

End User Terms of Service

These Terms of Service, including any Service Activation Form(s) or similar order form ("**Order**") and any applicable attachments, which by this reference are incorporated herein ("**Agreement**"), are a binding agreement between Third Generation of Pennsylvania, Inc., "**Third Generation**", "**we**", "**us**") and the user ("**you**") of Third Generation's business services and any related products or services. Signatories on the Order may be referred to individually as a "**Party**" and collectively as the "**Parties**".

We provide services and equipment intended solely for business use, pursuant to the terms and conditions set forth in this Agreement and on the condition that you accept and comply with this Agreement. By signing an Order or by using the Services, you (a) accept this Agreement and agree to be legally bound by its terms; and (b) represent and warrant that: (i) your representative is 18 years of age or of legal age to enter into a binding agreement; and (ii) has the right, power, and authority to enter into this Agreement on behalf of the corporation, governmental organization, or other legal entity, and to bind such organization to these terms. If you do not agree to the terms of this Agreement, you may not download, install, or use the Services or Equipment.

This Agreement incorporates the Use Policies set forth in Section 3(c) below. This Agreement and Use Policies govern the provision of Service in the United States. The terms of service and use policies governing service offered by our affiliates in other countries may vary.

1. DEFINITIONS

1. "**Account Data**" means any contact information provided with the account; logs of calling, SMS and MMS records or other metadata developed or collected in the provision of the Services; configuration data; and records of any Services purchased under this Agreement.
2. "**Affiliate(s)**" means a person or entity that is controlled by a Party hereto, controls a Party hereto, or is under common control with a Party hereto, and "**control**" means beneficial ownership of greater than fifty percent (50%) of an entity's then-outstanding voting securities or ownership interests.
3. "**Confidential Information**" means any information disclosed by or on behalf of the disclosing Party to the receiving Party that should

reasonably be considered as confidential given the nature of the information and the circumstances surrounding its disclosure, including the terms and conditions of this Agreement, and any information posted on 3genusa.com or any sub-domain (to the extent that such information is not publicly accessible). Confidential Information excludes any information or data which the receiving Party can demonstrate: (i) is available to the public; (ii) becomes available to the public through no breach of this or any other agreements between the Parties; (iii) before its disclosure hereunder, was known by the receiving Party without any obligation owing to the disclosing Party (directly or indirectly) to hold it in confidence; (iv) is received from a third party who does not owe any duty to the disclosing Party (directly or indirectly) with respect to such information; (v) is independently developed by the receiving Party without the use of Confidential Information of the disclosing Party; or (vi) is approved for release by written authorization of the disclosing Party but only to the extent of such authorization and without any disassembly, reverse engineering, or similar undertaking by Receiving Party.

4. **“Third Generation IP”** means all intellectual property rights associated with any design, data, specification, know-how, software, device, technique, algorithm, method, discovery or invention, whether or not reduced to practice, relating to any (a) Service, including our work product, (b) result of a Service, (c) joint development, and/or (d) enhancement or improvement to or derivative of any of the foregoing.
5. **“Third Generation Network”** means the network and supporting facilities between and among our physical or virtual data centers or cloud environments, up to and including the interconnection point between our network and facilities, and the public Internet, private IP networks, and the Public Switched Telephone Network (“PSTN”) and any additional authorized service provider we engage to provide services. The Third Generation Network does not include the public Internet, your own private network, or the PSTN.
6. **“Customer Content”** means the content of calls, facsimiles, SMS or MMS messages, voicemails, voice recordings, shared files, conferences or other communications transmitted or stored through the Services.
7. **“Effective Date”** means the date identified on the applicable Order.

8. **"End User"** means an individual user who uses the Services and may include but is not limited to your employees, consultants, clients, external users, invitees, contractors and agents.
9. **"Equipment"** means equipment or hardware which you acquire from us, our Affiliates, or our authorized vendors for use in connection with the Services.
10. **"Intellectual Property Rights" or "IP Rights"** means all common law and statutory rights (whether registered or unregistered, or recorded or unrecorded, regardless of method) arising out of or associated with:
(a) patents and patent applications, inventions, industrial designs, discoveries, business methods, and processes; (b) copyrights and copyright registrations, and "moral" rights; (c) the protection of trade and industrial secrets and Confidential Information; (d) other proprietary rights relating to intangible property; (e) trademarks, trade names and service marks; (f) a person's name, likeness, voice, photograph or signature, including without limitation rights of personality, privacy, and publicity; (g) analogous rights to those set forth above; and (h) divisions, continuations, continuations-in-part, renewals, reissuances and extensions of the foregoing (as applicable).
11. **"Losses"** means any allegations, claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, physical injury or death, damage to real property, costs or expenses (including reasonable legal fees).
12. **"Order(s)"** means a request or order for Service describing the type and quantity of Services required by you and submitted and accepted by the Parties in accordance with Section 6(a) (Ordering Services).
13. **"Service(s)"** means all services available on our Unified Communications as a Service ("UCAAS") platform(s), including but not limited to desktop software and services, browser and mobile services and features, VoIP, SIP trunking, and related services, Contact Center as a Service ("CCaaS") and features, video and collaboration software and services, and any additional services that may be offered by us, or Equipment provided under this Agreement, and/or as set forth in one or more Order(s).
14. **"Software"** means (i) computer programs, written by us or our Affiliates, contractors or other entities that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, which allow us to deliver the Services and products or to integrate with other systems, people, and services. This includes

source code which allows computers, servers, and the like to perform a specific operation or series of operations; and (ii) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, operated, installed, or compiled.

15. **"Taxes and Fees"** means all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on us or our affiliates, along with similar charges.

16. **"Term"** means the Initial Term plus any Renewal Terms.

