

## GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises and covenants made herein, the parties agree as follows:

**Services** - Subject to the terms and conditions of this Agreement, Convoke will provide the Services specified in the Order Form (the "Services"). Subject to the Customer's right to terminate this Agreement as provided herein, Convoke may expand or contract the scope of the Services or terminate this Agreement for any reason by issuing an amended Order to the Customer 30 days in advance of such change. The Customer's continued use of Convoke's Services after modification of these Services constitutes Customer's acceptance of the modifications.

**Initial Term** - The duration of the initial term of this Agreement is stated in the Order Form ("Initial Term"). The Initial Term shall commence on the later of: (a) the date upon which Convoke accepts the completed Order from the Customer; and (b) the date upon which Customer's first payment as set out in the Order has been received by Convoke (in accordance with the payment provisions set out in Section "Payment Terms").

**Renewal Term** - Unless this Agreement is earlier terminated in accordance with the provisions hereof, this Agreement will at the conclusion of the Initial Term automatically renew for successive terms of equal length to the Initial Term upon the same terms and conditions as those specified herein.

**100% Infrastructure Availability** - Convoke will use its best efforts to maintain critical infrastructure availability 100% of the time. If it cannot do so and the Customer experiences downtime, Convoke will refund the customer 5% of the monthly fee otherwise payable for each 60 minutes of downtime (up to a maximum of 50% of Customer's monthly fee for the affected server). Critical infrastructure includes functioning of all power and HVAC including UPS's and cabling. It does not, however, include the power supplies on the Customer's servers. Infrastructure downtime exists when a particular server is shut down due to power or heat problems and is measured from the time the Customer opens a trouble ticket with support@convoke.com regarding server downtime to the time the problem is resolved and the server is powered back on.

Credits shall not be provided to the Customer if infrastructure downtime is the result of: a) scheduled maintenance; b) Emergency Suspension of Services; c) circumstances beyond Convoke's control, including but not limited to war, fire, flood, other acts of God, sabotage, labor disturbance, government regulations or other government intervention; or d) a breach by the Customer of this Agreement or Convoke's Acceptable Use Policy.

**Network Availability** - Convoke will use its best efforts to ensure that the network will be available 100% of the time in a given month. If it becomes unavailable and the Customer experiences downtime, Convoke will refund 5% of the Customer's monthly fee otherwise payable for each 60 minutes of downtime (up to a maximum of 50% of Customer's monthly fee for the affected server). Network availability includes functioning of all network infrastructure including routers, switches and cabling. It does not include services or software running on the Customer's server. Network downtime exists when the Customer is unable to transmit and receive data and is measured from the time the trouble ticket is opened with support@convoke.com.

Credits shall not be provided to the Customer if network downtime is the result of: a) scheduled maintenance; b) Emergency Suspension of Services; c) circumstances beyond Convoke's control, including but not limited to third party network outages, war, fire, flood, other acts of God, sabotage, labor disturbance, government regulations or other government intervention; or d) a breach by the Customer of this Agreement or Convoke's Acceptable Use Policy.

**Network Latency and Packet Loss** - The Convoke Network will be maintained in such a manner as to provide the best possible performance to the Internet. In order to achieve this Convoke will use its best efforts to ensure:

- (a) Zero packet loss internal to the Convoke network;
- (b) Customer traffic will be delivered to a backbone Internet Carrier with an average latency not greater than 5ms over 30 seconds;

Credits shall not be provided to the Customer if degraded network performance is the result of: a) scheduled maintenance; b) Emergency Suspension of Services; c) circumstances beyond Convoke's control, including but not limited to network attacks, third party network outages, war, fire, flood, other acts of God, sabotage, labor disturbance, government regulations or other government intervention; or d) a breach by the Customer of this Agreement or Convoke's Acceptable Use Policy.

**Temporary Service Suspension** - The Customer agrees that from time to time, it may be necessary for Convoke to temporarily suspend Services for technical reasons or to maintain the Convoke network, the hardware or any other facilities, the timing of which will be determined by Convoke. Provided Convoke provide the Customer with reasonable advance notice of the temporary suspension of Services, such suspension will not be deemed an interruption of the Services for the purpose of calculating network availability or the Customer's entitlement to credit for network interruption.

