



## Terms of Service (TOS)

These Terms of Service provide updated terms and conditions pursuant to which You (defined below), for good and valuable consideration the receipt and sufficiency of which are acknowledged, are permitted to access and use certain services, computers, equipment, software, networks and information systems maintained by Prodigy Voice and Data, LLC (collectively, the “Prodigy Voice and Data, LLC Systems”).

Your use of the Prodigy Voice and Data, LLC Systems is also subject to Prodigy Voice and Data, LLC’s Acceptable Use Policy (AUP), available at [www.prodigyvd.net/polices](http://www.prodigyvd.net/polices), as it may be updated from time to time, and which terms are incorporated by reference herein. In addition, You shall ensure that Your Users (as defined below) comply with the AUP.

Inquiries regarding this policy should be directed to [info@prodigyvd.net](mailto:info@prodigyvd.net).

### Definitions

“Customer Content” means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the Services by You or Your affiliates.

“Personally Identifiable Information” or “PII” means information about an individual that can be linked to an individual from just the data provided and/or by accessing other data that is readily available. Personal Identifiable Information includes Protected Health Information as defined in the Privacy Rules of the Health Insurance Portability and Accountability Act (“HIPAA”) and non-public personal information as defined in the Gramm-Leach-Bliley Act and any other non-public information concerning an individual.

“Services” means the current or future services and software that You ordered.

“Software” means any software provided to You by Prodigy Voice and Data, LLC and used in connection with using the Services.

“User” means an individual who has access to the Services You ordered. A User may also be a Customer or an employee or independent contractor of a Customer. Whether or not a User is a Customer, such User is also subject to these Terms of Service and our Acceptable Use Policy.

“You” means you individually and the entity for whom you act as an authorized representative, employee or agent.



### Eligibility

You represent and warrant that You are an individual of at least eighteen years of age with the legal authority to bind any entity for whom You are acting as an authorized representative, employee or agent, and that Your use of the Service does not violate any applicable law or violation.

### Your Responsibilities

You agree to do each of the following: (i) comply with applicable law and the Acceptable Use Policy, (ii) use any Microsoft® software in compliance with the provisions below in Section 10, (iii) pay when due the fees for the Services, (iv) use reasonable security precautions in light of Your use of the Services, including encrypting any PII transmitted to and from, and while stored on, the Prodigy Voice and Data, LLC Systems (including the underlying servers and devices), (v) cooperate with Prodigy Voice and Data, LLC's reasonable investigation of outages, security problems, and any suspected breach of these Terms of Service or the AUP, and (vi) immediately notify Prodigy Voice and Data, LLC of any unauthorized use of Your account or any other breach of security.

### Data Practices.

You acknowledge and agree that any information You provide to, or exchange with, the Prodigy Voice and Data, LLC Systems may be used by Prodigy Voice and Data, LLC in a manner consistent with the Prodigy Voice and Data, LLC Privacy Policy, which is set forth at [www.prodigyvvd.net/polices](http://www.prodigyvvd.net/polices), as such policy may be modified from time to time at Prodigy Voice and Data, LLC's sole discretion. You consent to the transfer of any personal information provided to Prodigy Voice and Data, LLC from Your country of origin to the United States.

You retain all right, title, and interest in and to Your data that Prodigy Voice and Data, LLC hosts on Your behalf as part of the Services.

### Restrictions on Use

You will not use, and will not permit others to use, Your account to: (i) modify or prepare derivative works relating to the Prodigy Voice and Data, LLC Systems; (ii) use the Prodigy Voice and Data, LLC Systems in any manner that threatens the integrity, performance, or availability of the Prodigy Voice and Data, LLC Systems; (iii) reverse engineer, decompile, or disassemble the Prodigy Voice and Data, LLC Systems; or (iv) use the Prodigy Voice and Data, LLC Systems or any of the Software to help design a competing or similar service.

