all monthly recurring charges for the terminated Services multiplied by the number of months remaining in the Initial Term if the Agreement and/or Service Order is terminated during months 1-12 of the Initial Term; or (2) if the Agreement and/or Service Order is terminated after month 12 of the Initial Term, the average of all monthly recurring charges paid or payable by Customer for the terminated Services during the prior twelve (12) month period immediately preceding the month of termination multiplied by the number of months remaining in the Initial Term or Renewal Term in effect at the time, including all applicable taxes and fees. For avoidance of doubt, Customer agrees and acknowledges that the foregoing early termination charges shall apply even if Customer terminates the Agreement and/or any Service Order prior to commencement of the Initial Term and prior to the Service Activation Date for each applicable Service. The parties agree that the precise damages resulting from an early termination by Customer or termination by Cohere due to Customer's breach are difficult to ascertain and the early termination charge set forth in this Section 3(b) is a reasonable estimate of anticipated actual damages and not a penalty. The early termination charge shall be due and payable within ten (10) days of the effective date of termination.

**(ii) Business Divestiture or Business Downturn.** Subject to the requirements of Section 3(b)(ii) below, if Customer experiences a Business Divestiture or Business Downturn (as defined below), Cohere will negotiate in good faith with Customer to reduce the monthly recurring charges obligation that will apply after the occurrence of the Business Divestiture or Business Downturn. For purposes of this Section 3(b), the following definitions shall apply: (1) "Business Divestiture" means the sale or divestiture by Customer of a subsidiary, affiliate, or significant operating unit that uses any of the Cohere Service(s) subscribed to in a Customer Service Order Agreement; and (2) "Business Downturn" means an unplanned, material reduction in Customer's revenues and business operations beyond Customer's control, which materially and permanently reduces the size and scope of Customer's business operations and the volume of Cohere Service(s) being used by Customer. By way of illustration and not by limitation, Business Downturn shall not include a change in Customer's usage of any Cohere services resulting from a decision by Customer to reduce its overall use of telecommunications services, to alter or optimize its telecommunications network architecture, or to utilize services being provided by another vendor in lieu of Cohere's services.

**(iii)** To exercise its rights under Sections 3(b)(ii) and 3(b)(iii), Customer must: (a) give Cohere immediate written notice of the conditions which Customer believes give rise to a Business Divestiture or Business Downturn and the application of this Sections 3(b)(ii) and 3(b)(iii); (b) certify to Cohere in writing that it has not substituted any other services or technology provided by any other vendor in place of the terminated or reduced amount of the Cohere services; (c) provide copies of documentation and data demonstrating the need to decrease Customer's use of Cohere's services hereunder; and (d) in the case of a Business Divestiture, promptly provide documentation which establishes that a Business Divestiture has occurred. Sections 3(b)(ii) and 3(b)(iii) are inapplicable to any dedicated circuits provided by Cohere and may not be exercised during the first twelve (12) months of the Initial Term and, thereafter, may

only be used one (1) time during the Initial Term or any Renewal Term. Any reduction in the monthly recurring charges for Cohere services owed by Customer resulting from application of Sections 3(b)(ii) and 3(b)(iii) shall not exceed a total aggregate amount of twenty-five percent (25%) of the monthly recurring charges for any such services (exclusive of any dedicated circuits), as set forth in the Service Order or any other order form signed by Customer, which were charged by Cohere to Customer in the month immediately prior to the occurrence of the Business Divestiture or Business Downturn and will require a written amendment to the Service Order or order form to be executed by both parties.

**(c) Termination for Breach.** Either party may terminate this Agreement (or any Service Order) if the other party (a) is in material breach of this Agreement and such breach is not cured within thirty (30) days after the breaching party's receipt of written notice thereof, or (b) becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed over such party's assets. Each party must exercise its right of termination for the other party's uncured breach within thirty (30) days of discovering the other party's breach of this Agreement or any applicable Service Order or such specific breach shall be deemed to have been waived. Notwithstanding any other provision of this Agreement, Cohere has the right to suspend any Service, and terminate this Agreement for Customer's material breach, immediately upon written notice if any amount owed by Customer is delinquent for more than twenty (20) days from the invoice date.

