

Master Services Agreement

This Master Services Agreement ("Agreement") is entered by Momentum Telecom, Inc. ("Momentum," "we," "our" or "us") and the customer signing below ("Customer," "user," "you," or "your") as of the date of last execution ("Effective Date"), and, together with any Customer Service Order(s) you executed with Momentum ("Service Order"), constitutes the Agreement ("Agreement") between Momentum and Customer with respect to Momentum's business communications services and any related products or services (collectively, the "Service"). This Agreement governs both the Service and any equipment provided by Momentum to be used in conjunction with the Service ("Equipment"). If there is any conflict between the terms of any executed Service Order and this Agreement, the Service Order shall control.

From time to time we may revise this Agreement, our Acceptable Use Policy ("AUP"), our Privacy Policy and other policies. We will provide notice of such revisions by posting revisions to our website or sending an email to the email address that you provide to receive communications from us, or to your Web Account. You agree to visit our website and your Web Account periodically and to check your email box to review any such revisions. You also agree to notify us immediately of any changes to your email address. By continuing to use our services after revisions are effective, you accept and agree to abide by those revisions. By subscribing to our service, you agree that we may provide to you by use of electronic communications required notices, agreements, and other information concerning Momentum, including changes to this Agreement, our AUP and Privacy Policy.

BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ AND UNDERSTAND FULLY THIS AGREEMENT.

1. EMERGENCY SERVICES - 911 DIALING

THERE ARE SOME CIRCUMSTANCES UNDER WHICH YOUR 911 SERVICE MAY BE UNAVAILABLE OR LIMITED IN SOME WAY. EXAMPLES OF THE LIMITATIONS OF YOUR 911 SERVICE WHEN COMPARED TO TRADITIONAL TELEPHONE SERVICE ARE LISTED IN THIS SECTION. YOU ARE STRONGLY ADVISED TO FAMILIARIZE YOURSELF WITH THIS SECTION AND TO CONTACT US IF THERE IS ANYTHING YOU DO NOT UNDERSTAND. 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 TO TRADITIONAL TELEPHONE SERVICE. 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.

- 1.1 911 Dialing.** All our customers have access to either basic 911 or Enhanced 911 (E911) service (basic 911 and E911 collectively referred to herein as "911 Dialing"), depending on location. 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 Location of Service.** This Service is provided at a specific permanent physical address (each such address, a "Location") 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.
- 1.3 Confirmation of Activation Required.** As 911 Dialing will not be available at a given Customer Location until Service is activated at such Location, YOU SHOULD NOT RELY UPON THE AVAILABILITY OF 911 DIALING WITHOUT FIRST CONFIRMING THAT SERVICE HAS BEEN ACTIVATED AT THAT LOCATION. THERE MAY BE A DELAY UNTIL YOUR ADDRESS IS ENTERED IN THE E911 DATABASE. In the event Service (including 911 Dialing) is not available at a given Customer Location, we will promptly notify you.
- 1.4 Non-Native Telephone Number.** If you are using a non-native telephone number (a telephone number from a different exchange than the one in which you are using our Service), emergency authorities or personnel may be unable to determine the location from which you are calling.
- 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 your equipment has battery backup.
 - (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 disconnection of broadband service or ISP service will prevent all Service, including 911 dialing, from functioning. To use the Service, including 911 Dialing, you must obtain your own Internet connection, whether provided by a third-party or from us (where available). In the event we are not your Internet service provider, we are not responsible for any problems caused by your Internet connection or for any third party products or service, nor will we be obligated to 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 (if other than Momentum) 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, your Service, including the 911 Dialing feature, may not function.

(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. We will use reasonable efforts to notify you of such a service outage as promptly as reasonably possible upon learning of any such outage.

1.6 Network Facilities/Congestion. YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO PLACE OR RECEIVE CALLS, INCLUDING 911 CALLS, IF THERE IS A PROBLEM WITH NETWORK FACILITIES, INCLUDING NETWORK CONGESTION, NETWORK/EQUIPMENT FAILURE, OR ANOTHER TECHNICAL PROBLEM, OR IF THE NETWORK IS UNDERGOING MAINTENANCE. 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.

