

## Ojo Digital Voice and Video Phone Services

### Customer Licensing Agreement Terms of Service

Welcome to Ojo Digital Voice and Video Phone Services (the “Service”) offered by Ojo Service LLC, a Pennsylvania limited liability company with offices at 3190 Tremont Avenue, Trevose, Pennsylvania 19053 (“Ojo”), which includes related products or devices used in conjunction with the Service such as analog terminal adaptors, video phones, routers or any other IP connection device used with the Service that is provided by Ojo (collectively, “Device” or “Devices”).

These Terms of Service (“Agreement”) are between you (“you” or “customer”) and Ojo for the use of the Service. You must enter into this Agreement by selecting the checkbox under terms and conditions and clicking the “Continue” button on the order confirmation page on the web site in order to use the Service. You understand that by selecting the terms and conditions box, or any button or link required during the sign-up process, you approve of the text preceding, as may be modified through online posting of such modifications on www.ojophone.com (and its sub-domains) from time to time, and are entering into a legally binding agreement with Ojo under these terms. You hereby agree to the use of electronic communication in order to enter into contracts and to place orders, and agree to the electronic delivery of notices, policies and records of transactions initiated or completed with respect to the Service. You further waive any rights or requirements under any laws or regulations in any jurisdiction, to the extent permitted under applicable law, which require an original (i.e., non-electronic) signature or delivery or retention of non-electronic records.

When using the Service, you shall be subject to all posted agreements, guidelines or rules applicable to any particular part of the Service that may contain terms and conditions in addition to those in this Agreement. All such agreements, guidelines and/or rules, including Ojo’s privacy policy (“Privacy Policy”) posted on Ojo’s website at www.ojophone.com (or its sub-domains), are hereby incorporated by reference into this Agreement.

If you are residing in a jurisdiction which restricts the use of Internet-based applications according to age, or which restricts the ability to enter into agreements such as this Agreement according to age, and you are under such age limit, you may not enter into this Agreement or use the Service. Furthermore, if you are residing in a jurisdiction where it is forbidden by law to use the Service, you may not enter into this Agreement and you may not use the Service. By entering into this Agreement, you explicitly state that you have verified in your own jurisdiction that your use of the Service is allowed.

#### 1. EMERGENCY SERVICES - 911/E911 DIALING

##### 1.1. Limited Availability of Traditional 911/E911 Services.

You acknowledge that Ojo does not offer access to emergency services in a manner similar to that provided by wireline telephone services that are commonly referred to as either basic 911 or Enhanced 911 (“E911”). There are important limitations associated with this Service detailed throughout this Section 1. In some areas, the Service will provide the emergency operator with automatic location and call-back information if you dial the digits 9-1-1. This is E911. In other areas, the Service will not provide the emergency operator with automatic location and call-back information if you dial the digits 9-1-1. This is basic 911. The type of service offered to each customer will be based on the type of service available at the customer’s location. The type of service offered to the customer will be indicated in the welcome email provided to the customer after the customer’s service has been activated. Given the Service’s limitations, you should have an alternative means of accessing 911 services. The 9-1-1 service on military installations does not function in the same manner as 9-1-1 for non-military base addresses. You should not rely on the ability to use Ojo Digital Voice and Video Phone Services to contact emergency services while on a military installation.

Family Plan Lines do not connect to the Public Switch Telephone Network (PSTN) – they connect calls only to other devices on the Ojo Network. As such, you acknowledge, agree and understand that any Devices subscribed for a Family Plan on the Ojo Digital Voice and Video Phone Services (the “Family Plan Line”) do not support basic 911 or E-911 access to emergency services; that 911-type dialing will not be available for any Family Plan Line; and that the user on the Family Plan Line has an alternative means of accessing basic 911 or E-911 services at the physical location where the Family Plan Line will be utilized. You agree, or you will instruct the user on the Family Plan Line to agree, to inform any household residents, guests and other third persons who may be present at the physical location where the Family Plan Line is utilized as to the non-availability of basic 911 or E-911 dialing. **Note that the any discussion in this Agreement regarding the availability of basic 911 or E-911 services does not apply to any Family Plan Lines.**

##### 1.2. Notice.

You should inform household residents, guests and other third parties that may be present at the location where you make use of the Service of the limitations associated with the Service’s access to emergency services when the digits “9-1-1” are dialed. Specifically, you should advise such people of the potential unavailability and other limitations on basic 911 and/or E911, as detailed in this Agreement. Any Device that you use with the Service, along with any traditional telephone handsets connected to the Device, should include a warning sticker that informs any person who uses your account, with or without your permission, to access the Service (each a “User”) of the potential unavailability of 911 or E911 services. Warning stickers should have been included with the Device and it is your responsibility to ensure that the labels are properly affixed to all Devices and handsets. Should you need additional or replacement stickers, please contact Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444.

##### 1.3. Registration of Physical Location Required.

When you register for the Service, you must provide Ojo with the physical location where you will be using the Service (the “Service Address”). THE SERVICE IS AVAILABLE ONLY AT THE SERVICE ADDRESS YOU PROVIDE TO OJO WHEN YOU SIGN UP FOR THE SERVICE. YOU WILL NOT HAVE ACCESS TO EMERGENCY SERVICES UNTIL YOU RECEIVE CONFIRMATION VIA EMAIL FROM OJO THAT YOUR EMERGENCY SERVICES FUNCTIONALITY HAS BEEN SUCCESSFULLY ACTIVATED. For each additional phone number that you add to your service, it will be for the Service Address on the account. The Service Address does not vary by phone number. You will receive separate confirmations for each phone number that you register for emergency services functionality. Further, in the event that you use your Service at a location other than the Service Address associated with the phone number of the Service, any call you make to emergency services may be sent to an emergency center near your originally registered address and not your actual physical location. In this situation, the emergency center may not be able to transfer your call to the appropriate emergency operator and may not be able to contact the relevant parties to provide you with assistance. Given these limitations, you should have an alternative means of accessing 911 services.

##### 1.4. E911 Arrangements.

Ojo contracts with third parties to provide access to emergency services that includes call-back and location information in some locations. This type of access to emergency services is not offered in all areas of the United States, but instead depends on the capabilities of each individual Public Safety Answering Point (“PSAP”) as well as the ability of Ojo’s third-party provider to offer such capabilities with Voice over Internet Protocol calls. In those areas where offered and subject to the limitations of its third party providers, Ojo, will route your emergency call to the PSAP with your telephone number (including any virtual telephone numbers that you may have as part of the Service) and Service Address information (as provided at the time of Service sign-up). You hereby authorize Ojo to disclose your name, telephone number (including any virtual telephone numbers that you may have as part of the Service), Service Address information and other relevant identifying information to third-party service providers, including, without limitation, call routers, call centers and PSAPs, for the purpose of dispatching emergency services personnel to your Service Address.

##### 1.5. 911 Service Outages.

###### 1.5.1. Service Outages Due to Power Failure or Disruption.

The Service, including, without limitation, 911 dialing, does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including, without limitation, 911 dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including, without limitation, 911 dialing. You acknowledge that Ojo is not responsible for Service outages due to power failure or disruption or any other impediment to your usage of the Service, and any loss of service, including, without limitation, 911 dialing, that may result. In the event you lose Service as a result of power failure or disruption or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement. In the event of outages due to a power failure or disruption, you agree that Ojo is not required to provide you any credits or any other form of remuneration for the disruption of your Service.

