

## LEGAL

# Big Ocean® End User License Agreement and Terms of Service

## [AUP](#)

IF YOU DO NOT AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT AND THESE TERMS OF SERVICE (COLLECTIVELY, "AGREEMENT"), DO NOT DOWNLOAD, INSTALL, OR USE ANY BIG OCEAN SOFTWARE APPLICATIONS OR SERVICES, INCLUDING THE BIG OCEAN WEBSITE ("WEBSITE").

BY DOWNLOADING, INSTALLING, OR USING ANY BIG OCEAN SOFTWARE APPLICATIONS OR SERVICES, YOU AGREE TO ABIDE BY AND COMPLY WITH THIS AGREEMENT, AND YOU AFFIRM THAT YOU EITHER ARE OVER THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE, ARE AN EMANCIPATED MINOR, OR POSSESS LEGAL PARENTAL OR GUARDIAN CONSENT, AND THAT YOU ARE FULLY ABLE AND COMPETENT TO ENTER INTO THE TERMS, CONDITIONS, OBLIGATIONS, AFFIRMATIONS, REPRESENTATIONS, AND WARRANTIES SET FORTH IN THIS AGREEMENT.

YOU UNDERSTAND THAT 911 SERVICE IS ONLY PROVIDED BY BIG OCEAN IP DESK PHONES AND THE BIG

OCEAN CALL CONTROLLER OR SOFTPHONES ON PCS. YOU FURTHER UNDERSTAND THAT 911 SERVICE IS NOT PROVIDED OR AVAILABLE ON THE OTHER BIG OCEAN SOFTWARE APPLICATIONS AND SERVICES (INCLUDING WITHOUT LIMITATION SOME SOFTPHONES). IF YOU SUBSCRIBE TO ONE OF THE OTHER BIG OCEAN SOFTWARE APPLICATIONS OR SERVICES (OR YOUR SOFTPHONE DOES NOT PROVIDE E911), YOU MUST MAKE ALTERNATIVE ARRANGEMENTS TO PLACE 911 CALLS, SUCH AS USING A TRADITIONAL WIRELINE OR CELLULAR TELEPHONE, AND YOU SHOULD NOT RELY ON BIG OCEAN TO CALL 911.

YOU UNDERSTAND THAT THE BIG OCEAN MOBILE APPLICATION USES YOUR DEVICE'S DIALER AND CELLULAR TELEPHONE SERVICE TO MAKE 911 CALLS. IF YOUR DEVICE DOES NOT HAVE CELLULAR TELEPHONE SERVICE, YOU WILL NOT BE ABLE TO CALL 911 FROM THE BIG OCEAN MOBILE APPLICATION.

BIG OCEAN SOFTWARE APPLICATIONS AND SERVICES ARE INTENDED FOR GENERAL BUSINESS USE ONLY. THEY ARE NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE OR RESALE AS EQUIPMENT OR SERVICES IN ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE (E.G., EMERGENCY MEDICAL CARE, HAZARDOUS ACTIVITIES) OR IN WHICH THE FAILURE OF THE SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. BIG OCEAN SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES OR SERVICES.

This Agreement governs your use of Big Ocean services ("Services"), such as Big Ocean Office, Big Ocean Fax, Big Ocean Professional (formerly Big Ocean Mobile), and the Big Ocean Website, and Big Ocean software applications ("Applications"), such as the Big Ocean Mobile Application and Big Ocean Call Controller or Softphone. This Agreement is between Big Ocean, Inc. and its affiliates ("Big Ocean") and the legal entity you represent by signing up for any Service, using the Service, or downloading, installing, or using any Application ("You"). If You are an individual entering this Agreement on behalf Your company, You represent and warrant that You have the authority and are competent to do so.

### 1. End User License and Restrictions

Big Ocean grants You a limited, personal, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable, non-resellable license and right to use the Big Ocean Services and Applications in strict accordance with this Agreement. All rights not expressly granted under this Agreement are retained by Big Ocean.

**No Grant of Intellectual Property Rights.** You acknowledge and agree that any and all patents, copyrights, trademarks, service marks, trade secrets, and all other intellectual property rights (collectively, "IP Rights") in the Applications and Services are and shall remain the sole and exclusive property of Big Ocean and its licensors. Nothing in this Agreement intends to or shall grant, transfer, or assign any IP Rights to, or vest any IP Rights in, You. You are only entitled to the limited use of the rights expressly granted to You in this Agreement. You will not take any action to jeopardize, limit, or interfere with the IP Rights. You acknowledge and agree that any unauthorized use of the IP Rights is a violation of this Agreement, as well as a violation of applicable intellectual property laws. You acknowledge and understand that all title and rights in and to any third party content that may be accessed through the Applications or Services is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.

**No Grant of Rights to Third Parties and No Resale.** You agree not to sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Applications or Services or any part thereof without Big Ocean's prior written consent. If You are interested in reselling products or services offered by Big Ocean, You are encouraged to join Big Ocean's affiliate network, available [Here](#). **No Modifications.** You agree not to undertake, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Applications or Services, or any parts thereof. You agree not to intercept, capture, emulate, decrypt, or redirect the communications protocols used by Big Ocean for any purpose, including without limitation causing the Applications to connect to any computer server or other device not authorized by Big Ocean or in a manner not authorized by Big Ocean.

**New Versions of the Software.** Big Ocean, in its sole discretion, reserves the right to add, remove, or modify features or functions, or to provide fixes, updates and upgrades, to the Applications and Services. You acknowledge and agree that Big Ocean has no obligation to make available to You any subsequent versions of the Applications or Services. You also agree that You may have to enter into a renewed version of this Agreement if you want to download, install, or use a new version of the Software. In addition, You and Big Ocean acknowledge that no Third-Party has any obligation whatsoever to furnish

maintenance or support services with respect to the Applications or Services and that Big Ocean is solely responsible for the provision of maintenance and support as provided in this Agreement and to the extent such maintenance and support is required under applicable law.

## 2. Service Registration Procedures

Upon signing up for the Service and at subsequent times as requested by Big Ocean, You agree to provide to Big Ocean Your true, accurate, current, and complete personal name and/or business name, administrator name, billing address, shipping address, the addresses where the Services will primarily be used, 911 registered address for each applicable device, email address, contact phone number, credit card information, and other data which may be necessary to administer Your Big Ocean account ("Account") (collectively, "Registration Data"). You represent and warrant that the information You provide is accurate, current, and complete, and agree to promptly update any of the information if it changes. If You provide Registration Data that is, or that Big Ocean suspects to be, false, inaccurate, not current, incomplete, fraudulent, or otherwise unlawful, Big Ocean has the right, in its sole discretion, to suspend or terminate the Service and refuse any and all current or future use of all Services by You, Your business(es), affiliates and all users of Your Account. At all times, You shall maintain and promptly update Registration Data.

Upon completion of all Registration Data and acceptance of this Agreement, Big Ocean will provide You with, as applicable, a password(s), user ID(s), PIN(s), telephone number(s), and other account information. You will be required to provide a

security question and answer that will be used to verify ownership or affiliation with the Account. You are solely responsible for maintaining the confidentiality of all passwords, PINs, and security questions and answers associated with the Account, and, at all times, You will be solely responsible for all transactions and activities that occur as a result of the disclosure (whether authorized or unauthorized) of any password(s), PIN(s), and/or security questions(s) and answer(s) associated with the Account, even if such transactions and/or activities were not authorized by You. You are solely liable for any transactions or activities by You or anyone else that occur on Your Account. You shall immediately notify Big Ocean of any unauthorized use of Your Account or if any other breach of security has occurred. In no event shall Big Ocean be liable for any unauthorized use of Your Account.

