



Vertical Fish

VERTICAL FISH

TERMS AND CONDITIONS

AI ATTENDANT SERVICE AGREEMENT

AUGUST 28, 2025
VERTICAL FISH



VERTICAL FISH TERMS AND CONDITIONS

AI Attendant Services Agreement Effective

These Merchant Terms & Conditions ("Agreement") govern your access to and use of AI-powered assistant services provided by Vertical Fish LLC, a Colorado limited liability company ("Vertical Fish," "we," or "us"). By subscribing to, using, or enabling any Vertical Fish AI services—including but not limited to AI phone reception, customer engagement tools, and workflow automation—you ("Merchant," "you," or "Client") agree to be bound by this Agreement.

If you do not agree to these terms, do not use the services. Continued use of any Vertical Fish products constitutes binding acceptance of these Terms and Conditions.

RECITALS

WHEREAS, Vertical Fish is a provider of AI automation services, including but not limited to intelligent voice attendants that answer and process inbound business calls, collect caller information, handle customer inquiries, and route relevant requests using natural language processing and workflow automation tools;

WHEREAS, Merchant operates a lawful business, is duly licensed in its respective jurisdiction, and desires to implement Vertical Fish's AI Attendant to handle incoming phone calls on a metered basis;

WHEREAS, the parties desire to define the terms under which Vertical Fish will provide AI reception services to Merchant;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Scope of Services

Vertical Fish will provide Merchant with access to a dedicated AI Attendant ("Attendant") that will:

- Answer inbound customer calls using AI-powered voice recognition;
- Provide tailored responses based on Merchant-specific data and instructions;
- Capture, transcribe, and summarize caller interactions;
- Route information to Merchant via SMS, email, webhook, or CRM connection;
- Operate on a 24/7/365 basis unless otherwise stated.

The Attendant operates on a **metered billing structure**, as further defined in Section 5.

2. Merchant Responsibilities

Merchant agrees to:

- **Provide complete setup materials:** This includes accurate and detailed business information such as business name, type, location(s), operating hours, contact methods, FAQs, pricing, customer scripts, service descriptions, and escalation

rules. These inputs are essential to configure the AI Attendant properly.

- **Maintain current business data:** Merchant is responsible for notifying Vertical Fish of any operational changes (e.g., holiday hours, promotions, staff updates, or menu changes) that impact how the AI interacts with customers.
- **Define communication rules:** Merchant must supply clear routing rules for how inquiries should be transferred via call, SMS, or email, including designated recipients by topic or urgency.
- **Ensure compliance:** All provided data must be truthful, lawful, and compliant with applicable local, state, and federal regulations, including advertising, privacy, and AI disclosure guidelines.
- **Respond in a timely manner:** Merchant agrees to respond to requests from Vertical Fish (e.g., support tickets, configuration questions, or performance feedback) within a commercially reasonable timeframe, typically within two (2) business days.
- **Maintain payment method:** A valid, up-to-date payment method must be kept on file at all times. Merchant is responsible for updating expired cards or resolving failed payments to prevent service disruption.
- **Acknowledge impact of non-compliance:** Failure to fulfill these responsibilities may result in miscommunication with customers, performance degradation, delays in AI updates, or temporary service suspension.

3. Use Restrictions & Compliance

Merchant shall not use the AI Attendant to:

- **Violate any law:** This includes any local, state, or federal regulation relating to consumer protection, telemarketing practices, call recording laws, data privacy (e.g., CCPA, GDPR), truth-in-advertising, or industry-specific compliance standards.
- **Record without consent:** In jurisdictions that require one-party or two-party consent for call recording, Merchant must ensure all applicable notices are presented to callers, and that use of the AI system complies with those laws.
- **Misrepresent services or identity:** Merchant may not use the AI Attendant to mislead callers about who they are speaking with, the nature of the products or services being offered, pricing terms, business credentials, or promotional claims.
- **Request or solicit sensitive data:** The AI Attendant must not be configured to collect credit card numbers, banking credentials, health information, or any personally identifiable information unless there is clear legal authority to do so and proper security protocols are in place.
- **Enable unauthorized third-party use:** The AI Attendant is licensed solely for use by the Merchant listed in the Agreement. It may not be resold, shared with affiliates, or



repurposed for any other entity or business operation without written permission from Vertical Fish.

- **Impersonate other entities:** Under no circumstance shall the AI be used to pose as a government agency, competitor, partner company, or unrelated brand. Any representation made to customers must truthfully reflect the identity and scope of the Merchant.
- **Tamper with the AI system:** Merchant must not attempt to modify, reverse engineer, disable, or manipulate the AI's decision-making, logs, call routing structure, voice settings, or monitoring tools provided by Vertical Fish.
- **Use the system for abusive purposes:** This includes harassment, intimidation, threatening language, discriminatory responses, or otherwise using the system to cause emotional or reputational harm.

Vertical Fish reserves the right to suspend or permanently terminate access to the AI Attendant in the event of any abuse, misuse, or breach of these restrictions. In such cases, Vertical Fish may also:

- Require immediate correction or removal of non-compliant scripts or processes;
- Retain and review call logs and AI transcripts for investigation;
- Notify regulatory bodies or law enforcement where legally required;
- Withhold or terminate support services and integrations;
- Assess penalties, damages, or additional fees for reputational harm or legal exposure.

4. Service Levels & Support

Vertical Fish is committed to providing high-quality, reliable AI Attendant services. The following outlines the standard service levels, availability expectations, and support protocols included with Merchant enrollment:

Support Channels & Availability

- **Standard Support:** Email-based and in-platform ticketing support is available during business hours (Monday–Friday, 9am–6pm Mountain Time).
- **Emergency Support:** For critical system outages or call flow interruptions affecting business continuity, emergency escalation is available via designated support contact (provided upon onboarding).
- **Response Time Goals:**
 - Critical issues: Initial response within **2 business hours**
 - Non-critical issues: Response within **1 business day**

- Feature or configuration requests: Addressed within **3 business days** or scheduled via onboarding/project plan

Included Support Services

- Initial configuration and deployment of the AI Attendant based on Merchant's submitted workflows, FAQs, and routing preferences.
- Periodic call review assistance, feedback-based optimizations, and script updates (typically quarterly or as mutually agreed).
- Access to self-service tools, logs, and transcripts (where applicable), with usage-based visibility and limited data history retention.
- Bug fixes, system patches, and backend updates at no additional charge when related to Vertical Fish platform maintenance.

Optional and Premium Support (Available at Additional Cost)

- Priority response SLA and direct account manager support;
- Ongoing AI script tuning and call flow audits;
- Multi-location management or enterprise dashboard access;
- Custom development, integrations (e.g., CRM, POS), or branded voice cloning;
- Dedicated training sessions or technical onboarding assistance beyond the standard setup scope.

Merchant Cooperation Required

- Vertical Fish's ability to provide support is dependent on the Merchant's timely cooperation. This includes responding to support requests, providing accurate business information, reviewing test calls, and approving updates or modifications as requested.
- If Merchant fails to cooperate or becomes unresponsive to repeated support outreach, Vertical Fish may pause support activity until engagement resumes.

5. Billing & Payment

Billing is based on the specific **Vertical Fish AI product or service tier** selected by the Merchant during onboarding or through any subsequent written upgrade or amendment. Each product or package includes defined usage limits, features, and service levels which correspond to fixed or metered pricing structures.

Monthly Billing Obligation

Merchant agrees to pay all applicable charges on a **monthly recurring basis**, in accordance with the pricing terms outlined in this Agreement, the executed service order, or any authorized addendum. Charges may include, but are not limited to:



- The base monthly subscription fee for the selected AI Attendant package;
- Additional charges for any overage minutes beyond the included allowance;
- Feature-based charges for optional add-ons such as CRM integrations, branded voice models, outbound automation, or custom call routing;
- One-time fees such as setup, reconfiguration, or account reactivation;
- Applicable sales tax, service tax, and/or regulatory fees based on the Merchant's billing location.

