

SOFTWARE SUBSCRIPTION LICENSE AND SUPPORT AGREEMENT

This Software Subscription License and Support Agreement ("Agreement") is entered into effective as of the date set forth below by and between _____ [customer name] _____ ("Customer" or "Licensee") having a principal place of business at _____ [address] _____ and Survox, Inc. ("SURVOX") having a principal place of business at 547 Howard Street, San Francisco, California 94105.

Whereas, SURVOX is the owner of, or has acquired rights to, the Software and the Documentation (as defined below); and

Whereas Customer wishes to obtain from SURVOX a nonexclusive license to use the Software and the Documentation solely in accordance with the terms and on the conditions set forth in this Agreement; and

Whereas SURVOX is willing, subject to the terms of this Agreement, to license the Software to Customer;

Now Therefore in consideration of the mutual promises herein contained the parties hereby agree as follows:

§1 **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meanings assigned below. Other capitalized terms shall have the meanings set forth herein:

1.1 **"Approved Operating Systems"** means those specific operating systems approved for Use with the Software and designated as Approved Operating Systems on the SURVOX website or Documentation.

1.2 **"Confidential Information"** means all Software and Software listings (including any Hardware components thereof), Documentation, information, data, drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the Software, source code relating to the Software, and any other proprietary information supplied to Customer by SURVOX, or by Customer to SURVOX (in which case the Confidential Information must be clearly marked as "confidential information"), including all items defined as "confidential information" in any other agreement between Customer and SURVOX whether executed prior to or after the date of this Agreement.

1.3 **"Documentation"** means any on-line help files, instruction manuals, operating instructions, user manuals, and specifications provided by SURVOX that describe the use of the Software and that either accompany the Software or are provided to Customer at any time.

1.4 **"Effective Date"** means the later of the dates on which Customer and SURVOX have signed this Agreement.

1.5 **"Equipment"** means the equipment and/or computer system(s) with which the Software is licensed for Use, including peripheral equipment and operating system software, as specified in SURVOX's product documentation.

1.6 **"Hardware"** means any hardware, equipment, or computer system(s) provided by SURVOX either as a stand-alone piece of hardware or as a component of a Software-Hardware Package for Use by Customer.

1.7 **"Intellectual Property Rights"** shall include without limitation all right, title, and interest in and to all (i) Letters Patent and all filed, pending, or potential applications for Letters Patent, including any reissue, reexamination, division, continuation, or continuation-in-part applications throughout the world now or hereafter filed; (ii) trade secrets and equivalent rights arising under the common law, state law, federal law, and

laws of foreign countries; (iii) copyrights, mask works, other literary property or authors rights, whether or not protected by copyright or as a mask work; and (iv) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, federal law, and laws of foreign countries.

1.8 **“Level of Technical Support”** means that level of technical support services chosen by Customer as designated on the Order Form if different from the standard support included in SURVOX software licensing.

1.9 **“Minimum Hardware Requirements”** means the Equipment and any other minimum hardware requirements for Use with the Software that are designated as such in the SURVOX product documentation.

1.10 **“Open Source Components”** means Open Source Software (“OSS”) that is included by SURVOX as a component of the Software and/or the Software-Hardware.

1.11 **“Open Source Software”** means any software made generally available by a third party under a license approved by the Open Source Initiative, or any substantially similar license.

1.12 **“Site”** means each physical location specified in the Order Form at which Customer is entitled to Use the Software.

1.13 **“Software”** means the computer software program(s) and/or the Software-Hardware Package specified in the Order Form and otherwise provided to Customer pursuant to this Agreement and any Updates hereafter furnished to the Customer by SURVOX under this Agreement.

1.14 **“Software-Hardware Package”** means that particular combination of SURVOX Software and Hardware as designated on the Order Form.

1.15 **“Order Form”** means that certain document entitled Order Form attached to this Agreement as Exhibit A, which identifies the Equipment, Hardware, Software, Level of Technical Support, and Pricing Terms that are incorporated into this Agreement.

1.16 **“Updates”** means those updates, modifications, bug fixes and other corrections that SURVOX makes generally available for no additional charge to other licensees of the Software who receive technical support services.

