

## RESIDENTIAL AND SMALL BUSINESS COMMUNICATIONS □ TERMS OF SERVICE

These Terms of Service constitute the agreement ("Agreement") between **TRANSFORMYX** ("we," "us" or "Provider") and the user ("you," "user" or "Customer") of Provider's residential and small business communications services ("Service"). This Agreement governs both the Service and any devices, such as an IP phone, IP Softphone, Analog Telephone Adapter or any other IP connection device, sold or otherwise furnished to You by Provider ("Device" or "Equipment"), and also applies to all lines on each Provider account.

### 1. EMERGENCY SERVICES - 911 DIALING

**1.1 911 Dialing.** 911 Dialing under this Service is different than traditional 911 service offered by traditional telecommunications carriers. Most of our customers have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when you dial 911, your telephone number and registered address are 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. Customers in locations where the emergency center is not equipped to receive your telephone number and address have basic 911. With basic 911, the local emergency operator answering the call will 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/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak. As additional local emergency centers become capable of receiving our customers' information, customers with basic 911 will be upgraded to E911 service. You will not receive notice of the upgrade.

You authorize disclosure of your name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

**1.2 Notify All Users.** You should inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service of the important differences in and limitations of Provider 911 Dialing as compared with basic 911 or E911.

**1.3 Registration of Physical Location Required.** For each phone number that you use for the Service, you must register the physical location where you will be using the Service with that phone number. When you move the Device to another location, you must register your new location. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your old address. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by following the instructions from the "911" registration link on your web account dashboard features page, or until such feature is available, sending an email to support@getjive.com. For purposes of the 911 Dialing feature, you may only register one location at a time for each phone line you use with the Service. Regardless of what address you register, emergency calls you make from these devices will be routed to the national emergency response center.

**1.4 Confirmation of Activation Required.** Your 911 Dialing feature will not be activated for any phone line that you are using with the Service, unless and until you receive an email confirming that the 911 Dialing feature has been activated for that phone line.

### 1.5 Service Outages.

**(a) Service Outages Due to Power Failure or Disruption.** 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the 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 Service, including 911 Dialing.

**(b) Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or ISP Service.** Service outages or suspensions or disconnections of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.

**(c) Service Outage Due to Disconnection of Your Account.** Service outages due to disconnection, suspension or termination of your account will prevent all Service, including 911 Dialing, from functioning.

**(d) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts.** Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise

resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that Provider, and Jive Communications, Inc. or any other third party that provides, either directly or as reseller or distributor, the information or communications facilities or services underlying all or part of the Service to Provider for resale to Customer (“Carrier”), is not responsible or liable in any way for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of 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 Service, you will continue to be responsible for payment of the Service charges unless and until you disconnect the Service in accordance with this Agreement.

**(e) Other Service Outages.** If there is a Service outage for any reason, such outage will prevent all 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 Agreement.

**1.6 Re-Activation Required if You Change Your Number or Add or Port New Numbers.** 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

**1.7 Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls.** There may be a greater possibility of network congestion, delays and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks, including where emergency calls are first routed through a national emergency center.

**1.8 Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any national or local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither Provider, Carrier nor their respective officers, employees or agents may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to the 911 Dialing service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless Provider and Carrier, and their respective officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

**1.9 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 Service.

## **2. SERVICE**

**2.1 Monthly Term.** Service is offered on a monthly basis for a term that begins on the date that your Service is activated and ends on the last day of the first full calendar month after such activation date. The term of this Agreement shall automatically renew for an unlimited number of successive monthly periods thereafter, unless you deliver written notice of non-renewal at least ten (10) days before the end of the then-current monthly term. You are purchasing the Service for full monthly terms, meaning that if you attempt to disconnect Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of such monthly term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite ten (10) day notice of disconnection prior to the expiration of the then-current term. Expiration of the term or disconnection of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

**2.3 Small Business and Provider Office Anywhere™ Use of Service and Device.** If you subscribe to Small Business services, the Service and Device are provided to you as a small business user or business traveler. You shall not resell, lease, loan, rent, operate on a “service bureau” or similar basis or otherwise transfer the Service to another party without our prior written consent.

## **2.4 Prohibited Uses.**

**(a) Unlawful.** You shall use the Service and the Device only for lawful purposes. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device for an unlawful purpose. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, we (or any Carrier) may provide information in response to law enforcement requests, lawful government requests, subpoenas, court orders, etc., and you hereby consent to any such information disclosures.

