

PRECISION CONTACT GENERAL TERMS OF USE

PRECISION CONTACT Terms and Conditions (“General Terms”) applicable to the furnishing of text messaging services within the United States.

The Precision Contact Services referenced in these General Terms are offered by Red Phoenix, a Texas company, with offices located at 1023 South Greenville Avenue, Allen, TX 75002 to an end-user customer (“End-User”) located in the United States. The Agreement (as defined below) between End-User and Red Phoenix sets forth the legal rights and obligations governing Precision Contact provisioning and delivery of text and chat services (“Services”) to End-User. This Agreement consists of these terms and conditions and any other exhibit(s) or attachment(s) to this Agreement during the Term (as defined herein).

1. AGREEMENT:

THESE GENERAL TERMS AND CONDITIONS MAY BE MODIFIED FROM TIME TO TIME AT RED PHOENIX’S DISCRETION OR AS REQUIRED BY LAW WITHOUT NOTICE. END-USER AGREES TO BE BOUND BY SUCH CHANGES, AS THEY PERTAIN TO THE PARTICULAR SERVICES END-USER CHOOSES NOW OR MAY CHOOSE IN THE FUTURE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL ANY CHANGE DIMINISH ANY APPLICABLE SERVICE LEVEL AGREEMENTS ENTERED INTO AT THE TIME OF ANY ORDER. END-USER AGREES THAT ACCEPTANCE OF THIS AGREEMENT CONSTITUTES CONSENT TO THE USE OF END-USER’S ELECTRONIC RECORDS.

2. SERVICE:

The Precision Contact service allows the End-User to add new communication avenues to their business to complement the traditional main phone line and voice-only call center. This solution provides a cloud-based subscription service that provides the ability to communicate with customers through text messages and web chat. This service will utilize existing telephone numbers that are owned by the End User for texting (SMS) and provide a plug-in module to enable web chat functionality on the End User website. Upon registration of the service, Precision Contact will require a monthly fee. The term of the service contract will be governed by the agreed to service contract.

3. ASSUMPTIONS AND EXCLUSIONS:

- The End-User verifies that they represent the business that is administering the Precision Contact services and authorize Red Phoenix to act as an agent and affiliates' agent to text enable non-wireless telephone numbers owned and referenced herein for the management of text messaging (SMS) and related services.
- The End-User warrants that they have authority to use and manage the telephone number(s) in connection with the Services without the consent of any third party.
- Only US-based telephone numbers will be text-enabled through this service.
- Text messaging will only be supported if sent to and received from US-based telephone numbers.
- Only telephone numbers that are associated with landlines can be text-enabled and used with this service.
- Wireless numbers cannot be registered to use this service.
- Use of mobile applications that are provided with the Service will require access to a wireless

network. All fees associated with the wireless access and data usage are the responsibility of the End User.

4. MONTHLY FEES:

The monthly fee will be established via an online order form and the End-User may use the Precision Contact secure customer billing portal to review invoices and see billing and payment data. To establish service, the initial payment shall include the pro-rata monthly fees for the month of service initiation. Any non-recurring initial setup fees shall be set forth in the order form and collected in advance. Pricing excludes any applicable sales or use taxes, or any regulatory or telecommunications fees and taxes assessed on the service which will be separately itemized on the monthly invoice. End-User shall access the secure customer billing portal to setup payment methods including, if selected, credit card authorizations for payment. End-User is not authorized to sell, resell, authorize the use, or transfer the Services to another party without Red Phoenix's prior written consent, which may be withheld in Red Phoenix's sole discretion.

5. TERM:

The Term of this Agreement shall be set forth in the order as acknowledged by End-User and as reflected in the online order to Red Phoenix ("Term"). The Term of this Agreement shall commence on the "Commencement Date" as described in Section 7 ("Commencement of Billing"). If neither End-User nor Red Phoenix provides the other party written notice of cancellation at least 30 days prior to the end of the current Term, the Term will automatically renew for a 1-year term at the then-current rate. Alternatively, the End-User may elect to convert to a month-to-month Service upon 30 days notice prior to the end of the then-current. End-Users who are contracting Services from Red Phoenix on a month-to-month basis, must provide notice of cancellation at least 60 days prior to the end of the current monthly term or term will renew for an additional month.

6. CREDIT APPROVAL AND DEPOSITS:

Acceptance of any order will be subject at all times to credit approval or review by Red Phoenix or its designated third party. In the event End-User fails to make a payment to Red Phoenix or its designated third party of any undisputed amount, when due, for any consecutive 2 months out of a 6 month period; or has a material, negative change in financial condition (as determined by Red Phoenix in its reasonable discretion), Red Phoenix may require End-User to deliver another form of security as a condition to (i) Red Phoenix's acceptance of an order, (ii) continuation of any usage-based Services, or (iii) continuation of any non-usage-based Services.