1.7 Use Outside of the United States. Momentum's 911 Dialing feature may not provide access to emergency services in any country outside of the United States. Momentum disclaims any obligation to provide you with access to emergency services in any jurisdiction other than the United States, unless Customer obtains from Momentum prior written confirmation of the availability of access to emergency services in such jurisdiction.

1.8 MLTS 911 Call Notification. Momentum has implemented a notification feature for multi-line telephone systems (MLTS) such that Customer may designate an email address to which a notification email will be sent contemporaneously when a 911 call is made.

(a) **MLTS Notification.** If you use an MLTS, you will be able to designate an email address that will receive a simultaneous email notification if any phone number registered to your account has dialed 911. The MLTS Emergency Notification Email will be sent from noreply@emergencynotification.com and will contain the following information: (i) call date & time; (ii) dialed digits; (iii) User ID, User name, User extension (if assigned), and User phone number (if assigned); and (iv) Group ID, Group Name (if assigned) and Group Address (if assigned).

(b) **Customer Obligations Regarding MLTS Notification Email.** WITH RESPECT TO THE MLTS NOTIFICATION EMAIL, IT SHALL BE YOUR OBLIGATION TO: (I) PROVIDE AN EMAIL ADDRESS SUCH THAT IT IS LIKELY THAT THE RECIPIENT WILL SEE OR HEAR THE MLTS NOTIFICATION EMAIL; (II) ENSURE THE EMAIL ADDRESS IS CORRECTLY ENTERED INTO THE ACCOUNT DATA; (III) MAINTAIN AND UPDATE THE EMAIL ADDRESS/ACCOUNT, AS NECESSARY; AND (IV) ENSURE ALL ADDRESS INFORMATION IS REMOVED FROM THE GROUP PROFILE DATA AS DESCRIBED IN SECTION 1.8(a)(iv) HEREOF.

(c) **Disclaimer/Indemnification Regarding Group Profile Information.** Momentum is reliant on its third-party switching platform providers who control the content of the MLTS Notification Email. Specifically, any information entered by Customer in the Group Profile fields identified in Section 1.8(a)(iv) above will be included in the MLTS Notification Email. **BE ADVISED THAT ANY ADDRESS INFORMATION CONTAINED IN THE GROUP PROFILE (I.E., GROUP NAME OR GROUP ADDRESS) DOES NOT NECESSARILY IDENTIFY THE LOCATION OF THE 911 CALLER AND SHOULD NOT BE RELIED UPON AS SUCH. ANY ADDRESS INFORMATION CONTAINED IN THE GROUP PROFILE MAY BE DIFFERENT THAN THE ADDRESS INFORMATION PROVIDED TO THE PUBLIC SAFETY ANSWERING POINT (PSAP) AND EMERGENCY RESPONDERS. MOMENTUM SHALL HAVE NO LIABILITY AND YOU AGREE TO INDEMNIFY, DEFEND AND HOLD MOMENTUM HARMLESS WITH RESPECT TO ANY CLAIM, DEMAND OR LOSS ARISING FROM OR RELATED TO THE PRESENCE OF ANY GROUP ADDRESS INFORMATION IN THE MLTS NOTIFICATION EMAIL OR THE FAILURE OF CUSTOMER TO COMPLY WITH ITS OBLIGATIONS UNDER SECTION 1.8(b) HEREOF.**

1.9 DISCLAIMER OF LIABILITY AND INDEMNIFICATION FOR 911 DIALING. 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, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MOMENTUM. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS MOMENTUM, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS FROM ANY AND ALL LIABILITIES, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS OR JUDGMENTS (COLLECTIVELY, "CLAIMS") BY, OR ON BEHALF OF, ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, YOUR CUSTOMERS OR END USERS) RELATING TO THE ABSENCE, DELAY, FAILURE OR OUTAGE OF THE 911 DIALING FEATURE, 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, UNLESS SUCH CLAIMS ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MOMENTUM.

