

Apptix Voice SIP Trunking Terms and Conditions

Definitions

- 1.1. "911 Services" means functionality that allows end users to contact emergency services by dialing the digits 9-1-1.
- 1.2. "Enhanced 911 Services" means the ability to route an emergency call to the designated entity authorized to receive such calls, which in many cases is a Public Safety Answering Point ("PSAP), serving the Customer's Registered Address or user-provided address and to deliver the Subscriber's telephone number and Registered Address information automatically to the emergency operator answering the call.
- 1.3. "Basic 911 Service" means the ability to route an emergency call to the designated entity authorized to receive such calls serving the Customer's Registered Address. With basic 911, the emergency operator answering the phone will not have access to the caller's telephone number or address information unless the caller provides such information verbally during the emergency call.
- 1.4. "ANI" means Automatic Number Identification.
- 1.5. "Customer VoIP Application" means the Class 5 VoIP application provided by Customer in connection with Apptix SIP Trunk service.
- 1.6. "DID/DOD" means a telephone number assigned by Apptix to Customer for use by a Subscriber with Apptix SIP Trunk service.
- 1.7. "Directory Listings" means the listing of a Subscriber's telephone number in the ILEC directory for a Market.
- 1.8. "International" means anywhere outside of the continental United States, including Alaska and Hawaii.
- 1.9. "IP" means Internet Protocol.
- 1.10. "LCA" means a geographical local calling area (determined by the applicable ILEC) containing one or more Rate Centers.
- 1.6. "DID/DOD" means a telephone number assigned by Apptix to Customer for use by a Subscriber with Apptix SIP Trunk service.
- 1.11. "LNP" means local number portability.
- 1.12. "NADP" means the North American Dialing (or Numbering) Plan.
- 1.13. "Operator and Directory Assistance" means live or automated operator assistance for the placement of Subscriber calls, listing services and/or related information.
- 1.14. "PSTN" means the public switched telephone network.
- 1.15. "Rate Center" means a geographic area (determined by the applicable ILEC) within a LCA or Market that is associated with one or more specific NPA/NXX codes.
- 1.16. "Registered Address" means the address provided by customer in either written format on (i) appropriate Apptix order forms, (ii) entered into appropriate Apptix web sites or (iii) other written or verbal communication to Customer's Apptix sales or pos-sales representative, that represents the physical location from which Apptix's SIP

Trunking service and TNs associated with this service will be used. "SIP" is the signaling protocol used between VoIP networks to establish, control and terminate voice calls.

- 1.17. "Subscriber" means an individual, end-user or telephone device assigned a DID/DOD.
- 1.18. "TN" means a telephone number assigned by Apptix to Customer (or that Customer ports to Apptix) and used by Customer in connection with Apptix SIP Trunk for service.
- 1.19. "Toll Free Number" or "TFN" means a telephone number that supports NADP and is assigned by Apptix to Customer that Customer ports to Apptix for use with the Apptix SIP Trunk .
- 1.20. "U.S. Domestic" means the continental United States (excluding Alaska and Hawaii).
- 1.21. "VoIP" means voice over IP.

2. Services Provided

Provided that Customer is not in default of its obligations stated herein, Apptix shall provide Customer with the Service ordered in the Apptix Service Order Form, which Service Order Form is incorporated herein by reference, for the Service Term, the Service Term being defined in Section 11. If Customer has purchased or leased Equipment from Apptix or its certified third party leasing company then the Customer must install Equipment in accordance with instructions provided by Apptix (or its third party vendor). In addition Apptix Equipment must be used solely for the purpose of Service utilization. Customer is solely responsible to obtain, use and operate any equipment not provided by Apptix that may be used in association with the Service.

3. Service Description

Apptix SIP Trunks is a bundled virtual trunking service providing inbound, outbound local and long distance voice services via a Apptix assigned DID. The service will route between a Customer's IP address and either the PSTN or another IP address with Apptix delivering traffic to the Customer's gateway device or IP-PBX via an internet protocol connection using Session Initiation Protocol ("SIP") signaling. Each SIP Trunk enables a single concurrent call but can be oversubscribed with multiple assigned DIDs being accessible via a single trunk. SIP Trunks also include static 911 services, 411, Operator services, inbound caller id, caller location or white page listing. These services require Customer to provide their own legitimate service address. Only TNs or Toll-Free TNs provided by Apptix or ported to the Apptix network can be used in conjunction with this service.

