

This is a legal agreement (the Agreement) between you and Gizmo5 Technologies, Inc. ("Gizmo5"), the developer of the Gizmo5 software and service. This Agreement pertains to your use of the Gizmo5 software, technology, programs, documentation and updates which are provided to you by Gizmo5 Technologies (collectively, the "Software"). This Agreement also pertains to the services that are available to you by using the Software (the "Services"). Please carefully read the terms and conditions below. If you do not agree to the terms of this Agreement, DO NOT click the I Accept button. By clicking on the I Accept button, you are consenting to the terms of this Agreement.

Terms of Use

The provisions of the Gizmo5 [Terms of Use](#) and [Privacy Policy](#) are incorporated herein and made a part hereof.

License

This Agreement grants you a personal, non-exclusive, non-transferable, non-sublicensable right to use one copy of the Software for your own personal use on a single computer and/or workstation. Gizmo5 Technologies reserves all rights in the Software not expressly granted herein, including without limitation ownership and proprietary rights.

License Restrictions

You may not reproduce or distribute the Software for any purpose whatsoever. Without limiting the foregoing, you may not copy the Software to any server or location for reproduction or distribution. You may not reverse engineer, decompile or disassemble the Software. The restrictions contained herein apply equally to any updates that may be provided to you by Gizmo5.

Intellectual Property Rights and Third Party Materials

All service marks, logos, trade names, trade dress, and trademarks of Gizmo5 (collectively Marks) are the exclusive property of Gizmo5 and nothing in this Agreement shall grant you the license to use such Marks. All intellectual property rights in the Software and Services, including without limitation all computer code, audio, graphics, multimedia, images, sounds, and text incorporated into the Software or Services, are owned exclusively by Gizmo5 and are protected by United States of America copyright laws and international copyright treaty provisions. Any violation of the terms set forth herein is expressly prohibited by law and may result in severe civil and criminal penalties. Additionally, other marks that appear on Gizmo5 web sites, including Gizmo5.com, may belong to third parties that are not affiliated with Gizmo5.

Links available on the web site may enable you to leave the Gizmo5.com site. Gizmo5 does not control or endorse the content of third party web sites. The linked sites are not under the control of Gizmo5, and Gizmo5 is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. You are responsible for taking precaution to ensure that whatever you select for your use, whether on Gizmo5 web sites or the sites of third parties, is free of viruses, worms, Trojan horses, and other items of a destructive nature.

Third Party Agreements

Certain software, or portions thereof, included in the Software are subject to the terms and conditions of open source license agreements and other third party agreements (collectively, "Third Party Agreements") which contain terms that may expand (or restrict) your and/or third parties' rights to use certain portions of the Software (collectively, "Third Party Software"). The Third Party Agreements may permit you and/or third parties to copy, modify, redistribute and have access to the source code of the Third Party Software portions of the Software. Notwithstanding anything in this Agreement, to the extent the terms and conditions of the Third Party Agreement are inconsistent with or contradictory to the terms and conditions of this Agreement, then the terms and conditions of the Third Party Agreements shall prevail and control, only insofar as they apply to any Third Party Software included within the Software. Nothing in this section shall permit you or any third party to use any Gizmo5 trademark in connection with exercising the rights granted under the Third Party Agreements.

Disclaimer of Warranties

ALL SERVICES AND SOFTWARE PROVIDED BY GIZMO5 ARE PROVIDED AS IS. GIZMO5 AND ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, NETWORK SERVICE PROVIDERS, PARTNERS, OR EMPLOYEES MAKE NO WARRANTY TO YOU OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, TITLE, NON-INFRINGEMENT, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR A PARTICULAR USE OR PURPOSE AS TO THE SERVICES OR SOFTWARE PROVIDED TO YOU, OR AS TO ANY OTHER MATTER, ALL SUCH WARRANTIES HEREBY BEING EXPRESSLY EXCLUDED AND DISCLAIMED. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SOFTWARE OR SERVICES.

NEITHER GIZMO5 NOR ANY OF ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, NETWORK SERVICE PROVIDERS, PARTNERS, OR EMPLOYEES WARRANTS THAT THE SOFTWARE OR SERVICES WILL BE FREE FROM ANY VIRUS OR OTHER CODE THAT IS CONTAMINATING OR DESTRUCTIVE BY NATURE AND YOU ARE RESPONSIBLE FOR IMPLEMENTING AND MAINTAINING SUFFICIENT PROCEDURES TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR ACCURACY OF DATA INPUT AND OUTPUT AS WELL AS PROTECTION FROM SUCH VIRUSES OR OTHER CODE THAT MAY CONTAMINATE OR DESTROY YOUR SYSTEM OR DATA.

NEITHER GIZMO5 NOR ANY OF ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, NETWORK SERVICE PROVIDERS, PARTNERS, OR EMPLOYEES WARRANTS THAT THE SOFTWARE OR SERVICES ARE ERROR FREE OR WILL

OPERATE WITHOUT PACKET LOSS OR INTERRUPTION, NOR DOES GIZMO5 WARRANT ANY CONNECTION TO OR ANY TRANSMISSION OVER THE INTERNET. GIZMO5 MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO THE QUALITY OF THE CALL.

