



## MASTER SERVICES AGREEMENT

This Master Services Agreement Number **ACVX180831-3002018** (the “**MSA**” or “**Agreement**”) is by and between **Peerless Network, Inc.** and its affiliates which may provide a portion of the Service, with offices at 222 South Riverside Plaza, Suite 2730 Chicago, IL 60606 (collectively “**Peerless**”), and **Action Vox, Inc.** located at 30 N Gould Street Suite R Sheridan, WY 82801 (“**Customer**”), effective as of August 31, 2018 (“**Effective Date**.”) Peerless and Customer are collectively referred to herein as “Parties” and individually as a “Party.”

Whereas, Peerless is in the business of providing telecommunications services, enhanced services, and other related services; and,

Whereas, Customer desires to purchase certain services from Peerless pursuant to the terms of this Master Services Agreement and one or more Service Orders submitted by Customer to Peerless; and,

Whereas, Peerless and Customer desire to set forth in this MSA certain terms and conditions that will apply to the contractual relationship between the Parties.

Now, therefore, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### **1. SERVICES PROVIDED.**

- 1.1 Peerless agrees to provide, and Customer agrees to accept and pay for, those service (the “Services”) as may be requested by Customer and accepted by Peerless in accordance with the terms of this Agreement, Service Order(s) (as defined below) submitted by the Customer to Peerless, and Peerless’ applicable state and federal tariffs. Customer shall request services by submitting to Peerless a Service Order for each Service requested. Initial Service Orders agreed to by the parties are attached to this MSA. Additional Service Orders for Services provided under this MSA shall be submitted to Peerless, and shall reference the MSA Number of this MSA. Service Orders submitted by the Customer shall be on the forms for such Services provided by Peerless or through Peerless’ electronic order processing system (hereinafter “Service Orders.”) All Service Orders are subject to the terms and conditions of the Applicable Tariffs and this MSA. In the event of an inconsistency among terms in the MSA, the Service Orders and the Applicable Tariffs, the order of priority given to terms shall be first the Service Order, then this MSA, then the Applicable Tariffs.
- 1.2 The Parties will mutually agree on the points of demarcation or interconnection for all Services provided under this Agreement, Service Orders, or applicable tariffs.

### **2. TERM.**

- 2.1 This Agreement is effective on the Effective Date and shall continue for a period of one (1) year from the date Services are first utilized by Customer (“**Service Commencement Date**”, as determined by Peerless’ records) (the “**MSA Initial Term**”). Additionally, a term will be selected by Customer for each Service as specified on the Service Order (the “**Service Order Initial Term**”), *provided, however,* that if Peerless deems it necessary to discontinue offering a particular product or Service provided under this Agreement during the Service Order Initial Term, then Peerless may terminate such Service upon ninety (90) days prior written notice to Customer. The Service Order Initial Term starts on the Service Commencement Date.
- 2.2 This Agreement renews automatically for successive one (1) month periods at the expiration of the MSA Initial Term, unless cancelled by either Party giving at least thirty (30) days notice prior to the expiration of the then current term. Notwithstanding the foregoing, this Agreement shall not expire for so long as Peerless continues to provide Services under this Agreement or Service Order, but shall remain in full force and effect until all such Services have terminated, *provided, however* that no new Services may be initiated following notice of cancellation by either Party.



- 2.3 Subject to any contrary terms in a Service Order, which terms shall supersede this Agreement, at the end of the Service Order Initial Term (or any extension) for any Service (in either case the "**Service Expiration Date**") the term for that Service Order will automatically be extended on a month-to-month basis until terminated by either Party upon sixty (60) days written notice to the other unless (i) Customer notifies Peerless in writing at least forty-five (45) days before the applicable Service Expiration Date that it does not wish to renew the Service Order, but wishes to terminate it on the Service Expiration Date, in which case Peerless will terminate that Service on the Service Expiration Date; or (ii) Peerless agrees in writing to extend the Service Expiration Date for a mutually agreed upon renewal period. If a Service renews on a month-to-month basis in accordance with this Section, then Peerless shall have the right to increase the rates and charges for that Service (including charges for any associated local access circuits) upon written notice to Customer as specified in the applicable Service Order, failing which, such rate changes shall take effect upon seven (7) days written notice.
- 2.4 Termination/disconnection requests by Customer must be made by submitting a completed Service Disconnect Request Form to Peerless. Service Disconnect request forms are available upon request from Peerless. All such termination/disconnect requests shall take effect forty-five (45) days after receipt and acknowledgement by Peerless. Nothing contained herein shall relieve Customer of applicable early termination penalties that may be due hereunder.
- 2.5 Peerless reserves the right to modify any charges for Services as specified in the Service Order(s), failing which, such notification shall be upon seven (7) days prior written notice to Customer. Modification in rates may be in the form of new rates, charges and/or surcharges or through modification of existing rate elements which are used to determine rates and/or charges. Customer is liable for payment on any rate changes past the effective date as documented in a delivered rate modification notice. Rate decreases and the offering of additional services may be effective immediately upon notice to Customer, and Customer may not terminate this Agreement or any Service Order except as otherwise provided in this Agreement or the Service Order. In the event Peerless increases Customer's rates, Customer shall have the right to terminate the Service Order affected by such rate increase without penalty by giving Peerless written notice on or before the effective date of the rate increase.