2. PROVISION OF THE SERVICE

1. General Terms

- i) We will provide the Services as described in the relevant Order.
 - ii) We may retire Services that become obsolete and replace them with new Services that provide the same or similar functionality, as necessary, upon notice to you.
 - iii) The Service is not a telecommunications service. Important distinctions exist between telecommunications services and the Services. The Services are subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.
 - iv) You may use the Services in the United States to place calls to foreign countries. You will be solely responsible for any violations of local laws and regulations resulting from such use. Through our affiliates, we may provide services to end users in some foreign countries (collectively **"Global Customers"**). Services to Global Customers are subject to separate terms and conditions.
- b) **Beta Services:** We may, from time to time, offer access to services that are classified as a Beta version. Access to and use of Beta versions may be subject to additional agreements. We make no representations that a Beta version will ever be made generally available and reserve the right to discontinue or modify a Beta version at any time without notice. Beta versions

are provided AS IS, may contain bugs, errors or other defects, and your use of a Beta version is at your sole risk.

- c) **Support:** We provide technical support for Services to you. Support shall be available during our regular business hours, unless otherwise specified. For service impacting issues only, support is offered 24/7. Support does not include troubleshooting of End User LAN and WAN issues, third party hardware or software, device issues, or any Service related issues outside of our direct control.
- d) **Professional Services:** Certain Services may require professional services for implementation. Under such a circumstance, we shall notify you of the requirement of such professional services, and shall require the written consent of both Parties (which may be in the form of a separately executed Statement of Work) to proceed with the performance of such professional services. Any such services are governed by this Agreement and any applicable Statement of Work, which may be attached hereto.
- e) **Subcontracting:** We may provide any of the Services hereunder through any of our Affiliates or subcontractors, provided that we will bear the same degree of responsibility for acts and omissions for those subcontractors acting on our behalf in the performance of our obligations under this Agreement as it would bear if such acts and omissions were performed by us directly.

3) USE OF THE SERVICE

- a) **Service Requirements:** Use of the Service requires one or more compatible devices, Internet access, and certain software, and may require obtaining updates or upgrades to such from time to time. You acknowledge and agree that such system requirements, which may be changed from time to time, are your responsibility. Because use of the Service involves hardware, software, and Internet access not controlled by us, your ability to access and use the Service may be affected by the performance of these items and will not be cause for withholding payments due under this Agreement.
- b) **Incompatibility With Certain Broadband Services:** The Service may not be compatible with some broadband services. You acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

- c) **Use Policies:** You may use the Services only in compliance with this Agreement, applicable laws, and the use policies referenced below (collectively, the “**Use Policies**”), which are incorporated into and form part of this Agreement. You may not use, or permit the use of, the Services in any way which interferes with the use of the Services by others or with the operation of the Third Generation Network. Any breach of this Section will be deemed a material breach of this Agreement.
- i) **Acceptable Use Policy:** <https://3genusa.goascenda.com/acceptable-use-policy/>
 - ii) **Privacy Policy:** <https://3genusa.goascenda.com/privacy-policy/>
 - iii) **Emergency Services:** <https://3genusa.goascenda.com/911-terms>
- ci) **Fraudulent or Illegal Activity**
- i) You shall notify us immediately, in writing or by calling the customer support line, if your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. Failure to contact us in a timely manner may result in the termination of your Service and additional charges. Until such time as we receive notice of the fraudulent or unauthorized use, you will be liable for any and all stolen, fraudulent or unauthorized use of the Service.
 - ii) Notwithstanding anything to the contrary in this Agreement, we may act immediately and without notice to suspend or limit the Services if we reasonably suspect fraudulent or illegal activity in your account, material breach of the these Use Policies, or use of the Services that could interfere with the functioning of the Third Generation Network provided such suspension or limitation may only be to the extent reasonably necessary to protect against the applicable condition, activity, or use. We will promptly remove the suspension or limitation as soon as the condition, activity or use is resolved and mitigated in full. If you anticipate legitimate but unusual activity on your account, you should contact us in advance to avoid any Service disruption.
 - iii) If we have reason to believe that you have used the Service for an unlawful purpose, we may forward the relevant communication and other information, including your, to the appropriate authorities for investigation and prosecution. Appropriate authorities include, without limitation, law enforcement agencies, the Federal Communications Commission (“FCC”) or the single industry Traceback Consortium designated by the FCC to trace suspicious calls back to the point of origin. You hereby consent to our forwarding any such communications and information to these authorities, including, as necessary to comply with a lawful request, Confidential Information. In addition, we will provide

information in response to law enforcement requests, subpoenas, and court orders, to protect its rights and property, and in the case where failure to disclose the information may lead to imminent harm to any customer or others.

- e) **Recording Conversations:** The Services provide a function that allows you to record conversations, including video calls. The laws regarding the notice and notification and other related requirements of recorded conversations vary by state. We do not warrant that the function complies with any such notice and notification and other related requirements, and you are solely responsible for compliance with all local laws and regulations in the relevant jurisdiction when using this feature.
 - i) **Voice Recording:** When using the voice Services, an End User who chooses to record a call must give the other participants on the call verbal notification that the call is being recorded. If an End User does not consent to being recorded, the End User must leave the call.
 - ii) **Video Recording:** When using the video Services, End Users will receive a notification (visual or otherwise) when recording is enabled. If an End User does not consent to being recorded, the End User must choose to leave the meeting or community interaction.
- f) **Account Data Retention:** We, and respectively our third party providers, reserve the right to delete your voicemail, call detail, data, files, or other information that is stored through the Services and/or our third party service providers servers or systems in accordance with our storage policies. You agree that we shall have no liability whatsoever as a result of the loss or removal of any such voicemail, call detail, data, files, or other information.
- g) **Additional Services:** Sometimes when you use the Service, you may also use a service or purchase goods provided or offered by another person or company. Your use of these other services or goods may be subject to separate terms between you and the company or person concerned, and you agree that we shall have no liability or obligation relating to those services or goods.
- h) **No High Risk Use:** The Service is not designed or made available for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems. You shall not use the Service in any of the foregoing or other high risk environments.
- i) **Use by Children Prohibited:** You may not use the video Services if you are under the age of sixteen (16) unless a separate agreement exists with respect to use by schools. Individuals under the age of sixteen (16) may not create

accounts or use the Service except as described herein. We may terminate your access to the Service without warning if we believe that you are under the age of sixteen (16) or are otherwise ineligible to use the Service.