**(d) Effect of Termination.** Upon the expiration or any termination of this Agreement, Customer shall immediately cease any and all use of and access to any Cohere Service and any Cohere Confidential Information. Cohere shall have no liability from any termination of this Agreement provided that it is conducted in accordance with the terms of this Agreement. Sections 1 through 5, Section 9, Section 10, and Section 12 through 27 shall survive any termination or expiration of this Agreement.

**(e) Government or Regulatory Developments.** Cohere has the right to terminate any Customer Service Order Agreement if, regardless of the cause or reason, Cohere cannot legally provide some or all of the Equipment or Services for a period exceeding ten (10) days, including, without limitation, loss of governmental or regulatory authorizations required to provide the Equipment or Services; or, if changes in laws or regulations make the provision of some or all of the Services impracticable or illegal for Cohere to install, maintain, or operate any of the Equipment or provide any Service.

#### 4. Limitation of Liability

**(a)** Cohere's liability for damages arising out of any mistake, interruption, omission, delay, error, or defect which occurs in the course of installing, providing, maintaining, or modifying Service and/or Equipment or for any other reason, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the period during which the fault(s) occurred. In the event that Customer experiences a loss of service due to Cohere's fault, negligence, act, error, or omission, Cohere will provide Customer with a credit on a pro-rata basis for the period of time that the Service was unavailable to Customer. In order to receive a credit, Customer must provide Cohere written notice within ten (10) days of the service interruption and the credit will be applied to a future Customer invoice.

**(b)** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY CUSTOMER SERVICE ORDER AGREEMENT, IN NO EVENT WILL COHERE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER, ANY USER, OR ANY THIRD PARTY FOR ANY CLAIM, LOSS, EXPENSE, OR DAMAGE DUE TO LOSS OF REVENUES, PROFITS, SAVINGS, BUSINESS, OR GOODWILL, NOR WILL COHERE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES. THE FOREGOING LIMITATION OF

LIABILITY SHALL APPLY, WITHOUT LIMITATION, TO ANY CLAIM, LOSS, EXPENSE, OR DAMAGE, RELATING TO OR ARISING FROM ANY MALFUNCTION OF ANY SERVICE, EQUIPMENT, OR FACILITY PROVIDED BY COHERE OR ANY OTHER SERVICE PROVIDER AS WELL AS THE FAILURE OR INABILITY TO ACCESS E911 SERVICE OR ANY EMERGENCY SERVICE.

(c) NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT OR ANY CUSTOMER SERVICE ORDER AGREEMENT, IN NO EVENT SHALL COHERE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY USER OF THE SERVICE AND/OR EQUIPMENT DUE TO THE INABILITY OF CUSTOMER, ANY USER, OR ANY OTHER PERSON OR PARTY TO BE ABLE TO DIAL 911 OR ACCESS AND/OR SPEAK TO 911 EMERGENCY PERSONNEL THROUGH SERVICES OR EQUIPMENT PROVIDED BY COHERE; OR COHERE'S SUSPENSION OR TERMINATION OF SERVICES IN ACCORDANCE WITH THESE UNIVERSAL TERMS. THE LIMITATIONS SET FORTH IN THIS SECTION 4 APPLY TO ALL CLAIMS, DAMAGES, AND ALLEGATIONS WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY.

(d) Except for Cohere's gross negligence or willful misconduct, in no event shall Cohere's total aggregate liability to Customer, including, without limitation, liability to any User, person, or persons whose claim or claims are based on or derived from a right or rights claimed by Customer or to any third parties for any and all claims arising from or relating to any Service Order, these Universal Terms, or any other claim or cause of action, whether in contract, tort, or otherwise, exceed the aggregate amount of charges paid by Customer to Cohere during the six (6) month period immediately preceding the date of the occurrence of the event giving rise to the claim or cause of action. Cohere shall have no liability whatsoever for any damage to, or loss of, any equipment or other property under the care, custody or control of Customer or any User unless caused by Cohere's gross negligence or willful misconduct, in which case Cohere's maximum liability is set forth above in this Section.

(e) Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the limitations set forth in this Section 4 may not apply to Customer if prohibited by law.

(f) No action against either party arising out of this Agreement may be brought by the other party more than one year after the cause of action has arisen.