### **3. CHARGES, BILLING AND PAYMENT.**

- 3.1 Commencing on the Service Commencement Date, Customer will pay the applicable charges for each Service as specified in the applicable Service Order. Monthly recurring charges ("MRCs") will be invoiced on a monthly basis in advance and non-recurring charges will be invoiced in arrears. Usage-based charges will be invoiced in arrears in accordance with Customer's Billing Cycle. If the Service Commencement Date for any Service falls on a day other than the first day of any Billing Cycle, the initial charge to Customer shall consist of (a) the pro-rata portion of the applicable monthly charge covering the period from the Service Commencement Date to the first day of the subsequent Billing Cycle, and (b) the MRC for the following Billing Cycle.
- 3.2 Except as otherwise specified in a Service Order, Customer agrees to pre-pay for Services via check or wire transfer on a monthly basis and that it must have a positive cash balance at all times. If traffic volumes outpace the pre-payment amount, Peerless may suspend Service or seek a Cash Deposit to be used for overages. Any invoiced amount not properly disputed under Section 3.3 and not paid by the Due Date will bear a late payment charge at the rate of 1% per month (or such lower amount as may be required by law) until fully paid.
- 3.3 Any billing dispute or request for a billing adjustment must be made in good faith and in accordance with Section 7 - Dispute Resolution. Invoiced amounts not disputed by Customer in writing within thirty (30) days from the date of invoice will be conclusively deemed undisputed and accepted by Customer. Customer shall have an obligation to timely pay the undisputed portion of the invoiced amount. Any delay in payment of the undisputed portion of the bill will incur late payment charges as specified in Section 3.2 above.



- 3.4 In the event charges due pursuant to any invoice are not paid in full by the Due Date, Peerless shall have the right to suspend all or any portion of the Services to Customer immediately ("Suspension Notice") until such time as Customer has paid in full all charges then due including any late fees or penalties. Following such late payment, Peerless may require that Customer provide satisfactory assurance of its ability to pay for Services (i.e., deposit, guaranteed letter of credit, or other means as requested) and advanced payment of the cost of reinstating Services prior to reinstating Service.
- 3.5 Monthly Credit Limit. Except as otherwise specified in a Service Order, Peerless may, upon written notice, impose a monthly credit limit based on information found in a credit report (the "Monthly Credit Limit"). If such Monthly Credit Limit is put in place, Customer may not use any Service or combination of Services if such usage will result in the recurring charges applicable to such Service(s) in any month exceeding the Monthly Credit Limit. If Customer is delinquent in the payment of fees as set forth herein or if Customer's overall financial condition changes adversely (in Peerless' reasonable business judgment) and Peerless does not have security from Customer in an amount equal to Customer's highest invoice in the last six-month period, Peerless may require additional security of its choice from Customer of two times such amount. Customer shall provide such security within ten (10) Business Days. Peerless is not obligated to accept orders, provide or continue to provide any Services until any such security is received by Peerless.
- 3.6 Cash Deposit. Peerless reserves the right to require Customer to provide a Cash Deposit if Customer has a negative credit report or is in violation of this Agreement or is otherwise not in good standing, to be held as a guarantee for the payment of charges. The Cash Deposit does not relieve Customer of its responsibility for prompt payment of bills. Peerless may draw upon the Cash Deposit at any time to recover any amounts due and unpaid in which case the Customer shall immediately replenish it to its prior value. The Parties shall not waive any of their rights or remedies by drawing upon the Cash Deposit to recover overdue or unpaid amounts. In the event that Peerless draws upon the Cash Deposit, it may suspend the provision of Services until Customer replenishes it to its original value. If at any time, Customer's usage exceeds the Credit Limit, its payment history is or becomes unacceptable to Peerless, or Customer's Service is upgraded, Peerless may require Customer to provide, modify, or increase the amount or form of the Cash Deposit. Customer shall have five (5) business days from the receipt of Peerless' written request to comply with this request, and if it fails to do so, Peerless may immediately suspend the delivery of Services and/or terminate this Agreement without further notice or demand.
- 3.7 Letter of Credit. Peerless reserves the right to require Customer to provide a letter of credit (the "Letter of Credit") if Customer has a negative credit report or is in violation of this Agreement or otherwise not in good standing. The Letter of Credit shall be unconditional and irrevocable, issued by a financial institution acceptable to Peerless at its sole discretion, renewed or replaced no later than thirty (30) days before its expiration date, and be otherwise acceptable in form and substance to Peerless. The Letter of Credit is considered a cash fund to be drawn by presentment of a sight draft by Peerless at any time to recover any amounts due and unpaid by Customer. Customer waives all rights to dispute, intervene in, or enjoin the presenting or honoring of sight drafts, or funding of the Letter of Credit.
- 3.8 Except for claims for indemnification, no action or proceeding against either party will be commenced by the other party more than one (1) year after the Service which is the basis for the action or proceeding is rendered, and each party acknowledges that this limitation constitutes an express waiver by it of any rights under any applicable statute of limitations which would otherwise afford additional time.
- 3.9 Peerless shall have the right to offset against any obligations owed by Customer for the provision and/or purchase of Services ("Offset Arrangement") regardless of whether the obligation arose under this or any other current or future agreement or tariffed offering ("Service Agreements"). If additional payment is required in connection with a given Offset Arrangement, it will be made according to the terms of the applicable Service Agreement giving rise to such obligation.



