

Jabo Communications

Master Services Agreement

This Master Services Agreement constitutes and governs the agreement ("**Agreement**") between JABO Communications, LLC ("**we**," "**us**" or "**JABO**") and the user ("**you**," "**user**" or "**Customer**") of JABO's services ("**Service**"). **BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT, THAT YOU HAVE READ FULLY THE TERMS AND CONDITIONS, AND THAT YOU UNDERSTAND AND AGREE TO THE SAME.**

1. EMERGENCY SERVICES

1.1. 911 Emergency Dialing Description & Limitations

1.1.1. Service Outages Due to Power Failure or Disruption. Depending on several factors, including, but not limited to, the geographic location of the phone number associated with your VoIP Device (i.e., adapter, SIP phone, or IP phone software application) and/or the service address you listed at the time you registered for the service ("**Registered Location**"), by dialing 911 on your phone, your call, in many cases, will be routed to emergency personnel responsible for your Registered Location. Emergency resources and personnel will be dispatched to the Registered Location regardless of your actual location or that of your VoIP Device at the time of the call.

1.1.2. Customer Responsibilities. You must correctly identify the actual service address where your VoIP Device will be located when you register for the service. Failure to do so may result in fire, police or emergency personnel either not being able to find your location or may significantly delay their response time. Additionally, you may incur fines or other penalties, including service provider charges, resulting from improper dispatch of emergency services. Should you wish to move your service, you must update your Registered Location at least ten (10) days prior to your move to avoid delays and loss of emergency services. You may receive a new telephone number associated with the new location.

1.1.3. Limitations of 911 Emergency Dialing. YOU ACKNOWLEDGE THAT 911 EMERGENCY DIALING ("**VoIP 911**") ASSOCIATED WITH VOIP HAS CERTAIN LIMITATIONS, WHICH YOU MUST UNDERSTAND BEFORE ORDERING: (i) VoIP 911 only functions if you are using an approved VoIP Device, equipment or software and after your order has been processed and you have received a 911 service confirmation. If you use non-approved equipment or software or attempt to access JABO's VoIP service prior to confirmation, VoIP 911 may fail; (ii) even though you may be able to make outbound calls immediately after installing your VoIP Device, provisioning of VoIP 911 may take additional time to complete. If you attempt to make VoIP 911 calls before you have received a 911 service confirmation (or prior to completion of VoIP 911 provisioning), calls to 911 may fail or may be forwarded to a non-public, backup emergency answering service; and (iii) after VoIP 911 is provisioned, emergency personnel may not have your Registered Location and/or your phone number on file, so you should be prepared to provide that information in the event you require emergency services and dial "911." VoIP 911 will not function if: (i) your VoIP Device fails or is not configured correctly; (ii) if your service is not working for any reason, including, but

not limited to, a power outage, broadband service outage, network congestion, suspension or disconnection of your Service, broadband connection, or electrical power because of non-payment or late payment; or you fail to meet the minimum technical service requirements. FOLLOWING A POWER OUTAGE, YOU MAY NEED TO RESET OR RECONFIGURE YOUR EQUIPMENT PRIOR TO BEING ABLE TO USE YOUR SERVICE, INCLUDING VOIP 911. In certain limited cases, your VoIP 911 call will not be routed to the "traditional" wireline 911 dispatch center. Instead, it will be routed to a wireless telephone emergency dispatch center that may not normally receive 911 calls from your Registered Location. In this case, emergency personnel will not have your Registered Location and/or your phone number on file, so you should be prepared to provide that information in the event you require emergency services and dial "911" immediately. IF THE CALL IS DISCONNECTED FOR ANY REASON, EMERGENCY PERSONNEL WILL HAVE NO WAY TO CONTACT YOU OR DETERMINE YOUR IDENTITY OR LOCATION, SO YOU SHOULD REDIAL "911" IMMEDIATELY. IF ANY OF THE FOLLOWING OCCUR: (i) "traditional" 911 or E911 services are not available in your area; (ii) your Registered Location address cannot be validated; (iii) there is a failure in the underlying landline 911 network; (iv) there is a failure in the VoIP 911 call or location processing system. First, your call will be routed to a national call center where a trained operator will attempt to determine your identity and location. Neither the call center, nor the emergency dispatch center will have the ability to determine your location other than by asking you to provide your name and physical address. Only then will the operator be able to connect the call to an administrative number of the proper emergency dispatch center. THIS MAY RESULT IN A DELAY IN HANDLING OF YOUR EMERGENCY CALL AND, CONSEQUENTLY, MAY RESULT IN FIRE, POLICE OR EMERGENCY PERSONNEL EITHER NOT BEING ABLE TO FIND YOUR LOCATION OR MAY SIGNIFICANTLY DELAY THEIR RESPONSE TIME. FURTHER, IF YOU DO REACH EMERGENCY PERSONNEL, THEY MAY NOT HAVE THE ABILITY TO CONTACT YOU IF THE CALL IS DISCONNECTED FOR ANY REASON, SO YOU SHOULD REDIAL "911" IMMEDIATELY.

