

# Oklahoma State Regents for Higher Education

655 Research Parkway, Suite 200  
Oklahoma City, OK 73104

**Liza Hanke, Director of Purchasing**

**Tele: 405.225.9206**

**Fax: 405.225.9230**

**Email: lhanke@osrhe.edu**

---

Contract No. C1504

Jive Communications, Inc.

---

**CONTRACT TITLE:** **Jive Communications, Inc.**

**CONTRACT TERM:** July 6, 2015 to July 5, 2020

**CONTRACT PERIOD:** July 6, 2015 to July 5, 2016

**WEBSITE ADDRESSES:**

**OneNet:** <http://onenet.net/services/managed-contracts/>

**Jive Communications, Inc.:** <http://www.jive.com>

**Authorized Customers:** All state entities identified as counties, school districts, municipalities, vocational-technical schools, institutions within the Oklahoma State System for Higher Education, other state agencies and any entity eligible for direct connection to OneNet under its Client Connection Policy located at <http://onenet.net/new-customers/client-connection-policy/>.

**Contract Priority:** This is a noncompetitive contract with established education and government discounts. Prior to issuing any orders against this contract, end user customers should ensure that they have followed their appropriate internal purchasing procedures, including any required documentation of a market value comparison or a competitive process leading to the selection of this particular vendor.

**Contract Terms and Conditions:** All end users agree to abide by the terms and conditions outlined in the attached agreement and agreed to by the Oklahoma State Regents for Higher Education.

**Contract Pricing:** A fixed discount schedule is attached hereto as Exhibit A.

**Shipping:** F.O.B. Destination

**Contract Performance:** Contract performance will be monitored and any infractions of the Contract by Contractor, and/or Customers will be reported to the Purchasing Director for the Oklahoma State Regents for Higher Education.

**Contract Administrator:**

**Vendor Name:** Jive Communications, Inc.

**Tele:** 405-355-2559

**FEI#:** 02-0783048

**Fax:** 405-355-2559

**Attn:** Kurt A. Snodgrass

**Email:** ksnodgrass@jive.com

**OKLAHOMA STATE  
REGENTS FOR HIGHER EDUCATION**

Jive Communications, Inc.

This Contract, for the acquisition of Enterprise Interconnected Voice over Internet Protocol (“VoIP”), Unified Communications, hardware, software and related services is entered into by and between Jive Communications, Inc., located at 1275 W. 1600 N, Suite 101, Orem, UT 84057 (or “Contractor”) and the Oklahoma State Regents for Higher Education located at 655 Research Parkway, Suite 200, Oklahoma City, OK 73104 (“OSRHE”).

- 1. Contract and Term.** This Contract sets forth the terms and conditions under which Contractor will sell to Customer or OSRHE the Hardware, Support Services and Professional Services, and will license to Customer or OSRHE the Software Products ordered by Customer or OSRHE, as listed on Exhibit A, attached hereto. Terms used in this Contract shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be one (1) year commencing on the date of approval by both parties with four (4) one-year renewal options with written approval of the parties. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

- 2. Definitions.** Terms used in this Contract shall have the following meanings:

- A.** *Customer* – means any county, school district, municipality, vocational-technical school, institution within the state system, other state agency, or other entity eligible for direct connection to OneNet under its Client Connection policy which purchases or licenses of unified communications products or services under this agreement for its own internal use rather than for distribution or resale.
- B.** *Contractor* – Jive Communications, Inc.
- C.** *Contractor contract Administrator* – the individual as appointed by the Contractor to administer this Contract on behalf of the Contractor.
- D.** *OSRHE* – the Oklahoma State Regents for Higher Education.
- E.** *Purchase Order* – The Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order or other authorized instrument).
- F.** *State Contract Administrator* – the individual as appointed by the OSRHE to administer this Contract on behalf of the OSRHE and the Customers.

- 3. Entire Agreement and Order of Precedence.** This Contract; Exhibit A Pricing and Discounts; Exhibit B Jive Acceptance Form; Exhibit C Jive Communications Terms of Service; Exhibit D Jive Promotional Pricing Terms and Requirements; Exhibit E Installation Contract; Exhibit F Equipment Rental Agreement; Exhibit G Call Recording Privacy Policies and Notices will constitute the entire agreement between the parties hereto and will supersede any and all other agreements and or exhibits between the

parties relating to the subject matter hereof. In the event of a conflict between the documents listed in this paragraph, the controlling document will be this Contract, then Exhibit A, then Exhibit B, then Exhibit C, then Exhibit D, then Exhibit E, then Exhibit F, then Exhibit G. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein, will be binding or valid. This Contract and the exhibits attached hereto may not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both parties hereto.

The terms and conditions set forth herein will govern all transactions by Customers under this Contract. Customers will not have the authority to modify the terms of this Contract, except as to receive better pricing for a particular procurement than those set forth herein. In such event, the Contractor will furnish a copy of such better offerings to the OSRHE upon request. No additional term or condition of a Purchase Order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's or OSRHE' Purchase Order and this Contract, the Contract terms will control.

4. **Product and Service Offerings.** Products available under this Contract are set forth as any Unified Communications Hardware or Software Products and Software manufactured, supplied or produced by the Contractor. Services include any value-added service offered by the Contractor that the Contractor may perform as related to Products available under this Contract.
  - A. Products. Contractor shall maintain a product list including pricing, product descriptions and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products and removal of obsolete or discontinued products.
  - B. Services. Examples of services include, but are not limited to: warranty, support services, professional services, installation and product training. Contractor shall maintain a list including pricing and descriptions for all services offered under this Contract. The services lists may be updated at any time, by mutual written agreement, during the term of this Contract to incorporate changes to the service offerings. Support service offerings available are further defined in Exhibit A, attached hereto.
5. **Contract Administration.** The OSRHE and the Contractor will each provide a Contract Administrator to support this Contract. Information regarding the Contract Administrators will be posted on the OneNet website designated for this Contract.
  - A. OSRHE Contract Administrator. The OSRHE will provide a Contract Administrator whose duties will include, but not be limited to: (i) management of this Contract, (ii) advising of Contractor's performance under the terms and conditions of this Contract and (iii) periodic verification of product pricing and quarterly reports submitted by the Contractor.

- B.** Contractor Contract Administrator. The Contractor Contract Administrator shall provide a dedicated Contract Administrator whose duties shall include, but not be limited to: (i) supporting the marketing and management of this Contract, (ii) facilitating dispute resolution between the Contractor and a Customer, and (iii) advising the OSRHE of the Contractor's performance and status. The OSRHE may reserve the right to require a change in the Contractor's then-current Contract Administrator if the administrator is not, in the opinion of the OSRHE, adequately serving the needs of the State.

