

BROADPOINT SERVICES AGREEMENT

This is an agreement ("Agreement") between you and Broadpoint, LLC ("Broadpoint", "we" or "us"), which is licensed by the Federal Communications Commission to provide wireless radio and other services ("Service") in the area associated with your assigned account ("Account") and governs Service provided by us to you through wireless receiving and transmitting equipment, SIM (Subscriber Identity Module) Card and any accessories (each a "Device") that we have authorized to be programmed with a number or identifier (an "Identifier"). This Agreement explains our respective legal rights concerning all aspects of our relationship, including:

- Billing and charges
- Starting and ending service
- Account information
- Early cancellation fees
- Limitations of liability, damage awards and warranty
- Changes to this Agreement

Resolution of past or future disputes by arbitration instead of court trials and class actions and limitations on the time periods for bringing claims.

ARBITRATION NOTICE. The Resolution of Disputes provisions below, describes our mutual agreement to use mandatory arbitration for the resolution of most past or future disputes between us instead of a court trial or class action lawsuit.

IF YOU 1) USE THE SERVICE OR DEVICE, OR 2) ACCEPT ANY BENEFIT IN EXCHANGE FOR COMMITTING TO NEW TERMS AND CONDITIONS AND/OR A NEW CONTRACT TERM, OR 3) PAY US ANY AMOUNT FOR THE SERVICE, YOU CONSENT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, ANY CORRESPONDING RATE PLAN, AND ALL POLICIES AND GUIDELINES INCORPORATED BY REFERENCE, ALL AS MAY BE CHANGED AS DESCRIBED IN PARAGRAPH 6 BELOW. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT USE THE SERVICE OR DEVICE AND NOTIFY US WITHIN 30 DAYS OF THE DATE OF ORIGINAL ACTIVATION FOR EACH IDENTIFIER TO CANCEL THE SERVICE AND/OR RETURN THE DEVICE PURCHASED FROM US. YOUR RIGHTS TO TERMINATE THEREAFTER ARE SET FORTH BELOW. YOU ARE RESPONSIBLE FOR ALL CHARGES INCURRED PRIOR TO NOTIFYING US OF CANCELLATION.

DESCRIPTION OF SERVICES

1. **Rate Plans.** The price, features and options of the Service available for each Identifier on your Account depends on the calling, data or mobile Internet plan, feature or promotion selected by you when you activated or changed your Service and are described in a separate Broadpoint Calling Plan, Service Plan or Rate Plan ("Rate Plan") Brochure, in feature or promotional materials and/or in other Broadpoint sales information (collectively "Sales Information"), all of which are incorporated by reference, are a part of this Agreement and were available when you activated or changed Service. To receive copies of Sales Information contact Broadpoint Customer Care.

2. **Authority.** You represent that you are: (i) legally competent to enter into this Agreement, (ii) in the case of an individual, over 18 years old and a resident of the one of the fifty United States or the District of Columbia, or 21 years old or legally emancipated and a resident of Puerto Rico, and (iii) not aware of any disability that would prevent you from entering into this Agreement. If you order or activate Service on behalf of an entity, you represent that you are authorized to do so and acknowledge that such entity is bound by the terms and conditions of this Agreement; however, all terms and conditions that relate to use of the Service by you as the end user of a Device will also bind you individually. If you activate Service on behalf of an entity but were unauthorized to do so, you will be personally responsible for all charges to the Account and will be fully bound by this Agreement as though you had activated Service on your own behalf.

3. **Deposits/Service Limits/Credit Reports/Return of Balances.** You authorize us to ask consumer reporting agencies or trade references to furnish us with employment and credit information, and you consent to our rechecking and reporting personal and/or business payment and credit history if, in our sole discretion, we so choose. If you believe that we have reported inaccurate information about your account to a consumer reporting agency, you may send a written notice describing the specific inaccuracy to the address provided in the Notices section below. For you to receive Service, we may require a deposit or set a service limit. The deposit will be held as a partial guarantee of payment. It cannot be used by you to pay your bill or delay payment. Unless otherwise required by law, deposits may be mixed with other funds and will not earn interest. We reserve the right to increase your deposit if we deem appropriate. You may request that we reevaluate your deposit on an annual basis, which may result in a partial or total refund of the deposit to you or credit to your account. If you default on this Agreement is terminated, we may, without notice to you, apply any deposit towards payment of any amounts you owe to us. After approximately 90 days following termination of this Agreement, any remaining deposit or other credit balance in excess of \$10 will be returned without interest, unless otherwise required by law, to you at your last known address. You agree any amounts under \$10 will not be refunded to cover our costs of closing your account. If the deposit balance is undeliverable and returned to us, we will hold it for you for one year from the date of return and, during that period, we may charge a service fee against the deposit balance. You hereby grant us a security interest in any deposit we require and, to the extent of any property interest provided by law, in the Identifier and Device associated with your Account, to secure the performance of your obligations hereunder.

