



## **IVRNET Product Terms and Conditions**

Issued: November 21, 2024

These IVRNET Product Terms and Conditions are issued by N. Harris Computer Corporation acting through its IVRNET business unit (hereinafter, "IVRNET") These Terms and Conditions are effective immediately and supersede any and all previous Master Service Agreement, except for IVRNET Enterprise Customers.

To the extent of any conflict or inconsistency between the terms of any Service Agreement and these Terms and Conditions, these Terms and Conditions shall prevail.

### 1) Definitions

- a) "Customer" means the persons or organizations agreeing to be bound by these Terms and Conditions pursuant to a Service Agreement.
- b) "IVRNET Enterprise Customer" means the persons or organizations designated as enterprise customers by IVRNET.
- c) "Documentation" means any proprietary or product specific documentation provided by IVRNET to the Customer in relation to the Software or Services, including, but not limited to, training manuals, guidelines, and instructional manuals.
- d) "Intellectual Property" means: i) technology, inventions, discoveries, creations, trade secrets, designs, data, documentation, publications, research, findings, reports, methods, models, diagrams, practices, techniques, programs, concepts, ideas, plans, strategies, know-how, analyses, works, devices, algorithms, formulae, processes, procedures, specifications, technical information, interfaces, interactive elements, functionality, treatments, scripts, outlines, drawings, engineering, systems, industrial property, databases, developments, enhancements, modifications, derivative works and improvements (all in all forms and of whatever nature or kind, whether or not patentable or otherwise protectable in law and including the right to apply for protection thereof); ii) patents, patent applications, patentable subject matter, and patent disclosures and utility models, together with all divisions, re-issuances, continuations, continuations-in-part, revisions, renewals, improvements, extensions and re-examinations thereof or thereto (including the right to apply for any and all of the foregoing); iii) trade-marks, service marks, famous names, trade names, domain names, brand names, symbols, logos, slogans and corporate names and applications, registrations and renewals related thereto (including the right to apply for any and all of the foregoing); iv) copyrightable works, copyrights and applications, registrations, and renewals related thereto (including the right to apply for any and all of the foregoing); and v) industrial designs, integrated circuits, topographies, circuits and other similar technologies and property rights and the right to apply therefore.
- e) "Intellectual Property Rights" means, in respect to Intellectual Property, any right or protection existing from time to time in a specific jurisdiction under any patent law, copyright law, moral rights law, trade secret law, domain name law, semi-conductor chip protection law, database law, trade-mark law, privacy law, unfair competition law or other similar laws and includes legislation by governmental authorities and judicial decisions under common law or equity, and the right to apply to register any such rights.



- f) "IVRNET" means IVRNET.
  - g) "Service Agreement" means an agreement entered into between the Customer and IVRNET in relation to the provision of Software or Services and incorporating these Terms and Conditions.
  - h) "Software" means the software provided by IVRNET to the Customer from time to time in accordance with a Service Agreement and these Terms and Conditions. Page 2 i) "Services" means the services provided by IVRNET to the Customer from time to time in accordance with a Service Agreement and these Terms and Conditions. j) "Users" means the persons authorized by Customer to use the Software and Services in accordance with these Terms and Conditions, including employees, contractors, and subcontractors of the Customer.
- 2) Scope of Agreement
- a) IVRNET agrees to provide to the Customer, in accordance with these Terms and Conditions and the terms and conditions of Service Agreements, the following:
    - (i) Software and Services as agreed to between the parties from time to time;
    - (ii) any applicable licenses and/or sublicenses required for the Customer to utilize the Software in accordance with intended purposes;
    - (iii) custom programming, as described in Service Agreement(s), and agreed to by IVRNET; and
    - (iv) support services for the Software as agreed to between the parties from time to time.
  - b) Customer agrees to use the Software and Services in accordance with the terms and conditions of these Terms and Conditions and conditions of Service Agreement(s), including using the Software and Services, including IVRNET Central modules, in accordance with policies and training provided by IVRNET.
  - c) For customers using Voice, Email and/or Texting Notification Services additional terms included in Attachment A apply and are hereby incorporated herein by reference.
- 3) Commencement and Term of Service Agreement and Termination
- a) These Terms and Conditions shall apply during the term of any Service Agreement
  - b) The initial term of a Service Agreement is defined in the Service Agreement and the effective date thereof (the "Effective Date"), which will be the date of the final execution by an authorized IVRNET signatory. Unless otherwise specified in the Service Agreement, a Service Agreement will automatically renew in one (1) year increments thereafter unless IVRNET or the Customer notifies the other party in writing of its intention to cancel the Service Agreement at least ninety (90) days prior to the associated Effective Date anniversary. Completion of services specified by the Service Agreement will authorize IVRNET to submit invoices therefor. The Customer will be invoiced initial Setup & Implementation Fees as of the Effective Date and monthly fees will be invoiced upon completion of implementation. Payment Terms are net 30, and payment can be made by electronic Fund transfers, or cheque. Implementation of the software & services, as contracted by the Customer, will begin immediately upon signing of the Service Agreement.
  - c) Either party may terminate these Terms and Conditions and all Service Agreements immediately if the other party is unable to pay its debts when they become due, makes an assignment for the benefit of creditors, files any petition or has any petition filed against it under the bankruptcy laws of any jurisdiction, has or suffers a receiver or trustee to be appointed for its business or property, or is adjudicated as bankrupt or insolvent.
  - d) If either party breaches any of its obligations hereunder and fails to remedy such breach within five (5) business days after receiving notice of such breach from the non-breaching party, the non-