4. Service Limitations

Apptix SIP Trunk service does not include any Class 5 features (e.g. call waiting, call forwarding, voicemail, etc.), nor will the service provide any of the following call types: 976, 900, or 1010xxx. (Outbound local, 911, outbound 800 calls or 411 calls are only available if the call's originating Automated Number Identification [ANI] is a Apptix assigned DID or a DID that has been ported to the Apptix network). All special configurations are subject to Apptix's approval

and Apptix reserves the right to terminate this agreement where proper interoperability testing has not been completed when required. Any traffic deemed to jeopardize the integrity of Apptix's network may be blocked by Apptix.

5. Emergency Services Dialing

Customer will have access to either basic 911 or Enhanced 911 (E911) as their default emergency calling service.

With Enhanced 911 service (E911) , when a caller from the Customer's Registered Address dials the digits 9-1-1, the Apptix telephone number and subscriber's registered address is automatically sent to the local emergency center serving your location. The emergency operators will have access to this information regardless of whether the caller is able to verbally provide such information to the emergency call-taker. Accordingly, with E911 service, the emergency call-taker will have the caller's call-back telephone number and registered address information just by virtue of the caller placing the call using the digits 9-1-1. In limited circumstances, Customers equipped with E911 may have their calls routed to the national call center. Please see the description below for an explanation of when this would occur and how this service operates.

With basic 911 service when a caller from the Customer's Registered Address dials the digits 9-1-1, the call is sent to the local emergency center serving your location. But operators answering the call will not have automatic access to the caller's call-back telephone number or the Registered Address because the emergency center will not be equipped to receive, capture or retain Customer's assigned Apptix telephone number and Registered Address. Accordingly, callers must be prepared to provide both call-back and address information. If the call is dropped or disconnected, or if the caller is unable to speak, the emergency operator answering the call will not be able to call the caller back or dispatch help to the caller's address. As additional local emergency centers become capable of E911 functionalities, Apptix will automatically upgrade customers from basic 911 to E911 service. We will not notify Customer of the upgrade. In limited circumstances, Customers equipped with basic 911 may have their calls routed to the national call center. Please see the description below for an explanation of when this would occur and how this service operates.

6. Service Limitations

Apptix SIP Trunk service does not include any Class 5 features (e.g. call waiting, call forwarding, voicemail, etc.), nor will the service provide any of the following call types: 976, 900, or 1010xxx. (Outbound local, 911, outbound 800 calls or 411 calls are only available if the call's originating Automated Number Identification [ANI] is a Apptix assigned DID or a DID that has been ported to the Apptix network). All special configurations are subject to Apptix's approval and Apptix reserves the right to terminate this agreement where proper interoperability testing has not been

completed when required. Any traffic deemed to jeopardize the integrity of Apptix's network may be blocked by Apptix.

7. Payment

- 7.1. Rate Plan. Customer may select from a variety of billing plans for the Services in each market. The billing plan selected by Customer shall be set forth in the Order Form. The rates for the billing plans and other additional fees are set forth in the applicable Pricing Schedule, attached hereto. Apptix reserves the right to change the rates for the billing plans and other additional fees upon five (5) business days' prior written notice to Customer.
- 7.2. Payment. Payments not made by the due date shall accrue interest at the rate of one percent (1.0%) per month or the maximum rate allowed by law, whichever is less. Such interest shall accrue daily on all amounts due hereunder, including accrued default interest from the due date until payment in full is received by Apptix, notwithstanding the termination of this Agreement.
- 7.3. Taxes. Customer acknowledges and understands that all charges are exclusive of any applicable federal, state or local use, Universal Service Fund charges, 911 charges, excise, gross receipts, sales and privilege taxes, duties, fees or similar liabilities, whether charged to or against Apptix (except for taxes on Apptix's income) or Customer ("Additional Charges") and that Customer is liable for payment of all Additional Charges.
- 7.4. Suspension of Service. In the event charges due are not paid by the due date, in addition to its other remedies, Apptix shall have the right to take any and all of the following actions after giving Customer thirty (30) calendar days prior written notice: (i) suspend all or any portion of the Services to Customer until such time as the Customer has paid in full all charges then due Apptix, including any applicable late fees; (ii) terminate this Agreement and any applicable Addendum; and (iii) collect Early Termination Fees based on the remaining term of all Order Forms.