4. **Rates.** Your Service rates and other charges and conditions for each Identifier or Device are described in your Sales Information. If you lose your eligibility for a particular Rate Plan, we may change your Rate Plan upon prior notice to you. If you misrepresent your eligibility for any Rate Plan, you agree to pay us the additional amount you would have been charged under the most favorable Rate Plan for which you are eligible. If you select a Rate Plan that does not include Rollover voice minutes or includes a predetermined allotment of Services (for example, a predetermined amount of airtime, megabytes or text messages), any unused allotment of Services from one billing cycle will not carry over to any other billing cycle.

5. **Business Accounts.** If you receive Service where a business or government entity pays your charges or is otherwise liable for the charges, you authorize us to share your account information with that entity and/or its authorized agents. If you are on a Rate Plan and/or receive certain benefits tied to a business agreement with us, but you are liable for your own charges, then you authorize us to share enough account information with that entity and/or its authorized agents to verify your continuing eligibility for those benefits and/or the Rate Plan.

6. **Changes to Agreement or Service.** We may amend the terms of this Agreement, including the Sales Information, upon advance

notice provided to you in any manner we choose, including by notice contained with your invoice for the Service. In the event that we make such a change that has a material adverse impact on your rights or use of the Service, you may terminate the Agreement by giving us notice within 20 days of the date we notify you, and you will not be charged any cancellation fee. If you use the Service more than 20 days after we notify you of a change, you agree to that change. You have the option to change your Service at any time by notifying us, and you may take advantage of those of our Services for which you qualify, provided that you comply with any requirements of the Service, including, where applicable, extending the term of this Agreement. If, during the term of your Rate Plan you make a change in your Rate Plan that results in lesser services, a \$500 fee ("Downgrade Fee") may be assessed and the new rate plan will be effective for one year from the effective date of the new Rate Plan. Any change will take effect by your next billing cycle, and your continued use of the Service will be deemed to constitute your express consent to the changes. If you transfer to a Rate Plan having a term that is shorter than your previous Rate Plan, you may remain obligated for the term of the previous Rate Plan.

7. **Availability/Interruption.** Service is normally available to your Device when it is within the operating range of our system but may be available outside of that area in other participating carrier service areas. Service is subject to transmission limitation, reduction in transmission speed, or interruption caused by weather, your equipment, terrain, obstructions such as trees or buildings, or other conditions. Service may be limited in some areas where coverage is not available or may be temporarily limited or interrupted due to system capacity limitations, system repairs or modifications, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses. For data services, network speed is no indication of the speed at which your device sends or receives data. Actual device speed will vary based on device configuration, compression and network congestion. Not all service options or offers are available on all devices, on all rate plans or available for use in all areas. Additional hardware, software, subscription, credit or debit card, Internet access from your compatible PC, and/or special network connection may be required. Interruption may also result from nonpayment of charges by you. Suspension or cancellation of your voice rate plan will automatically terminate your data services. Upon termination of data service, all stored information will be deleted within 30 days of cancellation. We may block access to certain categories of numbers (e.g. 976, 900 and certain international destinations) or certain web sites if, in our sole discretion, we are experiencing excessive billing, collection, fraud problems or other misuse of our network. We may, but do not have an obligation to, refuse to transmit any information through the Service and may screen and delete information prior to delivery to you or the Device as permitted by law. Some aspects of the Service may be temporarily unavailable if personal information is provided by a child under the age of 13. Without parental consent, children under the age of 13 will not be able to use certain aspects of the Service. Devices may be incompatible with TTY, so TTY users may be unable to make emergency calls. TTY availability on our network does not indicate compatibility while using another carrier's network. Third parties will have access to your subscriber ID, zip code and your phone model when you browse their web sites. The way third parties handle your subscriber ID and zip code, your usage information and any information you voluntarily provide is governed by their policies. With Broadpoint mail the maximum mailbox capacity is 10 megabytes. New messages will not be delivered when the maximum capacity is reached. Limited third-party email services are also available. You will not receive call notification when actively sending or receiving data.

