

Terms of Use

Effective date: August 13, 2019

These Terms of Use (the “Terms” or “Agreement”) are a binding contract between you and Spoke Network, Inc. (“Spoke,” “we” and “us”). You must agree to and accept all of the Terms, or you don’t have the right to use the Spoke products, applications and other services provided to you by Spoke and its distribution partners through this website and other delivery methods (collectively “Services” or “Service”). Your use of the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document, as well as those in the [Privacy Policy](#).

END USER LICENSE

Spoke grants you a limited, personal, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable, non-resellable license and right to use the Services and in strict accordance with this Agreement. All rights not expressly granted under this Agreement are retained by Spoke.

No Grant of Intellectual Property Rights: You acknowledge and agree that any and all patents, copyrights, trademarks, service marks, trade secrets, and all other intellectual property rights (collectively, “IP Rights”) in the Services are and shall remain the sole and exclusive property of Spoke and its licensors. You will not take any action to jeopardize, limit, or interfere with the IP Rights. You acknowledge and agree that any unauthorized use of the IP Rights is a violation of this Agreement, as well as a violation of applicable intellectual property laws.

YOUR REPRESENTATIONS

You represent and warrant that you possess the legal right, capacity, and ability to enter into this Agreement. You represent and warrant that you are of legal age to form a binding contract (or if not, you’ve received your parent’s or guardian’s permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf). If you’re agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity’s behalf and bind them to these Terms (in which case, the references to “you” and “your” in these Terms, except for in this sentence, refer to that organization or entity).

You represent and warrant that you have made and will maintain at all times wireless or traditional wireline telephone service that will enable you to call 911 and any other applicable emergency service number. You represent and warrant that you will not use the Services in environments requiring fail-safe performance or in which the failure of the Services could lead directly to death, personal injury, or severe physical or environmental damage. You represent and warrant that the Registration Data (as defined below), user name, contact information, and all other information provided in connection with your Account (as defined below) are true and correct at all times. You represent and warrant that you will not use the Services in violation of

the Use Policy herein. You agree to be financially responsible for your use of the Services, including the authorized or unauthorized use of your Account.

PRIVACY

Spoke takes the privacy of its users very seriously. For the current Privacy Policy, please [click here](#).

The Children's Online Privacy Protection Act ("COPPA") requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. We do not knowingly collect or solicit personally identifiable information from children under 13; if you are a child under 13, please do not attempt to register for the Services or send any personal information about yourself to us. If we learn that we have collected personal information from a child under 13, we will delete that information as quickly as possible. If you believe that a child under 13 may have provided us with personal information, please contact us at support@spokephone.com.

CHANGES TO THESE TERMS

We are constantly trying to improve our Services, so these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, but if we do, we will bring it to your attention by placing a notice on the Spoke website, by sending you an email, and/or by some other means.

If you don't agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

CHANGES TO THE SERVICES

Services may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We'll try to give you notice when we make a material change to the Services that would adversely affect you, but this isn't always practical. Similarly, we reserve the right to remove any content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that content in violation of these Terms), in our sole discretion, and without notice.

Spoke in its sole discretion, reserves the right to add, remove, or modify features or functions, or to provide fixes, updates and upgrades to the Services. You acknowledge and agree that Spoke has no obligation to make available to you any subsequent versions of or improvements to the Services. You also agree that you may have to enter into a renewed version of this Agreement if you want to download, install, or use a new version of the Services. In addition, you and Spoke acknowledge that no Third-Party has any obligation whatsoever to furnish maintenance or

support services with respect to the Services and that Spoke is solely responsible for the provision of maintenance and support as provided in this Agreement and to the extent such maintenance and support is required under applicable law.

REGISTERING FOR OUR SERVICES

Upon signing up for the Services and at subsequent times as requested by Spoke, you agree to provide Spoke with your true, accurate, current, and complete personal name and/or business name, administrator name, billing address, email address, contact phone number, credit card information, and other data which may be necessary to administer your Spoke account (“Account”) (collectively, “Registration Data”). You represent and warrant that the information you provide is accurate, current, and complete, and agree to promptly update any of the information if it changes. If you provide Registration Data that is, or that Spoke suspects to be, false, inaccurate, not current, incomplete, fraudulent, or otherwise unlawful, Spoke has the right, in its sole discretion, to suspend or terminate the Service and refuse any and all current or future use of all Services by you, your business(es), affiliates and all users of your Account. At all times, you shall maintain and promptly update your Registration Data. You are solely liable for any transactions or activities by you or anyone else that occur on your Account. You shall immediately notify Spoke of any unauthorized use of your Account or if any other breach of security has occurred. In no event shall Spoke be liable for any unauthorized use of your Account. In connection with the registration, implementation, maintenance, or servicing of the Services, you will be required to provide data, information or other materials (collectively “Customer Data”). You hereby grant to Spoke a perpetual, worldwide, royalty-free, fully paid-up, non-exclusive, license to copy, store, record, transmit, display, view, print, and use Customer Data to the extent required to provide or improve the Services. Spoke may also share Customer Data as permitted pursuant to Spoke’s Privacy Policy, available [here](#), which is incorporated into this Agreement.

