

VIVE COMMUNICATIONS HOSTED AND SIP TERMS OF SERVICE (END USER)

These Terms of Service constitute the agreement (“Agreement”) between Vive Communications LLC. (“we,” “us” or “Vive Communications”) and the user (“you,” “user”, “Customer” or “Subscriber”) of Vive communications’ business services (“Service”).

BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ, UNDERSTAND AND FULLY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. SERVICE

1.1. Term. Service is offered on a monthly or multi-month basis as is determined in your Service activation or order form, or via our online ordering process (“Term”). The Term begins on the date that Vive Communications activates your Service and ends on the date set forth on your activation or order form. Thereafter, the subscription shall automatically renew for successive periods of equal length to the initial Term at the then current price of the Services on the date of renewal unless either party gives the other party prior written notice of non-renewal at least sixty (60) days prior to the end of the relevant subscription Term. Vive assumes the re-use of cabling and will charge if additional or replacement cabling is required. Vive is not responsible for analog devices.

1.2. Use of Service; Equipment. You shall not resell or transfer the Service to another party without our prior written consent. You are prohibited from using the Service 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. We reserve the right to immediately terminate or modify your Service if we determine, in our sole and absolute discretion, that you have at any time used the Service for any of the aforementioned or similar activities. You are responsible for supplying, operating and supporting the equipment for use with the Service. The unlimited policy uses a excessive use measurement of 2500 minute maximum per user/trunk. Vive may bill \$.039 per minute over 2500 minutes per trunk if usage is excessive

1.3. Prohibited Uses.

(a) Unlawful. You shall use the Service only for lawful purposes. We reserve the right to immediately terminate your Service if, in our sole and absolute discretion, we determine that you have used the Service for an unlawful purpose. In the event of such termination, you will be responsible for the full month’s charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of your Service. If we believe that you have used the Service for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, Vive Communications will provide information in response to

law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others.

(b) Inappropriate Conduct. You shall not use the Service in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately terminate your Service if, in our sole and absolute discretion, we determine that you have used the Service in any of the aforementioned ways. In the event of such termination, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of your Service. If we believe that you have used the Service in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, Vive Communications will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others.

1.4. Use of Service by Customers Outside the United States. Although we encourage you to use of the Service to place calls to foreign countries from within the United States, we do not presently offer or support the Service in any countries other than the United States and Canada. If you use the Service outside of the United States or Canada, you will be solely responsible for any violations of local laws and regulations resulting from such use. We reserve the right to terminate your Service immediately if we determine, in our sole and absolute discretion, that you have used the Service outside of the United States or Canada.

1.5. Copyright; Trademark; Firmware or Software.

(a) Copyright; Trademark. 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 our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of our websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") are and will at all times remain our exclusive property. Nothing in this Agreement grants you the right or license to use any of our marks.

(b) Firmware or Software. You have not been granted 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. We reserve the right to prohibit the use of any interface device that we have not provided to you. You hereby represent and warrant that you possess all required rights, including software and/or firmware licenses, to use any interface device that we have not provided to you. In addition, you shall indemnify and hold us harmless against any and all liability arising out of your use of such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

1.6. Theft of Service. You shall notify us immediately, in writing or by calling our customer support line, if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the unauthorized use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all stolen, fraudulent or unauthorized use of the Service.

1.7. Number Transfer on Service Termination. Upon the termination of your Service, we may, in our sole and absolute discretion, release to your new service provider the telephone number that you ported (transferred or moved over) to us from your previous service provider and used in connection with your Service if:

1.7.1. such new service provider is able to accept such number;

* your account has been properly terminated;

* your account is completely current, including payment for all charges and applicable termination fees; and

* you request the transfer upon terminating your account.

1.8. Service Distinctions. The Service is not a telecommunications service and we provide it on a best efforts basis. Important distinctions exist between telecommunications service and the Service offering that we provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

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

1.10. Directory Listing. The phone numbers you obtain from us will not be listed in any telephone directories automatically. Phone numbers transferred from your local phone company may, however, be listed. As a result, someone with your phone number may not be able to utilize a reverse directory to lookup your address. If you would like to have your numbers listed within the National Directory Listing Service a onetime service fee of \$25.00 will be charged to your account.

1.11. Incompatibility With Other Services.

(a) Security Systems. The Service may not be compatible with security systems. You may be required to maintain a telephone connection through your local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

(b) Certain Broadband and Cable Modem Services. You acknowledge that the Service presently

may not be compatible with some broadband services . You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

2. CHARGES; PAYMENTS; TAXES; TERMINATION

2.1. Billing. When the service is activated, you must provide us with a valid email address and a credit or debit card number or ACH/Check from a card issuer/Bank that we accept. We reserve the right to stop accepting credit or debit cards from one or more issuers. If your credit or debit card expires, you close your account, your billing address changes, or your credit or debit card is canceled and replaced on account of loss or theft, you must advise us at once. We will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears) to your credit or debit card, including but not limited to:

- * activation fees;
- * monthly Service fees;
- * international usage charges;
- * advanced feature charges;
- * equipment purchases;
- * termination fees; and
- * support fees.

2.2. The amount of such fees and charges shall be published on our website and may change from time to time. Notification of monthly invoices will be sent to you via your email address on file with us. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$250. Any usage charges will be billed in increments that are rounded up to the nearest minute except as otherwise set forth in the rate schedules found on our website.

2.3. Billing Disputes. You must notify us in writing within seven days after receiving your credit or debit card statement if you dispute any Vive Communications charges on that statement or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to accountspayable@vivecommunications.com.