2. SERVICE

2.1 Term and Termination. The Term of this Agreement shall commence upon the Effective Date and continue so long as any Service Order is in effect. The Term for the Service at a given Location shall be as specified in the Service Order(s) for such Location. Unless otherwise provided in the Service Order, the Term of such Service Order will automatically renew for successive terms of one (1) month thereafter (in each case, a "Renewal Term"), until terminated in accordance with the remaining terms of this Agreement.

(a) Either party may terminate a Service Order, for any reason or for no reason, (i) at the end of the Initial Term by providing the other party with written notice of termination not less than sixty (60) days prior to the end of the Initial Term or (ii) at the end of any Renewal Term by providing the other party with written notice of termination not less than thirty (30) days' prior to the end of the Renewal Term.

(b) Either party may terminate this Agreement and/or any Service Order(s) if the other party has committed a material breach thereof 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 or a Service Order under this Section 2.1(b), you shall pay us liquidated damages in the amount of the Monthly Revenue Commitment (defined as all service item quantities multiplied by the applicable monthly recurring charge as set forth in the Service Order(s)) multiplied by the number of months (or any portion thereof) remaining in the then-current Term of the terminated Service Order(s) ("Termination Fee"), plus all fees incurred prior to the date of termination of services.

(c) Other than termination pursuant to Sections 2.1(a) or 2.1(b) hereof or for other reasons stated in a Service Order, you may terminate this Agreement and/or any Service Order(s) by thirty (30) day written notification to us and the Agreement or Service Order(s) shall terminate thirty (30) days thereafter, at which time you shall pay us the Termination Fee (as defined above) for all terminated Service Orders, plus all fees incurred prior to the date of termination of services.

(d) The parties agree that, at the inception of the Agreement, it would be impossible to determine the damages suffered by Momentum for your early termination or breach and that the liquidated damages referred to in paragraphs 2.1(b) and 2.1(c) 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 Service at the prices listed in the Service Order.

2.2 Fair Use. Momentum reserves the right to review usage of all its plans to ensure you are not abusing them. You agree to use the Service for normal voice or fax calls and will not employ methods or equipment to take advantage the Service by using the voice or fax services excessively or for means not intended by Momentum. If Momentum determines, in its reasonable discretion, that you are abusing its plans, Momentum may terminate Service after providing you with thirty (30) days' written notice and reasonable proof, with the opportunity to cure. For the purpose of clarity, but in no way limiting the definition of abusive use of the Service, 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 Service. If Momentum has reasonable evidence that Customer may be in violation of the foregoing prohibitions, Momentum in its reasonable discretion may take curative action that may result in the modification, suspension or cancellation of some or all of your Service after providing you with ten (10) days' written notice with the opportunity to cure.

2.3 Prohibited Uses. You agree to abide by Momentum's Acceptable Use Policy which can be accessed and read on our website at *****momentumtelecom.com/acceptable-use-policy and which is incorporated herein by reference. You shall not use the Service and the Equipment in any unlawful or improper manner, including, without limitation, conduct that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy. We reserve the right to disconnect your Service, if, after investigation and in our reasonable discretion, we determine that you have used the Service or the Equipment in any such manner. We shall use commercially reasonable efforts to provide Customer with notice and evidence of such unlawful or improper use prior to any such disconnection. Although we will limit such disconnection to the specific Customer Location(s) involved if commercially reasonable to do so, we reserve the right to disconnect Service generally as circumstances may require in our reasonable discretion. In the event of such disconnection, and upon our providing you with reasonable proof of the unlawful or improper use, you will be responsible for the liquidated damages and other charges as set forth in Section 4.4 hereof. If we believe that you have used the Service or the Equipment in an unlawful or improper manner, 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, we will provide information in response to law enforcement requests, lawful government requests, subpoenas, and court orders and in the case where failure to disclose the information may lead to imminent harm to the Customer or others. Furthermore, we reserve all its rights at law and equity to proceed against anyone who uses the Service illegally or improperly.

2.4 Copyright; Trademark; License.

(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 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. Customer shall not use any of Momentum's marks in any manner which creates the impression that such marks belong to or are identified with Customer, nor shall Customer delete, alter, cover, or distort any copyright or other proprietary notices or trademark.

(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 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.