## 5. No Warranty.

THE EQUIPMENT AND SERVICE ARE PROVIDED BY COHERE ON AN "AS IS" BASIS, AND CUSTOMER'S AND ITS USERS' USE OF THE EQUIPMENT AND SERVICE ARE AT CUSTOMER'S OWN RISK. WITHOUT LIMITING THE FOREGOING, AND EXCEPT FOR ANY THIRD PARTY MANUFACTURERS' WARRANTIES THAT MAY BE APPLICABLE TO THE EQUIPMENT PURCHASED BY CUSTOMER DIRECTLY FROM COHERE, COHERE MAKES NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FUNCTION, WHETHER EXPRESS OR IMPLIED. COHERE MAKES NO WARRANTY THAT THE SERVICE OR EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE. COHERE DOES NOT WARRANT THAT ANY SERVICE WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE NETWORK WILL HAVE THE CAPACITY TO MEET THE DEMAND OF USERS DURING SPECIFIC HOURS. CUSTOMER MAY BE UNABLE TO ACCESS THE SERVICE AT ANY TIME AND DISCONNECTION FROM THE SERVICE MAY OCCUR FROM TIME TO TIME.

## 6. Equipment.

Customer is responsible for all costs at its premises, including, without limitation, its personnel, wiring, computer equipment, Internet access (in situations where Cohere is not the Internet service provider), electrical power, and the like, necessary for the use of the Service and any Equipment.

## 7. Software.

Cohere uses certain software and related components licensed by Cohere from third parties. Customer shall not use any such third party software and related components except in conjunction with use of the Service and/or Equipment.

## 8. Third Party Networks and Network Monitoring.

(a) Cohere utilizes the public Internet and third-party networks in conjunction with its provision of the Service and the Website. Cohere makes no representation that the Internet or any third-party network will adequately protect the privacy of Customer's or any User's personal information, and Cohere expressly denies any liability associated therewith.

(b) **Monitoring.** Cohere may monitor Customer's Account and Customer's and Users' use of any Service to respond to service or technical problems; to monitor compliance with this Agreement or any Service Order; if there has been an actual or suspected violation of this Agreement or any Service Order; to assess or determine that the Service and any Equipment are properly implemented and configured; at Customer's request; or to protect the integrity of the Cohere network or Customer's use of the Service, in any emergency situation, or any other situation in which Cohere, in its good faith judgment, deems appropriate under the circumstances.

## 9. Financial Terms.

(a) **Prices and Charges.** In addition to paying for all applicable non-recurring and professional services charges, Customer shall, throughout the Initial Term and any Renewal Term, pay the monthly recurring charges set forth in the Service Order. All such monthly recurring charges shall apply irrespective of whether Customer decreases, abandons, and/or cancels its use of any Service and/or Equipment during such the Initial Term or any Renewal Term. Customer agrees and acknowledges that Cohere may start billing, and Customer is obligated to pay, for data services once the data circuit ordered by Customer has been delivered at the designated Customer premises. Cohere may increase, decrease, change, or modify any of its rates for any Service at any time; provided, however, that such changes shall not be effective until at least thirty (30) days after written notice is given to Customer. Notwithstanding Section 3(b), if Cohere increases the rate to be paid for any Service, Customer shall be permitted to terminate the affected Service(s) provided by Cohere, without incurring an early termination charge, if Customer gives Cohere written notice of termination within thirty (30) days of receipt of Cohere's notification of any rate increase for such affected Service(s). If Customer elects to terminate Service in accordance with this Section 9(a), Customer shall remain liable for any accrued charges owed prior to the effective date of termination. If Customer fails to give written notice of termination within thirty (30) days of receipt of Cohere's written notice of a rate increase, Customer shall be deemed to have accepted the rate increase, waived its right to terminate, and this Agreement and all Service Orders shall remain in full force and effect.

## (b) Taxes, Fees, and Professional Services.

(i) **Taxes.** Federal, state, local, county, municipal, and other government or regulatory agencies may assess taxes, including, without limitation, excise, franchise, sales, value-added, use, personal and real property taxes, surcharges and/or fees ("Taxes") on Customer's purchase and/or use of the Service and/or Equipment. These Taxes may change from time to time, with or without notice to Customer. Customer is responsible for the payment of all applicable Taxes now in force or enacted in the future. Such amounts are in addition to the charges paid for the Service and Equipment. If Customer is exempt from any or all Taxes, it must provide Cohere with an original certificate that satisfies applicable legal requirements attesting to its tax exempt status. Tax exemption shall only apply from and after the date that Cohere receives such valid certificate.