1.17 **“Use”** means loading, utilization, storage or display of the Software by Customer for its own internal information processing, by copying or transferring the same into Customer’s equipment.

§2 LICENSE AND COPIES

2.1 **Grant of License.** Subject to the terms and conditions of this Agreement, SURVOX hereby grants to Customer a non-exclusive, nontransferable, and non-assignable license (“License”) to (a) Use the Software on the Equipment designated in the Order Form for its own internal business purposes (or with the prior written consent of SURVOX, on substitute, upgraded, or additional Equipment; provided however that any costs resulting from the transfer of the Software to such other Equipment, including without limitation services rendered by SURVOX shall be Customer’s responsibility); (b) use and make copies of the Documentation in conjunction with the foregoing; and (c) make a reasonable number of copies of the Software solely for back-up or archival purposes. Customer will reproduce all copyright and other proprietary notices on all copies of the Software and Documentation in the same form and manner that such copyright and other proprietary notices are included in the Software or Documentation. Customer acknowledges that SURVOX shall retain title to the Software and Documentation. SURVOX hereby reserves all rights to the Software, Documentation, or any copyrights, patents, or trademarks embodied or used in connection therewith, except for the rights expressly granted herein.

2.2 **Copies.** Customer will be entitled to make a reasonable number of machine-readable copies of the Software for backup or archival purposes only. Customer may not copy the Software except as permitted by this Agreement. Customer shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform SURVOX in writing of such location(s).

2.3 **Restrictions on License.** Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) sell, lease, license or sublicense the Software or the Documentation; (b) decompile, disassemble, or reverse engineer the Software, in whole or in part; (c) allow access to the Software by any user other than the Customer’s employees; (d) write or develop any derivative software or any other software program based upon the Software or the Confidential Information; (e) provide, disclose, divulge or make available to, or permit use of the Software or Confidential Information by any third party without SURVOX’s prior written consent; or (f) use the Software on any hardware that has not been specified in the Order Form or approved in advance in a writing signed by SURVOX.

2.4 **Exclusion of Source Code.** Customer's rights under this Agreement shall not extend to Source Code for any Software and/or Software-Hardware Package (the “Products”) and nothing contained herein shall be interpreted to require SURVOX to deliver any Source Code for any Products to Customer except as may be expressly required for any Open Source Component as described in Section 2.6..

2.5 **Expiration String.** NOTICE: THE SOFTWARE LICENSE IS TIME SENSITIVE AND IS DESIGNED TO CEASE FUNCTIONING AFTER A CERTAIN PERIOD (“EXPIRATION DATE”) AND/OR UPON A BREACH OF THE TERMS OF THIS AGREEMENT. NOTICE OF EXPIRATION MAY NOT ACTIVELY BE GIVEN OTHER THAN AS SET FORTH ON THE ORDER FORM ATTACHED AS SCHEDULE 1. CUSTOMER ACCEPTS AND APPROVES SUCH EXPIRATION DATE AND SHALL COPY AND REMOVE ANY OF ITS OWN DATA PRIOR THERETO.

2.6 **License Terms for Open Source Components.** The Open Source Components are not licensed under the license granted in Section 2.1, but instead are licensed under the terms of the applicable open source license. SURVOX shall provide a list of Open Source Components for a particular Software-Hardware Package upon Customer's request. To the extent the terms of the licenses applicable to Open Source Components prohibit any of the restrictions in this Agreement with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the license applicable to an Open Source Component requires that SURVOX offer to make the source code for such Open Source Component available upon Customer's request, this Section constitutes such offer.

§3 **TECHNICAL SUPPORT AND TRAINING**

3.1 **Product Support:** SURVOX will assist Customer to diagnose hardware, software, or other user problems and provide guidance to Customer in resolving such problems. This support will be provided through a single Installation Location site manager designated by Customer during the warranty period described in Section 5

3.2 **Upgrades:** SURVOX will furnish at no additional charge during the warranty period any enhanced, upgraded, or improved ("new") version of any SURVOX Software provided to Customer under this Contract, plus related documentation, within a reasonable time after release. Customer agrees to accept such new version in lieu of the superseded version.