You may not transfer your account to anyone else without our prior written permission.

You will not share your account or password with anyone, and you must protect the security of your account and your password. You are responsible for any activity associated with your account.

USE OF OUR SERVICES

You will only use the Services for your own personal or business use and only in a manner that complies with all laws that apply to you. If applicable laws prohibit your use of the Services, then you aren’t authorized to use the Services. We can’t and won’t be responsible for your use of the Services in a way that breaks the law.

You shall not use the Services for any illegal, fraudulent, improper, or abusive purpose or in any way that interferes with Spoke’s ability to provide high quality Services to other customers, prevents or restricts other customers from using the Services, or damages any Spoke’s or other customers’ property. If Spoke finds that you are using the Services for anything other than the permitted uses in this Agreement or for any of the prohibited uses in this Agreement, Spoke may

at its sole discretion terminate your Service and charge you any applicable fees for the Services used plus damages caused by your improper use. Prohibited uses include, but are not limited to: Behavior that is illegal, obscene, threatening, harassing, defamatory, libellous, deceptive, fraudulent, malicious, infringing, tortious, or invasive of another's privacy. Sending unsolicited messages or advertisements, including email, voicemail, SMS (commercial or otherwise) ("spamming"), or otherwise sending bulk and/or junk email, voice mail, or SMS. Harvesting or otherwise collecting information about others, including email addresses, without their consent. Negligently, recklessly, knowingly, or intentionally transmitting any material that contains viruses, time bombs, trojan horses, worms, malware, spyware, or any other programs that may be harmful or dangerous. Utilizing the Services in excess of what, in Spoke's sole discretion, would be expected of normal business use. Using the Services in any way that interferes with other customers' and third parties' use and enjoyment of the Services or use the Services in any manner which disrupts, prevents or restricts any other customer from using the Services.

You further understand and agree that: your use of the Services is subject to all applicable local, state, national, and international laws and regulations (including without limitation those governing account collection, export control, consumer protection, unfair competition, anti-discrimination, securities laws, and false advertising). In addition, some of Spoke's Services are offered on an "unlimited" basis. All unlimited Services may only be used for normal business use and unusually high usage of the Services may impair Spoke's ability to provide high quality Services to others and/or indicate unauthorized use of the Services, in which case Spoke may suspend or terminate your Account. Spoke reserves the right to add to, modify or amend this Use Policy at any time for any reason at its sole discretion.

Your use of the Services is subject to the following additional restrictions: You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise use the Services or interact with the Services in a manner that:

1. Infringes or violates the intellectual property rights or any other rights of anyone else (including Spoke);
2. Violates any law or regulation;
3. Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
4. Jeopardizes the security of your Spoke account or anyone else's (such as allowing someone else to log in to the Services as you);
5. Attempts, in any manner, to obtain the password, account, or other security information from any other user;
6. Violates the security of any computer network, or cracks any passwords or security encryption codes;
7. Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);

8. Uses any intellectual property rights protected by applicable laws and contained in or accessible through the Services for the purpose of building a competitive product or service or copying its features or user interface;
9. Uses the Services, or permits it to be used, for purposes of product benchmarking or other comparative analysis intended for publication without Spoke's prior written consent;
10. Uses the Services to develop or enhance any software, software code, or any derivative works of any software without Spoke's prior written consent;
11. "Crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
12. Copies or stores any significant portion of the Content;
13. Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, ("User Submissions"), and so forth (all of the foregoing, the "Content") are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won't use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else's (including Spoke's) rights.

You understand that Spoke owns the Services. You won't modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), creative derivative works based on, or otherwise exploit any of the Services.