Payment Authorization

Merchant hereby **authorizes Vertical Fish LLC to initiate recurring ACH (Automated Clearing House) debits** from the bank account provided during onboarding or via the billing portal. This authorization covers all monthly charges, including overage and add-on usage, and will remain in effect until explicitly revoked in writing with confirmation of receipt.

ACH payments will be processed **within 1–3 business days of invoice issuance**. If a charge is declined or returned for any reason (e.g., insufficient funds, closed account), Vertical Fish may assess a processing fee and suspend services until the issue is resolved.

Invoicing and Payment Schedule

- Invoices are issued electronically each month and itemize all charges for the prior billing cycle.
- Payment is due upon issuance and processed automatically via the authorized ACH method.
- Late or failed payments may result in **immediate service interruption**, late fees, or administrative penalties.
- Merchants must maintain current and valid billing credentials at all times to ensure continuity of service.

Billing Disputes and Adjustments

Any dispute regarding billed charges must be submitted in writing within **seven (7) calendar days** of the invoice date. Failure to dispute within that timeframe constitutes acceptance of the charges.

Vertical Fish reserves the right to adjust pricing, modify terms, or impose additional fees for system-wide changes, feature upgrades, or changes in the Merchant's service scope, with **30 days' advance written notice** unless otherwise required for compliance or emergency infrastructure changes.

6. Term & Termination

6.1 Term of Agreement

This Agreement shall commence on the **Effective Date** and continue on a **month-to-month basis**, unless otherwise stated in a written service order, master agreement, or subscription contract. The Agreement will

automatically renew each month unless terminated in accordance with this section.

6.2 Termination by Merchant

Merchant may terminate this Agreement at any time by providing **thirty (30) days' written notice** to Vertical Fish. Notice must be sent to support@verticalfish.ai or through the official cancellation form available in the Merchant portal.

To avoid being billed for the upcoming month, notice must be received **at least 3 business days prior** to the next billing cycle. Merchant remains responsible for all fees incurred up to the termination effective date, including final pro-rated overage or usage-based fees.

6.3 Termination by Vertical Fish

Vertical Fish may terminate this Agreement, suspend access to services, or revoke system access immediately and without prior notice if:

- Merchant fails to pay fees or maintain a valid payment method;
- Merchant breaches any material term of this Agreement, including unlawful use or misuse of the AI Attendant;
- The services are being used in a manner that causes reputational harm or legal risk to Vertical Fish;
- Required cooperation from Merchant is unreasonably withheld, delayed, or abandoned during setup or support;
- A legal, regulatory, or policy constraint prevents continued service delivery.

Vertical Fish will make reasonable efforts to notify Merchant of termination and provide a final invoice summarizing outstanding obligations.

6.4 Effect of Termination

Upon termination:

- All access to Vertical Fish AI systems, data, and services will be revoked;
- Any outstanding balances will become immediately due;
- Merchant may request a final download of applicable transcripts, data logs, or system summaries (if available) within **7 business days** of termination;
- Any reusable hardware or devices provided by Vertical Fish must be returned in working condition within **15 business days** or replacement fees may apply.

7. Data, Privacy & Ownership

7.1 Ownership of Data

All data generated through the AI Attendant—including call transcripts, customer interaction summaries, lead entries, and call routing metadata—shall be considered the **property of the Merchant**. Vertical Fish acts as a processor and custodian of this data for the purposes of delivering the contracted service.



Merchant retains full ownership and control over its business content, customer interactions, workflows, and any data submitted to the system during configuration or usage.

7.2 Use of Data by Vertical Fish

Vertical Fish reserves the right to **anonymize and aggregate** data from across its platform for purposes of system optimization, product improvement, performance benchmarking, and service analytics. Under no circumstances will customer-specific data (e.g., personal identifiers, recorded audio, phone numbers, addresses) be shared with third parties for marketing, resale, or unrelated purposes without express written consent.

Training data used to improve AI accuracy may include anonymized speech patterns or structural conversation flows but will not retain identifiable Merchant or customer data unless explicitly agreed upon.

7.3 Data Access and Retention

- Vertical Fish maintains call transcripts and interaction summaries for a default period of **90 days**, unless otherwise specified by the service tier or regulatory requirement.
- Merchants may request extended data retention, custom archiving, or export capabilities at additional cost.
- Upon termination of this Agreement, Merchant may request a one-time data export within **7 business days**, after which all remaining data may be deleted from active systems.

7.4 Third-Party Integrations

If the Merchant elects to integrate the AI Attendant with external systems (e.g., CRM, SMS platform, calendar, email gateway), Merchant assumes full responsibility for reviewing and complying with the third party's data handling and privacy practices.

Vertical Fish will take reasonable steps to ensure secure API use and authenticated access but does not guarantee the data practices of unaffiliated systems.

7.5 Privacy Compliance

Vertical Fish complies with relevant U.S. data privacy regulations and frameworks. However, it is the Merchant's responsibility to ensure its own use of the AI Attendant complies with industry-specific, state-level, or international privacy regulations (e.g., CCPA, HIPAA, GDPR), including proper caller disclosures and lawful basis for data collection.

Where legally required, Merchant must include **clear notices** (e.g., "This call may be recorded or handled by an automated assistant") in their business listings or voicemail greetings.

8. Indemnification & Limitation of Liability

8.1 Indemnification by Merchant (Full Scope Protection)

To the fullest extent permitted by law, **Merchant agrees to unconditionally indemnify, defend, and hold harmless Vertical Fish LLC**, including its owners, officers, directors, employees, agents, affiliates, subcontractors, successors, and assigns (collectively, "Vertical Fish Parties") from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, investigations, regulatory

actions, disputes, third-party lawsuits, expenses (including attorneys' fees and costs), and judgments arising directly or indirectly from:

- Merchant's use, misuse, or failure to properly manage the AI Attendant or any service delivered by Vertical Fish;
- The conduct, acts, omissions, or misrepresentations of Merchant's staff, representatives, or customers interacting with the AI system;
- Breach of this Agreement or violation of any applicable law, regulation, or industry rule by Merchant;
- Any dispute between Merchant and its customers, vendors, or business contacts arising out of use of the AI Attendant, whether or not related to a system error;
- Claims of invasion of privacy, wiretapping, data misuse, robocalling, or unauthorized recordings initiated via the Merchant's use of the services;
- Intellectual property infringement or defamation arising from Merchant-provided prompts, scripts, recordings, or data inputs;
- Failure of Merchant to maintain accurate, legal, or timely business content or workflows;
- Any use of the services beyond the intended or licensed scope;
- Any data loss, missed business opportunity, reputational damage, or customer dissatisfaction not directly caused by willful misconduct of Vertical Fish.

Merchant's indemnification duties apply **regardless of whether Vertical Fish was negligent**, except in cases of proven gross negligence or intentional misconduct. These duties survive termination of the Agreement.

8.2 Indemnification by Vertical Fish (Limited)

Vertical Fish agrees to defend and indemnify the Merchant against third-party claims that the unmodified core Vertical Fish platform (excluding custom content or third-party integrations) infringes valid U.S. intellectual property rights. This indemnity:

- Applies only if Merchant promptly notifies Vertical Fish in writing and allows Vertical Fish to control the defense;
- Does not apply to Merchant-configured prompts, call flows, branding elements, integrations, or customer-supplied content;
- Is capped at Vertical Fish's actual financial interest and does not extend to reputational, consequential, or punitive damages.

8.3 Limitation of Liability

Notwithstanding any provision to the contrary:



- **Vertical Fish's total aggregate liability** for any and all claims under this Agreement shall not exceed the amount paid by the Merchant for services during the **three (3) months** prior to the event giving rise to the claim;
- Under no circumstances shall Vertical Fish be liable for:
 - Indirect, incidental, special, punitive, or consequential damages;
 - Lost revenue, lost data, lost business opportunities, or business interruptions;
 - Damages resulting from third-party integrations, telecommunications outages, API changes, or hardware/software malfunctions not controlled by Vertical Fish;
 - Customer losses, negative reviews, miscommunications, or confusion resulting from AI-generated messaging, limitations, or inaccuracies;
 - Service disruptions due to legal or regulatory action against underlying platforms or carriers.

