

# VOICE AGREEMENT

This Agreement (“Agreement”) is between SKYBEAM and an end user of SKYBEAM’s enhanced voice communications services as described below. This Agreement governs both the services described below and any devices provided by SKYBEAM for use in conjunction with the services, including but not limited to the “SKYBEAM Equipment” (as defined herein). In this Agreement, “you” and “your” mean the customer of the SKYBEAM services defined below, and “SKYBEAM,” “we,” “our,” and “us” mean SKYBEAM, and any SKYBEAM affiliates authorized to provide you with SKYBEAM services. BY ENROLLING IN, ACTIVATING, USING, OR PAYING FOR THE SERVICES, YOU AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, INCLUDING THOSE PERTINENT TO 911 EMERGENCY DIALING, AND TO THE PRICES, CHARGES, TERMS AND CONDITIONS PROVIDED TO YOU WITH RESPECT TO THE SERVICE DURING THE SERVICE REGISTRATION PROCESS, INCLUDING IN MARKETING MATERIALS ASSOCIATED WITH YOUR OFFER, AND ON THE SKYBEAM VOICE SERVICE WEB SITE, ALL OF WHICH ARE INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THE AFOREMENTIONED TERMS AND CONDITIONS, DO NOT USE THE SERVICES, AND CANCEL THE SERVICES IMMEDIATELY BY CALLING SKYBEAM AT 1-866-411-3278 FOR FURTHER DIRECTIONS.

## 1. SERVICE DESCRIPTION

SKYBEAM Voice Service is an enhanced voice communication service whereby the voice communication is converted to Internet Protocol (“IP”) and carried, in part, over high-speed internet access, also known as broadband internet service. This service may be generically referred to as “voice over IP” and is defined to include: (a) voice over IP unlimited local and nationwide calling within the United States; (b) the following regular call features: Caller ID With Number Only, Call Waiting, Call Forwarding; (c) the following advanced service features: Personal Conferencing, Do Not Disturb, Voicemail, Call Logs, Phone Feature Manager, and (d) other features or advanced features which SKYBEAM, in its sole discretion, may add from time to time.

## 2. SERVICE REQUIREMENTS

SKYBEAM Voice Service requires: (a) specialized customer premises equipment called a telephone adapter (“ATA” or “SKYBEAM Equipment”) which SKYBEAM provides at an additional charge to you for connectivity from a regular telephone handset (which you need to supply) to

your broadband connection and which you are responsible for installing yourself pursuant to instructions provided to you by SKYBEAM; and (b) a broadband connection via cable modem (2-way cable) or DSL with broadband capability of at least 90 Kbps upstream speed that you have a right to use at your own expense. **Since voice over IP is dependent on the broadband connection, the availability of an adequate power supply and correct ATA configuration, SKYBEAM does not guarantee that the service will be continuous or error-free.**

### **3. SKYBEAM VOICE SERVICE 911 EMERGENCY DIALING**

**PLEASE READ THE INFORMATION BELOW ABOUT 911 DIALING CAREFULLY. BY USING AND PAYING FOR THE SERVICES, YOU ACKNOWLEDGE AND AGREE TO ALL OF THE INFORMATION BELOW REGARDING THE LIMITATIONS OF SKYBEAM VOICE 911 EMERGENCY DIALING SERVICE, AND THE DISTINCTIONS BETWEEN SUCH SERVICE AND TRADITIONAL 911 OR e911 CALLS.**

**911 OR e911 CALLS FROM TELEPHONES CONNECTED TO THE TELEPHONE ADAPTER PROVIDED FOR THIS SERVICE WILL FORWARD TO THE REGIONAL EMERGENCY DISPATCH CENTER ONLY IF THE CUSTOMER HAS PROVIDED THE PHYSICAL ADDRESS FOR THE HANDSET. THIS LOCATION WILL BE ENTERED BY THE CUSTOMER AND MAINTAINED BY THE CUSTOMER USING OUR BRANDED E911 SERVICES REGISTRATION PAGE AVAILABLE AT:**

