Final Exception Document
Mutually agreed to by the State of Arizona and Jive Communications, Inc.

The following are the exceptions which were submitted by Jive Communications, Inc. in response to the State of Arizona's solicitation ADSPO14-00004241. Any exceptions not addressed by the State in this document were not considered and shall be deemed not accepted by the State and shall not become a part of any resultant contract.

All accepted exceptions shall be incorporated within in applicable sections of a resultant contract. Approved exceptions shall override the original RFP language, unless the acceptance was only clarification.

1) Solicitation section reference: Scope of Work

7.2.4 Restore and Response penalties:

7.2.4.1 Every 15 minutes that 'full service restoration' is not completed the Contractor shall be charged a penalty of 5% of the customer's monthly bill. This will be seen in the form of a credit against the billed amount at the end of the month.

7.2.4.2 If full restoration has not been completed within double the allowed time the customer will have the right to terminate services with that Carrier with no penalty.

7.2.4.2.1 Customer, at its discretion, can allow an exception to this within their negotiated SLA, based on agreed to terms by both parties, for allowances such as, but not limited to, force majeure.

Jive Exception:

7.2.4 Restore and Response Penalties

~~7.2.4.1 Every 15 minutes that 'full service restoration' is not completed the Contractor shall be charged a penalty of 5% of the customer's monthly bill. This will be seen in the form of a credit against the billed amount at the end of the month.~~

~~7.2.4.2 If full restoration has not been completed within double the allowed time the customer will have the right to terminate services with that Carrier with no penalty.~~

~~7.2.4.2.1 Customer, at its discretion, can allow an exception to this within their negotiated SLA, based on agreed to terms by both parties, for allowances such as, but not limited to, force majeure.~~

Jive Alternative Language:

~~Jive Communications Restore and Response Penalties: The Contractor shall commit to maintaining four 9's (99.99%) in any given calendar year. Service levels are measured on a yearly basis starting from the first full calendar quarter (Jan to Mar, Apr to Jun, Jul to Sept, Oct to Dec) after the end of the "stability period." The "stability period" means the period of three (3) months after the Customer Solution has gone live (or such other period as agreed between the Contractor and Customer).~~

~~Service credits for unavailability are calculated as follows, measured on a yearly basis:~~

~~Total Available Service Time – System Outages~~

~~Actual Service Availability X 100 ÷ Total Available Service Time~~

~~The maximum Service Credits due in any one calendar month shall not exceed 50% of the monthly fees.~~

~~Service unavailability shall be defined as any period of time during which the Customer Solution is unable to make voice calls where Customer bandwidth is sufficient. Excluded from this definition (meaning Service Credits shall not be made available) are:~~

- ~~Unavailability from insufficient bandwidth or any other connectivity issue affecting the client's site (local, national, or international)~~
- ~~Unavailability caused by the Customer's Internet Service Provider (local, national, or international)~~
- ~~Planned maintenance~~
- ~~Outage caused by unsupported software or hardware~~
- ~~Instances when the Customer fails to comply with the Customer Obligations~~
- ~~When the Customer fails to pay the Fees on the due date~~
- ~~A Force Majeure event~~

~~Unavailability is calculated from the time of the initial report by the Customer or Contractor until the time of a fix report from the Contractor. A claim can only be made after a maximum of five (5) working days have passed from the fix report.~~

State's Final Response: Exception as stated above Not Accepted, see revised language at the end of this document.

2) Solicitation section reference: Special Terms and Conditions

14 Warranty

14.2 Quality. Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by the State, the Materials shall be:

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for the intended purposes for which the Materials are used;
- Conform to the written promises or affirmations of fact made by the Contractor; and
- Fully compatible with the State's computer hardware and software environment.

Jive Alternative Language:

14.2 Quality. Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by the State, the Materials shall be:

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for intended purposes for which the Materials are used;
- Conform to the written promises or affirmations of fact made by the Contractor; and
- To the Contractor's knowledge, fully compatible with the State's computer hardware and software environment. Before deploying Services / Materials at any State location, the Contractor will evaluate the State's existing hardware and software environment to ensure interoperability.

State's Final Response: Exception Accepted. Language shall be as stated in Jive Alternative Language within 4th bullet point.

3) Solicitation section reference: Special Terms and Conditions

23. FIRST PARTY LIMITATION OF LIABILITY

Contractor's liability for first party damages to the State arising from this Contract shall be limited to two (2) times the maximum-not-to-exceed amount of this Contract. The foregoing limitation of liability shall not apply to: (i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to, performance requirements; or (iii) costs or attorneys' fees that the State is entitled to recover as a prevailing party in any action.

Jive Alternative Language:

23. FIRST PARTY LIMITATION OF LIABILITY

Contractor's liability for first party damages to the State arising from this Contract shall be limited to ~~two (2) times~~ the actual amount received by the Contractor during the 3 calendar months immediately preceding the act or event giving rise to the liability. The foregoing limitation of liability shall not apply to: ~~(i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii)~~ claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to, performance requirements; ~~or (iii) costs or attorneys' fees that the State is entitled to recover as a prevailing party in any action~~.

State initial Response: Unacceptable, the State is not accepting exceptions to these requirements

Jive Counter response: Jive will accept this provision as written.

State's Final Response: Exception withdrawn by Jive.

4) Solicitation section reference: Special Terms and Conditions

24. INDEMNIFICATION

Contractor shall indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee") from and against any and all claims, actions, damages, costs (including attorneys' fees), and losses arising under this Contract, including, but not limited to, bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnitee. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved, or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

Jive Alternative Language:
Strike original language and replace with the following:

(a) The State hereby acknowledges that VoIP services are not fail-safe, and are not intended for use in situations where fail-safe operation is critical or where failure could lead to severe injury to businesses, people, or property.