**6. Pricing.**

- A.** Price Reduction. Price decreases will take effect automatically during the contract term under the following conditions:
- (i) *List Price is Reduced.* If the Contractor lowers its list pricing for products or services to its customers having contracts with substantially identical terms during the Contract term, the Contractor will lower the Contract pricing in accordance with the established pricing structure as outlined in Exhibit A;
  - (ii) *Special Offers/Promotions.* Except as stated under subsection (iii), if Contractor offers special discount pricing to any Customer, Contractor will lower the Contract Price for all Customers to match the special discount pricing during the period in which the special discount pricing is available.
  - (iii) *Special Offers/Promotions to Authorized Users Under/Outside of Contract.* The Contractor may offer Customers, under either the Contract or any other contracting vehicle, competitive pricing which is lower than the rates set forth herein at any time during the Contract term and such lower rates will not be applied as a global price reduction under the Contract pursuant to the subsection (ii).
- B.** Customer Discount. Based on a quantity of one (1), the Customer Discount for all core products will conform to the pricing outline set forth in Exhibit A, attached hereto. Customer may negotiate more advantageous pricing for large volume or project purchases with the Contractor.
- C.** Shipping and Handling Fees. The price to the Customer under this Contract and/or on the Purchase Order will include all shipping and handling fees. Shipments will be F.O.B. Customer's destination. No additional fees will be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, the Customer will be responsible for any charges for expedited delivery.
- D.** Tax-Exempt. Customers and the OSRHE are exempt from all federal and state sales tax.

- E. Changes to Prices.** The Contractor may change the price of any product or service at any time, but discount levels will remain consistent with the discount levels specified in Exhibit A. Price decreases will take effect automatically during this Contract term and the Contractor shall pass all price decreases on to the Customer.

The Contractor may make product model changes and add new products or product upgrades at any time and the pricing for the same will incorporate comparable price discount levels as specified in Exhibit A or as mutually agreed upon in writing by authorized representatives of the parties at the time of the proposed changes or additions.

- 7. Order Processing and Payments.** All Customer Purchase Orders will be placed with the Contractor. Accurate Purchase Orders will be effective and binding upon the Contractor's acceptance of the Purchase Order prior to the termination of the Contract period. Such acceptance shall not be unreasonably withheld.

The Contractor shall submit invoices directly to the Customer. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services are made to the Contractor by the Customer. Payment terms will be net forty-five (45) days from date of accurate invoice.

Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the order by the Customer.

Partial payment under this Contract will not foreclose the right to recover wrongful payments.

- 8. Software Licensing Agreement.** Customers obtaining products or services under this Contract shall hold, use and operate such software subject to compliance with the Jive Communications Terms of Service set forth in Exhibit C, attached hereto. The Contractor may make changes to its Terms of Service by delivering notice of the changes to the OSHRE no less than 30 days before the changes are to be effective. Without regard to any notice period stated in the Terms of Service, all changes posted to [www.jive.com/legal](http://www.jive.com/legal) will be effective 30 days after notice is provided in accordance with this section. Customers may not add, delete or alter any of the language in Exhibit C. If any clause of the Terms of Service conflicts with the language of this agreement, the language of this agreement will control.

Compliance with the Jive Communications Terms of Service is the responsibility of the Customer. The OSRHE Office will not be responsible for any Customer's compliance with the Jive Communications Terms of Service. If the OSRHE Office purchases software licenses for its own use under this Contract it will be responsible for its compliance with the Jive Communications Terms of Service.

9. **Service Agreement.** Customers purchasing services under this Contract must execute a Jive Acceptance Form with the Contractor as set forth in Exhibit B, attached hereto. No changes to the Jive Acceptance Form may be made unless previously agreed to by Contractor and OSRHE. The Jive Acceptance Form will include Service Level Descriptions for related products.
10. **Internet Access to Contract.** Access by Customers to Contract terms and pricing information will be made available and posted on the OneNet website, [www.onenet.net/services/managed-contracts/](http://www.onenet.net/services/managed-contracts/)
- A. Accurate and Timely Contract Information. If the Contractor posts this Contract on its website, Contractor warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Contractor's website. Contractor shall reconcile errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.
- B. Price Data Retention and Audit. Periodic audits of the information posted for this Contract on Contractor's website may be conducted by the OSRHE.
- C. Use of Access Data Prohibited. If the Contractor stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by the Contractor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and the Contractor shall not restrict access to the Contract terms and conditions, including pricing, i.e., through use of restrictive technology or passwords.
11. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract will be in writing and will be valid on (i) the date the receiving party acknowledges delivery if delivered by email or facsimile transmission (automatic replies will not constitute acknowledgement), (ii) the date of delivery if hand delivered, or (ii) three business days after being mailed by registered certified mail if delivered via United States Postal Service or commercial courier service. The parties may from time to time specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the OSRHE:

Director of Purchasing  
Oklahoma State Regents for Higher Education  
655 Research Parkway, Suite 200  
Oklahoma City, OK 73104

If sent to the Contractor:

Jive Communications, Inc.  
Attn: Michael Sharp  
1275 W. 1600 N, Suite 101  
Orem, UT 84057

With a copy (which will not constitute notice by itself) to:

Jive Communications, Inc.  
Attn: General Counsel  
1275 W. 1600 N, Suite 101  
Orem, UT 84057

- 12. Handling of Written Complaints.** In addition to other remedies contained in this Contract, a person contracting with the OSRHE may direct their written complaints to the following office:

Director of Purchasing  
Oklahoma State Regents for Higher Education  
655 Research Parkway, Suite 200  
Oklahoma City, OK 73104  
Phone: 405-225-9206  
Fax: 405-225-9230  
Email: [lhank@osrhe.edu](mailto:lhank@osrhe.edu)

- 13. Reporting.** The Contractor shall report all products and services purchased under this Contract. The OSRHE may verify required reports and may audit Contractor's books applicable to this Contract if necessary to enforce its rights under this paragraph.

**A. Detailed Quarterly Report.** The Contractor shall electronically provide the OSRHE with a detailed quarterly report in the format required by the OSRHE showing the dollar volume of any and all sales under this Contract for the previous quarter. Reports are due on the twenty-fifth (25<sup>th</sup>) day following the close of the previous quarter. It is the responsibility of the Contractor, to collect and compile all sales under this Contract and submit one (1) quarterly report. The quarterly report will include the name of each Customer, order date, ship date, quantity, unit price, extended price, product part number, Customer Purchase Order number and other information as required by the OSRHE.

- 14. Captions.** The captions contained in this Contract are intended for convenience and reference purposes only and will in no way be deemed to define or limit any provision thereof.

- 15. Choice of Law and Venue.** The laws of the State of Oklahoma will govern the construction and interpretation of this Contract, and venue in any action to enforce the Contract will be in Oklahoma County, Oklahoma. Nothing herein will be construed to waive the State's sovereign immunity, and this section will control over any conflicting term in the Jive Communications Terms of Service.



**16. Termination.**

- A. Termination for Convenience.** The OSRHE may terminate this Contract, at will, at any time, with or without cause, by written notice to the Contractor given not less than thirty (30) days prior to the effective date of such notice. After the first six months, the Contractor may terminate this Agreement with 30 days' written notice to the OSRHE. In no event will either party be liable for termination of this Contract pursuant to this Subsection.
- B. Termination for Cause.** Either party may terminate this Contract for cause if the other party:
- (i) Fails to perform any material term or condition of this Contract, and does not remedy the failure within thirty (30) days after receipt of written notice of such default given by the non-defaulting party; or
  - (ii) Becomes insolvent, files or has filed against it a petition under applicable bankruptcy or insolvency laws, proposes any dissolution, composition or financial reorganization with creditors, makes an assignment for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any property or business of the defaulting party.
- C. Obligations upon Termination or Expiration.** The termination or expiration of this Contract will in no way relieve either party from its obligations to pay the other party any sums accrued hereunder prior to such termination or expiration or affect the limitation of liability.

