

MERR.COM TERMS OF SERVICE

These Terms of Service constitute the agreement ("Agreement") between Merrimac Communication Ltd. ("we," "us" or "Merr.com") and the user ("you," "user" or "Customer") of Merr.com's communications services and any related products or services ("Service"). 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 and it applies to all lines on each Merr.com account. **BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ, ACCEPT AND UNDERSTAND FULLY THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

1. EMERGENCY SERVICES - 911 DIALING

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

1.2 Registration of Physical Location Required. For each phone number that you use for the Service, you must register with Merr.com the physical location where you will be using the Service with that phone number. When you move the Device to another location, you must register your new location. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your old address. Dialing 911 from an unregistered location may cause disruptions to the 911 emergency system and could result in fines or penalties. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by calling the Merr.com tech support line.

1.3 No 911 Service to Mobile Devices. No 911 service will be provided to any mobile devices such as wireless WIFI phones or Softphones.

1.4 Lifeline Service, All Medical Monitoring Equipment, Home Security Systems, Not Supported

All phone services including, Lifeline, medical monitoring and home security systems do not function in the event of a power failure and therefore are not supported and not recommended. Merr.com has no control over power to its equipment at the customers site or its equipment not at the customers site. Merr.com is not responsible for any damages that may be caused due to a power outage. Customers who install these devices on Merr.com equipment do so at their own risk. The Service is not a telecommunications service and we provide it on a best efforts basis. Things beyond our control may affect the Service, such as power outages, fluctuations in the internet, your underlying broadband service. Other things may affect Service, such as maintenance. See 1.8 Disclaimer of Liability and Indemnification.

1.5 Service Outages.

(a) Service Outages Due to Power Failure or Disruption. 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.

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

(c) Service Outage Due to Disconnection of Your Merr.com Account. Service outages due to disconnection of your account will prevent all Service, including 911 Dialing, from functioning.

(d) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts. Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that Merr.com is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you disconnect the Service in accordance with this Agreement.

(e) Other Service Outages. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

1.6 Re-Activation Required if You Change Your Number or Add or Port New Numbers. 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

1.7 Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to

traditional 911 dialing over traditional public telephone networks.

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

1.9 Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service.

2. SERVICE

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

2.2 Use of Service and Device. You shall not resell or transfer the Service or the Device to another party without our prior written consent. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately disconnect or modify your Service if we determine, in our sole and absolute discretion, that your use of the Service or the Device is, or at any time was, inconsistent with normal usage patterns.

2.3 Use of Username and Password. Should you request and acquire from Merr.com the Username and Password for maintenance reasons or softphone or WIFI phone use you will be responsible for keeping the Username and Password secret. If the Username and Password is acquired by others it could be programmed into another device or multiple devices and used to run up a large phone bill including international calls on your account. You are responsible for all charges run up on your account using your Username and Password.

2.5 Prohibited Uses.

(a) Unlawful. You shall use the Service and the Device only for lawful purposes. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device for an unlawful purpose. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, Merr.com will provide information in response to law enforcement requests, lawful government requests, subpoenas, court orders, to protect it's rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others.

(b) Inappropriate Conduct. You shall not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device in any of the aforementioned ways. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, Merr.com will provide information in response to law enforcement requests, subpoenas, court orders, to protect it's rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others . Furthermore, Merr.com reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

2.6 Use of Service and Device by Customers Outside the United States. Although we encourage you to use of 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. Merr.com Service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection you are using is outside the United States, and/or your ISP places restrictions on the usage of VoIP services, Merr.com does not represent or warrant that use of the Merr.com Service by you is permitted by any other jurisdictions or by any or all the ISPs. You will be solely responsible for any violations of local laws and regulations or violations of ISP terms of service resulting from such use. We reserve the right to disconnect your Service immediately if we determine, in our sole and absolute discretion, that you have used the Service or the Device in violation of laws of jurisdictions outside the U.S.

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

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

(b) Unauthorized Usage of Device; Firmware or Software. 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.

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

2.9 Theft of Service. You shall not use the Service in a manner calculated to avoid Merr.com policies and procedures. You shall not obtain or use the Services in an improper manner. You shall notify us immediately, in writing or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the disconnection of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service. Merr.com reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

2.10 Merr.com Provided Equipment. Customer understands and agrees that any device without limitation such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection device provided by Merr.com in the customers possession is the property of Merr.com and that Customer assumes full responsibility for any damage that may occur through misuse, abuse, fire or theft and will exercise reasonable care to ensure the equipment is maintained in good working condition. Customer understands that the possession or use of this equipment without the authorization of Merrimac Communications is a violation of state and federal law and constitutes a theft as described by law. In the event that Customers service is disconnected, Customer agrees to return equipment to Merrimac Communications.