breaching party may at its option terminate these Terms and Conditions, including any and all of Service Agreements then in effect without further notice.

#### 4) Software and Services

- a) IVRNET grants to the Customer a revocable, non-transferable and non-exclusive license to use of the Software as described and detailed in each Service Agreement.
- b) Any Documentation provided to the Customer in relation to the Software or Services shall not be disclosed, sold, transmitted or otherwise be made available to any third party without the express prior written Page 3 permission of IVRNET, and IVRNET reserves all available Intellectual Property Rights over such Documentation at all times.
- c) Any subsequent custom programming of the Software or Services as requested by the Customer and accepted by IVRNET shall be provided by IVRNET, subject to the applicable charges and upon terms and conditions as specified in a Service Agreement.
- d) Unless otherwise agreed to by IVRNET and the Customer, Software, customized software, work product, or other Intellectual Property created by IVRNET in the course of providing the Services shall be owned by IVRNET, and all Intellectual Property Rights, title and interest in and to the customized product (including open source software components disclosed to and approved by Customer in accordance with the provisions of a Service Agreement), including literary and artistic rights pursuant to the Canadian copyright law, shall (a) upon its creation, vest in IVRNET and (b) remain the sole property of IVRNET. Despite the foregoing, the Customer and IVRNET agree that any Intellectual Property owned by the Customer and provided to IVRNET for the purposes of performing the Services shall remain the property of the Customer. c) Any amendments, modifications or versions of the Software or Services that arise as a result of custom programming shall remain the exclusive property of IVRNET, unless otherwise agreed upon in writing between IVRNET and the Customer.

#### 5) Delivery of Software and Services

- a) IVRNET will deliver and install the Software and Services as stated in any Service Agreement(s).
- b) The Software is owned by IVRNET or others from whom IVRNET has obtained licenses. Title and ownership in the Software remain at all times with IVRNET or its licensor and no such rights pass to the Customer.
- c) All risk of loss, destruction or damage to delivered copies of the Software shall pass to the Customer upon delivery by IVRNET. d) Except as otherwise provided in these Terms and Conditions, delivery and acceptance of the Software and Services shall commence as of the deployment date specified in a Service Agreement.
- d) Without prejudice to IVRNET's other rights and remedies, IVRNET may postpone or cancel any delivery, until all money due from the Customer pursuant to Service Agreement(s) has been paid.

#### 6) Customer Obligations

- a) Customer shall ensure that all physical equipment and infrastructure provided by, owned, or under the care of the Customer or any party other than IVRNET (collectively, the "Customer's Equipment") on the Customer's premises that connects to the Services will perform according to published technical specifications for such Customer's Equipment, and will conform to interface requirements as set in IVRNET's applicable interface specifications. Unless otherwise specified herein, IVRNET shall have no obligation under any Service Agreement to provide compatible equipment to the Customer, or to update, modify, or otherwise alter Customer's



Equipment in order to be compatible with the Services. IVRNET shall not be responsible for a failure in Services as a result of incompatible Customer's Equipment.

