

## PLAYVOX MASTER SUBSCRIPTION AGREEMENT

Last Updated: October 26, 2022

This Master Subscription Agreement is between Arcaris, Inc. d/b/a Playvox ("Playvox") and the organization agreeing to the terms of this Agreement (the "Customer") (each herein referred to individually as a "Party", or collectively as the "Parties"), and, together with all applicable exhibits, attachments, addenda, and Order Forms, is the complete agreement of the parties regarding Customer's access to, and use of, the Services (the "Agreement"). This Agreement shall be effective on the earliest of (a) the date Customer clicks a button indicating its agreement with the terms of this Agreement, (b) the date Customer enters into an Order Form or other ordering document incorporating the terms of this Agreement, or (c) Customer's use of the Services (the "Effective Date"). In the event of a conflict, the terms of an applicable exhibit, attachment, addendum, or Order Form prevails over the terms in this Master Subscription Agreement. If Customer has a separate written agreement executed with Playvox, the terms of this Master Subscription Agreement will not apply.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE PRODUCTS AND SERVICES MADE AVAILABLE HEREUNDER.

### 1. DEFINITIONS.

**"Account"** means any accounts or instances created by or on behalf of Customer or its Affiliates within the Services.

**"Affiliate(s)"** means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby "control" (including, with correlative meaning, the terms "controlled by" and "under common control") means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

**"API"** means the application programming interfaces developed, made available and enabled by Playvox that permit Customers to access certain functionality provided by the Services, including without limitation, any interface that enables the interaction with the Service(s) automatically through HTTP requests and the Playvox application development API that enables the integration of the Service(s) with other web applications.

**"Applicable Data Protection Law(s)"** means the laws and regulations of the United States (including the California Consumer Privacy Act (the "CCPA"), the California Privacy Rights Act (the "CPRA"), the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom (including the General Data Protection Regulation or GDPR and any applicable national laws made under it where Customer is established in the European Economic Area), the Swiss Federal Act of 19 June 1992 on Data Protection, and the Brazilian General Data Protection Law (LGPD), all as may be amended or superseded.

**“Applicable Law(s)”** means all applicable local, state, federal and international laws, rules and regulations, including, without limitation, those related to data privacy and data transfer.

**“Confidential Information”** means all information disclosed by one Party to the other Party which is marked confidential or which a reasonable person would understand to be confidential or proprietary given the nature of the information and circumstances of disclosure. For purposes of this Agreement, Customer Data shall be deemed Customer Confidential Information. Playvox’s Confidential Information shall include, without limitation, any non-public information regarding Playvox’s business, products and services (including, without limitation, the discovery, invention, research, improvement, development, marketing or sale thereof as well as templates, scorecards, modules, coaching cards, rubrics and the like), pricing, financial data, models and information, business and marketing plans, customer information, business opportunities, plans for development of future products, unreleased versions of products, know-how, technology, the Services, the Software, and the API. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) was already known to the receiving Party at the time of disclosure by the disclosing Party without an obligation of confidentiality; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without use of the disclosing Party’s Confidential Information.

**“Contractor”** means an independent contractor or consultant of a Party.

**“Customer Data”** means all electronic data, text, messages, communications or other materials submitted to and stored within the Services by Customer, Users and End-Users in connection with Customer’s use of such Service.

**“Customer Personnel”** means employees and Contractors of Customer, including customer support personnel.

**“Documentation”** means any written or electronic documentation, images, video, text, or sounds specifying the functionalities of the Services provided or made available by Playvox to Customer or Users through the Site.

**“Effective Date”** means the effective date designated on the relevant Order Form referencing this Agreement.

**“End-User”** means any person or entity other than Customer or Users with whom Customer, its Users, or its End-Users interact while using a Service.

**“Force Majeure Event”** means any circumstances beyond Playvox’s reasonable control, including, but not limited to, an act of God, act of government, flood, fire, earthquake, epidemic or pandemic, civil unrest, act of terror, strike or other labor problem, widespread failure or delay of any Internet service(s), Third-Party Service(s), or acts undertaken by third parties, including without limitation, a denial of service attack.

**“Intellectual Property Rights”** means any and all respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights.

**“Order Form”** means any Playvox-generated subscription order form executed or approved by each Party with respect to Customer’s subscription to a Service, which form may detail, among other things, the number of Users authorized to use such Service under Customer’s subscription to that Service and the Service Plan applicable to Customer’s subscription to that Service.