**SKYBEAM**  
[e911 Registration](#)

**YOU ACKNOWLEDGE THAT WE HAVE TOLD YOU THAT THE SERVICE DOES NOT SUPPORT TRADITIONAL 911 OR e911 UNTIL REGISTERED AND CONFIRMED.**

**YOU ACKNOWLEDGE THAT SKYBEAM DOES NOT OFFER PRIMARY LINE OR LIFELINE SERVICES, AND THAT SKYBEAM STRONGLY RECOMMENDS THAT YOU ALWAYS HAVE AN ALTERNATE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.**

### **4. OTHER SERVICE DISTINCTIONS**

#### **a. Privacy and Security**

Voice over IP communication utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. You acknowledge and understand that SKYBEAM cannot guarantee that voice over IP communication is completely secure. SKYBEAM always respects your privacy and treats the content of all communications as private, except

as may be required by law. Please refer to the SKYBEAM Online [Privacy Policy](#) for additional information.

**b. Power Outages**

You acknowledge and understand that the Service does not function in the event of power failure. Should there be an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require you to reset or reconfigure equipment prior to utilizing the SKYBEAM Voice Service.

**c. Broadband Service Interruptions**

You acknowledge and understand that the Service does not function in the event of interruption of your broadband or high speed Internet access service.

**d. Home Security Systems and other Non-voice Communications Equipment**

**All non-voice communications equipment, including but not limited to, home security systems that are set up to make automatic phone calls, fax machines, modems and medical monitoring devices, are not compatible with SKYBEAM Voice Service.** By accepting this Agreement, you waive any claim against SKYBEAM for interference with or disruption of such systems due to the Services.

**e. Local Number Portability**

In the event you are not utilizing a new phone number for your SKYBEAM Voice Service, but rather are transferring an existing phone number, which currently is subscribed to a carrier other than SKYBEAM for local, local toll and/or long distances telecommunications services, to SKYBEAM Voice Service, the terms and conditions of this paragraph shall apply:

1) you hereby authorize SKYBEAM to process your order for SKYBEAM Voice Service and to notify your local telephone company of your decision to switch your local, local toll and long distance services to SKYBEAM Voice Service, and represent that you are authorized to take this action;

2) you agree and acknowledge that if you set up your ATA prior to the date that the number switch becomes effective ("Port Effective Date"), you will be able to make outgoing calls only over the phone you have connected to the ATA. **In such event, you should keep another phone connected to an existing phone extension at your service location to receive**

**incoming calls until the Port Effective Date, after which you will be able to both make and receive calls using the SKYBEAM Voice Service; and**

**3) you agree and acknowledge that if your ATA is not yet activated as of the Port Effective Date, your existing phone service for the number you are transferring will be disconnected you will have no service for that line. Therefore, to avoid an interruption in your phone service, it is extremely important that you install the ATA prior to, or on, the Port Effective Date.** An estimate of the Port Effective Date will be sent to you via e-mail by SKYBEAM following your completion of the ordering process.

## **5. USE OF SERVICE**

### **a. Lawful, Non Fraudulent Use of Service and ATA**

SKYBEAM will accept no more than 3 orders for SKYBEAM Voice Service per household. You agree to use the Service and ATA only for lawful purposes. You will not use the Service or ATA for any unlawful, abusive, or fraudulent purpose, including, for example, using the Service in a way that (1) interferes with our ability to provide Service to you or other customers; or (2) avoids your obligation to pay for communication services. If SKYBEAM has reason to believe that you or someone else is abusing the Service or using it fraudulently or unlawfully, we can immediately suspend, restrict, or cancel the Service without advance notice. The ATA is intended for use only in the United States. If you remove the ATA to a country other than the United States and attempt to use the Service from there, you do so at your own risk, including the risk that such activity violates local laws in the country where you do so. SKYBEAM reserves the right to terminate your service immediately and without advance notice if you violate the above restrictions, leaving you responsible for all outstanding charges, all of which immediately become due and payable.