Limitation of Liability

IN NO EVENT SHALL GIZMO5, ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, NETWORK SERVICE PROVIDERS, PARTNERS, OR EMPLOYEES BE LIABLE TO YOU OR ANY THIRD PARTY IN ANY RESPECT FOR ANY COSTS OR DAMAGES ARISING EITHER DIRECTLY OR INDIRECTLY FROM THE USE OF Gizmo5 SERVICES OR SOFTWARE INCLUDING WITHOUT LIMITATION ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, OR FOR ANY LOSS OF REVENUE, PROFITS, USE, DATA, GOODWILL OR BUSINESS OPPORTUNITIES OF ANY KIND OR NATURE WHATSOEVER, ARISING IN ANY MANNER FROM ANY CAUSE OF ACTION OR CLAIM RELATING TO THIS AGREEMENT, TO THE SERVICES PROVIDED BY GIZMO5 OR TO THE USE OF THE SOFTWARE. THIS LIMITATION OF LIABILITY APPLIES EQUALLY TO ANY THIRD PARTIES WITH WHOM GIZMO5 ENTERS INTO A BINDING AGREEMENT TO MARKET, DISPLAY AND/OR DISTRIBUTE THE SOFTWARE TO END USERS AND SUCH THIRD PARTIES SHALL NOT BE LIABLE TO YOU OR ANY OTHER THIRD PARTY FOR ANY OF THE DAMAGES SET FORTH ABOVE.

Indemnification

You agree to indemnify and hold GIZMO5, its officers, directors, employees, agents, shareholders, licensors, suppliers, and any third party distributors harmless from and against any and all damages, losses, costs including attorney fees and expenses resulting from any violation by you of this Agreement or asserted by any third party due to or arising out of your use of or conduct with respect to the Software or Services.

Termination

Gizmo5 reserves the right to terminate this Agreement and your use of the Software and Services at any time and for any reason or no reason at all. You may terminate this Agreement at any time simply by ceasing to use the Software and Services. The provisions contained herein shall survive termination of this Agreement.

Export Control Laws

The export and re-export of Gizmo5 Software and other materials are controlled by the export laws and regulations of United States, as they may be amended from time to time. Accordingly, you certify that you are aware of and will comply with all applicable export rules and regulations, including the responsibility to obtain a license for the export or re-export of the Software and other materials to any destination requiring such a license.

In addition, neither the Software nor Services may be exported or re-exported to Cuba, Iran, Libya, Sudan, or any other country to which the United States prohibits the export of goods, technology, or services or to nationals of those countries, wherever located. Moreover, neither the Software nor Services may be distributed to persons on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals maintained by the U.S. government. By downloading the Software, you are certifying that you are not a national of one of the above-listed countries or of any other country to which the United States embargoes goods, services, or technology and that you are not a person on the Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.

EMERGENCY/911 CALLS

YOU EXPRESSLY ACKNOWLEDGE THAT EMERGENCY 9-1-1 CALLS ARE NOT INTENDED TO BE CARRIED/SUPPORTED BY THE SOFTWARE OR SERVICES AND THAT NEITHER GIZMO5 NOR ANY OF ITS AFFILIATES, SUBSIDIARIES, PARENT COMPANIES, AGENTS, NETWORK SERVICE PROVIDERS, PARTNERS, OR EMPLOYEES ARE OR WILL BE LIABLE FOR SUCH CALLS.

IP Addresses

Upon expiration, cancellation, or termination of this Agreement, you shall relinquish any IP address or addresses assigned to you by GIZMO5.

Jurisdiction and Other Provisions

This Agreement and the relationship between Gizmo5 and you shall be governed in accordance with the laws of the State of California. Any dispute between you and Gizmo5 regarding this Agreement will be subject to the exclusive jurisdiction of the state and federal courts in the State of California. You agree to submit to exclusive jurisdiction in the State of California, and you expressly waive all defenses to jurisdiction.

This Agreement is the entire agreement between you and Gizmo5 relating to your use of the Software or Services and supersedes any other communications or advertising with respect to the Software and Services. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. Gizmo5 failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. Gizmo5 may assign its rights and duties under this Agreement to any party at any time without notice to you.

Modifications of Agreement

Gizmo5 may modify this Agreement at any time without providing notice to you. Such modification will be made by posting a revised agreement on its web site and such modification shall be deemed effective immediately upon

posting of the modified Agreement. Your continued access or use of the Software or Services shall be deemed your acceptance of the modified Agreement. You agree to check our web site periodically to review such modifications.

Termination or Modifications of Software or Services

Gizmo5 reserves the right to terminate or modify the Software or Services at any time without providing notice to you. Gizmo5 right to modify the Software or Services applies to all or any aspect of the Software or Services, including, without limitation, changes to the pricing of the Services and/or limitations on the duration of calls. Your continued access or use of the Software or Services shall be deemed your acceptance of such modifications. You agree to check our web site periodically to review such modifications.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND IT AND THAT, BY USING THE SOFTWARE, WEB SITE OR ANY OTHER GIZMO5 SERVICES, YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.