

# **Subscriber Agreement and User Code of Conduct**

This agreement ("Agreement") is between Silverback ASP ("we," "us" or "Silverback ASP") and the user ("you," "user" or "Customer") of Silverback ASP's enhanced IP communications services and any related products or services ("Service"). This Agreement governs both the Service and any devices, such as Internet Access, Soft phone, IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service. By activating the Service, you acknowledge that you have read and understood, and you agree, to the terms and conditions of this Agreement, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

## 1. SERVICE

### 1.1 Term

Service is offered on a monthly basis for a term, which begins on the date that Silverback ASP activates your Service and ends on the day before the same date in the following month. Subsequent terms of this Agreement automatically renew on a monthly basis without further action by you unless you give Silverback ASP written notice of non-renewal at least ten [10] days before the end of the monthly term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. Expiration of the term or termination of Service does not excuse the Customer from paying all unpaid, accrued charges due in relation to the Agreement.

### 1.2.1 Use of Service and Device

if you have subscribed to Silverback ASP's enhanced IP communications services, the Service and Device are provided to you as a responsible Internet user. This means that you are not to resell or transfer the Service or the Device to any other person for any purpose, or make any charge for the use of the Service, without express written permission from Silverback ASP in advance. You agree that the Silverback ASP enhanced IP communication services do not confer the right to use the service for operating spiders programs, spamming, auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting. Silverback ASP reserves the right to immediately terminate or modify the Service, if Silverback ASP determines, in its sole discretion, that Customer's Service is being used for any of the aforementioned activities.

### 1.3 Lawful Use of Service and Device

#### 1.3.1 Prohibited Uses:

You agree to use the Service and Device only for lawful purposes. This means that you agree not to use them for transmitting or receiving any communication or material of any kind when in Silverback ASP's sole judgment the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, provincial, national or international law or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, provincial, national or international law. Silverback ASP reserves the right to terminate your service immediately and without advance notice if Silverback ASP, in its sole discretion, believes that you have violated the above restrictions, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. You are liable for any and all use of

the Service and/or Device by any person making use of the Service or Device provided to you and agrees to indemnify and hold harmless Silverback ASP against any and all liability for any such use that fails to comply with this Section 1.3.1. If Silverback ASP, in its sole discretion believes that you have violated the above restrictions, Silverback ASP may forward the objectionable material, as well as your communications with Silverback ASP and your personally identifiable information to the appropriate authorities for investigation and prosecution.

#### 1.3.2 Use of Service and Device by Customers outside the Singapore:

While we encourage use of the Service within Singapore to other countries, Silverback ASP does not presently offer or support the Service to customers located in other countries. If you remove the Device to a country other than Singapore and use the Service from there, you do so at your own risk, including the risk that such activity violates local laws in the country where you do so. You are liable for any and all use of the Service and/or Device by any person making use of the Service or Device provided to you.

#### 1.4 Loss of Service Due to Power Failure

you acknowledge and understand that the Service does not function in the event of power failure. Should there be an interruption in the power supply; the Service will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the Service.

#### 1.5 Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software

The Service and Device and any firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on Silverback ASP's website(s) and documentation are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of Silverback ASP are and shall remain the exclusive property of Silverback ASP and nothing in this Agreement shall grant you the right to right or license to use such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and that the Device is exclusively for use in connection with the Service. If you decide to use the Service through an interface device not provided by Silverback ASP, which Silverback ASP reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Service and you will indemnify and hold harmless Silverback ASP against any and all liability arising out of your use of such interface device with the Service.

#### 1.6 Tampering with the Device

you agree not to change the electronic serial number or equipment identifier of the Device, or to perform a factory reset of the Device, without express permission from Silverback ASP in each case whereas Silverback ASP is supporting the Device in each instance. Silverback ASP reserves the right to terminate your Service should you tamper with the supported Device, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

#### 1.7 Theft of Service

You agree to notify Silverback ASP immediately, in writing or by calling the Silverback ASP customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft or fraudulent use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. You will be liable for all use of the Service using a Device stolen from you and any and all stolen Service or fraudulent use of the Service.

#### 1.8 Return of Device

In the case where there may be a Device then it may be returned to Silverback ASP within fourteen (14) days of the line termination to receive a credit for the \$50 disconnect fee (refer to section 4.6 of this document regarding termination fees), provided: (i) Customer retained proof of purchase and original packaging and (ii) contents are undamaged and in original condition and (iii) and all documentation and packaging materials are returned. If Customer receives cartons and/or Devices that are visibly damaged, please note the damage on the carrier's freight bill or receipt and keep a copy or reject the shipment to be returned to Silverback ASP. Keep the original carton, all packing materials and parts intact and contact Silverback ASP's customer care department immediately. Warranty coverage varies depending on the type of Device that Customer chooses. Please refer to the Silverback ASP warranty materials included in the customer guide with the packaging of your Device(s).

