

## BUSINESS - CUSTOMER AGREEMENT

This Customer Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between Skybeam, incorporated in Colorado, with its principal place of business located at 320 Gateway Drive, Unit A, Berthoud, Colorado 80513 (hereinafter referred to as "Skybeam") and \_\_\_\_\_ a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Customer"). Skybeam will provide the Service (as defined below) to Customer on the terms and conditions set forth below.

### **1. Services:**

Subject to the terms and conditions of this Agreement, Skybeam agrees to provide to the Customer, and the Customer agrees to pay for, the Service described on the "Order Form" attached to this Agreement and incorporated by reference herein (the "Service").

### **2. Installation and Equipment:**

- a. Customer acknowledges and agrees that use of the Service will require certain equipment to be installed by Skybeam (the "Skybeam Equipment") at the Customer location. Skybeam Equipment includes, but is not limited to, an outdoor antenna, wiring, and radio transceiver.
- b. Skybeam will not be liable for any alterations to the Premises that result from the installation or removal of the Equipment, including, but not limited to, holes in walls, cable wiring or antenna mounting brackets.
- c. Any custom installation work that Customer requests, including placing cable under carpet, through interior walls or inside molding, may require an additional charge.

### **3. Payment Terms:**

- a. Agreement to Pay. Customer agrees to pay all monthly fees and installation charges, including all applicable taxes, surcharges, administrative fees, reconnection fees, customer service fees, late fees and door collection fees. Monthly fees will be one month in advance and due no later than 30 days after receipt of invoice. The installation fee (and any related taxes and surcharges) will be billed in the first invoice as a nonrecurring fee.
- b. Interest will accrue on past-due balances at the lower of one and a half percent (1.5%) per month or the highest rate permitted by applicable law. In addition, Skybeam reserves the right to impose administrative fees with respect to past due balances announced to Customer from time to time. If Service is disconnected as a result of nonpayment of fees and subsequently reconnected, Customer will be required to pay a reconnection fee in addition to applicable interest and administrative fees.
- c. Payment Methods. Customer agrees to pay Skybeam in accordance with the payment terms on the back of the invoice received by the Customer for the Service and agrees that Skybeam has the right to change the structure and amount of its fees at any time subject to applicable law.

### **4. Access to Customer's Premises:**

Customer authorizes Skybeam, and its employees, agents, contractors, and representatives to enter Customer's premises (the "Premises") in order to install, maintain, inspect, repair and remove the Equipment and/or Services. If Customer is not the owner of the Premises, upon request, Customer will supply Skybeam with the owner's name and address, evidence that the customer is authorized to grant access to the Premises on the owner's behalf, and (if needed) written consent from the owner of the Premises. This Agreement is contingent upon Skybeam's obtaining a right of entry onto the Premises.

### **5. Relocating / Removing Equipment:**

Customer will not remove the Equipment from the Premises or connect the Equipment to any outlet other than the outlet to which the Equipment was initially connected to by the Skybeam installer. Skybeam may relocate the Equipment for Customer within the Premises at the Customer's request. If customer relocates to a new address, this Agreement will automatically terminate and Customer will be required to enter into a new Customer Agreement to initiate service. Customer acknowledges that Customer may incur additional charges for any Equipment relocation.

### **6. Contact Address:**

For any inquiries or notice required in connection with this Agreement, Customer should contact Skybeam via e-mail at: info@skybeam.com, telephone at 1-888-759-2326, or in writing to Business Accounts at the address shown above.

## **7. Prohibited Uses of the Services:**

Customer shall not use the Equipment or the Service directly or indirectly to:

- a. perform any illegal activity;
- b. breach or attempt to breach the security of another user or attempt to gain access to any other person's computer, software or data without the knowledge and consent of such person. The Equipment and the Service may not be used in any attempt to circumvent the user authentication or security of any host, network or account. Use or distribution of tools designed for compromising security is also prohibited.
- c. invade another person's privacy;
- d. unlawfully use, possess, post, transmit or disseminate obscene material or child pornography;
- e. post, transmit, or disseminate content which violates any proprietary rights of Skybeam or any third party or is unlawful, threatening, abusive, libelous, slanderous, defamatory or otherwise offensive or objectionable;
- f. unlawfully promote or incite hatred;
- g. post, transmit or disseminate objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, federal or international law, order or regulation;
- h. upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information, software or other material obtained through the Service which is protected by copyright or other proprietary right, without obtaining permission of the owner;
- i. service, alter, modify or tamper with any Skybeam-owned Equipment or Service or permit any other person to do the same that is not authorized by Skybeam;
- j. restrict, inhibit or otherwise interfere with the ability of any other person to use or enjoy the Equipment or the Service, including, without limitation, posting or transmitting any information or software which contains a virus, lock, key, bomb, worm, Trojan horse or other harmful feature; or generating levels of traffic sufficient to impede others' ability to send or retrieve information;
- k. you may not reference Skybeam (e.g. by including "Organization: Skybeam" in the header or by listing an IP address that belongs to Skybeam) in the header of any unsolicited e-mails, even if that e-mail is not sent through the Skybeam network. URLs belonging to Skybeam include, but are not limited to the following: Skybeam.com and Skybeam.net.
- l. disrupt or attempt to disrupt Skybeam's backbone network. Prohibited disruptions include, but are not limited to, sending unsolicited bulk or commercial e-mail messages ("spam"). Unsolicited e-mail may not direct the recipient to any web site or other resource, which uses the Skybeam service. In addition, "mail bombing", the sending of numerous copies of the same or substantially similar messages or very large messages or files with the intent to disrupt a server or account, is prohibited;
- m. resell the Service or otherwise charge others to use the Service.
- n. use the Equipment or Services in a way which is contrary to any other Skybeam policy that may be posted by Skybeam from time to time. Specifically, customer agrees to abide by the Skybeam Acceptable Use Policy and should consult this document regularly to ensure that their activities conform to the most recent version.
- o. use an IP address or client ID not assigned to customer. Customer acknowledges that the IP address assigned by Skybeam is dynamically assigned, and may change at any time without notice.

