

**Enterprise Service Order Terms and Conditions**  
**Service Agreement Terms and Conditions**  
**Service Order Terms and Conditions**  
**Universal Terms and Conditions**  
**Master Services Agreement**

These terms and conditions, along with the pricing and products and services described on Momentum's website, along with the agreement you executed with Momentum or Alteva, constitute the Agreement ("Agreement") between Momentum Telecom Inc. ("Momentum", "we", or "us") and the user ("you," "user" or "Customer") of Momentum's business communications services and any related products or services ("Service"). This Agreement governs both the Service and any equipment, such as a Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection Equipment, used in conjunction with the Service and it applies to all lines on each Momentum account. Momentum may, at its discretion and without notice, modify, change, add to or omit any terms and conditions in this Agreement without advance notice to you. Your use of this Service after one (1) full billing cycle constitutes your agreement to such changes. Upon request, Momentum will mail to you a paper copy of this Agreement. This Agreement shall be effective the later of (i) the date it is signed by Momentum or (ii) you first begin to use the Service (the "Effective Date"). THIS AGREEMENT INCORPORATES ADDITIONAL TERMS AND CONDITIONS (IF YOU PURCHASED INCONTACT SERVICES) FOUND ON OUR WEBSITE: [WWW.MOMENTUMTELECOM.COM/INCONTACTTERMS](http://WWW.MOMENTUMTELECOM.COM/INCONTACTTERMS) . BEFORE ORDERING AND/OR USING THE INCONTACT SERVICES AND/OR EQUIPMENT, YOU SHOULD THOROUGHLY FAMILIARIZE YOURSELF WITH THOSE TERMS AND CONDITIONS, BECAUSE YOU WILL BE BOUND BY THEM.

**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 ITS TERMS AND CONDITIONS. YOU WAIVE ANY RIGHT TO TRIAL BY JURY TO RESOLVE ANY DISPUTES THAT MAY ARISE UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

**1. EMERGENCY SERVICES - 911 DIALING**

**YOU SHOULD BE AWARE THAT THERE ARE SOME CIRCUMSTANCES UNDER WHICH YOUR E911 SERVICE MAY NOT BE AVAILABLE OR MAY BE LIMITED IN SOME WAY. EXAMPLES OF THE LIMITATIONS OF YOUR E911 SERVICE WHEN COMPARED TO A TRADITIONAL TELEPHONE SERVICE ARE LISTED IN THIS SECTION. YOU ARE STRONGLY ADVISED TO FAMILIARIZE YOURSELF WITH THIS SECTION AND DISCUSS IT WITH YOUR MOMENTUM REPRESENTATIVE IF THERE IS ANYTHING YOU FIND CONFUSING OR YOU DO NOT UNDERSTAND.**

**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 have basic 911 in locations where the emergency center is not equipped to receive your telephone number and address. With basic 911, the local emergency operator(s) 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(s) 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 CUSTOMERS, EMPLOYEES, GUESTS OR OTHER THIRD PERSONS WHO MAY BE PRESENT AT THE PHYSICAL LOCATION WHERE YOU UTILIZE THE SERVICE OF THE IMPORTANT DIFFERENCE IN, AND LIMITATIONS OF, MOMENTUM 911 DIALING AS COMPARED WITH TRADITIONAL BASIC 911 OR E911.** The documentation that accompanies each piece of equipment you may purchase or lease will include a sticker concerning the potential non-availability of basic 911 or E911 (the "911 Sticker"). It is your responsibility 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 Equipment, or you require additional 911 Stickers, please contact our customer care department at 888-538-3960 for more stickers at no additional cost.

**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 Momentum to determine if service can be provided at your new permanent address. **If you attempt to use the Service without notifying Momentum and receiving our permission, emergency personnel may not be able to locate you to adequately respond to an emergency. Even with E911, emergency personnel may be dispatched at the address listed with us and not the address where you use the service if you fail to follow the requirements of this paragraph.**

**1.4 Confirmation of Activation Required.** Your 911 Dialing feature will not be activated for any phone line that you are using with the Service, UNLESS AND UNTIL YOU RECEIVE AN EMAIL FROM MOMENTUM CONFIRMING THE 911 DIALING FEATURE HAS BEEN ACTIVATED FOR THAT PHONE LINE.