#### **4. TAXES, ASSESSMENTS AND REGULATORY CHARGES.**

- 4.1 Customer acknowledges that Peerless computes all charges in any Service Order exclusive of any applicable federal, state, or local use, excise, gross receipts, sales, and privilege taxes, duties, fees, or similar liabilities ("Additional Charges"). Except to the extent Customer provides a valid exemption certificate in a form acceptable to Peerless prior to the delivery of Service, Customer will be responsible to pay any other regulatory surcharges that Peerless is required, or permitted, to invoice to Customer in connection with any Service, including, without limitation, permanent or temporary governmental fees or assessments unless Customer provides the appropriate certification to Peerless that the Customer will make payments directly to the applicable agency assessing the fees. It is the Customer's sole responsibility to supply tax-exempt documentation, if applicable, failing which Customer will be billed accordingly.
- 4.2 **Exemption Certificates.** Accepted exemption certificates shall be effective upon receipt of the exemption certificate, and Peerless reserves the right to require the submission of updated certifications for such exemption to remain effective. If Peerless does not collect any tax or surcharge because Customer has provided Peerless with an exemption certificate that is later found to be inadequate by an applicable authority, then, notwithstanding Peerless' prior acceptance of the certificate, Customer shall be liable for such uncollected amount and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected amount by the applicable authority and Peerless' reasonable expenses and attorneys' fees that result from such proceedings. With respect to any tax or surcharge that Customer has supplied an exemption certificate or is required to impose on and/or collect from its customers, Customer agrees to indemnify and hold Peerless harmless on an after-tax basis for any costs incurred by Peerless as a result of actions taken by the applicable authority to recover the tax or surcharge from Peerless due to the failure of Customer to timely pay, or collect and timely remit, to such authority.
- 4.3 All payments made by Customer will be made without any deduction or withholding for or on account of any Taxes. If Customer is or was required by law to make any deduction or withholding from any payment due to Peerless or its Affiliates under this Agreement, then, notwithstanding anything to the contrary contained in the Agreement, the gross amount payable by Customer to Peerless or its Affiliates will be increased so that, after any such deduction or withholding for Taxes, the net amount received by Peerless or its Affiliates will not be less than Peerless or its Affiliates would have received had no such deduction or withholding been required. If any taxing or governmental authority asserts that Customer should have made a deduction for withholding for or on account of any Taxes with respect to all or a portion of any payment made under the Agreement, Customer agrees to indemnify Peerless and its Affiliates for such Taxes and to hold Peerless and its Affiliates harmless on an after-tax basis from and against any Taxes, interest or penalties levied or asserted against them in connection therewith.
- 4.4 Customer's default Place of Primary Use ("PPU") is the following: **30 N Gould Suite R Sheridan, WY 82801-6317**. Customer understands and agrees that if no PPU is provided, then the address provided in the first paragraph above will be used.

#### **5. NETWORK MODIFICATION AND NETWORK MAINTENANCE.**

- 5.1 Peerless reserves the right to modify its Network, system configurations or routing configurations. Peerless may, at its sole discretion and without liability, change or modify the features and functionalities of a Service or modify or replace any hardware or software in the Network or in equipment used to deliver any Service provided that this does not have a material adverse effect on the committed Service. Peerless may perform scheduled or emergency maintenance (including temporary suspension of Service as necessary) to maintain or modify the Network, Network Terminating Equipment or the Services. Peerless will give Customer such notice of the maintenance as is reasonably practicable in the circumstances, provided that, in the event of scheduled maintenance, Peerless will give Customer at least four (4) days notice.