### **b. Theft of SKYBEAM Equipment or Service**

You agree to notify SKYBEAM immediately, in writing or by calling the SKYBEAM customer support line, if the ATA is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the ATA theft or stolen or fraudulent use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you.

### **c. Prohibited Uses of Service**

You are expressly prohibited from reselling or transferring the Service or SKYBEAM Equipment

to any other person for any purpose, without express written permission from SKYBEAM in advance. In addition, you are expressly prohibited from using the Service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for uses that result in excessive usage inconsistent with normal residential or home office usage patterns. If SKYBEAM determines, in its sole discretion, that your Service is being used for any of the aforementioned activities, SKYBEAM reserves the right to immediately terminate without advance notice or modify the Service and to assess additional charges for each month in which excessive usage occurred. Any usage in excess of 5,000 minutes per month shall be presumed to be not consistent with these restrictions and shall be subject to the conditions above.

**d. Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software**

The Service and ATA and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the ATA, and all Services, information, documents and materials on SKYBEAM's web site(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "Marks") of SKYBEAM are and shall remain the exclusive property of SKYBEAM and nothing in this Agreement shall grant you the right to right or license to use such Marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the ATA, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and that the ATA is exclusively for use in connection with the Service. If you decide to use the Service through an interface device not provided by SKYBEAM, which SKYBEAM reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Service and you will indemnify and hold harmless SKYBEAM against any and all liability arising out of your use of such interface device with the Service.

**e. Tampering with the ATA**

You agree not to change the electronic serial number or equipment identifier of the ATA, or to perform a factory reset of the ATA, without express permission from SKYBEAM in each

instance. SKYBEAM reserves the right to terminate your Service should you tamper with the ATA.

## **6. CANCELLATION OF SERVICE BY YOU OR SKYBEAM**

You may cancel the Service at any time by calling 1-866-411-3278 and notifying the SKYBEAM customer service representative. If for any reason you cancel SKYBEAM Voice Service or if SKYBEAM cancels the Service pursuant to the terms of this Agreement, SKYBEAM will provide instructions on how to dispose of the SKYBEAM Equipment. If you receive the SKYBEAM Equipment associated with your SKYBEAM Voice Service free of charge and you either do not subscribe to SKYBEAM Voice Service within six months of your receipt of the ATA or you cancel your SKYBEAM Voice Service within 30 days of your activation thereof for reasons other than your dissatisfaction with the Service, SKYBEAM reserves the right to request that You return the SKYBEAM Equipment to SKYBEAM at SKYBEAM's expense, and you agree to return the Equipment within 30 days of SKYBEAM's direction to you to do so.

## **7. BILLING AND PAYMENT FOR SERVICE**

a. SKYBEAM will render to you monthly on-line bills for SKYBEAM Voice Service, with the following charges:

1. a monthly service flat fee for unlimited local and nationwide calling, call features, and advanced service; and
2. international calls (which are not included in the monthly fee), charged on a per minute usage basis. You can view the rates for international calls placed over SKYBEAM [Voice Service](#). Where you obtained your ATA directly from SKYBEAM, SKYBEAM also reserves the right to charge you a fee for the ATA, and for associated shipping charges, and for activation and early termination fees, all as further described in the marketing materials pertinent to your offer. The early termination fee applicable to your offer will not apply if you cancel your service less than 30 days or more than one year after the date we commence billing for your service. If, in addition, you also receive traditional non-Voice over IP SKYBEAM local, local toll and/or long distance services, the charges for these services will not appear on the same online bill. You will continue to be separately responsible for those charges.

### **b. Payment Method for Online Bills**

You authorize SKYBEAM to charge any amounts payable by you in connection with your use of the Service automatically by credit card. Your right to use the Service is subject to any limits established by your credit card issuer. Your charges and credits issued in accordance with

Section 7(a). You give SKYBEAM permission to obtain authorization for use of your credit card from your credit card issuer.

