



# Terms of Service Agreement

This Terms of Service Agreement (“Agreement”) constitute the legal contract between SkyTalk Plus, LLC DBA Fidelity SkyTalk (“Fidelity SkyTalk” or “WE” or “US” or “OUR”) and the Customers (“Customer” or “Subscriber” or “User” or “YOU” or “YOUR”) utilizing the business services (“Service(s)”) and products (“Product(s)”) of SkyTalk Plus, LLC DBA Fidelity SkyTalk. This Agreement governs both the Service and any devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter, switch, router or any other IP connection device (“Device” or “Equipment”), used in conjunction with the Service. If Customer purchased Equipment (“CPE”) from a dealer, retail store, or any other provider other than Fidelity SkyTalk, YOU are a “Retail Customer” for purposes of this Agreement.

**BY ACTIVATING OR USING THE SERVICE, AND/OR THE WEB PORTAL OR WEBSITE, AND AS FURTHER EVIDENCED BY SIGNING A FIDELITY SKYTALK SERVICE ACTIVATION FORM, YOU REPRESENT THAT YOU ARE OF LEGAL AGE AND ARE EMPOWERED AND AUTHORIZED BY THE CUSTOMER TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ, UNDERSTAND AND FULLY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

## **1. EMERGENCY SERVICES – 911 DIALING.**

### **1.1 Non-Availability of Traditional 911 or E911 Dialing Service.**

The Service does not support traditional 911 or E911 access to emergency services in all locations. Where WE do not offer traditional 911 or E911 access, WE offer a feature known as “911 Dialing” which is a limited emergency calling service available only on Fidelity SkyTalk-certified Devices or Equipment. The 911 Dialing feature may not work at all when used in conjunction with a soft phone, virtual numbers, or Subscriber provided Customer Premise Equipment or CPE. OUR 911 Dialing feature is not automatically operational; YOU must separately take affirmative steps, as described in this Agreement and on OUR website, to access OUR Customer web portal to register the address(es) where YOU will use the Services in order to activate the 911 Dialing feature. YOU must do this for each Fidelity SkyTalk phone number and/or extension that YOU obtain. The 911 Dialing feature of the Service is different in a number of important ways from traditional 911 or E911 service as described on OUR website page for 911 Dialing under “Features,” and below.

YOU shall inform any household residents, guests and other third persons who may be present at the physical location where YOU utilize the Service of (i) the non-availability of traditional 911 or E911, and (ii) the important differences in and limitations of the Fidelity SkyTalk 911 Dialing feature as compared with traditional 911 or E911 dialing. The documentation that accompanies each Device WE supply and any CPE that YOU purchase should include a sticker concerning the potential non-availability of traditional 911 or E911 dialing (the "911 Sticker"). It is YOUR responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker on each Device that YOU use with the Service. If YOU did not receive a 911 Sticker with YOUR Device, or YOU require additional 911 Stickers, please contact OUR customer service department at: (888) 913-7633.

### **1.2 Registration of Physical Location Required.**

For each phone number and/or extension that YOU use for the Service, YOU must register with Fidelity SkyTalk the physical location where YOU will be using the Service with that phone number and/or extension. When YOU move the Device to another location, YOU must register YOUR new location. If YOU do not register YOUR new location, any call YOU make using the 911 Dialing feature may be sent to an emergency center near the previous Device address. YOU will register YOUR initial location of use when YOU subscribe to the Service. Thereafter, YOU may register a new location by following the instructions on the "911" registration page on YOUR Fidelity SkyTalk web portal account found at the SERVICES link. For purposes of the 911 Dialing feature, YOU may only register one location at a time for each phone line YOU use with the Service.

### **1.3 Confirmation of Activation Required.**

YOUR 911 Dialing feature will not be activated for any phone number and/or extension that YOU are using with the Service, unless and until YOU receive an email from US confirming that the 911 Dialing feature has been activated for that phone number and/or extension.

### **1.4 How 911 Dialing Feature Operates.**

WE contract with a third party to use the address of YOUR registered location to determine the nearest emergency response center and then forward YOUR call to a general number at that center. When the center receives YOUR call, the operator will not have YOUR address and may not have YOUR phone number. YOU must therefore provide YOUR address and phone number in order to get help. Some local emergency response centers may decide not to have their general numbers answered by live operators 24 hours a day. If WE learn that this is the case, WE will send YOUR call instead to a national emergency calling center and a trained agent will contact an emergency center near YOU to dispatch help. YOU hereby authorize US to disclose YOUR name and address to third-party service providers, including, without limitation, call routers, call centers and public service answering points, for the purpose of dispatching emergency services personnel to YOUR registered location.

## **1.5 Service Outages.**

If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, the following:

**(a) Service Outages Due to Power Failure or Disruption.** 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, YOU may need to reset or reconfigure the Device(s) prior to utilizing the Service, including 911 Dialing.

**(b) Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or ISP Service.** Service outages or suspensions or terminations of service by YOUR broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.

**(c) Service Outage Due to Suspension or Termination of YOUR Fidelity SkyTalk Account.** Service outages due to suspension or termination of YOUR account will prevent all Service, including 911 Dialing, from functioning.

**(d) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts.** YOUR ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that YOU alert US to this situation, WE will attempt to work with YOU to resolve the issue. During the period that the ports are being blocked or YOUR Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, YOUR Service, including the 911 Dialing feature, may not function. YOU acknowledge that Fidelity SkyTalk is not responsible for the blocking of ports by YOUR ISP or broadband provider or any other impediment to YOUR usage of the Service, and any loss of Service, including 911 Dialing that may result. In the event YOU lose Service as a result of blocking of ports or any other impediment to YOUR usage of the Service, YOU will continue to be responsible for payment of the Service charges unless and until YOU terminate the Service in accordance with this Agreement.