**1.5 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 equipment provided may also provide limited battery backup. Consult with Momentum to determine whether or not your equipment has battery backup.

i. **Equipment with battery backup.** Battery backup on qualifying equipment is limited. Excessive use during a power outage will result in shortened life of the internal battery. The equipment may provide indication of low battery voltage. Customer should contact Momentum for instructions or replacement. Failure of network power backup systems or the internal backup system during a power failure or disruption will prevent all Service, including 911 dialing, from functioning.

ii. **Equipment without battery backup.** Equipment that does 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 equipment 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 due to Internet Outage or Suspension or Disconnect of Broadband Service or ISP will prevent all Service, including 911 dialing, from functioning. You understand you must obtain your own Internet connection, or obtain service from us (where available) to use the Service. We may

not control your Internet access or the quality of your Internet connection. We are not responsible for problems caused by your Internet connection or for any third party products or service, nor will we contact any third party providers on your behalf.

**(c) Service Outage Due to Disconnection of Your Momentum 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 Momentum 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.

**1.6 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.

**1.7 Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using your 911 Dialing service are answered or addressed by any 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 MOMENTUM 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.** You shall defend, indemnify, and hold harmless Momentum, 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.

**1.8 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.

**1.9 Non-exclusive, Non-transferable License; Retention of Rights.** The right to use any of the Service granted to the Customer is nonexclusive and nontransferable, and Customer shall prohibit use of the Service by any third party other than Customer for such Customer's internal business purposes. It is expressly understood that title to the Service, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property belong to Momentum or its underlying providers and does not pass to the Customer.

**Restrictions:** Customer shall not:

- (a) copy or adapt the Service for any purpose, except as specifically permitted under this Agreement;
- (b) use the Service except in accordance with all applicable laws and regulations, and except as set forth in any documentation or instructions provided by Momentum;
- (c) reverse engineer, translate, decompile, or disassemble the Service;
- (d) use the Service in any outsourcing, application service provider, time-sharing or service bureau arrangement, including, without limitation, any use to provide Service or process data for the benefit of, or on behalf of, any third party other than the Customer;
- (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Service; or
- (f) delete, alter, cover, or distort any copyright or other proprietary notices or trademarks.

## **2. SERVICE 2.1 Terms.**

**(a) Monthly Terms:** Unless 2.1b applies, Service is offered on a month to month basis that begins on the date Momentum activates your Service, unless activation is delayed due to circumstances beyond the customer's control – then the term starts once the impediment to activation is removed and ends on the day before the same date in the following month; but in all events, billing will commence within six (6) months of execution of the Agreement. Should you postpone the date of activation more than one time, you will be charged two-hundred fifty dollars (\$250) per location for each and every postponement after the first postponement. For purpose of clarity, the preceding sentence does not obligate us to grant a postponement of the activation date. 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 termination 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, suspension or disconnection of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement.

**(b) Term Agreements:** Some products/services are available under a term agreement (Term). The Term for all Service starts on the day of the last billed new Service, or product (if applicable) whichever is later, and billing for Service commences when each Service is activated, unless activation is delayed due to circumstances beyond the customer's control—then the billing starts once the impediment to activation is removed; but in all events, billing will commence within six (6) months of execution of the Agreement. Should you postpone the date of activation more than one time, you will be charged two-hundred fifty dollars (\$250) per location for each and every postponement after the first postponement. For purpose of clarity, the preceding sentence does not obligate us to grant a postponement of the activation date. The Term and will automatically renew for successive one (1) year terms thereafter (in each case, a "Renewal Term"), until terminated in accordance with the remaining terms of this Agreement.

- i. Either party may terminate a Term Agreement, for any reason or for no reason, at the end of the current term or any Renewal Term by providing the other party with not less than ninety (90) days prior written notice of termination.
- ii. Either party may terminate a Term Agreement if the other party has committed a material breach of this Agreement, and such breach is not cured within thirty (30) days of the date the party in breach receives written notice of the breach. If we terminate this Agreement under this Section 2. (b) (ii) you shall pay us liquidated damages equal to the sum of one hundred percent (100%) of the remaining minimum monthly fees that would have been incurred for the remainder of the Term of this Agreement plus all fees incurred prior to the date of termination of services, plus any damages incurred by us as a result of your material breach.
- iii. Before the end of the any term or Renewal Term, and without your breaching this Agreement, you may terminate a Term Agreement with respect to all Services by written notification to us. The Agreement shall terminate thirty (30) days thereafter, at which time you shall pay us liquidated damages equal to the sum of one hundred percent (100%) of the remaining minimum monthly fees that would have been incurred for the remainder of the Term of this Agreement plus all fees incurred prior to the date of termination of services, plus any damages incurred by us as a result of your material breach. Customer has a right to reduce its Services requested without the obligation to pay liquidated damages if the reduction is related to a decrease in the number of the Customer's employees utilizing the Services, and not to shift Services to a different provider.
- iv. The parties agree that, at the inception of the Agreement, it would be impossible to determine the damages suffered by Momentum for Customer's early termination or breach and that the liquidated damages referred to in paragraphs 2.1 (b) ii and 2.1 (b) iii bear a reasonable relationship to the damages that Momentum is likely to incur as a result of an early termination of the Agreement. The parties further agree that the liquidated damages provision is a material term of the Agreement, and without its inclusion, Momentum would not be able to provide the Services at the prices listed in the Enterprise Service Order.

