

## **OLAFE, LLC** **SERVICE GUIDE**

### **INTRODUCTION**

This Service Guide is part of a binding agreement between OLAFE, LLC (“OLAFE,” “we,” “us” or “our”) and you and, if applicable, the company or other legal entity you represent (collectively, “you”). This service guide is incorporated by reference into an agreement that you signed (the “Agreement”) and is a part of that Agreement as if fully set forth therein.

Services will be provided to you on the terms and conditions set forth herein and in the Agreement. Capitalized terms used herein that are not otherwise defined shall have the meanings set forth in the Agreement.

The terms and conditions in the “GENERAL TERMS AND CONDITIONS” section below are applicable to all Services unless otherwise indicated. We may, in our sole discretion, change our prices, fees, the Services and/or the terms and conditions of this Service Guide in the future.

### **GENERAL TERMS AND CONDITIONS**

#### **1. CHARGES AND BILLINGS**

a. *Charges, Fees, and Taxes That You Must Pay.* You agree to pay all charges applicable to the Services, as set forth on the Proposal attached to the Agreement, including, but not limited to, installation charges, monthly service charges, equipment charges, and service call charges. You also agree to pay all applicable federal, state, and local taxes (however designated) and any fees or payment obligations imposed by governmental or quasi-governmental bodies for the sale, installation, use, or provision of the Services. You agree to pay any regulatory recovery, billing, administrative, or other cost recovery fees which OLAFE

invoices you, including, but not limited to, public, educational and governmental access and universal service. You will be responsible for paying any government imposed fees and taxes that become applicable retroactively. We will provide you with notice and an effective date of any change in our prices or fees, unless the change in price is related to a change in governmental or quasi-governmental taxes, fees or assessments, in which case we may elect not to provide notice except where required by applicable law. Not all fees apply to all Services.

b. *How We Will Bill You.* Billing for a Service will commence on the earlier of (i) the date we enable the Services and they become available for use, or (ii) 10 days after installation. If you self-install OLAFE Equipment, billing for the Service commences on the earliest of (i) the day on which you picked up OLAFE Equipment at our service center, (ii) the day you install the Service, or (iii) five (5) days after the date we ship the OLAFE Equipment to you. You will generally be billed monthly, in advance, for recurring service charges, equipment charges, and fees. In addition, you must pay, on or before the day we install any or all of the Services, the first month’s service charges, equipment charges, any deposits, any non-recurring charges and any installation charges. You may be billed for some Services individually after they have been provided to you. Your first bill may include pro-rated charges from the date you first begin receiving Services, as well as monthly recurring charges for the next month and charges for non-recurring charges. If you make partial payment of any bill, we will apply that payment to the outstanding charges in the amounts and proportions that we determine. However, we do not waive our rights to collect the full balance owed to us by accepting partial payment.

c. *Third-Party Charges That Are Your Responsibility.* You acknowledge that you may incur charges with third-party service providers that are separate and apart from the amounts charged by us. These may include charges resulting from accessing on-line services, purchasing or subscribing to other offerings via the Internet or any other on-line options available through our Services. You are solely responsible for all charges payable to third parties, including all applicable taxes. In addition, you are solely responsible for protecting the security of credit card and other personal information provided to others in connection with such transactions.

d. *Alternative Billing Arrangements.* In certain cases, we may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between you and the third party. We shall not be responsible for any dispute regarding these charges between you and any third party. You must address all such disputes directly with the third party.

e. *Payment by Credit Card or Check.* If you use a credit card to pay for our Services, that use is governed by the card issuer agreement for that card, and you must refer to that agreement for your rights and liabilities as a cardholder. If we do not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand. If you make payment by check, you authorize us to collect your check electronically. You agree that you may not amend or modify this Agreement with any restrictive endorsements (such as "paid in full"), releases, or other statements on or accompanying checks or other payments accepted by us and that any such notations shall have no legal effect.

f. *Our Remedies if You Pay Late or Fail to Pay.*

i. *Late or Non-Payments:* You may be billed fees, charges and assessments related to late payments or non-payments if for any reason (i) OLAFE does not receive from you any required payment for the Services within 30 days after the date on the invoice or (ii) you pay less than the full amount due for the Services; OLAFE reserves the right to bill you a late fee equal to the lesser of 1.5% of the unpaid balance due, or the maximum percentage allowed under applicable law.

ii. *Fees Not Considered Interest or Penalties:* OLAFE does not anticipate that you will fail to pay for the Services on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or nonpayment are not interest, credit service charges, or finance charges or penalties. Rather, they are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when we set such fees, charges, and assessments, because we cannot know in advance: (a) whether you will pay for the Services on a timely basis, if ever; (b) if you do pay late, when you will actually pay; and (c) what costs we will incur because of your late payment or non-payment.

iii. *Collection Costs:* If we are required to use a collection agency or attorney to collect money owed by you, you agree to pay the reasonable costs of collection. These costs include but are not limited to any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.

iv. *Suspension/Disconnect:* If you fail to pay the full amount due for any or all of the Services then OLAFE, in its sole discretion and in accordance with applicable law, may suspend or disconnect any or all of the Services you receive.

g. *Reconnection Fees and Related Charges.* Should you wish to resume a Service after any suspension, we may require you to pay a reconnection fee. Should you wish to reinstate any or all Services after disconnection, we may require you to pay an installation fee and/or service activation fee. These fees are in addition to all past due charges and other fees. Reconnection of the Services is subject to our credit policies, the Agreement and applicable law.

h. *Our Right to Make Credit Inquiries.* You authorize us to make inquiries and to receive information about your credit experience from others, to enter this information in your file, and to disclose this information concerning you to appropriate third parties for reasonable business purposes.

i. *Your Responsibilities Concerning Billing Questions.* Subject to applicable law, if you intend to dispute a charge or request a billing credit, you must contact us in writing within thirty (30) days of the date on the bill. You waive any disputes or credits that you do not report within thirty (30) days.