## 6. TERMINATION AND TERMINATION CHARGES.

- 6.1 If a Commission, the North American Numbering Plan Administrator ("NANPA") or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of materially increasing Peerless' cost to provide Services hereunder or canceling, changing, or superseding any material term or provision of this Agreement (collectively "Change in Law"), either Party may, on thirty (30) days' written notice to the other Party (delivered not later than thirty (30) days following the date on which the Change in Law has become legally binding), require that the affected provision(s) be renegotiated, or that new terms and conditions be added to this Agreement, if applicable. The Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that the new provision(s) shall not affect the validity of the remainder of this Agreement not so affected by the Change in Law. Should the Parties not be able to agree on modifications necessary to comply with the Change in Law within thirty (30) days after the Change in Law is effective, then, upon written notice, either Party may, to the extent practicable, terminate that portion of the Agreement impacted by the Change in Law.
- 6.2 Peerless may suspend or terminate this Agreement, any Service, or both, immediately if Customer after reasonable notice (a) fails to make any payment due under this Agreement, (b) fails to provide security or additional security within the timeframe required under Section 3.5, (c) fails to cure any fraudulent or otherwise unlawful activity, or (d) becomes the subject of a voluntary petition, or an involuntary petition not dismissed within sixty (60) days, in bankruptcy or any proceeding for insolvency, receivership, liquidation, or assignment for the benefit of creditors. Termination under this Section will be a nonexclusive remedy for breach without prejudice to any other right or remedy of such Party.
- 6.3 Either Party may terminate this Agreement, any Service Order, or both, immediately on notice, if the other (a) commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within thirty days written notice or (b) commits a material breach of this Agreement which cannot be remedied. Any termination of this Agreement or Service Order pursuant to this Section 6.3 shall take effect upon delivery of written notice to the breaching party that it failed to cure such nonperformance or breach. Termination of this Agreement for any cause does not release Customer from any liability which, at the time of termination, has already accrued to Customer, or which may accrue in respect of any act or omission prior to termination or from any obligation which is expressly stated to survive the termination.
- 6.4 Peerless may at its sole option, upon the occurrence of Customer's breach: (a) terminate this Agreement or any Service Order; (b) cease accepting or processing Service Orders and suspend Service(s) without prejudice to its right to terminate this Agreement or the Service(s); (c) cease all electronically and manually generated information and reports (including any CDR not paid for by Customer); (d) draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by Customer; and/or (e) pursue such other legal or equitable remedy or relief as may be appropriate.
- 6.5 If this Agreement or any Service is terminated prior to the expiration of the initial or any renewal term (except if properly terminated by Customer for Peerless' breach), then Customer shall pay to Peerless upon demand an early termination fee in an amount equal to the aggregate sum of each existing Service's MRC times the number of months remaining of the applicable term and all third-party termination liability for Customer's termination. Customer agrees that such a termination fee is based on an agreed revenue expectation based on actual Customer Service data and is not a penalty.
- 6.6 Any notice of Service or Circuit availability and any notice of termination of Services by Peerless to Customer, permitted under this Agreement, shall be made to Customer in accordance with the "Notices" section of this Agreement.
- 6.7 Customer acknowledges that in the event of expiration or termination of this Agreement or any Service Order, Peerless has no obligation to continue to provide services to Customer or to route traffic originating or



terminating to Customer. Customer further agrees that it will immediately effect an orderly and timely transition of services to another provider or other route.

## **7. INTERNAL DISPUTE RESOLUTION AND ARBITRATION OF DISPUTES.**

- 7.1 Any dispute between the Parties regarding the interpretation or enforcement of this Agreement, or any of its terms or billing under this Agreement shall be addressed by good faith negotiations between the Parties. The Parties agree that resolving disputes as promptly and efficiently as possible will best serve their respective interests. In order to be properly filed, all disputes must be directed to [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com) and the Customer's assigned customer service representative, and shall include detailed documentation as specified in Section 7.2.
- 7.2 **Internal Resolution Process.** Customer disputes, including billing disputes, shall be detailed in writing within thirty (30) days of the Invoice Date ("Dispute Notification"). Any such request shall include detailed documentation addressing each element of the dispute. Documentation to be provided by Customer shall include, without limitation, the country/city, number of minutes, and/or rate that is subject to dispute and may include, call detail records ("CDR"). Upon timely receipt of a properly filed Dispute Notification, Peerless will respond to each element of the dispute within thirty (30) days of the Dispute Notification. Each Party will appoint a knowledgeable, responsible representative with decision-making authority to negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. Each Party, through its representatives, shall negotiate diligently and in good faith for a period of sixty (60) days from the Dispute Notification or a mutually-agreed upon time period, to resolve the dispute. If the Internal Resolution Process does not result in a resolution of the dispute, the Parties will proceed to Arbitration in accordance with Section 7.4, below.
- 7.3 If a billing dispute is subsequently resolved in favor of Peerless, or if Parties fail to mutually resolve the dispute within sixty (60) days after Dispute Notification, Customer shall pay the disputed amount previously withheld including late payment charges, by the earlier of (a) Customer's next billing cycle or (b) thirty (30) days following the 60-day dispute resolution period. If the billing dispute is subsequently resolved in Customer's favor, then any resulting amounts due to Customer shall, as soon as practicable and provided Customer is not delinquent in payment or otherwise in default of this Agreement, be applied as a credit against a subsequent Customer invoice.
- 7.4 **Binding Arbitration.** Any dispute arising out of this Agreement that cannot be resolved pursuant to Section 7.3, must be submitted to binding arbitration in accordance with the rules established by the American Arbitration Association ("AAA"). The decision of a sole arbitrator shall be binding on all parties. The arbitration shall be held in accordance with the commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"), as amended by this Agreement.  
  