(b) In accordance with the limits of liability and indemnification provisions found in sections 1.8, 4.1, 4.2, 4.3 of the Jive Communications Terms of Service and section 9 of the Jive Communications Purchase and Installation Terms and Conditions, the Contractor shall indemnify and defend the State, its affiliates, officers, agents, employees, volunteers, successors and assigns (together, the "Indemnified Parties"), against any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses or liabilities, in law or in equity (collectively, "Claims") arising out of any act or

omission by the Contractor, its employees, agents, representatives, or Subcontractors with respect to (1) penalties from violation of any law or regulation caused by the Contractor's action or inaction or (2) failure of the Contractor to comply with the insurance requirements established under this agreement.

(c) The State shall notify the Contractor of any claim for which Contractor may be liable under this section. The Contractor shall have control, ~~subject to the reasonable approval of the State,~~ of the defense of any action on such claim and all negotiations for its settlement or compromise, except that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense ~~with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed~~. The State shall reasonably cooperate in the defense and any related settlement negotiations.

State initial Response: Unacceptable, the State is not accepting exceptions to these requirements

Jive Counter response: Jive recognizes this section is required by the director of the Procurement Office in all Arizona Technology Contracts. However, Jive is concerned that this section appears to require indemnification from Jive hat is not in keeping with the public policy of the State. in Arizona, telecom and VoIP providers are statutorily exempted from liability for any civil liability (including personal injury, death or property damage) that arises in connection with the provision of 911 services (ARS 12-713).

State's Final Response: Clarification Understood. No change to contract language required. Statute is understood.

5) Solicitation section reference: Special Terms and Conditions

25. IP INDEMNIFICATION

Indemnification - Patent and Copyright. With respect solely to Materials provided or proposed by Contractor or Contractor's agents, emp1oyees, or subcontractors (each a "Contractor Party") for performance of this Contract, Contractor shall indemnify, defend and hold harmless the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability, including, but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade secret, by such Materials or the State's use thereof.

In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

The State shall reasonably notify the Contractor of any claim for which Contractor may be liable under this section. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

If Contractor believes at any time that any Materials provided or in use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the State's prior written consent, which shall not be unreasonably withheld, (i) replace an infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

Notwithstanding the foregoing, Contractor shall not be liable for any claim for infringement based solely on any Indemnitee's:

(i) modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;

(ii) use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or

(iii) use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.

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Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

Jive Alternative Language:
Indemnification - Patent and Copyright. With respect solely to Materials provided or proposed by Contractor or Contractor's agents, employees, or subcontractors (each a "Contractor Party") for performance of this Contract, Contractor shall indemnify, defend and hold harmless the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability~~, including, but not limited to, reasonable costs and expenses, including attorneys' fees~~, for infringement or violation of any patent, trademark, copyright or trade secret, by such Materials or the State's use thereof. The Contractor's liability for any indemnification under this section will not exceed the actual amount received by the Contractor during the three (3) calendar months immediately preceding the act or event giving rise to the liability.

In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them~~; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation~~.

The State shall ~~reasonably~~ notify the Contractor of any claim for which Contractor may be liable under this section. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply. Contractor shall have control, ~~subject to the reasonable approval of the State,~~ of the defense of any action on such claim and all negotiations for its settlement or compromise, except that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense ~~with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed~~. The State shall reasonably cooperate in the defense and any related settlement negotiations.

State initial Response: Unacceptable, the State is not accepting exceptions to these requirements

Jive Counter response: Jive will accept this provision as written.

State's Final Response: Exception withdrawn by Jive.

6) Solicitation section reference: Special Terms and Conditions

26. INTELLECTUAL PROPERTY

26.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

Notwithstanding the foregoing, if the State elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the State shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within State government and operations without restriction for any activity in which the State is a party (collectively, "Government Purpose Rights").

Jive Alternative Language:

26.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely ~~pursuant to or as a result of this~~ for the Customer under this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials

developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. ~~Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s)~~. Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

State initial Response: Unacceptable, the State is not accepting exceptions to these requirements

Jive Counter response: Because Jive's software platform is proprietary, there may be software or other intellectual property developed by Jive for its own purposes in providing the services but which wouldn't be created for the State. If the State can confirm that this sentence refers only to intellectual property created for the State of Arizona as a result of this contract, Jive has no objection.

State's Final Response: Exception withdrawn during discussions on 1/22/15. State affirms the sentence refers only to intellectual property created for the State as a result of the Contract. No change to contract language required.

The State of Arizona has revised language within resultant contracts as follows:

1. Scope of Work section 7.2.4.1, shall be deleted in its entirety and replaced with the following language:

   7.2.4.1 If Full Service Restoration is not completed the Contractor shall be liable for 1/720 of the MRC for each hour after the allowable response time has been exhausted. This will be seen in the form of a credit against the billed amount at the end of the month.

   An "Outage" is an interruption in Service or use of the Equipment caused by a failure of the Contractor's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside of the Contractor's direct control.

2. Special Terms and Conditions section 6.1 Method of Assessment shall be deleted in its entirety and replaced with the following language:

   6.1 Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: https://spo.az.gov/state-purchasing-cooperative. At its option, the State may expand or narrow the applicability of this fee.

   For this contract only, the State of Arizona will not assess the 1% administrative fee to Contractors for E-Rate eligible purchases. E-Rate eligible purchases can be made by eligible recipients per 47 CFR §54.501. To determine if a customer is an eligible recipient the Contractor shall refer to the following web address:
   http://usac.org/sl/applicants/beforeyoubegin/definitions.aspx

   The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

   - Total sales receipts from State agencies, boards and commissions;
   - Total sales receipts from members of the State Purchasing Cooperative; and
   - Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.