## 2.2 Fair Use.

**(a) Usage Review.** Momentum reserves the right to review usage of all its plans to ensure you are not abusing them. You agree to use Momentum Services for normal voice or fax calls and will not employ methods or equipment to take advantage the Services by using the voice or fax services excessively or for means not intended by Momentum. Momentum may terminate Service immediately if it determines, in its sole discretion, you are abusing its plans. We reserve the right to at any time enforce this policy. For subscribers where usage to high cost areas (for example such as calls to rural numbers, Alaska or Hawaii) exceeds 5% of total call traffic, or more than 5% of call volume lasts less than 10 seconds, such usage may be deemed excessive in the sole discretion of Momentum. For such usage, you agree to pay a per minute or per page fee surcharge in excess of established levels at the current Momentum rate. The surcharge is currently \$0.03 per minute and/or \$0.03 per fax page. This surcharge applies to all plans, including the unlimited plans. Alternatively, in the sole discretion of Momentum, your Service may be immediately terminated. For the purpose of clarity, but in no way limiting the definition of abusive use of Services, auto-dialers, continuous call session connectivity, fax broadcasting, fax blasting, mass calling or any other blasting activities are conclusively presumed to be abusive use of the Services. If Momentum has reasonable suspicion that Customer may be in violation of the foregoing prohibitions, Momentum in its sole discretion may take curative action that may result in the modification, suspension or cancellation of some or all of Customer's Services.

**(b) Small Business Unlimited Usage Definition:** Momentum's definition of "unlimited usage" is based on the combined number of inbound and outbound voice minutes and fax pages (excluding all Momentum advertising and informational messages). We reserve the right to at any time enforce this policy in accordance with its terms. If the average voice usage exceeds 3,000 minutes per extension or over 500 fax pages within any thirty day period, such usage shall be deemed excessive. In that event, you agree to pay a per minute or per page surcharge, which is currently \$0.03 per minute and/or \$0.03 per fax page. This overage fee applies to all plans including the unlimited plans. Alternatively, in the sole discretion of Momentum, your Service may be immediately terminated.

**(c) Enterprise Usage Definition:**

- Hosted Simple – Unlimited usage – all seats with 10 digit telephone numbers come with an acceptable use of 2000 minutes of long distance. The 2000 minutes for each seat are pooled at the group/child (location) account level. If the account has five (5) unlimited seats with telephone numbers, then the account has a total of 10000 minutes of long distance that are shared by the five seats. Outbound long distance (LD) includes calls in the continental US states, Alaska, Hawaii, and Canada.
- Hosted Select – Each call path includes 2,000 minutes of long distance. The 2,000 minutes for each call path are pooled at the group/child (location) account level. If the account has five (5) call paths, then the account has a total of 10,000 minutes of long distance that will be shared by all of the hosted seats. Per minute overage charges will apply if the limit is exceeded. Outbound long distance (LD) includes calls in the continental US states, Alaska, Hawaii, and Canada.

- SIP Trunking – Unlimited usage - Each call path includes an acceptable use policy of 2,000 minutes of long distance. The 2,000 minutes for each call path are pooled at the group/child (location) account level. If the account has five (5) call paths, then the account has a total of 10000 minutes of long distance that will be shared by all of the DIDs. Per minute overage charges will apply if the limit is exceeded. Outbound long distance (LD) includes calls in the continental US states, Alaska, Hawaii, and Canada.
- Virtual Fax – Virtual Fax 500 includes 500 inbound and outbound fax pages. Anything above 500 pages is \$0.03 per page.
- LTE services are not unlimited in nature and are subject to usage caps and overage charges. Momentum Telecom offers two LTE plans; Smart that includes 10 Gb of total usage per device per month and Genius Plus that includes 25 Gb of total usage per device per month. Any and all data overages will be billed at \$9.95 per Gb per month. Usage is not pooled. We reserve the right to invoke content filtering and / or bandwidth management to limit excessive or abusive data use.