Either Party may initiate arbitration by providing written demand for arbitration, a copy of this Agreement and the administrative fee required by the AAA Rules to the AAA located in Chicago, Illinois. A copy of the notice shall also be provided to the other Party. The remaining cost of the arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties unless the arbitrator's award provides otherwise. Each Party shall bear the cost of preparing and presenting its case. The Parties agree that binding arbitration shall be conducted in Chicago, Illinois.  
  
The Parties agree that the Arbitrator's authority to grant relief shall be subject to the provisions of this Agreement and the Service Orders, the United States Arbitration Act, ("USAA"), the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes, Peerless' Tariffs, substantive law of the State of Illinois or the applicable state public service commission, and the Communications Act of 1934, as amended. Except for the intentional misconduct of a Party, the Arbitrator shall not be able to award, nor shall any Party be entitled to receive, punitive, incidental, consequential, exemplary, reliance or special damages, including damages for lost profits. The Arbitrators' decision shall follow the plain meaning of the relevant documents, and shall be final, binding,



and enforceable in a court of competent jurisdiction. The decision of the Arbitrator can only be appealed for mistake(s) of law.

## **8. WARRANTY AND LIMITATION OF LIABILITY.**

- 8.1 **WARRANTY AND DISCLAIMER.** PEERLESS WARRANTS THAT IT WILL PERFORM SERVICES WITH REASONABLE SKILL AND CARE AND IN A WORKMANLIKE MANNER AND WILL USE REASONABLE EFFORTS TO RESTORE SERVICES IN THE CASE OF FAILURE. PEERLESS MAKES NO OTHER WARRANTY OR GUARANTEE RELATING TO THE SERVICES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE, AND PEERLESS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS RELATING TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE.
- 8.2 **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, INCLUDING ANY DAMAGES ARISING FROM ANY NEGLIGENT ACT OR INADVERTENT OMISSION, WHETHER IN CONTRACT, TORT OR UNDER LAW, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR DIRECT DAMAGES IN AN AMOUNT IN EXCESS OF THE AMOUNT THAT PEERLESS CHARGED OR WOULD HAVE CHARGED FOR SUCH SERVICES IN THE SIX MONTHS PRIOR TO WHEN THE CLAIMS FIRST AROSE OR \$100,000, WHICHEVER IS LESS.
- 8.3 **EXCLUSION OF LIABILITY.** SUBJECT TO SECTIONS 8.1 AND 8.2, IN NO CIRCUMSTANCES SHALL PEERLESS, ITS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE: (a) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (b) ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, 'DENIAL OF SERVICE' ATTACKS, DNS SPOOFING ATTACKS AND/OR OTHER HACKING ATTACKS OF A SIMILAR NATURE, OR (c) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS.
- 8.4 NO ACTION OR PROCEEDING AGAINST EITHER PARTY WILL BE COMMENCED BY THE OTHER PARTY MORE THAN ONE YEAR AFTER THE SERVICE WHICH IS THE BASIS FOR THE ACTION OR PROCEEDING IS RENDERED, AND EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION CONSTITUTES AN EXPRESS WAIVER BY IT OF ANY RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS WHICH WOULD OTHERWISE AFFORD ADDITIONAL TIME.

## **9. INDEMNITY.**

- 9.1 **Definition of Losses.** For the purposes of this Section, “**Losses**” means all losses, liabilities, damages and costs (including Taxes and Additional Charges) and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation and settlement).
- 9.2 Customer shall defend, indemnify and hold Peerless, its affiliates, and their respective employees, agents, and contractors harmless from and against all Losses resulting from or in connection with any third party claims, suits, or proceedings: (i) arising from Customer's mischaracterization of its traffic or erroneous classification, as applicable, as an end user of the Services; (ii) alleging that the content, use and/or publication of information and communications transmitted by Customer, or its customers or end-users using the Services (“Content”) infringes upon or violates the rights of such third party; and (iii) alleging that Customer's use of the Services or the Content violates applicable law regardless of the form of action, whether in contract, tort, warranty, or strict liability and whether in respect of copyright infringement or any manner of intellectual property claims;



including but not limited to, under either (ii) or (iii) above, defamation claims or claims involving publication or transmittal of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing materials.