**“Personal Information”** or **“Personal Data”** means any information relating to a consumer, household, or an identified or identifiable natural person (‘data subject’), where such data subject is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity of that natural person and Applicable Data Protection Law(s) identify as being personal information.

**“Playvox Parties”** (each, a **“Playvox Party”**) means Playvox and any of its Affiliates, officers, directors, employees, Contractors, agents, service providers, suppliers, licensors and permitted assigns.

**“Sensitive Personal Information”** means any of the following: (i) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (**“PCI DSS”**); (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (**“HIPAA”**); or (iii) any other Personal Data of an EU citizen deemed to be a “special category” (as identified in the EU General Data Protection Regulation or any successor directive or regulation).

**“Service(s)”** means any products, subscriptions, licenses, and/or services, that Customer orders via an Order Form referencing this Agreement, including, as applicable, the API, Software, and Documentation. Any new or modified features added to or augmenting the Services or updates or enhancements to the Services are also subject to this Agreement and Playvox reserves the right to deploy such updates at any time. “Service(s)” specifically exclude Third-Party Services.

**“Service Plan”** means the services plan and the functionality and services associated therewith (as detailed in the Order Form or on the Site) for the Services to which the Customer subscribes.

**“Site”** means [www.playvox.com](http://www.playvox.com) (and all other successor URLs, mobile or localized versions and related domains and subdomains owned or operated by Playvox or its Affiliates).

**“Software”** means software provided by Playvox (either by download or access through the internet) that allows a User to use any functionality in connection with the Services.

**“Subscription Term”** means the period during which Customer has agreed to subscribe to a Service with respect to any individual User starting on the Subscription Start Date and continuing for the term as designated in an Order Form with respect to any individual User.

**“Taxes”** means taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes accessible by any local, state, provincial or foreign jurisdiction.

**“Third-Party Services”** means third party products, applications, services, software, networks, systems, directories, websites, databases and information to which a Service links, or which Customer may connect to or enable in conjunction with a Service, including, without limitation, Third-Party Services which may be integrated directly into Customer’s Account by Customer or at Customer’s direction.

**“Usage Data”** means metrics and information regarding Customer’s use of the applicable Service(s), including evaluating how Users and End-Users use the Service(s).

**“User”** means an individual authorized to use the Service(s) through Customer’s Account as an agent, manager, team leader, administrator or any other role as identified through a unique login.

## **2. ACCESS TO AND USE OF THE SERVICES.**

**2.1 Services.** During the Subscription Term and subject to compliance by Customer and Customer’s Users with this Agreement, any applicable Documentation and the Order Form, Customer has, for Customer’s internal business purposes only, the limited right to access and use the Services listed in the applicable, fully executed Order Form in accordance with Customer’s Service Plan. Without limiting the foregoing, Customer’s right to access and use the API is also subject to the restrictions and policies implemented by Playvox from time to time with respect to the API as set forth in the Documentation or otherwise communicated to the Customer in writing.

**2.2 Extension of Rights to Affiliates.** Customer may extend Customer’s rights, benefits and protections provided herein to Customer’s Affiliates and to Contractors or service providers acting on Customer’s or Customer’s Affiliates’ behalf, provided that the Customer remains responsible for their compliance hereunder.

**2.3 Modifications.** Playvox Parties reserve the right, at their discretion, to modify, add, or discontinue any Service(s) or any portion thereof, at any time, for any reason and without liability to Customer except as provided in this Section 2.3. Further, Customer acknowledges that the Playvox Parties may modify the features and functionality of the applicable Service(s) during the Subscription Term. Playvox shall use reasonable efforts to provide Customer with advance notice of any deprecation of any material feature or functionality. In the event any such modification materially impairs Customer’s ability to use the applicable Service(s) in the manner contemplated by this Agreement, Customer may terminate the Agreement upon written notice to Playvox and Playvox shall immediately refund Customer, on a pro-rated basis, any pre-paid Fees corresponding to the unused portion of Customer’s Subscription Term for the Services after such termination.

**2.4 Connections.** A high-speed internet connection is required for proper transmission of the Services. Customer is responsible for procuring and maintaining the network connections that connect Customer’s network to the Services, including, but not limited to, “browser” software that supports protocols used by Playvox, including Secure Socket Layer (SSL) protocol or other protocols accepted by Playvox, and to follow procedures for accessing Services that support such protocols. Playvox is not responsible for interruptions, service or performance failures, delays or other problems in connection with use of the internet, third-party platforms and other services, or other Force Majeure Events. Playvox is not responsible for notifying Customer or Users of any upgrades, fixes, or enhancements to any such software or services or for any compromise of data, including, without limitation, Customer’s Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated, or controlled by Playvox.