Merchant acknowledges and accepts all risks associated with use of AI and automated systems, including the potential for misunderstanding, errors, limitations in interpretation, and caller dissatisfaction.

8.4 Disclaimer of Agency

Vertical Fish is a service provider and technology vendor only. It does not represent, act for, or serve as an agent of the Merchant. All interactions with customers or third parties remain the full responsibility of the Merchant. Nothing in this Agreement creates a partnership, joint venture, franchise, or employment relationship.

8.5 Reseller & Dependency Disclosures

Merchant acknowledges that Vertical Fish is a **reseller and downstream provider** of certain infrastructure platforms, voice-to-text services, and telephony systems. The performance and availability of Vertical Fish's services are subject to:

- The ongoing availability and functionality of upstream vendors such as OpenAI, Twilio, Google Cloud, and other API-driven providers;
- Third-party terms of service, rate limits, and regional restrictions which may change without notice.

Vertical Fish shall not be held liable for outages, restrictions, pricing changes, or service terminations originating from upstream providers. Services may be suspended or permanently discontinued at any time due to upstream access revocation, legal action, technical failure, or regulatory constraint—without refund or further obligation.

Vertical Fish makes no representations or guarantees regarding the continued availability of any particular AI model, voice service, TTS/STT engine, routing layer, or technology stack. Merchant assumes all risk associated with reliance on external digital infrastructure.

8.6 AI Limitations, Risk Acceptance, and Indemnity

Merchant expressly acknowledges that the services provided by Vertical Fish—including, but not limited to, AI voice assistants, transcription tools, and automated responses—are powered by **emerging artificial intelligence technologies** that are experimental in nature and subject to continuous development. As such:

Merchant understands and agrees that AI systems may:

- Misunderstand or misinterpret caller intent;
- Respond inaccurately or with outdated or unintended information;
- “Hallucinate” facts (generate fabricated but plausible-sounding answers);
- Lose context mid-conversation or switch topics unpredictably;
- Fail to escalate urgent or sensitive requests;
- Provide incorrect instructions, pricing, scheduling, or directions;
- Transcribe names, phone numbers, or addresses incorrectly;
- Confuse multiple callers or misroute conversations;
- Deliver robotic, awkward, or delayed responses due to latency or model behavior;
- Trigger false positives or negatives in spam filtering, escalation logic, or voice recognition;
- Exhibit tone, phrasing, or emotional affect that may be misunderstood by human users;
- Break or crash when integrated with unstable third-party APIs or communication platforms.

Full Risk Acceptance:

Merchant accepts **100% of the risk** associated with deploying and relying on these AI technologies. Merchant agrees to use their best judgment in determining how, where, and when to deploy the AI Attendant within their business and understands that **errors, confusion, or malfunction are an inherent part of AI usage.**

Merchant is solely responsible for verifying the accuracy of AI-generated communications and ensuring that fallback procedures (e.g., human escalation, disclaimers, or disclaimers) are in place when needed. Vertical Fish makes no warranties that the system will interpret every caller's message accurately or respond as a human would.

Indemnification for AI Malfunction:

Merchant shall **indemnify, defend, and hold harmless** Vertical Fish LLC and its affiliates from any and all claims, losses, liabilities, damages, complaints, or legal actions (including third-party claims) arising from:

- Customer dissatisfaction or financial loss due to incorrect AI responses;



- Missed appointments, orders, or time-sensitive issues;
- Business disruption or reputational damage due to an AI malfunction, hallucination, or miscommunication;
- Legal or regulatory violations resulting from AI-generated content or failure to properly inform callers of AI use;
- Any situation in which the AI Attendant acts outside the scope of the intended business logic—even if due to system error, upstream bug, or machine learning behavior beyond Vertical Fish's control.

Merchant acknowledges that AI is **not a substitute for human judgment**, and agrees that no refund, reduction, or legal claim shall be made against Vertical Fish for outcomes resulting from technical limitations or natural unpredictability of artificial intelligence.

This clause survives termination of the Agreement and applies to all versions, upgrades, or deployments of the AI system delivered by Vertical Fish.

9. Miscellaneous

9.1 Entire Agreement

This Agreement, including all referenced exhibits, schedules, pricing tiers, and approved addenda, constitutes the **entire agreement** between the parties regarding the subject matter hereof. It supersedes all prior or contemporaneous understandings, communications, or agreements—oral or written.

9.2 No Waiver

The failure of either party to enforce any right or provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other right or provision. No waiver shall be effective unless in writing and signed by an authorized representative.

9.3 Assignment

Merchant may not assign or transfer this Agreement or any of its rights or obligations without prior written consent from Vertical Fish. Any attempted assignment in violation of this clause shall be null and void. Vertical Fish may assign this Agreement in the event of a sale, merger, or internal reorganization without notice.

9.4 Survival

All provisions that by their nature should reasonably be expected to survive termination of this Agreement—including but not limited to indemnity, limitation of liability, data ownership, and payment obligations—**shall survive** termination or expiration.

9.5 Relationship of Parties

Nothing in this Agreement creates a partnership, joint venture, fiduciary duty, or employment relationship. The parties are independent contractors, and neither party has the right to bind the other in contract or obligation.

9.6 Legal Compliance

Merchant agrees to comply with all applicable federal, state, and local laws, rules, and regulations in connection with its use of the services

provided under this Agreement. Vertical Fish reserves the right to immediately suspend services upon discovery of suspected unlawful use.

9.7 Notices

All notices, requests, demands, and other communications under this Agreement shall be given in writing and delivered to:

Vertical Fish LLC

35 West Broadway, Suite 501
Salt Lake City, UT 84101
Email: legal@verticalfish.ai

All notices to Merchant shall be sent to the billing or business contact information provided during onboarding, and shall be deemed delivered upon successful email transmission or three (3) business days after postal mailing.

10. Warranties by Merchant

Merchant hereby represents, warrants, and covenants that it shall at all times remain in compliance with all applicable federal, state, local, and international laws, statutes, regulations, ordinances, and administrative codes, including but not limited to those pertaining to data privacy, telemarketing, consumer protection, advertising, voice recording disclosures, and artificial intelligence disclosures and usage limitations.

Without limiting the generality of the foregoing, Merchant further expressly warrants that:

- **(a)** All scripts, business logic, voice prompts, messages, workflows, customer responses, or other content (“Merchant Content”) submitted to Vertical Fish for use in configuring or deploying the AI Attendant are true, accurate, complete, lawful, and do not infringe upon any third party’s intellectual property or proprietary rights;
- **(b)** Merchant shall timely fulfill any and all goods, services, or outcomes promised or inferred through AI-generated customer interactions;
- **(c)** Merchant shall deliver all post-call communications or follow-ups, including but not limited to confirmations, receipts, status updates, or cancellations, as communicated to the end-user by the AI Attendant;
- **(d)** Merchant shall not engage in, and shall ensure that the AI Attendant is not configured to engage in, any misrepresentation of pricing, service availability, business credentials, refund policies, or performance claims;
- **(e)** Merchant shall not permit the AI Attendant to impersonate any third party, misidentify the Merchant’s business identity, or otherwise deceive or manipulate end-users;
- **(f)** In the event that the AI Attendant is configured to collect sensitive, personally identifiable, financial, health, or regulated information, Merchant warrants it has all required legal consents, disclosures, and data handling protocols in place and acknowledges that Vertical Fish bears no responsibility for compliance under HIPAA, PCI, CCPA, GDPR, or similar statutes;



- **(g)** Merchant shall not use any trade name, trademark, service mark, proprietary format, branding elements, or other identifiers owned by Vertical Fish, its licensors, or upstream infrastructure partners (e.g., OpenAI, Twilio) without the prior express written consent of Vertical Fish;
- **(h)** Merchant shall not sublicense, resell, replicate, white-label, or offer the AI Attendant to any third party, nor shall Merchant use a single license to service multiple physical locations, DBAs, brands, or client entities without a written multi-location license approved by Vertical Fish;
- **(i)** Merchant shall be solely responsible for all end-user interactions, outcomes, and expectations created by the AI Attendant and shall accept full liability for any consequences thereof, including dissatisfaction, legal claims, or financial losses;
- **(j)** Any actual or attempted fraud, unlawful use, breach of contract, or public policy violation shall constitute a material breach subject to immediate termination of services, potential legal recourse, and referral to appropriate regulatory authorities.