(ii) **Fees.** In addition to any Taxes imposed by governments or regulatory agencies, Cohere reserves the right to charge or increase various fees ("Fees"), including, without limitation, activation fees, E911 Service fees, universal service fees, and regulatory recovery

fees. Any imposition of or increase in Fees that are imposed by a government or regulatory agency or that are intended to recover costs associated with government or regulatory programs may, in Cohere's sole discretion, be effective immediately upon posting to the Website. The imposition of or increase in any Fees shall not constitute a rate increase as described in Section 9(a) and shall not give Customer a right to terminate this Agreement or any Service Order pursuant to Section 9(a).

**(iii) Professional Services.** If, at any time during the Initial Term or any Renewal Term, Customer requests Cohere to provide any type of support service(s) which is outside the scope of routine customer support (i.e., unrelated to an operational problem with the Cohere network or Cohere service) or a situation or matter not caused by Cohere (e.g., equipment set up not requested during the initial installation; additional training after any requested formal training; questions about customer-provided equipment), Cohere shall have the right to charge, and Customer agrees to pay, a professional services fee for any such support services provided by Cohere to Customer which are outside the scope of routine customer support. The imposition of a professional services fee as set forth in this Section shall not constitute a rate increase as described in Section 9(a) and shall not give Customer a right to terminate this Agreement or any Service Order pursuant to Section 9(a).

**(c) Billing and Payment.**

**(i) Payment.** All Cohere invoices are due upon receipt and all payments must be made in U.S. currency. Customer shall pay monthly recurring charges for any partial month during the Initial Term or any Renewals Term on a pro rata basis. Customer is solely responsible for any and all charges incurred as the result of the use of the Service associated with its Account, whether or not such charges were authorized or intended. Cohere may suspend, restrict, or cancel use of the Service and Equipment, if Customer does not make full payment of all billed charges by the due date. Any amounts not paid to Cohere within twenty (20) days of the date of the applicable invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Customer shall also reimburse Cohere for all reasonable attorneys' fees and other costs incurred by Cohere in connection with collecting delinquent payments or with Customer's breach of this Agreement. Customer shall be responsible for all sales, use, value added or other tax or duty arising from or related to this Agreement and the provision of Services and Equipment, except for taxes on Cohere's net income.

**(ii) Invoice and Statement Periods, Format and Delivery.** Billing periods and invoice formats may vary. Cohere reserves the right to change the billing period, invoice format, or method of delivery from time to time, with or without notice to Customer. Unless otherwise agreed, all invoices shall be delivered electronically via the email address on file for Customer's Account. Customer is obligated to keep its Account information accurate and current. An incorrect or obsolete email address shall not release Customer from any of its payment obligations.

**(iii) Methods of Payment.** In its sole discretion and in limited instances, Cohere reserves the right to accept payment by credit card. Customer acknowledges and agrees that each credit card payment is subject to a credit card processing fee of twenty-five dollars (\$25) and an additional charge of 0.04% of the amount due. In situations where Cohere agrees to accept payment by credit card, Cohere reserves the right to discontinue acceptance of payment by credit card at any time.

**(iv) Prepayment.** Unless otherwise agreed to in writing by Cohere, all monthly recurring charges for Service and Equipment will be billed and paid one calendar month in advance. Cohere has the right to bill and Customer shall pay for all non-recurring and professional services plus applicable taxes prior to the applicable Service Activation Date. All usage and related charges will be billed and paid in arrears as and when they are incurred and remain subject to the payment terms set forth in this Agreement.

**(v) Billing Disputes.** If Customer believes that it has been charged in error, or if Customer believes that it is due a credit or refund, Customer must notify Cohere in writing within thirty (30) days after delivery of Cohere's invoice. Any billing disputes must be in writing,

using the Cohere Credit Request Form, including a detailed statement describing the nature and amount of the disputed charge(s) and the reason(s) why a credit or refund is being requested, and sent via certified or overnight mail, return receipt requested, to the attention of:

Billing Department  
Cohere Communications, LLC  
845 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10022

Customer shall cooperate fully with Cohere to promptly address and attempt to resolve the disputed charge(s). If Customer fails to provide written notice of dispute within the enumerated thirty (30) day deadline, the charges and invoice will be considered correct and binding on Customer. Irrespective of the foregoing, Customer shall pay the full amount of the invoice, including the disputed amounts, in a timely manner and in accordance with the payment terms set forth in this Agreement.