###### 1.5.2. Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or Internet Service Provider (“ISP”) Service.

Service outages or suspensions or terminations of service by your broadband

provider or ISP will prevent all Service, including, without limitation, 911 dialing, from functioning. You acknowledge that Ojo is not responsible for Service outages due to Internet outage or suspension or termination of broadband or ISP service by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of Service, including, without limitation, 911 dialing, that may result. In the event you lose Service as a result of an Internet outage or suspension or termination of your broadband or ISP service or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement. You agree that Ojo is not required to provide you any credits or any other form of remuneration for the disruption of your service in the event of outages resulting from Internet outages or suspension or termination of your broadband or ISP service or any other impediment to your usage of the Service.

#### 1.5.3. Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts.

Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert Ojo to this situation, Ojo will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including, without limitation, 911 dialing, may not function. You acknowledge that Ojo is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your use of the Service, and any loss of service, including, without limitation, 911 dialing, that may result. In the event you lose service as a result of blocking of ports or any other impediment to your use of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement. In the event of outages due to your broadband provider or ISP blocking the ports over which Service is provided, you agree that Ojo is not required to provide you any credits or any other form of remuneration for the disruption of your Service.

1.5.4. Service Outage Due to Suspension or Termination of Your Ojo Account. Service outages due to suspension or termination of your account will prevent all Service, including, without limitation, 911 dialing, from functioning.

#### 1.5.5. Other Service Outages.

If there is a Service outage for any reason, such outage will prevent all Service, including, without limitation, 911 dialing, from functioning. Such outages may occur for a variety of reasons, including, without limitation, those reasons described elsewhere in this Agreement.

1.6. Network Congestion: Reduced Speed for Routing or Answering 911 Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

#### 1.7. Alternate 911 / E911 Arrangements.

IF YOU CARE TO AVOID THE LIMITATIONS OF OJO'S SERVICE WITH RESPECT TO 911 DIALING, YOU SHOULD OBTAIN AN ALTERNATE MEANS OF ACCESSING TRADITIONAL 911 OR E911 SERVICES, DEPENDING ON THE CAPABILITIES OF THE EMERGENCY RESPONSE CENTER RESPONSIBLE FOR YOUR LOCATION.

#### 1.8. 911 / E911 LIMITATION OF LIABILITY.

IN NO EVENT SHALL OJO OR ITS AFFILIATES OR ITS OR THEIR DIRECTORS, STOCKHOLDERS, MEMBERS, PARTNERS, EMPLOYEES, ATTORNEYS, ACCOUNTANTS, CONSULTANTS, LICENSORS, SUPPLIERS, CONTRACTORS, REPRESENTATIVES, AGENTS, FINANCIAL AND OTHER ADVISORS, HEIRS, SUCCESSORS AND ASSIGNS OR ANY OTHER THIRD-PARTY PROVIDER OR VENDOR ITS OR THEIR DIRECTORS, STOCKHOLDERS, MEMBERS, PARTNERS, EMPLOYEES, ATTORNEYS, ACCOUNTANTS, CONSULTANTS, LICENSORS, SUPPLIERS, CONTRACTORS, REPRESENTATIVES, AGENTS, FINANCIAL AND OTHER ADVISORS, HEIRS, SUCCESSORS AND ASSIGNS WHO FURNISH SERVICES OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, THE SERVICE OR THE DEVICE (COLLECTIVELY, THE "OJO PARTIES", AND INDIVIDUALLY, AN "OJO PARTY") BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS ARISING FROM OR RELATING TO 911 DIALING AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO 911 DIALING, UNLESS IT IS PROVEN THAT THE ACT OR OMISSION PROXIMATELY CAUSING THE CLAIM,

DAMAGE, OR LOSS CONSTITUTES GROSS NEGLIGENCE, RECKLESSNESS, OR INTENTIONAL MISCONDUCT ON THE PART OF OJO.

OJO DOES NOT HAVE ANY CONTROL OVER WHETHER, OR THE MANNER IN WHICH, 911 CALLS USING THE SERVICE ARE ANSWERED OR ADDRESSED BY ANY LOCAL EMERGENCY RESPONSE CENTER. OJO DISCLAIMS ALL RESPONSIBILITY FOR THE CONDUCT OF LOCAL EMERGENCY RESPONSE CENTERS AND THE NATIONAL EMERGENCY CALLING CENTER. OJO RELIES ON THIRD PARTIES TO ASSIST OJO IN ROUTING 911 CALLS TO LOCAL EMERGENCY RESPONSE CENTERS. OJO DISCLAIMS ANY AND ALL LIABILITY OR RESPONSIBILITY IN THE EVENT SUCH THIRD PARTY DATA USED TO ROUTE CALLS IS INCORRECT OR YIELDS AN ERRONEOUS RESULT.

## **2. SERVICE**

### 2.1. Term.

Ojo offers Voice over Internet Protocol (also known as VoIP, or Voice over IP) enabled telephone service, including, without limitation, outbound calling, inbound phone numbers and related telephony features. The Service is offered on a prepaid basis. Customer accounts that are subject to a monthly service charge are automatically replenished through a charge billed to your credit or debit card without further action by you ("Automatic Recharge"). You hereby authorize such charges. Automatic Recharge takes place (i) on a monthly basis at the commencement of each monthly term and (ii) when your account balance is below the level set forth in the terms and conditions for your selected Service. Ojo provides the Service for full monthly terms only, beginning on the date that your account is first created.

### 2.2. Term.

There is a two year service commitment when you sign-up and purchase your Video Phone device for Digital Video Phone Service, a one year service commitment when you sign-up and purchase your analog telephone adapter and a one-year service commitment when you sign-up and purchase your Video Phone device for a Family Plan Line. All services, thereafter, are offered on a monthly basis.

- If you purchased a Video Phone device for Digital Video Phone Service and cancel the Service within two years of your activation date, an early termination fee of \$199.00 (plus applicable taxes and surcharges) will apply. This early termination fee will be prorated down by 1/24th after the completion of each month of Service.
- If you purchased an analog telephone adapter and cancel the Service within one years of your activation date, an early termination fee of \$59.99 (plus applicable taxes and surcharges) will apply. This early termination fee will be prorated down by 1/12th after the completion of each month of Service.
- If you purchased a Video Phone device for a Family Plan Line and cancel the Service within one year of your activation date, an early termination fee of \$99.00 (plus applicable taxes and surcharges) will apply. This early termination fee will be prorated down by 1/12th after the completion of each month of Service.

Your first service term begins on the activation date, which is the date you first ordered service or the date Ojo successfully processes your payment, whichever is later. It is not the day you receive the Device you ordered or the first time you use the Service. Please note that the obligations of this Agreement begin on your activation date. This Agreement automatically renews on a monthly basis on each month anniversary of your entering into this Agreement without further action by you unless you contact Ojo Digital Voice and Video Phone Services Customer Support of non-renewal at least ten (10) days before the next month anniversary of you entering into this Agreement. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card. When initially subscribing for your Service or adding Service(s), Ojo will charge you then for the first month of Service(s) beginning on the date you place your order by clicking the "Continue" button on the order confirmation page on the web site. Ojo may also charge, and collect retroactively, early termination, overage, usage and other charges not previously charged and collected. Expiration of the term or termination of Service does not excuse the Customer from paying all unpaid, accrued charges due in relation to the Agreement.