- j) **Localizations:** If we make available a version of the Services in a language other than English, you will use commercially reasonable efforts to review the localization for accuracy and quality. You will promptly notify us of any translation error, including, but not limited to, misuse of idioms and misspellings. If you create localizations of any provided materials, you agree to use commercially reasonable efforts to minimize translation errors, including, but not limited to, misuse of idioms and misspellings. Notwithstanding anything to the contrary in this Agreement, we provide any translated Services on an “as is” basis with no warranties of any kind. We shall have no liability related to or arising from any localization of materials.

4) EQUIPMENT

- a) **General; Shipping:** You may order Equipment for use with the Services by placing Orders. You shall pay all shipping and related charges unless otherwise agreed upon in writing. Equipment ordered through any third-party vendor may be subject to additional terms and conditions, and you agree to be bound by such terms and conditions. All Equipment shipments are F.C.A. (free carrier), and title and risk of loss or damage shall pass to you upon delivery to the carrier. You shall be deemed the importer of Equipment for all purposes, and shall be liable for any applicable customs, import/export duties, clearance charges and other Taxes and Fees (including VAT), in connection with international shipments. You agree not to resell the Equipment without our express written consent.
- b) **Warranty and Returns:** We will pass through to you all warranties that we are expressly authorized by the original supplier to pass through.
- c) **Lost, Stolen, Altered or Broken Equipment:** You shall not modify the Equipment in any manner without our express written consent and shall only use the Equipment in connection with the Services. You shall be responsible for all lost, stolen or broken Equipment (except to the extent covered by warranty) and shall promptly notify us of any such loss or theft and cooperate with us as reasonably requested to prevent unauthorized use of lost or stolen Equipment.
- d) **Return of Equipment:**
- i) If you obtained Equipment from us, you may return the Equipment to us within fourteen (14) days of termination of Service to receive a credit for any termination fee provided that:

- (1) the Service is terminated within the first fifteen (15) days following the activation of the Service;
 - (2) the Equipment is in its original condition, reasonable wear and tear excluded;
 - (3) prior to returning the Equipment to us, you obtain a valid return authorization number from our customer care department, which can be reached at service@3genusa.com; and
 - (4) you pay all costs of shipping the Equipment back to us.
- ii) If you disconnect multiple lines, we will issue you a credit for all termination fees upon receipt of all Equipment in accordance with the requirements set forth above.
 - iii) If you receive cartons or Equipment that are visibly damaged, you must note the damage on the carrier's freight bill or receipt and keep a copy. In such an event, you must keep the original carton, all packing materials and parts intact in the same condition in which they were received from the carrier and contact our customer care department immediately at service@3genusa.com.
- e) **Unsupported Devices:** You shall be responsible for ensuring that any Equipment acquired from a third-party vendor is in reasonable working condition and configured in accordance with our technical requirements. You shall not access or use the Services with any equipment or devices, other than supported Equipment, without our consent. We shall have no liability whatsoever for your access or use of the Services with any equipment or device that is not supported by us, even if we has consented to your use of such device.

5) PAYMENTS:

a) Prices and Charges:

- i) Unless otherwise specified on an Order, all prices are in US dollars as set forth on the Order. Additional charges may result if you activate additional features, exceeds usage thresholds, or purchases additional Services or equipment.
- ii) You will be liable for all charges resulting from use of the Services on your account. No set-off, deduction or cross-collateralization will be permitted hereunder.
- iii) All professional services will be billed at prevailing professional service rates in one (1) hour blocks. Travel and expenses will be billed at actual cost.
- iv) We may change prices at any time, including changing from a free service to a paid service and charging for Services that were previously

offered free of charge; provided, however, that we will provide you with at least thirty (30) days prior notice and an opportunity to terminate this Agreement if we change the price of a Service to which you are subscribed.

- v) If changes in applicable law, regulation, rule or order materially affect delivery of Service, the Parties will negotiate appropriate changes to this Agreement. If the Parties cannot reach agreement within thirty (30) days after our notice to you requesting such a renegotiation, we may, on a prospective basis after such thirty (30) day period, pass any increased delivery costs on to you or eliminate Services impacted by the change in law, regulation, rule or order.

b) Billing and Payment

- i) Recurring charges for the Services begin on the Effective Date and will continue until such Services are terminated or expire in accordance with the Agreement. Recurring charges (such as charges for phone numbers, product licenses, minute bundles, and equipment rental fees) will, once incurred, remain in effect for the then-current Term.
- ii) We will bill all charges, including applicable Taxes and Fees, monthly in advance, except for usage-based charges, which will be billed monthly in arrears along with any other charges which we may decide to bill in arrears, to your credit or debit card. Notification of monthly invoices will be sent to you via your email address on file with us. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$250. Any usage charges will be billed in increments that are rounded up to the nearest minute unless otherwise set forth in an applicable rate schedule.
- iii) All Services and equipment must be purchased via valid credit or debit card at the time of purchase. By providing a valid credit or debit card, you are expressly authorizing all Service and Equipment charges and fees to be charged to such payment card, including recurring payments billed on a monthly or annual basis. This authorization will remain valid until 30 calendar days after you terminate our authority to charge the payment method. Your termination of our authority to charge a particular card does not alleviate your responsibility to pay charges due. In addition, your provided credit card shall be used for any in-month purchases of additional services and products, or where you have exceeded usage or threshold limits, and any overage charges.
- iv) Credit and debit card payments are subject to the approval of the card issuer, and we will not be liable in any way if a card issuer refuses to