Customer Further Understands and Agrees. That upon termination of service Customer will immediately return the equipment, with all attachments, accessories and parts to Merrimac Communications in the same condition the equipment was received, ordinary wear and tear excepted.

To prevent tampering, altering, or repair of the equipment by any person other than Merrimac Communications authorized personnel.

That if the equipment is lost, stolen or destroyed or Customer fails to return the equipment, Customer is responsible and will pay to Merrimac Communications the full replacement cost for each piece of equipment Customer fails to return.

If Customer has given Merrimac Communications a cash deposit or a credit card as security for Customer's prompt payment of service and the safe keeping of equipment, Merrimac Communications is authorized to offset or debit Customers deposit account or debit Customers credit card in the exact amount as indicated for each piece of equipment Customer fails to return.

2.11 Number Transfer on Service Disconnection. Upon the disconnection 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 disconnected;
- your account is completely current, including payment for all charges and applicable disconnection fees; and
- you request the transfer upon disconnecting your account.

2.12 Service Distinctions. The Service is not a telecommunications service and we provide it on a best efforts basis. Things beyond our control may affect the Service, such as power outages, fluctuations in the internet, your underlying broadband service. Other things may affect Service, such as maintenance. Merr.com will act in good faith to minimize disruptions to your use of and access to Service. Important distinctions exist between telecommunications service and the Service offering that we provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

2.15 Incompatibility With Other Services.

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

(b) Certain Broadband, Cable Modem, and Other Services. You acknowledge that the Service presently is not compatible with AOL cable broadband service, certain versions of TiVO, and there may be other services with which the Service may be determined to be incompatible. You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

3. CHARGES; PAYMENTS; TAXES; DISCONNECTION

3.1 Billing. When the service is activated, you must provide us with a valid mailing and email address and a credit or debit card number from a card issuer that we accept unless you request and qualify for the mailed billing option. We reserve the right to stop accepting credit or debit cards from one or more issuers. If your credit or debit card expires, you close your account, your billing address changes, or your credit or debit card is cancelled and replaced on account of loss or theft, you must advise us at once. We will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears) to your credit or debit card, including but not limited to :

activation fees; monthly Service fees; usage charges; international usage charges; advanced feature charges; premium services/Add-Ons, equipment purchases; federal, state and/or local taxes; universal service fees; disconnection fees; and shipping and handling charges.

The amount of such fees and charges shall be published on our website and may change from time to time. Merr.com may introduce new products and services at special introductory pricing. Introductory pricing may change at Merr.com's discretion. Notification of monthly invoices will be sent to you via your email address on file with us. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$50. Merr.com bills usage charges in full minute increments that are rounded up to the next full minute unless otherwise set forth in the rate schedules found on our website. Merr.com bills fractional usage charges in full cents that are rounded up when the value is \$.005 or more and down when the value is less than \$.005, unless otherwise set forth in the rate schedules found on our website.

The above fees are defined as follows:

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

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

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

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

Advanced Features, Add-Ons, Premium Services – Merr.com charges additional fees for enhanced features and services.

Equipment Purchases – may be purchased with credit or debit card unless qualified for the Mail billing plan.

Universal Service Fee – 5% of total.

Taxes – Merr.com is required to bill and collect local, state and federal taxes imposed on Merr.com customers by the various taxing authorities. Merr.com passes all taxes it collects on to the appropriate taxing authority.

3.2 Billing Disputes. You must notify us in writing within seven days after receiving your credit or debit card statement if you dispute any Merr.com charges on that statement or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to:

Merrimac Communications
327 Palisade St.
Merrimac WI 53561-or- office@merr.com

3.3 Payment and Collection.

(a) Payment. We accept payment by credit or debit card or check or cash if you select and are qualified for the mailed billing program. If credit or debit card your subscription to the Service authorizes us to charge your credit or debit card. This authorization will remain valid until 30 days after we receive written notice from you terminating our authority to charge your credit or debit card, whereupon we will charge your credit or debit card for the disconnection fee, if applicable, and any other outstanding charges and disconnect your Service. We may disconnect your Service at any time in our sole and absolute discretion if any charge to your credit or debit card is declined or reversed, your credit or debit card expires and you have not provided us with a valid replacement credit or debit card or in case of any other non-payment of account charges.