USE OF SERVICE

8. **Acceptable Use.** You must use your Device in a proper manner in compliance with the manufacturer's instructions and ensure that your Device is compatible with, and will not interfere with, the service of Broadpoint. Your use of the Device and use of the Service must comply with all applicable laws, rules, and regulations.

9. **Account Access and Unauthorized Use.** Any person able to provide information we deem sufficient to identify you and the Account is authorized by you to receive information about and make changes to your Account, including adding new Service. You are responsible for safeguarding your Device and access information (such as your Account number) and failure to do so may result in expense to you. If your Device, user name or password is stolen or Service is fraudulently used, you must immediately notify us and provide us with such documentation and information as we may request (including affidavits and police reports). You will remain responsible for all charges incurred before you notify us. After you report the theft or loss to us, you remain responsible for complying with your other obligations under this Agreement, including, but not limited to payment of your monthly Service fee. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Failure to reasonably cooperate may result in your liability for all fraudulent usage.

10. **Your Content and Use of Service.** You are solely responsible for all content that you permit to be posted or transmitted onto or through the Service or any of our systems, including materials, code, data, text (whether or not perceptible by users), multimedia information (including, but not limited to sound, data, audio, video, graphics, photographs, or artwork), e-mail, chat room content, bulletin board postings, or any other items or materials accessible through the Service or any of our systems ("Content"). YOUR USE OF THE SERVICE IS ENTIRELY AT YOUR OWN RISK. YOU ASSUME FULL RESPONSIBILITY FOR AND RISK OF LOSS RESULTING FROM YOUR DOWNLOADING, ACCESS TO, OR USE OF ANY THIRD-PARTY CONTENT, OR FROM YOUR ACCESS TO OR USE OF THE SERVICE OR THE INTERNET, IN ANY MANNER AND FOR ANY PURPOSE WHATSOEVER. In providing Service, we may permit our subscribers to transmit, receive and host content over our network and the Internet and may act as a "services provider" as defined in the Digital Millennium Copyright Act.

11. **Use of Service/Device/Identifier.** Reproduction, retransmission, dissemination or resale of Service is prohibited without prior written contractual arrangements with us and any required regulatory approvals. You are responsible for ensuring that your Device is compatible with our Service and meets federal standards. You are responsible for the purchase and maintenance of any additional hardware, software and/or Internet access from your PC required to use the Service. Internet Protocol ("IP") addresses for services provided on the Broadpoint GSM/GPRS network will be assigned dynamically per session from a private pool and not all protocols will be supported. Other IP addressing options are available for additional cost. Except as provided otherwise by law, you have no property rights to any Identifier, including, without limitation, any IP address, any e-mail address or any other identifier, provisioned by us, our agents or the manufacturer of your Device to be used with the Service, and you agree we may change any such Identifier at any time with or without prior notice to you. In the event we are required by law to transfer any Identifier to you on termination of this Agreement, we may charge you a fee. Devices not purchased from us or our authorized distributors (a) may not provide you with some or all of the features included in your Service (b) may not allow you to use features and functions while off our network, including those that work while on our network, and (c) calls to 911 may not go through on any network. Call timers included on your Device are not an accurate representation of actual billed usage. By using the Service, you

agree to abide by the terms and conditions of any applicable software license. If you wish to block your caller identification information from being received by any party that you call, you may do so by using #67.