**17. Limitation of Liability.** To the extent permitted under Oklahoma law, the parties intend that each will be responsible for its own intentional and negligent acts or omissions to act. The OSRHE or Customers will be responsible for the acts and omissions to act of their officers and employees while acting within the scope of their employment according to the Governmental Tort Claims Act, 51 O.S., § 151, *et seq.* In accordance with Oklahoma Statutes Title 63, 2817(c), the Contractor will not be responsible for any damages or personal injury except those solely caused by the gross negligent acts or omissions to act, recklessness or intentional misconduct by its officers, employees or agents to the extent it results from the provision of nine-one-one emergency services. The Contractor agrees to indemnify and hold harmless the OSRHE and the Customer of any claims, demands and liabilities resulting from any act or omission to act on the part of the Contractor and/or its agents, servants and employees in the performance of this Contract. The OSRHE and/or the Customer shall promptly notify the Contractor of any such claims. This section will control over any conflicting term in the Jive Communications Terms of Service.

**18. Oklahoma Open Records Act.** Customers are governmental entities of the State of Oklahoma, by virtue of which they are subject to the Oklahoma Open Records Act ("ORA"), codified at 51 O.S., § 24.A.1, *et seq.* The parties agree that any provision of

this Contract which conflicts with the ORA is ineffective. The Customers do undertake to protect proprietary information provided by the Contractor to the full extent permitted by the ORA.

**19. Employment Status Verification System.** The Contractor hereby certifies that it is registered with and participates in a Status Verification System, as defined in 25 O.S. §1312, to verify the work eligibility status of all new employees. The Contractor further certifies that all subcontractors approved to perform work under this Contract and which have employees are also registered with and participate in a Status Verification System. The Contractor and all approved subcontractors shall remain in compliance with all Federal, State and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract.

**20. Electronic and Information Technology Accessibility.** The Contractor must ensure compliance with the Oklahoma Information Technology Accessibility Standards. Pursuant to Title 74, Section 85.7d. and OAC 580:16-7-56 electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of Management and Enterprise Services,. Standards may be found at [www.ok.gov/cio/Policy\\_and\\_Standards/](http://www.ok.gov/cio/Policy_and_Standards/).

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the OSRHE and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any third party claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance shall be necessary on the Contractor's part. Such requirements shall be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the OSRHE of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the

Contractor, from any third party claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

The Contractor shall provide with any offer, a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application development/customization by means of either completing a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

21. **Laws and Regulations.** All applicable state and federal laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over the project will apply to this Contract throughout and they will be deemed to be included in this Contract the same as though written out in full herein.
22. **Equal Opportunity Employer.** The Contractor shall maintain the status of an Equal Opportunity Employer, a provider of services and/or assistance, and in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Orders 11246 and 11375.
23. **Americans with Disabilities Act.** The Contractor shall comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) and all amendments and requirements imposed by the regulations issued pursuant to this Act.
24. **Federal, State and Local Taxes, Licenses and Permits.** The Contractor shall comply with all applicable laws and regulations on taxes, licenses and permits.
25. **Insurance Requirements.** The Contractor shall maintain the following insurance for the protection of itself and its officers, employees, agents, while carrying out its service responsibilities, under the provisions of this Contract:
  - A. Workers' Compensation and Employer's Liability Insurance
  - B. Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 for bodily injury and property damage and \$2,000,000 General Aggregate for bodily injury and property damage liability
  - C. Comprehensive Automobile Liability Insurance with a minimum combined single limit of \$1,000,000 for bodily injury and property damage. Coverage will apply to non-owned and hired vehicles

The Contractor shall provide the OSRHE or Customer with a Certificate of Insurance upon request and shall endeavor to provide the OSRHE or Customer written notification of any cancellation or termination of the above policies.

26. **Liens.** Except as otherwise stated in this section, the Contractor shall keep the OSRHE free and clear from all liens asserted by any person or firm for any reason arising from

the furnishing of services or materials by or to the Contractor. The Contractor may obtain third-party financing for any equipment leased to any Customer, and leased equipment may be subject to a lien in favor of that third-party.

27. **Force Majeure.** Neither party will be liable to the other for any alleged loss or damages resulting from the delivery or warranty of the Products, or performance of Services being delayed by acts of the OSRHE or Customer, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of the Contractor.
28. **Survival.** The sections of this Contract which by their essential purpose will survive any expiration or termination, will survive such expiration or termination.
29. **Waiver.** A waiver by either party of any default, or of any of the terms and conditions of this Contract will not be deemed to be a waiver of any other default or of any other term or condition. Either party's exercise of any right or remedy provided in this Contract will be without prejudice to its right to exercise any other right or remedy.
30. **Severability.** In the event any provision of this Contract is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the obligations of the parties will remain in full force and effect and the rights of the parties will not in any way be affected or impaired thereby.
31. **Assignment.** This Contract and the licenses granted hereunder are personal to the OSRHE or Customer. No party shall assign, sublicense or transfer this Contract or any of the licenses without prior written approval of the other applicable party, such approval will not be unreasonably withheld. Any attempt to assign without prior written approval will be void.
32. **Independent Contractors.** Both parties are acting solely as independent contractors and not as an agent of the other party. Consultants and independent contractors furnished by the respective parties will be solely the employees or agents of such parties, respectively, and will be under the sole and exclusive direction and control of such parties. They will not be considered employees of the other party for any purpose.
33. **Non-Exclusivity.** For the duration of the contractual agreement, the OSRHE will retain the right to utilize the services of other vendors, including in-house resources, for projects not assigned to the Contractor.
34. **Access to Records.** The Contractor shall maintain all fiscal records and any other records relating to this Contract in such a manner as to clearly document the Contractor's performance hereunder. The OSRHE or any of its duly authorized representatives will have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

35. **Non-Appropriation/Non-Allocation.** The terms of this Contract are contingent upon sufficient appropriations/allocation being made by the Legislature or other appropriate governmental entity. Accordingly, the Oklahoma State Regents for Higher Education may terminate this Agreement without penalty should funding for this Contract be reduced to a level that the Oklahoma State Regents for Higher Education reasonably deems insufficient to support this Contract.

**IN WITNESS WHEREOF**, the authorized representatives of the parties therefore hereby execute their mutual agreement to the terms of this Contract. This Contract will be executed and will be a binding Contract between the parties.

**Jive Communications, Inc.**

By: 

Name: Michael Sharp

Title: CSO

Date: June 22, 2015


**Oklahoma State Regents for Higher Education**

By: 

Name: Amanda Paliotta

Title: Vice Chancellor for Budget &  
Fiscal Affairs, Information  
Technology, Telecommunications &  
OneNet

Date: 7/6/15

Approved  
As To Form  
Initials 

## EXHIBIT A (Pricing and Discounts)

### Interconnected VoIP – Monthly User Charges

Jive Hosted VoIP Monthly Service includes: Jive’s complete set of unlimited features and functions (e.g., local calling, long distance, voicemail, auto attendants, extensions, etc.), 24x7 customer service, maintenance, platform updates and technical support.