- accept a credit or debit card for any reason. You are responsible for any credit card chargeback or similar fees for refused or rejected payments that we are entitled to charge under this Agreement. If the payment card associated with your account is declined or fails for any reason, we will send you a notice using the contact information associated with your account. We may continue to attempt charging your payment card for outstanding charges and additional fees along with any other rights and remedies available to us under this Agreement, at law or in equity.
- v) Subject to Section 6(d) (Billing Disputes) below and unless otherwise stated at the time of purchase or on the billing statement, payment is due in full, without deduction or set-off, within thirty (30) days of the date on the billing statement. Any payment not made when due may be subject to a late payment fee equivalent to the lesser of (i) one and a half percent (1.5%) per month; or (ii) the highest rate allowed by law. Our acceptance of late or partial payments (regardless of how they are marked or designated (including without limitation as 'Paid in Full', 'Accord and Satisfaction', or similarly)) will not waive, limit, or prejudice in any way our rights to collect any amount due. We may terminate the Services and this Agreement for non-payment if any fees or charges are not paid within thirty (30) days of the due date.
 - c) **Taxes and Fees:** Excluding taxes based on our net income, you are responsible for all Taxes and Fees. Taxes and Fees may vary based on jurisdiction and the Services provided. Some Taxes and Fees are recovered through imposition of a percentage surcharge on the charges for Service. Charges for Service are exclusive of Taxes and Fees. Taxes, access fees, universal service or other recovery fees, or similar charges will be adjusted on the date in which those increases become effective as mandated by competent authority. If any withholding tax is levied on the payments, then you must increase the sums paid to us so that the amount received by us after the withholding tax is deducted is the full amount we would have received if no withholding or deduction had been made. If you are tax exempt, you must present us with the required forms as requested from time to time negating our liability to pay or withhold certain Taxes and Fees, which we may consider in its sole discretion. Tax exemption may only apply from and after the date we receive such certificates. Taxes and Fees that we are entitled to pass on to our customers as a surcharge pursuant to applicable laws may be increased on thirty (30) days' written notice.
 - d) **Billing Disputes:** If you reasonably and in good faith dispute any portion of the charges, you must provide written notice to us by emailing

accounting@3genusa.com within seven (7) days of the billing date, identifying the reason for the dispute and the amount being disputed. You may withhold disputed amounts. Your dispute as to any portion of the billing statement will not excuse your obligation to timely pay the undisputed portion of the billing statement. Upon resolution in our favor, you must pay any unpaid amounts within thirty (30) days, including any late payment fee. Any amounts that are found to be in error resulting in your overpayment will be applied as a billing credit against future charges. You will be reimbursed any such outstanding billing credits at the expiration or termination of this Agreement.

6) ORDERING AND TERM

- a) **Ordering Services:** You may order Services by executing an Order in the format we provide. The Order will identify the Services requested by you. An Order will become binding when it is executed by you and accepted by us. We may accept an Order by commencing performance of the requested Services. The Services will begin on the Effective Date. You may purchase additional Services, software, and equipment through execution of additional Orders.

Term and Automatic Renewal: The Term will begin on the Effective Date of the initial Order and continue for the initial term set forth in the initial Order (“**Initial Term**”). Upon expiration of the Initial Term, recurring Services will automatically renew for successive periods the same length as the Initial Term (each a “**Renewal Term**”) unless you give notice of non-renewal at least ten (10) days before the expiration of the current Term or as is otherwise agreed upon in the Order. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month’s charges to the end of the then-current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. The term of any recurring Services added to the Account after the initial Order is submitted will start on the Start Date of the subsequent Order, will run coterminously with the then-current term of any pre-existing Services, and will be billed on the same billing cycles as the pre-existing Services.

- b) Expiration of the term or termination of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

7) SUSPENSION/TERMINATION

- a) **Suspension of Services:** We will make a good faith effort to contact and provide notice to you in advance of any suspension. As reasonably practicable under the circumstances, we will endeavor to resolve any circumstance that may give rise to our suspension or termination rights, which include, without limitation: (i) a material risk to the security or performance of the Services, the Third Generation Network, or any other service provider, customer, or end user; (ii) use of the Services in violation of the Agreement; or (iii) if you are delinquent in your payment obligations for any undisputed fees. We acknowledge that suspending your right to access or use some or part of the Services is a significant action, and, therefore, we will not exercise this remedy except in good faith and as necessary to resolve the issue giving rise to our right to suspend the Services.
- b) **Termination for Cause:** Either Party may terminate this Agreement and any Services purchased hereunder in whole or part by giving written notice to the other Party if the other Party: i) breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of such notice; ii) at the written recommendation of a government or regulatory agency following a change in either applicable laws or the Services; or iii) upon the commencement by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings or an assignment for the benefit of creditors.
- c) **Effect of Termination**
 - i) If you terminate the Services, a portion of the Services, or this Agreement in its entirety due to our material breach under Section 7(b) (Termination for Cause), you will not be liable for any fees or charges for terminated Services for any period subsequent to the effective date of such termination (except those arising from continued usage before the Services are disconnected).
 - ii) If this Agreement or any Services are terminated for any reason other than as a result of a material breach by us or as set forth in Section 16(k) (Regulatory and Legal Changes) you must, to the extent permitted by applicable law and without limiting any of our other rights or remedies, pay within thirty (30) days of such termination all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services for the remainder of the then-current Term plus related Taxes and Fees and any additional sums owed.