**c. Commencement of Billing**

You understand that you are responsible for self-installing the ATA once you receive it. Where you purchase the ATA directly from SKYBEAM, once your order is processed and the Service is provisioned, we will ship you the ATA by 2 day mail, and will begin monthly billing for the Services promptly after the ATA shipment date (we refer to this date as the "Service Activation Date"). You are encouraged to complete installation of the ATA promptly because you will be responsible for full payment for the charges on your SKYBEAM bill even if you have not yet installed the ATA and used the Service at the time the bill is rendered.

**d. Price Changes**

We may change the prices and charges for the Services and/or international calling from time to time. We may decrease prices without providing advance notice. Increases to the prices or charges for the Services and/or international calling are effective no sooner than fifteen days after we post them on our [web site](#). Increases to charges that recover our costs associated with government programs are effective no sooner than 3 days after we post the increases on our web site.

**e. Charges and Billing**

Charges accrue through a full billing period. To determine the charge for each international call, we round up to the next full minute for any fraction of minutes used. We will determine the format of the bill and the billing period, and we may change both the bill format and the billing period from time to time.

**f. Failure to Pay**

Upon advance notice, we may suspend, restrict, or cancel the Services and this Agreement, if you do not make payments for current or prior bills by the required due date. Service suspension or cancellation will result in your loss of the number associated with the Service.

**g. Late Payment Charge**

We may add interest charges to any past-due amounts at the lower of 1.5% per month or the maximum rate allowed by state law, prorated for each day payment is past due. Acceptance of late or partial payments (even if marked "Paid in Full" or with other restrictions) shall not waive any of our rights to collect the full amount of your charges for the Service. Notice of any

disputes must be in writing and received by us within 30 days after you received your bill or you will waive any objection. You agree to reimburse us for reasonable attorneys' fees and any other costs associated with collecting delinquent or dishonored payments. If charges cannot be processed through your credit card, we will charge you an additional \$15.00. If the state law where you receive the Service requires a different fee, we will charge you that amount.

#### **h. Taxes and Other Charges**

SKYBEAM will charge you for and you must pay any applicable taxes, fees, surcharges or other charges associated with nationwide and international calls using the Service, unless you can show with documentation satisfactory to us that you are exempt. Taxes will be in the amounts that federal, state and local authorities require us to bill you.

#### **i. No Credit Allowances for Interruption of SKYBEAM Voice Service**

You acknowledge and agree that the Services are provided "as is." Credit allowances for interruption of SKYBEAM Voice Service, including international calling services, will not be provided.

### **8. INDEMNIFICATION**

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD SKYBEAM, ITS AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO OR ARISING OUT OF THIS SERVICE, THE TELEPHONE ADAPTER, OR ITS INSTALLATION, OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE LACK OF 911 DIALING OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

YOU AGREE THAT SKYBEAM SHOULD NOT BE RESPONSIBLE FOR ANY THIRD PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES. FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES, UNLESS SUCH CLAIMS ARE BASED ON OUR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS PROVISION WILL CONTINUE TO APPLY AFTER THE AGREEMENT ENDS.

### **9. LIMITATIONS OF LIABILITY**

BY ENROLLING IN, ACTIVATING, USING OR PAYING FOR THE SERVICES, YOU AGREE THAT

YOU HAVE READ THIS AGREEMENT AND UNDERSTAND THE LIMITATIONS OF SKYBEAM VOICE SERVICE DESCRIBED HEREIN.

SKYBEAM'S LIABILITY TO YOU ON ACCOUNT OF ANY ACT OR OMISSION OF SKYBEAM RELATED TO THIS AGREEMENT, INCLUDING ACTS OR OMISSIONS RELATED TO 911 DIALING, SHALL BE LIMITED TO ACTUAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, OR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY SKYBEAM'S INTENTIONAL MISCONDUCT OR RECKLESSNESS. EXCEPT FOR DAMAGES THAT ARE THE DIRECT RESULT OF SKYBEAM'S WILLFUL OR INTENTIONAL MISCONDUCT, YOU WILL NOT BE ENTITLED TO ANY OTHER DAMAGES, INCLUDING INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION. SKYBEAM AND OUR EMPLOYEES, AGENTS, CONTRACTORS AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, ANY OF YOUR SOFTWARE, FILES, DATA OR PERIPHERALS.