**2.5 Prohibited Activities.** Customer shall not: (a) license, sublicense, sell, resell, outsource, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit the Services; (b) make any of the Services available to or process data on behalf of any third party, other than authorized Users in

furtherance of Customer's internal business purposes as expressly permitted by this Agreement; (c) circumvent or disable any security or other technological features or measures of any Service, or attempt to probe, scan or test the vulnerability of a network or system or to breach security or authentication measures; (d) modify, adapt, or hack any of the Services or otherwise attempt to gain unauthorized access to any of the Services or related systems or networks; (e) use any of the Services in any unlawful manner, including but not limited to violation of any individual's privacy rights; (f) use any of the Services to send unsolicited or unauthorized junk mail, spam, pyramid schemes or other forms of duplicative or unsolicited messages; (g) use any of the Services to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person's intellectual property rights; (h) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any software making up any of the Services; (i) use any of the Services to knowingly post, transmit, upload, link to, send or store any content that is unlawful, racist, hateful, abusive, defamatory, libelous, obscene, or discriminatory; (j) unless expressly agreed to otherwise in writing by Playvox, use any of the Services to collect, store, process or transmit any Sensitive Personal Information (and Playvox expressly disclaims any liability under this Agreement for such Sensitive Personal Information); (k) use any of the Services to knowingly post, transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software ("**Malicious Software**"); (l) access any of the Services for competitive purposes and/or if Customer (or a User) are a competitor of Playvox; or (m) use or launch any automated system that accesses a Service (i.e., a bot) in a manner that sends more request messages to a Service server in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser.

**2.6 Account Activity.** Customer is solely responsible for the content, accuracy, and legality of all of Customer Data, and Playvox has no obligation to review Customer Data for the foregoing. The Customer also maintains all responsibility for determining whether the Services and the information generated thereby are accurate or sufficient for Customer's purposes. Access to and use of the Services is restricted to the specified number of individual Users permitted under Customer's subscription to the applicable Service(s). Customer acknowledges and agrees that each User will be identified by a unique username and password ("**User Login**") and that a User Login cannot be shared or used by more than one individual, unless otherwise provided in Customer's Service Plan. Customer is responsible for maintaining the confidentiality of all User Login information for Customer's Account, including, without limitation, all User Login information for all Users. If any User who has access to a User Login is no longer an employee or Contractor of Customer, then Customer will delete such User Login as soon as reasonably practicable and otherwise terminate such access to the Services.

**2.7 Compliance.** Customer is responsible for its compliance with the provisions of this Agreement and with all Applicable Laws, including compliance by its Users and End-Users and for any and all activities that occur under Customer's Account, which Playvox may verify from time to time. Without limiting the foregoing, Customer is solely responsible for ensuring that Customer's use of the Services is compliant with any and all terms, privacy policies, agreements or other obligations Customer may maintain or enter into with Users, End-Users, or a Third-party Service provider.

**2.8 Management of Services.** In addition to any other rights Playvox has under this Agreement, Playvox reserves the right, in Playvox's sole discretion, to temporarily suspend Customer's access to and use of any of the Services: (a) during planned downtime for upgrades and maintenance to such Service(s) (of which Playvox will notify Customer as soon as reasonably practicable through our forum page and/or

through a notice to Customer's Account owner and Users) ("**Planned Downtime**"); or (b) during any unavailability caused by Force Majeure Events. Playvox will use commercially reasonable efforts to schedule Planned Downtime for weekends (Pacific time zone) and other off-peak hours.

### **3. DATA.**

**3.1 Customer Data.** Customer represents and warrants that Customer has all necessary rights, title and permissions for Customer and Playvox to access, collect, share, and use Customer Data as contemplated by this Agreement and that Customer Data does not and will not violate or infringe (a) any intellectual property, publicity, privacy or other rights, or (b) any Applicable Laws. Customer acknowledges and agrees that Customer shall not submit to or process via the Services any data that is Sensitive Personal Information.