#### 1.9 Number Transfer on Service Termination

Silverback ASP may, solely at the Company's discretion, release the telephone number that was ported in to Silverback ASP by you and used in connection with your Service provisioned by Silverback ASP to your new service provider, if such new service provider is able to accept such number, upon your termination of the Service, and provided (i) your account has been terminated; and (ii) your Silverback ASP account is completely current including payment for all charges and disconnect fees; and (iii) you request the transfer upon terminating your account.

#### 1.10 Service Distinctions

You acknowledge and understand that the VOIP Service is NOT a telephone service. Important distinctions exist between telephone service and the enhanced communication service offering provided by Silverback ASP. The Service is subject to different regulatory treatment than standard phone service. This treatment may limit or otherwise affect your rights of redress before national and provincial telecommunications regulatory agencies.

### 2. EMERGENCY SERVICES- 995 DIALING

#### 2.1 Non-Availability of Traditional 995 Dialing Service:

You acknowledge and understand that the Service does NOT support traditional 995 accesses to emergency services. Silverback ASP 995 dialing cannot be used in conjunction with the Silverback ASP Service application. You agree to inform any household residents, guests and other third persons that may be present at the physical location where you utilize the Service as to the non-availability of traditional 995 dialing from your Silverback ASP Service and Device(s).

### 3. CHANGES TO THIS AGREEMENT

Silverback ASP may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted. Agreement posted supercedes all previously agreed to electronic and written Terms of Service.

## 4. CHARGES / PAYMENTS / DEFAULT / TAXES / TERMINATION

### 4.1 Billing

You must give us a valid Company Name, Contact Persons, Address and Phone Numbers when the Service is activated. If you close your Phone or Internet Access account or your billing address changes, or the service is cancelled and replaced, you must advise Silverback ASP at once. We will bill all charges monthly to your address, including but not limited to: activation fees, monthly Service fees, international usage charges, advanced feature charges, equipment purchases and shipping and handling charges. Silverback ASP reserves the right to bill at more frequent intervals if the amount due at any time exceeds S\$100.

### 4.2 Billing Disputes

you must notify Silverback ASP in writing within 7 days after receiving your statement if you dispute any Silverback ASP charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address:

Billing Department  
Silverback ASP  
275 #02-08 Thomson Road, Novena Singapore 307645  
or  
[accounts@silverback.com](mailto:accounts@silverback.com)

### 4.3 Payment

Silverback ASP only accepts payments by Credit Card, direct deposit, wire transfer or company Check. Your initial use of the Service authorizes Silverback ASP to charge the customer account number on file with Silverback ASP, including any changed information given Silverback ASP. Silverback ASP may terminate your Service at any time in its sole discretion, if any charge to your account on file with Silverback ASP is declined or reversed or in case of any other non-payment of account charges. Termination of Service or non-payment leaves you FULLY LIABLE to Silverback ASP for ALL CHARGES ACCRUED BEFORE TERMINATION and for charges incurred by Silverback ASP owing to your non-payment, such as (but not limited to) collection costs and attorney's fees.

### 4.4 Termination/Discontinuance of Service

Silverback ASP reserves the right to suspend or discontinue providing the Service generally, or to terminate your Service, at any time in its sole discretion. If Silverback ASP discontinues providing the Service generally, or terminates your Service in its discretion without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper use of the Service or Device (such as, but not limited to, your attempts to hack, disrupt, or misuse the Service), you will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

### 4.5 Taxes

Customer is responsible for, and shall pay any applicable national, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to

your account. If Customer is exempt from payment of such taxes, it will provide Silverback ASP with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date Silverback ASP receives the Tax Exempt Document.

#### 4.6 Disconnect Fee

Customer will be charged a disconnect fee of \$50 per IP voice line upon termination of Service for any reason or for convenience by Customer. The disconnect fee becomes due and payable immediately upon termination and will be billed directly to Customer. If Customer has multiple lines, Customer will be charged a disconnect fee of \$50 per line for each line disconnected. To receive a credit for the disconnect fee, Customer must return the Device(s) undamaged and in original condition, packaging included, within fourteen (14) days of termination. Silverback ASP will not credit Customer if the Device(s) is damaged or not in its original condition as received by the Customer. In the event Customer disconnects multiple lines, Silverback ASP will issue Customer a credit for all disconnect fees upon receipt of all Devices (e.g., Multimedia Terminal Adapters, etc.) in accordance with this Section.

### 5. WARRANTY and LIABILITY LIMITATIONS / INDEMNIFICATION

#### 5.1 Limitation of Liability

Silverback ASP shall not be liable for any delay or failure to provide the Service, including 995 dialing, at any time or from time to time, or any interruption or degradation of voice or service quality that is caused by any of the following:

- 1.) Act or omission of an underlying carrier, service provider, vendor or other third party;
  - 2.) Equipment, network or facility failure;
  - 3.) Equipment, network or facility upgrade or modification;
  - 4.) Force majeure events such as (but not limited to) acts of god; strikes; fire; war; riot; government actions;
  - 5.) Equipment, network or facility shortage;
  - 6.) Equipment or facility relocation;
  - 7.) Service, equipment, network or facility failure caused by the loss of power to Customer; or
  - 8.) Any other cause that is beyond Silverback ASP's control, including without limitation the failure of an incoming or outgoing communications, the inability of communications to be connected or completed, or degradation of voice quality.
- Silverback ASP's liability for any failure or mistake shall in no event exceed Service charges with respect to the affected time period.