8) CONFIDENTIALITY

- a) **Obligations:** During the Term of this Agreement and for at least one (1) year thereafter, the receiving Party shall hold, and shall cause its Affiliates to hold, the disclosing Party's Confidential Information in confidence, shall use such Confidential Information only for the purpose of fulfilling its obligations under this Agreement, and shall use at least as great a standard of care in protecting the Confidential Information as it uses to protect its own Confidential Information.
- b) **Permitted Disclosures:** Each Party may disclose Confidential Information only to those of its employees, agents or subcontractors who have a need for it to perform or exercise such Party's rights or obligations under this Agreement and who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Each Party may disclose the other Party's Confidential Information in any legal proceeding or to a governmental entity as required by law, but only to the extent and for the purposes of such required disclosure, and provided, to the extent permitted by law, the receiving Party first promptly notifies the disclosing Party of the need for such disclosure and allows the disclosing Party a reasonable opportunity to seek an appropriate protective order. We may disclose without your consent your name and certain proprietary network information or Confidential Information in response to a traceback request to identify reasonably suspected sources of illegal calls. The traceback request may be submitted by the Traceback Consortium, the Federal Communications Commission, or other federal, state or local law enforcement agencies.
- c) **Return/Destruction of Confidential Information:** Confidential Information, including copies, will be deemed the property of the disclosing Party. The receiving Party will, within twenty (20) days of a written request by the disclosing Party return all Confidential Information (or any designated portion thereof), including all copies thereof, to the disclosing Party or if so directed by the disclosing Party, destroy such Confidential Information. The receiving Party will also certify in writing that it has satisfied its obligations under this Section.

9) INTELLECTUAL PROPERTY

- a) **Limited License:**
 - i) Subject to, and conditional upon your compliance with, the terms of this Agreement, we grant to you a limited, personal, revocable, non-exclusive, non-transferable (other than as permitted under this Agreement), non-sublicensable license to use any Software provided or made available by

us as part of the Services to the extent reasonably required to use the Services as permitted by this Agreement, only for the duration that you are entitled to use the Services and subject to you being current on all payment obligations.

ii) You will not:

- (1) sublicense, resell, distribute or assign your rights under the license granted under this Agreement to any other person or entity;
- (2) modify, adapt or create derivative works of the Software or any associated documentation;
- (3) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code for the Software;
- (4) use the Software for infringement analysis, benchmarking, or for any purpose other than as necessary to use the Services you are authorized to use;
- (5) create any competing Software or Services; or
- (6) remove any copyright or other proprietary or confidential notices on any Software or Services.

b) **IP Rights**

- i) **Third Generation Rights:** Except as expressly provided in this Agreement, the limited license granted to you under Section 9(a) (Limited License) does not convey any ownership or other rights or licenses, express or implied, in the Services, any related materials, work product developed in connection with any professional services, or in any Intellectual Property and no IP Rights or other rights or licenses are granted, transferred, or assigned to you or any other party by implication, estoppel, or otherwise. All rights not expressly granted herein are reserved and retained by us and our licensors. You will return all Third Generation IP to us at the conclusion of the applicable Service. You will cooperate to take such actions reasonably requested to vest ownership of Third Generation IP to us.
- ii) **Third Party Rights:** The Software and Services may comprise or incorporate services, software, technology or products developed or provided by third parties, including open source software or code. You acknowledge that misuse of the Services may violate third-party IP Rights.
- iii) **End User Rights:** As between the Parties, you retain title to all IP Rights that are owned by you or your suppliers. To the extent reasonably required or desirable for the provision of the Services, you grant to us a limited, personal, non-exclusive, royalty-free, license to use your IP

Rights. You must provide (and are solely responsible for providing) all required notices and obtaining all licenses, consents, authorizations or other approvals related to the use, reproduction, transmission, or receipt of any Customer Content that includes personal or Confidential Information or incorporates any third-party IP rights.

- iv) **Use of Marks:** Neither Party may use or display the other Party's trademarks, service mark or logos in any manner without such Party's prior written consent, except that we may use your name and trademarks in a list of customers, or in connection with written sales or promotional materials (which for the avoidance of doubt shall not include any online forums without your express prior written consent). If you have a direct relationship with us, we may place a "Powered by" and/or copyright notice, or similar footer at the bottom of any or all Services.

10) DATA PROTECTION

- a) **Data Privacy:** We respect your privacy and will only use the information you provide to us or that is collected in the provision of the Services in accordance with the Privacy Policy available at <https://3genusa.goascenda.com/privacy-policy/>.
- b) **Data Security:**
 - i) We will take commercially reasonable precautions, including, without limitation, technical (e.g., firewalls and data encryption), administrative and physical measures, to help safeguard your account, Account Data, proprietary network information, and Customer Content against unauthorized use, disclosure, or modification.
 - ii) You must protect all access points to the service, including without limitation IP desk phones, desktop clients, web clients, mobile applications, and software integrations, using industry-standard security measures. You are solely responsible for keeping all user identifications and passwords secure. You must monitor use of the Services for possible unlawful or fraudulent use and must notify us immediately if you become aware or have reason to believe that the Services are being used fraudulently or without authorization. Failure to notify us may result in the suspension or termination of the Services and additional charges resulting from such use. We will not be liable for any charges resulting from unauthorized use of your account.
 - iii) **Software Changes:** We may push software updates and patches directly to your device(s) for installation and you will not prevent us from doing so. You must promptly implement all fixes, updates, upgrades and

replacements of software and third-party software that we may provide. We will not be liable for the inoperability of the Services or any other Service failures due to your failure to timely implement the required changes.