8. Customer Responsibilities

- 8.1. Fraudulent/Unauthorized Use of Service. Customer shall not use or permit others to use the Services in a manner that is fraudulent or unauthorized. Apptix may, without notice and without liability, interrupt all Customer's communications to prevent or terminate fraudulent and/or unauthorized activities provided Apptix reasonably believes that such activities have occurred or, with reasonable certainty, are about to be undertaken.
- 8.2. Equipment. Except for any equipment purchased from Apptix through an Order Form, Customer shall be responsible for providing at its sole cost: (i) all hardware and software necessary to connect and interoperate with the Services and the Apptix network; (ii) public IP address(es) for the SIP proxy server, softswitch, and/or other hardware/software solution for Voice Services (as described in Schedule A); (iii) broadband Internet connectivity; (iv) ensuring that its users connect to Apptix's hosted VoIP platform via a public or dedicated connection (Apptix will charge Customer for such access according to the interconnection options set forth in the attached Pricing

Schedule); (v) all other equipment, software and other facilities to be installed at the Customer's premises, including without limitation, routers, IP enabled phones and/or an analog terminal adapter; (vi) timely inputting, validating and maintaining Subscriber information in all applicable national databases, including, without limitation, Automatic Local Identification (ALI) Database, Dynamic Automatic Local identification (DALI) Database, Line Information Database (LIDB) and Caller ID with Name Database (CNAM), using an Apptix provided process, tool and/or interface; and (vii) Customer shall not remove Automatic Number Identification (ANI) or otherwise take any action that may affect the integrity of the call detail information that is passed to Apptix as part of the Services.

- 8.3. Facilities. For components of the Services located at Customer facilities, Customer shall provide and maintain throughout the Term a safe, physical environment for use of the hardware which complies with industry practices and with all applicable federal, state, and local laws and regulations. Customer is responsible for all equipment and facilities within its own network and for data and other communications circuits under Customer's direction or control used to reach the facilities and network of Apptix.
- 8.4. One Subscriber Per DID. Customer shall only assign one (1) Subscriber to each DID for Voice Services plan. In the event multiple Subscribers are assigned or are otherwise using any single DID, Apptix may elect to retroactively charge Customer for (i) all applicable Subscriber fees for each and every Subscriber assigned to such DID, and (ii) all long-distance usage of Services for all affected Subscribers pursuant to the applicable Voice Services plan.
- 8.5. Concurrent Calls. Only two (2) concurrent calls may be assigned to each DID (except for DID assigned to a Trunk Line). In the event additional concurrent calls are assigned or are otherwise using any single DID, Apptix may elect to limit Customer for concurrent calls assigned to such DID.

9. Regulatory Matters

- 9.1. Legal Compliance. Customer and Apptix shall comply with all applicable laws, rules and regulations relating to the responsibilities assumed by Customer and Apptix under this Agreement.
- 9.2. Regulatory Treatment. The Services are not a telephone service. Important distinctions exist between telephone service and the Services. The Services are subject to different regulatory treatment than telephone service. This treatment may limit or otherwise affect Customer and end-user rights of redress before any federal, state, or local regulatory agencies. Customer acknowledges and understands that the regulatory requirements applicable to VoIP services are currently under development and may be subject to change or clarification. In the event that any government or any regulatory agency with authority over Apptix and/or the Services provided pursuant to this Agreement makes any determination that the provision of the Services as contemplated in this Agreement is unlawful or if any such agency issues any order, rule or decision, or otherwise takes any action, that imposes additional obligations on Apptix, or materially increases the costs, performance burden or risks to Apptix, then Apptix may either (i) terminate this Agreement without liability upon sixty (60) days written notice to Customer (or such shorter period as is available to Apptix before such action is effective); or (ii) with sixty days

notice to Customer, pass such increased costs through to Customer and Customer may terminate this Agreement without liability by delivering written notice of termination no later than sixty (60) days after the effective date of any rate increase.