**(d) Service Suspension, Termination and Restoration.** Cohere may suspend or terminate Customer's Service, and may terminate this Agreement or any Service Order, if Customer fails to meet any or all of its payment obligations. If Customer's Service has been suspended or terminated, Cohere may, at its sole option, choose to restore or re-establish Customer's Service prior to the payment of all charges due. Such restoration or re-establishment shall not be construed as a waiver of Cohere's right to receive full payment for all charges due or as a waiver of any rights to suspend or disconnect Service for non-payment of any such charges due and unpaid or for the violation of any provision of this Agreement; nor shall the failure to suspend or disconnect Service for non-payment of any past due amount operate as a waiver or estoppel to suspend or disconnect Service for non-payment of such Account or of any other past due Account. If Service is suspended for non-payment of charges, it will be only restored when all charges are paid in full and at Cohere's discretion.

**(e) Authorization to Verify Credit Rating.** Customer agrees to supply Cohere with the information necessary to verify Customer's credit rating prior to providing Customer with access to any Service or Equipment. Cohere may also, during the term of this Agreement, update its information regarding Customer's credit rating without notice to Customer.

**(f) Deposit.** If Cohere determines, prior to providing Customer with access to any Service or Equipment, or during the term of this Agreement or any Service Order, that it requires a deposit to ensure Customer's payment, Customer may be required to provide a deposit. In the event Cohere requires a deposit, the deposit will be held and applied as required by law. Cohere may apply Customer's deposit to past due obligations as well as to any fees or other assessments to Customer's Account.

**10. Trademarks.**

Customer shall not use any of Cohere's trade names, trademarks, service marks, or logos without Cohere's express written consent.

**11. Service Disconnection.**

Cohere reserves the right to terminate the Service or Customer's use of the Equipment in the event Customer or any User is in violation of this Agreement. Cohere may be required by law to interrupt the Service in the event it causes interference to the Cohere network, any party, or any equipment.

**12. Indemnification.**

**(a)** Cohere shall, at its expense, indemnify, defend and hold harmless Customer, its officers, directors, employees, agents, and contractors, from and against any third party claim, action, proceeding, liability, loss, damage, cost and expense, including reasonable attorneys' fees and court costs to the extent caused by the negligence or willful misconduct of Cohere and arises from: (a) any bodily injury or death to any person or persons or damage to tangible personal property (which, for the avoidance of doubt, does not include software or data) directly caused by Cohere while at Customer's physical location(s); and (b) the Cohere Service

infringing a third party's rights under any United States registered patent, copyright, or trademark.

**(b)** Customer shall, at its expense, indemnify, defend and hold harmless Cohere, its officers, directors, employees, agents, and contractors, from and against any and all losses, damages, claims, allegations, causes of action, liabilities, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any User of the Service or Equipment; (ii) any breach by Customer of any term or condition of any Service Order or this Agreement or Customer's breach of any warranty, representation or covenant in any Service Order or this Agreement; (iii) any claim by any employee or invitee of Customer or User other than a claim based on the gross negligence or willful misconduct of Cohere; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Services or Equipment; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

**(c)** Each party's indemnity obligations are subject to the following: (i) the aggrieved party shall promptly notify the indemnifier in writing of the claim; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to the claim (provided that the indemnifier may not settle or defend any claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party shall cooperate fully to the extent necessary, and execute all documents necessary for the defense of such claim.

### 13. Confidentiality.

**(a)** Each party (a "Receiving Party") acknowledges that it and its employees, contractors, or agents may, in the course of providing or using the Services and/or otherwise satisfying its obligations hereunder, be exposed to or receive information which is proprietary or confidential to the other party (a "Disclosing Party"). Any and all such information in any form obtained by a Receiving Party or its employees, contractors, or agents in the provision or use of the Services or the satisfaction of such party's obligations under this Agreement, including but not limited to the financial terms of this Agreement or any Service Order, product and business information, financial information, trade secrets, know-how and information regarding processes, shall be deemed to be the confidential and proprietary information ("Confidential Information") of the Disclosing Party. The Receiving Party agrees (a) to hold all Confidential Information in strict confidence; (b) to disclose Confidential Information only to employees and/or contractors of the Receiving Party who have a need to know such Confidential Information and who are obligated to hold such Confidential Information in strict confidence; and (c) not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose such Confidential Information to third parties, or to use such Confidential Information for any purposes whatsoever other than in connection with the Receiving Party's performance under this Agreement.