2.4. Payment and Collection.

(a) Payment. We only accept payment by credit, debit card and eft, unless other payment terms have been explicitly agreed to in writing by Vive Communications. Your subscription to the Service authorizes us to charge your credit or debit card or ACH (Checking Account). This authorization will remain valid until 30 days after we receive written notice from you terminating our authority to charge your credit or debit card or Checking Account, whereupon we will charge your credit or debit card or Checking Account for the termination fee, if applicable, and any other outstanding charges and terminate you Service. We may terminate your Service at any time in our sole and absolute discretion if any charge to your credit or debit card or Checking Account is declined or reversed, your credit or debit card expires and you have not provided us with a

valid replacement credit or debit card or in case of any other non-payment of account charges.
(b) Collection. If your Service is terminated, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

2.5. Termination; Discontinuance of Service. We reserve the right to suspend or discontinue the Service generally with ninety (90) days advance notice, or to terminate your Service, at any time, for your breach of this Agreement, including but not limited to (i) your failure to pay any sum due hereunder; (ii) for suspected fraud or other activity; (iii) for your termination of the Service prior to the end of the then current Term, and/or (iv) for any other breach of this Agreement ("Default"). If we discontinue the Service generally, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. However, if your Service is terminated as a result of your Default, you will be responsible for all outstanding charges, unbilled charges, and any applicable termination fee, as set forth below, ("Default Charges"); all of which will immediately become due and payable. In the event you fail to pay such Default Charges when due, you shall reimburse Vive for all attorney, court, collection and other fees and costs incurred by Vive in enforcement of its rights under this Agreement.

2.6. Taxes. You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service. Such amounts are in addition to payment for the Service and will be billed to your credit card as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive such certificate.

2.7. Termination Fee. You shall be charged a termination fee of \$19.99 per phone/DID number if your Service is terminated for any reason during the Term following the activation of your Service.

2.8. Payphone Charges. If you use our "Toll Free" feature or any toll free feature that we offer in the future, we will be entitled to recover from you any charges imposed on us either directly or indirectly in connection with toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent, or in such other fashion as we deem appropriate for the recovery of these costs.

2.9. Charges for Directory Calls (411). We will charge you \$5.00 for each call made to Vive Communications directory assistance.

2.10. Charges for Conference Bridge Calls. We will charge you per minute for each caller who calls into your conference bridge. Your Conference Bridge per minute usage fee will be the lower of (i) 3.9 cents per minute, or (ii) the per minute Conference Bridge usage fee determined in your Service Activation Form or online order form. The per minute usage fee will be calculated based on all participants on the conference bridge, including on-network and off-network participants.

3. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

3.1. Limitation of Liability. We will not be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

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

3.2. Our aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period.

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

3.4. Indemnification and Survival.

(a) Indemnification. You shall defend, indemnify, and hold harmless Vive Communications, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney's fees) by, or on behalf of,

you or any third party or user of the Service, relating to the Services, including, without limitation, 911 Dialing, .

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

3.5. No Warranties on Service. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER VIVE COMMUNICATIONS NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF VIVE COMMUNICATIONS'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY VIVE COMMUNICATIONS OR VIVE COMMUNICATIONS'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

3.6. No Third Party Beneficiaries. 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.

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

3.8. Recording Conversations. Vive Communications may provide a function that allows a user or Subscriber to record individual telephone conversations. The laws regarding the notice and

notification requirements of such recorded conversations vary by state to state. Subscriber is solely responsible for applying the local laws in the relevant jurisdiction when using this feature.

4. SERVICE LEVEL AGREEMENT

Vive Communications may, if necessary, temporarily limit or suspend immediately the Service without liability if reasonably necessary to prevent any harm to Vive Communications and its business, to any downstream service provider or to you. Vive Communications will provide written notice of such limitation or suspension to you either in advance if possible, or if advance notice is not possible, then as soon as practicable upon imposing such limitation or suspension depending on the nature of the emergency and the repairs required. You shall follow all reasonable instructions provided by Vive Communications for the purpose of mitigating the effects of such emergency, provided, however, that in no event shall you Users be required to incur additional expenses in connection therewith. Any such suspension or limitation shall be limited to the time period in which Vive Communications is performing emergency repair activities and full services shall be restored as soon as possible. Such activities shall be treated as a Severity Critical according to the SLA found at <http://www.vivecommunications.com/legal>, with service credits stated therein as applicable.

5. MISCELLANEOUS

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

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

5.3. No Waiver of Rights. Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

5.4. Entire Agreement. This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found on our website constitute the entire agreement between you and Vive Communications and govern the use of the Service by you, members of your business, employees and guests. This Agreement supersedes any prior agreements between you and Vive Communications and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

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

6. FUTURE CHANGES TO THIS AGREEMENT

6.1. We may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted on www.vivecommunications.com. Vive Communications will make best efforts to notify Customers in advance via email regarding changes to the terms and conditions of this Agreement. Such changes will become binding on you on the date they are posted to our website and no further notice by us is required upon your continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service.

7. PRIVACY

7.1. The Service utilizes, in whole or in part, the public Internet and third-party networks to transmit voice and other communications. Vive Communications is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to our website at www.vivecommunications.com for additional Privacy Policy information.

8. NOTICES.

8.1 Any written notice required to be given to a party shall be in writing and shall be duly given (a) on the date of delivery if delivered personally; (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the fifth business day following the date of mailing if delivered by registered to certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to such party's address as set forth in your Service activation or order form. Either party may change its address or person to be notified by giving written notice to the other party in a manner prescribed herein.

END OF TERMS OF VIVE COMMUNICATIONS SERVICE AGREEMENT