- 9.3. CALEA. Apptix hereby confirms that it (or its provider) is working in good faith to provide a solution that complies with the Communications Assistance for Law Enforcement Act of 1994 ("CALEA"). As soon as any such CALEA solution becomes generally available, Apptix will provide such CALEA solution to Customer (at no additional charge) as a part of the Services.
- 9.4. Services Treated as Inbound. Customer recognizes that inbound services involve connectivity from the PSTN together with enhanced functionality, including but not limited to conversion and delivery to Customer in an IP-based format. For regulatory purposes Apptix may treat all inbound services for all Services as local in nature although there is no guarantee that such interpretation will be accepted by the relevant regulatory authority.
- 9.5. Transport and Application Services Only. Apptix provides communications transport and application services; Apptix does not operate or control the content transported. Apptix shall have no liability or responsibility for the content of any communication transmitted via the Services hereunder, except to the extent such content arises from communications initiated by Apptix.

10. Warranty; Disclaimers

- 10.1. Service. Apptix represents and warrants, the quality of service provided hereunder shall be consistent with industry standards and sound business practices and shall conform, in all material respects, with the documentation provided by Apptix in conjunction with the Services and be provided in accordance with the Service Level Agreement attached to this Agreement.
- 10.2. Disclaimer. EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT (INCLUDING ANY SERVICE SCHEDULES OR ASSOCIATED SERVICE LEVEL AGREEMENTS), APPTIX MAKES NO OTHER WARRANTIES ABOUT THE SERVICES AND NO WARRANTIES ABOUT THE EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE EQUIPMENT AND SERVICES ARE PROVIDED "AS IS". NO WARRANTY IS MADE BY APPTIX ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. APPTIX DOES NOT WARRANT THAT THE EQUIPMENT AND/OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE EQUIPMENT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.
- 10.3. Pass Through Warranty. Apptix does not manufacture any equipment. All equipment purchased under this Agreement is being provided by a third party. To the extent possible, Apptix will pass through any manufacturer's warranties directly to Customer and will work with Customer to obtain any warranty services. The warranty for any

hardware will be as specified in the Order Form. If the Order Form does not specify a warranty, the equipment is provided on an "AS IS" basis.

11. Liability; Indemnification

- 11.1. Limitation of Liability. EXCEPT FOR BREACHES OF OBLIGATIONS OF CONFIDENTIALITY OR INDEMNIFICATION, IN NO EVENT WILL APPTIX'S CUMULATIVE LIABILITY FOR CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, EXCEED THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO APPTIX BY CUSTOMER DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

EXCEPT FOR BREACHES OF OBLIGATIONS OF CONFIDENTIALITY OR INDEMNIFICATION, THE PARTIES SHALL NOT BE LIABLE TO THE OTHER AND SHALL NOT BE LIABLE TO ANY CUSTOMER OF THE OTHER PARTY OR OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL LOSS OR DAMAGES, HOWEVER CAUSED ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, BY SUCH PARTY'S NEGLIGENCE OR NEGLIGENCE OF ITS EMPLOYEES OR OTHERWISE, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF APPTIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

The parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in Sections 8 and 9 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including without limitation the economic terms, would be substantially different.

- 11.2. Indemnification. Each Party shall indemnify and hold harmless the other, its officers, directors, employees, agents, providers and suppliers against and from any liability, loss, damage, cost and expense (including reasonable attorneys' fees and costs of litigation) arising out of or in connection with any claim or action which any third party may file or threaten to file against either Party or its officers, directors, employees or agents arising out of, or resulting directly from, the grossly negligent acts or omissions or the willful misconduct of it or its employees, directors, officers, representatives, and agents in the course of its performance of its obligations under this Agreement. The indemnification provided herein shall survive the termination of this Agreement and the termination of any Services provided pursuant to this Agreement.

