

Terms and Conditions

This Agreement is by and between JADE International Inc. (JADE) and Customer.

- Attachments and Service Orders:** The Service Order(s) and other attachments attached hereto and incorporated by reference detail the price, location and other information about the Service(s) to be provided by JADE. The Service Order becomes legally binding upon signature.
- Authorized Use:** Customer may use Services only for authorized and lawful purposes. JADE offers all Services subject to availability. JADE has the right to limit the manner in which any portion of its network and facilities ("Network") is used to protect the technical integrity of the Network. JADE does not undertake to transmit messages, but offers the use of its Service when available. JADE is not liable or responsible for content, errors in transmission or failure to establish connections.
- Cancellation or Modification of Orders:** If Customer cancels a Service Order in writing and such cancellation request is received by JADE no later than 5 days prior to the due date, Customer must pay all JADE out of pocket expenses, including any third party charges incurred by JADE to fulfill the order prior to cancellation. If Customer cancels a Service Order after such time, Customer must pay all JADE out of pocket expenses, including any third party charges incurred by JADE to fulfill the order prior to the cancellation *and* all recurring charges for one billing month. If Customer requests a delay of installation of Service in writing and such delay request is received by JADE no later than 5 days prior to the due date, Customer will not incur any additional charges. If Customer requests a delay of installation after such time, Customer must pay all recurring charges for the shorter of one billing month or the period from the original due date to the new Service Date. If Customer requests changes to a Service Order that require JADE to incur additional engineering expenses, Customer will be responsible for JADE's then current rates.
- Equipment, Installation and Interconnection:** Other than the facilities, termination equipment or other devices provided by Customer, and unless otherwise provided elsewhere in this Agreement or any attachments hereto, JADE will pay for, provide, install, maintain, operate, control and own any equipment, cable or facilities connected to the Network ("System Equipment"), which equipment at all times remains JADE's personal property, regardless of where located or attached. JADE may change or replace the System Equipment so long as the basic technical parameters of the Service are not altered. Customer may not rearrange or move or disconnect the System Equipment, and is responsible for any damage to or loss of System Equipment caused by Customer's negligence or willful misconduct or that of its end users. JADE has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided herein. If Customer's or an end user's equipment is incompatible with Service, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility. If, in responding to a Customer-initiated service call, JADE reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment or software, Customer will pay JADE for such service call at JADE's then prevailing rates.
- Access:** JADE may require access to Customer's premises to install and maintain the Service and equipment necessary for the provision of Service. Customer must provide, or cause its end users to provide, reasonable access, space, power and environmental conditioning as applicable to the particular installation, and must use, and cause its end users to use, commercially reasonable efforts to obtain any necessary consents to rights of way from third parties.
- Installation:** Upon completing installation, JADE will notify Customer that Service has been installed, tested by JADE and is available for Customer's use ("Service Date"). Unless Customer notifies JADE by fax or in writing by close of business on the Service Date that Service is not operational, the term of the Service Order will begin and billing will commence. If Customer so notifies JADE, JADE will work to correct any compliance issues. If JADE does not find a defect in service, JADE will notify Customer, and the Service Date will remain unchanged.
- Charges, Billing and Payment:** Provision of Service is subject to JADE's approval of Customer's credit standing. JADE may require a deposit prior to the provision of Service or as a condition to the continued provision of Service, if Customer's credit standing or payment record so indicates. Billing for Services begins on the Service Date and will not be delayed due to Customer premises equipment or Customer's readiness to accept or use Service. JADE bills in advance for Service, except for charges based on usage. Any installation charges or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice. Taxes, surcharges and governmental fees are not included in JADE's charges and will be billed and paid by Customer as separate line items. Customer will pay any and all taxes, fees, surcharges or assessments unless and until Customer provides JADE with an exemption certificate. All amounts billed are due by the next billing date. Any payment or portion thereof not made when due is subject to a late charge of 1.5% per month on the unpaid amount.
- Claims and Disputes:** If Customer disputes any charges billed hereunder, Customer must submit a documented claim regarding the disputed amount within 120 days of receipt of the bill on which the disputed charges appear. All claims regarding disputed charges appear. All claims regarding disputed charges not submitted to JADE within such time are deemed waived. Withheld disputed amounts determined in favor of JADE and paid disputed amounts determined in favor of Customer will bear interest at the rate of 1.5% per month from the date payment was due or made, as applicable, to the date payment was made or refunded, as applicable.
- Third Party Charges:** JADE is not liable for any charges by third parties used to access our services. This includes but is not limited to telephone long distance charges, toll charges or per call charges.
- Service Outages and Credits:** JADE will issue credit allowances for service outages as set forth below upon Customer's written request, which credit will appear on the next invoice following processing. A service outage begins when Customer reports the outage to the appropriate JADE number(s) to open a trouble ticket, and ends when the affected circuit is fully operational, as