### **2.3 Prohibited Uses.**

**(a) Unlawful.** You shall use the Service and the Equipment 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 Equipment for an unlawful purpose. In the event of such disconnection, you will be responsible for the full charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Equipment 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, Momentum 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 Equipment 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 Equipment in any of the aforementioned ways. In the event of such disconnection, you will be responsible for the full charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Equipment 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, Momentum 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, Momentum reserves all of its rights at law and equity to proceed against anyone who uses the Service illegally or improperly.

#### **2.4 Copyright; Trademark; Unauthorized Usage of Equipment; Firmware or Software.**

**(a) Copyright; Trademark.** The Service and Equipment and any firmware or software used to provide the Service, or provided to you in conjunction with providing the Service, or embedded in the Equipment, and all Service, 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 Equipment; Firmware or Software.** You have not been granted any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Equipment, 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. You expressly agree that the Equipment 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 Equipment for any other purpose. We reserve the right to prohibit the use of any interface equipment 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 equipment 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 Equipment 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.

**2.5 Tampering with the Device or Service.** You shall not change the electronic serial number or Equipment identifier of the Equipment to perform a factory reset of the Equipment 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 Equipment. In the event of such disconnection, you will remain responsible for the full charges to the end of the current term, including, without limitation, unbilled charges, plus a termination 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.

**2.6 Theft of Service.** You shall not use the Service in a manner calculated to avoid Momentum policies and procedures. You shall not obtain or use the Service in an improper manner. You shall notify us immediately, in writing or by calling our customer support line, if the Equipment 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 Equipment 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 Equipment stolen from you and any and all stolen, fraudulent or unauthorized use of the Service. Momentum reserves all of its rights at law and equity to proceed against anyone who uses the Service illegally or improperly.

**2.7 Return of Equipment.** Customers may return Equipment to us and we will also waive our termination fee, subject to the following: Service is disconnected within the first thirty (30) days



following the activation of the Service; you return the Equipment to us within fourteen (14) days of the date you disconnected Service; we receive the Equipment in its original condition; you return original proof of purchase (if applicable) with the Equipment, together with the original packaging, all parts, accessories and documentation; and you pay all costs of returning the Equipment back to us.

If you receive Equipment that is visibly damaged, you must contact our customer care department immediately at [momentumsupport@momentumtelecom.com](mailto:momentumsupport@momentumtelecom.com) or 888-538-3960.

**2.9 Ownership and Risk of Loss.** If you purchase the Equipment, you bear all risk of loss of, theft of, casualty to or damage to the Equipment, from the time it is shipped to you until the time (if any) when it is returned to us in accordance with this Agreement.

**2.10 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) Service in one or more (or all) service areas.

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

**2.12 Scope of Service.**

**a)** The Service and the Equipment are solely and exclusively for the use of the Customer and shall not be used for any illegal purpose or in any manner inconsistent with the provisions of this Agreement. Customer acknowledges the Service and the Equipment were developed, compiled, prepared, revised, selected and arranged by Momentum and others (including certain information sources) through the application of methods and standards of judgment developed and applied through the expenditure of substantial, time, effort and money and constitute valuable industrial and intellectual property and trade secrets of Momentum and such others. Customer agrees to protect the proprietary rights of Momentum and all others having rights in the Service and the Equipment during and after the Term. Customer acknowledges and agrees that it has no ownership rights in and to the Service and that no such rights are granted under this Agreement. Customer shall honor and comply with all written requests made by Momentum or its suppliers to protect their and others' contractual, statutory and common law rights in the Service and the Equipment with the same degree of care used to protect its own proprietary rights, which in no event shall be less than reasonable efforts. Customer agrees to notify Momentum in writing promptly upon becoming aware of any unauthorized access or use by any party or of any claim that the Service or the Equipment infringe upon any copyright, trademark, or other contractual, statutory, or common law rights.