Engaging in any of the activities listed above may result in immediate termination of this Agreement.

## **8. Customer Information:**

- a. Customer authorizes Skybeam to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's file.
- b. Skybeam collects and uses aggregate information about Internet usage such as sites visited, session lengths, bit rates, and number of bytes passed. Skybeam may share this aggregated information with other parties from time to time. Skybeam collects and uses personally identifiable information for billing purposes, as well as to anticipate and resolve problems with the Service. Skybeam will not use or disclose any personally identifiable information regarding Internet usage unless compelled by a court order or subpoena, Customer consents to the use or disclosure, or to protect Skybeam's broadband services and facilities.

## **9. Customer Service:**

Skybeam expressly reserves the right to institute fees for providing certain customer support services if, at its sole discretion, it determines such fees are warranted. Customer acknowledges that Skybeam shall not be liable for any damage to Customer's equipment resulting from or arising in connection with its provision of technical service and support for the Skybeam service even if such damage results from the negligence or gross negligence of the Skybeam installer, technician or customer service representative.

## **10. Termination and Expiration:**

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- a. The term of this Agreement shall commence on the Effective Date indicated above and shall have a Term of one (1) month unless otherwise noted on the "Order Form". After expiration, this Agreement shall automatically renew on a month to month basis at the then current Skybeam List Prices for the Services. At any time during the Renewal Term thereafter, either party may terminate this Agreement by giving ten (10) days' notice to the other party.
- b. Customer agrees that upon termination of this Agreement:
  1. Customer will permit Skybeam to access Customer's premises at an agreed-to time to remove any Skybeam Equipment and other material provided by Skybeam.

**11. Limited Warranty:**

ANY Skybeam EQUIPMENT AND SERVICE ARE PROVIDED BY Skybeam "AS IS" WITHOUT WARRANTY OF ANY KIND. SKYBEAM DOES NOT WARRANT UNINTERRUPTED USE OF THE EQUIPMENT OR THE SERVICE. SKYBEAM DOES NOT WARRANT THAT ANY DATA OR ANY FILES SENT BY OR TO CUSTOMER WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY EXCLUDED AND DISCLAIMED.

**12. Skybeam Performance and Reliability Rights:**

Although Skybeam will make every commercially reasonable effort to deliver a high quality Internet access service, unless otherwise specified by Skybeam in writing, customer is purchasing a best-effort data service with no performance or reliability warranty either expressed or implied. Skybeam reserves the right to manage its network for the greatest benefit of the greatest number of subscribers including, but not limited to the following: rate limiting, traffic prioritization, and protocol filtering. Customer expressly acknowledges and accepts that such action on the part of Skybeam may affect the performance of the service. Skybeam reserves the right to enforce limits on specific features of the Service, including, but not limited to, e-mail storage and web-hosting maximums.

**13. Damage to and Encumbrances on Premises, Equipment:**

- a. Ownership of Equipment. All equipment, except for equipment purchased and paid for in full by Customer, will at all times remain the property of Skybeam. Customer may not sell, transfer, lease, encumber or assign all or part of the Skybeam Equipment to any third party. Customer shall pay the full retail cost for the repair or replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Skybeam Equipment or part thereof, together with any costs incurred by Skybeam in obtaining or attempting to obtain possession of any such Skybeam Equipment. With regard to such equipment, Customer agrees:
  1. To use the equipment only for the purpose of receiving the services ordered from Skybeam and for no other purpose.
  2. To prevent any connections to the equipment which are not expressly authorized by Skybeam.
  3. To prevent tampering, altering or repair of the equipment by any person other than Skybeam's authorized personnel.
  4. To assume complete responsibility for improper use, damage or loss of such equipment regardless of cause.
  5. To return the equipment in good condition, ordinary wear and tear resulting from proper use excepted, immediately upon discontinuance of service. In the event the equipment is not returned to Skybeam in good condition, Customer agrees to pay to Skybeam the actual replacement cost for each Wireless Customer Premise System and for other equipment not returned.
- b. Skybeam may, at its option, install new or reconditioned Equipment, including swapping existing customer equipment for upgraded equipment, for which the customer may incur a fee.
- c. Customer's Premises, Equipment. If Skybeam damages the Customers' Premises or computer hardware during the Services' installation or maintenance, Skybeam will compensate the owner for reasonable, actual and documented costs of necessary repair, not to exceed \$1,000. Skybeam shall have no liability whatsoever for any damage to or loss or destruction of any software, files or data.

#### **14. No Skybeam Liability For:**

- a. **Content.** There may be some content on the Internet or otherwise available through the Service, which may be offensive to some individuals, or which may not be in compliance with all local laws, regulations and other rules. Skybeam assumes no responsibility for the content contained on the Internet or otherwise available through the Service. All content accessed by Customer through the Service is accessed and used by Customer at Customer's own risk, and Skybeam and each of their respective affiliates, subcontractors, employees and agents, shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content by Customer. Skybeam specifically disclaims any responsibility for the accuracy, quality and confidentiality of information obtained through the Service.
- b. **Eavesdropping.** Other Service subscribers may be able to access and/or monitor Customer's use of the Service. This risk of eavesdropping exists on the Internet and other services to which access is provided by Skybeam as part of the Service. Any sensitive or confidential information (such as credit card numbers or other financial information, medical information or trade secrets) sent by or to Customer is sent at Customer's sole risk, and neither Skybeam nor any of their respective affiliates, subcontractors, employees or agents, shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by Customer.
- c. **FTP/HTTP/Proxy/Gateway Server Setup.** Customer should be aware that when using the Service to access the Internet or any other online service, there are certain applications, such as FTP, HTTP, proxy, or gateway server applications, which may be used to allow other Service users and Internet users to gain access to Customer's computer. Neither Skybeam nor any of their respective affiliates, subcontractors, employees or agents, shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings, resulting from, arising out of or otherwise relating to the use of such applications by Customer, including, without limitation, damages resulting from others accessing Customer's computer or from any loss of data maintained on the Network.