7. COMMENCEMENT OF BILLING:

Billing for the Services subscriptions ordered by the End User will commence based upon the date of the subscription order for the Services. Upon activation of a subscription order, the End User will receive its first invoice on the next invoice date.

8. TERMINATION:

8.1 Termination: End-User may terminate Services after activation of a subscription order and

prior to the end of the term of Services (“Services Term”) upon 30 days prior notice to Red Phoenix (with sufficient detail necessary to identify the affected Services), and (ii) Red Phoenix may immediately terminate Services as the result of an uncured default by End-User, upon which, in each case, End-User shall pay Red Phoenix a termination charge equal to the sum of: (a) all unpaid amounts for Services provided through the date of termination; (b) any third party cancellation/termination charges related to the installation and/or termination of Services, (c) the non-recurring charges for any cancelled Services, provided Red Phoenix has initiated actual performance, if such charges have not already been paid; and, (d) the percentage of the monthly recurring charges for the terminated Services calculated from the effective date of termination as (1) 100% of the remaining monthly recurring charges that would have been incurred for the Services for months 1 through 12 of the Services Term, plus (2) 50% of the remaining monthly recurring charges that would have been incurred for the Services for months 13 through the end of the Services Term.

- 8.2 Termination: Discontinuation of Services:** Red Phoenix reserves the right, in accordance with applicable law, to suspend or discontinue the Services generally, or to terminate End-User’s Services, at any time, in Red Phoenix’s sole and absolute discretion, for any reason or for no reason. If Red Phoenix discontinues the Services generally, or terminates End-User’s Services without a stated reason, then End-User will only be responsible for charges accrued through the date of such termination, including a pro-rated portion of the final month’s charges.

9. OTHER SERVICES AND EXCLUSIONS:

- 9.1 Customer Data:** Some provided services allow the End-User to designate the level of access to customer data. The End-User is solely responsible for limiting access to only individuals that require access to this data.
- 9.2 Message Screening:** Red Phoenix has access to End User messages and reserves the right to screen the messages for content. Red Phoenix may choose to filter or completely block messaging traffic if it is determined that the Services are being used in an inappropriate or unlawful manner. This action can be taken at the discretion of Red Phoenix or as directed by a supporting message provider.
- 9.3 Message Storage:** Red Phoenix will continue to store message history for the length of the service contract and provide access to the End User through the Services. Red Phoenix reserves the right to limit the storage space in the future and may provide a mechanism that allows the End User to archive the history on their own storage medium.
- 9.4 Incompatibility with Other Services:**
- a) Privacy and Security:** The Services utilizes, in whole or in part, the public Internet and third-party networks to transmit messages. As a result, Red Phoenix cannot guarantee the privacy, confidentiality or security of End-User’s communications and Red Phoenix shall not be liable for any breach of privacy which may be experienced with regard to the Services.
- i) Red Phoenix is committed to respecting End-User Privacy relating to**

personally identifiable information. Upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, Red Phoenix may disclose personally identifiable information. Please refer to our privacy policy for additional information such as how we use your information. End-User's acceptance of Services constitutes agreement with, and acceptance of our privacy policy.

ii) End-User authorizes Red Phoenix or its designee to (i) investigate and/or review End-User's credit history.

iii) Red Phoenix intends to fully comply with the Communications Assistance for Law Enforcement Act ("CALEA"). End-User hereby agrees and consents to Red Phoenix's right to monitor and otherwise disclose the nature and content of your communications if and as required by CALEA without any further notice to you.

c) **Scheduled Maintenance:** Scheduled maintenance of the Services will not normally result in Services interruption or outage. However, in the event scheduled maintenance should require a Services interruption or outage, Red Phoenix will exercise commercially reasonable efforts to (i) provide End-User with 7 days' prior written notice of such scheduled maintenance, (ii) work with End-User in good faith to attempt to minimize any disruption in the End-User's Services that may be caused by such scheduled maintenance and (iii) perform such maintenance during the non-peak hours of 11:00 p.m. until 5:00 a.m. CST.

10. GENERAL TERMS APPLICABLE TO THIS PRECISION CONTACT SERVICE:

10.1 **Billing:** Red Phoenix will bill End-User certain charges, applicable taxes, including but not limited to, excise taxes and surcharges on recurring charges monthly in advance and other charges, if applicable, including but not limited to, usage-based charges, monthly in arrears. Unless otherwise specified on a particular invoice, all payments are due and payable in U.S. Dollars.