### Suspension

Prodigy Voice and Data, LLC may suspend the Services without liability if: (i) we reasonably believe that the Services are being used (or have been or will be used) in violation of these Terms of Service, the AUP, Your service agreement or any applicable law, court order, rule or regulation in any jurisdiction, (ii) we discover that You are, or are affiliated in any manner with, a person who has used similar services abusively in the past; (iii) You do not cooperate with our reasonable investigation of any suspected violations of these



Terms of Service, the AUP or Your service agreement; (iv) we reasonably believe that the Prodigy Voice and Data, LLC Systems have been accessed or manipulated by a third party without Your consent, (v) we reasonably believe that suspension of the Services is necessary to protect our network or our other customers, (vi) a payment for the Services is overdue, or (vii) suspension is required by law. If the suspension was based on Your breach of your obligations under Your service agreement, then we may continue to charge you the fees for the Services during the suspension, and may charge you a reasonable reinstatement fee upon reinstatement of the Services.

#### Access to Data.

You will not have access to Your data stored on the Prodigy Voice and Data, LLC Systems during a suspension or following termination.

The deletion of Customer Content is automatic upon termination or expiration of Your access to the Prodigy Voice and Data, LLC Systems. Consequently, unless Prodigy Voice and Data, LLC determines otherwise, You will not have access to Your Customer Content, and Prodigy Voice and Data, LLC may immediately erase or delete Customer Content from its computer infrastructure after the effective date of termination or expiration of Your access to the Prodigy Voice and Data, LLC Systems.

#### IP Address

Upon expiration or termination of Your access to the Prodigy Voice and Data, LLC Systems, You must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to You in connection with setting up the Services, including pointing to the DNS for your domain name(s). You agree Prodigy Voice and Data, LLC may make modifications to DNS records.

#### Ownership of Intellectual Property

The Prodigy Voice and Data, LLC Systems are protected by copyright, trademark, and other laws of the United States and foreign countries. You may not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Prodigy Voice and Data, LLC Systems. You shall not acquire any right, title or interest in or to the Systems, except the right to use them in accordance with Your service agreement.



### Microsoft Software & Microsoft License Mobility

In addition to these Terms of Service, the AUP, and the terms of Your service agreement, Your use of any Microsoft software is governed by Microsoft's license terms that appear at [www.prodigyv.net/policies](http://www.prodigyv.net/policies)

If You make use of Microsoft software on the Services that is not relicensed to You by Prodigy Voice and Data, LLC under its Microsoft Service Provider License Agreement ("SPLA"), then You represent and warrant that You have a written license agreement permitting You to use the Microsoft software in conjunction with the Services. While utilizing the Services, Your rights and obligations relating to the software licensed by Microsoft to You are identical to those imposed on You under this Agreement if You utilized software relicensed to You by Prodigy Voice and Data, LLC under the Microsoft SPLA. You agree that You will provide Prodigy Voice and Data, LLC the proper evidence of such licensing as Prodigy Voice and Data, LLC may reasonably require prior to the commencement of the Services, and from time to time as necessary to verify and update the status of the license. If You fail to provide the required evidence of licensing Prodigy Voice and Data, LLC may, at its option, either (i) suspend the ordered Services that included such software until the evidence is provided, (ii) provide the Services in reliance on Prodigy Voice and Data, LLC's licensing agreement with the vendor, and charge You its standard SPLA fee for the use of the software until such time as the required evidence is provided, or (iii) suspend or terminate Your use of the Services.

If You wish to exercise License Mobility through Software Assurance rights, You must execute the Mobility Verification Form located at <http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx> or at its successor site, and submit it to Microsoft for verification within ten (10) days of Your deployment of such Microsoft software. Licenses under the License Mobility through Software Assurance program must remain on Prodigy Voice and Data, LLC's shared servers within a single data center for no less than ninety (90) days. You may not reassign a particular license within ninety (90) days of the last assignment.

You must cooperate with Prodigy Voice and Data, LLC in the event that Microsoft requests Prodigy Voice and Data, LLC's participation in an audit of the software services. You agree that Prodigy Voice and Data, LLC can provide Microsoft with (a) the number of Windows Virtual Machine instances provided to You by Prodigy Voice and Data, LLC (b) a list of the Microsoft software products which run in such Windows Virtual Machine instances that are licensed to You by Prodigy Voice and Data, LLC and (c) all copies of Your validated Mobility Verification Forms. If Microsoft determines that You are non-compliant with the program requirements for License Mobility through Software Assurance and You do not cure the non-compliance within a time period specified by Microsoft, then Prodigy Voice and Data, LLC may terminate the provision of any or all Services to You.