### 2.3. Lawful Use of Service.

#### 2.3.1. Account, Pin and Security.

When you complete the online registration form, you agree to provide accurate, current and complete information about yourself, including, without limitation, name, address and credit/debit card information (the "Personal Data"), and to maintain and update your Personal Data to keep it accurate, current and complete. You may maintain or update your Personal Data via your Ojo Digital Voice and Video Phone Services online account. You agree that Ojo shall have no obligation to verify the Personal Data. You agree that Ojo may rely on your Personal Data as accurate, current, and complete and you consent to use of Personal Data for any purpose by Ojo and others involved in provision of the Service, including providing Personal Data to Ojo's representatives and agents. You agree that if your Personal Data is untrue, inaccurate, not current, or incomplete in any respect, that Ojo shall have the right, without obligation and in addition to its other rights and remedies, to terminate your Service. For information regarding Ojo's Privacy Policy and use of Personal Data, please go to [www.ojophone.com](http://www.ojophone.com) (or its sub-domains). A user name will be assigned to you, but you will need to choose a pin. You are entirely responsible for maintaining the confidentiality of your pin and account. Furthermore, you are entirely responsible for any and all activities that occur under your account. You agree to notify Ojo immediately of any unauthorized use of your account or any other breach of security. Ojo will not be liable for any loss that you may incur as a result of someone else using your pin or account, either with or without your knowledge. However, you could be held liable for losses incurred by Ojo or another party due to someone else using your account or pin. You may not use anyone else's account at any time, without the permission of the account holder.

#### 2.3.1.1. Use of Service.

Unless otherwise specified, the Services are for your personal and non-commercial use. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software, products or services obtained from using the Services. In addition, you agree that if you or any User uses the Service in a manner that violates or attempts to violate this Agreement, Ojo reserves the right to terminate your Service and this Agreement immediately and without advance notice, leaving you responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card. You are liable for any and all use of the Service by yourself and any User. If Ojo, in its sole discretion, believes that you have violated the above restrictions, Ojo may, in addition to its other rights and remedies, forward the objectionable material, as well as your communications with Ojo and your Personal Data and other personally identifiable information to the appropriate authorities for investigation and prosecution and you hereby consent to such forwarding.

In addition, Ojo may disclose your name, telephone number (including any virtual telephone numbers that you may have as part of the Service), credit or debit card information, and other personal information, any communications sent or received by you, and any other information that Ojo may have about your account, including, without limitation, types of service, length of service, MAC address(es), IP address(es), email address(es), registered 911 address, and all other account information, as follows: in response to law enforcement or other governmental agency requests; as required by law, regulation, rule, subpoena, search warrant, or court order; as necessary to identify, contact, or bring legal action against someone who may be misusing the service, the device, or both; to protect Ojo's rights and property; or in emergency situations where disclosure of such information is necessary to protect Ojo customers or third parties from imminent harm.

You acknowledge that the Service and Device may permit parties to a call to capture and store information transmitted during the call such as your caller identification or phone number and/or the sounds and video images comprising the call. These sounds, images and information may be stored and used as part of an address book, audio and video messaging and other public and private uses.

#### 2.3.2. Residential Use of Service and Device.

The Service and any associated Devices are provided to you solely for residential use. If you use the Service or the Devices in a way that is inconsistent with the normal use for your service or plan, you will be required, at Ojo's sole discretion, to pay the rates for the service or plan that would apply to the way you used the service or device, or terminate the Service, together with a US\$100.00 administrative fee for same, and you consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card. Ojo reserves the right to monitor the type and amount of usage for possible use of the Service in

excess of normal residential use. For calling plans with unlimited calling minutes usage in excess of 5,000 minutes per month is considered excessive usage and may be investigated by Ojo. For example, if you subscribe to one of Ojo's residential service plans, and you are notified that your usage is inconsistent with normal residential use, you may thereafter be required to pay Ojo's higher rates for commercial service for all periods in which your use of Service or the Device was inconsistent with normal residential use. You are prohibited from using the Service with any devices other than Ojo-approved devices. You shall not resell or transfer the Service or the Device to another party without Ojo's prior written consent. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. Ojo reserves the right to immediately terminate or modify your Service if Ojo determines, in its sole discretion, that your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns. If Ojo terminates your Service for any of the foregoing reasons, you agree to be responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card.

#### 2.3.3. Use of Service by Customers Outside the United States.

While Ojo encourages use of the Service within the United States of America to call other countries, Ojo does not presently offer or support the Service to customers located in other countries. If you use the Service or Device from any country other than the United States of America, you do so at your own sole risk, including, without limitation, the risk that such activity violates local laws in the country where you do so. You are liable for any and all such use of the Service by yourself or any person making use of the Service provided to you. Ojo reserves the right, in addition to its other rights and remedies, to terminate your Service immediately and without advance notice if it determines that you are using the Service or Device outside the United States of America. If Ojo terminates your Service for the foregoing reason, you agree to be responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card.

#### 2.3.4. Blocking of Service.

Ojo may, without prior notice, and consistent with applicable laws or regulations, block traffic to or from specific countries, cities, or NPA/NXX codes when Ojo deems it necessary to take such blocking action (i) to prevent the unlawful use of its services; (ii) to prevent the use of Service in violation of this Agreement; (iii) due to nonpayment for Service; or (iv) due to a network blockage or degradation of Service to Ojo's customers. Service will be restored as soon as it can be provided following resolution of the applicable issues.

#### 2.3.5. No Directory Listing.

The phone numbers you get from Ojo will not be listed in any telephone directories. However, any phone numbers you transfer from your local phone company may be listed until the next telephone directory is published. Thereafter, your phone number will only be published in the telephone directory to the extent the publishing vendor maintains your listing in lieu of an explicit cancellation of such listing by you.

#### 2.3.6. 711 SERVICE.

Other than Family Plan Line customers, customers located within the United States of America with speech or hearing disabilities may obtain assistance in placing a call by dialing 711 to connect with a telecommunications relay service (TRS) center. Specially trained Communications Assistants at TRS centers provide confidential assistance to allow persons with a wide range of speech or hearing disabilities to complete calls. **Please note that emergency calls should not be placed using 711.** All customers, including, without limitation, those with speech or hearing disabilities, must dial 911 for emergency services to ensure that they reach the appropriate emergency service agencies dedicated to providing service in the customer's geographic location. **Note that 911 services are not available for Family Plan Lines.**

#### 2.4. Loss of Service Due to Power Failure or Internet Service Outage or Termination or Suspension or Termination by Ojo.

As detailed above in Section 1, you acknowledge and understand that the Service does not function in the event of power failure. You also acknowledge and understand that the Service requires a fully functional broadband connection to the

Internet (which is not provided by Ojo Digital Voice and Video Phone Services) and that, accordingly, in the event of an outage of, or termination of service with or by, your ISP and/or broadband provider, the Service will not function, but that you will continue to be billed for the Service unless and until you or Ojo terminate the Service in accordance with this Agreement. In addition, some providers of broadband service may provide modems that prevent the transmission of communications using the Service. Ojo does not warrant that the Service will be compatible with all broadband services and expressly disclaims any express or implied warranties regarding the compatibility of the Service with any particular broadband service. In the event your broadband service is not compatible with the Service, you agree that Ojo is not required to provide you any credits or any other form of remuneration for your inability to use the Service. Should there be an interruption in the power supply or Internet outage, the Service will not function until power is restored or the Internet outage is cured. A power failure or disruption may require you to reset or reconfigure equipment prior to utilizing the Service. Power disruptions or failures or Internet outages will also prevent dialing to emergency service numbers, including, without limitation, the E911 calling feature. Should Ojo suspend or terminate your Service, the Service will not function until such time as Ojo restores your Service (which may require payment of all invoices and reconnection fees owed by you or cure of any breach by you of this Agreement). In the event of outages due to Internet or power failure, you agree that Ojo is not required to provide you any credits or any other form of remuneration for the disruption of your Service. If Ojo terminates your Service for the foregoing reason, you agree to be responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card.