**b)** Customer shall not access the Service through any medium or Equipment which Momentum has not authorized in writing, nor may any medium or Equipment by which the Service is provided be shared, moved, modified, interfaced, copied, broadcasted, reproduced, ported or otherwise routed with or to

any other equipment without Momentum's prior written consent. In addition, Customer shall not move, modify, interface, copy, broadcast, reproduce, port or otherwise use or route the Service or any portion thereof with or to any other equipment, network or software that Momentum, in its sole good faith judgment, determines is interacting or interfering or may interact or interfere with the performance of the Service or any portion thereof and, from time to time, upon Momentum's request therefore, Customer shall promptly notify Momentum in writing of any and all such equipment, network and software. Service expressly provided by Momentum for operation on Customer's own equipment shall be furnished without warranty as to compatibility, fitness or performance with such equipment, and Customer shall bear all cost and responsibility for such equipment.

Unauthorized access or use is unlawful and Momentum and its suppliers shall have all rights provided by law to prevent such access or use and to collect damages in such event. Customer agrees to notify Momentum in writing promptly upon becoming aware of any unauthorized access or use. Customer shall not share, recompile, decompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from, the Services and/or the equipment. Customer may use the Service solely for its internal business purposes and may not use the Service for any development purposes or to develop any applications, software or otherwise that could in any way interact or interfere with the performance of the Service or any portion thereof, except as Momentum may expressly permit under a separate development license with Customer.

c) The analysis and presentation included in the Service shall not be recirculated, redistributed or published by Customer except for internal purposes without the prior written consent of Momentum and where necessary, with certain sources of the information included in the Service.

d) Customer shall not use any of Momentum's or its Affiliated Companies' trademarks, trade names, or service marks in any manner which creates the impression that such names and marks belong to or are identified with Customer, and Customer acknowledges that it has no ownership rights in and to any of these names and marks.

e) Customer acknowledges and agrees that Momentum may delegate certain of its responsibilities, obligations and duties under or in connection with this Agreement to a third party or an Affiliated Company of Momentum, which may discharge those responsibilities, obligations and duties on behalf of Momentum.

### **3. Equipment**

**3.1 Equipment Purchases:** You may purchase telecom Equipment to utilize the Momentum Service. You are responsible for the shipping charges associated with the initial delivery of the Equipment. You will be deemed to have accepted the items five (5) days after each is delivered and installed, unless you notify us in writing to the contrary. Returns for credit after five (5) days automatically receive a 20% restocking fee, along with an additional 10% fee for each additional 30-day period. If you receive Equipment that is visibly damaged, you must contact our customer care department immediately at [momentumsupport@momentumtelecom.com](mailto:momentumsupport@momentumtelecom.com) or 888-538-3960. Momentum may, at your request, facilitate the provision of Equipment from a third party supplier or resell certain Equipment. Procuring and maintaining that Equipment is your sole responsibility. While we suggest and resell some Equipment

brands and facilitate your purchase of some Equipment as an accommodation, the original Equipment manufacturer and not Momentum shall be responsible for any Equipment defects. Momentum will pass all original Equipment manufacturer warranties for the Equipment to you and will not have any liability to you regarding such Equipment. Please check the Equipment provider's website for warranty, return rules and other terms and conditions applicable to such third party Equipment supplier. ALL EQUIPMENT SALES ARE FINAL. Equipment may be returned to the manufacturer in the event of a defect that arises within the applicable warranty period, provided you comply with the terms of this Section and the manufacturer's Return Materials Authorization ("RMA") policy. Prior to returning the Equipment, you must contact Momentum so Momentum can determine whether a defect exists and to receive an RMA number, which is required along with the return. You must ship the Equipment to the manufacturer at the address provided by Momentum in accordance with all RMA procedures. You have 10 days after receipt of an RMA to ship the Equipment back to the manufacturer at the address we provide. You must pay all shipping fees. Once the manufacturer has received the Equipment, the original Equipment manufacturer will deal with the Equipment under its applicable warranty policy.

**3.2 Equipment Rentals.** In addition to the other services referred to in this Agreement, we may rent Equipment to you for the sole purpose of use in connection with the Service. The term of use of the Equipment will be coterminous with the end of the term for the Service and any extensions thereof; you will be deemed to have accepted the items five (5) days after each is delivered and installed, unless you notify us in writing to the contrary. You may return any defective Equipment to us for a replacement as long as it has not been misused or damaged by you, your agents or invitees. You are responsible for the shipping charges associated with the initial delivery of the Equipment and the return shipping cost at the end of the Term. Furthermore, you shall be responsible for ensuring that any Momentum Equipment is maintained in a secure location, and you shall be fully liable for any and all costs and charges associated with damage to or loss of Momentum Equipment.