**(e) Other Service Outages.**

Any other Service outage may impact YOUR 911 Dialing feature.

## **1.6 Re-Activation Required if YOU Change YOUR Number or Add or Port New Numbers.**

911 Dialing does not function if YOU change YOUR phone number or if YOU add or port new phone numbers to YOUR account, unless and until YOU successfully register YOUR location of use for each changed, newly added or newly ported phone number.

## **1.7 Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls.**

There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

### **1.8 Possible Lack of Automatic Number Identification.**

It may or may not be possible for the local emergency personnel to automatically obtain YOUR phone number when YOU use 911 Dialing. OUR system is configured to send the automatic number identification information; however, one or more telephone companies, not US, route the traffic to the emergency response center and that center may not be capable of receiving and passing on that information. As a result, the operator who answers YOUR 911 Dialing call may not be able to automatically obtain YOUR phone number and call YOU back if the call is not completed or is not forwarded, is dropped or disconnected, if YOU are unable to speak to tell the operator YOUR phone number, or if the Service is not operational for any reason.

### **1.9 No Automated Location Identification.**

In most service areas, it is not possible at this time to transmit to the local emergency response center the address that YOU registered for 911 Dialing. YOU will need to state the nature of YOUR emergency promptly and clearly, including YOUR location (and possibly YOUR telephone number), as the operator will not have this information. Emergency personnel will not be able to find YOUR location if the call is not completed or is not forwarded, is dropped or disconnected, if YOU are unable to speak to tell the operator YOUR location, or if the Service is not operational for any reason.

### **1.10 Disclaimer of Liability and Indemnification.**

WE do not have any control over whether, or the manner in which, calls using OUR 911 Dialing Service are answered or addressed by any local emergency response center. WE disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. WE rely on third parties to assist US in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. WE disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither SkyTalk Plus, LLC DBA Fidelity SkyTalk nor its officers or employees may be held liable for any claim, damage, or loss, and YOU hereby waive any and all such claims or causes of action, arising from or relating to OUR 911 Dialing Service unless such claims or causes of action arose from OUR gross negligence, recklessness or willful misconduct. YOU shall defend, indemnify, and hold harmless SkyTalk Plus, LLC DBA Fidelity SkyTalk, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to YOU in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney's fees) by, or on behalf of, YOU or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any User of the Service to be able to use 911 Dialing or access emergency service personnel.

### **1.11 Alternate 911 Arrangements.**

If YOU are not comfortable with the limitations of the 911 Dialing Service, YOU should consider having an alternate means of accessing traditional 911 or E911 services.

## **2. SERVICE.**

### **2.1 Term of Service.**

Service is offered on a monthly term or multi-year term basis and is determined according to YOUR Fidelity SkyTalk Service Activation Order form, or via OUR online ordering process. The Service term begins on the date that Fidelity SkyTalk first activates YOUR Service and ends on the day before the anniversary date of YOUR contracted term.

### **2.2 Minimum Service Period: Cancellation of Service in Less Than 90 Days.**

**(a) Promotional Installation Charge.** Fidelity SkyTalk establishes Services for all new Customers with promotional one-time setup fees that are subsidized and do not represent actual costs. This subsidy is based on the assumption of YOUR Services being maintained for an extended period of more than 90 days. If YOU decide to cancel the Services and notify of US of this decision in less than 90 days from the Service Activation Date, YOU will be subject to and liable for the Normal Setup Fee which varies based upon the number of extension licenses that were activated on YOUR Customer account.

**(b) Normal Setup Fee.** The normal setup fee for a Customer account which has between one and thirty (30) extension licenses is \$389.95. The normal setup fee for a Customer account which has between thirty-one (31) and one hundred (100) extension licenses is \$619.95. The normal setup fee for a Customer account which has more than one hundred and one (101+) extension licenses is \$899.95. In the event of Service cancellation in less than 90 days, these normal setup fees will be due in addition to all other Fees, Charges, or Costs for YOUR Services that are already due and for which YOU are liable to US.

**(c) Early Cancellation by Contract Customers.** Contract Customers who cancel in less than 90 days from the Service Activation Date will be subject to this Normal Setup Fee but not any early Termination Fees.

**(d) Cancellation After 90 Days.** After 90 days, all Customers can cancel Services according to the standard Cancellation Terms applicable to the specific type of Customer account and respective contract term as defined elsewhere in this Agreement.

### **2.3 Satisfaction Guarantee for Contracted Customer, Conditions & Limitations.**

A multi-year contract Customer is provided with a Satisfaction Guarantee for a period of 150 days after YOUR Service with Fidelity SkyTalk has been activated. A Customer may choose to cancel YOUR Services with Fidelity SkyTalk during a 60-day satisfaction guaranteed period following the 90-day minimum Service period and YOU will not pay any added charges or fees including no early termination fees of any kind. If YOU are not satisfied for any reason YOU may cancel Service using these instructions. However, if YOU cancel Service from one (1) to 90 days after Service Activation, YOU will still be subject to the Normal Setup Fee as described in item 2.2 immediately above. YOU must notify Fidelity SkyTalk in writing of YOUR intent to cancel Services under Contract ten (10) days or more before the end of the current monthly billing cycle. Customer will still be fully liable and obligated to pay all current Service charges and any additional usage based charges as well as any taxes and normal fees plus the same for the following one (1) additional complete monthly billing cycle. All these amounts will become immediately due and payable upon Service cancellation notice to Fidelity SkyTalk. All Equipment

and Devices purchased from Fidelity SkyTalk will remain the property of the Customer and must be paid for fully. NO REFUND OF ANY KIND WILL BE PROVIDED AS PART OF THIS GUARANTEE. After 150 days, any cancellation or early termination of Services which are part of a multi-year Contract will be subject to early Termination Fees as detailed in Section 6.3 of this Terms of Service Agreement.