1.1.4. Agreement & Acknowledgement. You agree to advise all persons who might place calls over this service of these limitations herein, and understand that it is recommended that you place the warning sticker provided to you on, or near, your VoIP Device in an easily viewed location for any Service user. You authorize JABO, and its agents and/or vendors, to disclose your name and address to third-party emergency services providers in order to dispatch emergency personnel to your Registered Location. You understand JABO and its underlying providers do not warrant the availability of a particular method of VoIP 911 for any location and/or the availability of VoIP 911 services. You acknowledge that the liability of JABO and its the underlying service providers is limited to the amount paid for the service for any service outage and/or inability to dial 911 from your line or to access emergency service personnel, as set forth in herein.

1.1.5. Non-Provisioned 911 Calls. In the event you dial 911, but have not entered, or updated, your registered location, you will be charged for the emergency call. Charges for these calls are substantial, but will be passed through to you at our actual cost.

2. MSA TERM; SERVICE ORDERS

- 2.1. MSA Term Concurrent With Service Order(s). The term of the MSA shall commence concurrent with the effective date of the first service order from Customer, and shall continue until such time as Customer has no open Service Orders with JABO.
- 2.2. Service Orders: Customer may submit service orders to JABO to purchase telecommunication and related services under this Agreement ("**Service Orders**"). The Service Orders describe the telecommunication and related services that are available for purchase ("**Services**"). Service Orders are subject to JABO's acceptance.

3. CANCELING, MODIFYING OR EXPEDITING ORDERS

- 3.1. Cancellation. Customer may cancel a Service Order if the request is received by email or writing by JABO prior to the planned installation date, and JABO shall have the right to assess a Cancellation Charge. If the request to cancel is received after installation has commenced, Customer must pay full termination liability as set forth below.
- 3.2. Modification. Customer may request in writing modification of Service Order(s), which shall incur the assessment of a Modification Charge. If JABO receives a written modification request for delay of installation less than three days prior to the planned installation date, Customer shall pay, in addition to the Modification Charge, the monthly recurring charge ("**MRC**") applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. JABO reserves the right to limit the number of requests to delay the planned installation date.
- 3.3. Expedite. Customer may request an expedited installation date. If JABO accepts the expedited installation date, Customer shall pay an Expedite Charge.
- 3.4. Third-Party Charges. In addition to the charges set forth above, JABO may invoice Customer for third-party charges it incurs in order to complete Customer's request to cancel, modify, or expedite the Service Order, and Customer shall pay any such costs prior to the time JABO must pay its underlying service provider(s) for the early-terminated Service.

4. JABO NETWORK; ACCESS AND INTERCONNECTION

- 4.1. Responsibilities. JABO will own and control the telecommunications equipment, cable and facilities installed and operated by JABO for provision of the Services to Customer ("**JABO Network**") unless otherwise stated herein. The JABO Network will remain JABO's personal property regardless of where located or attached. JABO has the right to upgrade, replace or remove the JABO Network in whole or in part, regardless of where located, so long as the Services continue to perform. Customer may not alter, move or disconnect any parts of the JABO Network and is responsible for any damage to, or loss of, the JABO Network caused by Customer's (or its end users') breach of this provision, negligence or willful misconduct. JABO has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility.