#### **10. WARRANTIES**

EXCEPT AS THIS AGREEMENT EXPRESSLY STATES, AND EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THE MATERIALS ACCOMPANYING THE EQUIPMENT, WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICES OR EQUIPMENT AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE ALSO MAKE NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. WE DO NOT AUTHORIZE ANYONE, INCLUDING, BUT NOT LIMITED TO, SKYBEAM EMPLOYEES, AGENTS OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT.

#### **11. DISPUTE RESOLUTION BY BINDING ARBITRATION**

**IT IS IMPORTANT THAT YOU READ THIS ENTIRE SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION. YOU CONTINUE TO HAVE CERTAIN RIGHTS TO OBTAIN RELIEF FROM A FEDERAL OR STATE REGULATORY AGENCY. THIS SECTION DOES NOT APPLY TO RESIDENTS OF CALIFORNIA.**

##### **a. Binding Arbitration**

The arbitration process established by this section is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16. You have the right to take any dispute that qualifies to small

claims court rather than arbitration. All other disputes arising out of or related to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration. This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a small claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect.

The arbitration of any dispute shall be conducted in accordance with the American Arbitration Association's ("AAA") Supplementary Procedures for Consumer-Related Disputes, as modified by this Agreement, which are in effect on the date a dispute is submitted to the AAA. You have the right to be represented by counsel in an arbitration. In conducting the arbitration and making any award, the arbitrator shall be bound by and strictly enforce the terms of this Agreement and may not limit, expand, or otherwise modify its terms.

NO DISPUTE MAY BE JOINED WITH ANOTHER LAWSUIT, OR IN AN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON, OR RESOLVED ON A CLASS-WIDE BASIS. THE ARBITRATOR MAY NOT AWARD DAMAGES THAT ARE BARRED BY THIS AGREEMENT AND MAY NOT AWARD PUNITIVE DAMAGES OR ATTORNEYS' FEES UNLESS SUCH DAMAGES OR FEES ARE EXPRESSLY AUTHORIZED BY A STATUTE. YOU AND SKYBEAM BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES THAT ARE EXCLUDED UNDER THIS AGREEMENT.

#### **b. Arbitration Information and Filing Procedures**

Before you take a dispute to arbitration or to small claims court, you must first contact our customer account representatives at the customer service number on your SKYBEAM bill for the Services, or write to us at SKYBEAM, 3261 FM 663, Suite D Midlothian, TX 76065 and give us an opportunity to resolve the dispute. Similarly, before SKYBEAM takes a dispute to arbitration, we must first attempt to resolve it by contacting you. If the dispute cannot be satisfactorily resolved within sixty days from the date you or SKYBEAM is notified by the other of a dispute, then either party may then contact the AAA in writing at AAA Service Center, 134555 Noel Road, Suite 1750, Dallas, Texas 75240-6620 and request arbitration of the dispute. Information about the arbitration process and the AAA's Arbitration Rules and its fees are available from the AAA on the Internet at [www.adr.org](http://www.adr.org), or by contacting us at SKYBEAM, 3261 FM 663, Suite D Midlothian, TX 76065. The arbitration will be based only on the written submissions of the parties and the documents submitted to the AAA relating to the dispute, unless either party requests that the arbitration be conducted using the AAA's telephonic,

online, or in-person procedures. Additional charges may apply for these procedures. Any in-person arbitration will be conducted at a location that the AAA selects in the state of your primary residence. Arbitrations under this Agreement shall be confidential as permitted by federal law. By notifying SKYBEAM within twenty days after commencing an arbitration proceeding, you may elect to relieve both parties to the arbitration of confidentiality obligations.