- b) Customer is solely responsible for adequate protection and backup of the Customer's data and equipment used by IVRNET in connection with and providing Services. IVRNET does not guarantee that the performance of the Services will be uninterrupted or error-free. IVRNET does not guarantee that the information accessed through the Services will be accurate or complete. Customer acknowledges that certain features of the Services may not be forward compatible with future versions of software or hardware in relation to the Services and use of such features with future versions of Customer's Equipment may require additional Services to facilitate compatibility.
- c) Customer shall not, and shall all reasonable efforts that its directors, officers, business partners, employees and agents shall not:
  - (i) reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from the Software;
  - (ii) copy, reproduce, modify, sell, lease, sub-license, market or commercially Page 4 exploit in any way the Software other than expressly agreed to between IVRNET and the Customer;
  - (iii) use or permit the use of the Software for third parties, including but not limited to any service bureau, timesharing, lease, distribution or re-sale, rental, application service provide arrangement, or any other arrangement;
  - (iv) disclose, resell or grant access to an access code to the Software to any third party not affiliated with Customer.
- d) Unless caused solely by IVRNET's gross negligence or willful misconduct, Customer is, and shall always remain responsible for all risk of loss or damage to Customer's property, including loss of, or corruption of data, as well as all risks to Customer and others in connection with the Services. Customer's responsibility for these risks continues during the period in which the Services are performed by IVRNET.

#### 7) Charges

- a) All charges invoiced to the Customer pursuant to these Terms and Conditions and Service Agreement(s) hereto shall be subject to applicable taxes as indicated on such invoice(s).
- b) Deposits are due in the amount set forth in Service Agreement(s) and shall be paid concurrently with the Customers execution of the applicable Service Agreement. All deposits are non-refundable.
- c) Prior to implementation of the Software and Services, IVRNET may, at its discretion, invoice the Customer for the amounts indicated on Service Agreement(s), less any deposit received from the Customer. For Services involving development work, IVRNET will invoice the Customer immediately after the completion of any portion of any development work, at IVRNET's discretion.
- d) The Customer agrees to pay IVRNET the amounts invoiced within 30 days of the date of such invoice.
- e) IVRNET reserves the right to adjust the fees charged for Software and Service to reflect changes in the consumer price index.
- f) At IVRNET's sole discretion, IVRNET may increase the fees charged for Software or Services upon providing the Customer with 30 days' notice of such increase.



- g) Excluding training costs, any monthly, quarterly or annual charges for support, maintenance, software, data licensing, or other ancillary services related to the Software and Services, as set out in Service Agreement(s), may be changed by IVRNET in its sole discretion from time to time after the initial 12-month period, upon IVRNET providing Customer with 30 days' notice of such changes.
  - h) If the Customer fails to pay any amounts due under these Terms and Conditions and Service Agreement(s), the Customer shall be charged interest at the rate of 18% per annum, compounded monthly (but in no event more than the highest rate allowable by law) on such delinquent amounts from the due date until the date of payment. Suspension of Software access and Services will occur on all accounts that remain in arrears in excess of 90 days.
  - i) In the event that IVRNET misses the deployment date specified in a Service Agreement due to a delay on the Customer's part, the Customer shall pay a fee as set out in Service Agreement(s).
  - j) Any services or expenses not specifically covered by these Terms and Conditions or any Service Agreements shall be billed to the Customer at IVRNET's then prevailing rates.
  - k) All sums are expressed and shall be payable in Canadian currency.
  - l) The Customer's obligation to pay any amounts outstanding for all invoices issued pursuant to these Terms and Conditions or a Service Agreement shall survive the termination of these Terms and Conditions or a Service Agreement.
- 8) Support Services
- a) IVRNET shall supply support services from Monday to Friday, during its normal business hours of 8:00 a.m. to 5:00 p.m. Mountain Standard Time (MST), excluding statutory holidays recognized in accordance with a Service Agreement. Additional support services outside of normal business hours may be available pursuant Page 5 to a Service Agreement. IVRNET reserves the right to charge for services outside of normal business hours not included under a Service Agreement.
  - b) Any assistance or changes requested from the Customer as it relates to the initial pre-deployment and deployment of the Software or Services are provided at no additional cost for up to two months after the delivery date. Such training may take the form of computer-based training (CBT) and does not include training on site by IVRNET personnel. Onsite training and consulting is available at an additional cost to Customer, as agreed upon in writing between the Customer and IVRNET.
  - c) At IVRNET's discretion, IVRNET may establish benchmarks for minimum training standards to be completed by the Customer and Users in respect to the Software and Services. If the Customer's training standards are not current IVRNET may request that the Customer and Users attend additional training at the Customer's cost, and IVRNET may adjust the monthly support fees in recognition of Customer's increased support requirements. Subsequent training after deployment of the Software and Services for additional Users that did not, or have not met the minimum training standards will be provided by IVRNET and charged at IVRNET's daily rate, such training may be provided on a remote, CBT, or on-site basis, as agreed upon by IVRNET and Customer.
  - d) The Customer is entitled to new versions of applicable Software modules as they become available, at no additional cost. IVRNET reserves the right to charge for installation expenses for new versions including but not limited to data conversion, manual updates and training.