- 4.2. Access. Customer shall provide JABO with access to the premises to install and maintain Services and JABO's Network. Customer must provide, at its expense, the following (collectively "**Premise Requirements**"): (i) appropriate space, power and environmental conditioning; and (ii) reasonable access rights and/or rights of way from third parties, as may be required for the installation and maintenance of the JABO Network at and into Customer's premises. Customer must pay a Modification Charge if Customer does not provide the Premise Requirements prior to the scheduled installation date. In addition to the Modification Charge, JABO may charge Customer for the reasonable time and materials incurred and documented by JABO that are incurred because of Customer's failure to timely provide the Premise Requirements plus any third-party charges assessed against JABO. Customer must provide JABO with a contact and/or help desk number that can be reached 24 hours per day/7 days per week.
- 4.3. Demarcation Point and Inside Wiring. JABO shall be responsible for provisioning Service up to the Demarcation Point and Customer is responsible for providing and maintaining any necessary wiring and facilities on Customer's side of the Demarcation Point. "**Demarcation Point**" means the JABO-designated physical interface between JABO's Network and Customer's equipment, which point shall be either: (i) in the case of a Service terminating at a JABO-owned or controlled premises, JABO's designated distribution panel or network interface device located within such JABO premises; or (ii) in the case of a Service terminating at Customer's premises, the distribution panel or network interface device located at the common telecommunications ("**telco**") demarcation at the Customer or end-user premises (e.g., entry point for telco facilities, telco closet or common telco room). If requested by Customer, JABO may install, co-ordinate or otherwise arrange for installing or obtaining from third parties, facilities on Customer's side of the Demarcation Point ("**Inside Wiring**"). Customer agrees to pay Time and Materials for any Inside Wiring performed by JABO personnel and agrees that JABO may bill Customer for any third-party charges it incurs to provide such Inside Wiring with Customers authorized consent.
- 4.4. Letter of Authorization; Carrier Facility Assignment. If Customer is moving telephone service from another carrier to JABO, then prior to JABO provisioning Service, Customer shall execute a Letter of Authorization selecting JABO as its preferred carrier. If Customer seeks to port existing telephone numbers, it must submit a valid number portability request. If Customer intends to connect the Services to facilities that neither it nor JABO owns, it must provide JABO with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

5. INSTALLATION AND MAINTENANCE

- 5.1. Installation. JABO will notify Customer when the Service has been installed. Billing will commence when Customer accepts service and service is turned up by Customer. If Customer so notifies JABO in writing, the Service Date will not occur, and the Service Term will not commence until the Service is operating properly. The Service Date will not be delayed or postponed due to problems with Customer's equipment or Customer's lack of readiness to accept or use Service.
- 5.2. Maintenance

5.2.1. Scheduled Maintenance. JABO will monitor JABO's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. JABO will endeavor to provide Customer with at least five business days' notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.

5.2.2. Emergency Maintenance. If JABO has to perform maintenance outside of the Scheduled Maintenance window set forth above, then JABO will provide as much prior notice to Customer as is practicable under the circumstances.

6. CHARGES, BILLING, TAXES AND PAYMENT

6.1. Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears when applicable. Any installation or other nonrecurring charges, which are non-refundable, will appear on the first monthly invoice.

6.2. JABO may require a deposit prior to the provision of any new Service. JABO also may require a deposit as a condition to its obligation to continue to provide Service(s) if Customer has failed to timely pay for Service(s) on two occasions during any six-month period.

6.3. JABO will invoice Customer for applicable Taxes (defined below) and, will identify such charges as a separate line item on the invoice. "**Tax**" or "**Taxes**" means any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge which JABO is required or permitted by law or a tariff to collect from Customer; provided, however, that the term "Tax" will not include any tax on JABO's corporate existence, status, income, corporate property or payroll taxes.

6.4. Payment for all undisputed amounts due under this Agreement by JABO on or before the due date specified on the invoice ("**Due Date**"). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

6.5. Customer may dispute any charge on a given invoice for up to thirty (30) days from the invoice Due Date. Once the thirty (30) day dispute period has passed, charges are deemed correct by Customer and all rights to dispute such charges are waived. All disputes shall be in writing in accordance with terms enumerated herein.

6.6. No o+ or Operator Assisted Calling; May Not Support x11 Calling. The Service does not support o+ or operator assisted calling (including, without limitation, collect calls, third party billing calls 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.

6.7. You are fully liable to us for any and all charges or costs we incur pursuant to this Agreement, including any collections costs such as court costs and attorneys' fees.

- 6.8. You shall notify us immediately, in writing or by calling our customer support line, 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 notify us, provide your account number and a detailed description of the circumstances relating to the theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination 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 and any and all stolen, fraudulent or unauthorized use of the Service.