11. Business Changes

Merchant shall provide Vertical Fish with written notice no less than **thirty (30) calendar days** prior to the effective date of any change in:

- ownership or control of the Merchant entity;
- legal structure (e.g., from LLC to corporation);
- trade name, DBA, or brand identity;
- core product or service offering;
- geographic location of operations;
- anticipated call volume or usage profile;
- other material change that may affect Vertical Fish's ability to fulfill its obligations or properly configure the AI Attendant.

Vertical Fish reserves the right, in its sole discretion, to review the impact of any such changes and revise the service scope, pricing, terms, or continuation of this Agreement accordingly.

12. Returns, Credits, and Dispute Resolution

Merchant shall ensure that any refund, cancellation, or return policy referenced or implied during AI-assisted customer interactions is truthful, accurate, and enforceable under applicable law. Vertical Fish shall have no responsibility for misrepresentations made through the system, nor any obligation to intervene in disputes between Merchant and its customers.

Where the AI Attendant is used to facilitate bookings, reservations, purchases, or service agreements, Merchant assumes all responsibilities relating to refund policies, service guarantees, or customer satisfaction terms.

13. Chargebacks and Caller Disputes

Merchant shall bear sole and exclusive responsibility for resolving any and all disputes, inquiries, or complaints arising from or related to customer calls, communications, or transactions processed or facilitated by the AI Attendant. Vertical Fish shall not be liable for transcription errors, speech recognition issues, AI misinterpretations, or any downstream dispute originating from AI-driven interactions.

Vertical Fish reserves the right to monitor complaints and may request call logs, summaries, or transcripts as part of its quality control protocol. In the event of repeated disputes, chargebacks, or formal complaints, Vertical Fish may suspend, restrict, or terminate service without refund or liability.

14. Rates; Fees; Adjustments

14.1 Minimum Service Fees

Merchant agrees to pay the following minimum fees as a condition of service:

- **Minimum Setup Fee:** A one-time minimum, non-refundable setup and deployment fee of **five hundred dollars (\$500.00 USD)** shall be assessed upon commencement of service.
- **Minimum Monthly Base Fee:** A recurring minimum monthly service fee of **two hundred fifty dollars (\$250.00 USD)** shall be charged to the Merchant account regardless of usage, system access frequency, or transaction volume. This fee is the minimum billing threshold and shall apply each calendar month during the term of this Agreement.

14.2 Variable Charges and Platform Usage

In addition to the Base Fee, Merchant agrees to pay all fees incurred as a result of optional platform features, enhancements, or system configurations, including but not limited to:

- API-based integrations or CRM connections;
- Use of premium voice models or speech synthesis customization;
- Outbound AI interactions (voice, SMS, or email automation);
- Multi-location routing or brand-differentiated flows;
- Advanced analytics, reporting layers, or compliance modules;
- Any bespoke development or support outside of standard onboarding.

These services shall be billed based on the then-current pricing schedule or as otherwise agreed to in writing.

14.3 Pass-Through of Upstream Vendor Costs and Infrastructure Expenses

Merchant expressly acknowledges and agrees that Vertical Fish is a downstream technology aggregator and **relies on third-party platforms, APIs, and infrastructure providers** for key service components, including but not limited to:

- Artificial Intelligence model access and inference (e.g., OpenAI, ElevenLabs);



- Speech-to-text (STT), text-to-speech (TTS), and voice interface APIs;
- Cloud hosting, bandwidth, serverless compute, or storage environments;
- Telephony, SIP trunking, programmable voice/SMS, and call routing systems (e.g., Twilio, Vonage, etc.).

Merchant **further acknowledges that such providers may modify their pricing, licensing models, usage fees, or minimum commitments at any time**, and that such modifications may directly impact the cost of service delivery by Vertical Fish.

Accordingly:

- **Vertical Fish reserves the unrestricted right to pass through any third-party price increases, surcharges, usage fees, tier changes, or volume minimums directly to the Merchant, with or without markup.**
- In addition to pass-through costs, Vertical Fish may, at its sole discretion, apply a **percentage-based or fixed-fee surcharge** to such increases to account for business continuity, administrative burden, billing reconciliation, infrastructure scaling, and operating margin preservation.

These pass-through and discretionary surcharges may be **implemented without renegotiation of this Agreement**, provided that Vertical Fish gives Merchant **email notice at least fifteen (15) days prior** to the effective date of the pricing change.

14.4 Billing Cycle and Fee Assessment

All charges described herein shall be **calculated monthly in arrears**, based on actual service consumption, system configuration, and applicable infrastructure pass-throughs, and shall be billed to Merchant via automatic ACH debit or other authorized payment method on file.

Failure to remit payment or maintain an active billing method shall subject the account to immediate service interruption and/or late payment penalties.

14.5 Administrative, Penalty, and Recovery Fees

Vertical Fish reserves the right to assess the following additional fees:

- **Account Reactivation Fee:** \$75.00 per suspended account;
- **Returned ACH or Payment Reversal Fee:** \$50.00 per incident;
- **Custom Reporting or Transcript Export Fee:** \$25.00–\$75.00 per request;
- **Technical or Engineering Support (Beyond Standard Use):** \$150.00 per hour.

14.6 Equipment and Hardware Terms (If Applicable)

If Vertical Fish supplies any physical equipment (e.g., smart terminals, voice-optimized handsets, or signage):

- Merchant shall be responsible for **all applicable shipping, replacement, restocking, and return logistics**;
- Failure to return any device upon account cancellation shall result in a device replacement charge of **not less than four hundred dollars (\$400.00 USD)** per standard unit or **eight hundred dollars (\$800.00 USD)** per wireless, advanced, or custom unit.

14.7 Payment Authorization and Enforcement

Merchant hereby irrevocably authorizes Vertical Fish LLC (“Vertical Fish”) to initiate **automated clearing house (ACH)** debits from the bank account provided on file, or any subsequently updated account, for all fees, surcharges, and adjustments billed under this Agreement.

14.7.1 Account Maintenance & Validity

Merchant shall:

- Maintain at all times a valid and active depository account capable of ACH transactions;
- Promptly notify Vertical Fish, in writing, of any changes to the designated bank account no less than **five (5) business days** prior to such change becoming effective;
- Complete and sign any updated authorization forms or account verification documents reasonably requested by Vertical Fish.

Failure to provide timely notice or to maintain an account in good standing shall constitute a **material breach of this Agreement** and may result in immediate suspension of service without further notice.

14.7.2 Authorization to Draft Adjusted Fees

Merchant expressly agrees that:

- Vertical Fish may **adjust fees, rates, or surcharges** in accordance with Section 14.3 (Pass-Through Increases) or otherwise under the terms of this Agreement **without the need for a new signed addendum**;
- Continued use of services following notification of updated pricing constitutes Merchant's full and binding acceptance of such revised charges;
- Vertical Fish is authorized to initiate ACH drafts for the updated amounts without the need for further express written consent, to the extent permissible under applicable law.

This authorization is granted in compliance with the **Electronic Fund Transfer Act (15 U.S.C. § 1693 et seq.)** and the applicable rules and guidelines issued by the **National Automated Clearing House Association (NACHA)**.