	<u>MSRP</u>	<u>State Discount</u>
<ul style="list-style-type: none"> <li>VoIP Service Charge (<b>Low Usage Phone</b>) <i>Note: Low Usage phones limited to less than 100 minutes off-net calling per month.</i></li> </ul>	<b>\$20.00</b>	<b>\$9.95</b>
<ul style="list-style-type: none"> <li>VoIP Service Charge (<b>Sub 249 Users</b>)</li> </ul>	<b>\$25.00</b>	<b>\$18.95</b>
<ul style="list-style-type: none"> <li>VoIP Service Charge (<b>250-1249 Users</b>)</li> </ul>	<b>\$25.00</b>	<b>\$18.00</b>
<ul style="list-style-type: none"> <li>VoIP Service Charge (<b>1250+ Users</b>)</li> </ul>	<b>\$25.00</b>	<b>\$17.50</b>
<ul style="list-style-type: none"> <li>Interconnected VoIP - DID Charge per line</li> </ul>	<b>N/A</b>	<b>\$0.25</b>
<ul style="list-style-type: none"> <li>Intra and Interstate Long Distance/min</li> </ul>	<b>N/A</b>	<b>Included</b>
<ul style="list-style-type: none"> <li>International rates can be found at <a href="http://jive.com/international-rates">http://jive.com/international-rates</a></li> </ul>		
<ul style="list-style-type: none"> <li>Regulatory Taxes and Fees</li> </ul>	<b>N/A</b>	<b>ICB</b>
<ul style="list-style-type: none"> <li>ACD per Agent</li> </ul>	<b>N/A</b>	<b>Included</b>
<ul style="list-style-type: none"> <li>IVR Port</li> </ul>	<b>N/A</b>	<b>Included</b>
<ul style="list-style-type: none"> <li><b>One-time Setup Charge Per User</b> <ul style="list-style-type: none"> <li>Includes set-up and configuration of individual devices</li> </ul> </li> </ul>	<b>\$50.00</b>	<b>\$15.00</b>
<ul style="list-style-type: none"> <li><b>One-time Gateway Options per Site</b> <ul style="list-style-type: none"> <li>1-200 Users</li> <li>201-500+ Users</li> </ul> </li> </ul>	<b>N/A</b>	<b>\$1,200</b> <b>\$2,400</b>

### Optional Services – One-time Charges

- Optional On-Site Training** for Administrators, Help Desk and Users  
**\$300 per day** (3-day min.)
- Optional On-Site Engineering and Configuration** (Expert Level)  
**\$750 per day** (3-day min.)
- Hardware:** If required, handsets and hardware items are available for rental or purchase from multiple vendors. *Please see Exhibit H – Jive Hardware Pricing Catalog.*

## **EXHIBIT B**

### **(Jive Acceptance Form)**

#### **What to Expect**

From the time Jive receives initial payment and signed agreements, the following timeline will be in effect:

#### **Equipment**

You will be contacted within 48 business hours for information necessary to configure phones. If information is obtained during that time, equipment will be shipped and arrive within 10 business days. If expedited shipping is requested, you will be charged additional shipping charges and the shipping timeline will be accelerated.

#### **Phone Numbers (new)**

New phone numbers are typically available 4–5 business days after they have been requested, but can take 10–12 business days in some instances. If expedited number acquisition is requested, you will be charged \$50 per number. Expedited numbers are usually available within 2–3 business days.

#### **Phone Numbers (existing/port)**

Porting existing numbers takes 20 business days, unless there are issues that cause the order to be rejected by the current phone provider. If a port request is rejected, the request will be resubmitted and the porting timeline will start over. If expedited number porting is requested, you will be charged \$50 per number. Expedited numbers are usually ported within 8–10 business days.

#### **Dial Plan and System Setup**

You will be contacted within 5 business days to begin the process of setting up your dial plan, call routing, etc. If Jive receives the necessary information within this time frame, all configuration will be done within 10 business days.

#### **Support**

Feel free to contact Jive Support staff at any point in the process by calling 877-JIVE-003 (877-548-3003).

#### **Billing**

Charges will begin to accrue as soon as the 25 non-billed, trial phone calls are completed, or as soon as phone number on your account is ported, whichever occurs sooner.

#### **Terms and Conditions**

By signing below, Customer personally certifies that he or she is an Authorized Agent of the Company, and has read and agrees to be bound by the entirety of Jive's Terms and Conditions, located at

<http://onenet.net/services/managed-contracts/>

including details regarding Jive's hardware, E911, and 45-day guarantee policies. Customer agrees to pay for the items in the quote identified as "up-front charges" upon receiving a proper invoice once goods have been received or services rendered. Customer understands that the amount identified as "monthly charges" is the base amount that will be charged each month. Additional monthly usage fees may apply, including but not limited to international calling charges and local, state, and federal taxes. Future changes to nature or quantity of services on the account may cause changes in monthly charges.

Company Name: \_\_\_\_\_

Customer/Authorized Agent Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT C

### **Jive Communications, Inc. Terms of Service**

These terms of service govern the purchase and use of the business communications service and related equipment provided by Jive Communications, Inc. (“Jive”) and are between Jive and the “Customer” identified in a signed sales quote.

The parties agree as follows:

1. **Term.** Unless the sales quote states otherwise, the services are provided on a month-to-month basis, and the term begins on the date Jive first activates Services for the Customer.

2. **Extension of Term.** (a) Except as stated in section 2(b), if the sales quote states an initial term longer than one month, this agreement will be automatically extended for an unlimited number of successive one-year periods unless the Customer delivers notice of termination no less than 30 days before the end of the term.

(b) Instead of automatic extension under section 2(a), the Customer may elect to extend this agreement after the initial term on a month-to-month basis by delivering notice of its election to Jive no less than 30 days before the end of the term.

3. **Non-Appropriation of Funds.** If the Customer is a school or other government agency, and (1) funds are not appropriated to pay for the Services or functionally similar services in any fiscal period during the term of the agreement, (2) operating funds are not otherwise available to pay the Service Charges and Other Charges, (3) there is no other legal procedure available to pay the Service Charges and Other Charges, and (4) the non-appropriation did not result from any act or omission of the Customer, the Customer may terminate this agreement on the last day of the last fiscal period for which appropriations were received. The Customer shall provide notice of the non-appropriation no less than 30 days before the termination under this section is to become effective.

4. **Adding or Removing Services.** The Customer may add Services to its account at any time, and Jive will prorate the Service Charges for the first month. To reduce the number of Services, or to terminate this agreement, the Customer must notify Jive no less than 10 days before the end of the term, and the reduction or termination will take effect after the end of the term. Jive may immediately terminate this agreement if the Customer removes all devices and SIP trunks from its account.

5. **Equipment Purchase and Cancellation.** (a) The Customer may cancel an equipment purchase without any fee by notifying Jive no later than 24 hours after submitting the order.

(b) After 24 hours, the Customer may cancel an equipment purchase or reject delivered equipment by delivering written notice to Jive no later than 5 business days after delivery of the equipment. The Customer shall pay a 30% restocking fee for all equipment purchases canceled or rejected under this section 5(b) unless rejection is due to faulty, damaged or incorrect equipment. Jive shall not accept any returned equipment that is not in like-new condition, that is returned without its original packaging, or that is returned more than 30 days after the date of delivery.