#### **2.4 Renewal of Original Service Term.**

This Agreement automatically renews on the same terms and for the same period of time as the original Service Activation Form YOU signed and used to establish YOUR original Service with Fidelity SkyTalk. The renewal date is determined by YOUR original bill date and the original contract term of YOUR services with US. All of the Terms of Service Agreement apply on a renewal except for items **2.2** and **2.3**. Customers who do not wish to renew Service with US according to the original Service Term need to follow the procedures for Changes to Original Service Terms (2.5) or Termination of Service (Section 6) as detailed in this Terms of Service Agreement.

#### **2.5 Changes to Original Service Terms or Service Pricing.**

(a) If YOU want to decrease YOUR contract term commitment with US, or decrease the Services YOU receive from US, for any reason, YOU must give US written notice of the intent to change the contract term or decrease the Services at least ten (10) days before the end of YOUR current monthly billing cycle. Multi-year contract Customers should do this in the month preceding the last month of the current contract term. YOU will then be responsible for the next full month's charges to the end of the then-current billing term, including, without limitation, all Service and Fee items, unbilled Services due in arrears including any usage charges, plus a Termination Fee, if applicable, at the currently existing Service rates and according to the currently existing Service term. Additionally, an order to decrease either the term of commitment or the services used by a customer will result in a \$20 one-time order processing charge. The new contract Service term and/or Service pricing will then become effective and will continue thereafter according to this Terms of Service Agreement.

(b) YOU can increase YOUR Services from US and YOUR contract term commitment with US, at any time. Adding more new Contracted Term Items to YOUR Services will extend the contract term for all original Services on that same account on a co-terminus basis with the Services and Items added. The new contract and service prices will take effect with your next billing invoice. YOU may also be charged immediately for new Services ordered if more than 21 days remain in your current billing cycle.

(c) If WE have increased Service pricing for items that are already present on YOUR existing Customer account, and WE intend to impose these increases in Service Pricing on YOUR Customer account with US, WE will notify YOU in writing of these changes and OUR intent at least 60 days before YOUR current contract term expires. YOU may then elect to change or cancel Service according to this Terms of Service Agreement.

#### **2.6 Acceptable Use of Service and Connected Devices or Equipment or CPE.**

The Service is only to be used by YOU for its legitimate, legal, and acceptable purposes. Any connected Equipment or CPE that is accessing the Service cannot be used in any way that results in activity or communications that are not consistent with these acceptable purposes.

A complete description of both Acceptable and Unacceptable uses are detailed in the Fidelity SkyTalk Acceptable Use Policy (“AUP”) which is available at: [www.fidelityskytalk.com/aup.html](http://www.fidelityskytalk.com/aup.html). The AUP is integral to and incorporated completely with this Terms of Service Agreement. WE reserve the right to immediately terminate or modify YOUR Service if WE determine, in OUR sole and absolute discretion, that YOU have at any time used the Service or the Equipment or CPE for any unauthorized, unreasonable, abusive, or illegal type of activity, access, or purpose.

### **2.7 Retail Customers – Equipment Supplied by Customer Used for Service.**

For Retail Customers who provide and use equipment not supplied by Fidelity SkyTalk, YOU are responsible for supplying, operating and supporting the Customer Premise Equipment for use with the Service. In addition, any Customer supplied equipment must be pre-approved by Fidelity SkyTalk. All CPE must comply with all the terms and conditions of this Agreement and with the AUP and is subject to same.

### **2.8 Copyright and Trademarks**

All Copyrights, Trademarks, Services, information, documents and materials on OUR websites, provided to YOU as part of YOUR Service, or otherwise in YOUR possession are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of OUR websites, corporate names, Service marks, trademarks, trade names, logos and domain names (collectively “Marks”) are and will at all times remain OUR exclusive property. Nothing in this Agreement grants YOU the right or license to use any of OUR marks. Customers are not allowed to reproduce or copy any Proprietary or Confidential information or documents without the express written permission of Fidelity SkyTalk.

### **2.9 Right to Use License of Services with or without Device; Firmware or Software.**

Customer has not been granted any license to use the firmware or software used to provide the Service or provided to YOU in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. YOU expressly agree that the Device is exclusively for use in connection with the Service and that WE will not provide any passwords, codes or other information or assistance that would enable YOU to use the Device for any other purpose. WE reserve the right to prohibit the use of any interface device that WE have not provided to YOU. YOU hereby represent and warrant that YOU possess all required rights, including software and/or firmware licenses, to use any interface device that WE have not provided to YOU. In addition, YOU shall indemnify and hold US harmless against any and all liability arising out of YOUR use of such interface device with the Service. YOU shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

### **2.10 Theft of Service or Device and Fraudulent Usage.**

YOU shall notify US immediately, in writing or by calling OUR customer support line (888-913-7633), if YOUR Service is being stolen, or a Device is stolen, or YOU become aware at any time that the Service is being fraudulently used or otherwise being used in an unauthorized manner. When YOU call or write, YOU must provide YOUR account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service.

Failure to do so in a timely manner may result in the termination of YOUR Service and additional charges to YOU. Until such time as WE receive notice of the theft, fraudulent use or unauthorized use, YOU will be liable for all use of the Service using a Device stolen from YOU and any and all stolen, fraudulent or unauthorized use of the Service.

### **2.11 Service Distinctions.**

The Service is not a telecommunications service as defined by the FCC and other regulatory bodies and WE provide it on a best efforts basis. Important distinctions exist between telecommunications service and the Service offering that WE provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect YOUR rights of redress before regulatory agencies.