#### 2.5. Non-Voice Systems.

You acknowledge that the Service is not set up to function with outdialing systems including, without limitation, digital video recording systems, home security systems, medical monitoring equipment, fax machines and satellite TV systems. YOU AGREE THAT YOU HAVE NO CLAIM AGAINST OJO FOR INTERRUPTION OR DISRUPTION OF SUCH SYSTEMS BY THE SERVICE.

#### 2.6. Copyright / Trademark / Unauthorized Usage of Firmware or Software.

The Service and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, and all services, information, documents and materials on Ojo's website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, trade dress, slogans, insignia, logos, legends, symbols and domain names (collectively, "marks") of Ojo are and shall remain the exclusive property of Ojo and nothing in this Agreement shall grant you the right or license to use any such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software. You are NOT allowed to use interface devices not provided by Ojo and such devices will not work with the Service. Notwithstanding this prohibition, if for some reason you attempt to use the Service through an interface device not provided by Ojo, you warrant and represent that you possess all required rights, including, without limitation, software and/or firmware licenses, to use that interface device with the Service. Further, you agree that any such use of an interface device not provided by Ojo excludes Ojo from any liability from such use and further, you agree that any warranties that might otherwise apply to the Service are voided as a result of such use.

#### 2.7. Delivery of and Risk of Loss To Devices.

All Device shipments are F.O.B. Ojo's facility, where Ojo's liability for delivery shall cease, and title (if applicable) and all risk of loss or damage shall pass to you upon delivery to the carrier who delivers the Device to your address. You will own any Device that is part of the Service and bear all risk of loss of, theft of, casualty to or damage to the Device subject to the limited warranty provided in Section 5.3.1. Any delivery and payment for delivery of the Device by Ojo is solely performed as a convenience to you and in no way shifts the risk of loss or damage from you to Ojo.

#### 2.8. Cancellation and Returns.

You may cancel your ordering of the Service and any Device at any time prior to the third day after the date you submit your order for the Service and the Device or any additional time period required by applicable law ("Cancellation Period"). To cancel, please contact Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444.

After the Cancellation Period, no Device may be returned by you for any reason without prior approval by Ojo pursuant to Section 2.8.3 below. There is no Cancellation Period for upgrades or downgrades of Service. You are responsible for any charges for international usage, directory assistance and any features or services not expressly included in the monthly plan fee. In addition, Ojo may not be able to refund all of the federal, state, provincial, municipal, local or other governmental sales, use, excise, universal service fees, 911 fees, value-added, personal property, public utility, regulatory or other taxes or regulatory fees or charges that you paid.

All returns of Devices, whether during the Cancellation Period or in connection with the warranty provided in Section 5.3.1, shall be in original packaging. You shall be responsible for all costs related to shipping the Device to Ojo. Any Device returned to Ojo without prior authorization for its return or not in original packaging may be refused by Ojo. In order to return any Device to Ojo, you must obtain a return material authorization (RMA) number from Ojo by contacting Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444 and return the Device undamaged and in good working condition, in its original packaging with its original contents to the address specified by Ojo Digital Voice and Video Phone Services Customer Support. Failure to follow these procedures will prevent you from receiving any refund for the Device or warranty repair service. Ojo will provide a replacement Device only if the Device is deemed to be defective and covered under the warranty provided in Section 5.3.1. You agree that any replacement Device may not necessarily be a new Device, but rather may be a refurbished, restocked and/or repaired Device. Ojo will not cover replacement for damaged, lost, stolen or modified Devices. Any Device returned by you that is not covered under warranty may be refused by Ojo, and you will be responsible to pay return shipping charges.

#### 2.9. Tampering with the Service or Devices.

You agree not to, and not to allow any User to, hack or disrupt the Service or Devices or to make any use of the Service or Devices that is inconsistent with its intended purpose or to attempt to do so.

#### 2.10. Theft of Service.

If the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner, you shall notify Ojo immediately by contacting Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444. When you call, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. Until such time as Ojo receives notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service.

#### 2.11. Service Distinctions.

You acknowledge and understand that the Service is not a traditional telephone service. Important distinctions (some, but not necessarily all, of which are described in this Agreement) exist between telephone service and the Service provided by Ojo. In addition, the Service is subject to different regulatory treatment than telephone service. You acknowledge and understand that this treatment may limit or otherwise affect your rights of redress before Federal, State or other governments or telecommunications regulatory agencies.

#### 2.12. No 0+ Calling; May Not Support x11 Calling.

Ojo's Service does not support 0+ calling or operator assisted calling (including, without limitation, collect, third party billing or calling card calling). Ojo's Service may not support 311, 511, 976, 900 and/or other x11 (other than 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

#### 2.13. Local Number Portability (LNP).

If you wish to transfer/port an existing telephone number to Ojo Digital Voice and Video Phone Services (other than with respect to Family Line Plans), you may do so, if technically feasible. You must follow the online instructions for switching your phone number.

During the online ordering process, you will provide an electronic signature of the Letter of Authorization which will begin the transfer/port process. Once the LNP

process is initiated, this transfer may not be cancelled or interrupted by you. In the event that Ojo is unable to transfer your telephone number due to technical or other issues, it will notify you and explain the options available to you. If you are porting a phone number to Ojo, Ojo may not be able to provide you some services, such as 911 location services, immediately. You should not cancel your old service until the porting process is complete and you receive confirmation from Ojo that your number has been successfully ported.

You may be able to take, or port, your current Ojo Digital Voice and Video Phone Services phone number to another service provider. If you request your new service provider to port a number from Ojo, and Ojo receives your request from that new service provider, Ojo will treat it as notice from you to terminate the Service for that number upon successful completion of porting. After the porting is completed, you will not be able to use the Service for that number and you may be charged Ojo's cost to port your number. Just like any other termination, you will remain responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card.

**CANCELLATION OF THE SERVICE PRIOR TO CONFIRMATION FROM YOUR NEW SERVICE PROVIDER THAT YOUR TELEPHONE NUMBER HAS SUCCESSFULLY PORTED SHALL RESULT IN AN INABILITY FOR OJO TO PORT YOUR TELEPHONE NUMBER AND THE POTENTIAL LOSS OF YOUR TELEPHONE NUMBER.**

**YOU ACKNOWLEDGE THAT AS PART OF THE SIGN-UP PROCESS FOR OJO DIGITAL VOICE AND VIDEO PHONE SERVICES, YOU HAVE CONFIRMED YOU HAVE WORKING BROADBAND SERVICE. IF YOU REQUEST TO PORT YOUR NUMBER AND YOU DO NOT HAVE BROADBAND SERVICE, YOUR NUMBER COULD PORT, BUT YOU WILL NOT HAVE OJO SERVICE AND YOU WILL NOT HAVE ACCESS TO 911 CALLING. IF YOU REQUEST TO PORT YOUR NUMBER AND YOUR NUMBER IS ASSOCIATED WITH YOUR DSL SERVICE, YOUR NUMBER WILL BE PORTED TO OJO, BUT YOUR DSL SERVICE MAY BE CANCELLED BY YOUR DSL PROVIDER. IF YOUR DSL SERVICE IS CANCELLED AND YOU INTENDED TO USE THIS DSL SERVICE AS YOUR BROADBAND SERVICE IN ORDER TO RECEIVE OJO SERVICE, YOU WILL NOT HAVE OJO SERVICE AND YOU WILL NOT HAVE ACCESS TO 911 CALLING.**