10.2 **Late Payments:** If any undisputed charges for the Services are due but unpaid for any reason, Red Phoenix may suspend or terminate the Services and all accrued charges shall be immediately due. Late payments are subject to a late payment charge of the lesser of 1.5% for each 30-day period that they remain unpaid or the maximum permitted by law. A fee will also be charged to activate a suspended account. No suspension or termination of the Services or of this Agreement shall relieve End-User from paying any amounts due hereunder. Termination of services will occur if non-payment persists for 60 days.

10.3 **Taxes and Fees:** End-User is responsible for all applicable Federal, State, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges, including fees collected by Federal and State regulatory agencies, now in force or enacted in the future, that arise from or as a result of End-User's subscription or use or payment for the Services. Such amounts are in addition to payment for the Services and will be billed to End-User as set forth in this Agreement. If End-User is exempt from payment of such taxes, End-User must provide Red Phoenix with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date

Red Phoenix receives such certificate.

- 10.4 Billing Disputes:** If End-User reasonably disputes any portion of an invoice, End-User must pay the undisputed portion of the invoice and submit written notice to Red Phoenix of the claim within 45 days of the date of the invoice, with sufficient detail of the nature of the claim, the amount and invoices in dispute and information necessary to identify the affected Service(s) for the disputed amount. Red Phoenix will investigate claims of disputed Services. If the dispute is resolved against the End-User, End-User will pay all invoiced amounts plus interest at the rate of 1.5% for each 30-day period that that invoice is overdue. If the dispute is resolved in favor of End-User, Red Phoenix shall not invoice End-User for disputed claims. Disposition of the dispute result is by sole judgment of Red Phoenix and is deemed final and binding.
- 10.5 Collection:** If End-User's Services are terminated, End-User will remain fully liable to Red Phoenix for all charges pursuant to this Agreement and any and all costs Red Phoenix may incur to collect such amounts, including, without limitation, collection costs and attorney's fees.
- 10.6 Fraudulent or Unauthorized Services Use Charges:** End-User will be responsible for all charges even if such charges are incurred as a result of fraudulent or unauthorized use of the Services, if such charges result from use associated with End-User's premises or equipment, including unauthorized use associated with security devices within the control of End-User. Notwithstanding the foregoing, End-User shall not be responsible for any fraudulent or unauthorized charges if such charges result from a security compromise to Red Phoenix's "Core Network". As used herein, "Core Network" shall mean those elements under Red Phoenix's direct control (and not within control of End-User).

10.7 LIMITATION OF LIABILITY

IN NO EVENT WILL RED PHOENIX, ITS DEVELOPMENT PARTNERS AND COMPANIES UNDER COMMON CONTROL WITH ANY OF THE FOREGOING AND ITS AND THEIR SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, VENDORS, ATTORNEYS OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO END-USER IN CONNECTION WITH THE SERVICES BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICES, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY OR ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT RED PHOENIX WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

- i) **Disclaimer of Liability for Billing Errors:** The liability of Red Phoenix for errors in billing that result in overpayment by the End-User shall be limited to a credit equal to the dollar amount erroneously billed. Furthermore, no errors shall

change or diminish End-User's obligation to pay for Services rendered or used.

10.8 INDEMNIFICATION: End-User shall defend, indemnify and hold harmless Red Phoenix, together with its development partners, and companies under common control with any of the foregoing and its and their shareholders, officers, directors, employees, subcontractors, vendors, insurers, attorneys and agents and any other service provider who furnishes services to End-User in connection with the Services, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney's fees) by, or on behalf of, End-User or any third party or user of the Services relating to End-User's use or users' use of the Services, any Devices or this Agreement.

10.9 WARRANTY:

RED PHOENIX MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICES OR ANY DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON- INFRINGEMENT OF ANY WARRANTY ARISING OUT OF USAGE OR TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICES WILL MEET END-USER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, RED PHOENIX DOES NOT WARRANT THAT THE SERVICES OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER RED PHOENIX, ITS PARENT AND SUBSIDIARY COMPANIES AND COMPANIES UNDER COMMON CONTROL WITH ANY OF THE FOREGOING NOR ITS SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, VENDORS, INSURERS, ATTORNEYS OR AGENTS OR ANY OTHER SERVICES PROVIDER OR VENDOR WHO FURNISHES SERVICES, DEVICES OR PRODUCTS TO END-USER IN CONNECTION WITH THE SERVICES, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO RED PHOENIX'S OR END-USER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, END-USER'S OR USER'S DATA, FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF RED PHOENIX'S OR ITS SERVICE PROVIDER'S OR VENDOR'S NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES OR DEVICE, IF ANY, BY RED PHOENIX OR RED PHOENIX'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

10.10 Termination: Discontinuation of Services: Red Phoenix reserves the right, in accordance with applicable law, to suspend or discontinue the Services generally, or to terminate End-User's Services, at any time, in Red Phoenix's sole and absolute discretion, for any reason or for no reason. Red Phoenix will provide 30 days notice of termination. If Red Phoenix discontinues the Services generally, or terminates End-User's Services, End-User will be responsible for charges accrued through the date of such termination, including a pro-rated portion of the final month's charges.

