

## **Phonebooth Free Terms of Service and License Agreement**

**PLEASE READ THIS TERMS OF SERVICE AND LICENSE AGREEMENT (THE “AGREEMENT”) CAREFULLY.**

**BY CLICKING “I AGREE,” YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF THE ENTITY ON WHO’S BEHALF YOU ARE SETTING UP AN ACCOUNT (THE “CUSTOMER”). YOUR AGREEMENT TO THIS AGREEMENT WILL BE AN AGREEMENT BETWEEN CUSTOMER AND BANDWIDTH.COM, INC. (“BANDWIDTH.COM”). YOU REPRESENT AND WARRANT TO BANDWIDTH.COM THAT YOU HAVE AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT.**

**IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO USE PHONEBOOTH FREE.**

**THIS AGREEMENT IS SUBJECT TO CHANGE FROM TIME TO TIME AS DETERMINED BY BANDWIDTH.COM IN ITS SOLE DISCRETION. MODIFIED AND/OR UPDATED VERSIONS OF THIS AGREEMENT WILL BE POSTED AT [WWW.PHONEBOOTH.COM/LEGAL/FREETERMS](http://WWW.PHONEBOOTH.COM/LEGAL/FREETERMS).**

**CUSTOMER SHOULD CHECK [WWW.PHONEBOOTH.COM/LEGAL/FREETERMS](http://WWW.PHONEBOOTH.COM/LEGAL/FREETERMS) REGULARLY FOR MODIFIED AND/OR UPDATED VERSIONS OF THIS AGREEMENT.**

**BANDWIDTH.COM WILL PROVIDE CUSTOMER NOTICE OF ANY MATERIAL CHANGES TO PHONEBOOTH, PHONEBOOTH SERVICES AND/OR THIS AGREEMENT. EXCEPT AS OTHERWISE DETERMINED BY BANDWIDTH.COM, MODIFIED AND/OR UPDATED VERSIONS OF THIS AGREEMENT WILL BE EFFECTIVE IMMEDIATELY UPON POSTING; MODIFIED AND/OR UPDATED VERSIONS OF THIS AGREEMENT WILL BE IDENTIFIED BY THE DATE, MONTH AND YEAR THEY BECOME EFFECTIVE.**

### **DEFINITIONS:**

“911 Services” means functionality that allows End Users to contact emergency services by dialing the digits 9-1-1.

“AAA” will have the meaning ascribed to such term in Section 15 below.

“Additional Inbound Minutes” means those minutes in excess of the free monthly cap of 200 inbound call minutes per Customer account, which 200 inbound call minutes will be provided upon activation of Customer’s Phonebooth Free account and on the first day of each calendar month thereafter, as described in Section 1 below.

“Administrator” means a person (or persons) authorized to act on behalf of Customer, who is/are responsible for the administration and management of the use of Phonebooth Free by Customer and Customer’s End Users.

“AUP” means Bandwidth.com’s Acceptable Use Policy, which is posted at [www.phonebooth.com/legal/AUP](http://www.phonebooth.com/legal/AUP), as modified by Bandwidth.com from time to time in Bandwidth.com’s sole discretion.

“Beta Service” will have the meaning ascribed to such term in Section 1 below.

“Contact Us Plus” means Bandwidth.com software that, when installed by Customer, permits click-to-call (and click-to-email) functionality from Customer’s web site when used in connection with Phonebooth Free.

“Customer Equipment” means any internal wiring or extensions, required conduit, facilities, power or other similar infrastructure, systems, equipment, software and networks used in connection with Phonebooth Free.

“Electronic Tools” means online access, application programming interface (API), or access by any other means, to a service ordering/management system to access or manage Customer’s use of Phonebooth Free.

“End User” means an individual who Customer assigns a telephone number (or an extension associated with such a telephone number) for use in connection with Phonebooth Free pursuant to this Agreement and/or an individual who uses Customer’s Phonebooth Free account.

“Escalation Notice” will have the meaning ascribed to such term in Section 15 below.