- e) Support services necessary due to the failure of the Customer's staff to attend scheduled training will be provided as available at IVRNET's then prevailing rates.
  - f) Other support services (software and consulting) made available by IVRNET but not specifically covered by these Terms and Conditions or a Service Agreement will be provided to the Customer as requested at IVRNET's then prevailing rates.
  - g) All customer-related issues can be submitted to IVRNET's online helpdesk by contacting help@IVRNET.com.
- 9) Confidentiality of Information
- a) Each party acknowledges that confidential information (including customer data, trade secrets and confidential technical, financial and business information) (collectively, "Confidential Information") may be exchanged between IVRNET and the Customer. Each party shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the other party. Each party agrees that it will not disclose or use the Confidential Information of the other party except for the purposes of Service Agreement(s) and as authorized herein. Customer will promptly report to IVRNET any unauthorized use or disclosure of IVRNET's Confidential Information that the Customer becomes aware of and provide reasonable assistance to IVRNET (or its licensors) in the investigation and prosecution of any such unauthorized use or disclosure.
  - b) Notwithstanding section 9(a), the recipient of Confidential Information may use or disclose the Confidential Information to the extent that such Confidential Information is:
    - (i) already known by the recipient without an obligation of confidentiality,
    - (ii) publicly known or becomes publicly known through no unauthorized act of the recipient,
    - (iii) rightfully received from a third party without any obligation of confidentiality,
    - (iv) independently developed by the recipient without use of the Confidential Information of the disclosing party,
    - (v) approved by the disclosing party for disclosure, or
    - (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient provides the disclosing party with notice of such requirement prior to any such disclosure and takes all reasonable steps available to maintain the information in confidence.
  - c) Customer shall safeguard and maintain the Confidential Information of IVRNET in strict confidence and shall not, and shall cause all Users not to, disclose, provide, or make such Confidential Information or any part thereof available in any form or medium to any person except to the Customer's employees, contractors and consultants who have a need to access such IVRNET's Confidential Information in order to enable the Customer to exercise its rights under this Agreement. The Customer also agrees not to:
    - (i) disclose to third parties (whether in writing or orally) any benchmark test data related to the Software, and
    - (ii) use IVRNET's Confidential Information to create any computer software or documentation that is substantially similar to the Software.
  - d) Upon the termination of Service Agreement(s) for any reason whatsoever, each party may request of the other that all documents, information, data and/or software however recorded,



which contain any of the other's Confidential Information be returned, provided that the Party shall be entitled to charge a reasonable fees and materials charge for doing so. If no request is received for the return of Confidential Information within thirty (30) days of Service Agreement(s), the Confidential Information shall be destroyed within a reasonable time thereafter and shall not be used for any purpose whatsoever.