7. TERMINATION

- 7.1. Termination with Notice. JABO may disconnect all Service(s) associated with a delinquent account upon ten (10) days' written notice for Customer's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days' written notice for: (i) Customer's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) Customer's insolvency, bankruptcy, assignment for benefit of creditors, appointment of trustee or receiver; (iii) any governmental prohibition or required alteration of the Services and/or; (iv) if 40% or more of Customer's traffic results in JABO incurring underlying costs that are 20% higher than Customer's contracted Pricing. The Parties may agree to enter good faith negotiations to increase the Pricing for Services.
- 7.2. Termination without Notice. JABO may terminate or suspend Services without notice if: (i) necessary to protect JABO's Network; or (ii) required by legal or regulatory authority.
- 7.3. Post Termination. Any termination or disconnection shall not relieve Customer of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. JABO retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If JABO terminates Service in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a reconnection charge and a deposit equal to two (2) months' recurring charges. All requests for disconnections will be processed by JABO in 30 days or less. Customer must pay for Services until such disconnection actually occurs.
- 7.4. Termination by Customer: Customer may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days' prior written notice, without incurring termination liability, for JABO's (i) breach of any material provision of this Agreement, which remains uncured at the end of the notice period and/or; (ii) a change in a law, rule or regulation that materially affects Customer's use of Service(s).
- 7.5. Termination Liability: If JABO terminates this Agreement or any Service Order(s) pursuant to any provision herein (other than for JABO's material, uncured breach, or in the event of cessation of Service(s)), or if Customer terminates this Agreement or any Service Order(s) for any reason other than pursuant to Section 7.4 above, all Monthly Recurring Charges or MRCs associated with the terminated Service(s) for the balance of the applicable Service Term or renewal shall become immediately due and payable.

8. GOVERNMENTAL REGULATION; CHANGES

- 8.1. This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.
- 8.2. JABO may discontinue, change the Terms of Service or impose additional requirements to the provision of Service, upon 15 days' written notice, if necessary, to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of JABO providing the Service. Customer is not responsible for the termination liability set forth herein if JABO discontinues the Service under this subsection.

9. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES.

- 9.1. Limitation of Liability. We will not be liable for any delay or failure to provide the Service, including 911 dialing and 911 alert notification, at any time or from time-to-time, or any interruption or degradation of voice quality that is caused by any of the following: an act or omission of an underlying carrier, service provider, vendor or other third party; (i) equipment, network or facility failure; equipment, network or facility upgrade or modification; (ii) 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; (iii) equipment, network or facility shortage; (iv) equipment or facility relocation; (v) service, equipment, network or facility failure caused by the loss of power to you; (vi) 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; (vii) any act or omission by you or any person using the Service or VoIP Device provided to you; or (viii) any other cause that is beyond our control, including, without limitation, a failure of or defect in any VoIP 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. Our aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period. Each action or claim of any party arising under or relating to this Agreement shall be made only against the other party as a corporation or as to JABO, a limited liability company, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any parent company, affiliated company, subsidiary, shareholder, employee, officer, director, manager or member of the other party.
- 9.2. Disclaimer of Liability for Damages. IN NO EVENT WILL JABO, ITS OFFICERS, DIRECTORS, EMPLOYEES, MANAGERS, MEMBERS, 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 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. THE LIMITATION(S) HEREIN APPLY TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER CLAIMS BASED IN TORT AND/OR CONTRACT. CUSTOMER ACKNOWLEDGES, ACCEPTS AND AGREES TO THE REASONABLENESS OF THE PROVISIONS OF THESE LIMITATIONS AS AGREED HEREIN.

9.3. Indemnification and Survival

9.3.1. Indemnification. You shall defend, indemnify, and hold harmless JABO, its officers, directors, employees, affiliates, members, managers 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) by, or on behalf of, you or any third party or user of the Service, relating to the Services, including, without limitation, 911 dialing, or the VoIP Device.

9.3.2. Survival. The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

9.4. No Warranties on Service. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR VOIP DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR VOIP DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, AND DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER JABO NOR ITS 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 JABO'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR VOIP DEVICE, IF ANY, BY JABO OR ITS AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

9.5. VoIP Device Warranties

9.5.1. Limited Warranty. Except as set forth herein, if you received the VoIP Device new from us and the VoIP Device included a limited warranty at the time of receipt, you must refer to the separate limited warranty document provided with the VoIP Device for information on

the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation.

9.5.2. No Warranty. If your VoIP Device did not include a limited warranty from us at the time of receipt, you are accepting the VoIP Device "as is". You are not entitled to replacement, repair or refund in the event of any defect.

9.5.3. Disclaimer. OTHER THAN WARRANTIES AS TO THE VOIP DEVICE(S) EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE VOIP DEVICE, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE VOIP DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE VOIP DEVICE.