“Intellectual Property” means patents, pending patent applications, designs, trademarks and/or trade names (whether registered or unregistered), copyrights and related rights, database rights, know-how, trade secrets and/or confidential information, and all other intellectual property rights and similar or equivalent rights which currently exist or are recognized in the future, as well as all applications, extensions and renewals in relation to any such rights.

“Officers” will have the meaning ascribed to such term in Section 15 below.

“Phone System” means any and all hardware and/or software which Customer uses to place or receive telephone calls.

“Phonebooth Free” is a one-way only inbound call management service. **As an inbound only call management service, Phonebooth Free does not allow End Users to make any outbound calls or any emergency calls and/or 911 calls.**

“Phonebooth Free Manager” means the Electronic Tool provided by Bandwidth.com and established by Customer to purchase, use and manage Phonebooth Free.

**1. Phonebooth Free Overview; Beta Service.** So long as Customer is not in default with respect to its obligations pursuant to this Agreement, Bandwidth.com will provide Customer with Phonebooth Free pursuant to the terms and conditions of this Agreement. Phonebooth Free is a “Beta Service.” Beta Service is not provided at the level of technical and operational performance, quality or compatibility of a final, generally available product offering. A Beta Service such as Phonebooth Free may be deficient and may not operate properly; the use of the Beta Service may entail poor performance, poor quality, protracted outages and/or disruption of service. Bandwidth.com may, in its sole and unfettered discretion, substantially modify Phonebooth Free at any time and/or withdraw Phonebooth Free entirely.

Subject to Bandwidth.com’s unfettered discretion to modify the terms for the use of Phonebooth Free at any time, Phonebooth Free will include the following features: (i) one (1) inbound only phone number with a non-cumulative free (no-charge) monthly cap of 200 inbound call minutes per Customer account, which minutes will be provided upon activation of Customer’s Phonebooth Free account and on the first day of each calendar month thereafter; (ii) when Customer’s monthly cap is exceeded, Phonebooth Free will route all inbound calls to Customer’s default voicemail box; (iii) a non-cumulative monthly cap of 50 voicemail transcriptions per Customer account, which transcriptions will be provided upon activation of Customer’s Phonebooth Free account and on the first day of each calendar month thereafter, (iv) a maximum of 50 End Users per Customer account; and (v) the option to purchase Additional Inbound Minutes as described in Section 6 below.

If Bandwidth.com supplies Customer with a Phonebooth Free telephone number that Customer subsequently ports out to another service provider, Bandwidth.com reserves the right to charge Customer a porting fee of \$25.00 and Customer’s Phonebooth Free account will be automatically terminated immediately thereafter.

**PHONEBOOTH FREE IS A BUSINESS SERVICE PROVIDED FOR USE WITH A PHONE SYSTEM AND IS DESIGNED AND OFFERED EXCLUSIVELY FOR SMALL TO MEDIUM SIZED BUSINESS USE. CUSTOMER ACKNOWLEDGES AND AGREES THAT PHONEBOOTH FREE SHALL BE USED STRICTLY AND EXCLUSIVELY FOR COMMERCIAL USE ONLY BY A BUSINESS ENTITY. PHONEBOOTH FREE IS NOT BEING OFFERED OR INTENDED FOR ANY NON-BUSINESS OR NON-COMMERCIAL USE, NOR FOR USE BY INDIVIDUALS OR FOR RESIDENTIAL USE. AS A PRODUCT FOR BUSINESS AND COMMERCIAL USE ONLY, PHONEBOOTH FREE DOES NOT INCLUDE CERTAIN FUNCTIONS THAT USERS MAY EXPECT IN A RESIDENTIAL SERVICE.**

PHONEBOOTH FREE MAY BE USED ONLY FOR LAWFUL, PROPER AND APPROPRIATE PURPOSES AND MAY NOT BE USED IN ANY WAY THAT IS ILLEGAL, IMPROPER OR INAPPROPRIATE, OR OTHERWISE FAILS TO CONFORM TO BANDWIDTH.COM’S ACCEPTABLE USE POLICY POSTED AT [WWW.PHONEBOOTH.COM/LEGAL/AUP](http://WWW.PHONEBOOTH.COM/LEGAL/AUP), WHICH IS INCORPORATED BY REFERENCE HEREIN.