**Emergency Service Suspension** - Convoke may at any time and from time to time suspend Services without penalty or liability for any claim by the Customer where necessary, acting reasonably, to prevent the improper or unlawful use of Convoke's services or equipment by the Customer or any other person. Convoke will provide the Customer with notice following such an emergency suspension to advise of the reasons for the suspension. Such emergency suspension of Services will not be deemed an interruption of the Services for the purpose of calculating network availability or the Customer's entitlement to credit for network interruption.



**Data Backups** - Convoke offers data backup services on a fee-for-service basis. Where engaged, Convoke will use commercially reasonable efforts and industry accepted methods to ensure the reliability of the backup and restore process. However, because of the technical limitations regarding backups on live servers and the possibility of data corruption on backup or restore, Convoke cannot guarantee all or any data can be restored from any particular backup. The Customer acknowledges that Convoke will have no liability whatsoever for any claim resulting from a failed backup and/or restore procedure.

**Rights to Convoke Intellectual Property** - The Customer shall not display or otherwise use any trade mark, trade name, copyright, logo, symbols, coined word or combination of words, or any other intellectual property whatsoever owned or used by Convoke, nor will Customer permit the same to be displayed or otherwise used in connection with any business conducted or controlled by the Customer, except in all cases as may be specified or approved in writing by Convoke.

**Termination of Agreement** - If the Customer breaches any of its obligations under this Agreement, Convoke may terminate this Agreement immediately and without prior notice. Convoke may also terminate this Agreement upon the giving of not less than thirty (30) days' prior written notice the Customer. The Customer may cancel this Agreement as provided for in Section "Cancellation Policy". In the event the scope of Services provided to Customer is unilaterally changed by Convoke as contemplated in Section "Services", the Customer shall be permitted to terminate the Agreement at any time prior to the date that the change proposed by Convoke is to take effect.

**Limitation of Liability** - CUSTOMER AGREES THAT NEITHER CONVOKE NOR ANY OF ITS MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR REPRESENTATIVES OF CONVOKE (COLLECTIVELY, THE "CONVOKE INDEMNITIES") WILL AT ANY TIME BE HELD LIABLE FOR ANY LOSS OF BUSINESS OR INJURIES OR LOSSES TO PERSONS OR PROPERTY FROM WILLFUL, ACCIDENTAL OR MISTAKEN SUSPENSION OR DELETION OF CUSTOMER INFORMATION OR DATA. The Customer acknowledges and agrees that in no event will Convoke or any of its members, shareholders, directors, officers, employees or representatives (collectively, the "Convoke Indemnitees") be liable for any special, indirect, consequential, punitive or exemplary damages, or economic damages (including but not limited to damages for loss of profits or revenues, loss of data, or loss of use) in connection with this Agreement, even if Convoke has been advised of the possibility of such damages. If, despite the foregoing limitations, Convoke or any Convoke Indemnitee should become liable to the Customer in connection with this Agreement for any reason, then in no event will the aggregate liability of Convoke or any of the Convoke Indemnitees exceed the amount payable by the Customer to Convoke for one month of Services under this Agreement.

**Indemnity** - The Customer will indemnify and save harmless Convoke and all Convoke Indemnitees from and against all damages, losses, liabilities, fines, costs and expenses (including actual legal fees and costs), incurred by or awarded, asserted or claimed against Convoke or any Convoke Indemnitee in connection with this Agreement which are attributable, in whole or in part, to any negligent or willful activities or omissions of the Customer or any breaches by the Customer of its obligations under this Agreement.

**Governing Law** - This Agreement shall be interpreted in accordance with and be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein. The courts of Ontario shall have exclusive jurisdiction to entertain any action or proceeding brought by the parties in connection with this Agreement or any alleged breach of this Agreement.

**Customer Acknowledgement** - The Customer acknowledges that it accepts all risk of any unauthorized or illegal use of the Convoke network or any inter-connected network by third parties. Convoke provides no warranties, makes no representations, and accepts no liability for the unauthorized or illegal access or interference with the Customer's server and or network.

**Electronic Commerce** - The Customer is solely responsible for all aspects of its online activities, including the operation of any store or e-business. This includes, but is not limited to: a) the accuracy of statements and materials related to products and/or services offered online; b) the accuracy of accounting or billing; c) the accurate calculation and application of shipping and sales tax; d) the processing of orders, inquiries and complaints; and e) the maintaining of the confidentiality of client credit card numbers and personal information.