**(b) Inappropriate Conduct.** You shall not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device in any of the aforementioned ways. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, we (or any Carrier) may provide information in response to law enforcement requests, subpoenas, court orders, etc., and you hereby consent to any such information disclosures. Furthermore, Provider reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

**2.5 Use of Service and Device by Customers Outside the United States.** Although we encourage you to use of the Service to place calls to foreign countries from within the United States and to use the Provider Service as you travel, we do not presently offer or support the Service in any countries other than the United States. Provider Service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection you are using is outside the United States and/or your ISP places restrictions on the usage of VoIP services, Services may not be available or may be degraded or otherwise inoperable. No representation or warranty is made as to whether use of the Provider Service is permitted by any other jurisdictions or by any or all the ISPs. You will be solely responsible for any violations of local laws and regulations or violations of ISP terms of service resulting from such use. We reserve the right to disconnect your Service immediately if we determine, in our sole and absolute discretion, that you have used the Service or the Device in violation of laws of jurisdictions outside the U.S.

## **2.6 Copyright; Trademark; Unauthorized Usage of Device; Firmware or Software.**

**(a) Copyright; Trademark.** The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names used in connection with the Services (collectively "marks") are and will at all times remain our exclusive property or the exclusive property of our Carriers. Nothing in this Agreement grants you the right or license to use any such marks.

**(b) Unauthorized Usage of Device; Firmware or Software.** To the extent of any firmware or software embedded or installed on the Device, or otherwise provided to you in connection with the Service, you are granted a nontransferable, non-exclusive, revocable license to use such firmware or software in object code form only (without making any modification thereto) exclusively for use in connection with the Service, only during the term of this Agreement, and otherwise strictly in accordance with the terms and conditions of this Agreement. No further rights or licenses are granted to you or any third party, by implication, estoppel or otherwise, and Provider reserves

any and all rights of ownership and use. You expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. You hereby represent and warrant that you possess all required rights, including software and/or firmware licenses, to use any interface device that we have not provided to you. In addition, you shall indemnify and hold us and any Carrier harmless against any and all liability arising out of your use of such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

**2.7 Tampering with the Device or Service.** You shall not change the electronic serial number or equipment identifier of the Device or perform a reset of the Device without our prior written consent. We reserve the right to disconnect your Service if we believe, in our sole and absolute discretion, that you have tampered with the Device. In the event of such disconnection, you will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

**2.8 Theft of Service.** You shall not use the Service in a manner calculated to avoid reasonable policies or procedures of Provider or any Carrier related to the use of the Service. You shall not obtain or use the Services in an improper manner. You shall notify us immediately, in writing or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the disconnection of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service. Provider reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

**2.9 Number Transfer on Service Disconnection.** Upon the disconnection of your Service, the telephone number that you ported (transferred or moved over) to us from your previous service provider and used in connection with your Service shall be released to your new service provider if:

- such new service provider is able to accept such number;
- your account has been properly disconnected; and
- your account is completely current, including payment for all charges and applicable disconnection fees.

**2.10 Service Distinctions.** The Service is not a telecommunications service and we provide it on a best efforts basis by reselling the communications services and facilities of Carriers. Events and circumstances beyond our control may affect the quality or availability of the Service, such as power outages, fluctuations in demand for Services or fluctuations in demand for internet or communications services or facilities, equipment malfunctions and software errors and problems in your underlying broadband service. Other things may affect Service, such as maintenance and repair, scheduled downtime, etc. Provider will act in good faith to minimize disruptions to your use of and access to Service. Important distinctions exist between telecommunications service and the Service offering that we provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies or under applicable laws, rules or regulations.

**2.11 Ownership and Risk of Loss.** Unless you agree to rent or lease the Device in a separate written instrument with Provider, upon the later of payment in full of the set-up fees or equipment fees specified on Appendix A or delivery of the Device to you, Provider shall, and hereby does, sell, convey and transfer the Device to you "AS IS" and without warranty or representation of any kind or nature from Provider. However, Provider shall, and hereby does, to the extent assignable, assign or transfer to you all applicable manufacturer warranties on the Device. From and after the date of shipment of the Device to you, you shall bear all risk of loss of, theft of, casualty to or damage to the Device.

**2.12 No 0+ or Operator Assisted Calling; May Not Support x11 Calling.** The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls, 900 or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

**3. CHARGES; PAYMENTS; TAXES; DISCONNECTION**

**3.1 Billing.** When the Service is activated, you must provide us with a valid billing address. We will provide you with an account statement at the end of every month. You agree to pay the balance on the account as shown in the statement within thirty (30) days, without deduction or offset of any kind or nature. Delinquent amounts shall bear interest at the rate of twelve percent (12%) per annum from and after the original due date.

Your bill will be computed based on your account service fee and your per-minute usage, as described in Appendix A: Billing Rates.