6. **Equipment Rental.** If the Customer is renting any equipment from Jive, the terms of the Equipment Rental Agreement, found in Exhibit F are hereby incorporated by reference.

7. **Appropriate Use.** The Services are for the Customer's own commercial use only. Jive may immediately terminate this agreement if it determines that the Customer is reselling Services or is using them in any way that is defamatory, harassing, or threatening or is otherwise inconsistent with applicable laws or these terms of service. If the Customer wants to use Services from outside the United States, it must determine whether doing so is legal in that location.

8. **Reasonable Use.** The Customer acknowledges (1) that any reference Jive has made to "unlimited" minutes or features refers to Jive's practice not to charge users on a per-minute or per-use basis when use is reasonable and (2) that Jive does not offer "unlimited" plans for call center operations, fax spamming, or other activities that use an extraordinary amount of connectivity to the public switched telephone network (the "PSTN"). Jive may limit PSTN connectivity, impose per-minute charges for excessive use, or terminate this agreement if it determines that the Customer's average per-user PSTN connectivity is unreasonable as compared to other customers.

9. **Billing; Billing Disputes.** (a) Jive shall invoice the Customer each month for the Service Charges, Rental Charges, and any Other Charges. Except as permitted under section 9(c), the Customer shall pay each invoice in full by the due date.

(b) If this agreement is terminated, all unpaid Service Charges, Rental Charges and Other Charges will become due immediately.

(c) To dispute an unpaid invoice, the Customer must, no later than the due date of the invoice, (1) notify Jive of the dispute and (2) pay all undisputed portions of the invoice. To dispute a paid invoice, the Customer must notify Jive of the dispute no later than 60 days after the date of the invoice. If the Customer fails to pay the undisputed portions of an invoice by the due date of the invoice, or if it fails to provide notice as required in this section, it hereby waives its right to dispute any portion of the invoice. The Customer must notify Jive of any billing dispute by phone at (801) 426-5782, option 3, by email at [billing@jive.com](mailto:billing@jive.com), or by delivering notice to Jive Communications, Inc., Attn: Accounts Receivable, 1275 West 1600 North, Suite 100, Orem, UT 84057.

10. **Government Fees and Taxes.** Jive pays taxes and other costs imposed by government authorities in connection with its provision of Services. Jive may charge the Customer a regulatory fee to recover any such taxes or other costs associated with Services provided to the Customer, regardless of whether Jive has passed on such taxes or costs in the past.

11. **Late Fees.** (a) Jive may charge a late fee up to \$15 or 1.5%, whichever is greater, for any amount unpaid by the due date. Jive may charge a separate late fee for each whole or partial billing period the Customer's payment is late to the extent permitted under the Oklahoma Government Tort Claims Act.

(b) Jive will charge a late fee for a disputed amount if (1) it was not paid by the due date and (2) Jive determines that the Customer disputed the charge in bad faith.

(c) Jive may use collection services to recover unpaid charges and may report late payments to credit bureaus or other entities. The Customer shall pay any attorneys' fees or other amounts Jive spends to collect unpaid charges and awarded by a court of competent jurisdiction.

12. **Returned Check Fees.** Jive may charge up to the maximum amount permitted by law if the Customer's banking institution dishonors or reverses a check, draft, or other payment.

13. **911 Dialing; Service Availability; Location Information.** (a) The Customer acknowledges (1) that it has read and understood Jive's 911 and Service Availability Policy, Exhibit C, and (2) that 911 dialing service offered by Jive ("Jive 911 Dialing") differs from 911 dialing service offered by traditional telephone carriers in the ways described in the 911 and Service Availability Policy, including that Jive 911 Dialing will not function if the Customer loses electrical power or broadband internet connection or if anything on the Customer's wide area network or local area network blocks the Customer's connection to Jive's platform.

(b) The Customer shall provide Jive the physical location of each device used to make or receive calls, and Jive shall not initiate Services until it has received this information. If the Customer relocates any device, it shall promptly notify Jive's Fulfillment Department of the device's new location by phone at (801) 717-1556 or by e-mail at [fulfillment@jive.com](mailto:fulfillment@jive.com) and shall pay any fees associated with updating the location database.

(c) Location and callback information associated with a device will normally be automatically forwarded to an emergency dispatch center when using Jive 911 Dialing. Because some emergency dispatch centers are not equipped to receive such location and callback information, the Customer acknowledges that it may need to provide location and callback information verbally. Automatic forwarding of location and callback information is not activated for any device until Jive notifies Customer by e-mail that it has been activated.

14. **Limit of Liability.** (a) Jive and its representatives will not be liable for any damages or other claim arising from any person's use of or inability to use the Services because of a failure or degradation of a third party provider's network, a failure or degradation of broadband internet service, a force majeure event, or any other third-party cause, whether the claim is founded in breach of contract, breach of warranty, negligence or any other theory of liability.

15. **Disclaimer of Warranties.** Jive hereby disclaims the implied warranties of merchantability, fitness for a particular purpose, noninfringement of intellectual property rights, and all other express or implied warranties for Services and any related equipment.

16. **Manufacturer's Warranty.** Jive hereby assigns to the Customer all rights it has under any manufacturer's warranty for equipment it sells to the Customer. Subject to section 15, Jive may assist the Customer in obtaining replacement or service under the manufacturer's warranty.

17. **Shipment.** Risk of loss or damage to equipment during shipment belongs to the shipping party unless the receiving party has requested a different shipping carrier, in which case the receiving party bears the risk. After the equipment arrives at the location specified by the receiving party, the risk of loss or damage belongs to the receiving party.

18. **Entire Agreement; Modification.** These terms of service constitute the entire agreement between Jive and the Customer except as set forth in Contract C1504 with the OSRHE.

19. **Binding Arbitration. Attorney's Fees.** If any legal proceeding is validly instituted to enforce the terms of this agreement, the prevailing party may recover its attorneys' fees and other costs.

20. **Governing Law; Personal Jurisdiction; Venue.** This agreement is governed by the laws of the State of Oklahoma without regard to its conflicts-of-law provisions. If any litigation is validly instituted in connection with this agreement, the parties hereby consent to the exclusive personal jurisdiction of the courts in Oklahoma and waive any objection as to venue or inconvenient forum.

21. **Waiver of Rights.** Failure to enforce a right or provision under this agreement does not constitute a waiver of that right or provision.

22. **Severability.** If any part of this agreement is declared unenforceable by a court, all other parts will remain enforceable.

23. **Survival.** Sections 9, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, and 27 of these terms of service will survive termination of this agreement.

24. **Notices.** (a) Jive shall deliver any notice to the Customer to the mailing address, fax number, or e-mail address stated in the sales quote. Except for billing disputes under section 9(c) or location updates under section 13(b), the Customer shall deliver any notice to Jive by fax to 385-309-0012, by e-mail to [legal@jive.com](mailto:legal@jive.com), or by delivering it to 1275 West 1600 North, Suite 100, Orem, UT 84057. Either party may update its contact information for notices by delivering notice of the new contact information to the other party in accordance with this section 26(a).

