

WINDJAMMER COMMUNICATIONS LLC SUBSCRIPTION AGREEMENT

This Subscription Agreement constitutes the agreement ("Agreement") between Windjammer Communications LLC ("we," "us" or "Windjammer Communications LLC") and the user ("you," "user" or "Customer") of Windjammer Communications LLC's residential and small business communications services and any related products or services ("Service"). This Agreement governs both the Service and any devices, such as a Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service and it applies to all lines on each Windjammer Communications LLC account. This Agreement shall be effective as of the date it is signed by Windjammer Communications LLC (the "Effective Date").

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

1. EMERGENCY SERVICES - 911 DIALING

1.1 911 Dialing. All of our customers have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when you dial 911, your telephone number and registered address are simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. Customers in locations where the emergency center is not equipped to receive your telephone number and address have basic 911. With basic 911, the local emergency operator answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak.

You authorize us to disclose your name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

1.2 Notify All Users. You should inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service of the important differences in and limitations of Windjammer Communications LLC 911 Dialing as compared with basic 911 or E911. The documentation that accompanies each Device that you purchase will include a sticker concerning the potential non-availability of basic 911 or E911 (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker as near as possible to each phone that you use with the Service. If you did not receive a 911 Sticker with your Device, or you require additional 911 Stickers, please contact our customer care department at 1-888-495-2881.

1.3 Location of Service. This Service is provided at a specific permanent address and not available as a nomadic offering. Before you move to another location, you must notify Windjammer Communications LLC to determine if service can be provided at your new permanent address. **Service will only be provided at locations where E911 connectivity is available.**

1.4 Service Outages.

(a) Service Outages Due to Power Failure or Disruption. Dependent upon your location, network backup power systems may be in place during the event of a power failure. The device provided may also provide limited battery backup. Consult with Windjammer Communications LLC to determine whether or not your device has battery backup.

i. Device with battery backup. Battery backup on qualifying devices is limited. Excessive use during a power outage will result in shortened life of the internal battery. The device will provide indication of low battery voltage. Customer should contact Windjammer Communications LLC for instructions or replacement. Failure of network power backup systems or the MTA internal backup system during a power failure or disruption will prevent all service, including 911 dialing, from functioning.

ii. Device without battery backup. Devices that do not have a battery backup cannot support 911 dialing in event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 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 911 Dialing.

(b) Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or ISP Service. Service outages or suspensions or disconnections of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.

- (c) **Service Outage Due to Disconnection of Your Windjammer Communications LLC Account.** Service outages due to disconnection of your account will prevent all Service, including 911 Dialing, from functioning.
- (d) **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 us to this situation, we 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 the 911 Dialing feature, may not function. You acknowledge that Windjammer Communications LLC is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports 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 disconnect the Service in accordance with this Agreement.
- (e) **Other Service Outages.** If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. SUCH OUTAGES MAY OCCUR FOR A VARIETY OF REASONS, INCLUDING, BUT NOT LIMITED TO, THOSE REASONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

- 1.5 **Network Congestion; Reduced Speed for Routing or Answering 911 Dialing 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.
- 1.6 **Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. NEITHER WINDJAMMER COMMUNICATIONS LLC NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, OR AGENTS MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO OUR 911 DIALING SERVICE UNLESS SUCH CLAIMS OR CAUSES OF ACTION AROSE FROM OUR GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT. You shall defend, indemnify, and hold harmless Windjammer Communications LLC, 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, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.
- 1.7 **Alternate 911 Arrangements.** If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service.

2. SERVICE

- 2.1 **Monthly Term.** Service is offered on a month to month basis that begins on the date that Windjammer Communications LLC activates your Service and ends on the day before the same date in the following month. Subsequent terms of this Agreement automatically renew on a monthly basis unless you give us written notice of non-renewal at least ten (10) days before the end of the monthly term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to disconnect Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite ten-day notice of disconnection prior to the expiration of the then-current term. Expiration of the term or disconnection of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

- 2.2 **Residential Use of Service and Device.** If you subscribe to Windjammer Communications LLC's residential services, the Service and the Device are provided to you solely for residential use. You shall not resell or transfer the Service or the Device to another party without our 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. We reserve the right to immediately disconnect or modify your Service if we determine, in our sole and absolute discretion, that your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service or the Device was inconsistent with normal residential use.

2.3 Business Use of Service. If you subscribe to Windjammer Communications LLC's Business services, the Service is provided to you as a small business user. You shall not resell or transfer the Service to another party without our prior written consent. You are responsible for supplying, operating and supporting the standard SIP based Customer Premise Equipment for use with the Service. We reserve the right to immediately disconnect 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.