3.3 **Supporting Systems Information:** To allow SURVOX to effectively support and evaluate the performance of SURVOX Software and control its distribution, Customer agrees to disclose to SURVOX from time to time the entire data processing configuration (i.e., hardware and operational software) of which the SURVOX items provided under this Contract form a part.

3.4 **Technical Training.** SURVOX will provide technical training to Customer's technical personnel as specified in the Order Form.

3.5 **Delivery.** SURVOX will deliver the Software to the Customer's Site on or before the delivery dates specified on the Order Form or, if no delivery date has been so specified, then within thirty (30) days after Customer's written request received by SURVOX within six (6) months of the Effective Date of this Agreement.

3.6 **Suspension of Support.** Support is included in the software license fees which are due and payable as set forth on the Order Form. In the event payment is not timely received, SURVOX may suspend all support and Additional Support Services upon thirty (30) days written notice to Customer.

3.7 **No Support for Open Source Components.** SURVOX does not provide any technical or other support services for Open Source Components.

3.8 **No Support for Operating Systems.** SURVOX agrees to provide support services related solely to the installation of its Software on those Approved Operating Systems designated in the SURVOX Documentation and/or website and does not provide technical or other support for issues related solely to the operation of

such Approved Operating Systems. In no event shall SURVOX be obligated to provide support services for Software not installed on designated Approved Operating Systems; provided, however, that SURVOX in its sole discretion may elect in writing to support Software installed on operating systems not designated as Approved Operating Systems.

§4 **LICENSE FEE, INSTALLATION AND SUPPORT FEES AND TAXES**

4.1 **License Fee.** In consideration of the license granted pursuant to Section 2 of this Agreement, Customer agrees to pay SURVOX the non-refundable License Fee and the support fees specified in the Order Form. The License Fee and the support fees are due and payable in full upon the Effective Date or as otherwise set forth in the Order Form. Failure to pay the License or support fees as set forth in the Order Form shall be deemed a material breach of this Agreement and in such event SURVOX shall have the right to terminate the rights granted hereunder.

4.2 **Installation Fee.** Customer shall pay to SURVOX the Configuration and Installation Fee specified in the Order Form for configuration and installation of the Software.

4.3 **Support Fees.** Customer shall pay to SURVOX the Support Fees for the Level of Technical Support chosen by the Customer and specified in the Order Form.

4.4 **Taxes.** Customer agrees to pay or reimburse SURVOX for all federal, state, dominion, provincial, or local sales, use, personal property, payroll, excise or other taxes, fees, or duties arising out of this Agreement and/or the Use of the Software (other than on the net income of SURVOX).

4.5 **No Offset.** Fees and expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts owed by or to Customer for any reason.

§5 **LIMITED WARRANTY AND REMEDIES**

5.1 **Limited Warranty.** SURVOX warrants that during the warranty period set forth in the Order Form for each item of Software, Hardware and/or Software-Hardware Package licensed hereunder (the “Products”), (a) the Products will perform in substantial accordance with the Documentation delivered with such Products, and (b) at the date of delivery of any and all Products, SURVOX shall have used commercially reasonable efforts to cause the Products to be free of any known computer virus or harmful, malicious, or hidden program, data, or other computer instructions whose purpose is to disrupt, damage, or interfere with the use of computer and telecommunications software or hardware for their normal purposes (except in accordance with the Documentation).

5.2 **Exceptions of Limited Warranty.** Notwithstanding Section 5.1 or any other provisions of this Agreement, SURVOX shall have no obligation to fix errors in the Products caused by (i) accident, misuse,

abuse, improper operation, misapplication, unauthorized modification, maintenance or repair, or (ii) use with software or hardware that is not specified in the Documentation, or (iii) any other cause external to the Products.

5.3 **Remedy for Breach of Limited Warranty.** SURVOX's exclusive liability and the Customer's sole and exclusive remedy for breach of the provisions of this warranty section shall be, at SURVOX's option, to repair or replace the Product(s) that do not meet SURVOX's limited warranty and are returned to SURVOX. If it is not commercially practicable to repair or replace the Product(s), SURVOX shall terminate this Agreement and refund to Customer the License fee less a proportionate amount for the months that Customer Used the Product(s). THE FOREGOING OBLIGATIONS OF SURVOX TO REPAIR OR REPLACE ITS PRODUCTS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY. The warranty set forth above is made to and for the benefit of Customer only. The warranty will apply only if:

- (a) the Product(s) have been properly installed and Used at all times in accordance with the Documentation and the terms and conditions of this Agreement; and
- (b) no modification, alteration or addition has been made to the Product(s) by persons other than SURVOX or SURVOX's authorized representative; and
- (c) Customer has not requested modifications, alterations or additions to the Product(s) that cause the Product(s) to deviate from the Documentation.