#### **15. Limitation of Liability:**

Unless otherwise specifically provided in the Agreement, neither Skybeam nor any of their respective affiliates, subcontractors, employees or agents, will be liable to Customer or to any third party for:

- a. any direct, indirect, incidental, special, punitive or consequential losses or damages, including loss of profits, loss of earnings, loss of business opportunities and personal injuries (including death), resulting directly or indirectly from, or otherwise arising in connection with, the use of the Service by Customer or any other use of the Equipment, including without limitation, any damage resulting from or arising out of Customer's reliance on or use of the Equipment or Service, or the mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, non-deliveries, mis-deliveries, transmission, or any failure of performance of the Equipment or Service;
- b. any direct, indirect, incidental, special, punitive or consequential losses or damages, including loss of profits, loss of earnings, loss of business opportunities and personal injuries (including death), resulting directly or indirectly from, or otherwise arising in connection with, the termination or reclassification of Customer's account by Skybeam pursuant to the Agreement; and
- c. any losses, claims, damages, expenses, liabilities or costs (including legal fees) resulting directly or indirectly out of, or otherwise arising in connection with, any allegation, claim, suit or other proceeding based upon a contention that the use of the Equipment or Service by Customer or a third party infringes the copyright patent, trademark trade secret, confidentiality, privacy, or other intellectual property rights or contractual rights of any third party.
- d. The limitations set forth in this Section 15 apply to the acts, omissions, negligence and gross negligence of Skybeam and each of their respective affiliates, subcontractors, employees and agents, which, but for this provision, would give rise to a cause of action in contract, tort or any other legal doctrine.
- e. Customer's sole and exclusive remedies under this Agreement are as expressly set out in this Agreement. Some states do not allow the limitation or exclusion of incidental or consequential damages, so such limitations or exclusions may not apply to you.

#### **16. Multiple Users:**

Customer acknowledges that Customer is executing this Agreement on behalf of all persons who use the Equipment and/or Service through Customer's computer. Customer shall have the sole responsibility for ensuring that all such other users understand and comply with the terms and conditions of this Agreement. Customer further acknowledges and agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach is the result of use of the Service and/or Equipment by Customer or by any other user of Customer's computer.

**17. Governing Law:**

This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of Colorado. Customer may not bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.

**18. General:**

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supercedes and replaces any and all prior written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Skybeam's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. This Agreement may not be assigned or transferred by Customer. This Agreement is freely assignable by Skybeam to third parties.

Customer: \_\_\_\_\_

**Skybeam**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



SKYBEAM

HIGH-SPEED INTERNET • DIGITAL PHONE

## ***Service Agreement***

Thank you for choosing the Skybeam solution for your Internet needs. Once this service order is accepted by Skybeam a Colorado corporation, with offices at 320 Gateway Drive, Unit A, Berthoud, CO 80513, this Service Agreement and all documents referred to herein will constitute a binding agreement between you and Skybeam ("the Agreement") for the Service(s) on the attached Service Quote. This Agreement governs both the Service and any Devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection Device ("Device" or "Equipment"), used in conjunction with the Service.

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

### ***Skybeam Responsibilities***

Skybeam is responsible to provide best-effort Internet connections and voice quality between the Skybeam provided Wireless equipment and our Internet backbone. Skybeam is not responsible for download speeds from points anywhere further on the World Wide Web, as these are affected by several factors beyond our control. "Best-effort" as used herein is defined as remaining at the speeds advertised within the service plan purchased by the Customer throughout most of the Customer's daily use. Skybeam reserves the right to interrupt those speeds if necessary for equipment upgrades and network maintenance, and will do its best to inform the Customer of any such interruptions ahead of time.

Skybeam shall have the unrestricted right to engage subcontractors in rendering Services under this Agreement.

Skybeam is also responsible for providing and maintaining a number of e-mail accounts for the customer as specified in the chosen service plan.

### ***Customer Responsibilities***

Customers are responsible for upholding the non-transferability and account security of their service. The customer is entirely responsible for any actions, damages, or costs incurred via their account, regardless of who is using that account.

Customer's relationship with Skybeam is that of an independent contractor. Customer is not an agent of Skybeam, and Customer has no authority to obligate Skybeam by contract or otherwise.

### ***Emergency Services - 911 Dialing***

Skybeam 911 Dialing is similar in operation to traditional 911 Services except for during a power outage or broadband Service outage which will result in the inability to complete any call, including 911 calls. In some cases Services outages outside of your local area will result in the inability to complete calls. We recommend that our Customers maintain an active portable cellular telephone to be used in the event of an emergency during a Service outage. Following a power failure or disruption, You may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing. New Service orders and Service moves require 14 business days processing time to update the databases that the Public Safety Answering Point serving Your area uses to retrieve address location information based on Your telephone number when You dial 911. You must notify Skybeam in advance and in writing when the Service is moved. It is always a good idea to educate all Users of any 911 Service that it is important to make sure any emergency Services dispatcher has the correct address information. Young children that know how to dial a phone should also be able to tell someone their complete address and phone number. This is basic safety education that is the responsibility of the parent or guardian. We urge You to make sure that every member of Your household can recite this information if the need to do so arises. We hope that You and Your family never have the need to dial 911, but it is better to be prepared if the need arises. It is the Customer's responsibility to educate all members of the household and visitors about the limitations of the Skybeam 911 dialing Service.

Service outages or suspensions or terminations of Service by Skybeam will prevent all Services, including 911 Dialing, from functioning. 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. 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.

We do not have any control over whether, or the manner in which, calls using our 911 Dialing Service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither

Skybeam nor its officers or employees may be held liable for any claim, damage, or loss, and You hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing Service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless Skybeam, its officers, directors, employees, affiliates and agents and any other Service provider who furnishes Services to You in connection 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.