- e) Personal Information. IVRNET acknowledges that it may have access to Personal Information (meaning any information about an identifiable individual) in connection with these Terms and Conditions. IVRNET agrees not to make use of Personal Information other than for the performance of its obligations under these Terms and Conditions or a Service Agreement, and not to release, disclose, communicate Personal Information or make Personal Information available to any person whosoever other than IVRNET's employees, contractors or any other persons providing all or any portion of the Services who:
  - (i) reasonably have a need to know the Personal Information in connection with the performance of IVRNET's obligations under these Terms and Conditions or a Service Agreement; and
  - (ii) are contractually bound to protect Personal Information from unauthorized use or disclosure. Ownership of Personal Information, and all right, title and interest in such Personal Information, is the exclusive property of Customer or its affiliate, as the case may be.

With respect to Personal Information, IVRNET agrees that it shall:

- (i) protect Personal Information from unauthorized disclosure in accordance with the security standard and procedures set out in these Terms and Conditions;
  - (ii) use and maintain Personal Information accurately and solely on behalf of Customer or its affiliates for the purpose of and in connection with the terms of these Terms and Conditions;
  - (iii) reasonably assist Customer to comply with all law and regulations relating to the protection and privacy of the Personal Information; and
  - (iv) notify Customer immediately of any breach hereof and use its best efforts to cooperate with Customer to remedy the privacy breach. IVRNET will handle all personal information in accordance with the Alberta Personal Information Protection Act (PIPA), Personal Information Protection and Electronic Documents Act (PIPEDA) and other relevant legislation.
- f) The parties agree to treat all Confidential Information (as defined herein) it may receive from the other party during the term of these Terms and Conditions in accordance with the provisions herein. Customer further agrees that it shall require each of its employees, contractors, subcontractors, and Users who receive all or any portion of IVRNET's Intellectual Property to treat IVRNET's Confidential Information in accordance with these Terms and Conditions.
  - g) Security Requirements and Reporting. IVRNET agrees to perform these Terms and Conditions in accordance with the reasonable security, data protection and encryption standards and practices that are used within the information technology and services industry for the purpose of preventing, mitigating, detecting, not permitting, protecting against, and otherwise securing Customer's Confidential Information used and/or access during the Services from any harm, damage, sabotage, hacking, interference, interception, unauthorized access or use, corruption,



or criminal activity use by Customer. IVRNET shall not implement changes to its security standards and procedures that would, in the reasonable opinion of IVRNET, have an adverse effect on the provision of the Services or on the security of any of Customer's Confidential Information. IVRNET acknowledges and agrees that it must also comply with the applicable laws relating to security policies and procedures.

- h) Without limiting the generality of hereof or any other provisions of these Terms and Conditions, IVRNET shall restrict entry to authorized persons to those areas of its site or sites in which Services are performed, in which any Customer Confidential Information or other information or data of Customer is kept, or held;
  - i) IVRNET agrees to keep such Confidential Information received from or relating to Customer resident on systems operated by or for the benefit of IVRNET or in the possession or control of IVRNET for so long as and to the extent required pursuant to the terms hereof, and to use the same care and discretion that IVRNET uses with respect to its own confidential property and trade secrets, and, in any event, no less than a reasonable standard of care.
  - j) Notification of Security Breach. Without in any way limiting the generality of any other provision of these Terms and Conditions, IVRNET shall immediately notify Customer of any breach of IVRNET's security systems, procedures or standards of which IVRNET becomes aware including, without limitation, any unauthorized access to or entry into its premises, computer systems or databases.
  - k) Unless obligated under law, only upon written authorization from the Customer shall IVRNET release any of the Customer's information or data to third parties, including third party vendors. IVRNET reserves the right to charge for the services required to make this information available.
  - l) Upon termination of these Terms and Conditions, or at IVRNET's request, the Customer shall return to IVRNET all proprietary information provided by IVRNET to the Customer pursuant to these Terms and Conditions or any Service Agreement, including the Documentation.
  - m) This section shall survive termination of these Terms and Conditions, regardless of cause.
- 10) Payment Card Industry Standards Compliance a) The Payment Card Industry Security Standards Council ("PCI Council") provides certain security standards for the handling, storage, and security of payment card information ("PCI Standards"). IVRNET agrees that in the handling, storage, process of payment or other form of transmission of Customer's payment card information IVRNET shall comply with the PCI Standards, as applicable, and as may be revised from time to time, set forth by the PCI Council. b) IVRNET has attested to compliance with the current Data Security Standard of the PCI Council as a level 2 service provider.
- 11) Warranty and Limitations
- a) IVRNET represent and warrants that:
    - (i) the Software and the Services, as delivered and when used in accordance with the these Terms and Conditions and Service Agreements, will perform in all material respects as specified in the Documentation during the term specified in each Service Agreement;
    - (ii) IVRNET will make best commercial efforts to ensure the software/service is functioning, available and accessible at all times;
    - (iii) all Services will be performed in a professional manner in accordance with the standards for such Services which would be generally accepted in IVRNET's industry;