### **2.12 Incompatibility with Other Services.**

**(a) Security Systems.** The Service may not be compatible with security systems. YOU may be required to maintain a telephone connection through YOUR local exchange carrier in order to use any alarm monitoring functions for any security system installed in YOUR home or business. YOU are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

**(b) Certain Broadband and Cable Modem Services.** YOU acknowledge that the Service presently may not be compatible with some broadband services. YOU further acknowledge that some providers of broadband service may provide modems that prevent or hinder 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 and equipment provided as part of that service.

## **3. FURTHER DETAILS OF FEATURES AND FUNCTIONALITIES.**

### **3.1 Description of both Standard and Optional Features/Functions.**

The Service may include both “Standard” and “Optional” features and functions. Standard features are those that are included with a specific Service or Service plan without any additional or specified charge. Optional features are those that a Customer may choose to add to a Service or Service plan and will generally be separately identified and will often be at an additional charge beyond that paid for the basic Service or plan. We reserve the right to alter or change both Standard and Optional features and the associated charges if any at OUR sole discretion and at any time.

### **3.2 Guarantee of Features/Functions for Contract Customers.**

Customers with multi-year contracts will be guaranteed access to features and functions equal to or greater than those included with the contracted Services and specified at the time of the contract origination at the fixed contract pricing until the contract expires or is renewed. At the time of contract expiration or renewal, SkyTalk will notify YOU if features and functions and the prices associated with them have changed to reflect the then current features, functions, and pricing that will prevail on YOUR Customer account upon the renewal of a contract term.



### **3.3 Optional Recording Feature.**

Fidelity SkyTalk Service provides an optional function that allows a User or Subscriber to record individual telephone conversations. The laws regarding the notice and notification requirements of such recorded conversations vary by state to state. Subscriber is solely responsible for applying the local laws in the relevant jurisdiction when using this feature.

### **3.4 Charges for Conference Bridge Calls.**

WE will charge YOU per minute for each caller who calls into YOUR Conference Bridge. YOUR Conference Bridge per minute usage fee will be the lower of (i) 1.4 cents per minute, or (ii) the per minute or other Conference Bridge usage fee determined in YOUR Service Activation Form or online order form. The per-minute usage fee will be calculated based on all participants on the conference bridge, including on-network and off-network participants.

### **3.5 Charges for Directory Calls (411).**

WE will charge YOU \$2.00 for each call made to Fidelity SkyTalk directory assistance. We reserve the right to change this charge at OUR sole discretion.

### **3.6 No 0+ or Operator Assisted Calling; May Not Support x11 Calls.**

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, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

### **3.7 No Directory Listing by Default.**

The phone numbers provided to the Customer by Fidelity SkyTalk will not be listed in any telephone directories on a general or default basis. A Directory Listing and provisioning for Directory Assistance to allow outside parties to locate the phone numbers provided by US to YOU may be purchased as an optional one-time installation Service at additional charge. Phone numbers transferred and ported to OUR Service from YOUR local phone company or former provider are also subject to this condition. As a result, someone will not find YOU in a Directory Listing or with Directory Assistance unless YOU request the optional one-time installation Service required. Furthermore, someone may or may not be able to utilize YOUR phone number in a reverse directory to find YOUR address.

### **3.8 Recovery of Payphone Charges.**

If Customer, or anyone calling Customer, uses OUR "Toll Free" features or any toll free feature that WE offer in the future, WE will be entitled to recover from YOU any charges imposed on US either directly or indirectly in connection with toll free calls made to YOUR number. This includes but is not limited to surcharges that may be imposed on Fidelity SkyTalk by 3rd party providers of payphone services for individuals using YOUR toll free Services purchased from US. 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.

## **4. DEVICES AND EQUIPMENT.**

### **4.1 Equipment Provided by Fidelity SkyTalk.**

Fidelity SkyTalk will generally sell and provide “NEW” Equipment only in the original packaging and including the original manufacturer’s warranty coverage. All Equipment provided by Fidelity SkyTalk will be specified and approved for use with the Services offered and provided. No additional warranties or commitments for merchantability, or fitness of use are implied or expressed intentionally or otherwise (please refer to Section 7.5 of this Agreement for complete details about Device Warranty). All Equipment purchased will be shipped by a method of YOUR choice and YOU will be billed for the actual expense of such shipping plus a \$10 packing and handling charge for each shipment. WE strongly encourage and suggest YOU to keep all original packaging, documentation, and materials for at least 30 days after YOU receive Equipment from US so that YOU can return same to US in the event of an OUT OF BOX FAILURE as described below in Section 4.2. Original packaging is a requirement of the RMA procedure and necessary for YOU to obtain a replacement part without additional expense.

### **4.2 Ownership and Risk of Loss.**

YOU will own the Device or Equipment and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped to YOU. WE will add insurance coverage from the carrier to protect the contents of YOUR shipment if YOU instruct US to do so. If YOU receive cartons, Devices, 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 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 the carrier immediately. WE also suggest YOU contact OUR Billing Department at [billing@fidelityskytalk.com](mailto:billing@fidelityskytalk.com) or by calling (888) 913-7633 and speaking to the Billing Department (option 4). WE will assist YOU in processing a claim with the carrier for the damages done to YOUR shipment but will not assume any liability for such damage or for payment of YOUR claim.