10. **Acceptable Use.** Services are provided subject to Customer's compliance with JABO's Acceptable Use Policy as published at www.jabocom.com/acceptable-use-policy/.

11. **Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party, not to be unreasonably conditioned, withheld or delayed, except that: (1) JABO may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (2) Customer may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, provided that any assignment by Customer pursuant to this exception is subject to the following conditions: (i) the proposed assignee satisfies JABO's credit and deposit standards; (ii) Customer has fully paid for all Services through the date of assignment; and (iii) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

12. **Entire Agreement:** This Agreement, together with the Service Order(s) and applicable tariffs set forth the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, promises, representations, and negotiations between the Parties. If there is a conflict, between any term, and these Terms of Service or a Service Order, the order of precedence shall be: (i) the Service Order; (ii) these Terms of Service; then (iii) the Purchase Order between Customer and Contractor. Modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by both Parties.

13. **Force Majeure:** Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for 60 days or longer, the other Party may terminate the affected Services. Customer's invocation of this clause does not relieve Customer of its obligation to pay for Services actually received.

14. **Governing Law; Litigation:** The interpretation of the rights and duties of the Parties and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and subject to the laws of the State of Oklahoma excluding its principles of conflicts of law.
15. **AAA Arbitration.** In the event of any dispute, claim or controversy between or among the parties to this Agreement arising out of or relating to this Agreement or any breach thereof, including, without limitation, any claim that this Agreement or any of its parts is invalid, illegal or otherwise voidable or void, whether such dispute, claim or controversy sounds in contract, tort, equity or otherwise, and whether such dispute, claim or controversy relates to the meaning, interpretation, effect, validity, performance or enforcement of the Agreement, such dispute, claim or controversy shall be settled by and through an arbitration proceeding to be administered by the American Arbitration Association (or any like organization successor thereto) in Oklahoma City, Oklahoma in accordance with the American Arbitration Association's Commercial Arbitration Rules. Each of the parties to this Agreement hereby agrees and consents to such venue and waives any objection thereto. The arbitrability of any such dispute, claim or controversy shall likewise be determined in such arbitration. Such arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the commercial arbitration rules (formal or informal) of the American Arbitration Association. Both the foregoing agreement of the parties to this Agreement to arbitrate any and all such disputes, claims and controversies and the results, determinations, findings, judgments and/or awards rendered through any such arbitration shall be final and binding on the parties hereto and may be specifically enforced by legal proceedings. Notwithstanding any provision of this Agreement relating to which state laws govern this Agreement, all issues relating to arbitrability or the enforcement of the agreement to arbitrate contained herein shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and the federal common law of arbitration.
16. **Headings:** Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.
17. **Notices:** Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. JABO must provide such notice to Customer's billing address, and Customer must provide such notice to JABO at Attn: Customer Care, PO Box 15337, Newport Beach, CA 92657. Notice by email is deemed given when delivered. Email is: CustomerCare@jabocomm.com.
18. **No Waiver:** Either Party's failure to enforce any provision or term of this Agreement shall not be construed as a failure or continuing waiver of such provision or term of this Agreement.
19. **Public Releases:** Customer hereby agrees in writing that JABO may issue press releases regarding the Services described herein and may use Customer's name in connection therewith.
20. **Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

21. **Survival:** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.
22. **Relationship of Parties; No Third-Party Beneficiaries:** The Parties are independent contractors, and nothing herein creates or implies an agency, joint venture or partnership relationship between the Parties. This Agreement shall bind and inure to the benefit of JABO, Customer, and permitted successors and assigns. The Parties do not intend to create any rights for the benefit of any third parties.
23. **Confidentiality:** Each Party may disclose confidential information to the other Party and its partners or affiliates in connection with this Agreement. Confidential information includes this Agreement, Service Orders, Service Level Agreements, all pricing information and any other information that is marked confidential or bears a marking of like import, or that the Party disclosing such information states is confidential and then confirms such confidentiality in writing within ten (10) days ("Confidential Information"). Confidential Information may only be used in connection with performance under this Agreement. Confidential Information may not be disclosed except to those employees or affiliates of the receiving Party who have a need to know, or to consultants or subcontractors of the receiving Party who agree to be bound by this Section. Confidential Information does not include information that is generally available to the public through no wrongful act of the receiving Party or is independently developed by the receiving Party. Upon termination or expiration of this Agreement, the receiving Party will return the Confidential Information or destroy it. The obligations of this provision will survive for five years after the termination or expiration of this Agreement.