(b) Notice will be deemed to have been duly given (1) upon delivery, if delivered personally to an officer of the receiving party; (2) upon verbal or written confirmation of receipt (not including automatically-generated responses), if delivered by fax or e-mail; (3) three business days after being mailed by registered or certified mail, postage prepaid; or (4) the next business day, if sent by commercial overnight delivery service; unless, with respect to (3) or (4), tracking information indicates delivery on a different date.

25. **Assignment.** Jive may assign its rights and obligations under this agreement to any successor of substantially all of its assets. Otherwise, neither party may assign its rights or obligations under this agreement without the written consent of the other party.

26. **Effectiveness; Signature.** This agreement will become effective when the Customer has signed the sales quote. The Customer may sign the sales quote by hand or by electronic means (for example, by using a commercial e-signature service or by typing the name of the Customer's authorized representative into a web form).

27. **Definitions.** In this agreement, the following definitions apply:

**"claim"** means any loss, liability, damages, court costs, litigation costs, arbitration awards or fees, or other costs;

**"device"** means a physical phone, soft phone, fax machine, analog telephone adapter, or other device used to make or receive calls using the Service;

**"emergency dispatch center"** means any local or national answering point for 911 calls;

**"Other Charges"** means all charges for late fees, toll-free minutes, international long distance minutes, local loop access, additional off-network minutes, number porting, expedited number porting, directory or phone book access, taxes, fees, and other variable, one-time, or recurring charges except for Service Charges and Rental Charges;

**"Rental Charges"** means the monthly charges for rental equipment on the Customer's account;

A party's **"representatives"** are its officers, agents, employees, subsidiaries, and financial and legal advisers;

**"Service Charges"** means fixed monthly charges for the Services on the Customer's account; and

**“Services”** means the hosted VoIP PBX service, IP service, local telephony service, DIDs, and other information or communications services offered by Jive during the term of this agreement.

## **EXHIBIT D**

### **JIVE PROMOTIONAL PRICING TERMS AND REQUIREMENTS**

Multi-Year Promotional Pricing Terms and Requirements (Rev. March 26, 2014)

In addition to the existing Jive Terms of Service, the Customer agrees to the following terms to qualify for the Jive's multi-year contract promotional pricing: discounts under the promotional pricing program are available only to full-priced end-users (i.e. no "Common Area Phones" allowed). The Customer must activate a minimum of 25 full-price end-users in order to qualify for this promotion. The Contract Term begins on the day we activate your service (i.e. the day telephone numbers are ported or new telephone numbers are assigned). The Customer hereby acknowledges it has received certain benefits from Jive in exchange for any Contract Term greater than one month. If Jive terminates Services to the Customer for nonpayment or other default before the end of the Contract Term, or if the Customer terminates service before the end of the Contract Term for any reason other than Non-Appropriation of Funds (as described in Paragraph 3.5 of the Jive Communications Terms of Service), the Customer shall pay Jive with respect to each Interconnected VoIP User activated on the account, in addition to all other amounts owed, the difference between the discounted cost of service and the non-discounted cost of service from the activation date through the date of termination. The Customer is responsible for all applicable usage fees, prorated access charges, taxes, surcharges or other charges through the termination date.

At Jive's discretion, the Customer may be required to "trade-in" their existing telephone system and handsets to participate in the Jive Free Phones promotion. In these cases, the Customer may be required to package existing phone system and place on a pallet to be collected by Jive.

## **EXHIBIT E**

### **INSTALLATION CONTRACT**

Jive Communications Purchase and Installation Terms and Conditions  
(Rev. January 20, 2010)

PLEASE READ THIS DOCUMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

The terms and conditions of sale stated herein govern the Customer's purchase of hardware, software and/or other products and services (an "Item" or "Items") from Jive Communications, Inc., a Delaware Corporation (the "Provider"). By accepting delivery and/or installation of the Item(s) described on the invoice, Customer agrees to be bound by these terms and conditions.

#### **1. Other Documents.**

These terms and conditions may NOT be altered, supplemented, or amended by the use of any other documents. Any attempt to alter, supplement or amend this document or to place an order for Items which is subject to additional or altered terms and conditions will be void, unless the parties otherwise agree in writing.

#### **2. Order Cancellation.**

Order cancellations must be received by Provider at [billing@getjive.com](mailto:billing@getjive.com) within 72 hours of the time that the original order was placed. Cancellations received after such time will result in a 30% restocking fee.

#### **3. Shipping Charges & Taxes.**

Prices do not include charges for shipping, handling, and applicable taxes. Such additional charges will appear separately on the invoice. Provider is obligated to withhold sales tax for any products delivered within the State of Utah. Unless Customer provides Provider with a valid tax exemption certificate applicable to the Items' ship-to location prior to Provider's order confirmation, Customer is responsible for all taxes associated with the order.

#### **45. Title & Risk of Loss.**

Title to the Items passes from Provider to Customer on acceptance by Customer provided that loss or damage that occurs during shipping by a carrier selected by Provider will be Provider's responsibility. If a damaged Item is received, please contact Jive Communications within 15 days of receipt of your order by e-mailing [billing@getjive.com](mailto:billing@getjive.com) or calling 801-426-5782. You must retain the original packing materials. Loss or damage that occurs during shipping by a carrier selected by Customer is Customer's responsibility. The foregoing notwithstanding, title to all software will remain with the applicable licensors. No loss or damage will relieve Customer from its payment obligations.

## 5. Acceptance and Return Policies.

Customer must inspect the Items upon delivery and must accept or reject the Items no later than the close of business on the fifth full business day following delivery. Any Items rejected after such time will be subject to a 30% restocking fee. Items purchased directly from Provider by an end-user Customer may be returned by Customer within 30 days of the date of the invoice. Hardware must be received IN ORIGINAL PACKAGING, and a 30% restocking fee will apply. Customer will be responsible for paying shipping and necessary insurance fees when returning any Item(s) to Provider. Any set-up and/or configuration fees charged in connection with the Items will be refunded in full if the Items are returned within this period.

## 6. Warranties.

Hardware purchased from Provider comes with a 1-year limited warranty. Provider warrants that any Items, other than software, shall meet or exceed any specifications published by Provider or the manufacturer in the user manual delivered with the Item(s) and shall be free from defects in material or workmanship for a period of 1 year from the time of tender of delivery. Provider's sole obligation (and Customer's sole remedy) under this limited warranty shall be for Provider to repair or replace the Items, with new or refurbished parts, free of charge, at Provider's principal of business. This limited warranty specifically excludes shipping, freight and insurance charges, if any. With respect to all limited warranty claims, Customer shall request telephone, technical and troubleshooting support from Provider in accordance with Provider's normal business practices and, if and to the extent Provider is unable to resolve the problem and the problem appears to be a warranty claim hereunder, Provider will then instruct Customer regarding its warranty claim processing procedures. Such Warranty does not cover physical damage. The manufacturers limited warranties, if any, applicable to Items purchased from Provider are included in the documentation provided with the Items. Provider makes no express warranties except those stated in this section. Any such warranties will be effective, and Provider will be obligated to honor any such warranties, only upon Provider's receipt of payment in full for the Items to be warranted. Provider disclaims all other warranties, express or implied, including without limitation, implied warranties of merchantability, fitness for a particular purpose, lack of infringement of the rights of third parties or the compatibility or interoperability of the Items or software with other personal property or accessories (other than devices sold or furnished hereunder) that Customer uses with or connects to the Items or software. Any description of the Items contained on Provider's website or promotional materials is for the sole purpose of identifying the Items and any such description is not part of the basis of the bargain and does not constitute a warranty that the Items will conform to the description. All software is provided subject to any license agreements executed in connection therewith, and Provider does not warrant any software under these terms and conditions. Warranties, if any, for software are contained in the End-User License Agreements, as defined below, that govern the purchase and use of the software.