**2. Emergency Services. CUSTOMER ACKNOWLEDGES AND AGREES THAT, AS AN INBOUND ONLY CALL SERVICE, PHONEBOOTH FREE DOES NOT ALLOW END USERS TO MAKE ANY OUTBOUND CALLS OR ANY EMERGENCY CALLS AND/OR 911 CALLS.**

**CUSTOMER WILL INFORM ALL OF CUSTOMER’S END USERS (OR OTHER THIRD PERSONS WHO MAY USE PHONEBOOTH FREE) THAT PHONEBOOTH FREE DOES NOT PROVIDE 911 SERVICE. CUSTOMER WILL INFORM ALL OF CUSTOMER’S END USERS (OR OTHER THIRD PERSONS WHO MAY USE PHONEBOOTH FREE) THAT THEY**

**MAY ACCESS EMERGENCY SERVICES VIA ANY ADDITIONAL ARRANGEMENTS THAT CUSTOMER HAS MADE AVAILABLE TO ITS END USERS.**

**3. Service Availability.** Bandwidth.com will use commercially reasonable efforts to provide prior notification to Customer via electronic mail (“email”) (or via Phonebooth Free Manager) regarding any scheduled maintenance to Phonebooth Free and/or Phonebooth Free Manager. Bandwidth.com may interrupt its provision of Phonebooth Free and/or Phonebooth Free Manager for unscheduled emergency maintenance without notice to Customer from time to time. The “Beta Service” provided pursuant to this Agreement is provided "AS IS" and is provided without any representation of quality, fitness for any use or purpose, or warranty of any kind. **THE ENTIRE RISK ARISING OUT OF THE USE, OPERATION, OR PERFORMANCE OF PHONEBOOTH FREE REMAINS WITH CUSTOMER.**

**4. Phonebooth Free Manager; Related Account Management.**

(a) Phonebooth Free Manager enables Customer to use Phonebooth Free. Customer’s Administrator(s) will administer and manage the use of Phonebooth Free by Customer and Customer’s End Users. Customer’s End Users also may be able to manage the use of certain functions of Phonebooth Free with respect to such End User. Customer will ensure that each of Customer’s Administrator(s) and End User(s) has read and agrees to comply with this Agreement.

(b) Customer’s Administrator(s) will establish a password to restrict complete access to Phonebooth Free Manager to Customer’s Administrator(s). Customer’s End User(s) also will establish password(s) to restrict access to the use of applicable Phonebooth Free functions by such End User(s) to Customer’s Administrator(s) and such End User(s). Customer will (and will ensure that Customer’s Administrator(s) and End User(s)) take all steps necessary to ensure the security of any applicable password. If Customer (or Customer’s Administrator(s) or End User(s)) suspects that any password has been shared or otherwise become known to anyone other than Customer’s Administrator(s) or applicable End User(s), Customer (or Customer’s Administrator(s) or End User(s)) will immediately change any such password. Customer, Customer’s Administrator(s) and any End Users will not respond to any unsolicited requests for credit card details, passwords or other data. Customer will be solely responsible for any authorized or unauthorized access to or use of Phonebooth Free and/or Phonebooth Free Manager, including, without limitation, any acts or omissions of Customer’s Administrator(s) or Customer’s End Users.

**5. Service Term.** The term of this Agreement will commence on the date that Customer enters into this Agreement with Bandwidth.com and Bandwidth.com will continue to provide Phonebooth Free pursuant to this Agreement only until further notice by Bandwidth.com. Bandwidth.com reserves the right to terminate, with or without any notice, for any reason Bandwidth.com deems proper in the exercise of its sole and unfettered discretion, this Agreement and/or the provision of Phonebooth Free, including, without limitation, due to prolonged periods of Customer use inactivity, as determined in Bandwidth.com’s sole and unfettered discretion.