### **4.3 Replacement for Out of Box Failure and RMA Procedures.**

Fidelity SkyTalk will treat any Device or Equipment failure for Products purchased from US that occurs within 30 days of Customer receipt, except for shipment damage or Customer abuse, as an “Out of Box Failure”, WE will exchange the failed Equipment for a replacement item of the same type only if YOU follow the RMA procedures as shown:

**(a) Call the Billing Department (888) 913-7633 and Option 4 to receive an RMA number.** The Customer individual responsible for account billing must first contact US and obtain an RMA number for the failed Equipment. WE will ask YOU for a shipping reference for the failed Equipment and a description of the problem. WE will then provide YOU an RMA number for the failed item and make arrangements to ship to YOU a replacement item at OUR expense. When the replacement item is shipped to YOU, WE will issue an invoice for that Equipment or Device that is payable on 30 day terms. Enclosed with this shipment, WE will include a return shipping label that YOU will use to return the failed Equipment to US.

**(b) Return the Failed Equipment to Fidelity SkyTalk.**

Customer should place the failed item back in original packaging and ship to: FIDELITY SKYTALK, ATTN: Billing Department, 301 W. Maine Ave, Suite 102, Enid, OK, 73701. The RMA number should be prominently displayed on the outside packaging of the returned item so that WE can recognize and track it properly. This information is required to insure that YOU will be credited for the return of the failed item. Include a photo of the item to prove it is in good physical condition at the time of shipment. Use the return shipping label WE have provided to YOU to insure that the item is returned to US as expected. WE must receive this failed item in less than 30 days from the shipment date for the replacement item or YOU will be charged for the replacement item and all shipping expenses.

**(c) Failed Equipment will be Checked and Invoice Credited.**

When WE have received the failed item, WE will confirm the problem reported and then, providing that the 30 day allowable RMA period has not expired, WE will credit the invoice for the replacement item in YOUR possession. Please note, that if WE cannot confirm the problem, or if WE determine the item was damaged by shipping or abuse, then the replacement item invoice will remain due and YOU will be liable for its payment. WE will return the damaged goods to YOU if requested.

**4.4 Tampering with the Device or Equipment.**

Customer is prohibited from changing the electronic serial number or Equipment identifier of the Device or Equipment and should not perform a factory reset of the Device or Equipment without agreement from OUR technical support and their consent. WE reserve the right to charge YOU for Professional Service labor if OUR technical support resources are utilized to restore Service functionality to a Device or Equipment which is non-functional due to Customer tampering. WE reserve the right to terminate YOUR Service if WE believe, in OUR sole and absolute discretion, that YOU have tampered with the Device with malicious or abusive intent. In the event of such termination, YOU will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. YOU shall not attempt to use any Device or Equipment to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

**4.5 Extended Maintenance and Warranty on Telephone Devices.**

A Customer may choose to purchase an Extended Maintenance and Warranty Plan ("Plan") for the telephone Devices purchased from Fidelity SkyTalk. The Plan will provide the Customer with unlimited technical support and advanced replacement services for the telephone Devices. There are a number of specific policies and requirements associated with the Plan and these must all be adhered to and followed entirely for the Plan to remain in effect:

**(a)** All phones on a Customer system must be included in the Plan, no exceptions by type or location or purpose, and the Plan must begin within the first 30 days of actual use as represented by Customers activation of system Services

**(b)** The Plan charges will be added to the Customer monthly recurring bill as a separate line item from the other monthly Services. WE reserve the right to adjust this pricing from time to time and according to OUR sole discretion. Customer may choose to sign a multi-year contract for the Plan to guarantee pricing but this can only be done if a similar and coincident multi-year contract exists and is in place for the monthly Service used by the Devices that are covered under the Plan. Customer cannot sign a contract for the Plan only.

**(c)** Once begun, the Plan cannot be allowed to lapse or be canceled or it will be null and void and not available for re-establishment. Customer is allowed to cancel the Plan anytime by following the same monthly Service termination policies detailed in Section 6.1 of this Agreement. Early Termination Fees will apply if the Plan is under a multi-year contract at the time of cancelation.

**(d)** New extension Services and the associated telephone Devices added to the Customer system after the Plan is initiated will automatically be added to the Plan in the next monthly billing cycle and the monthly Plan charges will be adjusted accordingly.

**(e)** The maximum term for any Device covered by the Plan is seven (7) years. After this period the Device can no longer be covered by the Plan, even if the Customer maintains the Plan for more recently purchased Devices.

**(f)** If a Device covered under the Plan fails or becomes unusable, unless such failure results from excessive wear and tear or Customer abuse in the sole opinion of Fidelity SkyTalk, WE will replace the Device using the RMA procedures that are detailed in Section 4.2 of this Agreement.

**(g)** WE reserve the right to withdraw the offer of a Plan, at OUR sole discretion and without limitation, to any individual Customer whose use of OUR Services is deemed to be unsuitable and not compatible with the Plan's intent and purposes and OUR general expectations of use and fitness.

#### **4.6 Retail Customers and Customer Premise Equipment Failure and Support**

Fidelity SkyTalk will provide technical support to Retail Customers on a best effort basis. Retail Customers are subject to labor charges for Professional Services for all technical support related to any problems or resolutions that are employed to make CPE not supplied by Fidelity SkyTalk functional. Retail Customers can only return or exchange CPE at the retail store, dealer or other provider from which the Retail Customer purchased the CPE originally. All returns will be subject to the return policy of such retail store, dealer or other provider. WE will not accept any CPE returned to US from a Retail Customer.

### **5. Billing, Payments, and Taxes or Fees for Services and Products.**

#### **5.1 Creation and Liability for a Customer Account**

**Fidelity SkyTalk will create a Customer Account for YOU at the time that a Service Activation Form is signed, submitted, and completed through OUR online ordering process.** YOU are liable for all items and associated expenses on the Service Activation Form at the time that YOU sign that document. That document is a binding contract per this Terms of Service Agreement. YOU are agreeing to all the conditions and details of this Terms of Service Agreement by signing, and Fidelity SkyTalk will presume that YOU are authorized to accept these conditions on behalf of the Customer.