(c) Non-exclusive, Non-transferable License; Retention of Rights. The right to use any of the Service granted to you is nonexclusive and nontransferable and is intended solely for your business use and for no other purpose. You shall prohibit use of the Service by or for the benefit of any third party, including, without limitation, any outsourcing, application service provider, time-sharing or service bureau arrangement. 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 Customer. You acknowledge the Service and the Equipment were developed, compiled, prepared, revised, selected and arranged by Momentum and others 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. You agree to cooperate with all written, reasonable requests made by us or our suppliers to protect any contractual, statutory and common law rights in the Service and the Equipment. You agree to notify us 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. You shall not share, recompile, decompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from, the Service and/or the equipment.

2.5 Alteration of Service or Equipment. You shall not: (i) copy or adapt the Service for any purpose, except as specifically permitted under this Agreement; (ii) make any use of the Service or Equipment that is inconsistent with its intended purpose; (iii) attempt to hack or otherwise disrupt the Service or cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Service or Equipment; or (iv) change the electronic serial number or identifier of the Equipment to perform a factory reset thereof without our prior written consent. We reserve the right to disconnect your Service if we determine that the Service or Equipment has been altered without our consent. 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 upon our providing reasonable proof of such unauthorized alteration.

2.6 Theft of Service. You shall not use the Service in a manner calculated to avoid Momentum policies and procedures. You shall notify us without unreasonable delay (but in no event later than seventy-two (72) hours of Customer becoming aware of any theft, fraudulent or unauthorized use of the Service) 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. Failure to do so may result in the disconnection of your Service and additional charges to you. Until such time as we receive notice from you 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; provided that you shall not be so liable in the event Momentum knew or had reason to know of such theft, fraudulent use or unauthorized. Momentum reserves all its rights at law and equity to proceed against anyone who uses the Service illegally or improperly.

2.7 Service Exclusions and Limitations. The Service does not support collect calls, third party billing calls, calling cards or 900 calls. The Service may not support 311, 511 and/or other x11 Service (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) in one or more (or all) service areas.

2.8 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 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.

2.9 Non-Circumvention. During the Term of this Agreement, you shall not contract directly with Momentum's underlying carrier for the Service referenced on any Service Order without the written consent of Momentum, unless there is an existing agreement in place between Customer and the underlying carrier prior to the execution of the Service Order.

3. EQUIPMENT

3.1 Customer Equipment. You shall not access the Service through any medium or Equipment which we have 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 our prior written consent. In addition, you 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 we, in our sole good faith judgment, determine 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 our request therefore, you shall promptly notify us in writing of any and all such equipment, network and software. Service expressly provided by Momentum for operation on your own equipment shall be furnished without warranty as to compatibility, fitness or performance with such equipment, and you shall bear all cost and responsibility for such equipment.

3.2 Equipment Purchases: You may purchase telecom Equipment to utilize the 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. If you receive Equipment that is visibly damaged, you must contact our customer care department within

five (5) days of delivery at momentumsupport@momentumtelecom.com or 888-538-3960 to make arrangements for the return and/or replacement of the damaged Equipment. Subject to the foregoing exceptions, ALL EQUIPMENT SALES ARE FINAL. We 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. We 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. 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 policy. Prior to returning the Equipment, you must contact us so we can determine whether a defect exists and to receive an RMA number. You must ship the Equipment to the manufacturer at the address provided by us 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. Upon receipt, the original manufacturer will process the Equipment under its applicable warranty policy.

3.3 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 if 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.

(a) If you are not in default under this Agreement, your End of Contract (EOK) options for Equipment are: (i) to renew the term for your Service, including the Equipment; (ii) purchase the Equipment for its then fair market value from Momentum or its vendor, as may be applicable; or (iii) return the Equipment. You must give us sixty (60) days prior written notice of your EOK option choice. Under option (ii), 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.