## 7. License to Software.

All software, other than software owned, developed, controlled or licensed by any party other than Provider ("Third-Party Software"), provided to Customer is licensed subject to the terms set forth in any click-wrap license visually displayed upon installation or execution of the software

(the .End-User License Agreement.). In the absence of any such End-User License Agreement for a particular software product, Provider grants upon delivery to or access by Customer, and Customer will accept, a non-exclusive license to use the software (other than Third-Party Software) solely in conjunction with the Items, subject to the following terms and conditions: (i) all title to, ownership of and all proprietary rights (including but not limited to patent rights, copyrights, trade secrets and other intellectual property rights) in and to the software, other than the limited rights expressly granted to Customer herein, will remain vested in Provider; (ii) Customer will not sell, transfer, assign, lease, loan, rent, sublicense, reproduce, duplicate, distribute or permit others to access the software or any rights under the software license granted hereunder; (iii) nothing contained in this Agreement obligates Provider to deliver software source code to Customer or any third party; (iv) Customer will not, and will not permit others to: copy, translate, modify, create derivative works from, reverse engineer, decompile, encumber or otherwise use the software; and (v) all appropriate copyright and other proprietary notices and legends will be retained on all software. With respect to Third-Party Software, Customer's license and rights to use such Third-Party Software are subject to the terms and conditions of use specified by the owner, developer or manufacturer thereof. No oral statement, online click wrap amendments, facsimile, mail or other notification issued by vendor shall modify or otherwise effect the terms, conditions, or specification of this contract unless accepted in writing by both parties.

#### 8. Limitation of Liability.

Provider will have no liability beyond the remedies set forth herein, including any liability for Items not being available for use or for lost or corrupted data or software. Provider will not be liable for lost profits, loss of business or other consequential, special, indirect or punitive damages, arising out of or related to (i) the use, possession or operation of the Items, or (ii) the conduct by Customer of its business and operations, or for any damages based on strict or absolute tort liability, negligence or other theory of liability even if advised of the possibility of such damages, or for any claim by any third party except as expressly provided herein. Notwithstanding anything to the contrary contained herein, Provider's liability in connection with the sale or license of the Items, if any, to Customer or its employees, agents, customers or invitees, or any third parties, is hereby, expressly limited to the purchase price paid by Customer and received by Provider in connection with the specific Items that are or were the proximate cause of any such liability.

#### 9. Force Majeure.

Provider will not be liable for loss or damage caused by any delay or failure to perform its obligations under these terms and conditions caused by, strikes, lockouts, riots, war, fire, acts of God, accidents, material or transportation shortages, governmental restrictions or injunctions, or denial of import or export licenses, or compliance with any law, regulation or order, or due to any other circumstances or causes that have the effect of frustrating performance of these terms and conditions, beyond the control of Provider.

#### 10. Miscellaneous Provisions.



The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference is to be derived therefrom. These terms and conditions may be modified only by a written instrument dated subsequent to the date hereof and signed by Customer and an authorized representative of Provider. If any provision or provisions of these terms and conditions are held to be invalid, illegal or unenforceable, such provision will be enforced to the fullest extent permitted by applicable law, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby. Provider's failure to insist on performance of any term or condition contained herein, or failure to exercise any of Provider's rights hereunder, will not constitute a waiver of any of Provider's rights or remedies hereunder. These terms and conditions will be exclusively governed by and construed in accordance with the laws of the State of Oklahoma, excluding its conflicts of laws principles. Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any court located in the state of Oklahoma, in any action or proceeding related to or arising from these terms and conditions. In any action at law or equity to enforce or interpret the terms hereof, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

## **EXHIBIT F**

### **EQUIPMENT RENTAL AGREEMENT**

Jive Communications, Inc. Equipment Rental Agreement  
(Rev. October 30, 2012)

#### **1. Maintenance.**

The RENTER shall keep and maintain the rented equipment during the terms of the rental at his own cost and expense. He shall keep the equipment in a good state of repair, normal wear and tear excepted.

#### **2. Lost or Damaged Equipment.**

The RENTER shall pay the OWNER full compensation for replacement and/or repair of any equipment which is not returned because it is lost or stolen or any equipment which is damaged and in need of repair to put it into the same condition it was in at the time of rental, normal wear and tear excepted, or any equipment which is returned without original packaging, power supplies, original Ethernet cable, etc. The OWNER's invoice for replacement or repair is conclusive as to the amount RENTER shall pay under this paragraph for repair or replacement.

#### **3. Replacements.**

Notwithstanding the above, any equipment that fails due to manufacturer defect shall be replaced by OWNER at no charge for the duration of the rental period.

#### **4. Removal.**

The RENTER shall not remove the equipment from the address of the RENTER or the location shown herein as the place of use of the equipment without prior written approval of the OWNER. The RENTER shall inform the OWNER upon demand of the exact location of the equipment while it is in the RENTERS's possession.

#### **5. Sub-Lease or Sale.**

The RENTER shall not attempt to sub-lease or sell the rented equipment to any third party, regardless of payment status, without the express written permission of OWNER.

#### **6. Expenses and Charges.**

The equipment shall be delivered to RENTER and returned to OWNER at the RENTER's risk, cost and expense. If a periodic rental rate is charged by OWNER, rental charges are billed to the RENTER for each period or portions of the period from the time the equipment is delivered to RENTER until its return. If a term rental rate is charged by OWNER, rental charges are billed to the RENTER until the equipment is returned before the end of the term. If the equipment is not returned during or at the end of the term, then the rental charges shall continue on a full term basis for any additional term or portion thereof until the equipment is returned.

#### **7. Allowances.**

No allowance will be made for any rented equipment or portion thereof which is claimed not to have been used. Acceptance of returned equipment by OWNER does not constitute a waiver of any of the rights OWNER has under the rental agreement.

8. Inspections.

The RENTER shall allow OWNER to enter RENTER's premises where the rented equipment is stored or used at all reasonable times to locate and inspect the state and condition of the rented equipment. If the RENTER is in default of any of the terms and conditions of this agreement, the OWNER, and his agents, at the RENTER's risk, cost and expense may at any reasonable time enter the RENTER's premises where the rented equipment is stored or used at any reasonable time and recover the rented equipment.

9. Encumbrements.

The RENTER shall not pledge or encumber the rented equipment in any way. The OWNER may terminate this agreement immediately upon the failure of RENTER to make rental payments when due, or upon RENTER's filing for protection from creditors in any court of competent jurisdiction.

10. Warranties.

The OWNER makes no warranty of any kind regarding the rented equipment, except that OWNER shall replace the equipment with identical or similar equipment if the equipment fails to operate in accordance with the manufacturer's specifications and operation instructions. Such replacement shall be made as soon as practicable after RENTER returns the non-conforming equipment.