- i. If you are not in default under this Agreement, your End of Contract (EOK) options for phone(s) or Equipment are: (a) to automatically renew the term for your other services including the Equipment; (b) purchase the Equipment for its/their then fair market value from Momentum Telecom, Inc. or one of its vendors.; or (c) return the phone(s). You must give us three (3) months prior written notice of your EOK option choice. Under option (b), upon receipt of all amounts due for the purchase of the Equipment, clear title will be transferred to you on an "As Is, Where Is" basis.
- ii. If you elect to return Equipment to us upon expiration of your contract, you must notify us in writing of your intent at least three (3) months prior to contract expiration and you must return the Equipment to us immediately upon the EOK. The Equipment must be in good condition and working order, reasonable wear and tear expected ("Good Working Order"). We reserve the right to recover full reimbursement from you for the reasonable cost and expense incurred by us to restore such Equipment to Good Working Order. You will return the Equipment to a location in the United States designated by us. You are responsible for any costs associated with de-installation, packing, proper content labeling and return of the Equipment. Prior to return of Equipment, you are responsible for removing all your information and data, including programs not licensed to the Equipment. We have no obligation to remove your information or any other party's information from any

Equipment. The return of Equipment shall constitute a full release by you of any leasehold rights or possessory interest in the Equipment.

#### **4. CHARGES; PAYMENTS; TAXES; DISCONNECTION**

**4.1 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; equipment rental fees; usage charges; international usage charges; advanced feature charges; advanced features/add-ons; regulatory recovery fee, 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 this website and may change from time to time (but only if Momentum's providers' prices change, shall Momentum be entitled to raise the rates on the Enterprise Service Order, or any amendment thereto, you signed when you ordered services, so that Momentum may recoup any increase in its charges). Momentum may introduce new products and services at special introductory pricing. Introductory pricing may change at Momentum's discretion. Notification of monthly invoices will be sent to you via mail or 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 Service.
- **Equipment Rental Fees** – This is the charge associated with the rental of equipment for the sole purpose of use in connection with the Service.
- **Usage Charges** - If you exceed the number of calling minutes on your plan, Momentum will bill you for the minutes you use above your allowance. Momentum 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** – Momentum charges additional fees for enhanced features and services such as Virtual Phone Numbers.
- **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** – Momentum is required to bill and collect local, state and federal taxes imposed on Momentum customers by the various taxing authorities. Momentum passes all taxes it collects on to the appropriate taxing authority.
- **911 Fees** - State and/or local governments may assess fees on Momentum to pay for emergency services in your community. Momentum 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. Momentum is committed to supporting public safety services and resources in your State.

**4.2 Billing Disputes.** You must notify us in writing within thirty (30) days after receiving your statement if you dispute any Momentum 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:

**Momentum**

**880 Montclair Rd Suite 400**

**Birmingham, AL 35213**

**4.3 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. Momentum will provide ten days advance notice prior to disconnection of service.

**4.4 Disconnection; Discontinuance of Service.** We reserve the right to suspend or discontinue the Service generally, or to disconnect your Service or a service component, 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 charges to the end of the current term, including, without limitation, unbilled charges, plus the termination fee, if applicable, all of which will immediately become due and payable. Momentum will pursue collection for unpaid amounts on disconnected accounts and may report to credit bureaus.

**4.5 Taxes.** State and local governments may assess taxes, surcharges and/or fees on your use of Momentum Service. These charges may be a flat fee or a percentage of your Momentum 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 equipment. Such amounts are in addition to payment for the Service or equipment 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.

**4.6 Charges for Directory Calls (411).** We will charge you \$1.00 for each call made to Momentum directory assistance.

**4.7 Charges for Operator Assisted Calls (0).** We will charge you \$3.00 for each call made to Momentum operators asking for assistance.

## **5. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES**

**5.1 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, Momentum 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 Equipment provided to you
- any other cause that is beyond our control, including, without limitation, a failure of or defect in any equipment, 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.

**5.2 Disclaimer of Liability for Damages.** IN NO EVENT WILL MOMENTUM, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICE 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.

### **5.3 Indemnification and Survival.**

**(a) Indemnification.** You shall defend, indemnify, and hold harmless Momentum, 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 Service, including, without limitation, 911 Dialing, or the Equipment.