- (iv) IVRNET is duly organized, validly existing and in good standing under the laws of its State or Province of incorporation or formation and has the full legal right, power and authority to enter into and fully perform the Services under these Terms and Conditions and the unrestricted right and authority to make the assignments and grant the rights to Customer required by these Terms and Conditions and that its performance of the Services and/or the grant of right to use Software will not in any way infringe upon or violate any rights of any third party; and
- (v) IVRNET's execution of these Terms and Conditions and the compliance by Customer with the provisions hereof will not conflict or result in a breach of or default under any other agreement to which IVRNET is a party or by which it is bound.
- b) The Customer's sole and exclusive remedies for any breach of these Terms and Conditions are the remedies expressly set forth in these Terms and Conditions. The amount of IVRNET's liability to the Customer for any Page 8 damages that arise, either directly or indirectly, from the performance of a Service Agreement shall:
  - (i) be limited to; and
  - (ii) not exceed, the fees actually paid by the Customer in relation to that Service Agreement.
- c) In no event shall IVRNET be liable to the Customer or any other person or organization for any incidental, indirect, special, consequential, general or punitive damages arising out of or in any way connected with the use, furnishing of or failure to furnish the Software, Services or any related materials, including, but not limited to, claims for lost profits, increased expenses or costs, loss of good will or damage to property. This exclusion of liability shall apply without regard to whether such damages were foreseeable or foreseen or are claimed to arise by breach of contract, breach of warranty, misrepresentation, negligence, strict liability or other legal theory.
- d) While IVRNET may suggest to the Customer third party sources from which software or hardware may be available, no sales representative, manager, employee, or officer of IVRNET and no third persons or organizations are authorized to make any warranties or representations or to assume any responsibility for IVRNET in connection with equipment or software obtained from or supplied by parties other than IVRNET. The Customer is warned that any representations or purported warranties relating to software or equipment provided by third parties or to any combination of such software with the Software are unauthorized by IVRNET, are not binding on IVRNET and should not be relied upon by the Customer in making any decisions relating to the acquisition or use of computer products or systems.
- e) IVRNET makes no warranties or representations regarding performance, merchantability, fitness for any particular purpose, compatibility, maintenance, repair, or any other attribute or aspect of any equipment or software obtained from or through any party other than IVRNET or any combinations of the Software with equipment or software obtained from or through any party other than IVRNET.
- f) Customer agrees that no action under these Terms and Conditions will be brought against IVRNET more than six (6) months after the cause arises.
- g) Customer agrees that there are no express or implied warranties with respect to the Software, support or maintenance services, including, but not limited to, any implied warranties or merchantability or fitness for a particular purpose.



- h) Customer agrees that Customer and Users will comply with all relevant privacy and confidentiality legislation and policy in respect to third party information (including personal, confidential, and proprietary in nature), Customer and Users receive and input during the course of using the Software and Services.
- i) Customer agrees to record all revenue and monetary transactions accurately and in good faith through the Software and Services for the purposes of calculating the fees for the Software and Services.

#### 12) Mutual Indemnification

- a) Subject to the provisions contained herein, each party agrees to defend, indemnify and hold the other and its officers, directors, agents, affiliates, distributors, franchisees and employees harmless against any loss, damage, expense, or cost, including reasonable legal fees (including allocated costs for in-house legal services) ("Liabilities") arising out of any claim, demand, proceeding, or lawsuit by a third party as a result of their gross negligence, fraud or wilful misconduct relating to Service Agreements(s).