evidenced by the closing of the trouble ticket. No credits will be given for outages that are caused by Customer or an end user; (a) caused by Customer or an end user; (b) due to failure of power or equipment provided by Customer or 3rd parties; (c) during any period in which JADE is not given access to the Service premises; (d) part of a planned outage for maintenance; or (e) due to a force majeure event. Services provisioned entirely on JADE's network will be credited at 1/1440 of the monthly recurring charges per 30 minute outage up to and including a 24-hour period, or if an outage is greater than 24 hours, at 1/144 of the monthly recurring charges per 3 hour outage. If 2 or more trouble tickets have been opened for a particular Service in a 30-day period, and the cause of outage is determined to be in JADE's Network or System Equipment, such Service will be deemed a Chronic Trouble Service. If a 3rd trouble ticket is opened on a Chronic Trouble Service within 30 days of the 2nd trouble ticket, Customer may disconnect the affected Service without incurring Termination Liability.

11. **Governmental Authorization, Regularity Changes:** This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each party must comply with all applicable federal, state and local laws, rules, regulations and orders in performing its obligations hereunder. To the extent any provision of the Agreement conflicts with any such applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision. JADE may discontinue, limit, or impose additional requirements to the provision of Service, upon 15 days written notice, as required to meet regulatory requirements or when such requirements have a material, adverse impact on the economic feasibility of JADE providing Service, as determined in JADE's reasonable business judgment.
12. **Indemnification:** Each party ("Indemnitor") must indemnify, defend and hold harmless the other party ("Indemnitee") from all losses or damages arising from or related to personal injury or property damage caused by the negligence or willful misconduct or Indemnitor. Customer must indemnify, defend and hold harmless JADE from all losses or damages arising from Customer's breach of the Agreement, violation of any third party intellectual property right, all claims of any kind by Customer's end users, or any act or omission of Customer in connection with any Service provided hereunder.
13. **Limitation of Liability:** JADE is not liable for any indirect, incidental, consequential, special or punitive damages (including without limitation, lost profits or revenue) arising out of or related to the provision of Services hereunder, including any claims made by or through third parties. JADE's liability to Customer may not exceed one month's calculation of monthly charges for the applicable Services. Company has no liability whatsoever for the content of information passing through its network.
14. **Term:** This Agreement is effective for a period of one year. Billing begins on the day service begins and contract period starts on the first day of the following month. Thereafter, this Agreement automatically renews for successive one-year terms unless terminated by either party upon no less than 30 days written notice prior to the end of the renewal term. JADE reserves the right to increase pricing after the initial term. Upon expiration of the Agreement, Service not previously terminated by Customer will remain in effect for the term specified in the applicable Service Order for each affected Service, and the terms and conditions of the Agreement will continue to apply to such Services. Upon termination of the Agreement, all rights of Customer to order new Services cease and Supplier has no further obligations to furnish new Services to Customer.
15. **Termination by JADE:** JADE may terminate this Agreement or any Service Order hereunder, or suspend Services, without prior written notice, upon (a) Customer's failure to pay any amounts as provided herein; (b) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the Services; (c) any insolvency, bankruptcy assignment for the benefit of creditors, appointment of trustee or receiver or similar even with respect to Customer; or (d) any governmental prohibition or required alteration of the Services. JADE may terminate or suspend Services without notice if: (a) necessary to protect JADE's network; (b) JADE has reasonable evidence of Customer's fraudulent or illegal use of Services; or (c) required by legal or regulatory authority. The suspension or termination of service may include but is not limited to web hosting, e-mail hosting, colocation services, ftp hosting, antivirus/antispam services, search engine marketing management, TotalCare™ services and IT support. The suspension or termination of these services may prevent access to or the receiving/sending of e-mail and/or access to your website. If services are suspended or terminated for non-payment, JADE reserves the right to seize any equipment on JADE's premises and domains until customer has paid all balances due including early termination fees. In the event balances and early termination fees are not paid within three months of suspension or termination, JADE reserves the right to assume ownership of any equipment on JADE's premises or domains as partial payment. Any termination shall not relieve Customer of any liability incurred prior to such termination, early termination fees, or payment of unaffected Services. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination this Agreement. If JADE terminates the Service the Customer agrees to pay any attorney's fees or collection fees incurred by JADE. If the Service provided under any Service Order hereunder has been terminated by JADE in accordance with this section, and Customer wants to restore such Service, Customer first must pay all past due charges, a non-recurring charge, reconnection charge and a deposit equal to 2 month's recurring charges.
16. **Termination Liability:** If Customer terminates this Agreement or any Service Order(s) hereunder prior to the end of the term of such Service Order(s) for any reason other than JADE's material breach of this Agreement that remains uncured after written notice and a reasonable cure period, Customer shall pay to JADE within 30 days of such termination all monthly recurring charges associated with the terminated Service(s) for the balance of the term in such Service Order(s).
17. **Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, not to be unreasonably conditioned, withheld or delayed, except that JADE may assign its rights and/or obligations hereunder (a) to any parent, affiliate or subsidiary of JADE, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing.
18. **Entire Agreement:** This Agreement, together with the Service Order(s), any attachments and all applicable tariffs incorporated herein by this reference, sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings, and negotiations between the parties. In the event of a conflict, the