### Modifications of Any of the Services

Prodigy Voice and Data, LLC reserves the right to modify the features and functions of any of the Services with the objective of providing Customer with equal or enhanced service or in order to avoid possible legal claims. These updates shall include a subsequent release or version of the Service containing functional enhancements, error corrections, or fixes that are generally made available free of charge to Prodigy Voice and Data, LLC's customers that have contracted for such Service. Updates shall not include any release, option, or future product which Prodigy Voice and Data, LLC licenses separately or which is not included as part of the Services.

### Representations and Warranties of Customer

You represent and warrant that, if before this date or in the future, You have installed any software on one of Prodigy Voice and Data, LLC's servers, You have permission and authority from all sources necessary to install and use such software.

### Indemnity

You agree to indemnify and hold Prodigy Voice and Data, LLC, its suppliers, and its and their officers, directors, employees, consultants, affiliates, subsidiaries and agents harmless from and against any and all claims, costs, damages, liabilities, and expenses (including without limitation attorneys' fees) Prodigy Voice and Data, LLC incurs in relation to or arising from (i) Your access to or use of the Prodigy Voice and Data, LLC Systems, (ii) Your violation of these Terms of Service or the AUP or any applicable law or regulation, (iii) Your violation of any rights of any third party, including without limitation intellectual property rights or rights of publicity, confidentiality, property or privacy; or (iv) any disputes or issues between You and any third party. You will pay Prodigy Voice and Data, LLC the cost of defending the claim (including reasonable attorney's fees and expenses of litigation including covering any advance retainers required) and any damages awarded, fines, or other amounts that are imposed on Prodigy Voice and Data, LLC. Your obligation extends to any such acts by any of Your employees or independent contractors. Prodigy Voice and Data, LLC shall be permitted to choose the legal counsel who will represent them.

### DISCLAIMER OF WARRANTY

YOU ACKNOWLEDGE AND AGREE THAT THE PRODIGY VOICE AND DATA, LLC SYSTEMS ARE PROVIDED "AS IS, AS AVAILABLE". ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, DATA ACCURACY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. PRODIGY VOICE AND DATA, LLC DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR-FREE, WITHOUT DEGRADATION OF QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. YOU FURTHER ACKNOWLEDGE AND AGREE THAT ANY DATA OR MATERIAL OF ANY KIND WHATSOEVER CARRIED, STORED OR TRANSMITTED THROUGH THE USE OF THE PRODIGY VOICE AND DATA, LLC SYSTEMS



IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR EQUIPMENT OR LOSS OR DEGRADATION OF QUALITY OF SUCH DATA OR MATERIAL DURING, OR THAT RESULTS FROM YOUR USE OF THE PRODIGY VOICE AND DATA, LLC SYSTEMS INCLUDING BUT NOT LIMITED TO YOUR SENDING OR RECEIVING, OR TRANSMITTING OR ATTEMPTS TO DO THE SAME, OF SUCH DATA OR MATERIAL. SOME STATES AND COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

#### LIMITATION OF LIABILITY

EXCEPT FOR PRODIGY VOICE AND DATA, LLC'S GROSS NEGLIGENCE AND/OR INTENTIONAL MISCONDUCT, THE ENTIRE LIABILITY OF PRODIGY VOICE AND DATA, LLC AND ITS THIRD PARTY VENDORS, LICENSORS AND SUPPLIERS ARISING OUT OF YOUR USE OF THE PRODIGY VOICE AND DATA, LLC SYSTEMS IS LIMITED TO THE AMOUNT YOU ARE CHARGED FOR THE SERVICES DURING THE ONE (1) CALENDAR MONTH JUST PRIOR TO THE DATE OF THE EVENT GIVING RISE TO ANY LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL PRODIGY VOICE AND DATA, LLC OR ITS THIRD PARTY VENDORS, LICENSORS OR SUPPLIERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSSES, OR EXPENSES RELATING TO INTERRUPTION OF BUSINESS ACTIVITIES, LOSS OF DATA OR THE COSTS OF PROCURING SUBSTITUTE GOODS, WHETHER OR NOT PRODIGY VOICE AND DATA, LLC WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

#### Regulations; Suitability

Some of the Services are designed to help You comply with various regulatory requirements that may be applicable to You. However, You are solely responsible for understanding the regulatory requirements applicable to Your business and for selecting and using those Services in a manner that complies with the applicable requirements. You are solely responsible for determining the suitability of the Services for Your use in light of any applicable regulations such as HIPAA, GLB, and in compliance with the EU Data Privacy requirements or other applicable data privacy laws and regulations.