#### 5.2 No Consequential Damages

In no event shall Silverback ASP, its officers, directors, employees, affiliates or agents or any other service provider who furnishes services to Customer in connection with this Agreement or the Service be liable for any incidental, indirect, special, punitive, exemplary or consequential damages, or for any damages, including but not limited to loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use the Service, including inability to be able to dial 995 or to access emergency service personnel through the Service. The limitations set forth herein apply to claims founded in breach of contract, breach of warranty, products liability, tort and any and all other theories of liability and apply whether or not Silverback ASP was informed of the likelihood of any particular type of damages.

#### 5.3 Indemnification

Customer agrees to defend, indemnify, and hold harmless Silverback ASP, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all

claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third party or user of Customer's Service, relating to this Agreement, or the Device. This paragraph shall survive termination of this Agreement.

#### 5.4 No Warranties on Service

Silverback ASP makes no warranties, express or implied, including but not limited to, any implied warranties of merchantability or fitness of the Service or the Device for a particular purpose. Silverback ASP does not warrant that the Service will be without Service failure, delay, interruption, error, and degradation of voice quality or loss of content, data or information. Neither Silverback ASP nor its officers, directors, employees, affiliates or agents or any other service provider or vendor who furnishes services or products to Customer in connection with this Agreement or the Service will be liable for unauthorized access to Silverback ASP's or Customer's transmission facilities or premises equipment or for unauthorized access to, or alteration, theft or destruction of, Customer'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 Silverback ASP's or its service provider's or vendors' negligence. Statements and descriptions concerning the Service or Device, if any, by Silverback ASP or Silverback ASP's agents or installers are informational and are not given as a warranty of any kind.

#### 5.5 No Warranties, or Limited Warranties, for Devices

If Customer purchased the Device new from Silverback ASP and the Device included a limited warranty at the time of purchase, Customer must refer to the separate limited warranty document for information on the limitation and disclaimer of certain warranties. If Customer's Device did not include a limited warranty from Silverback ASP at the time of purchase, Customer agrees that it accepts its Device "as is" and that Customer is not entitled to replacement or refund in the event of any defect.

#### 5.6 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.

#### 5.7 Content

you are liable for any and all liability that may arise out of the content transmitted by or to you or Users using the Services. You shall assure that your or User's use of the Services and content will at all times comply with all applicable laws, regulations and written and electronic instructions for use by Silverback ASP. Silverback ASP reserves the right to terminate or suspend affected Services, and/or remove Your or Users' content from the Services, if Silverback ASP determines that such use or content doer not conform with the requirements set forth in this Agreement or interferes with Silverback ASP's ability to provide Services to you or others or receives notice from anyone that Your or Users' use or Content may violate any laws or regulations. Silverback ASP's actions or inaction under this Section shall not constitute review or approval of your or Users' use or Content. You will indemnify and hold Silverback ASP against any and all liability arising from the content transmitted by or to you or to Users using the Services. A "User" means any person, whether authorized or unauthorized, using the Service and/or Device provided to you.

## 6. GOVERNING LAW / RESOLUTION OF DISPUTES

### 6.1 Mandatory Arbitration

Any dispute or claim between Customer and Silverback ASP arising out of or relating to

the Service or Device provided in connection with this Agreement shall be resolved by arbitration before a single arbitrator administered by the Singapore Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join a punitive or certified class action to arbitration or seek to consolidate or bring previously consolidated claims in arbitration. Customer acknowledges that this arbitration provision constitutes a waiver of any right to a jury trial.

## 6.2 Governing Law

The Agreement and the relationship between you and Silverback ASP shall be governed by the laws of the Singapore. You and Silverback ASP agree to submit to the personal and exclusive jurisdiction of the courts located within Singapore. The failure of Silverback ASP to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## 6.3 Entire Agreement

This Agreement and the rates for Services found on Silverback ASP's website and documentation constitute the entire agreement between you and Silverback ASP and govern your use of the Service, superseding any prior agreements between you and Silverback ASP and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon Silverback ASP unless and until posted in accordance with Section 3 hereof.

## 6.4 Severability

if any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

## 7. PRIVACY

Silverback ASP Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Silverback ASP is not liable for any lack of privacy, which may be experienced with regard to the Service.

## 8. CHANGES; NOTICES

Notice to Customer of any changes to the "Terms of Service" shall be considered given by posting to the "Service Announcements" section of the Silverback ASP Web Site or email directly to customer. Notice will be considered received by Customer, and such changes will become binding on Customer, on the date posted to the Silverback ASP Web Site or emailed to customer and no further notice by Silverback ASP is required.

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