**3.2 Customer as Data Controller.** To the extent Customer Data constitutes Personal Data, the Parties agree that Customer shall be deemed to be the Data Controller and Playvox shall be deemed to be the Data Processor, as those terms are understood under the Applicable Data Protection Law. Customer acknowledges and agrees that Playvox may use subprocessors, who may access Customer's Data and Usage Data, to provide, secure, and improve the Services. If applicable, Playvox's Data Processing Addendum can be executed by the Parties and, if executed, will be attached hereto as **Addendum A** (the "**DPA**"). Upon execution by the Parties, if applicable, the DPA is hereby incorporated by reference into the terms of this Agreement.

**3.3 Safeguards.** In operating the Services, Playvox will maintain commercially reasonable administrative, physical, and technical safeguards ("**Safeguards**") designed to protect the security, confidentiality, and integrity of Customer Data. These safeguards include encryption of Customer Data in transmission (using SSL or similar technologies). Playvox is not responsible for any Safeguards relating to Third-Party Services, which Customer may link to through the Services at Customer's election.

**3.4 Ownership, Use and Disclosure.** Playvox acknowledges it receives no ownership or, except to the extent specified herein, other rights in any Customer Data, and all rights, title and interest in such Customer Data remain with Customer. Playvox shall not use Customer Data, unless authorized by the Customer or if Playvox is required to do so by law or court order. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data to Playvox: (a) during the Term as necessary and useful to perform the Services; (b) during the Term and thereafter to (i) use and disclose in aggregate, anonymous and de-identified form, where the resulting information does not in any way identify or allow the identification of Customer or any Personal Data, and/or (ii) use Customer Data for Playvox's internal business purposes, including without limitation, improving and/or creating enhancements to or new offerings, to develop industry standard benchmarks, improve the quality of its analytics, improve ("train") its artificial intelligence algorithms and machine learning models associated with the Services. Additionally, Customer understands and acknowledges that in connection with the processing of Customer Data pursuant to this Agreement, Playvox may share Customer Data with its Affiliates and Third-Party Service Providers.

### **4. CONFIDENTIALITY.**

Each Party will protect the other Party's Confidential Information from unauthorized use, access or disclosure in the same manner as each Party protects its own Confidential Information, but with no less

than reasonable care. Except as otherwise expressly permitted under this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the employees and/or non-employee service providers and Contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; provided, that such Party shall use reasonable efforts to provide the other Party with prompt written notice of such order or subpoena so that the other Party (or any of its Affiliates) may seek an appropriate protective order, unless, providing such notice would itself constitute a violation of Applicable Law; or (c) as reasonably necessary to comply with any Applicable Law. If, pursuant to clause (b), a Party is nevertheless legally required to disclose Confidential Information, then such Party shall only disclose that portion of the Confidential Information that is legally required to be disclosed.

## **5. INTELLECTUAL PROPERTY RIGHTS.**

5.1 As between the Parties, Customer exclusively owns and retains all Intellectual Property Rights in and to Customer Data, except for pre-existing Services components contained in Customer Data. The rights granted to Customer, Users, and End-Users to use the applicable Service(s) under this Agreement do not convey any additional rights in the Service(s) or in any Intellectual Property Rights of Playvox associated therewith. Subject only to limited rights to access and use the Service(s) as expressly stated herein, all rights, title, and interest in and to the Services and all Documentation, hardware, software and other components of or used to provide the Services and any derivative works, modifications or improvements of any of the foregoing, including all related Intellectual Property Rights, will remain with the applicable Playvox Party and belong exclusively to such Playvox Party.

5.2 Customer hereby grants to Playvox a fully paid-up, royalty-free, worldwide, transferable, sub-licensable, assignable, irrevocable, and perpetual license to use for any lawful purpose any suggestions, enhancement requests, recommendations or other feedback Playvox receives from Customer, Users, End-Users, or other third parties acting on Customer's behalf (collectively, "**Feedback**"). Playvox also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by any Feedback.

5.3 Playvox®, and Playvox's other product and service names, and logos used or displayed on the Services are registered or unregistered trademarks of Playvox (collectively, "**Marks**"). Customer shall not attempt, now or in the future, to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent Playvox or its Services.