HIGH RISK USE

You understand that the Services are not designed or intended for use during high-risk activities, and do not allow and should not be used for calls to emergency services numbers (e.g., 911 (U.S.), or 999 and 112 (UK)). WE ARE NOT A "DIAL-TONE" PROVIDER. IN THE EVENT OF AN EMERGENCY WHILE USING ANY SERVICES, HANG UP AND DIAL YOUR LOCAL EMERGENCY NUMBER. YOU MUST UTILIZE THE TELEPHONE SERVICE PROVIDED BY YOUR LOCAL CARRIER TO MAKE AN EMERGENCY CALL.

USE OF OUR APPS

These Terms apply to your use of the Services, including using our Services via our apps that can be found in both the Apple App Store and at the Google Play.

FREE AND PAID USE OF THE SERVICES

Some of our Services are currently free, but we reserve the right to charge for certain or all Services in the future. We will notify you before any Services you are currently using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services.

If you choose to sign up for any Services that carry a fee (“Paid Services”) you will be charged the then current fees for such Paid Services. Spoke’s current fees for the Paid Services can be found at <https://spokephone.com/pricing>. Unless otherwise agreed, all fees paid to Spoke are non-refundable.

FREE TRIAL

If you are using the Services on a trial or promotional basis (“Trial Period”), your Trial Period will terminate seven days after your initial access to the Services. You can subscribe to any Service at any time during the Trial Period. We may warn you by way of email or other method, that your Trial Period is coming to an end. Following expiration of the Trial Period, if you have not subscribed to any Service, the Services may automatically cease and / or your Account may be suspended or deleted. Upon expiration of the Trial Period, any Spoke Numbers (as defined below), will be deleted from your Account and you may not be able to obtain such Spoke Numbers again in the future. During the Trial Period, to the extent permitted by law, we provide the Services “AS IS” and without warranty or indemnity, and all other terms otherwise apply. We may modify or discontinue any trials or promotions at any time without notice.

BETA SERVICES

We may offer you access to beta Services that are being provided prior to general release, but we do not make any guarantees that these Services will be made generally available (“Beta Services”). You understand and agree that the Beta Services may contain bugs, errors and other defects, and use of the Beta Services is at your sole risk. We have no obligation to provide technical support and we may discontinue provision of Beta Services at any time in our sole discretion and without prior notice to you. These Beta Services are offered “AS-IS”, and to the extent permitted by applicable law, we disclaim any liability, warranties, indemnities, and conditions, whether express, implied, statutory or otherwise. If you are using Beta Services, you agree to receive related correspondence and updates from us, and acknowledge that opting out may result in cancellation of your access to the Beta Services. If you provide feedback (“Feedback”) about the Beta Service, you agree that we own any Feedback that you share with us. For the Beta Services only, these Terms supersede any conflicting terms and conditions in the Agreement, but only to the extent necessary to resolve conflict.

UNLIMITED USE / FAIR AND REASONABLE USE

Some Services allow for unlimited use, such as internal calling between employees, or subscribing to an unlimited calling plan (“Unlimited Services”). Utilizing Unlimited Services in excess of what, in Spoke’s sole discretion, would be expected of normal business use (“Excessive Use”), may result in Spoke either or all of: 1) restricting or terminating your Account,

2) limiting your access to the Services, 3) requiring you to subscribe to additional Paid Services, or; 4) requiring you to pay for prior periods of Excessive Use.

DISCOUNTS

From time to time in its sole discretion, Spoke may offer promotions or discounts. Any promotion or discount codes must be provided to Spoke upon purchase of the Services. You shall not be entitled to a subsequent credit for such promotions or discounts if you do not request such credit at the time of Account creation or change of Service. Promotions and/or discounts may not be used cumulatively or be used for Services retroactively. If a promotion and/or discount is offered on a confidential basis, you agree not to disclose the promotion and/or discount and to assume full responsibility for any harm, direct or indirect, caused to Spoke by the disclosure of the promotion and/or discount.

BILLING AND PAYMENT

All payments are made by credit card ("Payment Method"). When you subscribe to the Services, you will provide us with a valid credit card (including proper billing information) and authorize us to collect from your Payment Method. Any authorization will remain valid until thirty (30) days after you terminate our authority to charge your Payment Method. Upon termination, we will charge you any fees and any other outstanding charges and disconnect your Service. You agree to advise and notify us of any changes to your payment method, such as credit card account number or expiration date changes. If your Payment Method on your Account is declined or fails for any reason, Spoke will use reasonable efforts to contact you and advise you of the failed billing attempts. Notwithstanding the foregoing, Spoke reserves the right to disconnect your Services, suspend or terminate your Account if your Payment Method on file is declined or fails for any reason, and Spoke reserves the right to continue to attempt charging your Payment Method for any outstanding Service charges and additional fees and pursue any other legal remedies available to Spoke.