**(b)** Confidential Information shall exclude all information, which (a) is at the time of disclosure or thereafter becomes a part of the public domain through no act or omission of the Receiving Party, its employees, contractors, or agents; (b) was in the Receiving Party's possession as shown by written records prior to the disclosure and had not been obtained by Receiving Party either directly or indirectly from the Disclosing Party; (c) is hereafter disclosed to the Receiving Party by a third party who did not acquire the information directly or indirectly from the Disclosing Party hereunder; (d) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information, as evidenced by written records; or (e) was required by law to be disclosed, but only to the extent and for the purposes of such required disclosure.

### 14. Governing Law and Dispute Resolution.

**(a)** This Agreement and the terms of any Customer Service Order Agreement(s) and any addendum thereto, shall be governed by and enforced according to the laws of the state of New York without giving effect to any conflicts of laws rules.

**(b)** In the event of any controversy or claim arising from or related to this Agreement, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them. Except for disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges, amounts or fees invoiced to Customer, any and all disputes, controversies and claims arising out of or relating to this Agreement or any Customer Service Order Agreement(s), including its/their validity, shall be handled, determined, and resolved by arbitration conducted in the borough of Manhattan, New York, before one (1) arbitrator in accordance with the Commercial Arbitration Rules and Mediation Procedures then in effect of the American Arbitration Association. The arbitrator's award shall be final and binding on the parties, and judgment confirming such arbitration award may be entered thereon in any court having jurisdiction over such proceedings. Each party shall bear its own costs and expenses of preparing and presenting its case and shall bear an equal share of the expenses and fees with respect to the arbitration. The arbitrator shall not be empowered to award damages in excess of direct compensatory damages and shall not be authorized to award special, indirect, punitive, incidental, or consequential damages, and each party irrevocably waives any damages in excess of direct compensatory damages.

**(c) Action to Collect Charges.** Notwithstanding Section 14(b) above, the parties hereby agree that any disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges or fees invoiced to Customer arising from or relating to this Agreement including any Service Order, may be brought in the state or federal courts in the borough of Manhattan, New York. The parties hereby consent and submit to the exclusive jurisdiction of such courts. Each party hereto waives any objection based on forum non-conveniens and waives any objection to venue of any action instituted hereunder to the extent that an action is brought in any court identified above. Each party irrevocably consents to personal jurisdiction and venue exclusively in, and agrees to service of process issued or authorized by, any such court identified above. The parties also waive any right to jury trial in connection with any action or litigation in any way arising out of or related to Customer's failure to pay any charges or fees invoiced to Customer under this Agreement or any Service Order. Furthermore and notwithstanding Section 14(b) above, Cohere shall be reimbursed for all attorneys' fees and costs in the event it institutes any action to collect any amounts owed for Service and/or Equipment under this Agreement or any Service Order. In the event Cohere is required to initiate such an action, it shall not be limited to arbitration.

### 15. Severability.

This Agreement is made subject to all present and future valid orders and regulations of any regulatory body or court having jurisdiction over the subject matter hereof and to the laws of the United States, any of its states or any foreign governmental agency having jurisdiction. In the event that any of the provisions of this Agreement or any part thereof shall be determined by a competent authority to be invalid, unlawful or unenforceable to any extent, such provision or part thereof shall to that extent be severed from the remaining provisions of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

### 16. Notice.

**(a) To Customer:** Unless expressly stated otherwise in this Agreement, in the event Cohere is required or desires to provide Customer with notice under this Agreement, it will provide electronic notice to the e-mail address on file. In the event that Customer changes its e-mail address, Customer shall advise Cohere immediately in writing. By Customer's acceptance of these Universal Terms, Customer agrees to electronic delivery of all required notifications including invoices, unless otherwise provided for herein.

**(b) To Cohere:** Unless expressly stated otherwise in this Agreement, in the event Customer is required or desires to provide Cohere with notice, all correspondence must be in writing and sent, via certified mail, return receipt requested, or overnight courier service, to the following address:

Controller

Cohere Communications, LLC  
845 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10022

With a copy sent to:

Chief Executive Officer  
Cohere Communications, LLC  
845 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10022

#### 17. Waiver.

The failure of either party to enforce or insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any other provision of this Agreement.