## **2. REFUNDABLE DEPOSIT**

We may require you to pay a refundable deposit when you activate the Service(s). We may also require you to pay a refundable deposit after activation of the Service(s) if you add equipment and/or Service(s) or if you fail to pay any amounts when they are due. If we disconnect your Service(s) or are otherwise required under applicable law to refund the deposit, we shall within forty-five (45) days or as otherwise specified by applicable law return a sum equal to the deposit(s) you paid (without interest unless otherwise required by law) minus any amounts due on your account (including without limitation, any amounts owed for Services or for any OLAFE Equipment that is damaged, altered, or not returned).

## **3. CHANGES TO SERVICES**

Subject to applicable law, we have the right to change our Services, equipment and rates or charges, at any time with or without notice. We also may rearrange, delete, add to or otherwise change features or offerings contained in the Services, including but not limited to, functionality, hours of availability, and customer equipment requirements. If we do give you notice, it may be provided via email to the account manager, on your monthly bill, as a bill insert, in a newspaper or other communication permitted under applicable law. Please take the time to read any notices of changes to the Service(s). We are not liable for failure to deliver any Services, features or offerings except as provided in Section 9(g).

## **4. ACCESS TO YOUR PREMISES**

You agree to allow us and our agents the right to enter at reasonable times your property upon which the Services and/or equipment will be provided (the "Premises"), for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Services and/or equipment used to receive any of the Services. You warrant that you are either the owner of the Premises or that you have the authority to give us access to the Premises. If you are not the owner of the Premises, you are responsible for obtaining any necessary approval from the owner to allow us and our agents into the Premises to perform the activities specified above. In addition, you agree to supply us or our agent, if we ask, the owner's name, address and phone number and/or evidence that the owner has authorized you to grant access to us and our agents to the Premises.

## **5. MAINTENANCE AND OWNERSHIP OF EQUIPMENT**

a. *OLAFE Equipment.* You agree that except for the wiring installed inside the Premises ("Inside Wiring"), all equipment we provide to you ("OLAFE Equipment")

belongs to us or other third parties and will not be deemed fixtures or in any way part of the Premises. OLAFE Equipment includes all new or reconditioned equipment installed, provided or leased to you by us or our agents, including but not limited to, cabling or wiring and related security/firewall devices, thin client terminals, wired and wireless printer management devices, wired and wireless gateway/routers, any other hardware and all software or "downloads" to OLAFE Equipment. You agree to use OLAFE Equipment only for the Services pursuant to this Agreement. We may remove or change the OLAFE Equipment at our sole discretion at any time the Services are active or following the termination of your Service(s). You agree to allow us access to the Premises for these purposes. You may not sell, lease, abandon or give away the OLAFE Equipment, or permit any other system provider to use the OLAFE Equipment. The OLAFE Equipment may only be used in the Premises. At your request, we may relocate the OLAFE Equipment in the Premises for an additional charge, at a time agreeable to you and us. You understand and acknowledge that if you attempt to install or use the OLAFE Equipment or Services at a location other than the Premises, the Services may fail to function or may function improperly. You agree that you will not allow anyone other than OLAFE employees or agents to service the OLAFE Equipment. We suggest that the OLAFE Equipment in your possession be covered by your homeowners, renters, general liability, or other insurance. You will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the OLAFE Equipment to us in an undamaged condition.

#### *b. Customer Equipment*

i. **Responsibility:** OLAFE has no responsibility for the operation or support, maintenance or repair of any equipment, software or services that you elect to use in connection with the Services or OLAFE

Equipment (the "Customer Equipment"). Whether a device is owned by you or us, we have the unrestricted right, but not the obligation, to upgrade or change the firmware in these devices remotely or on the Premises at any time that we determine it is necessary or desirable in order to provide Services to you in accordance with our specifications and requirements.

ii. **Non-Recommended Configurations:** Customer Equipment that does not meet OLAFE's minimum technical or other specifications constitutes a "Non-Recommended Configuration." Neither OLAFE nor any of its affiliates, suppliers or agents warrant that a non-recommended configuration will enable you to successfully install, access, operate or use the Services. You acknowledge that any such installation, access, operation, or use could cause customer equipment to fail to operate or cause damage to Customer Equipment, you, your Premises or OLAFE Equipment. Neither OLAFE nor any of its affiliates, suppliers or agents shall have any liability whatsoever for any such failure or damage. OLAFE reserves the right to deny you customer support for the Services and/or terminate Service(s) if you use a Non-Recommended Configuration.

iii. **No Unauthorized Devices or Tampering:** You agree not to attach any unauthorized device to OLAFE Equipment or the Services. If you make any unauthorized connection or modification to OLAFE Equipment or the Services or any other part of the OLAFE network, we may terminate your Service and recover such damages as may result from your actions. Unless expressly authorized by us, you agree not to install anything to intercept or receive any of the Services offered over our network or to assist any person in intercepting or receiving any of the Services offered over our network. You also agree that you will not attach anything to the Inside Wiring, OLAFE Equipment or Customer Equipment, whether installed by you or us, which singly or together impairs

the integrity of our network or degrades our network's signal quality or strength or creates signal leakage. You hereby agree that we may recover damages from you for tampering with any OLAFE Equipment or any other part of our network or for receiving unauthorized Service(s). You agree that it would be difficult if not impossible to calculate precisely the lost revenue resulting from your receipt of unauthorized Service(s) or the alteration or improper use of OLAFE Equipment. You therefore agree to pay us as liquidated damages, the sum of \$500.00 per device used to receive the unauthorized Services in addition to our cost to replace any altered, damaged or unreturned OLAFE Equipment or other equipment owned by OLAFE, including any incidental costs. The unauthorized reception of the Services may also result in criminal fines and/or imprisonment. You will be liable for all authorized and unauthorized OLAFE Services used by you or others through your Premises or other access. You agree to notify us immediately in writing or by calling our customer service line during normal business hours if you become aware at any time that any OLAFE Equipment has been stolen or that your Services are being stolen or used without your authorization. When you call or write, you must provide your account number and a detailed description of the circumstances of the theft of any OLAFE Equipment or unauthorized use of your OLAFE Services. If you fail to notify us in a timely manner within 30 days, your Services may be terminated without notice, with additional charges to you.

c. *Inside Wiring.* You may install Inside Wiring, such as additional wiring and outlets, provided it does not interfere with the normal operations of our Services. If you have us install Inside Wiring, we will charge you for that service. Regardless of who installed it, we consider the Inside Wiring your property or the property of whomever owns the Premises. Accordingly, you are responsible for the repair and maintenance of the Inside Wiring, unless

you and OLAFE have agreed otherwise in writing. (If you do not own the Premises, contact your landlord or building manager about the repair or maintenance of Inside Wiring.) If you have us repair or maintain the Inside Wiring, we will charge you for that service.

## 6. USE OF SERVICES

a. *Limited Use.* You agree that the Services and the OLAFE Equipment will be used only for your personal, and/or commercial purposes, unless otherwise specifically authorized by us in writing. You will not use the OLAFE Equipment at any time at an address other than the Premises without our prior written authorization. You agree and represent that you will not resell or permit another to resell the Services in whole or in part. You will not use or permit another to use the OLAFE Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted OLAFE policy applicable to the Services. Use of the OLAFE Equipment or Services for transmission, communications or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited. You acknowledge that you are accepting this Agreement on behalf of all persons who use the OLAFE Equipment and/or Services and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable OLAFE policies including, but not limited to, acceptable use and privacy policies. You further acknowledge and agree that you shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Services.

b. *Customer Information.* During the term of this Agreement, you have provided and will provide to OLAFE information that is accurate, complete and current, including without limitation your legal name, address,

telephone number(s) email addresses, the number of devices on which or through which the Service(s) is being used, and payment data (including without limitation information provided when authorizing recurring payments). You agree to notify us promptly, in accordance with the terms of this Agreement, if there is any change in the information that you have provided to us. If you fail to provide and maintain accurate information, you will breach this Agreement.

c. *Acceptable Use Policy.* The OLAFE Acceptable Use Policy ("AUP") is posted on the OLAFE Web Site at [www.olafe.com/legal/](http://www.olafe.com/legal/) (or an alternative Web site if we so notify you) and is incorporated into the Agreement by this reference. You further agree that OLAFE may modify the AUP or other policies from time to time. Notwithstanding anything to the contrary in this Agreement, you acknowledge and agree that the terms of the AUP and any other applicable OLAFE policies may be put into effect or revised from time to time without notice by posting a new version of the AUP or policy as set forth above. You and other users of the Service should consult the AUP and posted policies regularly to conform to the most recent version. You agree not to use OLAFE Services as an Internet service provider, or, other than with respect to your own internal use, a server site for ftp, telnet, rlogin, e-mail hosting, "Web hosting" or other similar applications, or as an end-point on a non-OLAFE network. You agree to indemnify, defend and hold harmless OLAFE and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of any breach of this Section including, but not limited to, any claims based on or arising out of any material violation of any applicable law.

d. *Privacy Policy.* You can view the most current version of our Privacy Policy at the OLAFE Website. To the extent that OLAFE is expressly required to do so by applicable law, we will provide notice to you of a breach of the security of certain personally

identifiable information about you. It is OLAFE's information security policy to provide such notice to you in the manner set forth in Section 13. OLAFE is not responsible for any information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Services. You assume all privacy, security and other risks associated with providing customer proprietary network information (CPNI) or personally identifiable information to third parties via the Services. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

e. *Responsibility for Content.* You acknowledge that there is some content and material on the Internet or otherwise available through OLAFE which may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations or may violate your protected rights or those of others. We assume no responsibility for this content or material. Anyone who accesses such content and material does so at his or her own risk. Neither OLAFE nor its affiliates, suppliers, employees, agents or contractors shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content or material by you or others. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs that restrict access to sexually explicit or other objectionable material on the Internet are not fool proof. We make no representation or warranty regarding the effectiveness of such programs.

f. *Monitoring of Storage and Transmissions.* OLAFE shall have no obligation to monitor storage or transmissions made in connection with OLAFE Services. You

acknowledge and agree that OLAFE and its agents have the right to monitor, from time to time, any such storage and transmissions, including without limitation e-mail, chat, IP audio and video, and Web usage content. OLAFE may also use and disclose them in accordance with the OLAFE Acceptable Use Policy and other applicable policies, and as otherwise required by law or government request. We reserve the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable or in violation of this Agreement.

g. *Eavesdropping.* Our facilities are used by numerous persons or entities including, without limitation, other subscribers to OLAFE Services. As a result, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of OLAFE Services. This risk of eavesdropping exists not only with our facilities, but also on the Internet and other services to which access is provided as a part of OLAFE Services. Neither OLAFE nor its affiliates, suppliers, or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions.

h. *Facilities Allocation.* OLAFE reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support OLAFE Services, including, but not limited to, the amount of compute power, bandwidth and storage to be utilized and delivered in conjunction with OLAFE Services.

i. *Cookies.* You acknowledge that accessing certain OLAFE Services may result in a "cookie" being placed on your computer system. Cookies are small files stored on a computer's hard drive to simplify and improve a user's Web experience. If you don't want them placed on your computer system, it is your responsibility to

disable or restrict the placement of cookies through whatever procedures are available on your browser.

j. *Indemnification.* You agree that you shall be responsible for and shall defend, indemnify, and hold harmless OLAFE and its employees, affiliates, suppliers, agents and contractors and shall reimburse us for any damages, losses or expenses (including without limitation, reasonable attorneys' fees and costs) incurred by us in connection with any claims, suits, judgments and causes of action arising out of (i) your use of a Service, Customer Equipment or OLAFE Equipment; (ii) violation or infringement of contractual rights, privacy, confidentiality, copyright, patent, trademark, trade secret, or other intellectual property and proprietary rights arising from your use of a Service and any unauthorized apparatus or system; and (iii) your breach of any provision of this Agreement or any of the applicable OLAFE policies by you or any other user of the Services.

## **7. 911 POLICY FOR INTERCONNECTED VOIP SERVICES**

a. *911 Limitations.* OLAFE's 911 Dialing is only available if you have selected OLAFE's products that include local service (dial-tone). OLAFE's IP Trunking long distance product does not include local service and will not work or route 911 calls. Customers choosing IP Trunking "LD" must keep their local outbound calls with a Local Exchange Carrier and all 911 calls must be routed over that Local Exchange Carrier's network.

b. *Enhanced 911 Versus Basic or Limited E911.* OLAFE 911 dialing for its interconnected VOIP services ("911 Dialing") is different than traditional 911 service. OLAFE's customers have access to either basic 911 or Enhanced 911 ("Enhanced E911") service, depending on the capability of your local emergency center.

i. **Enhanced E911 Service:** With Enhanced E911 service, when you dial 911, your telephone number and registered address is simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary.

ii. **Basic and Limited E911 Service:** Customers in locations where the emergency center is not equipped to receive, capture or retain your telephone number and/or address have basic 911 or limited E911. With basic 911 or limited E911, the local emergency operator answering the call may not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he or she may not be able to call you back or dispatch help if the call is dropped or disconnected, or if you are unable to speak. As additional local emergency centers upgrade to Enhanced E911 and become capable of receiving all of our customers' information, OLAFE will automatically upgrade customers with basic or limited 911 to Enhanced E911 service. OLAFE will not give you notice of the upgrade.

c. **Disclosure.** By using OLAFE's service, you authorize OLAFE to disclose your telephone number, name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

d. **Notice to Users.** You should inform all employees, guests and other third persons who may be present at the physical location where you utilize OLAFE's interconnected VOIP service of the important differences in and limitations of OLAFE's 911 Dialing as compared with basic 911 or Enhanced E911. The documentation that accompanies each device enabled for service (the "Device" or "Devices") will include a sticker concerning the potential

non-availability of basic 911 or Enhanced E911 (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker on each Device that you use with the Service. If you did not receive a 911 Sticker with your Device, or you require additional 911 Stickers, please contact our customer care department.

e. **Register the Location of Your Physical Address.** For each phone line and telephone number that you utilize with the OLAFE interconnected VOIP service, you must register with OLAFE the physical location where you will be using the OLAFE service with that phone number. Your initial location will be registered as a part of subscribing to the OLAFE interconnected VOIP service. It is incumbent on you to confirm the accuracy of your physical address via a 911 REGISTRATION FORM if you have any changes, additions or transfers of phone numbers. OLAFE is providing an interconnected VOIP solution for businesses intended strictly for use at the physical address of the business. Users who are residential users or who have nomadic equipment or phones where the calling location changes as the Device moves to another location may not use OLAFE's interconnected VOIP service. If you are a residential user or nomadic user who attempts to make unauthorized use of OLAFE's service from the new location, 911 calls made will be sent to an emergency center near your old address.

f. **Service Outages Due to Power Failures.** 911 Dialing does not function in the event of a power failure or disruption to interconnected VOIP services. If there is an interruption in the power supply, the OLAFE interconnected VOIP Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the OLAFE interconnected VOIP service, including 911 Dialing.

g. *Internet Outage or Suspension or Disconnection of Broadband Service.* Service outages or suspensions or disconnections of service by the underlying broadband provider or ISP will prevent all OLAFE interconnected VOIP service, including 911 Dialing from functioning.

h. *Service Outages Due to Disconnection of Your OLAFE Account.* Service outages due to disconnection of your account will prevent all OLAFE interconnected VOIP service, including 911 Dialing, from functioning.

i. *Service Outages Due to Customer Premise Equipment, ISP or Broadband Provider Blocking of Ports or Other Acts.* Your firewall, internet service provider, broadband provider or other third party may intentionally or inadvertently block the ports over which the OLAFE interconnected VOIP service is provided or otherwise impede the usage of the OLAFE service. If you suspect this has happened to you, you should alert us to this situation and we will work with you to attempt to resolve the issue. During the period that the ports are being blocked or your OLAFE service is impeded, your OLAFE interconnected VOIP service, including 911 Dialing, may not function. You acknowledge that OLAFE is not responsible for the blocking of ports by any firewall or third party or any other impediment to your usage of the OLAFE interconnected VOIP service, and any loss of OLAFE service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the OLAFE service, you will continue to be responsible for payment for the OLAFE service charges unless and until you disconnect the OLAFE interconnected VOIP service in accordance with the terms of your written agreement with OLAFE covering the OLAFE interconnected VOIP services.

j. *Other Service Outages.* If there is a service outage for any reason, such outage will prevent all OLAFE interconnected VOIP

service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this policy.

k. *Network Congestion.* There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the OLAFE interconnected VOIP service as compared to traditional 911 dialing over traditional public telephone networks.

l. *Disclaimer of Liability and Indemnification.* OLAFE does not have any control over whether, or the manner in which, calls using OLAFE's 911 Dialing service are answered or addressed by any local emergency response center. OLAFE disclaims any and all responsibility for the conduct of local emergency response centers. OLAFE relies on third parties to assist it in routing 911 Dialing calls to local emergency response centers. OLAFE disclaims any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. None of OLAFE, its affiliates, or any of their partners, shareholders, members, directors, managers, officers, employees or agents may be held liable for any claim, cause of action, damage, loss, liability, expense, cost, fee, charge, or penalty, and by using the OLAFE service you hereby waive any and all such claims, causes of action, damages, losses, liabilities, expenses, costs, fees, charges, or penalties, arising from or relating to OLAFE's 911 Dialing service unless such claims, causes of action, damages, losses, liabilities, expenses, costs, fees, charges, or penalties arose solely from OLAFE's gross negligence or willful misconduct. You shall defend, indemnify, and hold harmless OLAFE, its affiliates, all of their partners, shareholders, members, directors, managers, officers, employees and agents, and any other service provider who furnishes services to you in connection the OLAFE interconnected VOIP service, from

any and all claims, causes of action, damages, losses, liabilities, expenses, costs, fees, charges, or penalties (including, without limitation, attorneys' fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the OLAFE interconnected VOIP service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the OLAFE interconnected VOIP service to be able to use 911 Dialing or access emergency service personnel.

m. *Alternate 911 Arrangements.* If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the OLAFE interconnected VOIP service.

## **8. LIMITED WARRANTY**

a. *Services Provided As-Is.* OLAFE Equipment and Services are provided "as is," without warranty of any kind, either express or implied. Neither OLAFE nor its affiliates, suppliers, employees, agents or contractors warrant that the OLAFE Equipment or the Services will meet your requirements, provide uninterrupted use, or operate as required, without delay, or without error. Neither OLAFE nor its affiliates, suppliers, employees, agents or contractors warrant that any communications will be transmitted in uncorrupted form. All representations and warranties of any kind, express or implied, including but not limited to any warranties of performance, non infringement, fitness for a particular purpose or merchantability, are hereby disclaimed and excluded unless otherwise prohibited or restricted by applicable law.

b. *Third Parties.* Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide components of the Services, including without limitation their services, equipment, infrastructure or

content. OLAFE is not responsible for the performance (or non-performance) of third-party services, equipment, infrastructure, software, or content, whether or not they constitute components of the Services. OLAFE shall not be bound by any undertaking, representation or warranty made by an agent or employee of OLAFE or of our underlying third-party providers and suppliers in connection with the installation, maintenance or provision of the Services, if that undertaking, representation or warranty is inconsistent with the terms of this Agreement. In addition, you understand that you will have access to the services and content of third parties through the Service(s), including without limitation that of content providers (whether or not accessible directly from the Service). OLAFE is not responsible for any services, equipment, infrastructure, software and content that is not provided by us (even if they are components of the Service), and we shall have no liability with respect to such services, equipment, infrastructure and content. You should address questions or concerns relating to such services, equipment, infrastructure, software and content to the providers of such services, equipment, infrastructure, software and content. We do not endorse or warrant any third-party products, services or content that are distributed or advertised over the Services.

## **9. LIMITATION OF LIABILITY**

a. *Application.* The limitations of liability set forth in this Section apply to any acts, omissions, and negligence of OLAFE and its underlying third-party service providers, agents and suppliers (and their respective officers, employees, agents, contractors or representatives) which, but for that provision, would give rise to a cause of action in contract, tort or under any other legal doctrine.

b. *Customer Equipment.* Customer equipment may be damaged or suffer service outages as a result of the

installation, self-installation, use, inspection, maintenance, repair, and removal of OLAFE Equipment and the Services. Except for gross negligence or willful misconduct, neither OLAFE nor any of its affiliates, suppliers, employees, agents or contractors shall have any liability whatsoever for any damage, loss, or destruction to the Customer Equipment. In the event of gross negligence or willful misconduct by OLAFE, suppliers, employees, agents or contractors, we shall pay at our sole discretion for the repair or replacement of the damaged Customer Equipment up to a maximum of \$500. This shall be your sole and exclusive remedy relating to such activity. You understand that your computer or other devices may need to be opened, accessed or used either by you or by us or our agents, in connection with the installation or repair of OLAFE Services. The opening, accessing or use of your computer or other devices used in connection with your computer may void warranties provided by the computer or device manufacturer or other parties relating to the computer's or device's hardware or software. Neither OLAFE nor any of its affiliates, suppliers, or agents shall have any liability whatsoever as the result of the voiding of any such warranties.

c. *Other Services or Equipment.* By accepting this agreement, you waive all claims against OLAFE for interference, disruption, or incompatibility between the OLAFE Equipment or the Services and any other service, systems, or equipment. In the event of such interference, disruption, or incompatibility, your sole remedy shall be to terminate the Services in accordance with Section 12 and early termination liability charges may apply.

d. *Software.* When you use certain features of the Services, such as online features (where available), you may require special software, applications, and/or access to the Internet. OLAFE makes no representation or warranty that any software or application installed on Customer

Equipment, downloaded from the Service, or available through the Internet does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any Customer Equipment from damage to its software, files, and data as a result of any such virus or other harmful feature. We may, but are not required to, terminate all or any portion of the installation or operation of the Services if a virus or other harmful feature or software is found to be present on your Customer Equipment. We are not required to provide you with any assistance in removal of viruses. If we decide, in our sole discretion, to install or run virus check software on your Customer Equipment, we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your Customer Equipment. Neither OLAFE nor its affiliates, suppliers, employees, agents or contractors shall have any liability whatsoever for any damage to or loss of any hardware, software, files, or data resulting from a virus, any other harmful feature, or from any attempt to remove it.

e. *Lost Files.* In addition, as part of the installation process for the software and other components of the Service, system files on your Customer Equipment may be modified. OLAFE does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files. OLAFE does not represent, warrant, or covenant that the installation of the special software or applications or access to our Service(s) will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including but not limited to your computer(s). For these and other reasons, you acknowledge and understand the importance of backing up all files to another storage mechanism prior to

such activities. OLAFE, its suppliers, employers, agents or contractors shall not have any liability whatsoever for any damage to or loss of any software, files, or data.

f. *Software Licenses.* When you use certain features of the Services, such as the ability to install custom applications for personal, and/or commercial purposes, you agree that all software which you request to be installed has been properly licensed by you for the intended purposes. It is your responsibility to track all licenses for all the software used in connection with OLAFE Services. Some software products can be purchased, leased, or rented through OLAFE in connection with subscribed Services. Neither OLAFE nor its affiliates, suppliers, employees, agents or contractors shall have any liability whatsoever for any damage for claims arising out of any third party license agreements.

g. *Disruption of Service.* The Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or the environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities. We shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances beyond our control, including, but not limited to, causes attributable to you or your property; inability to obtain access to the Premises; failure to obtain reliable consistent Internet connectivity at the Premises; failure to have sufficient electrical power at the Premises; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire,

flood, lightning, earthquake, wind, ice, extreme weather conditions or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Services. In all other cases of an interruption of the Services, you shall be entitled upon a request made within sixty (60) days of such interruption, to a pro rata credit for any Service interruption exceeding twenty-four consecutive hours after such interruption is reported to us, or such other period of time as may be specifically provided by law. Unless specifically otherwise provided by law, such credit shall not exceed the fixed monthly charges for the month of such Service interruption and excludes all nonrecurring charges, one-time charges, per-call or measured charges, regulatory fees and surcharges, taxes and other governmental and quasi-governmental fees. Except and unless specifically prohibited by law, such credit shall be your sole and exclusive remedy for an interruption of service. Any credits provided by us are at our sole discretion and in no event shall constitute or be construed as a course of conduct by OLAFE.

h. *911 Services.* OLAFE assumes no responsibility for, and shall have no liability to you for, any damage, loss of property, opportunity or earnings, personal injury, death or any other loss whatsoever resulting from your use of 911 or other emergency services through the Services or OLAFE Equipment.

i. *Damages.* EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER OLAFE NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO TORT OR CONTRACT) HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (I) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE,

PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (X) YOUR RELIANCE ON OR USE OF THE OLAFE EQUIPMENT OR THE SERVICES OR (Y) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICES (INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION OR FAILURE OF PERFORMANCE OF THE SERVICE, THE OLAFE EQUIPMENT OR THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF FILE DATA, E-MAIL OR OTHER INFORMATION OR DATA); OR (II) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE OLAFE EQUIPMENT OR THE SERVICES BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

j. *Customer's Sole Remedies.* Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above limitations may not apply if your state does not allow the exclusion or limitation of implied

warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of OLAFE and its employee, affiliates, suppliers, agents and contractors is limited to the maximum extent permitted by law.

## 10. CONFIDENTIAL INFORMATION

a. *Use and Disclosure.* You shall not disclose OLAFE Confidential Information during the Term or at any time during the three (3) year period following the end of the Term. As used in this Agreement, "OLAFE Confidential Information" means all nonpublic information disclosed by us, our business partners or our or their respective agents or contractors that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. OLAFE Confidential Information includes, without limitation, (i) nonpublic information relating to our or our business partners' technology, customers, business plans, promotional and marketing activities, finances and other business affairs, (ii) third-party information that we are obligated to keep confidential, and (iii) the nature, content and existence of any discussions or negotiations between you and us. Confidential Information does not include any information described below or any information that you are required to disclose by law.

b. *Excluded Information.* Notwithstanding any other provision in this Agreement, you shall not have any confidentiality obligation to us under the above section, with respect to any information provided or made available by us hereunder, and we shall not have any confidentiality or non-use obligation to you hereunder with respect to any information, software application, data or content provided or made available by you hereunder that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the receiving party at the time of its receipt from

the disclosing party; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by the receiving party.

c. *Conflict with Separate Non-Disclosure Agreement.* If you and we are parties to a separate non-disclosure agreement ("Stand-Alone NDA") and there is a conflict between the terms of the Stand-Alone NDA and the terms of this Section, the terms of the Stand-Alone NDA shall control.

d. *Customer Consent to Use of Customer Proprietary Network Information ("CPNI").* OLAFE acknowledges that it has a duty, and you have a right, under federal and/or state law to protect the confidentiality of your CPNI. CPNI includes information relating to the quantity, technical configuration, type, destination, location, and amount of use of the telecommunications services you purchase from OLAFE, as well as related local and toll billing information, made available to OLAFE solely by virtue of your relationship with OLAFE. With your consent, OLAFE may share your CPNI and other Confidential Information among its affiliates, and with agents and partners, so that all may use this information to offer you the full range of products and services offered by OLAFE and its affiliates. You consent to OLAFE using and disclosing your CPNI as described above. You may refuse CPNI consent by notifying OLAFE in writing. Your consent or refusal to consent will remain valid until you otherwise advises OLAFE, and in either case, will not affect OLAFE's provision of service to you.

## **11. SOFTWARE AND INTELLECTUAL PROPERTY**

a. *Revocable License.* The Services and OLAFE Equipment, including but not limited to any firmware or software embedded in the OLAFE Equipment or used to provide the Services, are protected by trademark,

copyright, patent and/or other intellectual property laws and international treaty provisions. You are granted a revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. You acknowledge and understand that you are not granted any other license to use the firmware or software embedded in the OLAFE Equipment or used to provide the Services. You expressly agree that you will use the OLAFE Equipment exclusively in connection with the Services. You shall not take any action nor allow anyone else to take any action that will reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

b. *Intellectual Property Rights.* Other than the limited use and access rights and licenses expressly set forth in this Agreement, we reserve all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) the Services; (ii) the OLAFE intellectual property; (iii) the Marks (as defined below); and (iv) any other technology and software that we provide or use to provide the Services. You do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in the Services, the OLAFE intellectual property, the Marks, or such other technology and software, except for the limited use and access rights described in this Agreement.

b. *Protection of OLAFE's Information and Marks.* All Service information, documents, and materials on our Web sites are protected by trademark, copyright or other intellectual property laws, and international treaty provisions. All Web sites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "Marks") of OLAFE and its affiliates are and shall remain the exclusive property of OLAFE. Nothing in this

Agreement shall grant you the right or license to use any of the Marks.

c. *Feedback.* In the event you elect, in connection with any of the Services, to communicate to us suggestions for improvements to the Services or the OLAFE Equipment (collectively, "Feedback"), we shall own all right, title, and interest in and to the same, even if you have designated the Feedback as confidential, and we shall be entitled to use the Feedback without restriction. You hereby irrevocably assign all right, title and interest in and to the Feedback to us and agree to provide us such assistance as we may require to document, perfect, and maintain our rights to the Feedback.

d. *End User Licenses.* You agree to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed or used in connection with OLAFE Services, as these agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. When this Agreement terminates, all end user licenses also terminate; you agree to destroy at that time all versions and copies of all software received by you in connection with OLAFE Services.

e. *Ownership of Addresses.* You acknowledge that use of OLAFE Services does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and Web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes.

f. *Authorization.* OLAFE does not claim any ownership of any material that you store, publish, transmit or distribute using OLAFE Services. By using OLAFE Services to publish, transmit or distribute

material or content, you (i) warrant that the material or content complies with the provisions of this Agreement, (ii) consent to and authorize OLAFE, its agents, suppliers, and affiliates to reproduce, publish, distribute, and display the content worldwide and (iii) warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using OLAFE Services may be copied, republished or distributed by third parties, and you agree to indemnify, defend and hold harmless OLAFE, its agents, suppliers, and affiliates for any harm resulting from these actions.

g. *Copyright.* Title and intellectual property rights to OLAFE Services are owned by OLAFE, its agents, suppliers, or affiliates or their licensors or otherwise by the owners of such material and are protected by copyright laws and treaties. You may not copy, redistribute, resell or publish any part of OLAFE Services without express prior written consent from OLAFE or other owner of such material.

g. *Material Downloaded through OLAFE.* In addition to any content that may be provided by us, you may access material through OLAFE Services that is not owned by OLAFE. Specific terms and conditions may apply to your use of any content or material made available through OLAFE Services that is not owned by OLAFE. You should read those terms and conditions to learn how they apply to you and your use of any non- OLAFE content.

h. *Non-Assertion.* During and after the term of the Agreement, with respect to any of the Services that you elect to use, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our customers, end users, vendors, business partners (including third party sellers on websites operated by or on behalf of us), sublicensees or transferees, any patent infringement or other intellectual property infringement claim with respect to such Services.

## 12. TERM AND TERMINATION

a. *Term.* The Agreement will be in effect for the period specified in the Agreement until (i) it is terminated as provided herein or (ii) it is replaced by a revised Agreement.

b. *Termination.* Either OLAFE or you may terminate this Agreement or any Service at any time by mutual agreement. In addition, either party may terminate this Agreement or any Service following the occurrence of any of the following events and written notice to the other party:

i. if the other party commits a material breach of this Agreement and such breach or default, if capable of cure, is not cured within 30 days after written notice thereof from the terminating party, or 10 days in the case of nonpayment. No cure period will apply where the party in breach has previously exhausted a cure period in connection with the same duty or obligation;

ii. if the other party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated as bankrupt or insolvent, files a voluntary petition in bankruptcy or for a reorganization or to effect a plan or other arrangement with its creditors, files an answer to a creditor's petition or other petition against it for an adjudication in bankruptcy or thereof, or applies for or permits the appointment of a receiver, trustee or custodian for any substantial portion of its properties or assets; or

iii. if an order is entered by any governmental entity approving an involuntary petition seeking reorganization of such other party, or appointing a receiver, trustee or custodian for any substantial portion of its assets or business or if for any reason either the other party voluntarily or involuntarily suspends transaction of its business or ceases to function as a going concern.