**6. Additional Inbound Minutes.** If Customer purchases Additional Inbound Minutes at any time, such purchase and the use of such Additional Inbound Minutes will be subject to the terms and conditions of this Section 6:

- a. Additional Inbound Minutes will cost three (3) cents (\$0.03) per minute, inclusive of all applicable federal, state, and local taxes and all fees, surcharges and miscellaneous fees, including but not limited to regulatory fees such as Universal Service Fund.
- b. Customer may purchase Additional Inbound Minutes in increments of \$10.00 only; each increment of \$10.00 will purchase 166.66 inbound minutes.
- c. Customer may purchase Additional Inbound Minutes only in advance by credit card.
- d. All minutes, including Additional Inbound Minutes will be used, and therefore deducted from any balance of available minutes, in full one minute (60 seconds) increments, with any available free minutes used first.
- e. All Additional Inbound Minutes are non-refundable and must be used within twelve (12) months of the purchase date; provided, however, if Bandwidth.com terminates Phonebooth Free (or Customer’s use of Phonebooth Free) for any reason other than Customer’s material breach of this Agreement, Bandwidth.com will refund to Customer promptly amounts previously paid by Customer for any then-unused Additional Inbound Minutes.
- f. The use of any Additional Inbound Minutes is subject to the terms and conditions of this Agreement.

**7. No Warranties.**

(a) PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER AND CONTACT US PLUS EACH IS PROVIDED “AS IS” AND “AS AVAILABLE” AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, EACH OF BANDWIDTH.COM, ITS AFFILIATES, SUPPLIERS AND, IF APPLICABLE, RESELLERS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, BANDWIDTH.COM, ITS AFFILIATES, SUPPLIERS AND, IF APPLICABLE, RESELLERS DO NOT WARRANT THAT PHONEBOOTH FREE (OR ANY FUNCTIONS OF PHONEBOOTH FREE), PHONEBOOTH MANAGER, CONTACT US PLUS AND/OR RELATED SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER OR CONTACT US PLUS (OR ANY SERVER THAT MAKES PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER OR CONTACT US PLUS AVAILABLE) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. BANDWIDTH.COM DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR RESULTS OF PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER OR CONTACT US PLUS IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, UNAUTHORIZED

ACCESS BY THIRD PARTIES OR OTHERWISE. CUSTOMER (AND NOT BANDWIDTH.COM) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. CUSTOMER ACKNOWLEDGES THAT ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER AND/OR CONTACT US PLUS IS AT CUSTOMER'S SOLE RISK AND DISCRETION AND BANDWIDTH.COM WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER OR CUSTOMER'S PROPERTY. CUSTOMER HEREBY EXPRESSLY ASSUMES THE RISK OF ITS OR ITS END USER'S USE OF ANY INFORMATION TRANSMITTED VIA PHONEBOOTH FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM BANDWIDTH.COM, ITS EMPLOYEES OR THROUGH OR FROM PHONEBOOTH FREE AND/OR PHONEBOOTH FREE MANAGER WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE FOREGOING EXCLUSION MAY NOT APPLY.

(b) BANDWIDTH.COM WILL HAVE NO OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER FROM OR AGAINST ANY THIRD PARTY CLAIMS ALLEGING THAT CUSTOMER'S USE OF PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER AND/OR CONTACT US PLUS OR THE EXERCISE OF ANY RIGHTS GRANTED HEREIN INFRINGES ON ANY INTELLECTUAL PROPERTY OF ANY THIRD PARTY. IF A CLAIM IS MADE, OR IN BANDWIDTH.COM'S REASONABLE OPINION IS LIKELY TO BE MADE, AGAINST BANDWIDTH.COM, CUSTOMER OR ANY THIRD PARTY ALLEGING THAT PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER AND/OR CONTACT US PLUS OR ANY USE THEREOF INFRINGES ANY INTELLECTUAL PROPERTY OF ANY THIRD PARTY, BANDWIDTH.COM MAY, IN BANDWIDTH.COM'S SOLE DISCRETION, TERMINATE THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS PURSUANT TO THIS AGREEMENT.