14.7.3 Non-Payment and Collections

In the event that:



- A scheduled ACH debit is returned for insufficient funds, account closure, or revocation of authorization;
- Merchant fails to cure any unpaid balance within **five (5) business days** of receiving written notice;

Then Vertical Fish may, at its sole discretion:

- Suspend, limit, or permanently terminate the Merchant's services;
- Assess a **Returned Payment Fee of fifty dollars (\$50.00 USD)** per failed transaction;
- Refer the outstanding balance to third-party collections or initiate legal proceedings for recovery;
- Apply an interest charge of **1.5% per month (or the maximum rate allowed by law)** on any overdue amounts.

All costs and expenses incurred by Vertical Fish in the enforcement of its rights under this Section, including reasonable attorneys' fees, collection agency fees, and court costs, shall be recoverable from the Merchant as a contractual obligation.

14.7.4 No Waiver

No failure by Vertical Fish to enforce any payment obligation shall be deemed a waiver of its right to do so subsequently. All rights and remedies under this Section shall be cumulative and in addition to any rights available at law or in equity.

15. Guarantor

Any individual or entity signing this Agreement in the capacity of Guarantor hereby irrevocably guarantees the prompt and complete performance of all Merchant obligations. Vertical Fish may, at its sole election, seek recovery or enforcement against the Guarantor directly without first pursuing remedies against the Merchant.

16. Amendments

This Agreement may be unilaterally amended by Vertical Fish upon thirty (30) days' written notice. Amendments may include updates to terms, pricing, compliance requirements, or platform capabilities. Continued use of the services after such notice constitutes binding acceptance of the amendments. No oral modification shall be valid.

17. Taxes

Merchant is responsible for the payment of all applicable taxes, levies, duties, and assessments, including but not limited to sales tax, telecommunications tax, value-added tax (VAT), and other governmental charges imposed by any jurisdiction. Vertical Fish may collect and remit such taxes where legally required.

18. Arbitration

Any controversy, dispute, or claim arising out of or relating to this Agreement shall be resolved exclusively by binding arbitration conducted in **Salt Lake City, Utah**, under the Commercial Arbitration Rules of the American Arbitration Association.

- Arbitration shall be conducted on an **individual basis only**; class arbitration is strictly prohibited.

- Judgment upon the arbitration award may be entered by any court of competent jurisdiction.

19. Force Majeure

Vertical Fish shall not be liable for any failure or delay in performance resulting from acts or circumstances beyond its reasonable control, including but not limited to natural disasters, war, terrorism, cyberattacks, power or internet outages, labor disputes, governmental restrictions, vendor outages, platform failures, or pandemics.

20. Indemnification

Merchant agrees to indemnify, defend, and hold harmless Vertical Fish, its officers, employees, agents, contractors, and affiliates from and against any and all claims, actions, liabilities, losses, costs, expenses, and damages (including reasonable attorney's fees) arising out of or related to:

- Merchant's use or misuse of the AI Attendant;
- Any violation of law, regulation, or customer rights;
- Breach of this Agreement;
- Customer complaints or disputes;
- Claims of negligence, fraud, or data misuse.

This indemnity shall survive the termination of this Agreement.

21. Limitation of Liability

In no event shall Vertical Fish be liable for any indirect, incidental, special, punitive, or consequential damages, including lost profits, data loss, or reputational harm, even if advised of the possibility thereof. Vertical Fish's aggregate liability shall be limited to the total fees paid by the Merchant in the three (3) calendar months preceding the claim.

22. Waiver of Class Actions

The parties expressly waive the right to participate in any class action, mass arbitration, representative proceeding, or joinder of claims relating to this Agreement. All claims must be brought individually.

23. Disclaimer of Warranties

Except as expressly provided herein, Vertical Fish disclaims all warranties, express or implied, including any implied warranties of merchantability, fitness for a particular purpose, system uptime, or AI accuracy. Use of the AI Attendant is at the Merchant's sole risk.

24. Governing Law; Jurisdiction

This Agreement shall be governed by and construed in accordance with the internal laws of the **State of Utah**. Exclusive venue for any permitted legal proceeding shall lie in the state or federal courts located in **Salt Lake County, Utah**.

25. Severability

If any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be limited or modified to the minimum extent necessary to preserve its intent and legality. The remaining provisions shall remain in full force and effect.



26. Counterparts

This Agreement may be executed in one or more counterparts, whether in physical or electronic form, all of which taken together shall constitute one and the same instrument. Digital signatures shall be deemed binding and enforceable.

27. AI Configuration & Maintenance

Vertical Fish shall provide configuration tools, onboarding assistance, and system maintenance. Merchant acknowledges that system functionality may vary based on model behavior, platform updates, or vendor limitations. Advanced configurations, re-training, or custom development may incur additional fees. Vertical Fish is not responsible for ongoing support of third-party integrations unless otherwise agreed.

28. Notices

All notices shall be in writing and delivered to:

Vertical Fish LLC
35 West Broadway, Suite 501
Salt Lake City, Utah 84101
Email: support@verticalfish.ai

Notices to Merchant shall be sent to the primary contact information on file and deemed delivered upon confirmed email transmission or standard mail delivery.

29. Entire Agreement

This Agreement, including all incorporated exhibits, pricing schedules, and authorized addenda, constitutes the entire agreement between the parties. It supersedes all prior or contemporaneous agreements, communications, and representations. No terms or conditions not contained herein shall be binding unless executed in writing by an authorized representative of Vertical Fish.



VERTICAL FISH LLC
LAWFUL USE TERMS AND CONDITIONS

Effective Date: May 21, 2025

These Terms & Conditions for Lawful Use of Service (“Agreement”) govern all use of Vertical Fish’s AI-powered voice, automation, and assistant technologies (“Services”) by any subscribing business (“Merchant,” “you,” or “your”). By using or continuing to use the Services, Merchant agrees to comply with this Agreement in full. If Merchant does not agree, use of the Services must cease immediately. These terms are binding regardless of whether Services are accessed via voice, web, app, SMS, or API.

1. Lawful Use Only

1.1 Compliance Obligation

Merchant agrees to use all Vertical Fish Services **solely for lawful, authorized, and ethical business purposes**, and shall at all times ensure full compliance with all applicable:

- **Federal, state, and local laws** governing business communications, marketing, data collection, and consumer protection;
- **International data privacy and processing laws**, including but not limited to:
 - **General Data Protection Regulation (GDPR)** – for any users located in the EU/EEA;
 - **California Consumer Privacy Act (CCPA)** and **California Privacy Rights Act (CPRA)** – for California-based individuals;
 - **Health Insurance Portability and Accountability Act (HIPAA)** – if Merchant operates in or near regulated healthcare environments;
 - **Children’s Online Privacy Protection Act (COPPA)** – where applicable;
- **Telemarketing and electronic communications regulations**, including:
 - **Telephone Consumer Protection Act (TCPA)**;
 - **CAN-SPAM Act of 2003**;
 - Any **state-specific robocall and AI disclosure laws** (e.g., California Civil Code § 1798.100, Illinois BIPA, etc.);
- **Voice recording and call consent laws**, including:
 - **One-party or two-party consent rules** depending on the Merchant’s and caller’s location;

- Public or private notice requirements for AI or automated response systems.

Merchant agrees to:

- **Clearly disclose** to all customers when they are interacting with an AI system, as required by law or platform policy;
- **Provide and maintain lawful opt-in procedures** for outbound messaging, SMS follow-ups, or promotional calls;
- **Retain verifiable consent** for any contact initiated via AI or automation when required by regulation;
- **Avoid deceptive practices** and ensure AI is never configured to impersonate human staff without disclosure.