10.11 Force Majeure: Except for the obligation to pay monies due and owing, neither party shall be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside

the reasonable control of the party, including but not limited to, an Excused Outage, governmental actions, acts of terrorism, transportation or labor strikes, environmental conditions, fire, flood, riot, strike, life or health-threatening conditions including but not limited to pandemics or epidemics.

Notwithstanding the foregoing, Red Phoenix may terminate the Agreement without liability on the part of either party if an Excused Outage or other event of Force Majeure continues for more than 30 calendar days.

10.12 Confidentiality: During the Term of this Agreement, Red Phoenix and End-User may be exposed to the other's confidential or proprietary information ("Confidential Information"). Confidential Information shall exclude any information in the public domain or that is independently developed by the receiving party. Each party agrees to: (i) hold the Confidential Information in strict confidence; (ii) not to disclose any such Confidential Information to any person (except as required by court order, lawful process or as otherwise required by law); and (iii) not to use any of the other party's Confidential Information for its own or another's benefit. End-User agrees that any violation of this provision regarding confidentiality will result in irreparable harm to Red Phoenix and agrees that Red Phoenix shall have the right to seek a restraining order, injunction or any other remedies available at law or in equity. The parties agree to waive any applicable bond requirement for enforcement of this provision.

10.13 Notices: All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been delivered (a) on the date of personal delivery or transmission if sent by confirmed facsimile transmission or electronic mail transmission, (b) on the first business day following the date of delivery to a nationally recognized overnight courier service, or (c) on the fourth business day following the date of deposit in the United States mail postage prepaid, by registered or certified mail return receipt requested, in each case, addressed as follows, or to such other address or person as a party shall designate by notice to the others in accordance herewith:

If to Red Phoenix:
Red Phoenix
1023 South Greenville Avenue
Allen, Texas 75002

If to End-User:

(Address indicated on Order Form)

10.14 Dispute Resolution: Except for any injunctive relief sought under Section 12.4, any and all disputes, claims or controversies ("Disputes") arising out of this Agreement must undergo the following dispute resolution process:

- i) **Individual Dispute Resolution:** All claims arising out of this Agreement will be brought individually and mediation will be for individual claims only.
- ii) **Good Faith Negotiations:** Prior to filing for mediation, the party claiming the Dispute must provide the other party with a written summary of the facts and

circumstances giving rise to the Dispute. The parties each must appoint a representative executive with authority to settle the Dispute and within 30 days after receipt of the summary, the parties must meet and confer, in good faith, in an attempt to resolve the Dispute.

iii) **Mediation:** If, 45 days after receipt of the written summary, the Dispute remains unresolved then it must be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it must be submitted to JAMS, or its successor, for final and binding arbitration. Either party may commence mediation by providing a written request for mediation, outlining the subject of the Dispute and the relief requested to JAMS and the other party. The parties must cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties must participate in the mediation in good faith, and they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable is not rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.15 Assignment: Red Phoenix may assign or delegate its rights and obligations hereunder, in whole or in part, to any subsidiary or affiliated company. End-User shall not assign this Agreement without Red Phoenix's prior written consent. Any attempted assignment in violation of this provision is void.

10.16 Binding Effect: This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

10.17 Waiver of Terms and Conditions: Failure of either party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

10.18 Severability: If any provision of this Agreement is for any reason held to be illegal or unenforceable, all other provisions of this Agreement will remain in full force and effect and the illegal or unenforceable provision shall be replaced by a mutually acceptable legal and enforceable provision consistent with the parties' original intent.

10.19 No Third-Party Beneficiaries: No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement or cause of action or creates any other third-party beneficiary rights.

10.20 Governing Law: This Agreement will have been made, executed and delivered in the State of Texas and will be governed and construed for all purposes in accordance with the laws of the State of Texas, without giving effect to conflict of law provisions. The parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.

10.21 Entire Agreement and Modification: This Agreement, as may be amended from time to

time without notice and other terms and conditions from Red Phoenix supersedes all prior or contemporaneous proposals, communications and negotiations, both oral and written, relating to the subject matter of this Agreement and constitutes the entire agreement between Red Phoenix and End-User with respect to the subject matter herein and governs the use of the Services by End-User, its employees, visitors and guests. This Agreement shall be supplemented by the order form signed by the End-User to initiate Service.

By submitting an Order Form, End-User is agreeing to abide by these Terms of Use.