911 Fees - State and/or local governments may assess fees on Provider to pay for emergency services in your community. Provider bills and collects 911 fees from its customers and remits such fees to the appropriate authority. Provider is committed to supporting public safety services and resources in your State. At the time of this writing, Provider is not required to charge any 911 fees in addition to those which are already covered in the monthly service amount. However, Provider reserves the right to charge additional 911 fees as required by local, state, and federal ordinance.

**3.2 Billing Disputes.** You must notify us in writing within ten (10) calendar days after the date of your account statement if you dispute any charges on that statement or you will be deemed to have accepted such statement and waived any right to contest such charges. All notices of disputed charges should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

-or- \_\_\_\_\_ [e-mail]

**3.3 Disconnection; Discontinuance of Service.** We reserve the right to suspend or discontinue your Service at any time in our sole and absolute discretion, without cause, after giving sixty (60) days notice. If we discontinue your Service without cause, you will only be responsible for charges accrued through the date of disconnection, including a pro-rated portion of the final month's charges and, if the effective date of discontinuation is within the first 12 months following activation of your Service, we will refund to you the fees you paid in the purchase or lease of equipment and setup of the Service. In addition, if you breach any of the terms or conditions of this Agreement, we may terminate this Agreement or disconnect your Service following written notice of breach if you have not cured such breach within ten (10) days thereafter. If your Service is disconnected on account of your breach of any provision of this Agreement, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus the disconnection fee, if applicable, all of which will immediately become due and payable. Provider will pursue collection for unpaid amounts on disconnected accounts and may report to credit bureaus.

**3.4 Taxes.** State and local governments may assess taxes, surcharges and/or fees on your use of Service or Devices. These charges may be a flat fee or a percentage of your charges and may change from time to time without notice. These charges are based on the rates applicable to the address you provided to us. You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to you as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive such certificate.

**3.5 Disconnection Fee.** You will be charged a disconnection fee of \$100.00 if your Service is disconnected for any

reason after forty-five (45) days from activation and within the first year following the activation of your Service.

#### **4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES**

**4.1 Limitation of Liability.** Neither Provider nor any Carrier will be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality, including but not limited to any delay, failure, interruption or degradation of Service that arises from or is related to any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;
- equipment, network or facility failure;
- equipment, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- equipment, network or facility shortage;
- equipment or facility relocation;
- service, equipment, network or facility failure caused by the loss of power to you;
- outage of, or blocking of ports by, your ISP or broadband service provider or other impediment to usage of the Service caused by any third party;
- any act or omission by you or any person using the Service or Device provided to you; or
- any other cause that is beyond our control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded.

Notwithstanding anything to the contrary in this Agreement, Provider's aggregate liability under this Agreement shall not exceed the actual amount received by Provider on your account during the calendar month in which act, event or occurrence giving rise to such liability occurred. You acknowledge and agree that, but for such limitation of liability, we would not enter into this Agreement and you would not benefit from the pricing contained herein.

**4.2 Disclaimer of Liability for Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL PROVIDER, CARRIER, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, COMPENSATORY, OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

**4.3 Indemnification.** You shall defend, indemnify, and hold harmless Provider, Carrier, and their respective officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) arising from or related to (i) any breach of this Agreement by you or your agents or employees or (ii) the activation or use of the Service or Device by you or your agents or employees, or any failure, delay or unavailability of the Services, unless such failure, delay or unavailability is caused by the gross negligence or reckless conduct of Provider.

**4.4 No Warranties on Service or Device.** NEITHER PROVIDER NOR ANY CARRIER MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE OR DEVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, THERE IS NO

WARRANTY THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER PROVIDER, CARRIER NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF PROVIDER'S, CARRIER'S OR OTHER SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY PROVIDER, CARRIER OR PROVIDER'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

**4.5 No Third Party Beneficiaries.** Except as expressly set forth herein, no provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

**4.6 Content.** You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or Device (each such person, a "User"). You shall assure that your and your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to disconnect or suspend your Services and remove your or your Users' content from the Service, if we determine, in our sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with our ability to provide Services to you or others. Our action or inaction under this Section will not constitute any review or approval of your or Users' use or content.

## **5. MISCELLANEOUS**

**5.1 Governing Law.** The Agreement and the relationship between you and us is governed by the laws of the State of Louisiana without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 5.2, you shall submit to the personal and exclusive jurisdiction of the courts located within the State of Louisiana and waive any objection as to venue or inconvenient forum.