(b) If you elect to return Equipment to us upon expiration of your contract, you must notify us in writing of your intent at least sixty (60) days prior to contract expiration and you must return the Equipment to us within thirty (30) days of the EOK. The Equipment must be in good condition and working order, reasonable wear and tear excepted ("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. With the exception of billing for circuit orders, billing for Service commences when each Service is activated at a given Location, unless activation is delayed due to circumstances beyond your control, in which event billing will commence once the impediment to activation is removed. For circuits, unless otherwise agreed in the Service Order, billing will commence on the Firm Order Commitment Date ("FOC Date") when the carrier releases the circuit to Momentum, which FOC Date will typically precede Service activation on the circuit due to Momentum testing requirements. We will bill all charges for service and applicable surcharges, fees, and taxes 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). A detailed explanation of these surcharges, fees, and taxes can be reviewed on our website at *****momentumtelecom.com/fee-definitions. We will charge you immediately upon disconnection for any accrued and unbilled amounts and recovery fees or Termination Fees (including taxes), if applicable, that are due. 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.

4.2 Payment and Collection. Invoices (or the undisputed portion thereof, in the event of a dispute) shall be paid no later than thirty (30) days from the invoice date. Any payment not made when due may be subject to a late payment fee equivalent to the lesser of (i) one and a half percent (1.5%) per month; or (ii) the highest rate allowed by law. Our acceptance of late or partial payments (regardless of how they are marked or designated) will not waive, limit, or prejudice in any way our rights to collect any amount due. Upon no less than ten (10) days' notice to you, we may terminate the Service and this Agreement for non-payment if any fees or charges are not paid within fifteen (15) days of the due date. 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, reasonable collection costs and attorney's fees.

4.3 Billing Disputes. You must notify us in writing within thirty (30) days after receiving your invoice if you dispute any charges on that statement with a reasonably detailed description of the basis of the dispute or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to:

Momentum Telecom, Inc.
1200 Corporate Drive, Suite 300
Birmingham, AL 35242
Attn: Billing Dept.

- 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, if in our reasonable discretion it becomes commercially impracticable to continue providing such Service. In that event, we shall provide no less than sixty (60) days' advance notice prior to disconnection of Service. If we discontinue the Service generally, or disconnect your Service (or any part thereof) other than for cause, 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 for cause as provided in the Agreement, including for failure to pay any sums due under the Agreement, you will be obligated to pay us liquidated damages equal to the Monthly Revenue Commitment for the duration of such disconnection (but not to exceed the Monthly Revenue Commitment that would have been incurred for the remainder of the Term of the applicable Service Order), plus all fees incurred prior to the date of disconnection of the Service. We 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 the Service. These charges may be a flat fee or a percentage of your Service 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 Directory/Operator Assistance Calls.** We will charge you \$1.00 for each call made to directory assistance (411 dialing) and \$3.00 for each call made to operator assistance (0 dialing).

5. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

- 5.1 LIMITATION OF LIABILITY.** WITHOUT LIMITING THE DISCLAIMER OF LIABILITY SET FORTH IN SECTION 1.9 HEREOF REGARDING 911 DIALING, IN NO EVENT WILL WE, OUR OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OR CORRUPTION OF DATA, LOST PROFITS OR OTHER ECONOMIC LOSS, LOST OR IMPAIRED GOODWILL OR ANY BUSINESS INTERRUPTION) ARISING OUT OF OR IN CONNECTION WITH THE SERVICE OR EQUIPMENT PROVIDED UNDER THIS AGREEMENT. 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.

NEITHER WE NOR OUR 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, UNLESS SUCH UNAUTHORIZED ACCESS RESULTS FROM OUR OR OUR SERVICE PROVIDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

WE WILL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, AT ANY TIME OR FROM TIME TO TIME, OR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY, WHICH FAILURE, INTERRUPTION OR DEGRADATION RESULTS FROM ANY CAUSE THAT IS BEYOND OUR REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ANY OF THE FOLLOWING: AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, OR OTHER UNAFFILIATED THIRD PARTY; FAILURE OR UNAVAILABILITY OF EQUIPMENT, NETWORK OR FACILITIES; EQUIPMENT, NETWORK OR FACILITY RELOCATION, UPGRADE OR MODIFICATION; SERVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER TO YOU; OUTAGES, PORT BLOCKING OR OTHER IMPEDIMENT TO SERVICE USAGE CAUSED BY ANY UNAFFILIATED THIRD PARTY; ANY ACT OR OMISSION BY YOU OR ANY PERSON UNAFFILIATED WITH US USING THE SERVICE OR EQUIPMENT PROVIDED TO YOU; OR THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION INCLUDING, WITHOUT LIMITATION, 911 DIALING, TO BE CONNECTED, COMPLETED OR FORWARDED.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, OUR MAXIMUM LIABILITY WITH RESPECT TO ANY CLAIMS RELATED IN ANY WAY TO OUR SERVICES, EQUIPMENT OR RIGHTS, INCLUDING, WITHOUT LIMITATION, THOSE ARISING UNDER OR RELATING TO THE AGREEMENT, SHALL IN NO EVENT EXCEED THE AMOUNTS PAID TO US BY YOU UNDER THE APPLICABLE SERVICE ORDER(S) DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