- 11.3. Procedures. In the event of any third party claim, demand, suit, or action (a "Claim") for which an indemnified party (or any of its affiliates, employees, or agents) is or may be entitled to indemnification hereunder, such indemnified party may, at its option, require the indemnifying party to defend such Claim at such indemnifying party's sole expense. The indemnifying party may not agree to settle any such Claim without the indemnified party's express prior written consent. Without limiting the foregoing, the indemnified party shall be permitted, at its own expense, to participate in the defense of any claim under this Agreement by counsel of its own choice.
- 11.4. Compliance with laws and infringement claims. Aptix shall indemnify and hold harmless Customer, its officers, directors, employees and agents, against and from any liability, loss, damage, cost and expense (including reasonable attorneys' fees and costs of litigation) arising out of or in connection with any claim or action which any third party may file or threaten to file against Customer or its officers, directors, employees or agents arising out of, or resulting directly from, (i) any claim that the Services or use of such Services infringes or misappropriates such third party's intellectual property rights in the United States; or (ii) any claim that the Services or use of such Services as contemplated by this Agreement violates any applicable laws having jurisdiction over the Parties or the Services.
- 11.5. Procedures for infringement claims. Notwithstanding the foregoing, if any claim for which indemnity is or may be sought hereunder is made or appears reasonably possible for intellectual property infringement, Customer agrees: (i) promptly to notify Aptix in writing; (ii) to cooperate with Aptix, and to allow Aptix sole authority to control the defense and settlement of such claim; and (iii) to permit Aptix, at Aptix's sole discretion, to enable Customer to continue to use the Aptix Services, or to modify or replace any such infringing material to make it non-infringing, provided that, if Aptix determines that none of the foregoing alternatives is reasonably available, Customer shall, upon written request from Aptix, cease use of, and, if applicable, return, such materials as are the subject of the relevant infringement claim.

12. Term and Termination

- 12.1. Initial Term. Commencing on the Effective Date, Customer may order Service(s) on Order Form(s). Each Order Form shall include a term for each Service, which shall begin on the date the Order Form becomes effective (the "Service's Acceptance Date") and continue for the number of months indicated on the Order Form (the "Service Term"). This Agreement shall govern all Services ordered pursuant to the terms and conditions herein. The term of this Agreement shall commence on the Effective Date and expire on the last to expire Service Term, except when earlier terminated as contemplated below.
- 12.2. Termination by Aptix. Aptix shall have the right to terminate this Agreement or, in its discretion, any portion of the Services by providing written notice to Customer in any of the following events: (i) if Customer has not paid any undisputed amount due within thirty (30) calendar days of receipt of written notice of failure to pay such an undisputed amount due; or (ii) upon the breach of a material term of this Agreement by Customer if

Customer has not cured such material breach within thirty (30) calendar days of Customer's receipt of written notice of such breach.

- 12.3. Termination/Discontinuance of Service. Apptix reserves the right to suspend or discontinue providing the Service generally, or to terminate Service, at any time in its sole discretion. If Apptix discontinues providing the Service generally, or terminates or suspends Service in its discretion other than as a breach by Customer, Customer will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. [If Service is terminated or suspended for any stated reason, including without limitation, violation of any terms of this Agreement, or because of any improper use of the Service or Device (such as, but not limited to, attempts to hack, disrupt, or misuse the Service or acts or omissions that violate any acceptable use policy of Apptix or of a third party provider to which Apptix is subject), Customer will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee if applicable, all of which immediately become due, payable and chargeable to Customer credit card.
- 12.4. Termination by Customer. Customer may terminate the Agreement during the 30 day period following the initial Service Acceptance Date with no further obligation.
- 12.5. Effects of Termination. Upon Termination, Customer shall be required to pay all amounts due as of the date of termination including any and all charges associated hardware, equipment, installation and/or site assessment services. Further, in the event Apptix terminates the Agreement at any time during the Term or if Customer terminates the Agreements after the 30 day period following the initial Service Acceptance Customer agrees to pay the Early Termination Fees. Any right or obligation which becomes absolute before termination of this Agreement for any reason, or which is by definition of a continuing nature, will survive such termination. Notwithstanding and without limiting the forgoing, Sections 1, 5, 8.2, 9.1, 11 and 12 shall survive the termination or expiration of this Agreement.

13. Non-disclosure

- 13.1. Confidential Information. Either Party will regard and preserve as confidential and proprietary to the other Party all information, written, oral, or computer based, to which it had access during its performance pursuant to this Agreement that a Party indicates is confidential or that by the nature of the information or the circumstances surrounding the disclosure ought to reasonably be deemed confidential ("Confidential Information").
- 13.2. Ownership of Confidentiality Obligations. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.
- 13.3. Mutual Confidentiality Obligations. Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants

and contractors, if any, who have a need to have access and who have been advised of the obligation and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy, as mutually agreed, all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

- 13.4. Exceptions. The foregoing Section 11.1 shall not apply to information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction.
- 13.5. Permitted Disclosures. Notwithstanding the foregoing, each Party may disclose Confidential Information received in confidence to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order to the extent permitted; or (ii) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