(b) Collection. If your Service is disconnected, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

(c) Notices. You understand that it is difficult for Merr.com to distinguish between credit and debit cards. You agree to waive your rights under Regulation E to receive ten days advance notice from Merr.com regarding the amount that Merr.com will debit from your account. Merr.com may send you messages about your billing from time to time, but Merr.com is not obligated to do so. Merr.com may change or cease its messages at any time without notice to you.

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

3.5 Taxes. State and local governments may assess taxes, surcharges and/or fees on your use of Merr.com service. These charges may be a flat fee or a percentage of your Merr.com charges and may change from time to time without notice. These charges are based on the rates applicable to the address you provided to us. You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to you as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive such certificate.

3.9 Charges for Directory Calls (411). We will charge you \$0.99 for each call made to Merr.com directory assistance.

3.10 Termination Charges for Ported Phone Numbers. We notify your current local phone carrier that we will be porting your number to our service; however, your current local carrier may levy additional termination or other charges to your account when your service ends. Further, we do not notify long distance carriers when your service is switched and they may also levy additional termination or other charges to your account when your service ends. It is your sole responsibility to call your local and long distance carrier and find out what additional billing charges, if any, will apply when your service ends. We are not responsible for any charges from the former phone carrier.

3.11 No 0+ or Operator Assisted Calling. May not support x11 calling. Our service does not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, or calling card calls. Our service may not support 311, 511, and other x11 services in one or more service areas. Our service does support specified dialing such as 911 and 411, which are provided for elsewhere in these Terms of Service.

3.12 No Directory Listing. The phone number you get from us will not be listed in any telephone directories unless requested by you at the going rate provided by the directory company of your choice, if available. However, any phone numbers you transfer from your local phone company may be listed.

4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

4.1 Limitation of Liability. We will not be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;

- equipment, network or facility failure;
- equipment, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- equipment, network or facility shortage;
- equipment or facility relocation;
- service, equipment, network or facility failure caused by the loss of power to you;
- outage of, or blocking of ports 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.

4.2 Disclaimer of Liability for Damages. IN NO EVENT WILL MERR.COM, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, COMPENSATORY, OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

4.3 Indemnification and Survival.

(a) Indemnification. You shall defend, indemnify, and hold harmless Merr.com, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party or user of the Service, relating to the Services, including, without limitation, 911 Dialing, or the Device.

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

4.4 No Warranties on Service. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER MERR.COM 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 MERR.COM'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY MERR.COM OR MERR.COM'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

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

4.6 Content. You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or Device (each such person, a "User"). You shall assure that your and your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to disconnect or suspend your Services and remove your or your Users' content from the Service, if we determine, in our sole and absolute discretion, that such use or content does not conform with the

requirements set forth in this Agreement or interferes with our ability to provide Services to you or others. Our action or inaction under this Section will not constitute any review or approval of your or Users' use or content.

5. MISCELLANEOUS

5.1 Governing Law. The Agreement and the relationship between you and us is governed by the laws of the State of Wisconsin without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 5.2, you shall submit to the personal and exclusive jurisdiction of the courts located within the State of Wisconsin and waive any objection as to venue or inconvenient forum.

5.2 Mandatory Arbitration and No Jury Trial. Any dispute or claim between you, any member of your household or any guest or employee of you and us arising out of or relating to the Service or Device will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Madison Wisconsin. The arbitrator's decision will follow the plain meaning of the relevant documents, and will be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. **REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.** All claims shall be arbitrated individually. You shall not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. **THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, WISCONSIN.**

5.3 No Waiver of Rights. Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

5.4 Entire Agreement. This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found on our website constitute the entire agreement between you and Merr.com and govern the use of the Service by you, members of your household, guests and employees. This Agreement supersedes any prior agreements between you and Merr.com and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

5.5 Severability. If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

6. FUTURE CHANGES TO THIS AGREEMENT

We may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted on www.merr.com. Such changes will become binding on you on the date they are posted to our website and no further notice by us is required upon your continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device and also supersedes any written terms provided to Retail Customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of the Device.

7. PRIVACY

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

Last updated: September 3, 2010.