#### 13) Default

- a) In the event the Customer should
  - (i) fail to make payment for any charges due hereunder or pursuant to any Service Agreement,
  - (ii) default in any of the terms of these Terms and Conditions or any Service Agreement, or
  - (iii) become insolvent or the subject of any bankruptcy proceedings, then IVRNET may, upon written notice, (a) terminate these Terms and Conditions and/or any Service Agreements, (b) declare all amounts due and payable, (c) render any Software or Services inoperable and/or inaccessible to the Customer, and (d) take possession of all Software that are not fully paid for. The Customer agrees to reimburse IVRNET for any and all expenses, including reasonable legal fees that may be incurred in taking any of these actions and enforcing its rights hereunder.
- b) The Customer specifically agrees that if IVRNET terminates these Terms and Conditions due to the Customer's default as itemized above or if for any reason the Customer terminates these Terms and Conditions or any of its Service Agreements, IVRNET shall be entitled to recover liquidated damages equal to the full number of months remaining in any Service Agreement(s).

#### 14) Non-solicitation

- a) Neither party shall, for the term of these Terms and Conditions and for a period of six (6) months from the date of termination or expiry of these Terms and Conditions, directly or indirectly, hire any employees of the other party who had significant involvement in the performance of the Services or induce or solicit, or attempt to induce or solicit, such employees to leave their employment, unless:
  - (i) where such personnel were already employees or contractors of such party; or
  - (ii) with the express written consent of such party. Neither party shall be deemed in default of its obligations under this section if a party hires an employee of the other party who independently approaches the party, or as a result of conducting general recruiting activities, such as participation in job fairs or publishing advertisements in publications or on Web sites for general circulation.

Despite the foregoing, if any restriction set forth in this section is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or



over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities or geographic area as to which may be enforceable.

#### 15) Miscellaneous

- a) These Terms and Conditions shall be governed by the laws of the Province of Alberta, and the laws of Canada applicable therein. The parties agree that they shall submit any matter in dispute to a court of competent jurisdiction located in Calgary, Alberta and the parties irrevocably attorns and consent to the exclusive jurisdiction of such court.
- b) No waiver by IVRNET of any default by the Customer shall constitute a waiver of any other default by the Customer or waiver of IVRNET's rights.
- c) These Terms and Conditions contains the whole of Service Agreement(s) between the parties and there are no collateral Service Agreements or conditions not specifically set forth herein and no modifications, amendments or variations shall be effective or binding unless agreed to in writing and properly executed by the parties.
- d) These Terms and Conditions shall be binding upon and ensure to the benefit of the parties hereto, and their permitted successors and assigns.
- e) Any provision of these Terms and Conditions which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction
- f) The Customer acknowledges and agrees that clerical and administrative errors shall not affect the validity of these Terms and Conditions and IVRNET shall be entitled to unilaterally correct the same.
- g) The headings in these Terms and Conditions are inserted for convenience only and shall not affect interpretation.
- h) In the event of any controversy, dispute, claim, question or difference (a "Dispute") between the Customer and IVRNET as to the interpretation of any provision of Service Agreement(s) or its performance of obligations, enforcement, breach, termination or validity, the parties shall promptly meet in a good faith effort to resolve the Dispute. If the parties do not agree on a decision within thirty (30) days after the first meeting on that topic, each party shall be free to pursue and exercise any and all legal rights available to them. The parties shall be free to submit any unresolved Dispute to any form of alternative dispute resolution they mutually deem appropriate or, absent such Service Agreement, the Dispute shall be submitted to the Court of Queen's Bench of the Province of Alberta, which forum, the parties specifically agree, is a proper and convenient dispute resolution forum. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any litigation arising out of these Terms and Conditions.
- i) IVRNET shall not be liable for failure to perform or delayed performance of these Terms and Conditions where such failure or delay is caused in whole or in part by events or causes beyond IVRNET's control, including, but not limited to, strikes, and other labor disputes, fires, embargoes, war or civic disturbances, acts of God, inability to obtain transportation or shipping space, machinery breakdown, delays of carriers or suppliers and government acts or regulations, official or unofficial. j) Any notice, request, demand, consent or other communication provided or permitted hereunder shall be in writing and given by personal