## **VoIP Service**

If You subscribe to Skybeam residential Services, the Service and the Device are provided to You solely for residential use. You shall not resell or transfer the Service or the Device to another party. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify Your Service if We determine, in our sole and absolute discretion, that Your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns. In addition, You will be required to pay our higher rates for commercial Service for all periods in which Your use of the Service or the Device was inconsistent with normal residential use.

If You subscribe to Skybeam Business Services, the Service and Device are provided to You as a small business User. You shall not resell or transfer the Service or the Device to another party. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify Your Service if We determine, in our sole and absolute discretion, that You have at any time used the Service or the Device for any of the aforementioned or similar activities.

If you subscribe to Skybeam PBX Services, the Service is provided to You as a small business User. You shall not resell or transfer the Service to another party. You are responsible for supplying; operating and supporting the standard SIP based Customer Premise Equipment for use with the Service. We reserve the right to immediately terminate or modify Your Service if We determine, in our sole and absolute discretion, that You have at any time used the Service for any of the aforementioned or similar activities.

The Service is not a telecommunications Service and We provide it on a best efforts basis. Important distinctions exist between telecommunications Service and the Service offering that We provide. The Service is subject to different regulatory treatment than telecommunications Service. This treatment may limit or otherwise affect Your rights of redress before regulatory agencies.

The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) Services in one or more (or all) Service areas.

The phone numbers You obtain from us will not be listed in any telephone directories. Phone numbers transferred from Your local phone company may, however, be listed. As a result, someone with Your phone number may not be able to utilize a reverse directory to lookup Your address.

The Service is not supported for use with home security systems. You will need to maintain a telephone connection through Your local exchange carrier in order to use any alarm monitoring functions for any security system installed in Your home or business. You are responsible for contacting the alarm monitoring company to test the alarm monitoring or security system.

Although We encourage You to use the Service to place calls to foreign countries from within the United States, We do not presently offer or support the Service in any countries other than the United States. If You use the Service or the Device outside of the United States, You will be solely responsible for any violations of local laws and regulations resulting from such use. We reserve the right to terminate Your Service immediately if We determine, in our sole and absolute discretion, that You have used the Service or the Device outside of the United States.

## **Acceptable Use Policy (AUP)**

All customer use of the Skybeam network and services must comply with the then-current version of the Skybeam Acceptable Use Policy (AUP), which is incorporated herein by this reference and made a part of this Agreement. The most current version of the Service Agreement which contains the AUP is available at <http://skybeam.com/support-docs/form-center.php>. Skybeam may change the AUP or these terms of service at any time, with or without notice. Such changes and their effective date will be posted on the Skybeam Web site or brought to your attention by appropriate means. You agree to review periodically, and if any change is not acceptable to you, you agree to terminate your subscription or authorized use by notifying Skybeam. Any termination by you shall be pursuant to the terms of this Agreement. Your continued use of Skybeam services after

Skybeam will immediately terminate any account which it believes, in its sole discretion, is transmitting or is otherwise connected with any spam or other unsolicited bulk e-mail. In addition, because damages are often difficult to quantify, if actual damages cannot be reasonably calculated then You agree to pay Skybeam liquidated damages of \$5 (US) for each piece of spam or unsolicited bulk e-mail transmitted from or otherwise connected with Your account, otherwise You agree to pay Skybeam actual damages, to the extent such actual damages can be reasonably calculated.

Skybeam has no obligation to monitor the Service or any User's use thereof or retain the content of any User session. However, Skybeam reserves the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request. Skybeam reserves the right to block access to any TCP/IP protocol ports required to enforce compliance with the TOS at any time with no notice.

### ***Service Bandwidth Resale***

Resale of bandwidth or any other part of the Service for any purpose is strictly forbidden. Failure to comply with this condition may result in immediate cancellation of the Service and termination of this Agreement for cause, at Skybeam's sole discretion.

### ***Privacy; Monitoring of Service***

Skybeam exercises no control whatsoever over the content of information passing through its network or equipment. You agree that all claims, disputes or wrong doing which result from your use of the service or which is related in any way to the content of information passing through Skybeam network or equipment are your sole and exclusive responsibility. If the Service includes space on any Skybeam server, you take full responsibility for the use of the Service by any minors and hereby consent to such minor's use of the Service. Skybeam is not liable for any lack of privacy which may be experienced with regard to the Service.

### ***Lawful Use***

Skybeam service may only be used for lawful purposes and in a manner consistent with the rights of other parties. Skybeam Services shall not be used in a manner which would violate any law or infringe on any copyright, trademark, trade secret, right of publicity, privacy right or any other right of any person or entity, or for the purpose of transmitting or storing material which is obscene, libelous or defamatory. Use and access to other networks through Skybeam must comply with the rules, regulations, terms, policies and/or conditions for such other networks. No individual or entity using the Skybeam network may use programs or methods intended to, or as a possible side-effect of their use, compromise the security of any system or device on our network or any external network, or attempt to bring about a denial of any form of service on our network or any external network.

The transfer of technology across national boundaries, including electronic transmission thereof, is regulated by the U.S. Government. Customer agrees not to export, import or re-export, (including, without limitation by way of electronic transmission) any technology transmitted through Skybeam Services without first obtaining any required export license or governmental approval. Customer agrees it will not directly or indirectly export or re-export such technology to any of those countries listed from time-to-time in supplements to Part 770 to Title 15 of the Code of Federal Regulations in Country Groups Q, S, W, Y or Z. The parties acknowledge that the foregoing lists are subject to regulatory change from time to time and Customer agrees to update the lists as appropriate.

Skybeam will cooperate fully with legal authorities in the investigation of suspected crimes or service abuses. Customer agrees to indemnify and hold harmless Skybeam, its agents and representatives, from any and all claims, costs, losses, damages, liabilities and expenses, including reasonable attorneys' fees for any reason whatsoever, including without limitation, any harm, injury, loss or damage incurred by Skybeam, or any other party, arising out of Customer's breach of this Lawful Use provision.