Service Order shall prevail over this Agreement and any applicable tariff shall prevail over both. Any modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by authorized representatives of both parties.

19. **Force Majeure:** Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions, governmental action, labor difficulties and supplier failures. Customer's invocations of the clause shall not relieve Customer of its obligations to pay for any Services actually received. In the event such failure continues for 60 days, the other party may terminate the affected portion of the Services.
20. **Limitations on Promotions and Special Offers:** Promotions and Special offers are only valid if initial payment is made within five business days of the following month. If an initial payment has not been received by this period, a new invoice will be drafted to reflect the price difference and will be due upon receipt.
21. **Use of Image:** Customer consents to the use by JADE of name, logo, voice, pictures, and biographical data concerning fully or in parts, in any form or language, with or without other material, throughout the world, without limitation, for television, radio, video, theatrical motion pictures, or any other medium by devices now known or hereafter devised, and Customer hereby waives any compensation in regard thereof as well as any future rights to the aforementioned.
22. **Unsolicited E-mail:** US Code Title 47, Sec.227(a)(2)(B), a computer/modem/printer meets the definition of a telephone fax machine. By Sec.227(b)(1)(C), it is unlawful to send any unsolicited advertisement (SPAM) to such equipment. By Sec.227(b)(3)(C), a violation of the aforementioned Section is punishable by action to recover actual monetary loss, or \$500, whichever is greater, for each violation. JADE reserves the right to suspend or cancel any account suspected of such violation. JADE may, at its option, charge \$25.00 per SPAM complaint we receive. These are non-refundable charges and will be invoiced at the time of complaint notification.
23. **Changes:** JADE reserves the right, at its sole discretion, to change, modify, add or remove any portion of these terms and conditions in whole or in part at any time. Changes in this Agreement will be effective upon posting by JADE on the JADE website <http://www.JADEInternational.com/terms>. Continued use of services provided by JADE after any changes to this Agreement are posted constitutes acceptance of the changes. Customer is responsible for regularly reviewing these terms and conditions.
24. **Governing Law:** This Agreement is governed by and subject to the laws of the State of Wisconsin, excluding its principles of conflicts of law.
25. **Headings:** The headings herein are for convenience only and are not intended to have any substantive significance in interpreting the Agreement.
26. **Relationship of Parties:** The parties are independent contractors, and nothing herein creates or implies an agency relationship or a joint venture or partnership between the parties.
27. **Jurisdictional Reports:** Upon JADE's request, Customer will provide JADE with reports of its estimated or actual percentage of interstate and intrastate use of JADE's Services.
28. **Litigation:** If either party commences litigation under this Agreement, the prevailing party is entitled to reimbursement of its costs and attorney's fees from the other party, except as stated in section 14 "Termination by JADE".
29. **Non-Exclusivity:** This Agreement is non-exclusive. Nothing herein prevents either party from entering into similar arrangements with other entities.
30. **Notices:** Whenever written notice is required to be provided by this Agreement, JADE must provide such notice to Customer's billing address, and Customer must provide such notice to JADE at 16655 W. Bluemound Road, Brookfield, WI 53005, Attn: Daniel Fifield. A notice is deemed given when delivered.
31. **No Waiver:** Either party's failure to enforce any provision or term of this Agreement shall not be construed as future or continuing waiver of such provision or term of this Agreement.
32. **Representations and Warranties:** Each party represents and warrants that it is fully authorized to enter into this Agreement. JADE represents and warrants to Customer that any Services provided hereunder will be performed in a professional manner by qualified and trained personnel. UNLESS SPECIFICALLY STATED HEREIN OR IN ANY SERVICE ORDER, JADE MAKES NO WARRANTIES, REPRESENTATIONS OR AGREEMENTS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
33. **Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the parties' original intent.
34. **Survival:** The terms and conditions of this agreement will survive the expiration or other termination of this Agreement to the fullest extent necessary for the enforcement and for the realization of the benefit thereof by the party in whose favor they operate.