## **5.2 Required Billing Information.**

All Customers of Fidelity SkyTalk are required to provide US with a valid email address, phone number, and mailing address for the individual employee or person who will be responsible for payment of the Customer account for all Services and Products provided to YOU by Fidelity SkyTalk. All bills, invoices, and other billing and accounting communications will be directed to this individual. Notification of monthly invoices will be sent to YOU via YOUR email address on file with US and will be due upon notice. When YOUR Customer account is created, YOU will receive a Welcome New Customer email and WE will provide YOU with a PIN code which WE may request from anyone calling Fidelity SkyTalk to insure that the party calling is authorized to make requests, obtain Customer Proprietary Number Information ("CPNI"), and make changes to the Customer account. Please have this PIN code available before calling.

## **5.3 New Customer Invoices and Payments**

WE will issue a first invoice for a new Customer at the time that a Service Activation Form (SAF) is signed or completed through OUR online order process. First invoices include special terms and conditions as compared to monthly recurring billing invoices which will automatically be created once YOUR monthly Service with US is activated. The first invoice will include, but is not limited to, the charges for the first month of recurring Services, the charges for any hardware purchased from US, any non-recurring setup or installation fees, and all appropriate taxes and mandated regulatory fees. The first invoice is immediately due and must be paid in full before any work on YOUR new customer account will take place. The first invoice payment will be collected using the payment form authorized by YOU at the time that YOU sign and submit the SAF. Customers who are not using ACH or Credit Card payment methods will be required to make this first payment in advance before any work or activity of any kind is performed on YOUR Customer account.

## **5.4 Shipping Invoices and Payments.**

The shipping invoice for any equipment ordered from US will be generated on the day that WE ship those items to YOU. WE will immediately collect payment for this invoice according to the payment authorization method on YOUR account. Customers who are not using ACH or Credit Card payment methods will be required to add an additional estimated shipping amount to the payment submitted to cover all other first invoice charges as detailed in Section 5.2 above.

## **5.5 Monthly Recurring Bill for Services and Other Charges.**

Once YOUR Services are activated for the first time at one of YOUR Customer facilities on a particular day of that particular month, recurring bills for Services will be issued each subsequent month on that same date. WE will bill all monthly recurring charges (MRC), applicable taxes, and surcharges monthly in advance. YOUR monthly bill may also include usage based charges which will normally be billed in arrears. WE may also bill YOU for any other items or charges which WE may determine should have been previously billed according to this Terms of Service Agreement but were not due to errors or omissions. Examples of such items, but not limited to these items, that could be billed in arrears are: (a) activation fees, (b) monthly Service fees, (c) international usage fees, (d) advanced feature charges, (e) Equipment purchases, (f) termination or reconnect fees, (g) shipping and handling charges.

All MRC bills for Services and other charges in arrears will be due upon email notice to YOU that they are available for review and payment. Payments for ACH and credit card Customers will automatically be processed on the billing date using the Authorized ACH or credit card details on file with US for YOUR Customer account.

### **5.6 Billing Disputes.**

YOU must notify US in writing within seven days after receiving YOUR Fidelity SkyTalk bill or invoice, or YOUR bank statement, or YOUR credit or debit card statement if YOU dispute any Fidelity SkyTalk charges on that document or YOU will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to OUR Customer Billing Department. YOU can email US at: [billing@fidelityskytalk.com](mailto:billing@fidelityskytalk.com). Or YOU can write US at: Fidelity SkyTalk, 301 W. Maine Avenue, Suite 102, Enid, Oklahoma 73701

### **5.7 Acceptable Forms of Payment.**

The primary forms of payment for all Fidelity SkyTalk Services and Products are ACH payments or credit/debit card payments from a card issuer that WE accept. WE reserve the right to stop accepting credit or debit cards from one or more issuers. Any other payment terms require the direct and expressed approval of Fidelity SkyTalk. YOUR payment information will be handled with the strictest confidence and will be processed separately but in coordination with YOUR Service Activation Form. No activity, work, or provisioning of a Customer's Service and/or Products will be performed until payment details are completed with OUR billing department. **5.8**

### **ACH Payment Details.**

Customers may choose to pay for all Services and Products from Fidelity SkyTalk by using ACH electronic bank account payment. After YOU sign YOUR Service Activation Form, OUR billing department will facilitate YOUR receipt of a standard ACH Authorization Form. WE will fax or email this form to YOU according to YOUR instruction. WE are required to keep this form in OUR files for recordkeeping and as proof of YOUR designation of this payment method. YOUR decision to pay for OUR Services and Products in this manner authorizes US to charge YOUR bank account for any amounts due on YOUR account with Fidelity SkyTalk on any invoice due date. This authorization will remain valid until such time as YOU: (i) designate another payment method and make all necessary arrangements with US to effect such new designation to OUR satisfaction, (ii) provide YOUR written notice to terminate Services according to Section 6 of this Terms of Service Agreement at which time WE will be authorized to collect all outstanding payments due for Services to be terminated using the ACH authorization on file until any balance owed on YOUR account is settled and cleared. YOU may request alternative payment arrangements at termination and WE may accept these alternatives at OUR sole discretion in lieu of YOUR ACH authorization to US. WE may terminate YOUR Service at any time in OUR sole and absolute discretion if any charge to YOUR bank account is declined or reversed; YOUR bank account is closed and YOU have not provided US with a valid replacement bank account; or in case of any other non-payment of account charges.