In connection with the registration, implementation, maintenance, or servicing of the Services, You will be required to provide data, information or other materials (collectively "Customer Data"). You hereby grant to Big Ocean a perpetual, worldwide, royalty-free, fully paid-up, non-exclusive, non-transferable (except in connection with an assignment of this Agreement) license to copy, store, record, transmit, display, view, print, and use Customer Data to the extent required to provide or improve the Services. Big Ocean may also share Customer Data as permitted pursuant to Big Ocean's Privacy Policy, which is incorporated into this Agreement.

### 3. Customer Representations

You represent and warrant that You possess the legal right, capacity, and ability to enter into this Agreement. You represent and warrant that You have made and will maintain at all times wireless or traditional wireline telephone service that will enable You to call 911 and any other applicable emergency service number. You represent and warrant that You will not use the Applications or Services in environments requiring fail-safe performance or in which the failure of the Applications or Services could lead directly to death, personal injury, or severe physical or environment damage. You represent and warrant that the Registration Data, user name, contact information, Registered Location(s), and all other information provided in connection with Your Big Ocean Account are true and correct at all times. You represent and warrant that You will not use the Applications or Services in violation of the Use Policy herein.

You agree to be financially responsible for Your use of the Applications or Services, including the authorized or unauthorized use of Your Account. In order to use the Applications or Services, You must have properly configured and working Internet service and/or Public Switched Telephone Network ("PSTN") service (i.e., mobile and/or landline phone service) and hereby agree, at Your sole expense: to (1) obtain access to Your own Internet and/or PSTN service with a third party provider other than Big Ocean; (2) be responsible for payment of Internet and/or PSTN connection or service fees and all equipment necessary to establish a connection to such Internet and/or PSTN service, as may be required to use the Applications or Services; (3) supply and pay third-party providers for all additional phone service and features required for Your use of the Applications or Services; and (4) pay Big Ocean for the Applications or Services.

### 4. Product Pricing and Availability

With respect to its advertising, offering, or sale of Applications, Services, or any other products (collectively, "Products"), Big

Ocean attempts to describe its products as accurately as possible. Nevertheless, Big Ocean does not warrant that any descriptions, pricing, availability, or other information relating to the advertising, offering, or sale of Products (collectively, "Product Information") from its Website, marketing materials, promotional flyers,

advertisements, or other printed or electronic materials (collectively, "Product Materials") is accurate, complete, reliable, current, or error-free. Despite our efforts, it is possible that Product Information may be mispriced, described inaccurately, or that the Product may be unavailable. In the event Big Ocean determines that a Product is mispriced, described inaccurately, or unavailable, Big Ocean reserves the right to take any action it deems reasonable and necessary to rectify the error, including without limitation, canceling Your Account or subscription to the Services. You agree to notify Big Ocean immediately if You become aware of any pricing or descriptive errors or inconsistencies with any Products You order through the Product Materials and comply with any corrective action taken by Big Ocean.

You acknowledge and agree that the Services may not be available 100% of the time. Credit allowances for interruption of the Services may only be provided on a case-by-case basis at the sole discretion of Big Ocean and shall be Your sole remedy for any Service interruptions or other issues with the Services.

## 5. Marketing Materials and Promotional Services

From time to time, Big Ocean may send You marketing materials and offer additional promotional services to You at no cost or at an additional fee ("Promotional Services"). You hereby agree that Big Ocean may send You (including registered administrators and end users of Your Account) such marketing and promotional materials via electronic transmission, e-mail, mail, or otherwise, provided, that You may unsubscribe to such materials at any time by notifying Big Ocean Customer Support. You understand and agree that Big Ocean may modify the scope of the Promotional Services it offers at any time without additional notice to You. You further understand and agree that Big Ocean may offer Promotional Services only to new customers and that You may not be eligible for some or all of the Promotional Service offerings. If You are offered promotional or special pricing by Big Ocean on any of the Services, You agree to keep the pricing information strictly confidential and shall not disclose such information to any third party without the express written consent of Big Ocean.

## 6. Use Policies

You shall not use the Services for any illegal, fraudulent, improper, or abusive purpose or in any way that interferes with Big Ocean's ability to provide high quality Services to other customers, prevents or restricts other customers from using the Services, or damages any Big Ocean's or other customers' property. If Big Ocean finds that You are using the Services for anything other than the permitted uses in this Agreement or for any of the prohibited uses in this Agreement, Big Ocean may at its sole discretion terminate Your Service and charge You any applicable fees for the Services used plus damages caused by Your improper use. Prohibited uses include, but are not limited to:

- Behavior that is illegal, obscene, threatening, harassing, defamatory, libelous, deceptive, fraudulent, malicious, infringing, tortious, or invasive of another's privacy.
- Sending unsolicited messages or advertisements, including email, voicemail, SMS, or faxes (commercial or otherwise) ("spamming"), or otherwise sending bulk and/or junk email, voice mail, SMS, or faxes.
- Harvesting or otherwise collecting information about others, including email addresses, without their consent.
- Negligently, recklessly, knowingly, or intentionally transmitting any material that contains viruses, time bombs, trojan horses,

worms, malware, spyware, or any other programs that may be harmful or dangerous.

- Creating a false Caller ID identity ("ID spoofing") or forged email/SMS address or header, or otherwise attempting to mislead

others as to the identity of the sender or the origin of any communication made using the Services.

- • Transmitting any material that may infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property

rights or other rights of third parties.

- • Violating any U.S. or foreign law regarding the transmission of technical data or software exported through the Services.
- • Utilizing the Services in excess of what, in Big Ocean's sole discretion, would be expected of normal business use, including

without limitation allowing more than one user to use a single VoIP line or using a single VoIP line in excess of what would

be expected of a single user.

- • Using the Services in any way that interferes with other customers' and third parties' use and enjoyment of the Services or

use the Services in any manner which disrupts, prevents or restricts any other customer from using the Services.

- • Using or employing methods and/or devices that are designed or likely to take advantage of, bypass, exploit, or otherwise

avoid this Use Policy.

- • Using the Applications or Services to store PHI on a non-temporary basis.
- • (If You are a HIPAA-Covered Entity) using the Applications or Services to transmit, receive, or store PHI without activation of

the Big Ocean HIPAA Conduit setting.

You further understand and agree that:

- • You shall be solely liable for any transmissions sent and data stored through the Services under Your Account, including the content of any transmission sent and data stored through the Services under Your Account.
- • You will abide by all applicable Big Ocean policies, procedures, and agreements related to the Services.
- • You shall not attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means.
- • Your use of the Services is subject to all applicable local, state, national, and international laws and regulations (including without limitation those governing account collection, export control, consumer protection, unfair competition, anti-discrimination, securities laws, and false advertising).

In addition, some of Big Ocean's plans and other Services are offered on an "unlimited" basis. All unlimited plans:

- • May only be used for normal business use.

- • Are provided only for dialog between two individuals at one time per line.
- • Exclude international calling, which is available for an additional fee.
- • Are issued on a "one (1) user per line basis", meaning that only one registered user may be assigned to use the Services for

any one line.