### ***COPYRIGHT, TRADEMARK, UNAUTHORIZED USAGE OF DEVICE, FIRMWARE OR SOFTWARE***

The Service and Device and any firmware or software used to provide the Service or provided to You in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our Websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of our Websites, corporate names, Service marks, trademarks, trade names, logos and domain names (collectively "marks") are and will at all times remain our exclusive property. Nothing in this Agreement grants You the right or license to use any of our marks.

You have not been granted any license to use the firmware or software used to provide the Service or provided to You in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You expressly agree that the Device is exclusively for use in connection with the Service and that We will not provide any passwords, codes or other information or assistance that would enable You to use the Device for any other purpose. We reserve the right to prohibit the use of any interface Device that We have not provided to You. You hereby represent and warrant that You possess all required rights, including software and/or firmware licenses, to use any interface Device that We have not provided to You. In addition, You shall indemnify and hold us harmless against any and all liability arising out of Your use of such interface Device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

You shall not change the electronic serial number or Equipment identifier of the Device or to perform a factory reset of the Device without our prior written consent. We reserve the right to terminate Your Service if We believe, in our sole and absolute discretion, that You have tampered with the Device. In the event of such termination, You will remain responsible for the full month's 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.

You shall notify us immediately, in writing or by calling our Customer support line, if the Device is stolen or if You become aware at any time that Your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When You call or write, You must provide Your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of Your Service and additional charges to You. Until such time as We receive notice of the theft, fraudulent use or unauthorized use, You will be liable for all use of the Service using a Device stolen from You and any and all stolen, fraudulent or unauthorized use of the Service.

## ***Security***

You can best control the risks associated with security, and are therefore solely responsible for maintaining such security. Skybeam will not be responsible for any disruption of service, corrupted files or viruses which affect the user of the Service. It is your responsibility to safeguard your system, through appropriate means (e.g. using commercially available software), from theft, unauthorized use or system corruption. Any detriment caused to the network as a result of your failure to properly secure your system may result in the immediate termination of your Service.

## ***Service Availability***

Due to the nature of the Service technology, Skybeam reserves the right to deem the Service unavailable to you up to, including, and after the installation. Skybeam assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to the unavailability of the Service in your geographical area, for any reason, even where such unavailability occurs after installation of the Service.

## ***Performance Levels***

Speed is a function of the traffic experienced upon the wider network architecture of the Internet itself. Skybeam does not guarantee the maximum Service performance (throughput speeds) levels but will make every reasonable effort to ensure the highest possible quality of service is always delivered. You understand that any content that you may access through the Service may be subject to "caching" at intermediate locations on the Internet.

## ***Skybeam Equipment***

Skybeam will provide you the authorized Wireless radio equipment for use with your Service. Only Skybeam Consumer Premises Equipment ("CPEs") are permitted and authorized to be connected to the Service. Skybeam will own the radio installed at the customer location, and will monitor and upgrade said equipment as Skybeam determines to be necessary and appropriate.

## ***Your Equipment***

It is your responsibility to ensure that your computer system meets the current minimum system requirements stated by Skybeam as being necessary to use the Service. From time to time, the computer equipment required to access and use the Service may change. Accordingly, your computer equipment may cease to be adequate to access the Service. In such event, your sole remedy will be to upgrade your computer equipment or terminate this Service Agreement. Lesser equipment may perform adequately, but Skybeam cannot ensure acceptable system use.

(i) Windows System Desktop or Laptop  
Microsoft Windows NT 4.0/2000/XP/VISTA  
Pentium Processor 400 MHz, or equivalent  
32 MB of memory (RAM) 75 MB of free  
hard drive space 256 colors at 800x600  
resolution Ethernet card (NIC) CD-ROM  
drive

(ii) Macintosh System MAC OS 8.0 and Open  
Transport 2.6 installed 32 MB of memory  
(RAM) 75 MB of free hard drive space 256  
colors at 800x600 resolution Ethernet card  
(NIC) CD-ROM drive

## **IP Addresses**

Internet Protocol ("IP") addresses are not portable and are not assigned for independent administration or distribution. Customer understands that IP assignments are not guaranteed, and may be modified as required by Skybeam and/or the American Registry for Internet Numbers (ARIN).

## **Throughput volume**

Each account has a standard quota for disk space and data transfer Throughput Volume usage. At Skybeam's discretion additional quota may be added to your account for a recurring fee, based on Skybeam's then-current rates. Usage above your quota limits will result in additional charges as described in the then-current Skybeam pricelist.

## **Term / Cancellation Policy**

If Customer chooses to cancel the Service at any point after the order is placed, but before the Service has been activated, Customer will be invoiced, and agrees to pay, a \$49 processing fee. If Customer wishes to cancel the Service before Service has been activated, the customer is required to give Skybeam at least fifteen (15) days written notice of his/her intent to cancel. This may be done through regular postal mail sent to Skybeam, 320 Gateway Drive, Unit A, Berthoud, CO 80513.

Termination does not affect your obligations under this Agreement, including your obligation to pay all fees for Services rendered prior to termination and any termination, processing and administration fees incurred as a result of such termination. Skybeam accounts must be paid in full before a cancellation will be considered complete.

In the event you upgrade your Skybeam Service, you will be required to enter into a new Service Quote.

If all Equipment provided by Skybeam is not returned within 30 days of cancellation of Service you agree to pay Skybeam the greater of \$250 or the current replacement cost of the Equipment provided. You authorize Skybeam and its agents to charge the Equipment replacement charge to the credit card on file with Skybeam. If Skybeam is unable to obtain a charge authorization for the full amount due, You agree to provide alternative payment in the form of a money order, cashiers check, or other certified bank check within 10 days of notification of the amount due. 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.