11. Legal Fees.

The RENTER shall pay all reasonable attorney and other fees, the expenses and costs incurred by OWNER in protection its rights under this rental agreement and for any action taken by OWNER to collect any amounts due to the OWNER under this rental agreement.

12. Acceptance.

These terms are accepted by the RENTER upon delivery of the terms to the RENTER or the agent or other representative of RENTER.

## **EXHIBIT G**

### **CALL RECORDING PRIVACY POLICIES AND NOTICES** Jive Communications Call Recording Privacy Policies and Notices (Rev. January 26, 2012)

Jive Communications, Inc. provides the following information and notices in regards to the electronic recording of telephone communications. The information provided is restricted to general information in the public domain which pertains to the electronic recording of telephone conversations.

Jive Communications, Inc. is in no way dispensing legal advice, nor should any third parties construe any information herein as a disclaimer of any rights. Jive Communications, Inc. also does confirm the accuracy of the information below. Any questions concerning the legal implications electronic recording of telephone communications should be directed to legal counsel unassociated with Jive Communications, Inc.

Jive Communications, Inc. is not liable for any lack of understanding or knowledge regarding the use of electronic recordings of telephone communications by any other party. It is the responsibility of the individual party to become fully acquainted with accurate legal information regarding use of these services. Warranties, notices, and other information are included below.

Both U.S. federal and state statutes govern the use of electronic, mechanical or other type of device recordings. The unlawful use of this type of equipment can lead to civil suit by the third parties, and can also incur criminal prosecution.

Call recording laws vary by state. Laws pertain to obtaining either single party (only you, the caller need to provide consent) or multi-party consent (all parties on the call need to provide consent) before a call can be recorded. If you are calling from or to a multi-party consent state, then the consent of all parties on the phone is required to record the call. If you are calling from and to a single party consent state, then additional consent is not required. The following links are provided as a guide on federal and state call recording laws but by no means is this information the ultimate source on the subject and is included for informational purposes only:

#### **1.1 Consent**

US Federal laws only require a single party to consent to recording a telephone conversation. However, individual states have laws that require multiple parties to a call to provide consent. Federal and many state laws do not protect recording of calls for criminal or tortuous purposes.

#### **1.2 Federal Laws**

The Federal Statute associated with electronic recording of telephone conversations is: Electronic Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. §§ 2510-2522.

There are two exceptions to the prohibition against call monitoring: 1) Consent of at least one party to the call; 2) Ordinary course of business exception. The ordinary course of business exception applies where the call recording concerns the legitimate operation of and during “ordinary course of business”.

<http://uscode.house.gov/download/pls/18C119.txt>

The Federal Communications Commission (FCC) (48 C.F.R. Sec. 64.501) requires at least one of the following measures be taken when recording an interstate phone call: 1) Both parties consent to the recording; or 2) The recording party must give verbal notification before recording; or 3) There must be a regular electronic beep tone during recording.

### **1.3 State Statutes**

While the U.S. federal law only requires one-party consent, many states have drafted different statutes. In some states, all parties must give their consent or at least be notified that the call is about to be recorded (with necessary opt-out option: if you don't like them to record the call, you can ask them to stop recording). A 1950s Supreme Court case affirmed that the federal law does not supersede state authority/statutes unless the call or the tap crosses state lines – which is why each state has established their own laws.

States requiring single party notification: Alabama, Alaska, Arizona, Arkansas, Colorado, District Of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming  
States requiring two (or multi-) party notification: California, Connecticut, Delaware, Florida, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Nevada, Pennsylvania, and Washington

Individual State laws can be found at <http://www.rcfp.org>

### **1.4 Business Telephone Exception**

The “business telephone” exception, which generally allows monitoring of calls and taping over an extension phone which is both provided to a subscriber in the ordinary course of a telephone company's business and is being used by that subscriber in the ordinary course of its business. This provision generally permits businesses to monitor the conversations of their employees, including personal conversations. The federal statutes provide criminal penalties for unlawful interception of telephone conversations, including up to five years' imprisonment or a maximum of \$10,000 in fines. They also allow for civil remedies, by which private parties are entitled to recover actual and punitive damages, together with fees and costs.

### **1.5 Evidentiary Issues**

Individuals and businesses that make surreptitious recordings often do so with the expectation that the recordings will be useful as evidence. Such recordings are subject to significant barriers to use as evidence. First, if made in violation of either federal or state law, the recordings will almost certainly be inadmissible. Second, even if lawfully recorded, the tapes will be exempt from the hearsay rule and will not, in most jurisdictions, be usable for impeachment. Anyone contemplating an evidentiary use of surreptitious recordings should consult with an attorney prior to making the recording.

### **1.6 Different Jurisdictions**

Federal law may apply when the conversation is between parties who are in different states, although it is unsettled whether a court will hold in a given case that federal law “pre-empt” state law, but either state may choose to enforce its own laws. Therefore it is better to err on the side of caution when recording an interstate telephone call.

## **1.7 FCC**

The FCC’s role in assisting consumers who believe their telephone conversations were unlawfully recorded is generally limited to ensuring that telephone companies enforce their tariff provisions regarding recording of telephone conversations. The only penalty that can be enforced by the local carrier is revocation of telephone service. (In the Matter of Use of Electronic recordings in Connection with Telephone Service.)

The FCC protects the privacy of telephone conversations by requiring notification before an electronic recording is used to record interstate or foreign telephone conversations. These types of conversations may not be recorded unless the use of an electronic recording is: Preceded by verbal or written consent of all parties to the telephone conversation; or Preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party; or Accompanied by an automatic tone warning device, sometimes called a beep tone, which automatically produces a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the electronic recording is in use. Also, no electronic recording may be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

## **1.8 References**

FCC Consumer Information Bureau: <http://www.fcc.gov/cib/>

Recording Telephone Conversations: <http://www.fcc.gov/guides/recording-telephone-conversations>

Electronic Communications Privacy Act of 1986 (“ECPA”), 18 U.S.C. 2510-2522:  
<https://it.ojp.gov/default.aspx?area=privacy&page=1285>

The Reporters Committee for Freedom of the Press: A Practical Guide to Taping Phone Calls and In-Person Conversations: <http://www.rcfp.org/taping/>

Interception And Divulgence Of Radio Communications:  
<http://www.fcc.gov/guides/interception-and-divulgence-radio-communications>

U.S. Department of Justice: <http://www.usdoj.gov/>

USA Bulletin, September 1997 Vol. 45, No. 5, 6. Electronic Investigative Techniques I:  
[http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usab4505.pdf](http://www.usdoj.gov/usao/eousa/foia_reading_room/usab4505.pdf)

USA Bulletin, September 1997 Vol. 45, No. 5, 6. Electronic Investigative Techniques II:  
[http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usab4506.pdf](http://www.usdoj.gov/usao/eousa/foia_reading_room/usab4506.pdf)

Telephone Tape Recording Law. Ralph Thomas. National Association Of Investigative Specialists: <http://www.pimall.com/nais/n.tel.tape.law.html>

**EXHIBIT H**

**JIVE HARDWARE PRICING CATALOG**