5.4 **Audit.** SURVOX or a third party selected by SURVOX may audit Customer's Use of the Software, upon notice to the Customer, for purposes of ensuring compliance with this Agreement and to effectively support and evaluate the performance of the Software. Any such audit will be conducted during regular business hours and shall not unreasonably interfere with the Customer's business activities.

§6 **DISCLAIMER, LIMITATION OF LIABILITY, AND CLAIMS**

6.1 **DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, SURVOX MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE PRODUCTS OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING MAINTENANCE AND SUPPORT. SURVOX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE PRODUCTS, DOCUMENTATION AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING. IN ADDITION. SURVOX DISCLAIMS ANY WARRANTY WITH RESPECT TO, AND WILL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR, THE OPERATION OF THE PRODUCTS IF PROGRAMS ARE MADE THROUGH THE USE OF THE PRODUCTS OR NON-SURVOX PRODUCTS THAT CHANGE, OR ARE ABLE TO CHANGE, THE DATA MODEL OF THE PRODUCTS.

6.2 **LIMITATION OF LIABILITY.** IN NO EVENT WILL SURVOX BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT

OF THE FURNISHING, PERFORMANCE OR USE OF THE PRODUCT(S) OR SERVICES PERFORMED HEREUNDER, OR ARISING FROM CUSTOMER'S INABILITY TO USE ANY OF THE PRODUCTS, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SURVOX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, SURVOX WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE PRODUCT(S) OR SAID SERVICES. SURVOX'S LIABILITY UNDER THIS AGREEMENT FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT EXCEED THE LICENSE FEE PAID BY CUSTOMER TO SURVOX UNDER THIS AGREEMENT.

6.3 **CLAIMS.** NO ACTION ARISING OUT OF OR RELATED TO ANY BREACH OR CLAIMED BREACH OF THIS AGREEMENT OR TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. FOR PURPOSES OF THIS AGREEMENT, A CAUSE OF ACTION WILL BE DEEMED TO HAVE ACCRUED WHEN CUSTOMER KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE BREACH OR CLAIMED BREACH.

6.4 **Allocation of Risk.** The provisions of this Section 6 allocate risks under this Agreement between Customer and SURVOX. SURVOX's pricing reflects this allocation of risks and limitation of liability between Customer and SURVOX.

§7 **MUTUAL INDEMNIFICATION**

7.1 **Indemnification by SURVOX.** SURVOX shall defend You against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or **misappropriates the intellectual property rights of a third party** (a "Claim Against Customer"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court approved settlement of, a Claim Against Customer; provided that You (a) promptly give SURVOX written notice of the Claim Against Customer; (b) give SURVOX sole control of the defense and settlement of the Claim Against Customer (provided that SURVOX may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provide to SURVOX all reasonable assistance, at Our expense. In the event of a Claim Against Customer, or if SURVOX reasonably believes the Services may infringe or misappropriate, SURVOX may in Our discretion and at no cost to Customer (i) modify the Services so that they no longer infringe or misappropriate, without breaching SURVOX's warranties under "Our Warranties" above, (ii) obtain a license for Customer's continued use of the Services in accordance with this Agreement, or (iii) terminate Customer's User subscriptions for such Services upon 30 days' written notice and refund to Customer any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

7.2 **Indemnification by You.** Customer shall defend SURVOX against any claim, demand, suit or proceeding made or brought against SURVOX by a third party alleging that Customer Data, or Customer's use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against SURVOX"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by SURVOX under a court-approved settlement of, a Claim Against SURVOX; provided that We (a) promptly give Customer

written notice of the Claim Against Customer; (b) give Customer sole control of the defense and settlement of the Claim Against SURVOX (provided that You may not settle any Claim Against SURVOX unless the settlement unconditionally releases SURVOX of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

7.3. **Exclusive Remedy.** This Section 7 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

§8 **CONFIDENTIALITY**

8.1. **Confidential Information.** Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that (i) is publicly available, (ii) already in the other party's possession and not subject to a confidentiality obligation, (iii) obtained by the other party from third parties without restrictions on disclosure, (iv) independently developed by the other party without reference to Confidential Information, or (v) required to be disclosed by order of a court or other governmental entity.