Upon the termination of Your Service, We may, in our sole and absolute discretion, release to Your new Service provider the telephone number that You ported (transferred or moved over) to us from Your previous Service provider and used in connection with Your Service if; such new Service provider is able to accept such number, Your account has been properly terminated, Your account is completely current, including payment for all charges and applicable termination fees, and You request the transfer upon terminating Your account.

## **Termination and Suspension**

Inappropriate use or abuse of our services by Customers, as determined in the sole discretion of Skybeam, may result in account suspension, termination, and/or legal action. Inappropriate use or abuse of our services by others can be traced, documented, reported to appropriate authorities and may be prosecuted to the fullest extent of the law.

Skybeam may terminate your account immediately if it determines, in its sole discretion, that you have violated any of the provisions of the Agreement. Skybeam reserves the right to unilaterally terminate or suspend an account at any time, without providing a reason. In the event of termination, account holders are still responsible to pay any fees that are still owed to us. The balance of any prepaid fees, after deducting all applicable charges and fees, will be refunded to the account holder on a pro-rated basis. Any penalties for criminal action will be deducted from amounts owed before refunds are provided.

Further, Service may be terminated by you or Skybeam for any reason effective at the end of a calendar month by providing written notice to the other party at least thirty (30) days prior to the requested termination date.

If Your Service is terminated, 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.

## **Payment and Billing**

### **Fees**

Fees include, without limitation, set up fees, monthly service fee, and equipment fees and other applicable costs set forth in the Service Quote. Skybeam will invoice fees for Services and any equipment in advance. You agree to pay all federal, state or local taxes arising under this Agreement. Setup fees are not refundable. If you deem it necessary to re-terminate the circuit (move to new location) you will be responsible for additional Skybeam, Inc fees. Skybeam is not responsible for Service disruptions caused by re-termination. The recurring charge payable by Customer for the Services is as stated on a separate Service Quote.

Charges for Directory Assistance Calls (411). We will charge You \$0.99 for each call made to Skybeam directory assistance.

### **Payment Method and Timing**

Accounts may be paid by electronic bank draft, money order, check or on-line credit card. Your Skybeam account will be considered delinquent if your payment is rejected for any reason. Accounts with returned electronic bank drafts or checks are subject to a \$25.00 processing fee per incident.

Payment terms: Payment shall be due 10 days after invoice date considered late if not received within 20 days of the invoice date. Payment is in advance of service delivery for that month.

### **Late Fees**

Late fees are established to recover the costs of dealing with late payment situations. Late fees are in addition to all other fees, including, without limitation, return bank draft fees or checks provided for herein or in the Service Quote.

- 30 days late – The customer is subject to a late fee of \$5. The late fee charge is determined by the date payment is received in the Skybeam office.
- 45 days late – The customer's service will be shut off.
- 60 days late – Customer's outstanding balance will be sent to collections.
- 75 days – Skybeam will call customer to inform them that we are going to come out to remove our equipment

If the customer pays before the equipment is actually removed, there will be an additional reconnect fee of \$30 and automatic payment set-up will be required. If the customer pays after the equipment is removed, and desires to continue with Skybeam's service, customer will be charged a regular initial installation fee.

## ***Moving / Reconnection Fee***

Customer will not remove the Equipment from the Premises, modify the Equipment in any way, or connect the Equipment to any outlet other than the outlet to which the Equipment was initially connected to by the Skybeam installer. For such charges as Skybeam may determine, Skybeam may relocate the Equipment for Customer within the Premises at the Customer's request. If the Customer moves during the term of this Agreement and would like to relocate the Service, Customer must place a relocation request with Skybeam at least two (2) weeks prior to the requested date for service transition. This request must contain the requested date of service termination, plus the address and phone number of the new location, and, the prospective move-in date, and the requested transfer of Service date. Upon receipt of a written or email relocation request from Customer, Skybeam will suspend all monthly fees from the requested termination date until service relocation is completed. The maximum suspension will be thirty (30) days. Skybeam will invoice Customer, and Customer agrees to pay, a new installation fee, including applicable discounts. Upon transfer of Customer's account, Customer agrees to continue to comply with all terms and conditions of this Agreement and the Service Quote. Billing cycle and service term will recommence upon activation of Skybeam Service at the new location. If Skybeam and its agents are unable to provide Service to Customer's new location, this Agreement shall terminate and applicable Early Termination fees shall be applied. If Skybeam has not yet received sufficient information from Customer to process the relocation order thirty (30) days after service termination, this Agreement is considered to be terminated by Customer, and Early Termination fees will apply.

## ***Installation***

Skybeam will provide installation services at the Customer premises at an agreed-upon price.

## ***Access to Customer's Premises***

Customer authorizes Skybeam, and its employees, agents, contractors, and authorized representatives to enter Customer's premises (the "Premises") in order to install, maintain, inspect, repair and remove the Equipment and/or Services. If Customer is not the owner of the Premises, upon request, Customer will supply Skybeam with the owner's name and address, evidence that the Customer is authorized to grant access to the Premises on the owner's behalf, and (if requested by Skybeam) written consent from the owner of the Premises. This Agreement is contingent upon Skybeam's obtaining a right of entry onto the Premises.

## ***Fee Changes***

Customer acknowledges and agrees that Skybeam has the right to change its Service fees at any time, upon notice to Customer.

## ***Customer Charges***

Customer acknowledges that Customer may incur Customer-initiated charges while using the Services. For example, charges may be incurred as a result of Customer accessing certain information, or purchasing or subscribing to certain offerings, via the Internet. Customer agrees that all such charges, including all applicable fees and taxes, shall be paid by Customer and are not the responsibility of Skybeam.