(c) BANDWIDTH.COM HAS NO OBLIGATION TO PROVIDE ANY SUPPORT TO CUSTOMER OR ANY END USER WITH RESPECT TO PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER AND/OR CONTACT US PLUS.

**8. Termination by Bandwidth.com.** In addition to any other right that Bandwidth.com may have to terminate or suspend this Agreement, if Bandwidth.com determines, in its sole discretion, that Customer's ongoing use of Phonebooth Free and/or the specific method or technology utilized by Customer places the network operated by Bandwidth.com, other customers, partners or the overall business(es) of each in jeopardy, Bandwidth.com reserves the right to terminate this Agreement and Customer's access to Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus immediately and without notification.

**9. License; Intellectual Property.**

(a) Subject to Customer's compliance with this Agreement, Bandwidth.com grants Customer a non-exclusive, non-transferable license to use Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus solely in connection with Customer's use of Phonebooth Free during the term of this Agreement. Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus may be incorporated into, and may incorporate itself, software and other technology owned or controlled by third parties. Any such third party software or technology incorporated in Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus falls under the scope of this Agreement. Any and all other third party software will be subject to Customer's acceptance of a license agreement with such third party. Customer will use Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus solely for lawful purposes in connection with Customer's use of Phonebooth Free during the term of this Agreement. Customer (and Customer's End Users) will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus; (ii) modify, translate or create derivative works based on Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus; (iii) rent, lease, distribute, sell, resell, assign, display, host, outsource, disclose or otherwise commercially exploit or otherwise transfer rights to Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus or make Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus available to any third party; (iv) use Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) remove any proprietary notices or labels on Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus; or (vi) copy, reproduce, post or transmit Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus in any form or by any means, including, without limitation, electronic, mechanical, photocopying, recording or other means.

(b) Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus each is the Intellectual Property of Bandwidth.com. Customer (and Customer's End Users) will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on or in connection with Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus. Any third party Intellectual Property included in Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus is the property of the respective owner of such Intellectual Property and may be protected by applicable law. Nothing in this Agreement gives Customer (or Customer's End Users) any right or license to any trademarks and/or trade names (whether registered or unregistered), signs, logos, icons, slogans, banners, screen shots, trade dress, links or other brand features of Bandwidth.com, including, without limitation "Phonebooth," without the prior written consent of Bandwidth.com, which consent may be withheld in the sole discretion of Bandwidth.com for any reason. If Customer (or any End User) from time to time provides suggestions, comments and/or other feedback to Bandwidth.com with respect to Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus, Bandwidth.com may, in connection with any of its products or services, freely use, copy, disclose, license, distribute and/or exploit any such suggestions, comments and/or other feedback in any manner and without any obligation or restriction based on intellectual property rights or otherwise. Bandwidth.com will retain sole ownership of any such suggestions, comments and/or other feedback and Customer will not provide any such suggestions, comments and/or other feedback subject to any terms that would impose any obligation on Bandwidth.com or any of its customers or partners.

**10. Limitation of Liability.** IN NO EVENT SHALL BANDWIDTH.COM BE LIABLE FOR ANY ALLEGED, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND ALL BUSINESS OR OPERATIONAL RELATED LOSSES) ARISING OUT OF OR RELATED TO PHONEBOOTH FREE, PHONEBOOTH FREE MANAGER, CONTACT US PLUS AND/OR PRODUCTS AND/OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