8.2. **Injunctive Relief.** In the event of actual or threatened breach of the provisions of Section 8.1, the non-breaching party will have no adequate remedy at law and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

§9 **TERM AND TERMINATION**

9.1. **Term.** This Agreement will take effect on the Effective Date and will remain in force for the Initial Term specified in the Order Form. This Agreement will thereafter continue until terminated as set forth below.

9.2. **Termination by Customer.** During the Initial Term specified in the Order Form, Customer may terminate this Agreement upon ninety (90) days advance written notice given no sooner than ninety days before expiration of the Initial Term. This agreement will thereafter continue until terminated upon ninety (90) days advance written notice from Customer given, no sooner than ninety (90) days before expiration of the Initial Term. Provided, however, that no such termination during or after the Initial Term will entitle Customer to a refund or any portion of the License Fee or maintenance and support fees.

9.3 **Termination by SURVOX.** SURVOX may terminate this Agreement if any of the following events (“Termination Events”) occur, provided that no such termination will entitle Customer to a refund of any portion of the License Fee or maintenance and support fees: (i) Customer fails to pay any undisputed amount due to SURVOX within thirty (30) days after SURVOX gives the Customer written notice of such non-payment; (ii) Customer is in material breach of any non-monetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after SURVOX gives Customer written notice of such breach; (iii) Customer becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes; or (iv) SURVOX elects to refund Customer’s fees in accordance with Section 5.4 or Section 7.1.

9.4 **Effect of Termination.** If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding the parties’ treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming SURVOX’s liability, which provisions will survive termination of this Agreement.

9.5 **Return of SURVOX Software and Hardware.** Within thirty (30) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return to SURVOX the Software (including any Software-Hardware Package), all derivative works and all copies thereof, in whole or in part, all related Documentation and all copies thereof, any SURVOX Hardware, and any other Confidential Information in its possession. Customer shall furnish SURVOX with a certificate signed by an executive officer of Customer verifying that the same has been done. Should Customer fail to return any Hardware or Software-Hardware Package to SURVOX within thirty (30) days of the termination of this Agreement, Customer shall pay to SURVOX the sum of \$ n/a per day until such Hardware or Software-Hardware Package is returned.

9.6 **Liability for Damage to Hardware Components.** Customer is fully responsible for maintaining any Hardware and/or Hardware components of the Software in good working condition and agrees not to attempt any repairs, modifications, or disassembling of such Hardware. Customer agrees to maintain full insurance coverage for any damages or loss to any Hardware or Hardware components of the Software with SURVOX identified as an additional insured and to return any Hardware to SURVOX without physical damage and in good working order.

§10 **NON-ASSIGNMENT.** Neither this Agreement nor any rights under this Agreement may be assigned, sublicensed or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of SURVOX, which consent will not unreasonably be withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

§11 **MISCELLANEOUS**

11.1 **Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is cause, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties.

Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

11.2 **Waiver**. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

11.3 **Severability**. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

11.4 **Standard Terms of Customer Ineffective**. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with the acquisition or licensing of the Software (including any Software-Hardware Package) will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of SURVOX to object to such terms, provisions or conditions.

11.5 **Amendments to Agreement**. This Agreement may not be amended, except by a writing signed by both parties.

11.6 **Prior Consent of SURVOX**. Unless expressly provided otherwise in this Agreement, any prior consent of SURVOX that is required before Customer may take an action may be granted or withheld in SURVOX's sole and absolute discretion.

11.7 **Export of Software**. Customer may not export or re-export the Software (including any Software-Hardware Package) without the prior written consent of SURVOX and without the appropriate United States and foreign government licenses.