**5.2 Mandatory Arbitration and No Jury Trial.** Any dispute or claim between you, any member of your household or any guest or employee of you and us arising out of or relating to the Service or Device will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Louisiana. The arbitrator's decision will follow the plain meaning of the relevant documents, and will be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. **REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.** All claims shall be arbitrated individually. You shall not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. **THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, LOUISIANA.**

**5.3 No Waiver of Rights.** Any party's failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

**5.4 Entire Agreement.** This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found in Appendix A constitute the entire agreement between you and Provider and govern the use of the Service by you, guests and employees. This Agreement supersedes any prior agreements between you and Provider and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations, whether written or verbal, concerning its subject matter. This Agreement

supersedes any written terms provided to retail customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of the Device. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

**5.5 Severability.** If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

**5.6 Survival.** Notwithstanding anything to the contrary in this Agreement, all provisions regarding limitation of liability, indemnification, payments or compensation to Provider of any kind or nature, portability of telephone number(s) after discontinuation of Service, disclaimers of warranties and all provisions in this Section 5 shall survive any termination or expiration of this Agreement.

**5.7 Attorney Fees.** In the event Provider undertakes collection efforts against you by and through an attorney, or initiates an action or suit to enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of reasonable attorneys' fees and costs, together with such other legal costs as may be authorized by law.

**5.8 Notices.** All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient, (b) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (c) one (1) business day after being sent to the recipient by facsimile transmission or electronic mail, or (d) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to as follows: if to you, to the address, facsimile number, electronic mail address reflected on the Company books and records and, if to Provider, to the address or electronic mail address specified in Section 3.2. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

**5.9 Time Periods.** In computing any time period prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins shall not be counted, but the last day of the period so computed shall be counted, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time is less than three (3) calendar days, intermediate Saturdays, Sundays or legal holidays shall be excluded from the computation. If the specified time period is measured in business days, "business days" shall mean Monday – Friday, but excluding United States national banking holidays.

**5.10 Independent Relationship.** You acknowledge that Provider is an independent reseller or distributor of the Service and Device and not an agent, partner, joint venturer of or otherwise affiliated with Jive Communications, Inc. or any other Carrier. Neither Jive Communications, Inc. nor any other Carrier are parties to this Agreement or any other agreement or instrument between Provider and you related to the Service or Device. Neither Jive Communications, Inc. nor any Carrier is liable or responsible in any way to Customer for any breach or default of Provider under this Agreement or any other agreement or instrument between Provider and you related to the Service or Device.

**5.11 Assignment.** This Agreement may be assigned or transferred by Provider to (a) Jive Communications, Inc. upon written notice to you by Provider or Jive Communications, Inc. or (b) to any successor of all or substantially all of the assets of Provider or its assignee, following which you shall remit all charges or other compensation to such assignee. Except for the foregoing, this Agreement may not be assigned or transferred by either party without the express written consent of the other party hereto.

## **6. FUTURE CHANGES TO THIS AGREEMENT**

We may change the terms and conditions of this Agreement from time to time by providing not less than ten (10) days written notice to you, provided that changes in pricing shall require not less than thirty (30) days written notice. Such notice may be given by regular U.S. Mail (including in written notices accompanying your account statements), by facsimile, or by electronic mail to the last e-mail address for notices that you have provided to Provider.

**7. PRIVACY**

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

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

By: **Customer**  
By:

Name: Name:  
Title: Title:  
Date: Date:

## Appendix A: Billing Rates

Provider will send a statement of account charges each month; Customer agrees to pay the statement balance in full within twenty-five (25) days of receipt.

### Billing:

\$30.00 monthly for each installed phone or ATA on your account. This includes unlimited inbound calling and 1500 outbound minutes per device, aggregated across the account.

Or

\$35.00 monthly for each session (concurrent reserved call path). This includes unlimited inbound calling and 1250 outbound minutes per device, aggregated across the account.

### Per-minute billing:

\$0.02 per-minute for each outbound minute beyond the included 3000

In addition, a \$0.03 charge will be assessed for each inbound toll-free minute used (six-second increments, with a minimum of one minute per call)

International and Extended per-minute prices as specified at <http://getjive.com/products/pricing/> (six second increments).

### Additional Charges:

DIDs will be billed monthly at a rate of \$4.99 each.

Toll-Free numbers will be billed monthly at a rate of \$4.99 each.

A one-time “number port” charge of \$15 will be assessed for all ported DIDs or toll-free numbers.

USF (Universal Service Fund) charges of ~6.81%. For information on the purpose and use of the USF, please see [http://www.fcc.gov/wcb/tapd/universal\\_service/](http://www.fcc.gov/wcb/tapd/universal_service/).

In addition, Provider reserves the right to charge additional fees and taxes as they become required by applicable Local, State or Federal law, in accordance with sections 3.1 and 3.4 or this agreement.

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