### **3. CHANGES TO THIS AGREEMENT**

Ojo may change this Agreement, including, without limitation, the Privacy Policy and the rates and any additional terms and conditions for your selected Service, from time to time, in its sole discretion. Notice of such changes will be deemed to be effective on the date the updated Agreement is posted to [www.ojophone.com](http://www.ojophone.com) (or its sub-domains). You may review the current Agreement, including, without limitation, the Privacy Policy and the rates and any additional terms and conditions for your selected Service, at any time by visiting [www.ojophone.com](http://www.ojophone.com) (or its sub-domains). Please review these documents at [www.ojophone.com](http://www.ojophone.com) (or its sub-domains) periodically to familiarize yourself with the most current version. This Agreement as posted supersedes all previously agreed to electronic and written versions of this Agreement.

### **4. CREDIT / CHARGES / PAYMENTS / DEFAULT / TAXES / TERMINATION**

#### **4.1. Credit.**

Applicants for the Service may be subject to credit review, as allowed by law. By requesting that the Service be initiated, you authorize Ojo to check credit scores, and to request from consumer reporting agencies information regarding employment, credit history, past address, and in the event it becomes necessary, to recheck such information. If you believe that Ojo has reported inaccurate information to a consumer reporting agency, you may send Ojo Digital Voice and Video Phone Services Customer Support a written notice describing the specific inaccuracy at the address listed for Ojo at the outset of this Agreement. Depending upon the results of the investigation, Ojo may or may not request that the alleged inaccurate information be removed from your credit history. The results of a credit check will be a factor in determining eligibility for the Service or promotions.

#### **4.2. Billing; Payment; Overage Charges.**

You must provide a valid credit or debit card number (Visa, MasterCard, American Express, Discover or any other issuer then-accepted by Ojo) when the Service is activated. Ojo reserves the right, in its sole discretion, to stop accepting

credit or debit cards from one or more issuers. If your card expires, you close your account, your billing address changes, or the card is cancelled and replaced owing to loss or theft, you must advise Ojo promptly by either updating your card information within your "My Account, Personal Details" via your online account or contacting Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444. Failure to maintain a valid credit or debit card on file or to update your information could result in your Service being terminated. If Ojo terminates your Service for the foregoing reason, you agree to be responsible for the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card.

All charges, including, without limitation, activation fees, monthly Service fees, advanced feature charges, equipment purchases and shipping and handling charges, applicable rate plan minute allotment, applicable taxes and surcharges, any additional per minute charges, and usage-based charges, including, without limitation, per minute charges for incoming toll free calls (e.g., 800, 877, etc.) and international calling usage charges will be deducted from your prepaid account or charged directly to your credit or debit card. In the event that your calling plan is subject to Automatic Recharge and your account falls below the level set forth in the terms and conditions for your selected Service, your credit or debit card will automatically be charged in the amount specified by you during sign up. In the event that any charge to your credit or debit card fails with respect to an Automatic Recharge to your account, your ability to make any calls not included in your monthly Service fee will be terminated; you must contact Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444 to be able to make calls not included in your monthly Service fee after you provide a valid credit or debit card to cover all applicable charges. If the balance in your account is above the level set forth in the terms and conditions for your selected Service, you are permitted to make up to three (3) hours of international calls not included in your monthly Service fee prior to termination of your ability to make any calls not included in your monthly Service fee.

In the event that any charge to your credit or debit card fails with respect to a monthly Service fee, (1) you will be automatically downgraded to a per minute price plan, where calls within the United States, Canada and Puerto Rico are charged at \$0.20 per minute and international calls are charged at the rates provided in Ojo's standard international rate plan, with all of such charges applied against the balance in your account; (2) upon the earlier of thirty (30) days after you have been downgraded to a per minute plan or when the balance in your account reaches zero, your Service will be terminated; you will be responsible for, in addition to Ojo's other rights and remedies, all charges incurred to date including the any monthly Service fees that have not been paid plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable; and you consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card; and (3) you must contact Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444 in order to be removed from the per minute price plan after you provide a valid credit or debit card to cover all applicable charges.

Charges for the Service will be rated and charged in accordance with the rates provided by Ojo, any promotional offer pursuant to the published terms of such offer by Ojo, or as otherwise provided in Ojo's price list or on Ojo's website at [www.ojophone.com](http://www.ojophone.com) (or its sub-domains). Call times for each call are rounded up to the next whole minute and billed in full minute increments. Per call charges are rounded up to the next whole cent. All calls that are determined to have been answered incur a minimum one (1) minute charge. Ojo relies on reasonable and standard technologies to determine whether and when a call has been answered, including, without limitation, signals sent by the carrier connecting the call that indicates the commencement of call. These technologies are not perfect or entirely reliable and it is possible for call-commencement signals to be received in error. Some foreign carriers (with whom Ojo interconnects in order to terminate calls to foreign countries) designate a call as "answered" when the called party's line rings or after a certain number of rings, and will charge Ojo for a completed call. In these situations, Ojo will charge for the call as if it were answered by the called party. All calls made to mobile telephones are deemed to have been completed.

Additionally, Ojo may charge an enhanced services fee (or change an enhanced services fee) in connection with the use of the Services. The enhanced services fee recovers Ojo's costs for enhanced 911 services and other enhanced services as they become applicable. The enhanced services fee will be deducted from your prepaid account balance or charged directly to your credit or debit card.

#### 4.3. Billing Disputes.

You must contact Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444 within 45 days after the end of your Service billing cycle if you dispute any Ojo charges on that statement or such dispute will be deemed waived. Monthly bill itemization detail can be found at your Customer online account. You will not receive a separately itemized paper bill in the mail.

#### 4.4. Payment.

Ojo accepts payments only by credit or debit card as set forth in Section 4.2. The initial placement of your order by clicking the "Continue" button on the order confirmation page on the web site and accepting terms and conditions authorizes Ojo to charge the credit or debit card account number on file with Ojo, including, without limitation, any changed information you have given Ojo, if the card expires or is replaced, or if you substitute a different card, for Ojo charges as set forth in this Agreement. This authorization will remain valid until thirty (30) days after Ojo receives your written notice terminating Ojo's authority to charge your credit or debit card, whereupon Ojo will charge you all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), and terminate the Service. Ojo may terminate your Service and this Agreement at any time in its sole discretion if any charge to your credit or debit card on file with Ojo is declined or reversed, your credit or debit card expires and you have not provided Ojo with a valid replacement credit or debit card or in case of any other non-payment of account charges. Termination of Service for declined or expired card, reversed charges or non-payment leaves you FULLY LIABLE to Ojo for ALL CHARGES ACCRUED BEFORE TERMINATION (including, without limitation, the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable) and for all costs incurred by Ojo in collecting such amounts, including, without limitation, collection costs and attorneys' fees.