TERM OF SERVICE AND TERMINATION

12. **Term.** The term of this Agreement for each Identifier begins on the date we activate Service for that Identifier or the date you accept a benefit that extends or renews the term and ends when Service for that Identifier is terminated. UNLESS WE AGREE OTHERWISE, YOU AGREE TO AN INITIAL TERM OF TWELVE (12) CALENDAR MONTHS AND AGREE TO PURCHASE SERVICE FOR THE FULL INITIAL TERM OR ANY RENEWAL TERM, AS APPLICABLE. If we allow you to suspend your account for a temporary period, we may extend the term of your Agreement by the length of the temporary suspension. After the expiration of the initial or any renewal term, this Agreement will automatically renew for an additional twelve (12) months until terminated by either party as provided herein. IF YOU TERMINATE SERVICE FOR ANY IDENTIFIER MORE THAN 30 DAYS AFTER YOUR ORIGINAL ACTIVATION DATE FOR THAT IDENTIFIER, BUT BEFORE THE END OF THE INITIAL OR ANY RENEWAL TERM, OR WE TERMINATE FOLLOWING YOUR DEFAULT, YOU WILL BE IN MATERIAL BREACH OF THIS AGREEMENT. YOU AGREE OUR DAMAGES WILL BE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND AGREE TO PAY US, AS A REASONABLE ESTIMATE OF OUR DAMAGES AND IN ADDITION TO ALL OTHER AMOUNTS OWING, A CANCELLATION FEE IN AN AMOUNT EQUAL TO FIFTY (50%) OF YOUR MONTHLY SERVICE FEE AMOUNT MULTIPLIED BY THE REMAINING MONTHS OR PARTS OF MONTHS IN YOUR SERVICE PLAN OR RENEWAL TERM, AS APPLICABLE, OR THE CANCELLATION FEE SET FORTH IN YOUR RATE PLAN, AND YOU MAY NOT BE ELIGIBLE FOR NEW CUSTOMER PROMOTIONS IN THE FUTURE. Payment of the cancellation fee will not relieve you of any obligations owed to us prior to the termination date, including payment of fees and costs. Any termination, other than your cancellation within 30 days of initial activation, or porting of any Identifier to another carrier will be effective at the end of the billing cycle in which cancellation occurs.

13. **Default/Termination.** You will be in default of this Agreement if you (a) fail to pay any amount owed to us or an affiliate of ours or any amount appearing on your invoice within 30 days after the date of the invoice, (b) have amounts still owing to us from a prior account, (c) breach any representation to us or fail to perform any of the promises you made in this Agreement, (d) violate any policy applicable to the Service, or (e) are subject to any proceeding under the Bankruptcy Code or similar laws. If you are in default, we may, without notice to you, suspend Service, withhold equipment or other refunds and/or terminate this Agreement, in addition to all other remedies available to us. We may charge reactivation charges to renew Service after termination or suspension for any reason. Upon termination and/or porting any Identifier to another carrier, you are responsible for paying all amounts and charges you owe to us, including any applicable cancellation fee. Third party promotions and/or discounts may end upon termination of this Agreement.

CHARGES AND BILLING

14. **Usage Charges.** You are responsible for paying all charges in accordance with your Rate Plan for use of the Service associated with the Identifier(s) and Device(s) assigned to you, even if you did not use, or authorize the use of, the Device. The network name or type of service displayed on your Device does not determine how Service will be billed. Charges may be associated with airtime, access, features, voice mail access, voice mail delivery, data usage, text and multi-media messages, downloadables, alerts, roaming, long distance, directory and operator assistance, listing or un-listing charges, the price of Devices and accessories, premium content, software, charges for other goods and services, including shipping and handling, that are charged through your bill. You are responsible for the installation, operation, and maintenance of your Device.

15. **Equipment Rental Terms and Charges.** Any rental of equipment specified on the signature portion of this agreement is subject to all terms and conditions herein as well as the following terms and conditions applicable to your rental of equipment from Broadpoint. The term of the rental shall commence on the date the equipment is shipped from Broadpoint's inventory center and shall continue thereafter until the expiration of the Service Commitment and the equipment is returned to Broadpoint. Returned equipment shall be shipped freight prepaid, in substantially the same condition as when first received, ordinary wear and tear excepted. Except as set forth in Section 33 below, you shall be responsible for and pay to Broadpoint, on demand, the new replacement cost of any lost or materially damaged equipment, as determined at Broadpoint's sole discretion. You shall be responsible for rentals to the date of receipt by Broadpoint. All rental rates and prices shall be subject to change by Broadpoint any time without notice.

16. **Voice Charges.** You will be billed at domestic airtime or roaming rates for 900, 866, 877, 888, and other "toll free" calls. All calls to 611 will be free of charge. Broadpoint will be your wireless long distance provider. For all incoming and outgoing voice Service, the length of the call will be measured during the time that the call is connected to our system, which is approximately from the time you press the button that initiates or answers a call until approximately the time the first party terminates the call. Voice Service on each call is billed in full minute increments, with partial minutes of use rounded up to the next full minute. For dropped call inquiries contact Customer Care. If an incoming call has been forwarded to another phone number, you will be charged for the entire time that our switch handles the call. While on our network, there is no charge for busy or unanswered calls if you end the call within 30 seconds. Service may be billed in a subsequent month due to delayed reporting between carriers and will be charged as if used in the month billed. Unused airtime minutes included in a monthly rate plan cannot be carried over to any subsequent month.

17. **Data Charges.** You are responsible for all data usage sent through our network, including advertisements, and associated with the Device, regardless of whether the Device actually receives the information. All IP addresses will be assigned dynamically per session from a private pool and not all protocols will be supported. Other IP addressing options are available for additional cost. Our network may resend data packets to ensure complete delivery, you will be billed for these resent packets. Once every 24 hours our system will create a billing record for each network you use during that period. The usage for each billing record will be rounded up to the next kilobyte and a cost will be associated with each billing record and rounded to the nearest cent. 1024 kilobytes equals one megabyte. Our system will then create individual billing records representing (a) the data usage for each data gateway accessed (e.g. WAP, RIM) while on our network (b) the combined usage for other carrier's domestic networks and (c) the data usage for international networks. Roaming rates apply when sending or receiving data outside of our network. If a majority of data usage in any three-month period is used off the Broadpoint network, we reserve the right, at our option, to terminate your service or move you to another plan for which you otherwise qualify. If you choose to connect your device to your PC for use as a wireless modem, standard data charges will apply. Utilizing compression solutions may or may not impact the amount of kilobytes for which you are billed. In addition to data charges, additional

monthly and/or usage charges apply for some service options. Synchronization is only available with certain programs. Unused included megabytes cannot be carried over to any subsequent month. In some situations, billing for data usage may be delayed; any delayed usage will create additional billing records for the actual day of the usage.

18. **Taxes, Surcharges and Other Fees.** Various taxes, surcharges, fees, and other assessments (e.g., universal service charge) are imposed by governments relating to the Service we provide to you, goods or services you purchase, and the wireless network and equipment used in providing the Service. We will determine, in our reasonable discretion, the taxes and other assessments that you are responsible to pay and the amounts of such charges. You are responsible for paying these taxes and other assessments, regardless of whether they are assessed on you or us, and regardless of whether the government requires Broadpoint to pass-through the charges to you. To determine which jurisdictions' wireless telecommunications service taxes and other assessments to collect, federal law requires us to obtain your Place of Primary Use ("PPU"), which must be your residential or business street address. You agree to provide us your PPU and to notify us of any changes in your PPU. If you do not provide us with an appropriate PPU, we may reasonably designate one for you. On certain Rate Plans, your PPU must be your residential address.

19. **Regulatory Cost-Recovery Fee.** In addition to other charges, you may also be assessed a Regulatory Cost-Recovery Fee, which is a monthly charge created, assessed and collected by Broadpoint to help defray our costs for compliance with various regulatory requirements which include, but are not limited to, the capability to provide wireless number portability and number pooling enhancements in our network. This fee is not a tax or a government-required charge. In our discretion, we may change the amount of the Regulatory Cost-Recovery Fee.

20. **Billing and Payment.** We will provide your bill in a format we choose, which may change from time to time. Payment of all charges is due upon receipt of invoice. A fee may be charged for additional copies of bills, or billing in another format, including the detailed billing option. You will receive a bill for all Service associated with each Device or multiple Devices and any charges of a third party on whose behalf we bill. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, we may make reasonable adjustments and prorations. If you have authorized payment by credit card, no additional notice or consent will be required for billings to that credit card for all amounts (including late charges and cancellation fees). You must promptly notify us of any change in your invoicing address or changes related to the credit card used for payment. Your payment obligations survive any termination of this Agreement.

21. **Late Payments/Disputes.** Time is of the essence for payment. Therefore, you agree to pay us a late fee for amounts unpaid 30 days after the date of the invoice of 1.5% per month, unless Broadpoint is required by applicable law to charge a different interest rate. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of our rights to collect the full amount you owe to us. For any check or electronic payment returned for nonpayment or for any credit card chargeback's, we will assess an additional fee not to exceed \$25, or such lower amount as permitted by applicable law and we may, without notice to you, suspend Service and/or terminate this Agreement, in addition to all other remedies. All amounts due, including disputed amounts, must be paid by the due date regardless of the status of any objection. Payments will be applied first to amounts owed to us and then to amounts owed to third parties. All communications concerning disputed amounts owed, including any instrument tendered as full satisfaction of the amounts owed, or stipulating any other conditional action, agreement or proposed resolution of any dispute must be (i) in writing, (ii) marked "Billing Dispute" on the outside of the envelope, (iii) sent to the address provided in the Notices section below, and (iv) received by us within 60 days after receipt of the invoice.

PRIVACY

22. Consents.

a. You consent to our release of information about you and your use of Service when we believe release is appropriate to (i) comply with the law (e.g. a lawful subpoena, E911 information); (ii) enforce or apply our customer agreements; (iii) initiate, render, bill and collect for Services; (iv) protect our rights or property, or to protect users of those Services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such Services; or (v) facilitate or verify the appropriate calculation of taxes, fees or other obligations due to a local, state or federal government.

b. We may also release information about you if we reasonably believe that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of communications or justifies disclosure of records without delay. You consent to our monitoring of any communication to or from you or your Device to protect our rights or property or those of our customers, as well as for quality control and service related purposes.

c. Your caller identification information (such as your name and wireless number, including area code), may be displayed on the equipment or bill of the person receiving your call.

d. You consent to our use of regular mail, predictive or autodialing equipment, email, SMS, facsimile or other reasonable means to contact you to advise you about our services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service-related notifications, or other such information. You consent to receiving advertising, alerts and other broadcast messages from us or our authorized agents.

23. **CPNI Consent.** Under federal law, you have a right, and we have a duty, to protect the confidentiality of information about the amount, type, and destination of your wireless service usage and the location of your device on our network (CPNI) when you use voice service. You consent to us sharing your CPNI with any Broadpoint affiliates who provide communications-related services, joint venture partners and independent contractors, to develop or bring to your attention communications-related products and services. This consent survives the termination of your Service and is valid until you revoke it. To remove this consent, notify us in writing at the address provided in the Notices section below, providing your (1) name, (2) Service billing address, (3) Identifier (e.g. mobile phone number including area code), and (4) Service account number. Removing consent will not affect your current Service or the provisions of paragraphs 5, 22 or 24.

24. **Business Transfer.** You consent to disclosure of your CPNI or other personal information, in connection with any merger, acquisition or sale of our assets or transition of service to another provider, as well as in the event of an insolvency, bankruptcy or receivership in which personal information would be transferred as one of our business assets.

RESOLUTION OF DISPUTES

PLEASE READ. IT IS IMPORTANT THAT YOU READ THIS SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH FINAL AND BINDING ARBITRATION INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

25. **Binding Arbitration.** The arbitration process established by this section is governed by the Federal Arbitration Act (the "FAA") (9 U.S.C. §§ 1-16). The FAA, not state law, governs whether a claim related to this Agreement is subject to arbitration. This provision is intended to be interpreted broadly to encompass all disputes or claims, including those against any subsidiary, parent or affiliate companies, arising out of any aspect of our relationship (including but not limited to this Agreement, our Privacy Policy, Acceptable Use Policy or the Service or any equipment used in connection with the Service). All such disputes or claims whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, will be resolved by binding arbitration except that (1) you may file claims to small claims court if they qualify for hearing by such a court, or (2) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us.

26. **Arbitration Procedures.** You must first present any claim or dispute to us by contacting Customer Care to allow us an opportunity to resolve the dispute. You may request arbitration if your claim or dispute cannot be resolved within 60 days. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") under the Wireless Industry Arbitration Rules ("WIA Rules"), as modified by this Agreement. The WIA Rules and information about arbitration and fees are available upon request from the AAA online at www.adr.org. Unless you and we agree otherwise, any arbitration will take place in the county of Broadpoint's closest office. At either party's election, the arbitration shall be held telephonically. An arbitrator may award any relief or damages (including injunctive or declaratory relief) that a court could award, except an arbitrator may not award relief in excess of or contrary to what this Agreement provides and may not order relief on a consolidated, class wide or representative basis. In any arbitration applying the WIA Rules applicable to large/complex cases, the Arbitrators must also apply the Federal Rules of Evidence, and the losing party may have the award reviewed in accordance with the review procedures set forth in the WIA Rules. Judgment on any arbitration award may be entered in any court having proper jurisdiction. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

27. **Costs of Arbitration.** For claims of less than \$1,000, you will be obligated to pay \$25 and we will pay all other administrative costs and fees. For claims over \$1,000 but under \$75,000, you will be obligated to pay your share of the arbitration fees, but no more than the equivalent court filing fee for a court action filed in the jurisdiction where your billing address is located. For arbitrations in excess of \$75,000, all administrative fees and expenses of arbitration will be divided equally between you and us. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

28. **Waiver of Class Actions and Jury Trials.** By this Agreement, both you and we are waiving certain rights to litigate disputes in court. You and we both agree that any arbitration will be conducted on an individual basis and not on a consolidated, class wide or representative basis. If for any reason this arbitration clause is deemed inapplicable or invalid, or to the extent this arbitration clause allows for litigation of disputes in court, you and we both waive, to the fullest extent allowed by law, any rights to trial by jury and to pursue any claims on a consolidated, class wide or representative basis.

29. **Limitations Period.** Any arbitration or legal action with respect to any and all claims or causes of action related to or arising out of this Agreement must be brought within TWO YEARS after the cause of action arises, or within the applicable statutory period of time, whichever is shorter. This limitations period does not apply to any cause of action when the statutory limitations period for that cause of action cannot be waived, restricted or otherwise limited by you.

LIMITATIONS

30. **Limitations.** The parties intend that the limitations on liability, warranty and damage awards provided for in this Agreement will apply to the fullest extent allowed by law. Some jurisdictions do not allow the exclusion of certain warranties or the waiver, limitation or exclusion of liability for punitive, incidental or consequential damages, or for intentional or willful conduct in some circumstances. To the extent that any of these limitations are not permitted by applicable law, they will not apply to you.

31. **Limitation of Liability.** WE ARE NOT LIABLE FOR ACTS OR OMISSIONS OF ANOTHER SERVICE PROVIDER OR ANY THIRD PARTY PROVIDERS OF SERVICES RELATED TO USE OF THE DEVICE OR SERVICE, FOR INFORMATION PROVIDED THROUGH YOUR DEVICE, LACK OF PRIVACY OR SECURITY EXPERIENCED WHEN USING THE DEVICE, EQUIPMENT FAILURE OR MODIFICATION, OR OTHER CAUSES BEYOND OUR REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS THAT THE SERVICE WILL BE ERROR-FREE, UNINTERRUPTED, OR FREE FROM UNAUTHORIZED ACCESS (INCLUDING THIRD PARTY HACKERS OR DENIAL OF SERVICE ATTACKS). WE AND ANY UNDERLYING CARRIER ARE NOT LIABLE FOR SERVICE OUTAGES, LOSS OF DATA, INABILITY TO RETRIEVE DATA, SERVICE LIMITATIONS OR INTERRUPTIONS, AS DESCRIBED ABOVE, ECONOMIC LOSS OR INJURIES TO PERSONS OR PROPERTY ARISING FROM USE OF THE SERVICE, THE DEVICE, OR ANY EQUIPMENT USED IN CONNECTION WITH THE DEVICE UNLESS ARISING FROM OUR SOLE AND GROSS NEGLIGENCE. OUR LIABILITY AND THE LIABILITY OF ANY UNDERLYING CARRIER ARISING FROM ANY SUCH SOLE AND GROSS NEGLIGENCE SHALL IN NO EVENT EXCEED OUR SERVICE CHARGES DURING THE AFFECTED PERIOD. WE AND ANY UNDERLYING CARRIER ARE NOT LIABLE FOR ANY INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS. YOU AND WE BOTH WAIVE TO THE FULLEST EXTENT ALLOWED BY LAW, ANY CLAIMS TO RECOVER INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES. WE ARE NOT LIABLE FOR THE INSTALLATION OR REPAIR OF THE DEVICE BY ANY PARTIES WHO ARE NOT OUR EMPLOYEES. SOME STATES DO NOT ALLOW THE LIMITATIONS SET FORTH ABOVE SO THE LIMITATIONS MAY NOT APPLY TO YOU, IN WHOLE OR IN PART. YOU AGREE THAT THE INCLUSION OF THIS PARAGRAPH WAS A MATERIAL CONSIDERATION FOR US TO ENTER INTO THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE LIMITATIONS SET FORTH ABOVE WITH RESPECT TO LIMITATION OF DAMAGES AND LIMITATION OF REMEDY ARE INDEPENDENT OF ONE ANOTHER AND WILL SURVIVE ANY FAILURE OF ALL OR PARTS OF THE ESSENTIAL PURPOSE OF THE OTHER.