## **6. FEES, PLAN MODIFICATIONS, AND PAYMENTS.**

6.1 **Payment and Billing.** Unless otherwise indicated on an Order Form referencing these Terms, all fees and charges under this Agreement ("**Fees**") will be invoiced in full up front at the time of commencement of the applicable Service(s) and are non-refundable. Unless otherwise indicated in the Order Form, Customer shall pay all undisputed invoices within 30 days of Customer's receipt of each invoice without set-off, counterclaim or deduction. Playvox reserves the right to charge interest on any late Fees in an amount equal to 1.5% per month of the overdue amount or the maximum amount allowed by Applicable Law, whichever is less. Customer is responsible for providing valid and current

payment information and Customer agrees to promptly update Customer's Account information, including payment information, with any changes that may occur (for example, a change in Customer's billing address or credit card expiration date). If Customer fails to pay or dispute Customer's Fees or other charges indicated on any Order Form within thirty (30) days of Playvox's notice to Customer that payment is delinquent, or if Customer does not update payment information upon Playvox's request, in addition to our other remedies, Playvox may suspend or terminate access to and use of such Service(s) by Customer, its Users and End-Users.

**6.2 Upgrades.** If Customer chooses to upgrade Customer's Service Plan or increase the number of Users authorized to access and use a Service during Customer's Subscription Term, any incremental Fees associated with such upgrade will be charged in accordance with the remaining Subscription Term. In any future Subscription Term, Customer's Fees will reflect any such upgrades.

**6.3 Downgrades.** Customer may not downgrade Customer's Service Plan or reduce the number of Users during Customer's Subscription Term. If Customer desires to downgrade its Service Plan or reduce the number of Users under any Service Plan for a subsequent Subscription Term, Customer must provide Playvox with at least thirty (30) days' advance written notice prior to the end of Customer's then-current Subscription Term. Downgrading Customer's Service Plan may cause loss of content, features, or capacity of the Service(s) as available to Customer under Customer's Account, and Playvox does not accept any liability for such loss.

**6.4 Taxes.** Unless otherwise stated on an applicable invoice, our Fees do not include any Taxes. Customer is responsible for paying Taxes except those assessable against Playvox measured by its net income. Playvox will invoice Customer for such Taxes if Playvox believes Playvox has a legal obligation to do so and Customer agrees to pay such Taxes if so invoiced.

## **7. TERM AND TERMINATION.**

**7.1 Term.** Unless earlier terminated in accordance with this Agreement, this Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms, including any Renewal Terms (together, the "**Term**").

**7.2 Renewal.** Either Customer or Playvox may elect to terminate this Agreement as of the end of Customer's then-current Subscription Term and not renew for an additional Subscription Term by providing written notice, in accordance with these Terms, on or prior to the date that is thirty (30) days before the end of the then-current Subscription Term. Unless either Customer or Playvox provides such timely notice, Customer's subscription to the Services will automatically renew for a Subscription Term equivalent in length to the then-expiring Subscription Term (the "**Renewal Term**"). Unless otherwise provided for in any Order Form, Playvox has the right to automatically increase the Fees applicable to Customer subscription to the Services for any such Renewal Term by an amount not to exceed the total of 3% per year for each User for the same Service(s) plus any increase in the CPI (as defined below) in effect for December of the immediately preceding calendar year (the "**Most Recent Calendar Year**") over the CPI in effect for December of the calendar year immediately preceding the Most Recent Calendar Year (the "**Auto Renew Fee Increase Cap**"); provided, however, that if Playvox determines, in its reasonable discretion, that material product or feature enhancements to the Services require that the increase in Fees exceed the Auto Renew Fee Increase Cap for a Renewal Term, Playvox will first obtain Customer's prior written consent before applying such new Fees to such Renewal Term. The term "CPI"



shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items published by the United States Department of Labor, Bureau of Labor Statistics.

**7.3 No Refunds or Credits.** Except as otherwise expressly set forth herein, no refunds or credits for Fees or other charges or payments will be provided to Customer if Customer terminates its subscription to the Services or cancels Customer's Account in accordance with this Agreement prior to the end of Customer's then-effective Subscription Term.

**7.4 Termination.** In addition to any other rights or remedies in this Agreement, either Party may terminate this Agreement (including any related Order Form) if the other Party (i) materially breaches this Agreement (including failure to pay undisputed Fees in a timely manner) and fails to cure such breach within 30 days following of receipt of notice of breach or (ii) becomes the subject of a petition in bankruptcy or any other proceedings relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**7.5 Unpaid Fees.** Except as expressly set forth below, upon termination of this Agreement for any reason, in addition to any other amounts Customer may owe Playvox, Customer must immediately pay any then-unpaid undisputed Fees associated with the remainder of such Subscription Term pursuant to all applicable Order Forms. This amount will not be payable by Customer if Playvox terminates this Agreement as a result of (a) an IP Claim in accordance with Section 11.2(c) (Playvox Indemnification) or (b) an uncured material breach by Playvox in accordance with Section 7.4(i) (Termination).