- 9.3 Each Party shall defend, indemnify and hold the other Party, its affiliates, and their respective employees, agents, and contractors harmless from and against all Losses resulting from or in connection with any third party claims, suits, or proceedings arising out of, relating to, or in connection with a death, personal injury, or damage to real and tangible real property to the extent resulting from or caused by the gross negligence, willful misconduct, or recklessness of the indemnifying Party, its affiliates, and their respective employees, agents, or contractors.
- 9.4 The Parties' indemnity obligations are conditioned upon: (A) the indemnified Party giving the indemnitor prompt written notice of any such suits, claims, and proceedings; (B) the indemnitor having complete and sole control of the defense and settlement of any such claim, suits, or proceeding *provided, however,* that the indemnitor provides all relevant information in a timely manner to the indemnified Party and that the indemnified Party must approve of any settlement, such approval not to be unreasonably withheld; and (C) the indemnified Party reasonably cooperating with the indemnitor to facilitate the defense or settlement thereof.

#### **10. FORCE MAJEURE.**

Other than with respect to failure to make payments due hereunder, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by: fire; flood; earthquake; the elements; lightning; explosion; war; act of terrorism; strike; embargo; labor dispute; utility curtailments; power failures; government requirement; civil or military authority; act of god or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers (other than the parties themselves); acts or failures to act of any governmental authority; computer viruses or worms; 'denial of service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature (provided that the parties have taken reasonable steps to prevent such hacking attacks) or any other causes beyond its reasonable control, whether or not similar to the foregoing providing that for any cause of force majeure the parties have taken reasonable steps to prevent such an event. Failure of either party to perform under this agreement, because of the occurrence of an event of force majeure lasting more than forty-five days will, upon twenty-four hours written notice to the other party, represent a ground for termination only of the service affected by such event.

#### **11. REGULATORY MATTERS; COMPLIANCE WITH LAWS; USE OF SERVICES AND SOFTWARE; ACCEPTABLE USE POLICY; SHORT DURATION CALLS; AUTO-DIALING AND CALL BLASTING.**

- 11.1 Peerless, upon reasonable notice to Customer, may cancel or suspend the provision of the whole or any part of any Service which is determined to be a violation of, or no longer permitted under, any applicable law or regulation or of Peerless' license in the jurisdiction.
- 11.2 Customer will ensure that neither it nor its customers or other authorized third party end users interfere with or disrupt other users of the Services or of the Peerless Network.
- 11.3 Customer will use a Service only for the purposes for which it is designed and provided.
- 11.4 The Parties shall comply with their licenses and all Laws applicable to this Agreement and to their respective businesses. Customer shall only resell or otherwise allow third party use of a Service in accordance with all requisite approvals or authorizations to resell from governments or regulators in the jurisdictions where Customer resells. Subject to the foregoing and except as set out in a Services Order, resale and third party use of a Service for the purpose for which it was designed and provided is not prohibited by this Agreement, provided that Peerless' performance obligations under this Agreement are solely to Customer, and not to any third party.



- 11.5 Customer represents and warrants that Customer's services, products, materials, data, and information used by Customer in connection with this MSA as well as customers or other authorized third party end users of Customer, does not, and will not during the term of this MSA operate in any manner that would violate any applicable international, federal, state, or local law or regulation (including, without limitation, infringement of copyright or trademark, misappropriation of trade secrets, wire fraud, telemarketing sales rules, invasion of privacy, or obscenity.) Customer will obtain all required licenses and permits, and will comply with any Laws that may be applicable to the provision and use of the Services by such authorized third party end users of Customer. Further, Customer shall obtain, file and maintain any tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by the FCC, a state Public Utility or Service Commission, or any other governmental body or agency having jurisdiction over its business ("Authorizations"). Upon the request of a Party, which request shall be no more frequent than once every six months (unless based on a request or order of a government body or agency having jurisdiction over either Party), the other Party will provide copies of the requested Authorizations.
- 11.6 Peerless hereby grants to Customer a personal, non-exclusive, non-transferable license during the term of this Agreement to use, in object code form, all software and related documentation owned by Peerless ("Licensed Material") which may be furnished to Customer under this Agreement solely for use with the Service ordered. Any Licensed Material furnished to Customer under this Agreement shall not be reproduced or copied in whole or in part, and will be returned to Peerless at the conclusion of the term (or earlier termination) of this Agreement.
- 11.7 Customer is solely responsible for (a) content of information and communications transmitted using the Services, and (b) use and publication of communications and/or information using the Services. Customer understands and agrees that Peerless is only an intermediary for the transmission of Customer and third party information, that Peerless plays a passive role as a conduit of information for Customer and third parties, and that Peerless neither initiates the transmission of information, selects the receivers of the transmission, nor selects nor modifies the information contained in the transmission.
- 11.8 Customer shall perform its obligations under this Agreement in a commercially reasonable, ethical and professional manner and in accordance with applicable legal requirements, including, as applicable, without limitation, (i) all applicable anti-bribery laws and regulations (including without limitation, the U.S. Foreign Corrupt Practices Act) and, (ii) all laws, regulations, codes of practice and guidelines regarding data privacy, telemarketing, "slamming" or other inappropriate selling activities, and (iii) all export control laws and regulations (including those promulgated by agencies of the United States Government, including the U.S. Departments of Commerce and Defense), which prohibit the export or diversion of goods to certain prohibited countries.
- 11.9 **Short Duration Traffic.** A Short Duration call is a call that is six (6) seconds or less in duration. Customer must inform Peerless if it intends to exchange Short Duration traffic. It is the Customer's responsibility to monitor its traffic for SD traffic. If Short Duration traffic is sent to Peerless certain call parameters apply as specified in the applicable Service Order. Absent a Service Order with Short Duration parameters, all per minute rates (Interstate Long Distance, Intrastate Long Distance and Local if applicable) assume at least 85% of calls terminating will be of a call duration of no less than six (6) seconds in length. If 15% or more of Customer's completed calls are equal to or less than six (6) seconds in length during any billing cycle, then Peerless reserves the right, in its sole discretion, to: (i) charge and Customer shall pay, in addition to Customer's current rates, a \$0.01 short duration surcharge per call; and (ii) take curative action that may result in the modification, suspension or cancellation of Customer's Services.
- 11.10 **Auto-Dialing and Call Blasting.** Auto-dialers, continuous call session connectivity, fax broadcasting, fax blasting, mass calling or any other blasting activities are not permitted with Peerless Services unless written approval is provided by Peerless. If Peerless has reasonable suspicion that Customer may be in violation of the foregoing