2.4 Prohibited Uses.

(a) Unlawful. You shall use the Service and the Device only for lawful purposes. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device for an unlawful purpose. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device 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, Windjammer Communications LLC will provide information in response to law enforcement requests, lawful government 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 or the Device 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 disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device in any of the aforementioned ways. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device 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, Windjammer Communications LLC 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. Furthermore, Windjammer Communications LLC reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

2.5 Copyright; Trademark; Unauthorized Usage of Device; Firmware or Software.

(a) Copyright; Trademark. The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, 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) Unauthorized Usage of Device; Firmware or Software. Other than for Business Plus customers, 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, or embedded in the Device, 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. Other than for Business Plus customers, you expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. 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.

2.6 Tampering with the Device or Service. You shall not change the electronic serial number or equipment identifier of the Device or to perform a factory reset of the Device without our prior written consent. We reserve the right to disconnect your Service if we believe, in our sole and absolute discretion, that you have tampered with the Device. In the event of such disconnection, you will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

2.7 Theft of Service. You shall not use the Service in a manner calculated to avoid Windjammer Communications LLC policies and procedures. You shall not obtain or use the Services in an improper manner. You shall notify us immediately, in writing or by calling our customer support line, 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. When you call or write, 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 disconnection 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 use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service. Windjammer Communications LLC reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

2.8 Return of Device. Customers may return the Device to us if 1) you cancel services and 2) you return the Device to us within fourteen (14) days of the date you disconnected Service. Windjammer Communications LLC will also any applicable disconnection fee subject to the following:

Service is disconnected within the first thirty (30) days following the activation of the Service, activation occurs when you place your order for service;

We receive the Device in its original condition, reasonable wear and tear excluded;

You return original proof of purchase with the Device, together with the original packaging, all parts, accessories, and documentation; and

You must pay all costs of returning the Device back to us.

If you receive a Device(s) that is visibly damaged, you must contact our customer care department immediately at 1-888-495-2881.

2.9 Service Distinctions. The Service is not a traditional telecommunications service and we provide it on a best efforts basis. Things beyond our control may affect the Service, such as power outages, fluctuations in the internet, your underlying broadband service. Other things may affect Service, such as maintenance. Windjammer Communications LLC will act in good faith to minimize disruptions to your use of and access to Service. 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.

2.10 Ownership and Risk of Loss. You will own the Device and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped to you until the time (if any) when it is returned to us in accordance with this Agreement.

2.11 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, calling cards or 900 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.

2.12 Incompatibility With Other Services.

(a) **Home Security Systems.** The Service may not be compatible with home 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, Cable Modem, and Other Services.** You acknowledge that the Service presently is not compatible with AOL cable broadband service, certain versions of TiVO, and there may be other services with which the Service may be determined to be incompatible. 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.

3. CHARGES; PAYMENTS; TAXES; DISCONNECTION

- 3.1 **Billing.** 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), including but not limited to:

activation fees; monthly Service fees; usage charges; international usage charges; advanced feature charges; advanced features/add-ons; subscriber line charge, universal service fund; 911 fees; federal, state and/or local taxes; disconnection fees; and shipping and handling charges.

The amount of such fees and charges shall be published on our website and may change from time to time. Windjammer Communications LLC may introduce new products and services at special introductory pricing. Introductory pricing may change at Windjammer Communications LLC's discretion. Notification of monthly invoices will be sent to you via your email address on file with us. Any usage charges will be billed in increments that are rounded up to the nearest minute unless otherwise set forth in the rate schedules found on our website.

The above fees are defined as follows:

Activation Fee - This fee covers charges for setting up your account and activating you on our system.

Monthly Service Fee - This is the basic charge associated with your service. This fee includes the calling charges defined by your plan, the features associated with your plan and basic account services.

Usage Charges - If you exceed the number of calling minutes on your plan, Windjammer Communications LLC will bill you for the minutes you use above your allowance. Windjammer Communications LLC also bills for calls to directory assistance and other information services.

International Usage Charges - These are the fees associated with calls to locations outside of the US, and Canada.

Advanced Features, Add-Ons, Premium Services - Windjammer Communications LLC charges additional fees for enhanced features and services such as Virtual Phone Number.

Universal Service Fund - The Universal Service Fund (USF) provides support to promote access to telecommunications services at reasonable rates for those living in rural and high-cost areas, income-eligible consumers, rural health care facilities, and schools and libraries. All telephone companies that provide service between states and internationally, including wireless companies, must contribute a percentage of their revenues derived from these services to the USF.

Taxes - Windjammer Communications LLC is required to bill and collect local, state and federal taxes imposed on Windjammer Communications LLC customers by the various taxing authorities. Windjammer Communications LLC passes all taxes it collects on to the appropriate taxing authority.