**11. Indemnity.** Customer will indemnify and hold harmless Bandwidth.com and its stockholders, directors, officers, employees, agents, licensors, representatives and affiliates from and against any and all actual or alleged losses, costs, claims, liability of any kind, damages (including to any tangible property or bodily injury to or death of any person), or expense of whatever nature, (including reasonable attorneys' fees) to or by any third party, relating to or arising from (a) the use of Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus provided to Customer and/or any End User, whether or not Customer and/or any End User has knowledge of or has authorized access for such use, (b) any damage to or destruction of Customer Equipment not caused by Bandwidth.com or its agents, and (c) any breach of this Agreement by Customer. Customer (or Customer's Phone System vendor or other service provider) will be solely responsible for implementing any installation, configuration, and/or connection of any Customer Equipment and has the sole and exclusive responsibility for the security and integrity of such Customer Equipment, if any. Customer therefore will indemnify and hold harmless Bandwidth.com and its stockholders, directors, officers, employees, agents, licensors, representatives and affiliates from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including reasonable attorneys' fees) on the part of or which may be incurred by Customer or a third-party relating to or arising from the use or operation of Customer Equipment. Customer's indemnification in this Section 11 includes any actual or alleged losses or claims in connection with unauthorized access to or use of Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus by any third-party through Customer Equipment, regardless of whether such unauthorized access is unintentional, accidental, intentional or fraudulent and regardless of whether Customer had knowledge of such unauthorized access. In all such cases of unauthorized access through or to Customer Equipment, Customer retains full and sole responsibility for the use of Phonebooth Free, Phonebooth Free Manager and/or Contact Us Plus as otherwise provided in this Agreement. If Bandwidth.com grants Customer access to Phonebooth Free (or Customer's Phonebooth account) by Electronic Tools (including, without limitation, Phonebooth Free Manager), Customer agrees that it is fully and exclusively responsible for all information accuracy, charges, costs, transactions, and activities conducted through such Electronic Tools. Customer agrees that it is fully and exclusively responsible to safeguard, monitor, manage, and maintain access to Phonebooth (including, without limitation, Phonebooth Free Manager) by any Electronic Tools, and to only allow authorized use of such Electronic Tools to Customer's Administrator(s). Customer will indemnify and hold harmless Bandwidth.com and its stockholders, directors, officers, employees, agents, licensors, representatives and affiliates from and against any actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including reasonable attorneys' fees) on the part of or which may be incurred by Customer, or a third-party, relating to or arising from the use or operation of Electronic Tools, including, without limitation, any actual or alleged losses or claims in connection with unauthorized access to, use, transactions, or activity conducted through the Electronic Tools, regardless of whether such unauthorized access is unintentional, accidental, intentional, or fraudulent, and regardless of whether Customer had knowledge of such unauthorized access. In all such cases of unauthorized access through or to Phonebooth Free by Electronic Tools (including, without limitation, Phonebooth Free Manager), Customer retains full and sole responsibility for the use of Phonebooth Free and/or Phonebooth Free Manager as otherwise provided in this Agreement.

**12. Acceptable Use Policy; Additional Privacy Matters.**

(a) All use of Phonebooth Free and/or Phonebooth Free Manager must comply with Bandwidth.com's Acceptable Use Policy, which is posted at [www.phonebooth.com/legal/AUP](http://www.phonebooth.com/legal/AUP), and is incorporated herein by reference, as applicable to a one-way only inbound call management service. By using Phonebooth Free and/or Phonebooth Free Manager, Customer agrees to comply with the AUP, as modified by Bandwidth.com from time to time in Bandwidth.com's sole discretion. Any amendment to the AUP will be effective immediately upon the posting of the modified AUP at [www.phonebooth.com/legal/AUP](http://www.phonebooth.com/legal/AUP). Violation of the AUP by Customer (or any of Customer's End Users) will constitute a material breach of this Agreement. Customer is solely responsible and liable for all use of Phonebooth Free and/or Phonebooth Free Manager by any of Customer's End Users, even if such use occurs without Customer's permission.

(b) If Customer (or any applicable End User) is a "covered entity" or a "business associate" thereof, as each term is used pursuant to the Health Insurance Portability and Accountability Act of 1996 (as amended, "HIPAA") or are otherwise subject to any HIPAA, related or similar legal requirement, Customer is solely responsible to ensure full compliance therewith. Customer will indemnify, defend and hold harmless Bandwidth.com from any claim, loss, damage, cost or expense (including, without limitation, attorneys' fees) arising out of any claim under HIPAA or any related or similar requirements of any applicable jurisdiction. Customer acknowledges that Bandwidth.com is not a Business Associate as such term is defined under HIPAA in connection with its provision of services under this Agreement.