**(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.

**5.4 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 EQUIPMENT 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 EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER MOMENTUM NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICE, EQUIPMENT, 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 EQUIPMENT OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF MOMENTUM'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR EQUIPMENT, IF ANY, BY MOMENTUM OR MOMENTUM'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND. WE WILL USE OUR BEST EFFORTS TO PROVIDE DIRECTORY LISTING INFORMATION TO A DIRECTORY CONTAINING SUBSCRIBER LISTING INFORMATION (SLI). WE SHALL NOT BE LIABLE FOR THE CONTENT OR ACCURACY OF ANY SLI (INCLUDING, BUT NOT LIMITED TO, A FAILURE BY ONE OR MORE DIRECTORIES TO "UN-PUBLISH" A NUMBER; ONE OR MORE DIRECTORIES PUBLISHING A WRONG NUMBER OR ONE OR MORE DIRECTORIES FAILING TO PUBLISH A LISTING) PROVIDED UNDER THIS AGREEMENT. YOU SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND US OR OUR SERVICE PROVIDERS FROM AND AGAINST ANY DAMAGES, LOSSES, LIABILITIES, DEMANDS, CLAIMS, SUITS, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES) ARISING FROM, OR RELATING TO, DIRECTORY LISTINGS AND/OR RESULTING FROM OR ARISING OUT OF YOUR OR A THIRD PARTY'S CLAIM OF INACCURATE LISTINGS, FAILURE OF LISTINGS, INACCURATE USE OF THE SLI, OR FAILURE TO "UN-PUBLISH" A LISTING.

**5.5 No Hardware Warranty.** YOU ACKNOWLEDGE THAT MOMENTUM IS NOT THE MANUFACTURER OF ANY HARDWARE OR EQUIPMENT AND THAT ALL HARDWARE AND EQUIPMENT ARE BEING PROVIDED BY MOMENTUM "AS IS" AND WITHOUT WARRANTY OR GUARANTY OF ANY KIND. YOU AGREE TO LOOK EXCLUSIVELY TO THE ORIGINAL EQUIPMENT MANUFACTURER OF SUCH HARDWARE AND EQUIPMENT WITH RESPECT TO ANY WARRANTY OR OTHER CLAIMS RESPECTING SUCH HARDWARE AND EQUIPMENT.

**5.6 No Third Party Beneficiaries.** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

**5.7 Content.** You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or equipment (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 Service 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 Service 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.

## **6. MISCELLANEOUS 6.1**

**Entire Agreement.** This Agreement, the Service Agreement, Equipment Rental Agreement, and the Equipment Purchase Agreement you executed with Momentum, and the fee schedule for Service found on Momentum's Web site constitute the entire agreement between you and Momentum and govern your use of the Service, superseding any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

**6.2 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.

**6.3 Privacy.** Momentum's Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Momentum is not liable for any lack of privacy, which may be experienced with regard to the Service.

**6.4 Subcontractors.** You understand, acknowledge, and agree that from time-to-time during the term of this Agreement, Momentum may, in its sole and absolute discretion, delegate performance of some or all of its rights and obligations hereunder to third parties selected by Momentum. You hereby consent to such subcontracting activity, provided that Momentum shall remain accountable to you for the performance of any such obligations.

**6.5 Letter of Authorization.** The undersigned Customer hereby appoints Momentum Telecom, Inc. ("Momentum") as agent for Momentum to act as its authorized agent for all matters pertaining to the number(s) populated in the appropriate fields. 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.

**6.6 Customer Consent to use of Customer Information.** Momentum agrees to protect the confidentiality of Customer's Proprietary network Information ("CPNI") as that term is defined in the U.S. Telecommunications Act of 1996 and FCC 07-22. Such CPNI includes, without limitation, information about the type and quantity of telecommunications services purchased by Customer from Momentum, Customer's Account activity and charges incurred by Customer. Customer consents to Momentum's use of CPNI for marketing purposes to offer Customer the full range of products and services available from Momentum, some of which may be different from the Services Customer currently purchases from Momentum. Additionally, should Customer have engaged Momentum's Services through a third party agent, Customer instructs Momentum that it may share CPNI with such agent so that agent may more effectively perform its services for Customer. Momentum may also share CPNI with its affiliates, agents or partners to offer other services and products not currently being purchased by Customer from Momentum. Customer may withdraw consent by notifying Momentum in writing.