#### Transmission of Data

You agree that Prodigy Voice and Data, LLC is not responsible for any non-Prodigy Voice and Data, LLC unauthorized access or modification of Your data while in electronic transmission to or from the Prodigy Voice and Data, LLC data centers. You also agree that Prodigy Voice and Data, LLC is not responsible or liable for any content sent, using, or received from the Prodigy Voice and Data, LLC Systems, including that which may be illegal, obscene, defamatory, threatening, or that may violate any trademark or copyright.

#### Subpoena and Compliance Fees

You agree to pay Prodigy Voice and Data, LLC's costs (and commercially reasonable fees for the time and effort required of Prodigy Voice and Data, LLC's employees) for complying with subpoenas, information



storage, retrieval, management, and advisory services pertaining to Services provided to You.

#### Export Controls

You agree to comply with all applicable U.S. export control laws and regulations as from time to time amended, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State. Customer shall not export, import, or transfer the Services contrary to U.S. or other applicable laws, whether directly or indirectly, and will not cause, approve, or otherwise facilitate others such as agents or any third parties in doing so. You represent that neither the United States Department of Commerce nor any other federal agency has suspended, revoked, or denied Your export privileges. You agree not to use or transfer the Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.

#### Choice Of Law; Venue; Jurisdiction

These Terms of Service shall be construed in accordance with the laws of the State of Georgia, excluding: (i) its conflicts of law principles; and (ii) the United Nations Convention on Contracts for the International Sale of Goods. The exclusive jurisdiction for all causes of action arising out of these Terms of Service shall be a federal or state court in Cobb County, Georgia. You agree to the admissibility of computer records and electronic evidence in any dispute herein. Notwithstanding anything herein to the contrary, Prodigy Voice and Data, LLC shall be entitled to seek equitable relief in addition to any and all legal remedies brought in any forum or court having jurisdiction without the requirement to post bond.

#### Written Document

You may preserve these Terms of Service in written form by printing it for Your records, and You waive any other requirement that these Terms of Service be evidenced by a written document.

#### Independent Parties

These Terms of Service do not create any agency, employment, partnership, joint venture, or franchise relationship. Prodigy Voice and Data, LLC is at all times an independent contractor.



### Modification

Prodigy Voice and Data, LLC reserves the right to modify these Terms of Service in its sole discretion at any time by posting a revised version hereof or by otherwise making such revised terms available to You for review. Any such modifications will supersede all prior versions after the revised version has been posted or otherwise made available as described above and shall be effective upon Your continued use of the Prodigy Voice and Data, LLC Systems, which continued use constitutes Your agreement to the revision.

### Notices

Any notices to Prodigy Voice and Data, LLC should be sent by first-class United States mail or overnight courier to:

Prodigy Voice and Data, LLC  
27 1<sup>st</sup> Ave NE, Suite 102  
Hickory NC 28601

### General

The waiver by Prodigy Voice and Data, LLC of any breach of any provision contained in these Terms of Service or the AUP shall not be deemed to be a waiver of such provision or of any subsequent breach of the same or any other provision contained in these Terms of Service or the AUP. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between You and Prodigy Voice and Data, LLC contradictory to the terms hereof. All provisions of these Terms of Service are severable, and the unenforceability or invalidity of any of the provisions will not affect the enforceability or validity of the remaining provisions. Prodigy Voice and Data, LLC may assign its rights and delegate its duties with respect to the Services in connection with the transfer of any of its lines of business. In the event You breach any of Your obligations hereunder, Prodigy Voice and Data, LLC may seek injunctive or other equitable relief without the necessity of posting bond.