Unlimited plans also may not be used for any of the following prohibited uses (which are in addition to the other prohibited uses applicable to all Services):

- • Trunking or forwarding Your Big Ocean number to (an)other phone number(s) capable of handling multiple simultaneous calls, or to a private branch exchange (PBX) or a key system.
- • Spamming or blasting (e.g., sending one hundred (100) or more bulk and/or junk voicemail or faxes simultaneously).
- • Bulk call-in lines (e.g., customer support or sales call centers, "hotlines", 900 numbers, sports-line numbers, etc.).
- • Auto-dialing or "predictive" dialing (i.e., non-manual dialing or using a software program or other means to continuously dial

or place out-bound calls).

In addition, unusually high usage of the Services may impair Big Ocean's ability to provide high quality Services to others and/or indicate unauthorized use of the Services, in which case Big Ocean may suspend or terminate Your Account or, upon prior notice, convert Your Account to a metered calling plan that charges significantly higher usage rates.

Big Ocean reserves the right to add to, modify or amend this Use Policy at any time for any reason at its sole discretion.

## 7. Unsolicited Advertisements

The transmission of unsolicited calls, using the Services for broadcasting, and/or transmitting unsolicited fax advertisements

is illegal under federal law, including the Federal Telephone Consumer Protection Act of 1991 (<http://www.fcc.gov/document/telephone-consumer-protection-act-1991>), and under a number of similar state laws. Distribution of unsolicited voicemail, broadcast, and fax advertisements through the Services is prohibited. You shall not use the Services to send or transmit any unsolicited communications or advertisements and understand that, if You do, Big Ocean may immediately terminate Your right to use the Services without liability of any kind.

At Big Ocean's sole option and without further notice, Big Ocean may use technologies and procedures, such as filters, that may terminate such unsolicited advertisements without delivering them. You hereby release and agree to fully, finally, and forever release, hold harmless, and fully indemnify Big Ocean from and against any damages or liabilities of any kind related to any voicemail, broadcast, and/or fax spam or solicitations that You may send and/or receive using the Services.

If You transmit or are otherwise connected with any transmission of voice, fax, e-mail, or other unsolicited marketing messages using the Services, You agree to pay Big Ocean its actual damages if those damages can be reasonably calculated. If actual damages cannot be reasonably calculated, You agree to pay Big Ocean liquidated damages of ten dollars (\$10.00) for each unsolicited marketing message transmitted through the Services. You acknowledge that if actual damages cannot be reasonably calculated, these liquidated damages are a reasonable estimation of such damages and are not a penalty.

## 8. Plan Credits, Taxes, Charges, Fees and Chargebacks

Generally. Please note that all prices, taxes, surcharges, and fees are subject to change at any time. You are responsible for paying all charges for Your Account, including but not limited to toll -free, local, long distance, international, additional feature charges, 411 and operator assisted charges, and directory assistance charges, and for all taxes, surcharges, and fees imposed on you or us as a result of your use of the Service. Customers with a past due balance on previous or multiple accounts will be charged the full balance upon opening a new account or updating their credit card information on file. Big Ocean also reserves the right to charge termination and transfer fees consistent with each plan's terms and conditions and as provided in this Agreement.

Taxes, Charges, and Fees. All fees for Services advertised or otherwise listed on the Website are exclusive of any federal, state, local sales, international excise, value-added, and similar taxes or fees and administrative or recovery fees or charges (collectively "Taxes and Fees"). You agree to pay all Taxes and Fees and/or similar liabilities, however denominated, that may now or hereafter be levied on the Services which are chargeable to or recoverable from customers by any federal, state, local, or international law or regulation, as well as any administrative and recovery fees and charges levied on the Services by Big Ocean, whether or not mandated by law or regulation. Should Big Ocean pay or be required to pay such liabilities (including any Taxes and Fees that were due but not charged or previously collected), You agree that Big Ocean may charge Your credit card on file for such payments upon receipt of an invoice and showing of indebtedness to Big

Ocean.

Plan Credits and Minutes. Big Ocean offers several different plans for its products and Services. Some of the plans provide for a fixed number of monthly credits ("Monthly Credits"). If You exceed Your Monthly Credits during the course of a Service month, You may purchase additional credits ("Additional Credits" and collectively with the Monthly Credits, "Plan Credits") as needed. Big Ocean may also provide You certain bonus credit minutes and/or other promotional incentives (e.g., "tell-a- friend" credits) upon fulfillment of the applicable promotion requirements. All of the Plan Credits are quoted in terms of domestic minute usage, and may be referred to on the Website or by a Big Ocean Customer service representative as "minutes". As explained below, International Calling may be charged at a different rate than domestic calling, and a Plan Credit "minute" therefore will not entitle You to a minute of international calling.

Metered Calling Plans. Big Ocean offers several monthly metered plans for some of its products and Services. Each metered calling plan provides You with a toll-free or local telephone number and a fixed number of Plan Credits each month for a monthly fee, excluding taxes, surcharges, and fees. When You exhaust Your initial paid allotment of Plan Credits for

Your metered plan, unless You advise us otherwise in writing, we will automatically purchase the minimum package for additional minutes for Your plan on Your behalf (and Your Account will be charged accordingly). Additional minute usage will be debited at the applicable per minute rate(s) for Your metered plan. However, in some limited instances, calls placed under a metered plan may not be counted against Your monthly allotment (e.g., calls made via a local phone number to leave or check voicemail or configure a system and calls answered on the Big Ocean softphone). Please check the details of Your metered plan to determine which calls (if any) are not counted against Your monthly minute allotment. For international calling, international rates will apply.

Unlimited Plan. Big Ocean offers unlimited monthly plans for some of its products and Services. An unlimited plan provides You with a local or toll-free telephone number and is subject to the terms and restrictions of the Use Policy set forth above and other restrictions described in this Agreement. If, for any reason, Big Ocean believes that You are using the unlimited plan for a prohibited purpose and/or Your call usage violates the Use Policy, then Big Ocean may, in its sole discretion with or without notice, either

terminate Your unlimited plan or immediately convert Your unlimited plan to a metered plan, as set forth above.

**International Calling.** Because Plan Credits are quoted for domestic minute usage, You may be charged additional Plan Credits and/or additional rates may apply if You use Your Plan Credits for international calling. Big Ocean's current

international rates are available [Here](#). To make international calls using the Services, You must purchase the minimum package of international calling credits or be a pay per minute user. If You dial an international number and do not have any credits to make such call, You will automatically purchase the minimum package in order to complete such call. In addition, You may be charged any applicable Taxes and Fees associated with international calls. You are advised to refer to Your specific plan details regarding all domestic and international charges and all other terms and conditions of Your plan.

**Value, Ownership, and Expiration of Plan Credits.** Plan Credits, Additional Credits, Promotional Credits, and international calling credits have no monetary value and cannot be exchanged for the cash value at any time after such credits are purchased by You. Plan Credits may only be redeemed and used by the holder or users of the Account to which the Plan Credits have been credited, and may not be sold, transferred, assigned, or used by another user or with another user's account. Any unused Monthly Credits expire at the end of the relevant Service month and do not "roll over" to the next month. Additional Credits and Promotional Credits expire according to the terms of their purchase.

**Fraudulent Activity or Erroneous Charges.** In the event of suspected fraudulent activity or erroneous charges on Your Account, You agree to contact Big Ocean as soon as possible. In many cases, Big Ocean can mitigate or correct fraudulent activity or erroneous charges without bank or credit card company intervention. If You suspect fraudulent activity or erroneous charges on Your Big Ocean Account, please contact Big Ocean customer support at 888-836-6387. When You contact customer support, please have the following information available: (a) Your name, contact information, Big Ocean Account telephone number in question, and security verification information; (b) the date that the Account in question was created; (c) the credit card account number used to open the Account; and (d) the total amount charged to the Account. If You do not contact Big Ocean within thirty (30) days after the suspected fraudulent activity or erroneous charges appear on Your Account, You waive Your rights to object to or challenge such activity or charges. Furthermore, if You request that Your bank or credit card company perform a chargeback without first contacting Big Ocean, and Big Ocean subsequently determines that the charges at issue are not erroneous, Big Ocean reserves the right to terminate Your Account immediately and take any available legal action. Notwithstanding the above, You are solely liable for any transactions or activities by You or anyone else that occur on Your Account, and in no event shall Big Ocean be liable for any unauthorized use of Your Account.

**Discounts.** From time to time in its sole discretion, Big Ocean may offer promotions or discounts. Any promotion or discount codes must be provided to Big Ocean upon purchase of the Services. You shall not be entitled to a subsequent credit for such promotions or discounts if You do not request such credit at the time of Account creation or change of service. Promotions and/or discounts may not be used cumulatively or be used for Services retroactively. If a promotion and/or discount is offered on a confidential basis, You agree not to disclose the promotion and/or discount and to assume full responsibility for any harm, direct or indirect, caused to Big Ocean by the disclosure of the promotion and/or discount.

## 9. Billing and Payment

Any applicable initiation charges, usage, monthly recurring charges, support charges, and other fees are billed in full in advance. Termination, international calling, equipment return fees and transfer charges, if any, are billed in arrears. Upon termination of Your Account for any reason, all unused Plan Credits, and international calling credits shall expire in their entirety on the termination date. No refund, transfer or



proration shall be made of any unused Plan Credits, Additional Credits, Promotional Credits, or international calling credits or of any remaining periods/months on any Service plan.

When You subscribe to Services, You will provide us with a payment method, such as a valid credit card (including proper billing information), and, if applicable, authorize us to collect from Your payment method. Any authorization will remain valid until thirty (30) days after You terminate our authority to charge Your payment method. Upon termination, we will charge You any fees and any other outstanding charges and disconnect Your service. You agree to advise and notify us of any changes to Your payment method, such as credit card account number or expiration date changes. If the credit card or other payment method on Your Account is declined or fails for any reason, Big Ocean will use reasonable efforts to contact You and advise You of the failed billing attempts. Notwithstanding the foregoing, Big Ocean reserves the right to disconnect Your Service

and terminate Your Account if Your credit card on file is declined or fails for any reason, and Big Ocean reserves the right to continue to attempt charging Your credit card for any outstanding Service charges and additional fees and pursue any other legal remedies available to Big Ocean.

Time is of the essence for payment. Therefore, You agree to pay us interest at the lesser rate of (a) 18% per annum or (b) the highest rate allowed by law for any amounts unpaid as of the due date. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of Big Ocean's rights to collect the full amount due. We may assess an additional fee of the lesser of (a) fifty dollars (\$50) or (b) the highest amount allowed by law for any credit card chargeback or check returned for nonpayment.

Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, we may make reasonable adjustments and prorate the charges to Your Account.

You must dispute any charges for the Services in writing to Big Ocean within thirty (30) days of the date of the charge by Big Ocean. If You fail to provide a written statement explaining in reasonable detail Your reasons for disputing the charge within such time period, You hereby irrevocably waive any objection and further recourse with regard to such charges. Written statements disputing charges must be sent to [customerservice@bigoceantelephone.com](mailto:customerservice@bigoceantelephone.com)

#### 10. Equipment Return Policy

You are responsible for all return shipping charges for any hardware returned to Big Ocean for any reason, including situations in which hardware is covered under warranty. If You have purchased any hardware from us or we have otherwise provided You with any hardware and Your Account is terminated for any reason after the end of any free-trial period and prior to the end of Your first year of service, You hereby authorize us to immediately bill your credit card the appropriate equipment return fees, as set forth below.

If You cancel Your Big Ocean Service within thirty (30) days from the date of purchase of the hardware, You may (a) keep the hardware and pay the list price minus the actual price paid for the hardware, excluding taxes, or (b) return Your hardware and receive a full refund. No returns are accepted after ninety (90) days from the date of purchase of the hardware. In addition, the following terms and charges apply to hardware returns:

- You agree to pay all shipping and handling charges related to any hardware returns.
- All hardware must be fully functional, include all components, manuals, peripheral devices, and all other accessories that were originally shipped with the hardware. At our discretion, we may decline Your return or charge You an additional fee of thirty dollars (\$30) for each missing item or for each item that we determine is damaged or not in good working condition.
- Before returning any hardware that has data in its memory, please transfer all files You wish to retain to another file source.

Once the hardware is returned, Your files cannot be recovered and You release us of any liability for any lost, damaged, or destroyed files, data, or other information.

#### 11. Account Ownership

The Account owner shall be the legal entity (e.g., corporation, partnership, individual) that signs up for the Services with Big Ocean. If no legal entity is provided upon sign-up, the Account owner shall be the owner of the credit card used to open the Account. Subsequent changes to ownership must be supported by appropriate legal documentation. Big Ocean shall not adjudicate ownership-related disputes, or any other internal business dispute. If Big Ocean is unable to determine the valid owner of the Account, Big Ocean reserves the right to suspend or terminate the Account and Services.

#### 12. Number Porting and Availability

Big Ocean will use reasonable efforts to facilitate number transfers or port requests for You, provided that You comply with the necessary and specific procedures for porting between service providers.

You acknowledge and understand that number porting depends on the cooperation of third parties outside of Big Ocean's control. Accordingly, You agree that Big Ocean will not be liable for the failure or delay of any third party to cooperate in the

porting of any telephone number, or for the allegedly unauthorized porting of any telephone number by a third party.

Big Ocean works with third party carrier(s) who, on Big Ocean's behalf, port telephone numbers in accordance with applicable Regulatory Rules and Industry Guidelines. Big Ocean's third-party carrier(s) require very specific and detailed information and requirements when completing a port request. Please be informed that You will be required to provide such detailed and specific information to complete a port request. For porting numbers into Your Big Ocean Account, follow the procedures on Your Account settings page for transferring a number to Your Big Ocean Account. For porting numbers out of Your Big Ocean Account, follow the procedures of Your new service provider. You understand that porting Your number out of Your Account does not automatically terminate Your Big Ocean Account.

Number porting is defined and regulated by the Federal Communications Commission (FCC). Visit <http://www.fcc.gov/cgb/NumberPortability> to learn more about number porting.

Big Ocean cannot guarantee requested telephone numbers will be available, that Your existing provider will port Your

number, or that circumstances beyond Big Ocean's control will not prevent or delay a successful port of Your number for the Services. You should not order any printed material, such as business cards or stationery, showing a telephone number, or issue any press releases or otherwise publicize any telephone number until that telephone number becomes active on Your Account. Big Ocean shall not be liable for reimbursement for press releases, business cards, and/or stationery under any conditions.

You understand and agree that Big Ocean may from time to time need to change the telephone or facsimile number assigned to You (due to an area code split or for any other reason). Big Ocean shall not be liable for any damages (including consequential, special damages or other damages) to You in the event that it needs to assign You a new telephone or facsimile number.

#### 13. Storage of User Information

Big Ocean is not obligated to store Your communications logs, voicemails, faxes, e-mails, or other messages and does so only as a convenience to You. You agree that Big Ocean has no responsibility or liability whatsoever for the deletion or failure to store any call log information, voicemails, faxes, e-mails, messages, and/or other communications maintained or transmitted by the Services. In addition, You specifically agree and acknowledge that to the extent that You use the HIPAA Conduit setting, any stored messages will be deleted on or after thirty (30) days. You acknowledge and agree that Big

Ocean may establish limits as to the size of communications that Big Ocean transmits or stores and the duration for which Big Ocean stores any communications.

#### 14. Recording Conversations

Certain Big Ocean Services provide a function that allows You to record individual telephone conversations. The laws regarding the notice, notification, and consent requirements for recording conversations vary from state to state. In some states, You are required to obtain consent from all parties to a record a conversation. You are solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using this feature. Big Ocean expressly disclaims all liability with respect to your recording of telephone conversations. You hereby agree to fully, finally, and forever release, discharge, hold harmless, and fully indemnify Big Ocean from and against any damages or liabilities of any kind related to Your recording of any telephone conversations using the Services.

#### 15. Voice-to-Text and Text-to-Voice Limitations

Certain Big Ocean Services may provide a function that allows voicemails to be converted to text and vice versa. You understand and agree that Big Ocean's voice-to-text ("VTT") and text-to-voice ("TTV") features may not accurately transcribe voicemails or articulate text messages, respectively. You are solely responsible for checking the original message and verifying the accuracy of the message when using any and all VTT or TTV features. Big Ocean expressly disclaims all liability with respect to the conversion of voicemails to text or vice versa. You hereby agree to fully, finally, and forever release, discharge, hold harmless, and fully indemnify Big Ocean from and against any damages or liabilities of any kind related to Your use of VTT or TTV features when using the Services.

#### 16. Support and Feedback

Big Ocean provides customer and technical support to You via telephone and e-mail for the Services. Big Ocean will use reasonable efforts to troubleshoot and resolve issues reported by You but does not make any representations or guarantees that Big Ocean will be able to fully resolve any such issues. Except as provided in this section, Big Ocean has no obligation to provide additional customer support, technical support, or to provide solutions (e.g., bug fixes to software) to any issues that may arise in Your particular use of the Services.

From time to time, Big Ocean may send You surveys, comment cards, customer satisfaction forms, or other requests to provide feedback. You hereby grant Big Ocean, its licensors, and suppliers a perpetual, unlimited, worldwide fully-paid up, royalty free license to use all feedback, answers, ideas, comments, or other information You provide to Big Ocean.

#### 17. Service Changes

You understand and agree that Big Ocean may make upgrades or changes to the Services which will not materially diminish the functionality of the Services without prior notice to You. In the event that a change to the Services would, in Big Ocean's

reasonable discretion and judgment, permanently and materially diminish or impair the functionality of the Services (a "Change"), Big Ocean shall provide You with written notice of such Change at least sixty (60) days prior to the date the Change will take effect. If the Change is unacceptable to You, You may terminate the Services without penalty by calling Big Ocean at 888-836-6387. Any use of the Services after the effective date of Change will be deemed Your acceptance of the Change.

#### 18. Additional Terms for Big Ocean VoIP Service

Big Ocean Office plans include one or more Voice over Internet Protocol ("VoIP") lines included in Your bundled Services, and for other plans, Big Ocean offers options to add one or more VoIP lines to Your Services. In either case, Services for the VoIP line(s) will be referred to as "VoIP Service", for which the following additional terms shall apply:

##### Grant of Rights

Big Ocean grants You a non-exclusive, non-transferable, revocable license, and right to use each VoIP line exclusively with one user under Your Account, subject to all the other terms of this Agreement. Accordingly, if You want to allow multiple

users to use the VoIP Service, You will need to purchase at least one VoIP line for each user. Charges and Plan Credits

Big Ocean offers several different plan options for VoIP Service. You may change Your VoIP Service plan at any time; however, a one-time processing fee of ten dollars (\$10) may apply when "downgrading" an existing plan to a plan with lower monthly fees (e.g., a plan with fewer minutes and/or features). In addition, certain plans may entitle You to receive discounts on equipment used in connection with Big Ocean VoIP Service. If You receive any equipment discounts associated with a VoIP Service plan and subsequently change that plan to one that does not offer those equipment discounts, You agree to reimburse Big Ocean, and hereby authorize Big Ocean to charge Your credit card on file, for such equipment discounts.

##### Equipment

To use the VoIP Service, You may need to purchase phones, headsets, or other equipment (collectively, "Equipment"). All Equipment shipments are F.O.B. Big Ocean's shipping distributor facility. Big Ocean's liability for delivery shall cease, and title to such Equipment (if applicable) and all risk of loss or damage shall pass to You upon delivery to the shipping carrier.

All equipment obtained from Big Ocean in connection with VoIP Service is subject to the Equipment Return Policy above. You understand and acknowledge that if You purchase an annual service plan and You cancel the Services plan prior to the end of Your initial term, cancellation or termination fees, or phone, hardware, and other equipment fees may apply in accordance with the terms and conditions of Your plan. You hereby authorize Big Ocean to charge Your credit card, and You hereby agree to be liable for any and all such fees, costs, and charges.

##### VoIP 911 Service

YOU UNDERSTAND THAT 911 SERVICE IS ONLY PROVIDED BY BIG OCEAN IP DESK PHONES AND THE BIG OCEAN CALL CONTROLLER OR SOME SOFTPHONES ON PCS, YOU FURTHER UNDERSTAND THAT 911 SERVICE IS NOT PROVIDED OR AVAILABLE ON THE OTHER BIG OCEAN SOFTWARE APPLICATIONS AND SERVICES (INCLUDING WITHOUT LIMITATION SOME SOFTPHONES). IF YOU SUBSCRIBE TO ONE OF THE OTHER BIG OCEAN SOFTWARE APPLICATIONS OR SERVICES (OR YOUR SOFTPHONE DOES NOT PROVIDE E911), YOU MUST

MAKE ALTERNATIVE ARRANGEMENTS TO PLACE 911 CALLS, SUCH AS USING A TRADITIONAL WIRELINE OR CELLULAR TELEPHONE, AND YOU SHOULD NOT RELY ON BIG OCEAN TO CALL 911.

YOU UNDERSTAND THAT THE BIG OCEAN MOBILE APPLICATION USES YOUR DEVICE'S DIALER AND CELLULAR TELEPHONE SERVICE TO MAKE 911 CALLS. IF YOUR DEVICE DOES NOT HAVE CELLULAR TELEPHONE SERVICE, YOU WILL NOT BE ABLE TO CALL 911 FROM THE BIG OCEAN MOBILE APPLICATION.

Big Ocean VoIP 911 Service ("VoIP 911 Service") operates differently than traditional 911 service. We are required by the FCC to advise you of the circumstances under which 911 may not be available or may be in some way limited by comparison to traditional 911 service. Such circumstances include:

- Internet Connection Failure. If the connection to the wired broadband Internet over which Your Big Ocean VoIP Service is provided is interrupted, You would not have access to Big Ocean VoIP Service during that interruption and therefore will not have access to VoIP 911 service during that interruption.
- Number Flexibility & Service Portability. Traditional 911 service automatically sends Your 911 call to the appropriate local emergency responder, or Public Safety Answering Point ("PSAP"), based on Your telephone number. Traditional Enhanced 911 service (also known as E911) automatically sends Your 911 call to the appropriate PSAP along with Your registered address and telephone number. Because the Big Ocean VoIP Service permits You to obtain a telephone number that does not correspond to Your geographic location (for example, You may obtain a Big Ocean VoIP telephone number with a California area code even if You do not have a California address) and allows You to use Big Ocean VoIP Service anywhere

You have wired broadband Internet, the VoIP 911 Service functions differently than traditional 911 service in certain respects:

o Because Your address does not necessarily correspond with Your telephone number, You must provide Big Ocean with the street address(es) where You will be using Big Ocean VoIP Service ("Registered Location(s)") when You sign up for service. o If You relocate any equipment (PC with softphone, IP phone, or ATA with traditional phone) that You use to access the VoIP

Service, You must update Your Registered Location(s). If You do not update your Registered Location(s), any 911 calls You make using the VoIP Service will be routed based on Your previously provided Registered Location and therefore may not be routed to the appropriate PSAP for Your new location.

o In addition, because the VoIP Service will, where possible, automatically transmit Your Registered Location to the PSAP, You must update Your Registered Location to ensure that the VoIP Service transmits accurate location information to the PSAP.

o Once You notify us of a change in Your Registered Location, there may be a delay in making the new Registered Location available to properly route 911 calls and advise PSAPs of Your new Registered Location.

o In some parts of the country where direct routing to PSAPs is not available for VoIP 911 Service, the Service will route Your call to the National Emergency Call Center where trained agents will ask for the name, location, and telephone number of the person calling 911 and will contact the appropriate PSAP to send help. The call center will not automatically receive Your address and telephone number. In these situations, public safety response times may be delayed. As a result, there may be an additional delay before emergency services arrive.

- **Loss of Electrical Power.** Unless You have a backup system to power Your wired broadband Internet connection and any equipment (PC with softphone, IP phone, ATA with traditional phone) that You use to access Your VoIP Service, You will not have phone service or 911 service during any power outage.

**Registration of Physical Locations Required.** As discussed above, You must register the Registered Location where You will be using VoIP service for each VoIP phone line You use from Big Ocean (e.g., if You purchase Big Ocean Office with three VoIP lines, You must provide a Registered Location for each of the three VoIP lines). Big Ocean will obtain Your Registered Location as part of the service initiation process and will not provide VoIP Service until you have provided Your initial Registered Location. However, You must update Your Registered Location when You use Your VoIP Service from a new location. Regardless of what address You register, in some circumstances, such as unavailability of direct routing to PSAPs or the use of portable devices to access the VoIP Service, emergency calls will be routed to the National Emergency Call Center.

You agree to provide true, accurate, current, and complete Registered Location information to Big Ocean as part of the service initiation process and to update as soon as possible Your Registered Location with true, accurate, current, and complete information whenever You use Your VoIP Service from a new location. If You provide Registered Location information that is, or that Big Ocean suspects to be, false, inaccurate, not current, or incomplete, Big Ocean has the right to suspend or terminate the Services and refuse any and all current or future use of all Services, or any portion thereof. Big Ocean will not, however, disable Your ability to make a 911 call during any service suspension.

You may update Your Registered Location by logging on to Your Account settings page or calling customer support at 888-836-6387. For purposes of 911 Dialing, You may only register one Registered Location for each VoIP line.

**Notify All Users of 911 Limitations.** You should inform all business colleagues, household residents, guests, and other persons who may be present at the physical location where You utilize the VoIP Service that 911 may not be available or may be in some way limited in comparison to traditional 911 service. Big Ocean will provide subscribers to VoIP services for which E911 service is provided stickers warning that "E911 Service May Be Limited or Not Available" for use with any VoIP equipment by mailing stickers to subscribers upon Service initiation. It is Your responsibility to place these stickers on the equipment You use to access VoIP Service. If You have not received a sticker, or You require additional 911 stickers, please contact customer support at 888-836-6387.

**Disclaimer of 911 Liability.** Big Ocean disclaims all responsibility for the conduct of PSAPs, the National Emergency Call Center, and all other third parties involved in the provision of emergency response services. Big Ocean does not have any control over PSAPs, the National Emergency Call Center, or other third parties and is therefore not responsible for whether they answer 911 calls made using the VoIP service, how they answer these calls, or how they handle or respond to these calls. Big Ocean relies on third parties to assist it in the provision of 911 service and disclaims any and all liability for acts or omissions by third parties in the provision of Big Ocean's 911 service.

**Operator Assisted Calling, 311, 511, and other X11 Calling**

The VoIP Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls, 900, or calling card calls). The VoIP Service may not support 311, 411, 511, and/or other X11 calling (other than 911 as specified in this Agreement)

## 19. Additional Terms for Directory Listing Service

Big Ocean offers a directory assistance listing Service ("Directory Assistance Listing") associated with Your assigned toll free and/or local number Account, for which the following additional terms shall apply. By subscribing to Directory Assistance Listing, Big Ocean will share certain information about Your

Account with third-parties as reasonably necessary to provide phone directory assistance ("Listing Information"). This information may include, without limitation, Your company name, address, and phone numbers. This information will be published in, and made publicly-available through, third-party directory assistance listing services, to be selected by Big Ocean or third-party service providers in their sole discretion. You hereby permit and grant Big Ocean a worldwide, irrevocable, non-exclusive, royalty-free, fully paid-up license to use and disclose Your Account information for these purposes. You further acknowledge that by subscribing to Directory Assistance

Listing, Your Listing Information may enter the public domain and that Big Ocean cannot control third parties' use of such information obtained through Directory Assistance Listing. You represent and warrant that the information provided in Your Account, including without limitation Your company name and address, are true and accurate, and shall remain true and accurate (whether by updating such information or otherwise), at all times that You use the Services.

You may opt out of Directory Assistance Listing at any time. You acknowledge, however, that Big Ocean may not be able to have Your Listing Information removed from some or all third-party directory assistance listing services that have already received Your information. You agree that Big Ocean is under no obligation to have Your Listing Information removed from any third-party directory assistance listing service already in receipt of such information.

Big Ocean bears no responsibility or liability for any cost, damages, liabilities, or inconvenience caused by calls made to Your telephone number; materials sent to You; inaccuracies, errors, or omissions with Listing Information; or any other use of such information. For the avoidance of doubt, Big Ocean shall not be liable to You for any use by third parties of Your Listing Information obtained through Directory Assistance Listing, including without limitation the use of such information after You have opted out of Directory Assistance Listing.

## 20. Publicity Rights

You agree that Big Ocean may identify You as a user of the Services in its business deals; press releases; marketing materials; electronic, printed, and broadcast advertising; newsletters; mailings; tradeshow; other promotional materials; on Big Ocean's website; or any other third-party website where Big Ocean or its designated agents may promote the Services. You hereby grant Big Ocean and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display Your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.

## 21. Non-disparagement

You agree not to directly or indirectly through a third party engage in any conduct or make any communication (public or private) that disparages Big Ocean or the Applications or Services in any way. Such communications include, but are not limited to, publishing, posting, printing, disseminating, or otherwise making such disparaging statements on or through the Internet, in any blog, or through any other form of social media. You further agree not to solicit or encourage, directly or indirectly, any such statements, comments, or communications by any third-party. In accordance with the termination provisions below, Big Ocean may terminate Your access to the Applications or Services if You breach the requirements of this section.

## 22. Copyright Infringement

Materials may be made available via the Service by third parties not within our control. We are under no obligation to, and do not, review content transmitted, sent, or received using the Applications or Services for purposes of determining copyright infringement. However, Big Ocean reserves the right to terminate access to its Applications or Services if a user infringes on others' copyrights, and will, in appropriate

circumstances, terminate access to the Applications or Services if Big Ocean determines that a user is a repeat infringer.

### 23. Export Restrictions

You represent and warrant that (a) You are not located in (and will not use the Services or Applications in) a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) You are not listed on any U.S. Government list of prohibited or restricted parties relating to exports. You also acknowledge that the Applications and Services may be subject to other U.S. and foreign laws and regulations governing the export of software by physical or electronic means. You agree to comply with all applicable U.S. and foreign laws that apply to Big Ocean as well as end-users end-use, and destination restrictions imposed by U.S. and foreign governments.

### 24. Additional Licenses

The Applications may also be governed by the additional terms of certain software licenses, which are available here: TBD

### 25. Indemnification

To the maximum extent permitted by applicable law, You shall indemnify and hold harmless, individually and collectively, Big Ocean, its affiliates, agents, resellers, and other providers who furnish goods and services to You in connection with the Services, and their officers, directors, managers, employees, and shareholders (the "Indemnified Parties") from and against any and all liability, claims, losses (including loss of profits, revenue and goodwill), damages, fines, penalties, injuries to persons or property, costs, and expenses (including reasonable attorneys' fees and dispute resolution expenses) arising from or related to (1) the use of or reliance upon the Applications or Services by You or any third party acting upon Your permission, knowledge, authority or direction, (2) a breach of this Agreement by You, (3) any negligent acts, omissions to act or willful misconduct by You or any third party acting with Your permission, knowledge, authority or direction, (4) the inability to use the Applications or Services or failure or outage of the Applications or Services for any reason, including but not limited to those related to calling, "911" or other emergency responders, (5) the use of the Applications or Services in connection with a violation of any applicable law, code, regulation, or ordinance, and/or (6) the misappropriation, breach, violation, or infringement of any right, title or interest of any third party, including but not limited to, contractual rights,

intellectual property rights (including patent, trademark, copyright, and trade secret rights), rights of privacy, and rights of publicity and personality.

### 26. Term

Your license to the Applications and Services is provided for a term specified in Your Services contract (the "Term"). The initial Term begins on the date that you sign up for the Services (the "Date of Purchase").

The Term for all Service plans will renew automatically for successive Terms of the same length without further action by or notice to You unless You notify Big Ocean customer service of non-renewal at least thirty (30) days before the end of the then current Term, unless otherwise provided in Your Services contract.

For avoidance of doubt, the provisions of this Agreement relating to intellectual property ownership, customer representations, confidentiality, use policies and restrictions, equipment, number porting and availability, storage of user information, customer feedback, publicity rights, non-disparagement, additional software licenses, indemnification, force majeure, warranty disclaimers, limitations of liability, notices,



assignment, future changes, interpretation, dispute resolution and arbitration, and choice of law shall survive termination or expiration of this Agreement for the maximum term allowable by law.

## 27. Termination

**Monthly Plan Customers.** For monthly plan customers, You may cancel or terminate Your use of the Services with or without cause at any time by calling customer service at 888-836-6387, subject to the restrictions and fees provided in this Agreement, Your Services contract, and any additional agreements governing the Services.

**Annual Plan Customers.** For annual plan customers, You are purchasing the Service for the full length of the applicable Term. You have thirty (30) days from the Date of Purchase for a prorated refund in accordance with Your Services Contract. After thirty (30) days, if You terminate the Services prior to the end of Your Term, You are responsible for all charges for any remaining time left on the Term as if You remained a customer through the end of the then-current Term, including, without limitation, outstanding charges, unbilled charges, taxes, and fees, including any applicable disconnection fee. In addition, You will not be entitled to a refund for any unused portion of prepaid Term charges.

Generally, You understand and agree that Big Ocean may at any time, and without additional notice to You, terminate, modify, suspend, disconnect, discontinue, or block access to some or all of the features of the Application or Services if:

- Big Ocean determines that You have materially breached this Agreement.
- Big Ocean determines that You have created or caused to be created multiple free accounts.
- Big Ocean determines that You have used a fraudulent credit card to pay for Service charges on Your Account.
- Big Ocean determines that You have verbally insulted, abused, or harassed any of its employees, contractors, agents, or

other representatives.

- You have failed to respond to Big Ocean's calls or email attempts to contact You about Your Account.
- Big Ocean determines that You did not or will not reasonably comply or cooperate with any applicable law or regulation.
- Big Ocean is ordered by law enforcement or other government agencies to suspend or terminate Service to Your Account.
- You bring any legal action or proceeding, including without limitation in any court, regulatory, or administrative body, arbitral

body, or mediator, against Big Ocean, or participate in any class action lawsuit against Big Ocean.

- You make any disparaging statement (whether written, oral, electronic, or otherwise) against Big Ocean, its Services, or its

employees, contractors, agents, investors, affiliates, or other representatives.

- Big Ocean determines that such action is necessary to protect, maintain, or improve the Services; to prevent fraud or

misrepresentation by affirmative acts and/or omissions; to protect Big Ocean, its customers, or other third parties affiliated with Big Ocean; or for any other good cause.

Upon any termination or suspension of Your Account, Big Ocean may immediately deactivate or delete Your Account and all related information and files in Your Account and/or restrict any further access to such files, information, or the Applications or Services.

Big Ocean shall not be liable to You or any third party for any reason for terminating or suspending Your use or access to the Applications or Services.

If You or Big Ocean terminates or suspends Your right to use the Services, You shall not be entitled to any refund or pro ration of any pre-paid amounts, Plan Credits, international calling credits, or other amounts paid to Big Ocean prior to the termination or suspension date.

## 28. Force Majeure

Big Ocean shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond its reasonable control, including without limitation, acts of God, earthquake, fire, flooding, fiber cuts,

actions or inactions of third party providers or suppliers, riots, sabotage, war, government requirements, or other events that are beyond Big Ocean's reasonable control.

## 29. Warranty Disclaimer

THE SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND BIG OCEAN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SIMILAR WARRANTY, WHETHER SAID WARRANTY ARISES UNDER PROVISIONS OF ANY LAW OF THE UNITED STATES OR ANY STATE THEREOF OR ANY COUNTRY. BIG OCEAN MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES ARE FREE OF RIGHTFUL CLAIMS OF ANY THIRD PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS (INCLUDING PATENT AND TRADE SECRET RIGHTS). THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE SERVICES SHALL BE BORNE SOLELY BY YOU.

BIG OCEAN MAKES NO WARRANTY ON UP-TIME, RESPONSE TIMES, LATENCY, MEAN-TIME BETWEEN FAILURES, QUALITY OF SERVICE, AND/OR QUALITY OF VOICE OR FAX COMMUNICATIONS. BIG OCEAN EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICES ARE APPROPRIATE FOR HIGH-RISK OR OTHER ACTIVITIES WHERE FAILURE OF THE SERVICE COULD RESULT IN SERIOUS HARM TO PERSONS OR PROPERTY.

BIG OCEAN EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICES ARE APPROPRIATE FOR USE AS A REPOSITORY OR MEANS BY WHICH TO STORE PHI ON A NON-TEMPORARY BASIS OR FOR USE BY A HIPAA- COVERED ENTITY TO TRANSMIT, RECEIVE, OR STORE PHI WITHOUT ACTIVATION OF THE BIG OCEAN HIPAA CONDUIT SETTING.

BIG OCEAN MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR FREE OR THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED. BIG OCEAN IS NOT RESPONSIBLE FOR MESSAGES OR INFORMATION LOST OR MISDIRECTED DUE TO INTERRUPTIONS OR FLUCTUATIONS IN THE SERVICES OR THE INTERNET IN GENERAL. BIG OCEAN IS NOT RESPONSIBLE FOR THE CONTENT OR FUNCTIONALITY OF ANY THIRD PARTY NETWORK USED IN CONNECTION WITH THE SERVICES.

BIG OCEAN DOES NOT WARRANT THE ACCURACY OR RELIABILITY OF THE RESULTS OBTAINED THROUGH USE OF THE SERVICES OR ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICES. YOU ACKNOWLEDGE THAT ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICES ARE AT YOUR SOLE RISK AND DISCRETION AND BIG OCEAN WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE TO YOU OR YOUR PROPERTY.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BIG OCEAN, ITS EMPLOYEES, RESELLERS, PARTNERS, OR AFFILIATES OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

ALTHOUGH EVERY EFFORT IS MADE TO ENSURE THAT VOICEMAILS AND FAX TRANSMISSIONS ARE SECURE, BIG OCEAN MAKES NO GUARANTEES OF SECURITY.

SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO CERTAIN OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT THAT BIG OCEAN CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

### 30. Limitation of Liability

IN NO EVENT SHALL BIG OCEAN BE LIABLE TO YOU OR ANY THIRD PARTY FOR SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND WHETHER ARISING UNDER

CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF BIG OCEAN HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY BIG OCEAN. BIG OCEAN'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES, REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED AND CAPPED IN THEIR ENTIRETY TO THE MONTHLY FEES BIG OCEAN CHARGED YOU DURING THE ONE (1) MONTH IMMEDIATELY PRIOR TO THE DATE THAT THE EVENTS GIVING RISE TO THE ACTION OR CLAIM FIRST OCCURRED. THE LIMITATION OF LIABILITY REFLECTS THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY IN ANY AND ALL CIRCUMSTANCES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO CERTAIN OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

### 31. Notices

Notices to You shall be effective on the date sent to Your registered electronic mail address when sent by email or, at Big Ocean's option, three (3) days following the date deposited in regular United States Mail, postage prepaid, and addressed to Your current address on Your Account. You are responsible for notifying Big Ocean of any changes in Your contact

information or address through Your Account settings page or by contacting customer service at 888-836-6387.

Written notice to Big Ocean shall be effective when directed to Big Ocean's Legal Department and received at Big Ocean's then-current address as posted on Big Ocean's Website, available [Here](#). Your notice must

specify Your name, Account information, and security verification question and answer. All notices from You to Big Ocean must be made in writing.

### 32. Assignment

Big Ocean may assign this Agreement and any of its rights and obligations hereunder at any time. You may not transfer or assign this Agreement or any of Your rights or obligations under this Agreement. Any purported transfer or assignment in violation of this section is void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties, their successors, permitted assigns, and legal representatives.

### 33. Future Changes to this Agreement

We may change the terms of this Agreement from time to time upon delivery of electronic or written notices to You. Big Ocean generally provides written notice of changes to Your account, including this Agreement and any other legal agreements, via email, electronic notice on the Big Ocean Website or Your Account Page, or on Your billing statements. You agree to carefully read and review each such e-mail notice, electronic notice, and billing statement from Big Ocean fully regarding any such notices of changes to Your Account.

The modified terms shall replace and supersede all previously agreed to electronic and written terms, as well as any prior versions of this Agreement. You agree that you are solely responsible for (a) making sure that Your registered email account is current and functional, (b) checking Your registered email account on a routine basis, (c) checking the Big Ocean Website and Your Account page on a routine basis, and (d) making sure that Big Ocean communications are not blocked or rendered undeliverable by You, Your computer, any software installed on Your computer, Your Internet service provider, or for any other reason.

### 34. Interpretation of this Agreement

This Agreement, including the documents incorporated herein, constitutes the entire agreement between You and Big Ocean with respect to the Applications and Services and supersedes all prior or contemporaneous understandings regarding such subject matter.

If any part of this Agreement is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect.

The failure of Big Ocean to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or any other provision.

Nothing in this Agreement shall be deemed or construed to constitute or create employment, partnership, association, joint venture, agency, or fiduciary relationship between the parties hereto.

You agree and acknowledge that any breach of the provisions regarding intellectual property ownership contained in this Agreement shall cause Big Ocean irreparable harm and Big Ocean may obtain injunctive relief and seek all other remedies available in law and in equity.

The section titles in this Agreement are for convenience only and have no legal or contractual effect.

This electronic document and any other electronic documents, policies, and guidelines incorporated herein will be: (1) deemed for all purposes to be a "writing" or "in writing," and to comply with all statutory, contractual, and other legal requirements for a writing; (2) legally enforceable as a signed writing as against the parties subject to the electronic documents; and (3) deemed an "original" when printed from electronic records established and maintained in the ordinary course of business. Electronic documents introduced as

evidence in any judicial, arbitration, mediation, or administrative proceeding will, if established and maintained in the ordinary course of business, be admissible to the same extent as

business records in written form that are similarly established and maintained.

Under California Civil Code Section 1789.3, California users of the Service receive the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1020 N Street, #501, Sacramento, California 95814, or by telephone at 916-445-1254.

### 35. Dispute Resolution and Optional Arbitration

In the event of any dispute, claim, question, or disagreement between You and Big Ocean ("Dispute"), You and Big Ocean shall first use reasonable best efforts to settle the dispute, claim, question, or disagreement. To this end, You and an authorized member of Big Ocean's legal department (or other representative of Big Ocean designated by the legal department) shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Neither You nor Big Ocean shall file or pursue any Disputes in any court, administrative, arbitral, or other adjudicative body prior to engaging in such consultations and negotiations.

You agree that any Disputes shall be adjudicated in the state and federal courts of the State of California, U.S.A. Venue for any Disputes shall be the Superior Court of California, County of San Mateo for state court cases, and the United States District Court of the Northern District of California for federal court cases. You agree to submit to the exclusive jurisdiction of such courts with respect to any Disputes and agree not to bring any Disputes in any other court or adjudicative body. You hereby consent to venue and personal jurisdiction in such courts with respect to such Disputes and irrevocably waive any right that You may have to assert that such forum is not convenient or that any such court lacks jurisdiction.

Notwithstanding the adjudication requirement above, for any Disputes involving ten thousand dollars (\$10,000) or less, either party may choose to resolve such Dispute through binding, non-appearance-based arbitration (i.e., arbitration conducted online, through written filings, and/or via teleconference). Such arbitration shall be conducted through an established alternative dispute resolution provider mutually agreed upon by the parties, and any judgment rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision shall be final and legally binding.

In the event of any litigation (including arbitration) between You and Big Ocean, the non-prevailing party shall reimburse the prevailing party for all reasonable and documented attorneys' fees, costs, and expenses relating to the Dispute.

### 36. Choice of Law

This Agreement and Your use of the Applications and Services shall be governed by and construed under the laws of the State of Georgia.