**6.7 Disputes.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY: (A) SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED JEFFERSON COUNTY ALABAMA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT; (B) AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURTS OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURTS; (C) WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN CLAUSE (A) OF THIS PARAGRAPH; AND (D) WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) TO A TRIAL BY JURY OF ANY DISPUTE BETWEEN THE PARTIES ARISING UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF THIS AGREEMENT, TORT, AND/OR ARISING OUT OF, UNDER OR RELATING TO, THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY. THE AFOREMENTIONED LEGAL THEORIES ARE INTENDED TO BE ILLUSTRATIVE ONLY AND IN NO WAY SHALL BE CONSTRUED TO LIMIT THE THEORIES UNDER WHICH A DISPUTE MIGHT ARISE BETWEEN THE PARTIES. EACH PARTY AGREES IT HAS HAD THE OPPORTUNITY TO HAVE ITS LEGAL COUNSEL REVIEW THE FOREGOING JURY TRIAL WAIVER, SUCH WAIVER IS IRREVOCABLE, AND APPLIES TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS WRITTEN CONSENT TO A BENCH TRIAL WITHOUT A JURY. THE PARTIES ACKNOWLEDGE THAT (i) THIS AGREEMENT WAS NEGOTIATED, ACCEPTED AND EXECUTED IN THE STATE OF ALABAMA, AND (ii) THE STATE OF ALABAMA HAS A SUBSTANTIAL RELATIONSHIP TO THIS AGREEMENT.

**6.8 Non-Solicitation.** Customer shall not solicit, entice, induce or encourage: (a) any employee(s) to leave the employment of Momentum or any of its affiliated companies or hire such employee; (b) any customer(s) of Momentum to discontinue using Momentum 's services or the services of any of its affiliated companies; or (c) any customer(s) of Momentum to refer prospective customers to any other competitor which is not an affiliated company or to switch customers from Momentum or any of its affiliated companies to any other competitor which is not an affiliated company. An "affiliated company" is an entity that is under the control, controls or under the common control of Momentum.

**6.9 Export Controls:** Customer acknowledges that the export, import, and use of certain hardware, software, and technological data provided under this Agreement is regulated by the United States and other governments and agrees to comply with all applicable laws and regulations, including the U.S. Export Administration Act, the regulations promulgated thereunder by the U.S. Department of Commerce, and any other applicable laws or regulations such as those that prohibit certain services from being used in or accessed by a national of Cuba, Iran, North Korea, Sudan, Syria or any other sanctioned or embargoed country.

**6.10 Miscellaneous Terms:**

- i. INTENDED USE. You are purchasing the Service for business purposes. The Service will not be used primarily for personal, family, or household purposes.
- ii. 911 SERVICE. If you purchase broadband access as part of the Service, you agree that without limiting the obligations assumed by you under, as well as the other qualifications, limitations, and restrictions imposed by, the General Terms, Momentum subcontractors are not responsible for managing 911 access.
- iii. ACCEPTABLE USE POLICY. Momentum's Acceptable Use Policy, which can be accessed and read on Momentum's website, is incorporated herein by reference.
- iv. EQUIPMENT AND HARDWARE. Under the terms of Momentum's agreements with its subcontractors, only Equipment provided by the subcontractor has been approved for use with some elements of the Service. If you intend to use any equipment not provided by Momentum, such equipment must be approved by Momentum in advance. Momentum reserves the right to refuse or terminate Service if you are using equipment that has not been approved by Momentum or, if applicable, a Momentum subcontractor.

**6.11 Consent to use Electronic Signatures and Records:** For your convenience, Momentum provides access to its Service online. This may require you to enter into agreements or receive notices electronically. As a result, you acknowledge and agree that by clicking "I Agree" or "I Accept". You agree to conduct electronically without limitation the particular transaction into which you entered including entering into this Agreement;

- i. You have read and understand the electronic copy of electronic contracts, notices and records, without limitation including this Agreement, and any policies and any amendments;
- ii. You agree to, and intend to be bound by, the terms of the particular transaction into which you thereby enter;
- iii. You are capable of printing or storing a copy of electronic records of transactions into which you enter including, without limitation, this Agreement and any amendments hereto; and,
- iv. You agree to receive electronically information about the Service and other electronic records into which you thereby enter including, without limitation, this Agreement.

**6.12 Interpretation:** The parties agree that, before signing this Agreement, each has had an opportunity (and is advised) to consult legal representation to assist it in interpreting and understanding the implications, duties, and potential liabilities that arise under this Agreement. Consequently this Agreement shall not be construed more strongly as against one party versus the other.