11) **DISCLAIMER OF WARRANTIES:** WE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE SERVICES OR OUR PROVISION OF THE SERVICES, OR ANY PROFESSIONAL SERVICES, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR NONINFRINGEMENT, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. FURTHERMORE, WE EXPRESSLY DENY ANY REPRESENTATION OR WARRANTY ABOUT THE ACCURACY OR CONDITION OF DATA OR THAT THE SERVICES OR RELATED SYSTEMS WILL OPERATE UNINTERRUPTED OR ERROR-FREE. UNLESS SPECIFICALLY IDENTIFIED IN ANY SERVICE LEVEL AGREEMENT, WE MAKE NO WARRANTY OR REPRESENTATION REGARDING THE AVAILABILITY OF THE SERVICES.

12) **LIMITATION OF LIABILITY**

- a) **Excluded Damages:** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR (1) INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, REPUTATIONAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND; (2) COSTS OF PROCUREMENT, COVER, OR SUBSTITUTE GOODS OR SERVICES; (3) LOSS OF USE, LOSS OR CORRUPTION OF DATA; OR (4) LOSS OF BUSINESS OPPORTUNITIES, PROFITS, GOODWILL, OR SAVINGS, WHETHER IN ANY OF THE FOREGOING, ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. NEITHER PARTY WILL BE LIABLE FOR ACTIONS REASONABLY TAKEN TO COMPLY WITH LAW.
- b) **Direct Damages:** EXCEPT AS SET FORTH HEREIN, THE TOTAL CUMULATIVE LIABILITY OF THE PARTIES UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE UNDER THIS AGREEMENT DURING THE PREVIOUS SIX (6) MONTHS. LIMITATIONS UNDER THIS SECTION WILL NOT APPLY TO: I) YOUR PAYMENT OBLIGATIONS; II) EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S IP RIGHTS; III) YOUR INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; IV) EITHER PARTY'S LIABILITY RESULTING FROM GROSS NEGLIGENCE, FRAUD, OR WILLFUL OR CRIMINAL MISCONDUCT; OR V) YOUR LIABILITY RESULTING FROM USE OF THE SERVICES IN BREACH OF THE AGREEMENT. NOTHING IN

THIS AGREEMENT SHALL LIMIT OR EXCLUDE ANY LIABILITY WHICH MAY NOT BE RESTRICTED, LIMITED OR EXCLUDED PURSUANT TO APPLICABLE LAW.

13) INDEMNIFICATION

- a) **By End User:** You hereby agree to indemnify, defend and hold us harmless, and our respective Affiliates, subsidiaries, directors, officers, agents, suppliers, employees and assigns (collectively, "Indemnified Parties"), from and against any Losses arising out of or relating to: (i) your use of Services; (ii) Customer Content and/or any third party information used, maintained or stored in connection with the Services; (iii) your use of 911 or E911 services, including but not limited to your management of and data entry into the Services; (iv) your breach of any representation, covenant or warranty contained herein; (v) violation of any law by you or any third party arising out of or relating to your actions; (vi) the modification or unauthorized use by you or distribution of the Services or Third Generation IP; or (vii) any violation of law in which you are allegedly engaged. Further, Customer will indemnify and hold harmless Third Generation against all damages, costs, and legal fees finally awarded against Third Generation by a court of competent jurisdiction in connection with such third-party claim or agreed to in a written settlement agreement approved in writing by the Customer.
- b) **By Third Generation:** Subject to the limitations set forth in Section 12 (Limitation of Liability), we shall, during the Term of this Agreement, defend and indemnify, at our expense, any claim or suit brought against you alleging that the Software infringes a U.S. trademark, patent or copyright and shall pay all costs and damages finally awarded. If use of the Software under the terms of this Agreement is, or in our opinion is likely to be, enjoined due to the type of infringement specified above, then we will, at our sole option and expense, obtain for you the right to continue using the Software, or replace or modify the Software so that it becomes non-infringing. We shall have no liability for actual or alleged infringement based upon the use of the Software in combination with other products, devices or software not furnished by us, use not in compliance with our specifications, or modifications made to the Software if the claim or suit of infringement would not have occurred but for such combination or modifications of the Software. We disclaim all other liability for patent, trade secret and copyright and other intellectual property rights infringement, including any incidental, special or consequential damages. With respect to any claims or actions relating to infringement of intellectual property rights, the remedies set forth in this Section shall be the sole and exclusive remedies to which you are entitled.

- c) **Defense and Indemnification Procedures:** Any Party seeking defense or indemnification (the “**Indemnified Party**”) must provide the Party from which it seeks such indemnification or defense (the “**Indemnifying Party**”) with the following: (a) prompt written notice of the third-party claim, (b) sole control over the defense and settlement of the third-party claim, and (c) reasonable information, cooperation, and assistance in connection with the defense and settlement of the third-party claim. The Indemnified Party’s failure to comply with the foregoing obligations will not relieve the Indemnifying Party of its defense or indemnification obligations under this Section, except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnified Party will have the right to participate at its own expense in the defense of such third-party claim, including any related settlement negotiations. No such claim may be settled or compromised by the Indemnifying Party without the Indemnified Party’s express written consent (which such consent may not be unreasonably withheld, conditioned, or delayed), unless such settlement or compromise includes a full and complete release of all claims and actions against the Indemnified Party by each party bringing such third-party claim.