#### 4.5. Termination/Discontinuance of Service.

Ojo reserves the right to change, suspend or discontinue providing the Service generally, or to terminate your Service, at any time in its sole discretion. If your Service is terminated for any stated reason, including, without limitation, violation of this Agreement, or because of any improper use of the Service (including, without limitation, your acts or omissions that violate the acceptable use policy of a third-party provider to which Ojo is subject), you will be responsible for, in addition to Ojo's other rights and remedies, the full month's charges to the end of the current term, all charges incurred to date plus an early termination fee as discussed above, including, without limitation, unbilled charges (which may include international, overage charges, etc.), all of which immediately become due and payable. You consent to Ojo, at Ojo's sole discretion, immediately charging such amounts to your credit or debit card.

#### 4.6. Taxes.

You are responsible for, and shall pay, any applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, universal service fees, 911 fees, value-added, personal property, public utility, regulatory or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or Devices. Such amounts are in addition to payment for the Service and will be deducted from your prepaid account balance or charged directly to your credit or debit card.

### 5. **WARRANTY AND LIABILITY LIMITATIONS / INDEMNIFICATION**

#### 5.1. Limitation of Liability.

IN ADDITION TO THE DISCLAIMERS OF LIABILITY ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL ANY OJO PARTY BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, INCLUDING, WITHOUT LIMITATION, E911 DIALING, AT ANY TIME OR FROM TIME TO TIME, OR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY THAT IS CAUSED IN WHOLE OR IN PART BY ANY OF THE FOLLOWING:

5.1.1. ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR OTHER THIRD PARTY.

5.1.2. EQUIPMENT, NETWORK OR FACILITY FAILURE.

5.1.3. EQUIPMENT, NETWORK OR FACILITY UPGRADE, MAINTENANCE OR MODIFICATION.

5.1.4. FORCE MAJEURE EVENTS SUCH AS (BUT NOT LIMITED TO) ACTS OF GOD; TERRORISM; POWER OUTAGES, STRIKES; FIRE; WAR; RIOT; OR GOVERNMENT ACTIONS.

5.1.5. EQUIPMENT, NETWORK OR FACILITY SHORTAGE.

5.1.6. EQUIPMENT OR FACILITY RELOCATION.

5.1.7. SERVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER.

5.1.8. OUTAGE OF CUSTOMER'S ISP OR BROADBAND SERVICE PROVIDER.

5.1.9. ACT OR OMISSION OF CUSTOMER OR ANY PERSON USING THE SERVICE PROVIDED TO CUSTOMER.

5.1.10. ANY OTHER CAUSE THAT IS BEYOND OJO'S CONTROL, INCLUDING, WITHOUT LIMITATION, A FAILURE OF OR DEFECT IN ANY SERVICE, THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, THE INABILITY OF COMMUNICATIONS (INCLUDING, WITHOUT LIMITATION, 911 DIALING) TO BE CONNECTED OR COMPLETED, OR DEGRADATION OF VOICE QUALITY.

THE AGGREGATE LIABILITY OF THE OJO PARTIES FOR (I) ANY FAILURE OR MISTAKE OF SUCH PERSON OR ENTITY; (II) ANY CLAIM WITH RESPECT TO THE PERFORMANCE OR NONPERFORMANCE HEREUNDER OF SUCH PERSON OR ENTITY OR (III) ANY ACT OR OMISSION OF SUCH PERSON OR ENTITY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT SHALL IN NO EVENT EXCEED SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD.

OJO CANNOT AND DOES NOT GUARANTEE OR WARRANT THAT THE FILES AVAILABLE FOR DOWNLOADING FROM OJO'S WEBSITE (OR ANY SUB-DOMAINS) OR COMPUTER SERVERS WILL BE FREE OF INFECTION OR VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE THAT MANIFEST CONTAMINATING OR DESTRUCTIVE PROPERTIES. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES AND CHECKPOINTS TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS FOR THE RECONSTRUCTION OF ANY LOST DATA. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICES AND OJO'S WEBSITE AND COMPUTER SERVERS, AND YOUR USE OF THE INTERNET.

IN NO EVENT SHALL ANY OJO PARTY BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO OJO'S OR CUSTOMER'S 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 OJO'S NEGLIGENCE OR OTHER ACTS OR OMISSIONS.

IN NO EVENT SHALL ANY OJO PARTY BE LIABLE FOR ANY, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, TO 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, WITHOUT LIMITATION, INABILITY TO BE ABLE TO DIAL E911 OR TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE SERVICE. THE LIMITATIONS SET FORTH IN THIS AGREEMENT APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT, INFRINGEMENT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT OJO WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

FURTHER, YOU AGREE TO REIMBURSE OJO FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS CONTEMPLATED BY THIS SECTION 5.1, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND LITIGATION COSTS. THE PROVISIONS OF THIS SECTION 5.1 SHALL BE APPLIED TO THE FULLEST EXTENT OF THE LAW, BUT IF ANY PORTION OF THIS SECTION IS DETERMINED TO BE UNLAWFUL, THEN THIS SECTION SHALL BE CONSTRUED TO LIMIT LIABILITY AGAINST OJO TO THE

FULLEST EXTENT POSSIBLE UNDER THE LAW. THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

### 5.2. Indemnification.

Customer agrees to defend, indemnify and hold harmless each Ojo Party (and, at Ojo's option, either defend such Ojo Party or pay such Ojo Party the cost of defense) from and against all losses, claims, injuries, damages, liabilities, indebtedness, obligations, deficiencies, demands, fines, penalties, judgments, liens, diminution in value and claims, and all expenses, costs, charges and fees of any nature whatsoever, including, without limitation, reasonable attorneys', consultants', computer forensic examination and other professional fees and disbursements, costs of investigation, litigation, collection, settlement, and judgment, and any taxes, interest and penalties with respect to any of the foregoing (collectively, "Liability") arising from, in connection with, or otherwise with respect: (a) the use of the Service by you or any User; (b) any violation of applicable laws, regulations or this Agreement by you or any User; (c) negligent acts, errors or omissions by you or any User; (d) injuries to or death of any person, and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such Liabilities arise from the gross negligence or willful misconduct of Ojo; (e) claims for infringement of any intellectual property rights arising from your or any Users' use of the Service, software used to provide the Service, the Internet, Personal Data or Content (as defined in Section 5.5.1 below); (f) claims arising from Content transmitted by or to you or Users; (g) the use of the Services with any interface devices not provided by Ojo; or (h) the absence, failure or outage of the Service, including, without limitation, the 911 emergency response service accessible through the Services, and/or the inability of you or any User to be able to access emergency response center personnel, whether arising out of misrouting of 911 calls due to your failure to provide Ojo with accurate and up-to-date Service Address information or other information or your failure to follow activation procedures for 911 calling.

### 5.3. Disclaimer of Warranties.

Ojo will provide a limited warranty on the Device as to manufacturing defects for a period of one (1) year from the date of purchase. This limited warranty does not apply to any defect or failure other than a manufacturing defect, and, without limiting the generality of the foregoing, does not apply to any defect caused by damage in transit, retailer handling or Customer handling. A Customer's sole remedy for any breach of this limited warranty is to obtain a repaired or replacement Device, by following the return procedures set forth in Section 2.8. The limited warranty will also apply in lieu of the limited warranty included with the Device if such included limited warranty is less favorable to Customer than that contained herein.

OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE PARAGRAPH ABOVE, THE DEVICE AND SERVICES ARE PROVIDED "AS IS" AND NO OJO PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS, IMPLIED OR STATUTORY WITH REGARD TO THE DEVICE, SERVICES OR OTHERWISE RELATED TO THE AGREEMENT, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, NO OJO PARTY WARRANTS THE DEVICE OR SERVICES WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION OR THAT ANY OJO PARTY WILL CORRECT ANY ERRORS IN THE DEVICE OR SERVICES. DESCRIPTIONS CONCERNING THE DEVICE OR SERVICES, IF ANY, BY ANY OJO PARTY ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES, AND YOU MAY HAVE OTHER RIGHTS WHICH MAY VARY FROM JURISDICTION TO JURISDICTION. TO THE GREATEST EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTIES NOT EFFECTIVELY EXCLUDED BY THIS AGREEMENT ARE LIMITED TO NINETY (90) DAYS.

### 5.4. Content and Additional Restrictions on Use of Service.

You are responsible for any and all liability that may arise out of the content transmitted by or uploaded to you or Users using the Services ("Content"). Customer hereby grants a non-exclusive, non-transferable, license to Ojo and its third-party providers and vendors to use such Content, but solely in connection

with and only for the term of the Service. You are responsible for maintaining the basic security of your systems, including implementation of necessary patches and operating systems updates, to prevent use by others in a manner that violates this Agreement.

You shall assure that your or any User's Content and use of the Services will at all times comply with all applicable laws, regulations and written and electronic instructions for use. You and any User shall not use the Services in any way that (a) interferes with, gains unauthorized access to or otherwise violates the security of Ojo's network, the Internet or another's server, network, personal computer, network access or control devices, software or data, or other system, or to attempt to do any of the foregoing, (b) infringes intellectual property or privacy rights, (c) contains or constitutes threatening or offensive material or constitutes spam/e-mail/usenet abuse, (d) presents security or privacy risks or (e) interferes with any communications network or the usage or enjoyment of services received by others. You and any User shall not use the Services to host, post, transmit or re-transmit any content or material that is threatening, harassing, obscene, indecent, pornographic, hateful, malicious, racist, defamatory, libelous, treasonous, excessively violent or promotes the use of violence, or provides instruction, information or assistance in causing or carrying out violence against any government, organization, group or individual, or provides guidance, information or assistance with respect to causing damage or security breaches to Ojo's network or to the network of any other person or entity.

While Ojo reserves the right to restrict any actions alleged to violate the intellectual property or privacy rights of another party, it is not Ojo's policy to decide whether claimed infringements are valid or not. Ojo reserves the right, in addition to its other rights and remedies, to terminate or suspend affected Services, and/or remove your or Users' Content from the Services, if Ojo determines that such use or Content does not conform with the requirements set forth in this Agreement (including, without limitation, the Privacy Policy and the rates and any additional terms and conditions for your selected Service) or interferes with Ojo's ability to provide Services to you or others or Ojo receives notice from anyone that your or Users' use or Content may violate any laws, regulations or the Privacy Policy. Individuals using the Services are subject to having all activities with respect to the Services monitored by system or security personnel. Use of the Services constitutes consent to system and security monitoring. Information derived from system and security monitoring may be used as a basis for administrative, disciplinary or criminal proceedings. Ojo reserves the right to block the receipt or transmission of any email or other transmission that Ojo reasonably believe is or will be sent in violation of any applicable laws, regulations and written and electronic instructions for use (including as set forth in this Agreement). Ojo's actions or inaction under this Section shall not constitute review or approval of your or Users' use or Content.

Ojo reserves the right to act immediately and without notice to suspend or terminate service in response to a court order or government notice that certain conduct of you or a User must be stopped or when Ojo reasonably determines: (1) that it may be exposed to sanctions or prosecution; (2) that such conduct may cause harm to or interfere with the integrity or normal operations or security of Ojo's network or networks with which Ojo is interconnected or interfere with another Customer's use of Ojo Services or the Internet; or (3) that such violation otherwise presents imminent risk of harm to Ojo or its customers or their respective employees.

Any complaints regarding the violation of this Section 5.4 by you or any User should be directed to the designated agent listed below. Where possible, include details that would assist Ojo in investigating and resolving the complaint (i.e., expanded headers and a copy of the offending transmission).

Designated Agent:  
Privacy Officer  
3190 Tremont Avenue, Trevoise, PA 19053  
215-354-5100 (phone) | 215-354-1049 (fax)  
[privacyofficer@ojophone.com](mailto:privacyofficer@ojophone.com)

### 5.5. Export Restrictions.

The export and re-export of the Services and Ojo's website are controlled by the export laws and regulations of the United States of America, as they may be amended from time to time. Accordingly, you agree to comply with all applicable export rules and regulations, including, without limitation, the responsibility to obtain a license for the export or re-export of the Services and Ojo's website to any destination requiring such a license. In addition, the Services and Ojo's website may not be exported or re-exported (a) into, or to a national or resident of, any country to which the United States of America has embargoed goods, (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Department of Commerce's Denied Persons List, or

(c) any other country to which the United States of America prohibits the export of goods, technology or services or to nationals of those countries, wherever located. By activating the Service, downloading or using any software or using Ojo's website, you are certifying that you are not a national of one of these countries or of any other country to which the United States of America embargoes goods, services or technology and that you are not a person on the Denied Persons List or the List of Specially Designated Nationals or are otherwise restricted from receiving the Service.

#### 5.6. International Services

Foreign carriers or regulatory agencies may impose, upon the portion of the end-to-end international service or facilities they provide, certain limitations or restrictions that may limit your ability to use the Service. You must conform to any limitations or restrictions imposed by the foreign carriers or agencies.

When other U.S. or foreign carriers, and foreign telecommunications administrations, use facilities to establish connections to points not reached by Ojo's network, Ojo is not liable for acts or omissions of other carriers or foreign telecommunications administrations. International calls are priced on the basis of the country and city codes dialed by you. When the facilities of other U.S. or foreign carriers, or foreign telecommunications administrations, are used in establishing connections to points not reached by Ojo's network, Ojo is not liable for refunds or damages if those calls do not terminate in the country, city or area codes associated with the called number.

### 6. **ENFORCEMENT MATTERS**

#### 6.1. Conflicts.

In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. In accordance with Section 3, Ojo reserves the right to modify the Service at any time to reflect any change in any governing law, applicable tariff or underlying network service or component affecting the Service.

#### 6.2. Governing Law.

This Agreement, and the rights and obligations of the parties hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania, without reference to its choice of law rules. In addition, this Agreement will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act, even if that law has been adopted in Pennsylvania, and application of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods are hereby excluded.

#### 6.3. Dispute Resolution.

**PLEASE READ THIS SECTION OF THE AGREEMENT CAREFULLY, AS IT PROVIDES FOR THE RESOLUTION OF MOST DISPUTES THROUGH BINDING ARBITRATION.**

Ojo Digital Voice and Video Phone Services Customer Support can resolve most customer concerns quickly and to the customer's satisfaction. You consent to Ojo recording any calls that are made to Ojo Digital Voice and Video Phone Services Customer Support, which may be used for quality, monitoring, development or other purposes. If you have a dispute covering your Service or your billing invoice, please first contact Ojo Digital Voice and Video Phone Services Customer Support at 1-866-619-6444. In the event your dispute or claim is not resolved to your satisfaction, you may seek to have that dispute or claim resolved as set forth below.