delivery (against receipt), or sent by registered mail (against receipt) postage prepaid, addressed to the other party for which it is intended at its address as follows: if to Customer, at the address specified in a Service Agreement and if to IVRNET: IVRNET a division of N. Harris Computer Corporation, 1 Antares Drive, Suite 400, Ottawa ON K2E 8C4. Provided, however, that either party may change its address for purposes of receipt of any such communication by giving ten (10) business days prior written notice of such change to the other party in the manner prescribed above. Any notice so given shall be deemed to have been received on the date on which it was delivered if delivered in person, or if sent by registered mail on the fifth (5<sup>th</sup>) business day thereafter.



## ATTACHMENT "A"

The following provisions will apply if the Customer contracts the Services indicated in each section.

### Terms Applicable to Email Communication Services

1. Suspension of Email Services. IVRNET and its provider of email services may suspend such services (in whole or in part) without liability if: (i) IVRNET or its provider reasonably believes or determines that the email services are being used in violation of the Agreement; (ii) customer does not cooperate with the reasonable investigation of any suspected violation of the Agreement; (iii) there is an attack on the email services or your services are accessed or manipulated by a third party without your consent, (iv) IVRNET or its provider is required by law or by a regulatory or government body to suspend the email services, or (v) there is another event for which IVRNET or its provider reasonably believes that the suspension or alteration of the email services is necessary or required to protect the existing email network, company, group companies or our other customers. In the event IVRNET or its provider suspends the services in whole or in part pursuant to this provision more than twice during a calendar month or four times during the applicable term, IVRNET and its provider will also have the right to immediately terminate the Agreement for breach upon written notice in addition to any other remedies available hereunder or otherwise at law or in equity.
2. If IVRNET, its email provider or their Affiliates, or any of its or their Representatives (the "Indemnitees") is faced with a legal claim by a third party arising out of Customer's actual or alleged: willful misconduct, breach of applicable law, negligence, or other claims under this Agreement, then Customer will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine or other penalty that is imposed on the Indemnitees as a result of the claim. Customer's obligations under this Section include claims arising out of the acts or omissions of Customer's employees or agents, any other person to whom Customer has given access to the Customer configuration, and any person who gains access to the Customer configuration as a result of Customer's failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by Customer.

### Terms Applicable to Voice and Messaging (SMS) Communication Services

1. **Indemnity.** Customer agrees to defend, at its own expense, and indemnify and hold harmless IVRNET, its provider of Voice and Messaging Services, its and their Affiliates, and its subcontractors (collectively the "Indemnitees"), from and against any third party claims, suits, damages and expenses asserted against or incurred by any of the Indemnitees arising out of or relating to:
  - (a) Customer's or its end users' use of any Voice and Messaging Services, or related products, data and Documentation provided to Customer hereunder, including where the same results in a violation of any law or regulation;
  - (b) any claims (including, but not limited to, any claims, fines, penalties, or losses) or other liabilities brought against IVRNET, its provider of Voice and Messaging Services,, its Affiliates and subcontractors by any third party (including, but not limited to, any other Voice and Messaging Services customer, Service Provider or governmental or regulatory authority) relating to Customer Data, Customer Services, Messages or Customer's or its end users' and Customers' use of the Service (including, but not limited to, any such



- claim which relates to infringement or misappropriation of any intellectual property rights of any third party or any breach or violation of laws or regulations); and
- (c) all damages finally awarded against IVRNET, its provider of Voice and Messaging Services, its Affiliates and subcontractors with respect to these claims.

Notwithstanding any other provision of the Agreement, Customer will pay all damages, settlements, expenses and costs, including costs of investigation, court costs and reasonable attorneys' fees and costs (including allocable costs of in-house counsel) incurred by the Indemnitees as set forth in this Section, including, without limitation, reasonable attorneys' fees and costs (including allocable costs of in-house counsel) incurred in successfully enforcing the terms of this indemnity.