14) **DISPUTE RESOLUTION**

- a) **Good Faith Attempt to Settle Disputes:** In the event of any dispute or claim arising out of or relating to the Agreement (a “**Dispute**”), each Party will appoint a duly authorized representative who will confer with the other Party before either Party brings legal action to make a reasonable and good faith effort to settle or otherwise resolve such Dispute. If the Parties are unable to resolve the dispute within thirty (30) days of initial notification of the dispute, either Party may invoke arbitration pursuant to subsection (b) below.
- b) **Arbitration:** Any dispute or claim between the Parties, including those arising out of or relating to the Service, will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Allegheny County, Pennsylvania. Each Party shall bear its own costs and expenses, including without limitation attorney’s fees and expenses related to the presentation of evidence, witnesses and document production, and an equal share of the arbitrator’s and administrative fees of the arbitration. The arbitrator’s decision will follow the plain meaning of the relevant documents, and will be final and binding. Without limiting the foregoing, the Parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators

may be entered in any court having jurisdiction thereof. The arbitrator may award relief only in favor of the individual Party seeking relief and only to the extent necessary to provide relief warranted by that Party's individual claim. All claims shall be arbitrated individually. Unless the Parties agree otherwise, the arbitrator may not consolidate more than one person's or entity's claims, and may not otherwise preside over any form of a representative or class proceeding. **THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.**

- c) **Equitable Relief:** Any breach of either Party's IP Rights or confidentiality obligations will cause that Party irreparable harm for which monetary damages will be inadequate and such Party may, in addition to other remedies available at law or in equity, obtain injunctive relief without the necessity of posting a bond or other security, proof of damages, or similar requirement, in addition to any other relief to which such Party may be entitled under applicable law.
 - d) **Limitations:** Except for actions of nonpayment or liability arising from Section 13 (Indemnification), no claim, suit, action or proceeding relating to this Agreement may be brought by either Party more than one (1) year after the cause of action has accrued. **Any actions, lawsuits, or proceedings must be conducted solely on an individual basis and the Parties expressly waive any right to bring any action, lawsuit or proceeding as a class or collective action, private attorney general action or in any other capacity acting in a representative capacity.**
- 15) **ON-SITE SERVICES:** If our personnel perform Services on your premises: (i) you will provide all facilities, access, furnishings, equipment, software, documentation, passwords, and data necessary to perform the Services; (ii) you will maintain adequate security, safety, utilities, and environmental standards, consistent with industry standards and its regular practices; (iii) while on your premises, our personnel will comply with your standard rules and regulations consistently applied and communicated to us in advance; (iv) except as otherwise provided, you will reimburse us for our reasonable out-of-pocket expenses incurred in connection with the Services, including travel related costs including, but not limited to, coach class travel, business class lodging, automobile rental, and meals.
- 16) **MISCELLANEOUS**
- a) **Force Majeure:** Excluding either Party's payment obligations under the Agreement, neither Party will be responsible or liable for any failure to perform or delay in performing to the extent resulting from any event or circumstance that is beyond that Party's reasonable control, including acts of

God, floods, fires, hurricanes, earthquakes, acts of war or terrorism, technology attacks, labor actions, failure of third party suppliers, or changes in applicable laws and regulations. Failure to provide the Services due to a force majeure event will be excused.

- b) **Notices:** Except where otherwise expressly stated in the Agreement, or as required by law, all notices or other communications must be in English and are deemed to have been fully given when made in writing and delivered in person, upon delivered email, confirmed facsimile, or five days after deposit with a reputable overnight courier service to the Parties and addresses set forth on the Order. You acknowledge and agree that all electronic notices have the full force and effect of paper notices. The addresses to which notices may be given by either Party may be changed upon written notice given to the other Party pursuant to this Section.
- c) **Independent Contractors:** The Parties are independent contractors, and nothing herein will be construed to any other effect. Each Party alone will determine, supervise and manage the method, details, and means of performing its obligations. Except as agreed in writing, neither Party will act or attempt to act or represent itself, directly or by implication, as the other Party's agent. Each Party will be solely responsible for the withholding and payment of all applicable federal, state, and local taxes for its own employees.
- d) **Exclusivity and Competition:** Nothing herein shall prohibit us from providing services similar or identical to the Services provided to you hereunder to any other entity or person.
- e) **Severability; No Waiver:** Any provision of this Agreement that is prohibited or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions. No course of dealing or failure of a Party to enforce strictly any term or provision of this Agreement, or to exercise any right, obligation, or option provided hereunder, will waive such term, provision, right, obligation, or option
- f) **Assignment:** This Agreement will be binding on the successors and assigns of both Parties, provided, however, you will not assign, delegate or transfer this Agreement without our prior written consent. Such consent will not be required, however, for an assignment involving a sale of all or substantially all of your assets that relate to this Agreement, except that you must send us written notice of such assignment. Any other assignment or transfer will be void and of no effect. Third Generation may assign its rights and/or delegate its obligations under the Agreement, in part or in full, to one or more of its Affiliates.

- g) **Third-Party Beneficiaries:** The Parties agree that there will be no third-party beneficiaries to this Agreement.
- h) **Governing Law:** This Agreement and all acts, transactions, rights, and obligations relating thereto will be governed by and construed under the laws of the Commonwealth of Pennsylvania, without giving effect to principles of conflicts of law.
- i) **Export Control:** Any services, products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. You will not use, distribute, transfer, or transmit the services, products, software, or technical information (even if incorporated into other products) except in compliance with U.S. and other applicable export regulations.
- j) **Regulatory and Legal Changes:** In the event of any change in law, regulation or industry change that would prohibit or otherwise materially interfere with our ability to provide Services under this Agreement, we may terminate the affected Services or this Agreement or otherwise modify the terms thereof.
- k) **Laws, Regulations, Permits:** Each Party will comply, at its own expense, with all applicable federal, state, county, and local ordinances, regulations, and codes in performing its obligations hereunder. Each Party represents that it has or will obtain all consents, licenses, permits and certificates required to receive or perform the Services and to do business in the United States (or such other country in which a Party or its Affiliates sells or uses the Services). If we reasonably believe that continued performance of the Services would cause us or you to be in violation of any applicable law, statute, ordinance, court order or regulatory agency rules, we may cease performing the applicable Service(s) to the extent reasonably required to correct or avoid the violation.
- l) **Non-Disparagement:** During the Term of this Agreement and for a period of one (1) year thereafter, you agree to take no action which is intended, or would reasonably be expected, to: (a) harm us or our reputation, or (b) lead to unwanted or unfavorable publicity for us, including, without limitation, any actions on the internet or any online forums, blogs, or Facebook or Twitter posts, or any other similar online venues (hereinafter "**Online Forums**"). In addition, you may not set up or in any way administer any Online Forums that relate, directly or indirectly, to us or any other service providers or customers without our express prior written consent.
- m) **Survival:** The rights and obligations of either Party that by their nature would continue beyond the expiration or termination of this Agreement or an Order will survive expiration or termination of this Agreement or the Order,

including without limitation payment obligations, warranty disclaimers, indemnities, limitations of liability, confidentiality, definitions and miscellaneous.