## **5.9 Credit or Debit Card Payment Details.**

Customers may choose to pay for all Services and Products from Fidelity SkyTalk using a credit or debit card from a card issuer that WE accept. After YOU sign YOUR Service Activation Form, OUR billing department will facilitate the recording of YOUR credit card details on YOUR Customer account. WE can fax or email YOU a Credit Card Payment Authorization form for YOUR card details and signature or WE can take this information from YOU directly over the phone so that it may be securely recorded and filed. YOUR decision to pay for OUR Services and Products in this manner authorizes US to charge YOUR credit/debit account for any amounts due on YOUR account with Fidelity SkyTalk on any invoice due date. This authorization will remain valid until such time as YOU: (i) designate another payment method and make all necessary arrangements with US to effect such new designation to OUR satisfaction, (ii) provide YOUR written notice to terminate Services according to Section 6 of this Terms of Service Agreement at which time WE will be authorized to collect all outstanding payments due for Services to be terminated using the credit/debit card authorization on file until any balance owed on YOUR account is settled and cleared. YOU may request alternative payment arrangements at termination and WE may accept these alternatives at OUR sole discretion in lieu of YOUR credit/debit authorization to US. WE may terminate YOUR Service at any time in OUR sole and absolute discretion if any charge to YOUR credit or debit card is declined or reversed; YOUR credit or debit card expires and YOU have not provided US with a valid replacement credit or debit card; or in case of any other non-payment of account charges.

## **5.10 Security Deposits for Customers on Payment Terms**

Customer accounts that are paid on an invoice terms basis will be subject to a security deposit requirement. The security deposit will be equal to one or more months of the recurring Service charges plus an allowance for any anticipated monthly usage charges. WE reserve the right to demand an increase in the amount of the security deposit should the Customer account accrue charges and fees on a regular basis that exceed the amount on which the original security deposit was determined and collected. The security deposit amount will be held by Fidelity SkyTalk until such time as the Customer terminates Service and pays all final charges due on YOUR account, or chooses an alternative primary payment method. The security deposit will be returned to the Customer within 30 days of either of these events.

## **5.11 Obligation by Customer to Immediately Update Billing Information**

A Customer is required to keep YOUR billing information accurate and up to date. If the individual responsible for maintaining YOUR billing account with US changes, YOU must immediately notify US of this change. If YOUR credit or debit card expires, YOU close YOUR account, YOUR billing address changes, or YOUR credit or debit card is canceled and replaced on account of loss or theft, YOU must also advise US at once. Failure by a Customer to maintain accurate billing contact and payment details will not protect YOU from liability for timely payment for Services, late fees, or termination and reconnection charges, if they are levied without YOUR knowledge because YOU have not informed US of changes in YOUR billing information.

### **5.12 Right to Bill More Frequently.**

Fidelity SkyTalk reserves the right to bill at more frequent intervals if the amount YOU owe to US at any time is excessive in comparison to YOUR normal Service and usage based charges. WE will send an email notice to the individual on file for YOUR account if WE intend to take this action.

### **5.13 Interest on Invoices 10 Days Past Due.**

**Customer accounts with outstanding invoices that have balances that have not been paid for any reason within 30 days after they are created and due, will be charged an additional late payment fee. The fee will be the greater of \$5 or 1.5% of the invoice amount not paid. The late fee is liquidated damages and not a penalty.**

### **5.14 Customer Responsibility for Cost of Collection.**

If YOUR Service is terminated, YOU will remain fully liable to US for all charges pursuant to this Agreement and any and all costs WE incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

### **5.15 Taxes and Regulatory Fees or Surcharges.**

WE are responsible and required to determine all taxes and fees due to governmental authorities for the services and goods YOU buy from OUR company. WE will collect all taxes and fees which are legally required on billing invoices on YOUR account for any monthly recurring or one-time services or charges from OUR company. These taxes and fees are in addition to the charges for services or goods from OUR company. WE will be responsible for making all payments due to any tax authority or regulatory bodies on YOUR behalf with the funds collected. These taxes and fees will be separately listed and identified on each billing invoice. If YOU are exempt from any taxes or fees, YOU must provide US with a certificate that satisfies legal requirements for tax exemption status. Tax exemption will only apply from the date WE receive such certificate. WE cannot retroactively credit YOUR account for any taxes previously collected.

## **6. TERMINATION OF SERVICES.**

### **6.1 Procedure for Normal Termination of Services.**

If YOU want to cancel YOUR Services with US for any reason, YOU must give US written notice of cancellation at least ten (10) days before the end of YOUR current monthly billing cycle. Multi-year contract Customers should do this in the billing cycle preceding the last billing cycle of the existing contract term to avoid any early termination fees or other special fees or charges. YOU will then be responsible for the next full month's charges to the end of the then-current billing term, including, without limitation, all Service and fee items, unbilled Services due in arrears, plus a termination fee, if applicable, all of which will immediately become due and payable. YOU will also be responsible for a second additional full month's charges in the event that YOU do not provide the requisite ten days' notice of termination prior to the expiration of the then current monthly billing cycle. Expiration of the term or termination of Service will not excuse YOU from paying all accrued and unpaid charges due under this Agreement.

### **6.2 Number Transfer after Service Termination.**

After the termination of a Customer's Service, WE will release to YOUR new service provider the



telephone number(s) that YOU used in connection with YOUR Service if all the following conditions have been met: (a) such new service provider is able to accept such number; (b) YOUR account with Fidelity SkyTalk has been properly terminated; (c) YOUR account is completely current, including payment for all charges and applicable termination fees; and (d) YOU request the transfer upon terminating YOUR account.

### **6.3 Early Termination Fee for Contracted Customers.**

A Customer who has signed and activated a multi-year contract, and has used the Services for more than 150 days since activation, is obligated to maintain the contracted services until the term of the contract expires. Any Customer terminating a multi-year contract before its expiration will be subject to and liable for the Early Termination Fee, regardless of the reason for the early termination and either with or without cause. The Early Termination Fee is the greater amount of: (a) \$500, or (b) 3 X the contracted monthly recurring Services amount to be terminated.