1.2 Industry-Specific Duties

If Merchant operates in a regulated industry (e.g., healthcare, financial services, legal, education), they must ensure that all use of Vertical Fish Services conforms to applicable industry standards and obligations, including but not limited to:

- Ensuring that **protected health information (PHI)** is not stored, processed, or transmitted unless properly secured and disclosed under HIPAA;
- Not collecting, transmitting, or exposing **personally identifiable financial data** in violation of PCI-DSS, GLBA, or similar frameworks;
- Avoiding any use of AI that would result in **unauthorized legal advice**, clinical claims, or automated decision-making prohibited under consumer law.

1.3 Indemnification for Unlawful Use

To the **maximum extent permitted by law**, Merchant shall fully **indemnify, defend, and hold harmless Vertical Fish LLC**, its officers, employees, contractors, infrastructure providers, and affiliates from and against any and all:

- Claims, actions, lawsuits, investigations, regulatory proceedings, fines, penalties, damages, settlements, or liabilities;
- Arising from or relating to:
 - Merchant’s violation of any applicable law, regulation, or compliance standard listed herein;
 - Use of the Vertical Fish platform in a manner that results in consumer harm, misrepresentation, data breach, privacy violation, or unlawful communication;



- Any failure to obtain proper consent, post required disclosures, or follow legally mandated recording or opt-in protocols;
 - Claims of unauthorized AI impersonation, telemarketing abuse, or illegal data collection practices;
 - Complaints brought by individuals, customers, agencies, or third parties as a result of unlawful conduct carried out using Vertical Fish Services;
- Including reasonable attorneys' fees, investigative costs, expert witness fees, and litigation expenses.

This indemnification obligation:

- **Survives the termination or expiration** of this Agreement;
- Applies whether Merchant acted negligently, knowingly, or through insufficient oversight;
- Covers both actual and alleged violations, including investigations where Vertical Fish is named or contacted due to Merchant's use.

Merchant agrees to use Vertical Fish Services **solely for lawful and ethical business purposes** in full compliance with:

- All applicable **federal, state, and local laws**;
- **Telephony, privacy, and AI disclosure regulations**, including TCPA, CCPA, GDPR, CAN-SPAM, and HIPAA where relevant;
- Any **industry-specific requirements**, including medical, financial, or legal sectors;
- Voice recording, robocall, and consent laws applicable in the Merchant's operating jurisdictions.

2. Prohibited Uses

2.1 Absolute Restrictions

Merchant is strictly prohibited from using Vertical Fish Services to support, promote, or engage in any activity that is illegal, harmful, deceptive, abusive, or otherwise violates ethical or regulatory standards. This includes, but is not limited to:

- **Pornographic or Sexually Explicit Content:** Creating, promoting, or transmitting sexually explicit materials, including obscene speech, simulated sexual interactions, or erotic service promotions.
- **Child Exploitation:** Any direct or indirect reference to child sexual abuse material (CSAM), child pornography, grooming behavior, or simulated child exploitation is strictly prohibited and will be reported to law enforcement without exception.

- **Prostitution and Escort Services:** Solicitation, promotion, facilitation, or automation of any form of compensated sexual encounter or companionship service.
- **Narcotics and Controlled Substances:** Any use of the Services to advertise, sell, facilitate, or distribute illicit drugs, unauthorized cannabis products, or paraphernalia, including AI interactions that suggest, simulate, or reference drug trafficking.
- **Violent, Hateful, or Threatening Conduct:** Use of the system to incite violence, threaten individuals, promote hate speech, or encourage self-harm.
- **Fraud and Impersonation:** Use of AI to mislead, deceive, impersonate competitors, government agencies, or individuals.
- **Money Laundering, Terrorism, or Illicit Finance:** Use of the platform to move funds, conduct scams, or enable financial structures designed to evade laws or obscure origins of funds.

2.2 System Misuse

Merchant shall not:

- Attempt to **reverse-engineer, tamper with, or bypass** any safety features or AI moderation layers embedded in the Services;
- Deploy the AI in environments or flows that are designed to deceive, confuse, or emotionally manipulate users;
- Configure call flows that **fabricate false confirmations**, pricing, bookings, or impersonate unavailable services or staff;
- Train or prompt the system to **violate any law, infringe rights**, or deliver harmful responses.

2.3 Indemnification for Prohibited Use

Merchant agrees to **indemnify and hold harmless Vertical Fish LLC** from any and all liability, including regulatory fines, criminal exposure, class action complaints, or reputational damages arising from:

- Merchant's use of the Services in a prohibited or unlawful manner;
- Content, prompts, or logic entered by Merchant or its staff that result in customer harm;
- Claims involving harassment, defamation, unauthorized content, or AI impersonation of protected roles;
- Any public relations, platform restrictions, or third-party bans imposed due to Merchant misuse.



Vertical Fish reserves the right to **immediately suspend or terminate** service with no refund if any prohibited use is suspected or confirmed.

3. Merchant Responsibilities

Merchant is solely responsible for ensuring the safe, lawful, and effective configuration of the Services. This includes:

3.1 Setup & Accuracy

- Providing **complete and truthful setup information**, including hours, location, pricing, FAQs, routing instructions, and fallback preferences;
- Promptly updating any changes to business operations, contact information, disclaimers, or service availability.

3.2 Consent & Disclosure

- Including all **required notices and disclaimers** (e.g., “This call may be recorded or handled by an AI assistant”) where legally necessary;
- Informing customers when they are speaking to AI unless otherwise permitted under state law;
- Ensuring **customer consent is valid, documented, and auditable** for any outbound contact made via automation.

3.3 Human Escalation

- Maintaining a reliable process for AI-to-human escalation;
- Monitoring service logs to ensure critical issues are addressed and **no urgent matters are lost or ignored** by automation.

3.4 Indemnification for Operational Mismanagement

Merchant shall indemnify Vertical Fish from any customer losses, service failures, or public complaints resulting from:

- Misconfigured flows, unanswered escalations, or unapproved messaging;
- Lack of disclosure or failure to obtain consent;
- Improper scripts, deceptive logic, or confusing AI behavior initiated by Merchant;
- Failure to deliver on bookings, services, or commitments represented by the AI.

4. System Behavior & AI Limitations

Merchant acknowledges that artificial intelligence, by nature, has **known limitations** and may:

- Misinterpret speech, deliver incorrect responses, or lose conversational context;
- Fabricate details (“hallucinate”), give out-of-date information, or make inaccurate suggestions;
- Confuse names, addresses, times, or sentiment;
- Exhibit robotic phrasing, latency, or unexpected tone variation.

4.1 Risk Acceptance

Merchant **fully accepts the operational risks** of deploying AI and acknowledges that:

- The AI assistant is not a human and should not be assumed to behave as one;
- All AI-driven messaging and decisions should be **monitored, reviewed, and tested regularly** by Merchant;
- Critical or sensitive workflows (e.g., legal, medical, financial advice) require human supervision and **should not be fully automated** without specific risk protocols.

4.2 No Warranty

Vertical Fish makes no representations or guarantees that the AI will:

- Always be accurate, truthful, or contextually correct;
- Properly handle complex, legal, or emotionally sensitive customer requests;
- Interpret speech correctly in all accents, dialects, or noisy environments;
- Perform without occasional technical disruption due to upstream vendor outages.