Billing dates and timing

No contract accounts: Billing cycle end dates may change from time to time, but are usually based in 30 day increments from the day you first subscribed to any Paid Services ("Billing Period").

Contract accounts: Billing cycle end dates may change from time to time, but are usually based in annual increments from the day you first subscribed to any Paid Services ("Billing Period").

Payments you make in advance of service: (i) The applicable monthly fee for any phone numbers you purchase via the Services that allow customer calls to be answered by Spoke ("Company Phone Numbers") or numbers that route calls directly to employees, offices, or other mobile or landline numbers ("Direct Numbers"), collectively ("Spoke Numbers") and, (ii) The applicable monthly license fee multiplied by the number of employees, contractors, freelancers, or other people, offices, desk phones or softphones ("Users") you have added to the Services.

Payments you make in arrears of service: The number of call minutes used in your previous Billing Period, multiplied by the applicable call per minute rate.

Changes made during a Billing Period: If you add Paid Services or Users during a Billing Period, we prorate the new charges to your Account such that their (the new Paid Services or Users) renewal dates coincide with your existing Billing Cycle. If you remove Paid Services or Users during a Billing Period, we do not prorate nor provide refunds.

Billing disputes: You must dispute any charges for the Services in writing to Spoke within thirty (30) days of the date of the charge by Spoke. If you fail to provide a written statement explaining in reasonable detail your reasons for disputing the charge within such time period, you hereby irrevocably waive any objection and further recourse with regard to such charges. Written statements disputing charges must be sent to support@spokephone.com.

TAXES, CHARGES, AND FEES

All fees for Services advertised or otherwise listed on the Website are exclusive of any federal, state, local sales, international excise, value-added, and similar taxes or fees and administrative or recovery fees or charges (collectively "Taxes and Fees"). You agree to pay all Taxes and Fees and/or similar liabilities, however denominated, that may now or hereafter be levied on the Services, which are chargeable to or recoverable from customers by any federal, state, local, or international law or regulation, as well as any administrative and recovery fees and charges levied on the Services by Spoke, whether or not mandated by law or regulation. Should Spoke pay or be required to pay such liabilities (including any Taxes and Fees that were due but not charged or previously collected), you agree that Spoke may charge your Payment Method on file for such payments upon receipt of an invoice and showing of indebtedness to Spoke.

You are responsible for paying all charges for your Account, including but not limited to toll-free, local, long distance, and international call minutes, additional feature charges, automated operators or operator assisted charges, and directory assistance charges, and for all taxes, surcharges, and fees imposed on you or us as a result of your use of the Service.

CANCELLING THE SERVICES

No contract accounts. You may cancel the Services and terminate your Account at any time, by using any self-service mechanisms found within the Services or by contacting us at support@spokephone.com. Please refer to our [Privacy Policy](#), as well as the information herein, to understand how we treat the information you provide to us after you have stopped using our Services.

Contract accounts. You may cancel the Services and terminate your Account within 30 days of your contract renewal date by contacting us at support@spokephone.com. Please refer to our [Privacy Policy](#), as well as the information herein, to understand how we treat the information you provide to us after you have stopped using our Services.

Spoke may also terminate (or suspend access to) your use of the Services or your Account, for any reason in our discretion, including your breach of these Terms. Spoke has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Account termination may result in destruction of any Content associated with your account, including phone numbers you may have acquired by using the Services, so keep that in mind before you decide to terminate your account. We will try to provide advance notice to you prior to our terminating your account so that you are able to retrieve any important User Submissions you may have stored in your account (to the extent allowed by law and these Terms), but we may not do so if we determine it would be impractical, illegal, not in the interest of someone's safety or security, or otherwise harmful to the rights or property of Spoke.

If your account is terminated either by you or by us, we will not be able to restore or otherwise recreate your account, User Submissions, or Content, including any Spoke Numbers you may have provided to others and / or used to promote your business.