14. General

- 14.1. Relationship of Parties. Neither Party shall have the authority to bind the other by contract or otherwise make any representations or guarantees on behalf of the other. Both parties acknowledge and agree that the relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship or franchise.
- 14.2. Force Majeure. Neither Party shall be liable for, delays, failure to perform, or damage, or destruction, or malfunction of any equipment, or any consequence of any thereof caused or occasioned by or due to fire, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, civil disturbance, acts of God or public enemy, war, military or government requisition, or any other cause beyond such Party's reasonable control.
- 14.3. Assignment. This Agreement shall be binding on Apptix and Customer and their respective affiliates, successors, and permitted assigns. Customer may not assign this Agreement in whole or in part at any time without the consent of Apptix, which consent may not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without consent in connection with a merger, sale or acquisition of all or substantially all the assigning Party's stock, membership interest or assets.
- 14.4. Waiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect, unless such waiver is provided in writing.

- 14.5. Notices. All notices, demands, requests, delivered and other communications required or permitted hereunder shall be sent via electronic transmission with a hard copy to follow, via U.S. certified mail or other reputable courier return receipt requested, in writing and shall be deemed to be delivered on the date the facsimile is received, or, if later, and regardless of whether actually received, three (3) business days following the date that such are sent by U.S. certified mail or other reputable courier.

If to Aptix:

Aptix, Inc.
13461 Sunrise Valley Dr.
Suite 300
Herndon, VA 20171, USA
Attn: Legal Department
Telephone #: (703) 890-2800
Facsimile #: (703) 890-2801

If to Customer then Aptix shall use the address given on the applicable Order Form.

Any Party may at any time change its address or facsimile number for notification purposes by giving the other Party prior written notice as provided in this Section by setting forth the new address and the date on which it will become effective.

- 14.6. Construction; Severability. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court with jurisdiction over the Parties to this Agreement, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.
- 14.7. Mediation. Before filing or initiating any suit, action, or legal proceeding relating to this Agreement, the Parties shall attempt in good faith to settle between the parties hereto all disputes, controversies, or differences arising out of or relating to this Agreement ("Disputes") in accordance with the following provisions. First, the Parties shall each make available an executive of at least director-level seniority with authority to resolve such dispute (the "Executives"), and such Executives shall attempt to resolve the Dispute for a period of thirty (30) calendar days. If the Executives are unable to resolve the Dispute during such thirty (30) day period to both parties' satisfaction, then the dissatisfied Party shall submit the dispute to non-binding mediation as follows. The party that did not submit the Dispute to mediation shall have fifteen (15) calendar days to select in good faith an impartial unaffiliated third party to act as mediator (the "Mediator") and the parties shall submit the Dispute to the Mediator for resolution. For a period of thirty (30) calendar days, the Mediator shall have the exclusive right to mediate the Dispute. Any meetings between the Parties held in conjunction with this dispute resolution process shall be held at a location to be mutually agreed upon by the parties. Each Party shall pay its own expenses and

costs in connection with the presentation of such Party's case. The remaining costs of the mediation, including fees of the Mediator, shall be borne equally by the Parties. If at the end of the period for mediation, the efforts of the Parties hereto have ended in failure and the Dispute remains unresolved, any Party may exercise its rights and remedies at law or in equity.

- 14.8. Governing Law. This Agreement and all of the parties' respective rights and obligations in connection therewith will be governed by Virginia law (excluding conflicts rules) and the parties submit to the jurisdiction of the state and federal courts located in Fairfax County, Virginia for the resolution of all disputes under or relating to this Agreement or its performance.
- 14.9. Submission to Jurisdiction; Waiver of Jury Trial. Each of the Parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or for recognition and enforcement of any judgment in respect hereof or thereof brought by any other Party or its successors or assigns shall be brought and determined in federal court located in the Eastern District of Virginia (or, if such federal court lacks jurisdiction thereover, in the Circuit Court for Fairfax County, Virginia), and all of the Parties hereby irrevocably submit to the exclusive jurisdiction of the aforesaid courts, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any action, suit or proceeding relating thereto except in such courts). Each Party further agrees to accept service of process in any manner permitted by such courts. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure lawfully to serve process, and (b) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- 14.10. Entire Agreement. This Agreement is the entire and only agreement between and among the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, agreements, promises, representations, discussions and other communications, written or oral. Any amendment must be made in writing and signed by authorized representative of both parties.
- 14.11. Captions. The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.