

# Terms of Use

## 1. ACKNOWLEDGMENT AND ACCEPTANCE OF TERMS OF SERVICE.

sipgate, Inc. („we“ or „us“ or „our“) makes available internet-based communication services as described at [www.sipgate.com](http://www.sipgate.com) (the „Service“). The Service does not generally provide access to the traditional telephone networks or cellular networks. You can only call other users who have registered for the Service or can use it to connect a VoIP phone to a third party service. The Service is owned and operated by us and is provided under the terms and conditions of these Terms of Service („Terms“) and any operating rules, policies, and procedures that may be published from time to time on this web site by us.

## 2. ELIGIBILITY.

The Service is available to individuals who are eighteen (18) years of age or older (each, an „Individual“) as well as corporations and other organizations (each a „Company“) who can form legally binding contracts under applicable law („you“ or „your“). If you do not qualify, please do not attempt to use the Service. We will be entitled to rely on any notice received by us from you. We may refuse to offer the Service to any person and may change our criteria for eligibility, at any time, in our sole discretion. We retain the right to terminate your account and your rights to use the Service for any reason including if we believe that any registration data you provide („Registration Data“) is or becomes untrue, inaccurate, not current, or incomplete.

## 3. MODIFICATIONS TO RULES.

We may change these Terms from time to time in our discretion. Upon any change in these Terms, we will notify you by posting the changes at [www.sipgate.com](http://www.sipgate.com). Your continued use of the Service after the posting of the amended Terms on this web site constitutes your affirmative acknowledgement of and agreement to abide and be bound by the Terms, as amended.

## 4. MODIFICATIONS TO SERVICE.

We reserve the right to modify or discontinue the Service, temporarily or permanently, with or without notice to you, and we are not obligated to support or update the Service. We will not be liable to you or any third party in the event that we exercise our right to modify or discontinue the Service.

## 5. ACCOUNT, PASSWORD AND SECURITY.

Upon registration, we will provide you with a password. You are responsible for maintaining the confidentiality of your password. We will also assign you a telephone number. Once you register your telephone number with us, you will be able to begin accessing the Service. Furthermore, you are entirely responsible for any and all activities which occur under your password, account, or telephone number; provided that a Company is entirely responsible for any and all activities of its employees, agents, and representatives. Telephone numbers are assigned and reassigned at the our discretion and may not be transferred without our permission.

## 6. FEES.

We do not currently charge any fees to use the Service. We reserve the right to change this policy at our sole discretion. You are responsible for procuring and paying the costs for any software, hardware, or internet/broadband connection charges necessary to use the Service.

## 7. PROPRIETARY RIGHTS.

You acknowledge we own and/or use under license all intellectual and other proprietary rights contained, embodied in, or with respect to the Service (the „Intellectual Property“). These Terms do not transfer any right, title, or interest in or to the Service or the Intellectual Property to you, and you may not copy, reproduce, distribute, or create derivative works from Service or the Intellectual Property without express authorization from us. We retain the unlimited, perpetual right to access, collect, compile, market, sell or otherwise use any information that we collect or process through or in connection with the Service. Furthermore, we may use without restriction any information that we independently develop.

## 8. CONDUCT.

You are solely responsible for your actions and the content of your transmissions through or in connection with the Service, it being understood that each employee acts on behalf of the Company with which such employee is associated in all actions and submissions on or in connection with the Service. You agree:

- a. to abide by all applicable local, state, national, and international laws and regulations in your use of the Service;
- b. not to use the Service for illegal purposes;
- c. not to use or attempt to use another person's or entity's account, telephone number, service or system without authorization from the owner;
- d. to comply with all laws regarding the transmission of voice or technical data (including all export laws, regulations, and restrictions of the United States);

- e. not to „stalk“, threaten, or harass anyone through, in connection with, or utilizing any data collected through the Service;
- f. that we neither endorse the content of any of your communications nor assume any responsibility for any threatening, libelous, obscene, harassing or offensive material contained in such materials, or any crime facilitated by use of the Services;
- g. not to interfere or disrupt networks connected to the Service or otherwise attempt to interfere with the proper function of the Service; and
- h. not to attempt to obtain unauthorized access to the Service.

We may, in our sole discretion, immediately terminate your access to the Service should your conduct fail to conform with any provision of this Section 8.

#### 9. DISCLAIMER OF WARRANTIES.

USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN „AS IS“ „AS AVAILABLE“ BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS WELL AS ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. WE MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY CONTENT OR ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### 10. LIMITATION OF LIABILITY.

NEITHER WE NOR ANY OF OUR OFFICERS, AFFILIATES, MANAGERS, MEMBERS, AGENTS OR EMPLOYEES, WILL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL EXPENSES, COSTS, DAMAGES, LOSS OF PROFITS, LOSS OF EARNINGS OR LOSS OF BUSINESS OPPORTUNITIES RESULTING DIRECTLY OR INDIRECTLY FROM THE RELIANCE UPON, USE OF OR THE INABILITY TO USE THE SERVICE OR FOR COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS AND SERVICES OR RESULTING FROM UNAUTHORIZED ACCESS TO, DELETION OR ALTERATION OF YOUR TRANSMISSIONS OR DATA OR FAILURE OF THE SERVICE TO STORE YOUR TRANSMISSIONS OR DATA, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE PROPERTY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE SERVICE, YOUR EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE. OUR LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCES IS LIMITED TO THE AMOUNT OF FEES RECEIVED BY US FROM YOU, IF ANY, IN THE IMMEDIATELY PRECEDING TWO (2) MONTH PERIOD. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### 11. RISK ALLOCATION.

You agree, in connection with any use of the Service, to release us (and our officers, directors, shareholders, employees and agents) from any and all claims, demands and damages, of any type and nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way connected with use of the Service by or on behalf of yourself. You agree to indemnify, defend and hold harmless us, our parents, subsidiaries, affiliates, shareholders, directors, officers, and employees, from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Service, your violation of these Terms, or the infringement by you, or any other person using your account or password, of any right of any person or entity.

#### 12. TERMINATION.

Either you or we may terminate access to the Service with or without cause at any time and effective immediately. Termination will be accompanied by a written or electronic notice to the other party. We will not be liable to you or any third party for termination of the Service. Should you object to any provision of these Terms or any subsequent modifications or become dissatisfied with the Service in any way, your only recourse is to immediately:

- a. terminate use of the Service; and
- b. notify us of termination.

Upon termination of the Service, your right to use the Service will immediately cease.

#### 13. APPLICABLE LAW & GENERAL PROVISIONS.

This Agreement is governed by the laws of the State of Delaware. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. This is the entire agreement between us and you relating to the Service and it supersedes any prior representations, discussions, undertakings, end user agreements, communications or advertising relating to the Software.

#### 14. COPYRIGHTS & TRADEMARKS.

sipgate® is a registered trademark in the United States and other countries used under permission by sipgate, Inc.