**7.6 Exporting Customer Data.** During the Term and up to expiration or termination of this Agreement, Customer will have the ability to export or download Customer's Data. After such expiration or termination, Playvox will have no obligation to maintain or provide any of Customer's Data, and Playvox will, unless prohibited by law or legal order, delete Customer's Data in the Services in accordance with Playvox's then-current deletion policy.

**7.7 Suspension.** Without limiting any other right under this Agreement, Playvox reserves the right to restrict functionalities or suspend the Services (or any part thereof), Customer's Account or Customer's and/or Users' or End-Users' rights to access and use the Services and remove, disable or quarantine any of Customer's Data if (a) Playvox reasonably suspects or detects that Customer, its Users or End-Users have violated this Agreement; or (b) Playvox reasonably suspects or detects any Malicious Software connected to Customer's Account or use of the Services by Customer, its Users or End-Users. This right includes the removal or disablement of Customer Data. Unless legally prohibited from doing so, Playvox will use reasonable efforts to contact the Customer directly via email to notify the Customer prior to taking any of the foregoing actions. Playvox shall not be liable to the Customer, its Users, End-Users or any other third party for any modification, suspension or discontinuation of Customer's rights to access and use the Services pursuant to this Section 7.7.

## **8. THIRD-PARTY SERVICES.**

Playvox may make available and Customer and Customer's Users may choose to enable, access or use various Third-Party Services through or in conjunction with the Services. If Customer does decide to enable, access or use Third-Party Services, Customer's access and use of such Third-Party Services shall be governed solely by the terms and conditions of such Third-Party Service provider. Playvox does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Third-

Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data (including Customer Data), or any interaction between Customer and the provider of such Third-Party Services. Playvox cannot guarantee the continued availability of such Third-Party Service features, and may cease enabling access to them without entitling Customer to any refund, credit or other compensation, if, for example and without limitation, the provider of a Third-Party Service ceases to make the Third-Party Service available for interoperation with the corresponding Service(s) in a manner acceptable to Playvox. Customer irrevocably waives any claim against Playvox with respect to such Third-Party Services. Playvox is not liable for any damages or losses caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Third-Party Services, or Customer's reliance on the privacy practices, data security processes, or other policies of such Third-Party Services. Customer may be required to register for or log into such Third-Party Services on their respective websites. By enabling any Third-Party Services, Customer is expressly permitting Playvox to disclose Customer's User Logins and Customer Data as necessary to facilitate the use or enablement of such Third-Party Services.

## **9. WARRANTY; DISCLAIMER.**

9.1 Playvox represents and warrants to Customer that the Services will operate in a manner that conforms in all material respects to the specifications included in the Documentation and that it will provide the Services and perform its other obligations under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards. The foregoing warranties will not apply to the extent such breach arises, in whole or in part, from an Exclusion (as defined in Section 11.2). Provided that Customer notifies Playvox in writing of the breach within thirty (30) days following performance of the defective Service(s), specifying the breach in reasonable detail, Playvox will, as Customer's sole and exclusive remedy, for any breach of the foregoing, re-perform the Services which gave rise to the breach and, if Playvox is unable to do so, then Customer may terminate this Agreement as set forth in Section 7 (Term and Termination) by providing thirty (30) days' advance written notice to Playvox.

9.2 EXCEPT AS EXPLICITLY PROVIDED IN SECTION 9.1, THE SITE AND ALL SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND PLAYVOX EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT PLAYVOX DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY CUSTOMER FROM PLAYVOX OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, PLAYVOX DISCLAIMS ANY OBLIGATIONS WITH RESPECT TO STORAGE OF CUSTOMER DATA, INCLUDING, WITHOUT LIMITATION, FOR ANY LOSS OR CORRUPTION OF CUSTOMER DATA. IN ADDITION, PLAYVOX DISCLAIMS ANY LIABILITY IN CONNECTION WITH (I) CUSTOMER'S CHOICE TO DOWNGRADE THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOSS OF CONTENT, FEATURES, OR CAPACITY OF SERVICES; AND (II) CUSTOMER'S USE OF OR CONNECTION TO ANY THIRD-PARTY SERVICES.