### **6.4 Termination of Service Due to Customer Breach of Agreement.**

If Customer's Service is terminated on account of YOUR breach of any provision of this Agreement or the Acceptable Use Policy incorporated in this Agreement, YOU will be responsible for the full month's charges, taxes, fees, and surcharges, to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, all of which will immediately become due and payable.

### **6.5 Fidelity SkyTalk Right to Suspend or Discontinue Service**

WE reserve the right to suspend or discontinue the Service generally for any cause that is beyond OUR control including but not limited to: Equipment failures, Internet disruption, sabotage or other criminal activity, war, or acts of God, or other force majeure. If WE suspend or discontinue the Service generally, or terminate YOUR Service without a stated reason, YOU will only be responsible for charges accrued through the date of suspension or termination, including a pro-rated portion of the final month's charges. Reasonable and explainable short-term suspensions lasting 24 hours or less due to any reason are not covered under this clause and Customers remain obligated to all terms of this Agreement in these situations.

## **7. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES.**

### **7.1 Limitation of Liability.**

Fidelity SkyTalk will not be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following: (a) an act or omission of an underlying carrier, service provider, vendor or other third party; (b) equipment, network or facility failure; (c) equipment, network or facility upgrade or modification; (d) force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions; (e) equipment, network or facility shortage; (f) equipment or facility relocation; (g) service, equipment, network or facility failure caused by the loss of power to YOU; (h) outage of, or blocking of ports by YOUR ISP, or broadband service provider, or other impediment to usage of the Service caused by any third party; (i) any act or omission by YOU or any person using the Service or Device provided to

YOU; (j) any other cause that is beyond OUR control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded. OUR aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period.

### **7.2 Disclaimer of Liability for Damages.**

IN NO EVENT WILL FIDELITY SKYTALK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

### **7.3 Indemnification and Survival.**

#### **(a) Indemnification.**

YOU shall defend, indemnify, and hold harmless Fidelity SkyTalk, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to YOU in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney's fees) by, or on behalf of, YOU or any third party or User of the Service, relating to the Services, including, without limitation, 911 Dialing, or the Device and its use.

#### **(b) Survival.**

The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

### **7.4 No Warranties on Service.**

WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, AND DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER FIDELITY SKYTALK NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES

OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES OR DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR USES OF DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF FIDELITY SKYTALK OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY FIDELITY SKYTALK OR FIDELITY SKYTALK' AGENTS OR FIDELITY SKYTALK PARTNERS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

## **7.5 Device Warranties.**

### **(a) Limited Warranty.**

Except as set forth herein, if YOU received the Device new from US and the Device included a limited warranty at the time of receipt, YOU must refer to the separate limited warranty document provided with the Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation.

### **(b) No Warranty.**

If YOUR Device did not include a limited warranty from US at the time of receipt, YOU are accepting the Device "as is". YOU are not entitled to replacement, repair or refund in the event of any defect.

### **(c) Disclaimer.**

OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN EXCLUDING ANY CUSTOMER PROVIDED DEVICES, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR THE DEVICE FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

## **7.6 No Third Party Beneficiaries.**

No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

## **7.7 Content.**

Customer will be liable for any and all liability that may arise out of the content transmitted by YOU or to any person, whether authorized or unauthorized, using YOUR Service or Device (each such person, a "User"). YOU shall assure that YOU and YOUR User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. WE reserve the right to terminate or suspend YOUR Services and remove YOUR or YOUR Users' content from the Service, if WE determine, in OUR sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with OUR ability to provide Services to YOU or others. OUR action or inaction under this Section will not constitute any review or approval of YOUR or Users' use or content.

## **8. GENERAL PROVISIONS AND MISCELLANEOUS.**

### **8.1 Governing Law.**

The Agreement and the relationship between YOU and US is governed by the laws of the State of Oklahoma without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 5.2, YOU shall submit to the personal and exclusive jurisdiction of the courts located within the State of Oklahoma and waive any objection as to venue or inconvenient forum.

### **8.2 Mandatory Arbitration and No Jury Trial.**

Any dispute or claim between YOU, any member of YOUR household or any guest or employee of YOU and US arising out of or relating to the Service or Device 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 Garfield County, Oklahoma. 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. REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED. All claims shall be arbitrated individually. YOU shall not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, GARFIELD COUNTY, OKLAHOMA.

### **8.3 No Waiver of Rights.**

OUR failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

#### **8.4 Entire Agreement.**

This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found on OUR website constitute the entire agreement between YOU and Fidelity SkyTalk and govern the use of the Service by YOU, members of YOUR business, employees and guests. This Agreement supersedes any prior agreements between YOU and Fidelity SkyTalk and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. **8.5**

#### **Severability.**

If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

#### **9. FUTURE CHANGES TO THIS AGREEMENT.**

WE may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted at [www.fidelityskytalk.com/termsofservice.html](http://www.fidelityskytalk.com/termsofservice.html). Fidelity SkyTalk will make best efforts to notify Customers in advance via email regarding changes to the terms and conditions of this Agreement. Such changes will become binding on YOU on the date they are posted as links to downloadable PDFs on OUR website and no further notice by US is required upon YOUR continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of any Device and also supersedes any written terms provided to Retail Customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of any Device.

#### **10. PRIVACY.**

Fidelity SkyTalk Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Fidelity SkyTalk is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to OUR website at [www.fidelityskytalk.com/privacypolicy](http://www.fidelityskytalk.com/privacypolicy) for additional Privacy Policy information.