### **c. Fees and Expenses of Arbitration**

You must pay the applicable AAA filing fee when you submit your written request for arbitration to the AAA. The AAA's filing fee and administrative expenses for a document arbitration will be allocated according to the AAA's Rules, except as stated herein, for claims of less than \$10,000, you will only be obligated to pay a filing fee of \$20 and we will pay all of the AAA's other costs and fees. For claims between \$10,000 and \$75,000, you will pay a fee to the AAA of no more than \$375, and we will pay all of the AAA's other costs and fees. If you elect an arbitration process other than a document ("desk") or telephone arbitration, you must pay your allocated share of any higher administrative fees and costs for the process you select. If you request such an alternative process, or for claims of \$10,000 or greater, SKYBEAM will also consider, upon receiving your request and on a case-by-case basis, paying some or all of the AAA's fees and expenses that you would otherwise be allocated under the AAA's rules. You also may ask the AAA about the availability of a pro bono arbitrator and/or a waiver or deferment of fees and expenses from the AAA; more information about the AAA's rules and policies is available at the AAA's web site, which is [www.adr.org](http://www.adr.org). Unless applicable substantive law provides otherwise, each party will pay its own expenses to participate in the arbitration, including attorneys' fees and expenses for witnesses, document production and presentation of evidence. If you prevail before the arbitrator, however, you may seek to recover the AAA's fees and the expenses of the arbitrator from us. If we prevail before the arbitrator, and if we show that you acted in bad faith in bringing your claim, then we may seek to recover the AAA's fees and expenses of the arbitrator from you.

## **12. MISCELLANEOUS**

### **a. No Third Party Rights**

This Agreement does not provide any third party with a remedy, claim, or right of reimbursement.

**b. Acts Beyond Our Control**

Neither you nor we will be responsible to the other for any delay, failure in performance, loss or damage due to fire, explosion, power blackout, earthquake, volcanic action, flood, the weather elements, strike, embargo, labor disputes, civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond our reasonable control, except that you must pay for any Services used.

**c. Assignment**

We can assign all or part of our rights or duties under this Agreement without notifying you. If we do that, we have no further obligations to you. You may not assign this Agreement or the Services without our prior written consent.

**d. Notices**

Notices from you to SKYBEAM must be provided as specified in this Agreement. Notice from you to SKYBEAM made by calling SKYBEAM at 1-866-411-3278 is effective as of the date that our records show that we received your call. SKYBEAM's notice to you under this Agreement will be provided by one or more of the following: posting on our web site, recorded announcement, bill message, bill insert, newspaper ad, postcard, letter, call to your billed telephone number, or e-mail to an address provided by you.

**e. Separability**

If any part of this Agreement is found invalid, the rest of the Agreement will remain valid and enforceable.

**f. Governing Law**

This Agreement is governed by the Federal Communications Act to the extent applicable, and otherwise This Agreement will be governed by the law of the State of Texas, without regard to its choice of law rules, except that the arbitration provisions in Section 11 are also governed by the Federal Arbitration Act. This governing law provision applies no matter where you reside, or where you use or pay for the Services.

**g. Entire Agreement**

This Agreement constitutes the entire agreement between us and supersedes all prior agreements, understandings, statements or proposals concerning the Service, including representations, whether written or oral. This Agreement can only be amended as provided in Section 7(d) and Section 12(h) herein. No written or oral statement, advertisement, or service

description not expressly contained in the Agreement will be allowed to contradict, explain, or supplement it. Neither you nor SKYBEAM is relying on any representations or statements by the other party or any other person that are not included in this Agreement.

**h. Changes to this Agreement**

SKYBEAM may change this Agreement from time to time. If we make any changes to the prices or charges, we will comply with our notice commitments described in this Agreement. IF YOU CONTINUE TO BE ENROLLED IN, USE, OR PAY FOR THE SERVICES AFTER ANY CHANGES IN THE PRICES, CHARGES, TERMS OR CONDITIONS, YOU AGREE TO THE CHANGES.

Where required by law, customers who cancel their service within the first three days following acceptance of this Agreement will be refunded all charges incurred with respect to their account.

Updated 12/26/2008 kj