prohibitions, Peerless in its sole discretion may take curative action that may result in the modification, suspension or cancellation of Customer's Services.

## **12. GOVERNING LAW.**

- 12.1 This Agreement shall be governed by the laws of the State of Illinois, without giving effect to the principles of conflicts of laws, except that if federal law, including the Act applies, federal law shall control.

## **13. NOTICES.**

- 13.1 All notifications, requests, demands and other communications required or permitted under this Agreement (not including invoices and rate changes) ("Notices") will be in writing and addressed to the recipient Party at the address(es) specified below. Notice will be deemed given: (a) upon delivery, when delivered in person during a Business Day or, if outside the hours of a Business Day, on the next Business Day; (b) twenty-four hours after transmission of an email or deposit with an overnight delivery service for next day delivery; (c) the same day when sent by facsimile transmission during normal business hours, receipt confirmed by sender's equipment; or (d) three Business Days after deposit in the mail, postage prepaid, registered or certified mail, return receipt requested.

<b>Notices to Peerless:</b>	<b>Notices to Customer:</b>
<b>Peerless Network, Inc.</b> <b>222 S Riverside Plaza Suite 2730</b> <b>Chicago, IL 60606</b> <b>ATTN: EVP, Sales and Marketing</b> <b>Facsimile: 312-506-0931</b> <b>contracts@peerlessnetwork.com</b>	30 N Gould Street Suite R Sheridan, WY 82801  <b>Primary Network Operations contact (NOC)</b> Attn: NOC Phone #: E-mail: noc@actionvox.com  <b>Maintenance notifications:</b> Attn: NOC Phone #: E-mail: noc@actionvox.com  <b>Rate Notifications:</b> Attn: Rates Phone #: E-mail: rates@actionvox.com  <b>Billing:</b> Attn: Billing Phone #: E-mail: accounting@actionvox.com  <b>Primary business contact:</b> Attn: Allan Noorda Phone #: 541-280-2588 E-mail: allan@actionvox.com  <b>Legal:</b> Attn: Legal Phone #: E-mail: legal@actionvox.com



#### **14. DEFINITIONS**

The capitalized terms used in this Agreement shall have the meaning specified below in these Sections. Any terms not defined in this Agreement shall have the same meanings as used by regulatory commissions and the telecommunications industry in general:

- 14.1   **"Act"** means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules, regulations and orders of the FCC or a state Commission.
- 14.2   **"Affiliate"** means an entity controlling, controlled by, or under common control with, directly or indirectly, a Party.
- 14.3   **"Applicable Tariffs"** consist of the service descriptions and other provisions contained in tariffs filed by Peerless or its affiliates, with the applicable Commission having jurisdiction over the Services being provided. Peerless' tariffs are available on its website.
- 14.4   **"Commission"** means the Federal Communications Commission ("FCC") or state administrative agency that has authority to regulate telecommunications services and/or Local Exchange Carriers within the state or jurisdiction where Peerless is providing service.