- 5.2 Indemnification.** Without limiting your indemnification obligations as set forth in Sections 1.8 and 1.9 hereof, you shall defend, indemnify and hold harmless Momentum, all employees, officers, directors, partners, members and shareholders of Momentum from and against any and all Claims (as previously defined herein) relating to the Service (including, without limitation, 911 Dialing or the Equipment) by, or on behalf of, any third party and arising from or with respect to (i) any breach or violation by you of any of the terms, conditions or provisions of this Agreement, or of any applicable law, rule or regulation; (ii) any act or omission by you constituting negligence or willful misconduct; or (iii) any injury to or death of any person or damage to or loss of property caused by you.

5.3 Limited Warranty. Momentum warrants to Customer that (a) it has the right to enter into this Agreement, (b) the use of the Service will not infringe on any intellectual property or other rights of a third party, and (c) the Service shall be performed in a professional and workmanlike manner, and in accordance with the requirements, if any, specified herein and in any Service Order. In the event of any breach by Momentum of the foregoing limited warranty, we shall immediately undertake to correct the deficiency using commercially reasonable efforts. If we are unable to correct the deficiency within a commercially reasonable time, then either party may terminate Service at the Location(s) affected by such deficiency without cost or penalty. The foregoing are your sole and exclusive remedies for breach of this warranty. The warranty set forth above is made to and for your benefit and will be enforceable against us only if you have acted in compliance with the terms of the Agreement. You agree to reasonably cooperate with our efforts to identify and correct any apparent non-conformance with the foregoing warranty.

OTHER THAN THE FOREGOING LIMITED WARRANTY AND AS OTHERWISE EXPRESSLY SET FORTH IN THE AGREEMENT (INCLUDING ANY INCORPORATED SERVICE LEVEL AGREEMENT(S)) AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, 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. 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.

5.4 No Hardware Warranty. WITH RESPECT TO ANY EQUIPMENT PURCHASED BY YOU, YOU ACKNOWLEDGE THAT MOMENTUM IS NOT THE MANUFACTURER OF ANY HARDWARE OR EQUIPMENT AND THAT ALL HARDWARE AND EQUIPMENT IS 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.

5.5 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 ensure 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 reasonable 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. The Service Order, this Agreement and all documents or website content expressly incorporated therein 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. This Agreement and the Service provided hereunder are subject to Momentum's Privacy Policy, which can be accessed and read on Momentum's website at *****momentumtelecom.com/privacy-policy. Momentum's Service utilizes, in whole or in part, the public Internet and third-party networks to transmit voice and other communications. Although Momentum engages in industry best practices with respect to privacy and security, Momentum does not and cannot guarantee the privacy of Customer data with respect to the use of the Service.

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

6.5 Letter of Authorization. You hereby appoint us to act as your authorized agent with respect to the administration of the telephone number(s) serviced under this Agreement (as may be applicable) solely for the limited purpose of facilitating the delivery of the Service. This agency includes disconnections of service and other requests as deemed necessary by us to implement the Service ordered from Momentum, including but not limited to: (1) securing information for activating, porting disconnecting, editing and transferring service for you, (2) securing information for the purposes of resolving technical issues for you, (3) securing information for activating, removing, changing and editing your directory listings.