#### 18. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and any User who uses the Services under Customer's Account.

#### 19. Assignment.

Customer shall not assign any of its rights or obligations under this Agreement, or transfer ownership of the Account or any Service or Equipment, without Cohere's prior written consent.

#### 20. Amendment.

Cohere reserves the right, with or without notice, to amend or modify these Universal Terms by posting such amendment or modification on the Website, and Customer agrees to be bound by any amendment or modification. Except as stated above in this Section 20 and subject to the terms and conditions of this Agreement, this Agreement may not be amended by Customer except by a written document executed by both parties.

#### 21. Entire Agreement and Merger.

This Agreement, along with the Customer Service Order Agreement(s) and the E911 Disclosure, supersedes and merges all prior agreements, promises, understandings, statements, representations, warranties, indemnities, covenants, and all inducements to the making of this Agreement relied upon by either party, whether written or oral, and embodies the parties' complete and entire agreement with respect to the subject matter hereof. Subject to Sections 2(a) and 20, no statement or agreement, oral or written, shall vary or modify the written terms hereof in any way whatsoever.

#### 22. Independent Contractors.

Cohere and Customer are independent contractors and any Service Order(s) and this Agreement do not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.

#### 23. Basis of Bargain; Failure of Essential Purpose.

Customer acknowledges and agrees that Cohere has established its prices and entered into one or more Customer Service Order Agreements in reliance upon the limitations and exclusions of liability and the warranty disclaimers set forth in these Universal Terms are an essential basis of the bargain between the parties and are material terms of this Agreement. The parties agree that the limitations and exclusions of liability and disclaimers specified in these Universal Terms will survive and apply even if found to have failed their essential purpose, and Customer hereby waives its right to contest the enforceability of any provision of these Universal Terms by reason of such failure.

#### 24. Third Party Beneficiaries.

Cohere may use or rely on one or more licensors, service providers, and/or equipment providers or equipment lessors whose products equipment, and/or services are incorporated into, provided in conjunction with, or licensed with, the Services and/or Equipment provided by Cohere, and each such licensor, service provider, equipment provider and equipment lessor is expressly made a third party beneficiary under the applicable Customer Service Order Agreement(s) and this Agreement. Such licensor, service provider, equipment provider, and equipment lessor shall have the right to enforce the terms and conditions of the Customer Service Order(s) and this Agreement respecting any terms affecting such licensor, service provider, equipment provider, or equipment lessor as if such person, company, or entity were a party to the Customer Service Order(s) and/or this Agreement.

#### 25. Facsimile Transmission/Counterparts.

This Agreement including any Service Orders may be executed and delivered by facsimile or email, and upon receipt such transmission shall be deemed delivery of an original. This Agreement including any Service Orders may be executed in several counterparts each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument.

#### 26. Force Majeure.

Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including, without limitation, acts of God, flood, fire, labor difficulties, governmental action, or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

#### 27. Interpretation of Agreement.

This Agreement and any Service Order will be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there will be no presumption or inference against the party drafting this Agreement or any Service Order in construing or interpreting any of the provisions contained in this Agreement or any Service Order. In the event of any inconsistency between or among any Service Order, the terms and conditions contained in the main body of this Agreement, or any exhibit, the following order of precedence shall apply and govern: (1) the applicable Service Order; (2) the terms and conditions contained in the main body of this Agreement; and (3) any exhibit to this Agreement. If any Service provided or provisioned by Cohere is undetermined by the Service Order as being provided pursuant to the terms and conditions contained in the main body of this Agreement or Exhibit A, Cohere shall have the exclusive right to designate which document shall apply and govern with respect to such Service.

**28. Cloud Services.** [Click Here](#): Exhibit A: Cohere Cloud Services Agreement.

**29. Priority One Service.** [Click Here](#): Exhibit B: Cohere Priority One Service.

**30. Data Backup Service.** [Click Here](#): Exhibit C: Cohere Data Backup Service.

**31. Colocation Service.** [Click Here](#): Exhibit D: Cohere Colocation Service.

**32. Disaster Recovery Service.** [Click Here](#): Exhibit E: Cohere Disaster Recovery Service.