## ***Acceptance***

The Customer agrees to all Terms of Service set out in this Agreement. Customer represents and warrants to Skybeam that Customer is of lawful age to enter into this Agreement and that (i) the Customer has the full right, power and authority to enter into this Agreement and to perform the acts required of Customer hereunder; (ii) the execution of this Agreement by Customer, and the performance by Customer of its obligations and duties hereunder, do not and will not violate any agreement to which Customer is a party or by which it is otherwise bound; and (iii) when accepted by such Customer, this Agreement will constitute the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

By using and accepting Service from Skybeam, Customer agrees to be legally bound by all of the Terms and Conditions of this Agreement and associated documents, the same as if Customer had signed this Agreement. These terms and conditions supersede all other written and oral communications or agreements with regard to the subject matter. Any waiver, modification or variation of these Terms and Conditions shall only be effective if in writing and/or in the form of a business contract signed by an authorized officer of Skybeam.

## **Authorization**

As part of the installation process, modifications to the inside wiring in your house may be required, and you hereby consent to such modifications.

## **Customer Complaint Resolution**

We are working to provide the best service possible and welcome your ideas on how we can improve the quality of our service. You can communicate your views to us in any of the following ways:

- 1) Call our main office number, 888-759-2326 during regular business hours: email: [techsupport@skybeam.com](mailto:techsupport@skybeam.com) .
- 2) Write to the Director of Customer Operations: 320 Gateway Drive, Unit A, Berthoud, CO 80513

## **Warranty/Limitation of Liability/Disclaimer of Liability**

YOU ASSUME FULL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES AND PRODUCTS TO ACHIEVE YOUR INTENDED PURPOSE. THE SERVICES AND ANY EQUIPMENT AND SOFTWARE PROVIDED TO YOU BY SKYBEAM ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. SKYBEAM DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES OR PRODUCTS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES AND PRODUCTS WILL BE UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, AND DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER SKYBEAM NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF SKYBEAM OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY SKYBEAM OR SKYBEAM AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC RIGHTS, WHICH VARY FROM STATE TO STATE.

### **LIMITED WARRANTY**

## **HIGH-SPEED INTERNET • DIGITAL PHONE**

SKYBEAM WARRANTS THAT IT WILL USE REASONABLE EFFORTS TO RENDER SERVICES PURSUANT TO THIS AGREEMENT IN A TIMELY, PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH TIMELINES ESTABLISHED HEREIN. ANY CLAIM FOR BREACH OF THE FOREGOING WARRANTY MUST BE BROUGHT WITHIN SIXTY (60) DAYS AFTER CUSTOMER'S ACTUAL DISCOVERY OF ANY DEFECT AND PRIOR TO THE EXPIRATION OF SIX (6) MONTHS FROM THE DATE THE APPLICABLE SERVICES WERE RENDERED. SKYBEAM WILL HAVE NO LIABILITY FOR ANY CLAIM MADE AFTER SUCH TIME. SKYBEAM DOES NOT WARRANT, HOWEVER, THAT YOUR USE OF ANY SERVICES WILL BE UNINTERRUPTED OR THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE OR SECURE. SKYBEAM'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY IN CASE OF BREACH OF THIS WARRANTY SHALL BE, AT SKYBEAM'S SOLE OPTION, EITHER RETURN OF ALL OR A PORTION OF THE SERVICE FEES PAID FOR THE CURRENT MONTH OF SERVICE, OR REPLACEMENT OR REPAIR OF CONNECTION SERVICES OR PRODUCTS. THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY SKYBEAM. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO LIMITATIONS MAY NOT APPLY TO YOU. IF ANY UNAUTHORIZED MODIFICATIONS ARE MADE TO THE EQUIPMENT OR SERVICES BY YOU DURING THE WARRANTY PERIOD, IF THE SERVICES OR PRODUCTS ARE SUBJECT TO ABUSE, ACCIDENT, IMPROPER USE, OR IF YOU BREACH THE TERMS OF THIS AGREEMENT, THEN THIS WARRANTY SHALL IMMEDIATELY BE TERMINATED.

## **LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT SKYBEAM WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF USE, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL, WORK STOPPAGE, TITLE, OR ANY OTHER DAMAGE OR LOSSES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE ARISING OUT OF OR RELATED TO THE AGREEMENT OR YOUR USE OF OR INABILITY TO USE SKYBEAM SERVICES, EVEN IF YOU ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL SKYBEAM BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OR DAMAGE CAUSED BY RELIANCE ON DATA OR INFORMATION AVAILABLE FROM OR ON SKYBEAM SERVICES AND SYSTEMS. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

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, VENDOR OR OTHER THIRD PARTY; EQUIPMENT, NETWORK OR FACILITY FAILURE; EQUIPMENT, NETWORK OR FACILITY UPGRADE OR MODIFICATION; FORCE MAJOR 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 BY, YOUR ISP OR BROADBAND SERVICE PROVIDER OR OTHER IMPEDIMENT TO USAGE OF THE SERVICE CAUSED BY ANY THIRD PARTY; ANY ACT OR OMISSION BY YOU OR ANY PERSON USING THE SERVICE OR DEVICE PROVIDED TO YOU; OR ANY OTHER CAUSE THAT IS BEYOND OUR CONTROL, INCLUDING, WITHOUT LIMITATION, A FAILURE OF OR DEFECT IN ANY DEVICE, THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, THE INABILITY OF COMMUNICATIONS (INCLUDING, WITHOUT LIMITATION, 911 DIALING) TO BE CONNECTED OR COMPLETED, OR FORWARDED. OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD.

OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE. DEVICE WARRANTIES DO NOT APPLY TO BUSINESS PLUS CUSTOMERS.

IN NO EVENT SHALL SKYBEAM'S AGGREGATE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS PAID BY YOU FOR THE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO A CLAIM. NOTWITHSTANDING THE FOREGOING, SOME JURISDICTIONS MAY NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY, AND SKYBEAM LIMITS ITS LIABILITY IN SUCH JURISDICTIONS ONLY TO THE DEGREE ALLOWED BY APPLICABLE LAWS.