6.6 Customer Consent to use of Customer Information. We agree to protect the confidentiality of your 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 you from us, your account activity and charges incurred by you. You consent to our use of CPNI for marketing purposes to offer you the full range of products and services available from Momentum, some of which may be different from the Service you currently purchase from us. Additionally, should you have engaged our Service through a third-party agent, you instruct Momentum that it may share CPNI with such agent so that agent may more effectively perform its services for you. We may also share CPNI with its affiliates, agents or partners to offer other services and products not currently being purchased by you from us. You may withdraw consent by notifying us in writing.

- 6.7 Confidentiality.** To the extent that the Parties have entered into a separate Non-Disclosure Agreement (“NDA”), such NDA is hereby incorporated by reference and shall be considered part of this Agreement. In the event of any conflict between this Agreement and the NDA, this Agreement shall control.
- 6.8 Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia 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 state and federal Courts located in Fulton County, Georgia, 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 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.
- 6.9 Attorney’s Fees/Litigation Expenses.** The Parties agree that if either Party to this Agreement brings a civil action related in any manner to this Agreement, the prevailing party in any such civil action shall recover from the losing party all of the prevailing party’s reasonable attorney’s fees and litigation expenses incurred.
- 6.10 Export Controls.** You acknowledge 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 agree 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.
- 6.11 Customer Representations.** You represent and warrant that you are at least eighteen (18) years of age or, as applicable, the age of majority in the country, state or province in which you reside, and that you possess the legal right and ability to enter into this Agreement. You represent and warrant that your name, contact information and registered location are true and correct and, to the extent you are entering this Agreement in a representative capacity on behalf of an entity, that you are authorized to act on behalf of such entity. You understand that we rely on the information you supply and that providing false or incorrect information may result in Service provisioning and delivery delays, the suspension or termination of your Service and/or the inability of a 911-dialed call to be correctly routed to emergency service personnel, as further explained above. You agree to promptly notify us whenever your personal or billing information changes (including, but not limited to, your name, address, e-mail address, telephone number, and credit card number and expiration date). You agree to be financially responsible for your use of the Service, as well as for use of your account by others.
- 6.12 Force Majeure.** We shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond our reasonable control, including without limitation, acts of God, earthquake, fire, flooding, pandemic, riots, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties as may occur notwithstanding our reasonable best efforts.
- 6.13 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.
- 6.14 Assignment.** Neither party hereto may assign, subrogate or transfer any interest, obligation or right under this Agreement, whether voluntarily, by operation of law or otherwise, without the prior consent of the other party (which consent shall not be unreasonably withheld, delayed or conditioned), and any such attempt shall be null and void. Notwithstanding the foregoing, (i) we may assign this Agreement without your consent to any of our direct or indirect wholly-owned subsidiaries, and (ii) each party shall be obligated to assign this Agreement in writing to any legal entity which acquires all or substantially all the assets and business of such party, whether by merger, sale of stock, sale of all or substantially all the assets and business of such party, reorganization, recapitalization, or other form of business combination or consolidation (“Acquiring Party”), and that Acquiring Party shall be legally bound by the terms and conditions of this Agreement, and the assigning, selling or reorganizing Party shall remain liable under this Agreement also. This Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.
- 6.15 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.
- 6.16 Execution.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which when taken together will constitute one and the same instrument. Signatures exchanged by electronic means (including, without limitation, in .pdf or similar format) shall be as valid as an original signature of such Party and shall be effective to bind such Party.
- 6.17 Notice.** Unless otherwise provided herein, any notice required to be given under this Agreement shall be in writing and shall be sent by mail, by overnight courier service or delivered personally to the notice address set out below, or such other address as the Parties may from time to time advise each other in writing
- 6.18 Survival.** All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination, cancellation, or expiration of this Agreement, including without limitation, those provisions relating to payment of outstanding fees, ownership and title, confidentiality, indemnity, limit of liability, and dispute resolution shall survive such termination, cancellation, or expiration.

Each Party has caused this Agreement to be executed on its behalf by an authorized individual as of the date(s) set forth below.

MOMENTUM TELECOM, INC.

CUSTOMER: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Notice Address:
Momentum Telecom, Inc.
One Concourse Parkway
Suite 600
Atlanta, Georgia 30328
With copy to: Legal_notices@momentumtelecom.com

Notice Address:

