

**FREEDOM RING COMMUNICATIONS, L.L.C.**

d/b/a

**BAYRING COMMUNICATIONS**

**STANDARD TERMS AND CONDITIONS APPLICABLE TO INTRASTATE, INTERSTATE and INTERNATIONAL COMMON CARRIER TELECOMMUNICATIONS SERVICES**

**IMPORTANT NOTICE:** THE FOLLOWING TERMS AND CONDITIONS APPLY TO DOMESTIC INTERSTATE COMMON CARRIER TELECOMMUNICATIONS SERVICES, INTRASTATE and INTERNATIONAL TELECOMMUNICATIONS SERVICES PROVIDED BY FREEDOM RING COMMUNICATIONS, L.L.C. d/b/a BAYRING COMMUNICATIONS ("BAYRING"). IN THE ABSENCE OF AN EXPLICIT WRITTEN AGREEMENT TO THE CONTRARY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BAYRING, AND ONLY TO THE EXTENT SUCH AGREEMENT CONFLICTS WITH THE FOLLOWING, ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN APPLY TO SERVICES PROVIDED BY BAYRING. BY USING OR PAYING FOR BAYRING'S SERVICES, USERS OF BAYRING SERVICES AGREE TO BE BOUND BY THESE PROVISIONS. BAYRING RESERVES THE ABSOLUTE RIGHT TO MODIFY THE TERMS AND CONDITIONS HEREIN FROM TIME TO TIME AT ITS SOLE DISCRETION.

**1. APPLICATION OF TERMS AND CONDITIONS**

1.1 These Terms and Conditions contain the regulations applicable to the provision of domestic interstate telecommunications services, intrastate and international telecommunications by Freedom Ring Communications, L.L.C. d/b/a BayRing Communications (hereafter referred to as "BayRing" or the "Company"), from its originating location(s) in the United States to all points. Service is furnished subject to the availability of facilities and transmission, atmospheric and like conditions. The Company does not guarantee or warrant that services provided hereunder will be error-free or uninterrupted.

1.2 The Company may utilize other telecommunication providers facilities and services in order to provision certain services.

1.3 The regulations contained in these terms and conditions do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carrier for use in accessing the services of the Company or to services which may be governed by valid and existing state or federal tariffs.

1.4 Where, in these Terms and Conditions, we refer to a "Subscriber" we mean that person, persons or entity that has agreed to purchase service from us. Where we refer to a "User" of services, we mean any person, persons or entity that actually uses the services we provide, whether or not the Subscriber authorized such use.

1.5 Definitions. This section defines the following terms for the purposes of these Terms and Conditions.

**"Authorization Code"** - A numerical code, one or more of which may be assigned to a Subscriber, to enable the Company to identify the origin of service user so it may rate and bill the call. All authorization codes shall be the sole property of the Company and no Subscriber shall have any property or other right or interest in the use of any particular authorization code. Automatic numbering identification (ANI) may be used as or in connection with the authorization code.

**"Automatic Numbering Identification (ANI)"** - A type of signaling provided by a local exchange telephone company which automatically identifies the local exchange line from which a call originates.

**"Billed Party"** - The person or entity responsible for payment of the Company's service. The Billed Party is the Subscriber associated with the Authorization Code used to place the call.

**"Company"** - The term "Company" denotes Freedom Ring Communications, L.L.C.

**"State"** - The term "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of Guam and the Virgin Islands.

**"Telecommunications"** - The transmission of voice communications or, subject to the transmission capabilities of the service, the transmission of data, facsimile, signaling, metering, or any other form of intelligence.

## 2. REGULATIONS

### 2.1 Undertaking of the Company

2.1.1 Scope: The Company undertakes to provide telecommunications services in accordance with these Terms and Conditions. The Company does not necessarily own the facilities over which the services are provided and the Company reserves the right to provide service over resold lines. The Company's services provide interstate long distance message telephone service that permits Users to send and receive direct transmissions of voice, data, and other types of communications.

2.1.2 Facilities/Services: All service provided by BayRing is subject to the availability of suitable facilities. The Company reserves the right to limit the length of communications or to discontinue furnishing services when necessary because of the lack of satellite, cable or other transmission medium capacity or because of any causes beyond its control, including where the Company discontinues a service offering completely or in a specific service area.

### 2.1.3 Limitations on Liability

A) Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, errors, or other defects, representations, or use of these services, or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Subscriber for interruptions in service as set forth in Section 2.1.7.

(B) Except for the extension of allowances to the Subscriber for interruptions in service as set forth in Section 2.1.7, the Company shall not be liable to a Subscriber, User or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue, data or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.

(C) The liability of the Company for errors in billing that result in overpayment by the Subscriber shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

(D) The Company shall not be liable for any claims for loss or damages involving:

1. Any act or omission of: (a) the Subscriber or User, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen;

2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Subscriber or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;

3. Any unlawful or unauthorized use of the Company's facilities and services;

4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services with Subscriber-provided facilities or services;

5. Breach in the privacy or security of communications transmitted over the Company's facilities;

6. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Subscriber obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Subscriber, in which event the Company's liability is limited as set forth in paragraph A of this Subsection 2.1.3.

7. Defacement of or damage to Subscriber premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;

8. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the

Subscriber or User, or the construction, installation, maintenance, presence, use or removal of the Subscriber's facilities or equipment connected, or to be connected to the Company's facilities;

9. Any intentional, wrongful act of a Company employee when such act is not within the scope of the employee's responsibilities for the Company and/or is not authorized by the Company;

10. Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of these Terms and Conditions.

11. Any act or omission in connection with the provision of 911, E911, or similar services;

12. Any noncompletion of calls due to network busy conditions;

13. Any calls not actually attempted to be completed during any period that service is unavailable.

(E) The Company shall be indemnified, defended and held harmless by the Subscriber and User from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Subscriber, User or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Subscriber, User or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Subscriber equipment or facilities or service provided by the Company.

(F) The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for service to the Subscriber, even if the Company has acted as the Subscriber's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or nonpreemptibility as may be provided by the other entities.

(G) Any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.

(H) THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

2.1.4 Indemnification: The Company shall be indemnified and saved harmless by the Subscriber from and against all loss, liability, damage and expense, including reasonable counsel fees, due to claims for libel, slander, or infringement of copyright in connection with the material transmitted over the Company's facilities; any claim resulting from a violation of these Terms and Conditions; and any other claim resulting from any act or omission of the Subscriber or patron(s) of the Subscriber relating to the use of the Company's facilities. Except to the extent as may be specifically required by law enforcement officials, the Company assumes no responsibility to undertake to monitor the content of information transmitted over the services provided.

#### 2.1.5 Provision of Equipment and Facilities

(A) Except as otherwise indicated, Subscriber-provided station equipment at the Subscriber's premises for use in connection with services provided by the Company shall be so constructed, maintained and operated as to work satisfactorily with the facilities and operations of the Company.

(B) The Company shall not be responsible for the installation, operation or maintenance of any Subscriber-provided communications equipment. Regardless of whether such equipment is connected to service furnished by the Company, the responsibility of the Company shall be limited to the furnishing of services under these Terms and Conditions and to the maintenance and operation of such services in the proper manner. Subject to this responsibility, the Company shall not be responsible for:

(1) The through transmission of signals generated by Subscriber-provided equipment or for the quality of, or defects in, such transmission; or (2) the reception of signals by Subscriber-provided equipment; or (3) network control signaling where such signaling is performed by Subscriber-provided network control signaling equipment.

2.1.6 Cancellation or Interruption of Services: Service may be discontinued or temporarily suspended by the Company, without notice to the Subscriber or Users, including by blocking traffic to certain cities or NXX exchanges, or by blocking calls using certain Authorization Codes, when the Company, in its sole discretion, deems it necessary to take such action to

prevent unlawful use of its service or where fraud or other improper use of the services are suspected. The Company will restore service as soon as it can be provided without undue risk.

2.1.7 Application of Credits for Interruptions of Service: Credits for interruptions of service, for which charges are specified on the basis of per minute of use, or on the usage of a fraction of a minute and determined on a case-by-case basis, shall in no event exceed an amount equal to the initial period charge provided for under these Terms and Conditions.

## 2.2 Limitations on Use of Service

2.2.1 Services provided by the Company under these Terms and Conditions may be used only for lawful purposes consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of services.

2.2.2 The use of the Company's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another or in such a way as to unreasonably interfere with use by others is prohibited.

2.2.3 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.

2.2.4 The Company's services are available for use twenty-four hours per day, seven days per week.

## 2.3 Payment Arrangements

### 2.3.1 Payment for Service

(A) The Subscriber is responsible for payment of all charges for facilities and services furnished by the Company, whether or not the User was authorized by Subscriber to utilize the services.

(B) Bills are due and payable upon receipt. If the Subscriber's net bill is not paid (payment received by the Company) within thirty (30) days after the invoice date listed on the bill it shall become a delinquent bill and will be subject to late payment charge not to exceed 1.5% per month (or the maximum rate allowed by law). If the Company initiates legal proceedings to collect any amount due hereunder and the Company substantially prevails in such proceedings then the defendant Subscriber shall pay the reasonable attorneys' fees and costs of the Company in prosecuting such proceedings and appeals there from.

2.3.2 Discontinuance of Service for Non-Payment: Without incurring liability, the Company may discontinue the provision of service to a Subscriber or to a particular Subscriber location, or may withhold the provision of ordered or contracted services for nonpayment of any sum due the Company for more than thirty days after issuance of the bill for the amount due.

2.3.3 Discontinuance of Service / Denial of Service Without Notice: The Company may discontinue Service (or refuse to provide additional Service) without notice for any of the following reasons:

A. Adverse Effect on Service. Use of equipment in such a manner as to adversely affect the Company's equipment or the Company's service to others.

B. Tampering With Company Property. User's tampering with equipment furnished or owned by the Company.

C. Unauthorized Use of Service. The unauthorized use of service by any method which causes hazardous signals over the Company's network.

D. Illegal use of Service. Use of service or equipment in a manner that violates the law.

E. For violation or non-compliance with these Terms and Conditions or for failure of the Subscriber to fulfill contractual obligations for service or facilities.

F. Subscriber provides inaccurate, false and/or otherwise misleading information in its application for Service.

G. By reason of any order or decision of a court, public service commission or federal regulatory body or other governing authority prohibiting the Company from furnishing its services.

2.3.4 For any check returned to the Company due to insufficient funds, uncollected funds, or closed account, Company may assess a charge in an amount not to exceed \$ 50.00 per check returned.

2.4 Taxes and Fees. Unless otherwise specifically agreed in writing or stated, the Company's rates quoted do not include federal excise taxes, and state and local sales, use, and similar taxes or federal or state universal service fund, telecommunications relay service or other government imposed fees. Subscriber is responsible for payment of these taxes, which are billed as separate line items. In addition, all services billed to a Subscriber location in any state that imposes a gross receipts or similar tax upon the Company with respect to such interstate services will be subject to a surcharge in the amount of such tax.

2.5 Service Period. Except as otherwise provided, the minimum period of service is one month for all services furnished. The Company may require a minimum contact period longer than one month in conjunction with non-standard types of service offerings, individual contact basis arrangements or as may be otherwise agreed.

### **3. MISCELLANEOUS**

3.1 Overcharge/Undercharge: When Subscriber has been overcharged, the amount shall be refunded or credited to the Subscriber. The Company may bill Subscriber retroactively for charges owed by the Subscriber pursuant to these Terms and Conditions.

3.2 Transfer and Assignment: Subscriber may not transfer, assign or delegate any right or obligation with respect to the services, and any attempted transfer, assignment or delegation shall be void and no effect unless the Company has given express written consent, which shall not be unreasonably withheld or unduly delayed. The Company's rights and obligations herein may be assigned or delegated without restriction.

3.3 No Title and Return of Equipment: In connection with certain Services furnished hereunder, the Company may install and maintain a network gateway device or other equipment on the Customer's premises ("Equipment.") Such equipment shall at all times remain the property of the Company, and any installation on the Customer's premises shall not serve to create any title, interest or ownership by the Customer of such Equipment. Upon termination of the Service, Customer will provide the Company with reasonable access to Customer's premises for purposes of removing any Equipment. If Customer fails to return the Company's Equipment, or if the Equipment is returned in a condition that is worse than could be expected through normal use and wear, then, in such event, Customer will be liable to the Company for the then current replacement cost of the Equipment.

#### **3.4**

##### Other Provisions

3.4.1 The parties agree that the agreement between them shall be governed by and construed in accordance with the laws of the State of New Hampshire, without regard to its choice of laws provisions, and the venue of any legal action by either party shall be in New Hampshire. That State of New Hampshire shall have personal jurisdiction over the parties for all matters arising from or related to the agreement between Subscriber and the Company.

3.4.2 Failure by either party to insist upon strict compliance by the other with any term or condition of the agreement between them shall not be construed as waiver of any subsequent breach.

3.4.3. Each provision of the agreement between Subscriber and the Company is severable from the whole, and if any one provision is declared invalid or unenforceable, the other provisions shall remain in full force and effect.

3.4.4. Deviations from these Terms and Conditions shall be valid only when made by written instrument, executed by both parties' authorized representatives.