911 Fees - State and/or local governments may assess fees on Windjammer Communications LLC to pay for emergency services in your community. Windjammer Communications LLC bills and collects 911 fees from its customers and remits such fees to the appropriate authority. Depending on where you live, these fees can vary widely. Windjammer Communications LLC is committed to supporting public safety services and resources in your State.

3.2 Billing Disputes. You must notify us in writing within seven days after receiving your statement if you dispute any Windjammer Communications LLC 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:

Windjammer Cable
c/o Billing Disputes
P.O. Box 13647
Durham, NC 27709-3647
billing@wjcable.net

3.3 Payment and Collection.

- (a) **Payment.** We bill in advance, except for usage on a monthly basis. Payment is due upon receipt. If payment is not received by the due date, a late fee of 1.5% of the unpaid balance will apply.
- (b) **Collection.** If your Service is disconnected, 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.
- (c) **Notices.** Windjammer Communications LLC will provide ten days advance notice prior to disconnection of service.

3.4 Disconnection; Discontinuance of Service. We reserve the right to suspend or discontinue the Service generally, or to disconnect your Service, at any time in our sole and absolute discretion. If we discontinue the Service generally, or disconnect your Service without a stated reason, you will only be responsible for charges accrued through the date of disconnection, including a pro-rated portion of the final month's charges. If your Service is disconnected on account of your breach of any provision of this Agreement, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus the disconnection fee, if applicable, all of which will immediately become due and payable. Windjammer Communications LLC will pursue collection for unpaid amounts on disconnected accounts and may report to credit bureaus.

3.5 Taxes. State and local governments may assess taxes, surcharges and/or fees on your use of Windjammer Communications LLC service. These charges may be a flat fee or a percentage of your Windjammer Communications LLC charges and may change from time to time without notice. These charges are based on the rates applicable to the address you provided to us. 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 or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to you 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.

3.6 Charges for Directory Calls (411). Calls to Windjammer Communications LLC directory assistance are subject to a service charge, per occurrence.

4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

4.1 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, Windjammer Communications LLC 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 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.

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

- 4.2 Disclaimer of Liability for Damages.** IN NO EVENT WILL Windjammer Communications LLC, 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, COMPENSATORY, 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.
- 4.3 Indemnification and Survival.**
- (a) **Indemnification.** You shall defend, indemnify, and hold harmless Windjammer Communications LLC, 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, attorneys 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, or the Device.
- (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.
- 4.4 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 Windjammer Communications LLC 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 Windjammer Communications LLC'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY Windjammer Communications LLC OR Windjammer Communications LLC'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.
- 4.5 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.
- 4.6 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 disconnect 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.

5. MISCELLANEOUS

- 5.1 Entire Agreement.** This Agreement and the fee schedule for Services found on Windjammer Communications LLC's Web site constitute the entire agreement between you and Windjammer Communications LLC and govern your use of the Service, superseding any prior agreements between you and Vendor 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 Windjammer Communications LLC unless and until posted in accordance with Section 3 hereof.
- 5.2 Severability.** 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.
- 5.3 Privacy.** Windjammer Communications LLC's Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Windjammer Communications LLC is not liable for any lack of privacy, which may be experienced with regard to the Service.
- 5.4 Acceptance.** Customer can evidence acceptance of this Agreement by signing where indicated below or by executing this Agreement electronically. By requesting Service or by activating Service, you acknowledge that your electronic acceptance of this Agreement binds you as the equivalent of your hand-written signature on this Agreement.
- 5.5 Subcontractors.** You understand, acknowledge, and agree that from time-to-time during the term of this Agreement Windjammer Communications LLC may, in its sole and absolute discretion, delegate performance of some or all of its rights and obligations hereunder to third parties selected by Windjammer Communications LLC. You hereby consent to such subcontracting activity, provided that Windjammer Communications LLC shall remain accountable to you for the performance of any such obligations.
- 5.6 Letter of Authorization.** The undersigned Customer hereby appoints Momentum Telecom, Inc. ("Momentum") as agent for Windjammer Communications LLC to act as its authorized agent for all matters pertaining to the number(s) listed below. This agency includes disconnections of service and other requests as deemed necessary by Momentum to implement the services ordered from Momentum, including but not limited to: (1) securing information for activating, porting disconnecting, editing and transferring service for Customer, (2) securing information for the purposes of resolving technical issues for Customer, (3) securing information for activating, removing, changing and editing Customer's directory listings.

Windjammer Communications LLC

<End User Subscriber>

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME AND NUMBER

TITLE

TITLE

DATE

DATE