## **10. LIMITATION OF LIABILITY.**

10.1 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS AGREEMENT, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY AFFILIATE FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, DATA LOST IN THE COURSE OF TRANSMISSION VIA CUSTOMER SYSTEMS OR OVER THE INTERNET, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ANY AFFILIATE IN CONNECTION WITH THIS AGREEMENT, OR THE SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT OR THE SERVICES, SHALL IN ANY EVENT EXCEED THE FEES PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 10.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES., WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF PLAYVOX WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. PLAYVOX HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES IN THIS AGREEMENT. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE AND SHALL NOT BE CUMULATIVE.

10.3 Damages Exception. The foregoing limitations of liability do not apply to damages arising out of or relating to (a) either party's indemnification obligations under Section 11 (Indemnification), or (b) breach of Playvox's Intellectual Property Rights.

10.4 Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for personal injury or death, which means that some of the above limitations may not apply. IN THESE JURISDICTIONS, THE PARTIES' LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. Any claims or damages that Customer may have against Playvox shall only be enforceable against Playvox and not any other entity or its officers, directors, representatives or agents.

## **11. INDEMNIFICATION.**

**11.1 Customer Indemnification.** Customer will defend the Playvox Parties from and against any third-party claim arising out of: (a) use of the Service(s) or the Site by Customer, its Users or End-Users in breach of this Agreement; or (b) any allegation that Customer's use of any Service(s) or Customer Data infringes or misappropriates a third party's Intellectual Property Rights. Customer will indemnify and hold Playvox harmless from and against any damages and costs finally awarded against Customer or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from any such claim.

**11.2 Playvox Indemnification.** Playvox will defend Customer from and against any third-party claim alleging that the Services infringe or misappropriate a third party's Intellectual Property Rights and will indemnify and hold Customer harmless from and against any damages and costs finally awarded against Customer or agreed in settlement by Playvox (including reasonable attorneys' fees) resulting from any such claim. If use of the Services by Customer or its Users has become, or in Playvox's opinion is likely to

become, infringing, Playvox may at its option and expense: (a) procure for Customer the right to continue using the Services as set forth hereunder; (b) replace or modify the Services to make them non-infringing; or (c) if options (a) or (b) are not commercially reasonable or practicable as determined by Playvox, terminate Customer's subscription to the Services and refund Customer, on a pro-rated basis, any pre-paid Fees corresponding to the unused portion of Customer's Subscription Term for the Services after such termination. Playvox will have no liability or obligation under this Section 11.2 with respect to any third-party claim if such claim is caused in whole or in part by (i) Customer, Customer's Personnel, or Customer Users' unauthorized use of the Services; (ii) any breach by Customer and/or Customer's Users or Customer's Personnel of this Agreement; (iii) Customer's Data; (iv) compliance with designs, data, instructions or specifications provided by Customer; (v) Customer, Customer's Personnel, or Customer Users' modification of the Services; or (vi) the combination, operation or use of the Services with other hardware or software (each, an "**Exclusion**"). This Section 11.2 states the sole and exclusive liability of the Playvox Parties to Customer and Customer's sole remedy with respect to an Intellectual Property Right infringement or misappropriation claim in connection with this Agreement.

**11.3 Indemnification Procedures.** Each Party's indemnification obligations in this Section 11 are subject in each instance to the indemnified Party: (a) promptly notifying the indemnifying Party in writing of the threat or notice of the claim; (b) giving the indemnifying Party sole and exclusive control and authority to select defense attorneys, defend, and/or settle any such claim (however, the indemnifying Party shall not settle or compromise any claim that results in liability or admission of any liability without the indemnified Party's prior written consent); and (c) the indemnified Party fully cooperating with the indemnifying Party in connection with the defense or settlement of any claim.

## **12. MISCELLANEOUS.**

**12.1 No Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that either Party may, without the other Party's consent, assign this Agreement to an Affiliate or in connection with any merger or change of control of such Party or the sale of all or substantially all of its assets provided that any such successor or assignee agrees to fulfill its obligations pursuant to this Agreement. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 12.1 will be null and void.

**12.2 Entire Agreement & No Waiver.** This Agreement constitutes the entire agreement and supersedes any and all prior agreements between Customer and Playvox with regard to the subject matter hereof. Each party acknowledges and agrees that by executing the terms and conditions specified in this Agreement, (i) it is not relying upon any other statements, representations, warranties, promises, assurances, or the like, (ii) no remedies are or will be available to a Party with respect to the foregoing, and (iii) such remedies are unconditionally and irrevocably waived; provided, the foregoing shall not apply to any acts of fraud by a party. For the avoidance of doubt, in the event of any prior agreement(s) between the parties or its predecessor(s), where such agreement(s) covered the same subject matter as this Agreement, those prior agreements are hereby terminated, and any products subscribed to thereunder or services yet to be performed shall now be subject to the terms and conditions of this Agreement. By placing an Order with Playvox, Customer agrees that the terms and conditions of this Agreement shall apply to and govern that Order. Except with respect to product, services and pricing