SKYBEAM, ITS EMPLOYEES, AGENTS, SUPPLIERS, VENDORS AND DISTRIBUTORS MAKE NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, OR VALIDITY OF THE DATA AND/OR INFORMATION AVAILABLE ON ITS SYSTEMS, OR RESIDING ON OR PASSING THROUGH ITS NETWORKS, OR THAT SKYBEAM SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. USE OF INFORMATION OBTAINED FROM OR THROUGH SKYBEAM IS AT YOUR OWN RISK. EXCEPT FOR THE PAYMENT OF FEES DUE BY CUSTOMER HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE UNDER THE AGREEMENT WHICH MIGHT BE DUE, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, TO ANY CONTINGENCY, DELAY, FAILURE, OR CAUSE OF ANY NATURE BEYOND THE REASONABLE CONTROL OF SUCH PARTY, INCLUDING WITHOUT LIMITATION ACTS OF NATURE, COURT OR GOVERNMENT.

IN NO EVENT WILL SKYBEAM, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY 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.

CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR INDEPENDENT BACKUP OF ANY DATA FILES RESIDING ON SKYBEAM COMPUTERS OR NETWORKS. SKYBEAM RESERVES THE RIGHT TO REMOVE/DELETE ANY PERSONAL FILES AFTER AN ACCOUNT IS TERMINATED OR ASSOCIATED WITH PROHIBITED ACTIVITIES.

BY RECEIVING SKYBEAM SERVICES YOU EXPRESSLY AGREE THAT THE USE OF THE EQUIPMENT AND SOFTWARE IS AT YOUR SOLE RISK. WITH RESPECT TO THE EQUIPMENT AND SOFTWARE PROVIDED BY SKYBEAM, SUCH EQUIPMENT AND SOFTWARE ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. SKYBEAM IS NOT RESPONSIBLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE INSTALLATION OR USE OF THE EQUIPMENT OR SOFTWARE.

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.

You will be liable for any and all liability that may arise out of the content transmitted by You or to any person, whether authorized or unauthorized, using Your Service or Device (each such person, a "User"). You shall assure that Your and Your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to terminate or suspend Your Services and remove Your or Your Users' content from the Service, if We determine, in our sole and absolute discretion, that such use or content does not conform to the requirements set forth in this Agreement or interferes with our ability to provide Services to You or others. Our action or inaction under this Section will not constitute any review or approval of Your or Users' use or content.

The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

### ***Indemnity***

You agree to defend, indemnify and hold Skybeam its officers, directors, agents and employees harmless from any claims, losses and damages, including attorney's fees, resulting from your violation of any of the provisions of this Agreement or your placement or transmission of any materials or content onto Skybeam servers or through its network, or from any and all use of your account, with or without your knowledge or consent, or from all claims, damages, fines, penalties, costs and expenses (including, without limitation, attorney fees) related to any action taken by Skybeam as part of its investigation of a suspected violation of this Agreement or as a result of its conclusion that a violation of this Agreement has occurred, or to your use of or inability to use Skybeam Services, equipment, bundled software, Internet or VoIP, including, without limitation, 911 dialing.

### ***Transferability and Assignment***

You shall not sell, transfer or assign this Agreement. Customer's account and right to use Skybeam Services and system are not transferable without Skybeam's prior written consent. Customer agrees to protect its password and account and to keep them secure from unauthorized users and use, and to be solely responsible for the protection and security of Customer's password and account information.

### ***Nature of Information***

The Customer has been advised and acknowledges that the Internet may contain information, materials, and language that may be deemed adult in nature and inappropriate or offensive. The Customer is responsible for all information received, transmitted, and/or stored by the Customer and the Customer releases Skybeam from and agrees to indemnify Skybeam its officers, directors, agents and employees against any and all claims, losses or expenses relating to such information, materials and language. This indemnification shall survive any termination of this Agreement.

### ***Notices***

Notification of either party to this Agreement shall be effective upon receipt, or refusal of delivery, when deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or when sent by a telefax, email, or a nationally recognized overnight delivery service, to the address of Skybeam set forth above or to the address of Customer set forth on Skybeam's records or such other address provided for such purposes.

### ***Proprietary Rights***

Skybeam grants Customer a non-exclusive, non-transferable license to use the products and Services provided hereunder. Title and property rights, including all intellectual property rights to such products and services, is and shall remain with Skybeam, whether or not they are embedded in any product. Customer recognizes that the products and Services used hereunder constitute valuable trade secrets of Skybeam. The Customer shall use its best efforts to protect and keep confidential any and all products and services used by customer and shall not attempt to copy, examine, in any way alter, or reengineer, reverse engineer, tamper with, or otherwise misuse such products and services.

## ***Jurisdiction/Venue/Choice of Law***

You agree that exclusive jurisdiction for any claim or dispute with Skybeam or relating in any way to your account or your use of the Services resides in the courts of Colorado and that this Agreement shall be governed by Colorado law. You expressly consent to the exercise of personal jurisdiction in the courts of Colorado in connection with any such dispute. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement or compel performance thereof, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.

## ***Amendments***

Skybeam may modify this Service Agreement from time to time, and your continued use of the Service following notice of such modification shall be deemed to be your acceptance of such modification. If you do not agree to any modification of this Service Agreement, you must immediately stop using the Service and notify Skybeam of your desire to cancel the Service.

## ***Information***

You hereby acknowledge that Skybeam and its affiliates may retain and use any information, comments or ideas conveyed by you relating to the Service (including any products and services made available on the Service). This information may be used to provide you with better service. Skybeam may open and maintain a customer file.

## ***Entire Agreement***

This Service Agreement, including the Service Quote and any and all other documents and Skybeam policies referenced herein, constitutes the entire agreement between Skybeam and you pertaining to the subject matter hereof. Skybeam's failure to insist upon or enforce strict performance of any provision of this Service Agreement shall not be construed as a waiver of any provision or right.

In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealed judgment that any provision of these Terms and Conditions (or part thereof) is void, invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of the Service Agreement will remain in full force and effect.

BY YOUR USE AND ACCEPTANCE OF THE SERVICE, YOU ARE INDICATING THAT YOU ARE OF LEGAL AGE AND HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT PRESENTED.

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