

VAR Agreement

This VAR Agreement (“Agreement”) is by and between Teutonic Holdings LLC dba BroadVoice, a California company (“BroadVoice”), and the VAR identified below (“VAR”). This Agreement will be effective only after it has been fully executed by both parties. The date that this Agreement is signed by the authorized BroadVoice representative will be the “Effective Date.”

INFORMATION

1. Whereas, BroadVoice is primarily engaged in the business of providing hosted telecommunication services to customers as a cloud telecommunications provider (“cloud or hosted service”); and
2. Whereas, BroadVoice desires to expand its customer base to include a greater number of customers through its VAR program; and
3. Whereas, BroadVoice has agreed to permit VARs to market BroadVoice’s telecommunications services under the terms and conditions set forth herein to permit customers that are not current customers of BroadVoice (the “Prospect”).

AGREEMENT

BroadVoice and VAR (collectively, the “parties”) agree as follows:

1. SOLICITATION OF ORDERS

VAR may, during the term of this Agreement and on a non-exclusive basis, solicit orders only from prospective commercial (not residential) subscribers (“Prospects”) to cloud telecommunications services provided by BroadVoice.

1.1 VAR may use other VARs or other representatives to perform any or all of VAR’s duties under this Agreement upon BroadVoice’s consent. BroadVoice may withhold such consent or revoke any granted consent in its sole discretion. If VAR, after receiving required consent, uses VARs or other representatives, all such VARs or other representatives will be subordinate to VAR and subject to all the terms and conditions set forth in this Agreement. VAR will remain solely responsible for all actions or omissions of such VARs or other representatives.

1.2 VAR will, at its own cost, meet and continue to meet any required training criteria for the VAR program.

1.3 VAR will obtain the authorized signature or other appropriate authorization of the Prospect on BroadVoice’s current service agreement. BroadVoice reserves the right to cancel or reject any request for services and any service agreement or service order form for any reason without incurring any liability to VAR.

1.4 VAR is not required to maintain any specific number of Monthly Recurring Charges. BroadVoice will pay the VAR per the attached addendum based on any full month billing for all voice services for the life of the customer. If a customer cancels service and does not pay a full month of service, places stop payment, or fails to pay for services in any manner, VAR will not be paid for that portion of the service. Broadband internet and other products and services are outlined in the addendum.

2. VAR IS AN INDEPENDENT CONTRACTOR

2.1 The parties acknowledge and agree, for themselves and their affiliates, VARs, and employees, that VAR will at all times be an independent contractor and will remain responsible for all matters related to its own employees and VARs, including compensation, welfare benefits, withholding, workers compensation, and participation in qualified plans. Except to the extent expressly set forth in this Agreement, BroadVoice will have no right to conduct or supervise the day-to-day activities of VAR’s employees, contractors, or VARs. Nothing in this Agreement will be construed to create a partnership, joint venture, or other similar relationship among the parties.

2.2 VAR will be solely responsible for payment of all taxes and/or other fees due as a result of BroadVoice’s payment of Commissions.

2.3 In performing this Agreement, VAR will observe the highest standard of integrity and fair dealing and VAR will do nothing to discredit, dishonor, reflect adversely upon or in any manner injure the reputation or business of BroadVoice.

3. APPOINTMENT IS ON A NON-EXCLUSIVE BASIS

3.1 BroadVoice appoints VAR on a non-exclusive basis as its authorized sales representative to obtain orders for services from Prospects located within the continental United States. VAR will only use the materials approved in advance in writing by BroadVoice or otherwise supplied by BroadVoice.

3.2 VAR's appointment is non-exclusive and BroadVoice reserves the right at any time to offer to any party (including Prospects) the same or different services through its employees or other persons who may be designated or appointed as authorized VARs.

3.3 VARs will not solicit existing customers of BroadVoice without first obtaining BroadVoice's written consent. Representative will not convey to Prospect(s) that the services of BroadVoice are available only from VAR or are available only with another product(s) or service(s) provided by VAR.

4. COMPENSATION

4.1 BroadVoice will pay VAR compensation ("Commissions") determined in accordance with Addendum for all sales generated by VAR, as defined below.

4.2 BroadVoice will pay due and owing Commissions within Thirty (30) days following the end of each monthly period in which the sale is considered qualified.

4.3 A sale by VAR will be a qualified sale if it has been processed through BroadVoice and is accepted by BroadVoice and as a qualified sale. In addition, a sale will only be considered to be qualified if the following criteria are met:

4.3.1 Successful completion of all requisite BroadVoice paperwork;

4.3.2 Verification and approval of contract by BroadVoice order entry or customer service;

4.3.3 Successful completion of the installation of the services by BroadVoice and all payments by the end user customer to BroadVoice.

Without limiting the foregoing, sales to non-creditworthy customers and sales for which BroadVoice does not receive compensation will be deemed not to be a sale and will be subject to commission charge back.

4.4 VAR is subject to charge back provisions in any case whereby BroadVoice incurs bad debt related to a customer brought to BroadVoice by VAR. VAR is responsible for reimbursing BroadVoice for any such charge backs caused by any sales made by the VAR or its representatives.

5. TERM OF AGREEMENT

5.1 The term of this Agreement will be for twelve (12) months commencing on the Effective Date. This Agreement will be automatically renewed in consecutive additional periods of one year each unless terminated by either party in writing at least fifteen (15) days prior to the expiration of the term then in effect.

5.2 In addition, BroadVoice may terminate this Agreement effective immediately in the event of any of the following occurrences:

5.2.1 VAR's insolvency, bankruptcy, receivership or dissolution;

5.2.2 VAR's actual or attempted assignment of this Agreement or any duties under this Agreement to another party without BroadVoice's prior written consent, which shall not be unreasonably withheld, delayed or conditioned;

5.2.3 VAR's material breach of any provision of this Agreement;

5.2.4 VAR's making of misrepresentations about BroadVoice;

5.2.5 VAR's attempted or actual sale of unauthorized services or unauthorized rates;

5.2.6 Any regulatory, judicial or legislative body having jurisdiction over the services provided by BroadVoice issues any order, policy, procedure, ruling, action or mandate that affects in any way the manner, method or terms under which BroadVoice provides the services; or

5.2.7 VAR's death or incapacity if an individual.

6. SUBMISSION OF ORDERS

6.1 VAR will submit orders from Prospects according to the procedures that BroadVoice gives to VAR and on those order forms that BroadVoice provides.

6.2 BroadVoice will have no obligation to pay Commissions on any order that is not made or submitted in accordance with the terms of this Agreement, regardless of whether BroadVoice initially accepted such order.

6.3 BroadVoice may provide VAR with leads of potential sales Prospects, but the provision of such leads does not constitute and will not be deemed as BroadVoice's approval of such Prospects.

7. PRICING

BroadVoice reserves the right to prescribe the pricing and the terms and conditions under which its services are offered and provided. BroadVoice also reserves the right to change its prices and terms and conditions and to discontinue or modify any service offering with no advance notice to VAR or any Prospect ordering service. VAR will not offer rebates, discounts or any other price adjustments without the express written consent of BroadVoice.

8. LIMITATION OF LIABILITY

8.1 THE LIABILITY OF BROADVOICE TO VAR UNDER THIS AGREEMENT IS LIMITED TO THE OBLIGATION TO PAY COMMISSIONS AS DESCRIBED HEREIN.

8.2 BROADVOICE WILL NOT BE LIABLE, IN ANY EVENT, FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT LOSS OR DAMAGE OF ANY KIND, OR LOST PROFITS OR OTHER ECONOMIC LOSS, WHETHER OR NOT BROADVOICE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, OR PUNITIVE DAMAGES, BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT.

8.3 BROADVOICE WILL HAVE NO LIABILITY TO VAR FOR COMMISSIONS THAT MIGHT HAVE BEEN EARNED UNDER THIS AGREEMENT BUT FOR BROADVOICE'S DELAY IN ACCEPTING OR PROCESSING ANY ORDER, REFUSAL OF ANY ORDER OR THE INABILITY OR FAILURE OF BROADVOICE TO PROVIDE SERVICES TO ANY PERSON OR ENTITY OR IN THE EVENT OF DISCONTINUATION OR MODIFICATION OF THE SERVICES.

9. INDEMNIFICATION

9.1 VAR agrees to indemnify and hold harmless BroadVoice and its officers, directors, shareholders, employees, VARs, successors, assigns and independent contractors from and against all losses, claims, damages, liabilities or expenses of any description, including but not limited to reasonable attorneys' fees and costs and allocable costs of in house legal counsel, arising out of VAR's acts or omissions, or those of VAR's officers, directors, partners, employees, VARs or other representatives, if any, including but not limited to misrepresentation of prices or services of BroadVoice or the payment or nonpayment of any sums to Prospects or other third parties. VAR agrees to promptly defend against any of these losses, claims, damages, liabilities or expenses but will not settle without consulting BroadVoice and obtaining BroadVoice's prior written consent. VAR must also allow BroadVoice to participate in the defense. VAR will immediately notify BroadVoice of the commencement or threatened commencement of any action, suit or proceeding, and of the issuance or threatened issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality involving VAR's activities under this Agreement or that may affect VAR's ability to perform its obligations hereunder.

9.2 VAR and BroadVoice agree to indemnify and hold harmless the other from and against any claim of any third party, including but not limited to reasonable attorneys' fees and costs and allocable costs of in house legal counsel ("Claim"), relating to damage to tangible property or bodily injury, or wrongful death, to the extent such Claim arises as a result of the sole negligence or willful misconduct of the respective indemnifying party, its employees, VARs, or contractors in connection with this Agreement.

10. JURISDICTION, VENUE, AND JURY WAIVER

This Agreement is made in Winnetka, California. This Agreement shall be interpreted and construed according to the laws of California excluding any such laws that might direct the application of the laws of another jurisdiction. The federal and state courts located in Los Angeles County, California shall be the only courts with jurisdiction to hear disputes under this Agreement. BroadVoice and VAR each waive trial by jury in any civil actions or proceedings that are brought by either of the parties under this Agreement.

11. FORCE MAJEURE

Neither party will be liable for delays in performance or for failure to perform when such delay or failure results from a cause beyond its reasonable control. Such causes include, but are not limited to, acts of God, acts of any public enemy, acts or failures to act by the other party, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, power losses and electromagnetic interference.

12. NO WAIVER

Failure or delay on the part of either party to exercise any right, power or privilege under this Agreement will not operate as a waiver thereof. Neither party may rely on any oral waiver of any provision of this Agreement.

13. NOTICE

All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be given by: (a) hand delivery; (b) first class, registered or certified mail with postage prepaid; or (c) overnight receipted courier service. Notices sent to VAR must be sent to the address first given above and notices sent to BroadVoice must be sent to the address set forth below, or such other address as may hereafter be designated in writing by either party. Notices given in accordance with subpart (b) shall be deemed delivered three days from the date of mailing. Notices given in accordance with subparts (a) or (c) of this Section shall be effective upon receipt or when receipt is refused.

Teutonic Holdings, LLC

20847 Sherman Way
Winnetka, CA 91306
Phone: 818-264-4400
Attn.: Doreen Paisano

14. MISCELLANEOUS

14.1 The failure of either party to give notice as required hereunder or to enforce or insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of any right, term or condition of this Agreement.

14.2 The parties agree that if either party to this Agreement brings any civil action related in any manner to this Agreement, the prevailing party in any such civil action shall recover all of its reasonable attorneys' fees and litigation expenses incurred from the non-prevailing party.

14.3 If any provision of this Agreement is invalid or unenforceable under applicable law, the provision shall be ineffective only to the extent of such invalidity, without affecting the remaining parts of the provision or the remaining provisions of this Agreement. VAR and BroadVoice agree to negotiate any such invalid or unenforceable provision to the extent necessary to render such part valid and enforceable.

14.4 This Agreement, including Exhibit A hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes any prior oral and/or written agreements and/or representations relating to such subject matter.

14.5 Those Sections of this Agreement that by their nature should survive the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement.

14.6 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which when taken together will constitute one and the same instrument. This Agreement may be executed by facsimile signature, and any such facsimile signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile signature were an original signature.

IN WITNESS WHEREOF, by the authorized signatures below, the parties have executed this Agreement.

VAR Company Name: _____

Signature: _____ **Title:** _____

Name: _____ **Date:** _____

Broadvoice

Signature: _____ **Title:** Vice President of Business Sales

Name: Shawn Jones **Date:** _____