- n) **Non-Solicitation:** You agree not to employ, either directly or indirectly, as an employee or contractor or otherwise, or, directly or indirectly, to solicit the employment or services of, our employees and/or contractors who provides Services to you during the Term of this Agreement and for a period of one (1) year from the date of the termination or expiration of this Agreement, without our express written consent. This restriction shall not apply if we would be prohibited by applicable law from enforcing such a restriction against our employee, and nothing in this Section shall be applied to bar you from hiring any person in response to a general solicitation for employment. Should you breach the terms of this Section, the Parties acknowledge and agree that we would be damaged in an amount that is not reasonably determinable and, therefore, you agree to pay us as liquidated damages and not as a penalty for each employee you hire or engage, an amount equal to one-third (1/3) of the annual salary paid by us to such employee.
- o) **Order of Precedence:** In the event of any conflict between the documents comprising this Agreement, precedence will be given to the documents in the following descending order: (i) the applicable Order; (ii) Use Policies incorporated by reference in this Agreement; (iii) the main body of this Agreement; (iv) the applicable Service Attachment; and (v) and any other document expressly referred to in this Agreement which governs the Services. No preprinted or form terms on a purchase order will apply.
- p) **Entire Agreement:** This Agreement, together with any attachment(s) or executed amendments, constitutes the Parties' entire understanding, and supersedes any prior written or oral agreements or understandings, related to the subject matter hereof. This Agreement is not enforceable unless properly executed by both Parties. The Parties' signatures on the Order or use of the Service shall constitute execution of this Agreement. This Agreement or any Order may be modified only by a mutually executed amendment, except that we may change the terms and conditions of these Terms of Service by posting the terms to our website and making you aware of the change in terms. If you do not accept the changes to these Terms of Service, you will have the opportunity to terminate the Services. If you do not elect to terminate the Services, such changes will become binding on you on the date they are posted to our website. Such amended Terms of Service will supersede all previously agreed to electronic and written terms of service.

Addendum A – Voice Services

This Voice Addendum shall apply only to our voice Services. The following clauses are hereby incorporated and made a part of the Agreement. In the event of any conflict or discrepancy between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall control.

- 1) **Unusual Usage:** We reserve the right, in our sole discretion, to examine your voice calling usage patterns and adjust the rates or impose a surcharge if such usage pattern is not normal or customary under generally accepted industry standards for the type of voice Service being used. We shall have the right, in our sole discretion, to adjust your rates due to abnormal usage patterns and you shall continue to be liable for any monthly recurring charges through the remainder of the Term.
- 2) **High Volume Short Duration Calls:** If 10% or more of your completed calls during any billing cycle constitute calls with a duration of less than six seconds in length (each, a “High Volume Short Duration Call” or “HVSD”), we may impose a surcharge for each HVSD call during the given billing cycle (including those HVSD Calls under the 10% threshold). We shall rate all such calls to the fourth (4th) decimal. In the event of any inconsistency between the provisions of this paragraph and an applicable pricing table, the provisions in this paragraph shall control.
- 3) **Nonstandard Call Types:** Voice plans may not include certain call types and such excluded call types will always be charged on a per-call basis. These calls types include, but are not limited to, a measured basis such as international calling and/or Operator Services.
 - a) For purposes of illustration a measured call commences to be billed when a call is answered by the called party and/or an automated answering device at the called party location. The measured call ends when either the calling party and/or the called party hangs up thereby disconnecting the call.
 - b) Notwithstanding 3(a) above, our underlying providers may charge fees for a "completed call" when the called party's line rings and/or after a certain number of rings even if the call is not answered by the called party. We shall in turn charge you for any such call(s).
- 4) **Call Rating:** All domestic calls will be rated and rounded in six (6) second increments with a six (6) second per call minimum and rounded to the third decimal place for each call charge. All international and calling card calls will be rated in six (6) second increments with a six (6) second per call minimum and rounded to the third decimal place for each call charge unless otherwise

determined by us to be in six (6) second increment rounding with rounding up to the next six (6) second increment and all calls to Mexico will be rated in six (6) second increments.

5) **Payphone Charges:** If you use our "Toll Free" feature or any toll free feature that we offer in the future, we will be entitled to recover from you any charges imposed on us in connection with toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent, or in such other fashion as we deem appropriate for the recovery of these costs.

6) **Directory Listing and Limitations**

- a) We may charge you an additional fee for each call made to directory assistance.
- b) The phone numbers you provision through the Services may not be listed in any telephone directories. However, phone numbers you transfer from a local phone company may be listed. As a result, a caller may not be able to utilize a reverse directory to lookup your address. Directory listings and the respective cost for such directory listing shall be as specified in the Service Prices and charged at the then current rate.
- c) You acknowledge that we may provide details of the numbers issued to you to organizations that wish to compile directories or directory enquiry services, and you consent to such disclosure.

7) **Additional Limitations**

- a) The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411) services in one or more (or all) service areas. Our provision of 911 services is subject to our **End User 911/E911 Service Terms and Conditions**.
- b) The Service may not be compatible with security systems. You may be required to maintain a telephone connection through the local exchange carrier to use any alarm monitoring functions for any security system. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.