applicable to an Order, additional or conflicting terms in any Order shall have no force or effect on either party, unless that Order is signed in hardcopy form by each party, and then those terms shall apply to the parties solely for that Order. Except as otherwise specified herein, any additional or conflicting terms contained in any other document (including, without limitation, any preprinted, additional or conflicting terms on any Customer purchase order, or acknowledgement from either party) shall be null, void and of no effect on either party. This Agreement may be amended by an authorized representative of each party in a duly executed writing signed in hardcopy form referencing this Agreement and expressing the intent to amend these terms and conditions. A Party's failure to enforce at any time any provision of the Agreement does not constitute a waiver of that provision or of any other provision of the Terms.

**12.3 Headers & Severability.** The headings contained in these Terms are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**12.4 Media.** Playvox and its Affiliates may use Customer's name, trademark, service mark and logos in Playvox's sales and marketing materials and public statements, and in other communications with Playvox's existing and prospective customers

**12.5 Governing Law & Arbitration.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware, without regard to its conflicts of law principles, and shall be subject to the exclusive jurisdiction of the courts of Delaware. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties.

**12.6 Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Nothing herein shall prevent either Party from entering into any further agreements or business relationships, nor prevent either Party from conducting similar business with others as long as such Party observes its obligations under this Agreement.

**12.7 Survival.** Provisions herein which by their context and content are intended to survive termination or expiration hereof shall so survive, including Sections 1 (Definitions), 3.1 (Customer Data), 3.4 (Aggregated Anonymized Data), 4 (Confidentiality), 5 (Intellectual Property Rights), 6.1 (Payment and Billing), 6.4 (Taxes), 7 (Term and Termination), 8 (Third-Party Services), 9 (Warranty; Disclaimer), 10 (Limitation of Liability), 11 (Indemnification), and 12 (Miscellaneous). Termination of this Agreement shall not limit either Party's liability for obligations accrued as of or prior to such termination or for breach of this Agreement.

**12.8 Notice.** All notices to be provided by Playvox to Customer under this Agreement may be delivered in writing by (i) nationally recognized expedited delivery service ("**Courier**") or U.S. mail to the contact mailing address provided by Customer on the applicable Order Form; or (ii) electronic mail to the electronic mail address provided by Customer on the applicable Order Form. Customer must give notice to Playvox in writing by Courier or U.S. mail to the mailing address below (and, in addition, with a copy to the email below):

Arcaris, Inc. (dba Playvox)

530 Lawrence Expy, #905

Sunnyvale, CA 94085, U.S.A With a copy to legal@playvox.com

All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

**12.9. Export Compliance.** The Services or components of the Services that Playvox may provide or make available to Customer or its Users may be subject to U.S. export control and economic sanctions laws. Customer represents and warrants that Customer will comply with all such laws and regulations as they relate to access to and use of the Services, and such other components by Customer and Users. Customer shall not access or use the Services if Customer is located in any jurisdiction in which the provision of the Services, or other components is prohibited under U.S. or other Applicable Laws (a **"Prohibited Jurisdiction"**) and Customer shall not provide access to the Services to any government, entity, or individual located in any Prohibited Jurisdiction. Customer represents, warrants and covenants that (i) Customer is not named on any U.S. government list of persons or entities prohibited or restricted from receiving U.S. exports, or transacting with any U.S. person, (ii) Customer is not a national of, or a company registered in, any Prohibited Jurisdiction, (iii) Customer shall not permit its Users to access or use the Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions, and (iv) Customer shall comply with all Applicable Laws regarding the transmission of technical data exported from the United States and the country in which Customer and its Users are located.

**12.10. Miscellaneous.** The official language of this Agreement is, and all attachments or amendments to this Agreement, contract interpretations, notices and dispute resolutions shall be in English. Translations of this Agreement shall not be construed as official or original versions. No exclusive rights are granted by Playvox under this Agreement. All rights or licenses not expressly granted to Customer herein are reserved to Playvox, including the right to license the use of the Subscription Services and any Software to other parties. Any reference to a law or statute in this Agreement shall be deemed to include any amendment, replacement, re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions (together with any conditions attaching to any of the foregoing) made in respect thereof.