11.8 **Applicable Law**. This Agreement will be interpreted and construed in accordance with the laws of the State of California, without regard to conflict of law principles.

11.9 **Exclusive Forum and Venue**. The Superior Court of the State of California in and for the County of San Francisco shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of or related to this Agreement. Customer expressly consents to (i) the personal jurisdiction of the Superior Court of the State of California in and for the County of San Francisco, and (ii) service of process being effected upon Customer by registered or certified mail.

11.10 **Mediation of Disputes.** Should any dispute arise out of or be related to this Agreement, it shall first be submitted to mediation prior to the filing of any lawsuit or complaint. The mediation shall not exceed one day and shall take place in San Francisco, California before a mediator mutually agreeable to the parties or, if they cannot agree, then before a mediator selected by JAMS in San Francisco. The parties shall make a good faith effort to resolve the dispute and the parties’ representatives must be fully authorized to negotiate a settlement at the mediation. The costs of the mediation shall be borne equally by the parties. Any party that refuses or fails to participate in the mediation shall not be entitled to recover any attorney’s fees in subsequent proceedings.

11.11 **Judicial Reference of Disputes**

IF EITHER PARTY COMMENCES A LAWSUIT FOR A DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT, ALL OF THE ISSUES IN SUCH ACTION, WHETHER OF FACT OR LAW, SHALL BE SUBMITTED TO GENERAL JUDICIAL REFERENCE BEFORE A SINGLE REFEREE SELECTED BY THE PARTIES AND APPOINTED BY THE COURT PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1 OR ANY SUCCESSOR STATUTES THERETO. IF THE PARTIES CANNOT AGREE ON THE SELECTION OF THE REFEREE, THE COURT SHALL SELECT AND APPOINT THE REFEREE.

IT IS THE INTENT OF THE PARTIES THAT DISCOVERY SHALL BE LIMITED IN SCOPE AND DURATION IN ORDER TO MINIMIZE THE COSTS OF LITIGATION. UNLESS OTHERWISE ORDERED BY THE REFEREE FOR GOOD CAUSE SHOWN, EACH SIDE SHALL BE LIMITED TO TWO DEPOSITIONS AND SHALL BE REQUIRED TO EXCHANGE ALL RELEVANT DOCUMENTS WITHOUT THE NECESSITY OF REQUESTS FOR DOCUMENTS. THE REFEREE SHALL BE AUTHORIZED TO CONTROL DISCOVERY THROUGHOUT THE PROCEEDINGS.

NOTICE: BY INITIALLING IN THE SPACE BELOW EACH PARTY ACKNOWLEDGES THAT IT IS GIVING UP ANY RIGHT IT MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A JURY TRIAL.

Initials of Parties: _____

11.12 **Headings.** Section and Schedule headings are for ease of reference only and do not form part of this Agreement.

11.13 **Entire Agreement.** This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

11.14 **Counterparts.** This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other

document) and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each party and delivered to the other party.

11.15 **Parties in Interest.** This Agreement shall be binding upon and inure to the benefit of each party, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the obligation of any third person to any party to this Agreement.

11.16 **Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail, postage prepaid, return receipt requested, (c) sent by overnight air courier (next day delivery), or (d) by facsimile with confirming letter mailed under the conditions set forth in subsection (b), in each case posted to the appropriate address set forth below. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit of the mail as set forth above, two (2) days after delivery to an overnight air courier service, or one (1) day after the moment of transmission by facsimile.

11.17 **Attorney's Fees.** In the event of any lawsuit for the breach of this Agreement or misrepresentation by any party, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses incurred in such lawsuit. Attorneys fees incurred in enforcing any judgment in respect of this Agreement are recoverable as a separate item. The preceding sentence is intended to be severable from the other provisions of this Agreement and to survive any judgment and, to the maximum extent permitted by law, shall not be deemed merged into any such judgment.

11.18 **Representation by Counsel.** SURVOX and Customer acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the intent of SURVOX and Customer.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers as of the day and year set forth below.

_____(Customer)_____

SURVOX, INC.

Signature

SURVOX Official

Print Name

Print Name

Print Title

Title

Date

Date

Return by email to Accounts@SURVOX.com

Exhibit A: Order Form

RESERVED