32. **Indemnification.** YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US, OUR AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO THIS AGREEMENT OR YOUR PROMISES OR STATEMENTS MADE IN IT, CONTENT YOU STORE, PROCESS OR TRANSMIT USING THE SERVICE AND ANY OTHER USE OF THE DEVICE OR SERVICE UNLESS DUE TO OUR SOLE AND GROSS NEGLIGENCE. YOU ALSO AGREE TO PAY OUR REASONABLE

ATTORNEYS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN ENFORCING THIS AGREEMENT, INCLUDING THROUGH ANY APPEAL, EXCEPT AS PROVIDED OTHERWISE IN THIS AGREEMENT. USE OF YOUR DEVICE WHILE OPERATING A MOTOR VEHICLE OR IN A DISTRACTED OR NEGLIGENT MANNER MAY BE PROHIBITED OR RESTRICTED BY LAW IN SOME AREAS. IT IS YOUR RESPONSIBILITY TO CONFORM TO ALL SUCH LAWS OR REGULATIONS AND YOU SHALL INDEMNIFY US FROM CLAIMS ARISING FROM ANY SUCH UNLAWFUL USE. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

33. **Limited Warranties.** For thirty (30) days from the date of rental, we warrant that any equipment rented pursuant to Section 15 shall operate in material accordance with the functional specifications of provided with such equipment. EXCEPT AS SET FORTH IN THIS SECTION, WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICE OR THE DEVICE OR ANY SERVICES PROVIDED BY ANY THIRD PARTIES, AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE DEVICE, THE SERVICE OR ANY SERVICES PROVIDED BY ANY THIRD PARTIES. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTY ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. TO THE EXTENT THAT THE MANUFACTURE OF ANY DEVICE PROVIDES A WARRANTY FOR SUCH DEVICE, WE SHALL PASS THROUGH SUCH WARRANTY TO YOU AND PROVIDE YOU REASONABLE ASSISTANCE IN ENFORCING THE TERMS OF SUCH WARRANTY AGAINST THE MANUFACTURER. WE ARE NOT THE MANUFACTURER OF THE DEVICE AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

GENERAL

34. **Assignment.** We may assign all or part of this Agreement, without notice to you, and such assignment will not be a change to the Agreement. We are then released from all liability. You may not assign this Agreement without our prior written consent.

35. **Notices.** We may send you notices by mail or electronic means, in our sole discretion. Notices to you shall be effective (1) 3 days following the date deposited in the U.S. Mail or delivered to a nationally recognized courier or delivery service to your address as kept in our files and/or (2) immediately upon our transmission using an electronic means such as e-mail or text messaging service. You are responsible for notifying us of any changes in your mailing or e-mail address. Written notice to us shall be effective when directed to Broadpoint, 711 W. Bay Area Blvd., Suite 405, Webster, TX 77598 and received by us. Your notice must contain specific information adequate to identify you and your Service. Oral and electronic notices shall be deemed effective on the date reflected in our records.

36. **Entire Agreement.** This Agreement, together with the Sales Information and all other documents and policies referenced herein, represent the entire agreement between you and us, which may only be amended as described in this Agreement. This Agreement supersedes any inconsistent or additional representations made to you by any of our representatives, agents or dealers. Subsequent purchases of additional services from us may require the entry into a separate agreement. If any term or condition of a Rate Plan conflicts with this Agreement, the terms of the Rate Plan will control. If any part of this Agreement is found invalid, the balance of the Agreement remains enforceable. If, at any time, we do not enforce any right or remedy available under this Agreement, that failure is not a waiver of our right to enforce the right or remedy at a later time. Copied, microfilmed, scanned or other duplicate or electronic images of this Agreement are admissible for all purposes.

37. **Governing Laws.** This Agreement is subject to applicable federal laws, federal or state tariffs, if any, and the laws of the State of Louisiana. Where our Service terms and conditions are regulated by a state agency or the FCC, the regulations are available for your inspection. If there is any inconsistency between this Agreement and those regulations, this Agreement shall be deemed amended as necessary to conform to such regulations.

38. **Translation.** The original version of this Agreement is the English language. Any discrepancy or conflicts between the English version and the versions in any other language will be resolved with reference to and interpreting the English version, which will control.

Broadpoint, LLC Services Agreement

Subscriber's Name

Contact

Subscriber's Mailing Address:

City

State

Account No.

Initial Service Date

IMPORTANT: I have read and agree to the attached terms and conditions.

Subscriber's Signature

Name

Title (if corporate account)

Date