8. Indemnification & Liability Allocation

8.1 Full Scope Indemnification by Merchant

To the fullest extent permitted by law, Merchant shall **unconditionally indemnify, defend, and hold harmless Vertical Fish LLC** (“Vertical Fish”), its parent entities, subsidiaries, affiliates, owners, officers, directors, employees, contractors, partners, successors, and permitted assigns (collectively, the “Vertical Fish Parties”) from and against any and all:

- **Claims**, causes of action, lawsuits, proceedings, investigations, inquiries, demands, threats, or allegations;
- **Liabilities**, losses, damages, penalties, fines, settlements, judgments, or enforcement actions;



- **Costs**, including reasonable attorney's fees, expert witness fees, litigation costs, discovery expenses, and court or arbitration fees;

arising directly or indirectly out of:

(a) Use or Misuse of the Services

- Any activity conducted by Merchant or its agents, employees, or representatives through or using Vertical Fish Services, whether or not such activity was authorized;
- The deployment of AI, voice, or automation systems for customer interaction, outbound messaging, or business operations;
- Any configuration, prompt, workflow, script, or response authored, uploaded, or activated by Merchant;

(b) Violation of Laws or Regulations

- Any actual or alleged breach of applicable federal, state, or international laws or regulations, including but not limited to:
 - TCPA, CAN-SPAM, HIPAA, CCPA, GDPR, COPPA, BIPA, or other privacy, telemarketing, and data handling laws;
 - Industry-specific compliance requirements (e.g., medical, financial, legal);
 - Voice recording or AI disclosure laws in single- or dual-consent jurisdictions;

(c) Misrepresentations or Inaccurate Customer Communications

- Any misrepresentation, false promise, or unauthorized statement made by the AI system due to Merchant-provided content or training;
- Inaccurate pricing, policy, schedule, or availability information delivered to customers via AI;

(d) Unauthorized Collection or Mishandling of Data

- Collection, processing, or dissemination of sensitive or personally identifiable information without proper disclosure, consent, or legal authority;
- Use of the Services in a way that exposes Vertical Fish to allegations of data breach, consumer harm, or unlawful surveillance;

(e) Intellectual Property Infringement

- Use of copyrighted, trademarked, or proprietary content in prompts, voice models, or integrations without proper licensing or rights;

- Claims that content provided by Merchant violates third-party IP rights;

(f) Platform Abuse or Security Violations

- Attempts to tamper with, reverse engineer, exploit, or interfere with the performance or integrity of the Vertical Fish platform or its integrations;
- Use of the system to harass, defraud, impersonate, or deceive others;

(g) Third-Party Complaints and Government Investigations

- Any customer, consumer, platform, or regulatory complaint tied to Merchant's use of the Services;
- Any subpoena, search, investigation, enforcement action, or fine issued in connection with Merchant behavior;

(h) Public, Reputational, or Financial Harm to Vertical Fish

- Any press coverage, negative customer reviews, legal costs, or loss of business that results from Merchant's negligent, unethical, or unlawful use of Vertical Fish Services;
- Any service disruption, third-party account suspension, or upstream vendor restriction caused by Merchant behavior.

8.2 Scope and Conditions of Indemnification

- This indemnity applies **regardless of whether the underlying conduct was intentional, negligent, reckless, or unknowing**;
- Merchant's indemnity obligations **survive termination or expiration** of this Agreement;
- Vertical Fish reserves the right to:
 - Select its own legal counsel;
 - Approve or reject proposed settlements that could impose ongoing obligations;
 - Recover payment from Merchant on a **demand basis**, without waiting for final judgment;
- Vertical Fish is not required to prove actual liability to invoke this indemnity—**the existence of an investigation, claim, or credible threat is sufficient**;

8.3 Exclusions

Merchant's indemnification obligation shall **not** extend to claims arising solely and directly from:



- The willful misconduct or gross negligence of Vertical Fish personnel;
- System behavior that materially deviates from Merchant inputs or logic and which Vertical Fish refused to correct upon notice;

8.4 No Limitation of Remedies

This indemnification section is intended to be **broadly interpreted** and **in addition to any other legal or equitable remedies** available to Vertical Fish. Nothing in this Agreement limits the ability of Vertical Fish to:

- Seek injunctive relief, emergency action, or court intervention;
- Pursue damages or restitution independently of this indemnification;

5. No Liability for Merchant Misuse

Vertical Fish LLC is a **technology service provider**, not a legal advisor, telemarketing agency, or business consultant. The Services provided—including but not limited to AI voice assistants, messaging automation, call handling systems, and integrations—are **configurable tools** that require the Merchant's judgment, inputs, and oversight.

As such, Vertical Fish expressly disclaims any responsibility or liability for:

5.1 Merchant-Caused Outcomes

Vertical Fish shall not be liable for:

- **Customer confusion, dissatisfaction, or financial harm** resulting from AI responses configured, prompted, or deployed by the Merchant;
- **Booking errors, missed appointments, double charges, incorrect orders, or misrepresented services or pricing** that result from Merchant-provided data or logic;
- **Service disruptions, lost sales, or damaged customer relationships** caused by Merchant delays, poor configuration, or neglect of AI escalation or fallback processes;
- **Reputational damage, bad reviews, or social media backlash** stemming from public interaction with the AI system that was not properly tested or supervised by the Merchant;

5.2 Legal Exposure or Compliance Failures

Vertical Fish shall not be responsible for:

- **Violations of privacy, consumer protection, recording, or AI disclosure laws** due to Merchant's failure to provide proper consent, notices, or legal disclaimers;

- **Lawsuits, investigations, fines, or enforcement actions** brought by individuals, customers, regulatory bodies, or platforms in connection with Merchant use of the Services;
- Any **unauthorized data collection, financial loss, or identity theft allegations** stemming from Merchant's AI scripts or workflows;

5.3 Platform and Vendor Risk

Vertical Fish shall not be held liable for:

- **Upstream vendor outages, API rate limits, latency, or call drops** caused by infrastructure providers such as Twilio, OpenAI, or other platforms;
- **Limitations or inaccuracies in AI model behavior**, including hallucinations, confusion, tone mismatches, or inability to handle complex tasks;
- Delays, bugs, or system responses that **differ from Merchant expectations** due to changes in AI behavior, regulatory updates, or vendor policy shifts.

5.4 Vertical Fish Is Not a Party to Transactions

Merchant understands and agrees that:

- Vertical Fish is **not a party to any contract, transaction, sale, service, or customer agreement** initiated, confirmed, or discussed through the AI system;
- All interactions conducted through the AI platform are **solely between the Merchant and their customers or users**;
- Vertical Fish does not verify, enforce, or guarantee any business promises, outcomes, or commitments made by the AI on behalf of the Merchant.

5.5 Merchant Acceptance of Risk

Merchant **accepts full responsibility** for how the Services are used, and agrees to independently verify that:

- AI outputs are accurate, appropriate, and aligned with business operations;
- All workflows, disclaimers, and user flows are properly configured and monitored;
- Customers have a clear, accurate understanding of their interactions with the system.

No failure by Vertical Fish to intervene, modify, or correct Merchant configuration shall constitute an assumption of liability, waiver of rights, or partnership.

Vertical Fish provides tools, not business practices. As such, Vertical Fish shall not be liable for:



- Customer confusion or financial loss caused by Merchant workflows or AI responses;
- Disputes regarding pricing, bookings, confirmations, or customer service failures;
- Legal violations caused by improper disclosures or unlawful scripts;
- Any illegal activity, civil claim, or regulatory action initiated due to Merchant conduct.

Merchant agrees that **Vertical Fish is not a party to any transaction** or customer interaction initiated through the system.

6. Suspension and Enforcement

Vertical Fish may immediately suspend or terminate any account without refund or prior notice if:

- The system is used for unlawful, harmful, or misleading purposes;
- The Merchant violates any section of this Agreement;
- A third-party platform (e.g., OpenAI, Twilio) flags Merchant use as abusive or illegal;
- There is a credible complaint involving criminal activity or regulatory risk.

Vertical Fish reserves the right to report suspected criminal behavior to law enforcement or regulatory bodies.

6. Merchant Responsibility for Public-Facing Information

6.1 Self-Service Content Management

Vertical Fish provides Merchants with access to a **secure self-service platform or content management system (CMS)** for the purpose of configuring, updating, and maintaining the information that the AI Assistant will use when responding to callers, users, or the general public.

This includes, but is not limited to:

- Business name, hours, pricing, staff names, menus, services offered, promotions, locations, disclaimers, and routing instructions;
- Frequently asked questions (FAQs), greetings, automated follow-ups, and fallback messages;
- System rules governing escalation, booking, order taking, or customer instructions.