c. *Suspension and Termination by OLAFE.* In addition to the termination rights set forth above, under the conditions listed below, OLAFE reserves the right, subject to applicable law, to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to any authorized users (e.g., email or logon/authentication credentials). OLAFE may take these actions if it: (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with OLAFE's ability to provide the Services to you or others, (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use, or (iv) reasonably believes that such use or information interferes with or endangers the health and/or safety of our personnel or third parties. OLAFE's action or inaction under this Section shall not constitute review or approval of your or any other users' use of the Services or information transmitted by or to you or users.

d. *Fees Due.* Subject to applicable law or the terms of any agreements with governmental authorities, all applicable fees and charges will accrue until this Agreement has terminated, the Services have been disconnected, and all OLAFE Equipment has been returned. We will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due OLAFE for the Services, affiliate services, OLAFE Equipment, or other applicable fees and charges).

e. *Your Obligations upon Termination.* You agree that upon termination of this Agreement you will do the following:

i. You will immediately cease all use of the Services and all OLAFE Equipment;

ii. You will pay in full for your use of the Services up to the date that this Agreement has been terminated, and the Services are disconnected; and

iii. Within ten (10) days of the date on which Services are disconnected, you will return all OLAFE Equipment to us at our business office or to our designee in working order, normal wear and tear excepted. Otherwise, you will be charged the amount set forth in the current pricing lists for such OLAFE Equipment, or the revised amount for which you receive notice; if no amount has been specified for the particular model of OLAFE Equipment, you will be charged the retail price for a new replacement. You may also be charged incidental costs that we incur in replacing the OLAFE Equipment. Upon our request, you will permit us and our employees, agents, contractors, and representatives to access the Premises during regular business hours to remove the OLAFE Equipment and other material provided by OLAFE. We will conduct this removal at a time agreed on by you and us, and you will ensure that all OLAFE Equipment is returned to OLAFE.

### 13. NOTICES

a. *Notices to You.* Except as otherwise set forth herein, notices made by us to you under this Agreement that affect our customers generally (e.g., notices of amended Agreements, AUPs, updated fees, etc.) may be provided on your monthly bill, as a bill insert, in a newspaper, via first class U.S. postal mail, overnight mail to your Premises, by e-mail, via a posting on our website [www.olafe.com](http://www.olafe.com), or by other permitted communication. Because we may from time to time notify you about important information regarding the Services and this Agreement by these methods, you agree to regularly check your postal mail, e-mail and all postings at [www.olafe.com](http://www.olafe.com) or on another website about which you have been notified or you bear the risk of failing to do so. Notices made by us under this Agreement

for you or your account specifically (e.g., notices of breach and/or suspension) will be provided to you via the email address provided to us in your registration for the Services or in any updated email address you provide to us in accordance with standard account information update procedures we may provide from time to time. It is your responsibility to keep your email address current and you will be deemed to have received any email sent to any such email address, upon our sending of the email, whether or not you actually receive the email.

b. *Notices to Us.* For notices made by you to us under this Agreement and for questions regarding this Agreement or the Services, you will contact OLAFE as follows:

OLAFE, LLC  
Attn: Legal  
21 Eiler Ln  
Irvington, NY 10533

c. *Language.* All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

### 14. GENERAL

a. *Survival of Limitations.* All representations, warranties, indemnifications, and limitations of liability contained in this Agreement shall survive the termination of this Agreement; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.

b. *Assignment.* This Agreement and the Services furnished hereunder may not be assigned by you. You agree to notify us immediately, in writing, of any changes of ownership or change in occupancy of the Premises. We may freely assign our rights and obligations under this Agreement with or without notice to you.

c. *Governing Law.* The laws of the State of New York shall in all respects govern this Policy and Agreement as though this Agreement was entered into, and was to be entirely performed, within the State of New York; and each Party hereby irrevocably consents to the exclusive jurisdiction of, and venue in, any state or federal court of competent jurisdiction located in New York, New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

e. *Export Laws.* You expressly agree to comply with all applicable export and re-export laws, including but not limited to the Export Administration Act, the Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Services in any way that violates any provision of these export and re-export laws or their implementing regulations.

f. *Retention of Rights.* Nothing contained in this Agreement shall be construed to limit OLAFE's rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, OLAFE and its suppliers reserve the right to delete all your data, files, electronic messages or other information that is stored on OLAFE's or its suppliers' servers or systems. In addition, you may forfeit your account user name and all e-mail addresses. We shall have no liability whatsoever as the result of the loss of any such data.

g. *Amendment.* Except as otherwise set forth herein, including, without limitation, Section 3, no change, amendment or modification of any of the provisions set forth herein or in the main body of the Agreement shall be binding unless made in writing and signed by a duly authorized representative of both parties hereto, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein.

h. *Counterparts.* The Agreement and any amendment thereto or any other document delivered pursuant thereto may be executed and delivered by facsimile, in one or more counterparts, and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party.

i. *Force Majeure.* Neither party will be liable for delays or any failure to perform under this Agreement due to causes that are not within the reasonable control of such party.

j. *Waiver.* The waiver by either party of any right under this Agreement or of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other right under this Agreement or of any other breach or failure whether of a similar nature or otherwise.

k. *Headings.* The captions and headings appearing in this Service Guide or in the Agreement are for reference only and shall not be considered in construing the same.

l. *Drafting.* This Agreement and its provisions shall not be construed or interpreted for or against any party hereto because that party drafted or caused its legal representative to draft any of its provisions.

m. *Third Parties.* Nothing in this Agreement, express or implied, is intended to confer or shall confer upon any persons other than the parties hereto any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

[End of Service Guide.]