If either you or Spoke terminate your Services or Account, your access to the Services will immediately cease, and you will immediately be charged for the number of call minutes used from the start of this current Billing Period until today, multiplied by the applicable call per minute rate. There are no refunds for any payments you made for Services in advance.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

CONTENT AND LINKS

Any information or Content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such Content originated, and you access all such information and Content at your own risk, and we aren't liable for any errors or omissions in that information or Content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can't guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

The Services may contain links or connections to third party websites or services that are not owned or controlled by Spoke. When you access third party websites or use third party services, you accept that there are risks in doing so, and that Spoke is not responsible for such risks. We

encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third party website or service that you visit or utilize. Spoke has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites or by any third party that you interact with through the Services. In addition, Spoke will not and cannot monitor, verify, censor or edit the content of any third party site or service. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third party website or service.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Spoke shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site, or between users and any third party, you agree that Spoke is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Spoke, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. If you are a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

STORAGE OF INFORMATION

Spoke is not obligated to store your User Submissions, communications logs, voicemails, call history, or other messages ("Communication Data") and does so only as a convenience to you. You agree that Spoke has no responsibility or liability whatsoever for the deletion or failure to store any Communication Data maintained or transmitted by the Services. You acknowledge and agree that Spoke may establish limits as to the size of Communication Data that Spoke transmits or stores and the duration for which Spoke stores Communication Data.

SUPPORT AND FEEDBACK

Spoke may provide customer and technical support to you via telephone, chat, forums, FAQ and email for the Services. The types of support provided by Spoke may be dependent on the particular Paid Services that you purchased. The types of support provided by Spoke is determined entirely by Spoke in its sole discretion and may change from time to time. Spoke does not make any representations or guarantees that Spoke will be able to fully resolve any issues reported by you. Except as provided in this section, Spoke has no obligation to provide additional customer support, technical support, or to provide solutions (e.g., bug fixes to software) to any issues that may arise in your particular use of the Services.

From time to time, Spoke may send you surveys, comment cards, customer satisfaction forms, or other requests to provide feedback. You hereby grant Spoke, its licensors, and suppliers a perpetual, unlimited, worldwide fully-paid up, royalty free license to use all feedback, answers, ideas, comments, or other information you provide to Spoke.

WARRANTY, LIABILITY, AND DISCLAIMERS

Warranty Disclaimer. Spoke does not make any representations or warranties concerning any content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. We make no representations or warranties regarding suggestions or recommendations of Services offered or purchased (whether or not following such recommendations and suggestions) through the Services are provided "AS IS" and without any warranty of any kind from Spoke or others (unless, with respect to such others only, provided expressly and unambiguously in writing by a designated third party for a specific product). THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OR ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, FREE OF VIRUSES OR OTHER HARMFUL CONTENTS OR COMPONENTS, OR THAT DATA WILL BE SECURE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL SPOKE BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO SPOKE IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (III) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. To the fullest extent allowed by applicable law, you agree to indemnify and hold Spoke, its affiliates, officers, agents, employees, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (i) your use of the Services (including any actions taken by a third party using your account), and (ii) your violation of these Terms. In the event of such a claim, suit, or action ("Claim"), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

OTHER TERMS

Assignment: You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Spoke's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Publicity Rights: You agree that Spoke may identify you as a user of the Services in its business deals; press releases; marketing materials; electronic, printed, and broadcast advertising; newsletters; mailings; tradeshow; other promotional materials; on Spoke's website; or any other third-party website where Spoke or its designated agents may promote the Services. You hereby grant Spoke and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.

Non-disparagement: You agree not to directly or indirectly through a third party engage in any conduct or make any communication (public or private) that disparages Spoke or the Services in any way. Such communications include, but are not limited to, publishing, posting, printing, disseminating, or otherwise making such disparaging statements on or through the Internet, in any blog, or through any other form of social media. You further agree not to solicit or encourage, directly or indirectly, any such statements, comments, or communications by any third-party. Spoke may terminate your access to the Services if you breach the requirements of this section.

Third Party Copyright Infringement: Copyright Infringement Materials may be made available via the Service by third parties not within our control. We are under no obligation to, and do not, review content transmitted, sent, or received using the Services for purposes of determining copyright infringement. However, Spoke reserves the right to terminate access to its Services if a user infringes on others' copyrights.

Choice of Law; Arbitration: These Terms are governed by and will be construed under the laws of the State of California, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in San Francisco County, California, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, San Francisco County, California, or the Northern District of California.

Miscellaneous: The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Spoke agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Spoke, and that it supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms, and that all modifications to these Terms must be in a writing signed by both parties (except as otherwise provided herein). No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind Spoke in any respect whatsoever. You and Spoke agree there are no third party beneficiaries intended under these Terms.