Ojo and you agree to arbitrate any and all disputes and claims between you and Ojo. Arbitration means that all disputes and claims will be resolved by a neutral arbitrator instead of by a judge or jury in a court. This agreement to arbitrate is intended to be given the broadest possible meaning under applicable law. It includes, but is not limited to: disputes and claims arising out of or relating to any aspect of the relationship between you and Ojo, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; disputes and claims that arose before this or any prior agreement (including, without limitation, claims relating to advertising); disputes and claims that may arise after the termination of this agreement; disputes and claims that are currently the subject of individual litigation; disputes and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and disputes and claims concerning the scope of this arbitration provision. References to "Ojo" and "you" include each of Ojo's and your respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of the Service or services under any prior agreements between you and Ojo.

The arbitration process established in this Agreement is governed by the Federal Arbitration Act. You and Ojo agree that (i) you may take your dispute to small claims court, rather than to arbitration, if your dispute qualifies for hearing by such court; (ii) if you fail to timely pay amounts due, Ojo may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or this Agreement; (iii) you or Ojo may take any disputes over the validity of any party's intellectual property rights to a court of competent jurisdiction; (iv) any dispute related to or arising from allegations associated with fraudulent or unauthorized use, theft, or piracy of service may be brought in a court of competent jurisdiction; and (v) either you or Ojo may seek any interim or preliminary relief from a court of competent jurisdiction, necessary to protect the rights or property of you or Ojo, pending the completion of arbitration. All other disputes arising out of Ojo's services and/or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal or equitable theory) must be resolved by final and binding arbitration.

Before initiating arbitration concerning this Agreement or Ojo's services, you must notify Ojo in writing of such dispute to give Ojo an opportunity to resolve the dispute. The written notice must be mailed to Ojo Digital Voice and Video Phone Services Customer Support at the address listed for Ojo at the outset of this Agreement. Ojo also has the right to initiate arbitration based on disputes with you arising out of Ojo's services or this Agreement. Before initiating arbitration, Ojo must also attempt to resolve the dispute by first contacting you.

Any dispute arising out of Ojo's services and/or this Agreement that is not satisfactorily resolved, within 60 days from the date that you or Ojo is notified by the other party of the dispute, may be submitted to the American Arbitration Association ("AAA") for final and binding arbitration. Any claim or dispute arising out of Ojo's services and/or this Agreement must be brought by you within one (1) year after the date on which the basis for the claim or dispute first arises, or you waive the right to pursue a claim based upon such claim or dispute.

For a dispute involving \$10,000 or less, the arbitration shall be conducted in accordance with the Consumer Arbitration Rules and Supplementary Procedures for Consumer Related Disputes of the AAA, as in effect at the time of the arbitration, and as modified by this Agreement. Disputes in excess of \$10,000 shall be governed by the AAA's Commercial Arbitration Rules and fee schedules. You may contact the AAA by telephone at 1-800-778-7879, by email at [Websitemail@adr.org](mailto:Websitemail@adr.org), or by mail at 335 Madison Avenue, Floor 10, New York, New York 10017. You may also obtain additional information about AAA and its procedures from AAA's website, at [www.adr.org](http://www.adr.org).

In conducting the arbitration, and in making any award, the arbitrator will be bound by and must strictly enforce the terms of this Agreement, and will not expand, limit, or otherwise modify the terms of this Agreement. The arbitrator will not award damages that are not expressly authorized by this Agreement. The arbitrator will not have authority to award punitive or exemplary damages or attorneys' fees. You and Ojo expressly waive any claims for an award of damages that are excluded under this Agreement.

The arbitration will be based only on written submissions of the parties, and the documents submitted to the AAA relating to the dispute, unless either party requests that the arbitration be conducted pursuant to the AAA's in-person, telephonic, or on-line procedures. Unless mutually agreed by the parties, any in-person arbitration will be conducted at a location selected by AAA in the state of your primary residence. You have the right to be represented by an attorney in any arbitration.

You must pay the applicable AAA filing fee when you submit your written request for arbitration to the AAA. Unless otherwise provided for in the AAA rules, or in the arbitration award, all other administrative fees and expenses of an arbitration, including, without limitation, the fees and expenses of the arbitrator, will be divided equally between you and Ojo. The prevailing party may seek to recover from the other party the AAA's fees and the expenses of the arbitrator. If you select an in-person, telephonic, or on-line arbitration process, you must pay your share of any higher administrative fees and costs for the process you select.

Unless applicable substantive law provides otherwise or as otherwise provided in this Agreement, each party will pay its own expenses to participate in the arbitration, including, without limitation, attorneys' fees and expenses for witnesses, document production, and evidence presentation.

All post-award proceedings will be governed by the Federal Arbitration Act. Any award may be confirmed and enforced in any court of competent jurisdiction. The arbitration will be confidential. Neither you nor Ojo may disclose the existence,

content, or results of the arbitration, except to confirm and enforce the award, or as may be required by law.

Each dispute arising out of Ojo's services or this Agreement will be resolved on an individual basis. You may not join your dispute with the claims or disputes of any other customer(s) in any other lawsuit or arbitration. You specifically agree that you will not bring any dispute as part of a class-action, and further agree not to act as a class representative or participate as a member of a class of claimants with respect to any dispute arising out of Ojo's services or this Agreement. You and Ojo agree that, by entering into this Agreement, you and Ojo are waiving the right to a trial by jury.

Despite Section 3 or any other provision in this Agreement to the contrary, if Ojo makes any substantive change to this arbitration provision, you may reject any such change within 60 days of the effective date of such substantive change and require Ojo to adhere to the language in this arbitration provision.

#### **6.4. Entire Agreement.**

The following policies are incorporated into this Agreement by reference and provide additional terms and conditions related to specific Services Ojo offers: the Privacy Policy and the rates and any additional terms and conditions for your selected Service. This Agreement, including, without limitation, the Privacy Policy and the rates and any additional terms and conditions for your selected Service, constitutes the entire agreement between you and Ojo and governs your use of the Service, superseding any prior agreements between you and Ojo and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon Ojo unless and until posted in accordance with Section 3.

#### **6.5. Severability and Assignment.**

If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement. Ojo may assign all or part of its rights and duties under the Services or this Agreement to any party at any time without notice to you. If Ojo assigns all or part of its rights and duties under the Services or this Agreement to any party, Ojo shall have no further obligation to you with respect to such assigned rights and

duties. You may not assign the Agreement, the Services or the Device without Ojo's prior written agreement.

#### **6.6. No Third Party Beneficiaries.**

There are no third party beneficiaries to this Agreement. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement or cause of action or creates any other third party beneficiary rights.

#### **6.7. Survival.**

The provisions of this Agreement relating to indemnification, limitations on liability, warranty limitations and disclaimers, resolution of disputes, billings and your obligation to pay for the Service and any additional usage charges, shall survive the termination of the Agreement and the termination of the Service.

### **7. PRIVACY**

The Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Ojo is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to Ojo's Privacy Policy at [www.ojophone.com](http://www.ojophone.com) (or its sub-domains) for additional information.

### **8. DIGITAL MILLENNIUM COPYRIGHT ACT - NOTIFICATION TO OJO REGARDING ALLEGED COPYRIGHT INFRINGEMENT**

Ojo has registered an agent with the United States Copyright Office in accordance with the terms of the Digital Millennium Copyright Act (the "Act") and avails itself of the protections under the Act. Ojo reserves the right to remove any Content which allegedly infringes another person's copyright. Notices to Ojo regarding any alleged copyright infringement should be directed to Ojo's Office of General Counsel at the address listed for Ojo at the outset of this Agreement.

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