**13. Resale Prohibition.** Phonebooth Free, Phonebooth Free Manager and Contact Us Plus each is provided for the use of Customer and Customer's End Users only. Customer may not under any circumstances resell or offer to resell Phonebooth Free, Phonebooth Free Manager and Contact Us Plus. Any failure by Customer to comply with this Section 13 will constitute a material breach of this Agreement. In addition to any other rights or remedies that Bandwidth.com may have as a result of such material breach, including, without limitation, termination of this Agreement, Customer also will be liable to Bandwidth.com for any additional charges and/or damages which may be incurred by Bandwidth.com as a result of any unauthorized resale or offer to resell.

**14. Third Party Beneficiaries.** The parties do not intend by the execution, delivery, or performance of this Agreement to confer any benefit, direct or incidental, upon any person or entity that is not a party to this Agreement.

**15. Dispute Resolution Process; Governing Law.**

(a) It is the mutual desire of the parties to promptly and fully resolve any dispute arising in connection with this Agreement in good faith, confidentially, and informally with minimal transaction costs; no public statement may be made by any party regarding any such dispute. If either party determines that the dispute cannot be resolved informally, then such party will initiate an escalation process by giving written notice (“Escalation Notice”) to the other party. Each party will name one executive as its representative, to be a person knowledgeable of the subject matter in dispute and someone with authority to discuss the dispute (“Officers”). The Officers will meet in person or by conference call, together with any persons assisting them, within fifteen (15) days after delivery of the Escalation Notice. All negotiations conducted by the Officers are confidential and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state rules of evidence. The Officers will conduct such additional meetings as they deem necessary to exchange relevant information, will appoint staff to engage in resolution of any disputed facts, and will attempt to resolve the dispute. Should the Officers be unable to resolve the dispute within such fifteen (15) days, or within such additional time as the parties may otherwise agree to in writing, either party may demand mediation, whereupon the parties will, in good faith, mediate the dispute no later than thirty (30) days after such demand through the services of a mutually selected mediator, the cost of whom will be borne equally by the parties, at a date and location selected by the mediator after consultation with the parties. **IF THE DISPUTE IS NOT RESOLVED AFTER APPLYING THE ESCALATION PROCEDURES SET FORTH ABOVE, THE PARTIES AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING ARISING UNDER OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, AND AGREE TO SUBMIT ALL CONTROVERSIES, CLAIMS AND MATTERS OF DIFFERENCE TO ARBITRATION ACCORDING TO THE COMMERCIAL RULES AND PRACTICES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”).** Arbitration hereunder will occur within sixty (60) days of the date of submission before a single neutral arbitrator having significant experience in the subject matter of this Agreement and who will be selected in accordance with AAA rules. Arbitration proceedings will take place in Wake County, North Carolina. Discovery will be permitted, including the use of interrogatories, requests for admission and production of documents and depositions. If the amount claimed to be in dispute is less than \$500,000, all applicable expedited procedures of the AAA will apply. The arbitrator’s fees and costs of the arbitration will be borne by the party against whom the award is rendered, except that if the arbitrator issues a split decision, granting partial relief to both parties, the arbitrator will equitably allocate the arbitrator’s fees and other costs. Each party will pay its attorney’s fees related to any dispute related to this Agreement. The arbitration award will be final and binding on both parties of this Agreement, will not be subject to any appeal and will be enforceable in any court of competent jurisdiction.

(b) **ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR IN COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS ACTION OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. CUSTOMER WILL NOT BE A CLASS REPRESENTATIVE, CLASS MEMBER OR OTHERWISE PARTICIPATE IN A CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING.**

(c) This Agreement will be governed by, construed under and enforced in accordance with the laws of the State of North Carolina without reference to its choice of law principles or the United Nations Convention on the International Sale of Goods. In the event any party brings a civil action or initiates judicial proceedings of any kind related to this Agreement (except for actions to enter or collect on judgments), the parties consent to the exclusive personal jurisdiction and venue of the federal and state courts located in Wake County, North Carolina and the prevailing party will be entitled to recover its costs, including reasonable attorney’s fees.