**IP Addresses** - Convoke assigns IP (Internet Protocol) addresses to the Customer for its use. The Customer has no right to use IP addresses not assigned to it, to move IPs between different servers or accounts or to use IP addresses in any manner not permitted by Convoke. Convoke maintains control of all IP addresses that are assigned to the Customer and reserves the right to change or remove them at its sole and absolute discretion. Convoke acknowledges that IP address changes are rare and typically made only at the request of ARIN. Also, the allocation of IP addresses is restricted by the policies of ARIN. These policies dictate that name-based hosting must be used whenever possible. Convoke reserves the right to periodically review IP address usage and revoke authorization to use those IP addresses not being utilized or where name-based hosting could be used.

**Convoke Administrative Access** - Unless otherwise negotiated and included in this Agreement by way of amendment, Convoke staff and management retain the right to administrative access to any and all servers on its network for the purposes of Datacenter, Network, Server maintenance, inventory and related activities. To facilitate this, all Convoke servers (not co-located servers) may include a Convoke administrative account designed for these purposes.

**Acceptable Use Policy** - The Customer shall at all times comply with the terms and conditions of the then-current version of the Acceptable Use Policy posted at [www.convoke.com](http://www.convoke.com), and incorporated into this Agreement by reference. The Customer agrees that Convoke reserves the right to amend the terms of the Acceptable Use Policy from time to time by posting a new or different version of the Acceptable Use Policy and advising Customer of same. The Customer's continued use of Convoke's Services after modification of



the Acceptable Use Policy constitutes Customer's acceptance of the modifications. The Customer should relate the terms of this Acceptable Use Policy to its clients and use reasonable efforts to ensure their compliance with the terms and conditions thereof.

**Severability and Waiver** - If any provision of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction, the offending provision will be severed but the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**Relationship of Parties** - No agency, partnership, joint venture, or employment relationship is created by this Agreement and neither party has the power to bind the other party.

**Legal Fees and Costs** - In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled, in addition to its court costs, to recover its actual legal fees and disbursement costs from the other party.

**Fees and Payment** - The Customer agrees to pay Convoke monthly fees for Services provided, based on the rates identified in the Order. The Customer is fully responsible to ensure payment of any and all amounts due are paid on time. Invoices are emailed or listed in the hosting control panel or, upon request, fax or mail. Dollar amounts and costs indicated on the Invoice are in Canadian currency, unless otherwise stated. Payment for all Convoke Services are billed and due one (1) month in advance.

**Billing Information** - The Customer is responsible for keeping its contact and billing information up-to-date and accurate, including but not limited to a properly functioning and reachable email address and telephone number. Convoke shall not be held liable if the Customer's account is suspended or terminated because of Convoke's inability to contact the Customer due to incorrect contact or billing information.

**Overdue Accounts** - Overdue accounts may, at the discretion of Convoke, be suspended. After a period of 72 hours, suspended accounts may be terminated at the discretion of Convoke unless payment is received in full or alternative, suitable arrangements are made with Convoke. A minimum \$25 reconnection fee will be charged on all accounts reconnected after being suspended. Returned checks and declined credit cards will also be charged a \$25 NSF fee.

If an account is terminated, there is NO possibility that it can be restored or its data recovered. Convoke shall not be liable to the Customer or any other third party for any consequences of a Customer's account being terminated.

**Other Charges** - The Customer will pay all sales, excise and other value-added taxes, duties or levies of any kind whatsoever imposed by any authority, government agency or commission in connection with Convoke's Services as provided under this Agreement. The Customer is also responsible for collecting and remitting any such taxes, duties or levies from end users of the Customer's products and services. Convoke reserves the right to charge the Customer a standard hourly rate of \$75/hour CDN to cover the resolution of excessive or unusual problems or complaints.

**Cancellation Policy** - Customer is responsible for all costs over the entire term of the agreement. These costs may be paid monthly, quarterly, semi-annually, or annually. If Customer cancels their service before the end of the Initial or Renewal Term then the remaining, unpaid costs for the agreed Term are due immediately. At least 30 days before the end of the Initial or Renewal Term of the Agreement, the Customer may submit a Cancellation Form informing Convoke they do not wish to Renew the Agreement with Convoke. This form can be requested by emailing support@convoke.com. There are no partial refunds or credits for early cancellations. All payments to Convoke are final and non-refundable except as otherwise set out herein.

**General** - This Agreement contains the entire understanding between Convoke and the Customer with respect to the Services described in the Order. This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between Convoke and the Customer. The Customer acknowledges and agrees that all of its rights relating to Convoke's Services are as set forth in this Agreement and hereby waives all other rights that it may have by implication of law or otherwise.