#### **15. GENERAL.**

- 15.1   Independent Contractors. Peerless and Customer are, and shall be deemed to be, independent contractors with respect to the subject matter of this Agreement. Nothing contained herein shall constitute this arrangement to be a joint venture or a partnership between Peerless and Customer. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.
- 15.2   Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other, which will not be unreasonably withheld, conditioned or delayed except that Peerless may freely assign this Agreement or any portion thereof to an Affiliate, and may freely assign its right to receive payments hereunder. To assign the Agreement, Customer must request and complete the proper assignment paperwork for an assignment to be valid. Any assignment, transfer or other disposition which is in violation of this Section is void and of no force and effect.
- 15.3   Subcontracting. Peerless, without Customer's consent, may subcontract the provision of a Service, or a portion of a Service, provided that Peerless will continue to be liable for the performance of such subcontractors under the terms of this Agreement.
- 15.4   Customer Data. Notwithstanding anything to the contrary, Customer agrees that Peerless (or any Peerless Affiliate) may process personal data (for example, contact details) provided by Customer in connection with this Agreement (hereinafter, "**Customer Data**") for the purpose of this Agreement and/or for purposes connected with the Service and/or business relationship between the Parties, consistent with applicable law and regulation. Customer confirms that, to the extent required, it has obtained all necessary consents from third parties in order to share any third-party information. Such processing may also include transferring Customer Data to other Peerless Affiliates worldwide and/or its storage in a local or foreign database.
- 15.5   Publicity. Neither Party will publish or use any advertising, sales promotions, press releases or other publicity which uses the name, logo, trademarks or service marks of the other without the prior written approval of the other, provided either Party may list the other as a supplier/customer of the services provided hereunder.
- 15.6   Confidential Information. For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by one Party ("Discloser") to the other Party



("Recipient") and identified in writing by the Discloser as Confidential Information in accordance with this Section. Additionally, such Confidential Information shall include any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the extent the same contain, reflect, are derived from, or are based upon, any of the information described in this Section, unless such information contained or reflected in such notes, analyses, etc. is so commingled with the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as "Derivative Information"). Confidential Information does not include information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) that is or becomes publicly known or available through no breach of this Agreement by the Recipient; (c) that is or becomes rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) that is or becomes independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed.

- 15.7 **Use of Confidential Information.** For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement or by agreement of the Discloser, the Recipient agrees: (a) to use it only for the purpose of performing under this Agreement, and (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement. Either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration, judicial proceeding, or approval of this Agreement, or to another party to any such proceeding in accordance with the rules applicable to such proceeding; so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court. Recipient agrees to comply with any such protective order that covers the Confidential Information.
- 15.8 **No Waiver.** No waiver of any term or condition of this Agreement shall be enforceable unless it is in writing and signed by the Party against whom it is sought to be charged. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of any such right, power or remedy unless provided herein. The waiver by either Peerless or Customer of any breach of this Agreement by the other in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind.
- 15.9 **Amendment.** The Parties may amend this Agreement at any time only by execution of an instrument in writing signed on behalf of each of the Parties hereto. Any extension or waiver by any Party of any provision hereto shall be valid only if set forth in an instrument in writing signed on behalf of such Party.
- 15.10 **Binding Effect.** If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.
- 15.11 **Survival.** Termination of this Agreement shall not affect either Party's accrued rights or obligations under this Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after this Agreement has ended.
- 15.12 **No Third-Party Beneficiary.** This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.
- 15.13 **Headings.** The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.



- 15.14 **Mutual Intent.** The language used in this Agreement is deemed the language chosen by the Parties to express their mutual intent. No rule of strict construction shall be applied against either Party.
- 15.15 **Remedies.** Except as may otherwise be provided herein, the assertion by a Party of any right or the obtaining of any remedy hereunder shall not preclude such Party from asserting or obtaining any other right or remedy, at law or in equity, hereunder.
- 15.16 **Entire Agreement.** This Agreement and all Appendices, Exhibits, Service and other Schedules, Order Forms and other attachments incorporated herein represent the entire agreement between the Parties with respect to the subject matter hereof and supersedes and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and inducements to the making of this Agreement relied upon by either Party, whether written or not. No change, modification or waiver of any of the terms of this Agreement will be binding unless included in a written agreement and signed by an authorized representative of Peerless and the Customer. Any terms purportedly imposed by any purchase order or other document used by Customer shall be void and of no effect.
- 15.17 **Counterparts; Electronic Signature.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, and a facsimile transmission, electronic delivery of a manual signature (e.g., .pdf), or an electronic signature via DocuSign (or other verified eSignature company) shall be deemed to be an original signature.

**IN WITNESS WHEREOF**, Peerless and Customer, through duly authorized representatives, have executed this Agreement on the dates below. The signatures transmitted and received via facsimile, scanned and electronically delivered, or an electronic signature via DocuSign (or other verified eSignature company) shall be treated for all purposes of this Agreement as original signatures and shall be deemed valid, binding and enforceable by and against both Parties. Peerless may consider this document null and void if a Customer executed version is not received by Peerless within thirty (30) days of the issue date.

**Peerless Network, Inc.**

DocuSigned by:

By: 

Name: Richard Knight

Title: 8EVP Sales and Marketing

Date: 9/1/2018

**Customer: Action Vox Inc.**

DocuSigned by:

By: 

Name: Allan Noorda

Title: President

Date: 9/1/2018