Merchant is **solely responsible** for ensuring that all information entered into this platform—whether directly by Merchant, by their staff, or by an authorized agent or representative of Vertical Fish—is:

- **Current** and up to date;

- **Factually accurate** and not misleading;
- **Compliant with all applicable laws**, regulations, advertising standards, and industry-specific requirements.

6.2 No Editorial Review by Vertical Fish

Vertical Fish does **not independently verify, review, or approve** any Merchant content prior to publication through the AI system. All materials input by the Merchant or by Vertical Fish personnel at the Merchant's direction are published **"as is"** and without any warranty of truthfulness, accuracy, legality, or compliance.

Vertical Fish is not a legal advisor, and **no reliance may be placed on any input, suggestion, or sample language** provided by Vertical Fish staff, onboarding specialists, sales agents, or automated setup tools.

6.3 Merchant Liability for False or Illegal Information

Merchant accepts **full and unconditional responsibility** for any consequences, errors, misrepresentations, or harm caused by public-facing statements made by the AI system, including but not limited to:

- **Misinformation**, inaccurate business claims, or pricing errors;
- **False advertising**, bait-and-switch tactics, or improper disclaimers;
- **Unauthorized medical, legal, or financial statements**;
- **Civil claims, criminal investigations, or regulatory enforcement actions** resulting from public use of the AI system;
- Any **negative customer experience, reputational harm, or commercial loss** resulting from inaccurate or incomplete AI communications.

6.4 Indemnification for Published Content

To the extent permitted by law, Merchant agrees to **indemnify, defend, and hold harmless Vertical Fish** from any and all liability, loss, damage, or expense—including fines, legal claims, class actions, or enforcement proceedings—arising from any public-facing information output by the AI Assistant that originated from Merchant inputs or instructions.

This includes content that:

- Was published by a Vertical Fish employee or agent on behalf of the Merchant;
- Was generated or modified using Vertical Fish tools;
- Was accessed by end-users through any channel powered by Vertical Fish AI (e.g., phone, chatbot, SMS, email, API, or widget).



Use of Vertical Fish AI is at Merchant's own risk.

7. Assumption of AI Risk

7.1 Nature of AI Technology

Merchant expressly acknowledges and agrees that the Services provided by Vertical Fish—including AI voice assistants, chat automation, speech synthesis, and workflow automation—are powered by emerging **artificial intelligence technologies** that are:

- **Experimental and probabilistic**, and may produce inconsistent or unexpected responses;
- **Non-human** in all respects, lacking legal or ethical reasoning, social nuance, and emotional intelligence;
- **Subject to hallucination**, including the generation of false, misleading, or completely fabricated information that may appear confident or authoritative;
- **Contextually limited**, meaning the AI may:
 - Misunderstand intent;
 - Lose track of conversation flow;
 - Confuse caller identities or switch topics unpredictably;
 - Respond inaccurately to sensitive or multi-part inquiries;
- Dependent on **upstream models, infrastructure vendors, and API integrations** (e.g., OpenAI, ElevenLabs, Twilio, Google Cloud), whose performance, availability, and behavior are beyond Vertical Fish's control.

7.2 Limitations of AI Responses

Merchant understands and accepts that the AI Assistant may:

- Provide **outdated, incomplete, or inaccurate information**;
- Misstate facts, business hours, or procedures if given incorrect setup data or if interpreting imprecise user input;
- Use tone, phrasing, or speech cadence that is **robotic, impersonal, or easily misunderstood**;
- Generate responses that sound plausible but contain **errors, omissions, or improper instructions**;
- Occasionally **repeat itself**, deliver incomplete thoughts, or **fail to respond appropriately** due to model or infrastructure limitations;

- React unpredictably to **non-standard input**, profanity, sarcasm, or ambiguous speech.

7.3 Merchant Responsibility

Merchant agrees to assume **full and unconditional responsibility** for:

- Monitoring the AI system's public behavior, tone, and messaging;
- Routinely testing, auditing, and reviewing AI interactions for accuracy, compliance, and customer satisfaction;
- Establishing clear **human escalation pathways** for complex, sensitive, or time-critical matters;
- Implementing fallback procedures, disclaimers, and public notices as appropriate for the Merchant's business type, industry, or location.

8. Indemnification & Liability Allocation

8.1 Full Scope Indemnification by Merchant

To the fullest extent permitted by law, Merchant shall unconditionally **indemnify, defend, and hold harmless Vertical Fish LLC**, including its owners, officers, employees, contractors, affiliates, and vendors (collectively "Vertical Fish Parties"), from and against any and all:

- Legal claims, complaints, investigations, regulatory actions, civil disputes, losses, damages, penalties, settlements, or judgments;
- Including reasonable attorneys' fees, court costs, expert witness fees, and litigation expenses;

That arise out of or relate to:

- Merchant's **use, misuse, or misconfiguration** of the Services;
- **Violation of any law**, statute, or regulatory framework;
- **Customer harm**, misrepresentation, or false promises communicated through AI;
- **Privacy violations**, unauthorized recordings, failure to disclose AI usage, or telemarketing complaints;
- Misuse of protected content, IP infringement, or the improper use of third-party trademarks or branding;
- Any act or omission by Merchant, its employees, or agents that exposes Vertical Fish to risk or liability.

This indemnity applies whether the alleged misconduct was **negligent, intentional, or unintentional**, and survives termination of the Agreement.



8.2 Enforcement and Defense

Vertical Fish reserves the right to:

- Select its own legal counsel in any matter subject to this indemnity;
- Approve or reject proposed settlements;
- Demand reimbursement directly from Merchant for costs incurred due to indemnifiable events, regardless of outcome.

Indemnification is triggered by the **initiation of a credible complaint, regulatory action, or legal dispute**, and does not require final judgment or proof of liability.

8.3 No Limitation of Remedies

This Section does not limit Vertical Fish's right to seek:

- Equitable relief (e.g., injunction);
- Immediate termination of services;
- Additional recovery under breach of contract or fraud theories.

9. Acceptance and Binding Effect

By subscribing to, accessing, installing, deploying, or configuring any part of the Vertical Fish AI Services—whether directly, through a sales representative, agent, onboarding tool, or online portal—the Merchant expressly:

9.1 Acknowledges and Confirms That:

- They have **read, understood, and agreed** to be bound by these Terms & Conditions for Use of Service in their entirety;
- They understand that these terms **govern the use, configuration, and public operation** of the AI Assistant and all related tools, workflows, and integrations provided by Vertical Fish LLC;
- They are entering into a **legally binding agreement** with Vertical Fish on behalf of themselves or the business entity they represent.

9.2 Consents and Agrees To:

- **Fully comply** with all lawful use restrictions, responsibilities, risk disclosures, indemnification clauses, and platform limitations outlined herein;
- Accept **total responsibility** for the deployment, behavior, and consequences of AI automation configured under their account;
- Accept all risks associated with **AI inaccuracy, miscommunication, and third-party interaction**;

- Maintain all required **notices, disclosures, and consents** necessary to operate the Services in accordance with applicable law.

9.3 Acknowledges That:

- Any violation of these Terms—whether willful, negligent, or unintentional—may result in:
 - **Immediate suspension or permanent termination** of Services;
 - **Legal liability**, including exposure to civil damages, fines, or enforcement actions;
 - **Public or reputational consequences**, for which Vertical Fish disclaims all responsibility.

9.4 Applicability of Terms

These Terms apply regardless of whether:

- The Merchant received a signed contract, electronic prompt, or onboarding form;
- The Services are used via voice, chat, API, dashboard, widget, or other delivery methods;
- Any representative or employee of the Merchant—not the Merchant themselves—interacts with the platform.

By continuing to use or activate the Service, the Merchant **ratifies these Terms as binding**, even in the absence of a countersigned agreement.

10. Governing Law & Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah or State of Colorado. Disputes shall be resolved via the arbitration clause or legal venue outlined in the full Vertical Fish Merchant Agreement.

10. Contact Information

Vertical Fish LLC
35 West Broadway, Suite 501
Salt Lake City, Utah 84101
legal@verticalfish.ai