**16. Notices.** Any notice(s) to Customer pursuant to this Agreement, including, without limitation, any notices of material changes to this Agreement, will be sent to Customer’s primary contact of record as provided by Customer to Bandwidth.com; if Customer has not identified any alternative primary contact of record, Customer’s primary contact of record is Customer’s Administrator (or any Customer’s Administrator, if more than one). Notice(s) to Customer will be deemed to be delivered when sent via one or any combination of the following on Bandwidth.com’s books and records: Customer’s email address(s) (or via Phonebooth Free Manager); Customer’s facsimile number; and/or next-day delivery service (for example, FedEx or the United States Postal Service) to Customer’s physical or postal address. Any notice(s) to Bandwidth.com pursuant to this Agreement will be sent via next-day delivery service (for example, FedEx or the United States Postal Service) to Bandwidth.com at 4001 Weston Parkway, Cary, North Carolina 27513, Attention: General Counsel.

**17. Miscellaneous.** Customer is not relying on any affirmation of fact, description, or promise from (or purported to be from) any person or entity, nor any oral or written representation or warranty that is not expressly included in this Agreement. Any alterations or additions to this Agreement made by Customer by any means will not be considered part of this Agreement. Bandwidth.com’s failure to insist upon or enforce strict performance of or strict compliance with any provision of this Agreement shall not be construed as a waiver of any provision or right; neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement entered into from time to time pursuant to this Agreement. This Agreement may only be modified, or any rights under it waived, by a separate written document executed by both parties. In the event of a conflict between this Agreement and any applicable tariff, the tariff will prevail. Customer may not assign this Agreement, by operation of law or otherwise, including, without limitation, pursuant to any merger, stock purchase or other change in control of Customer, without Bandwidth.com’s prior written consent. This Agreement will be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected thereby. In the event any specified time frame or deadline denotes calendar days, it is agreed that when the last date of required action or response falls on a weekend or holiday, the action and/or deadline will automatically extend to the next business day. Agreement headings are provided for reference purposes only.

18. No 911 Service. CUSTOMER ACKNOWLEDGES AND AGREES THAT, AS AN INBOUND ONLY CALL SERVICE, PHONEBOOTH FREE DOES NOT ALLOW END USERS TO MAKE ANY OUTBOUND CALLS OR ANY EMERGENCY CALLS AND/OR 911 CALLS.

**THIS AGREEMENT, TOGETHER WITH ANY ATTACHMENTS REFERENCED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ACCEPTABLE USE POLICY POSTED AT [WWW.PHONEBOOTH.COM/LEGAL/AUP](http://WWW.PHONEBOOTH.COM/LEGAL/AUP), OR ANY OTHER ADDENDA ENTERED INTO FROM TIME TO TIME, EACH OF WHICH IS INCORPORATED HEREIN BY REFERENCE, CONSTITUTE THE ENTIRE UNDERSTANDING BETWEEN CUSTOMER AND BANDWIDTH.COM, INC. WITH RESPECT TO THE SERVICE(S) PROVIDED PURSUANT TO THIS AGREEMENT. CUSTOMER IS NOT RELYING ON ANY AFFIRMATION OF FACT, DESCRIPTION, OR PROMISE FROM (OR PURPORTED TO BE FROM) ANY PERSON OR ENTITY, NOR ANY OTHER ORAL OR WRITTEN REPRESENTATION OR WARRANTY THAT IS NOT EXPRESSLY INCLUDED IN THIS AGREEMENT.**

**BY CLICKING “I AGREE,” YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND WILL BE BOUND BY SUCH TERMS. YOU ALSO AGREE THAT YOU ARE ABLE TO ELECTRONICALLY ACCESS AND PRINT THIS AGREEMENT AND THAT CLICKING “I AGREE” CONSTITUTES YOUR VALID ELECTRONIC SIGNATURE ON THIS AGREEMENT.**