

# EMBARQ™ WIRELESS CONSUMER TERMS AND CONDITIONS

Effective November 2008

These terms and conditions (“Agreement”) govern EMBARQ’s provision and your use of EMBARQ™ Wireless Consumer services, wireless phones, and wireless devices (collectively, “Services”). By purchasing Services from EMBARQ, you agree to be bound by the terms set forth below.

## 1. AGREEMENT; TERM AND TERMINATION

**1.1 General.** This Agreement covers the terms on which we agree to provide, and you agree to accept, any service or product we make available to you, including your Services. You accept this Agreement when you do any of the following: (a) provide your written or electronic signature; (b) accept through an oral or electronic statement; (c) attempt to or in any way use any of the Services; (d) pay for any Services; or (e) open any materials or package that says you are accepting when you open it. The Agreement includes the terms in this document together with the terms associated with the Services you select (as described in our marketing materials, e.g., service plan brochures, or on our website). You should carefully read all terms in the Agreement, including among other terms, a MANDATORY ARBITRATION of disputes provision. You represent that you are of sufficient legal age to enter into this Agreement. In the event of conflict among terms in any materials, the terms and conditions posted to [www.embarq.com/ratesandconditions](http://www.embarq.com/ratesandconditions) control. In this document, we use the words "we," "us," "our" or "EMBARQ" to refer to Embarq Communications, Inc., any entities under common control with or controlling Embarq Communications, Inc., and any affiliates doing business as EMBARQ. **This Agreement is not applicable to EMBARQ™ Prepaid Wireless services, phones, and devices; see [www.embarq.com/ratesandconditions](http://www.embarq.com/ratesandconditions) for applicable terms.**

**1.2 Business customers activating or using Business Lines** (as defined in the applicable Business Agreement). This Agreement is inapplicable to you. The agreement with EMBARQ for business customers includes (a) the EMBARQ Standard Terms and Conditions for Communication Services ("Standard Terms and Conditions"), (b) the EMBARQ Wireless Annex ("Product Terms and Conditions"), and (c) the business wireless service agreement under which Services are purchased (“Business Agreement”). The applicable Standard Terms and Conditions and the Product Terms and Conditions are posted at [www.embarq.com/ratesandconditions](http://www.embarq.com/ratesandconditions) on the date the Business Agreement is signed, and are incorporated by reference into the Business Agreement. For business customers, dispute resolution procedures are described in the Standard Terms and Conditions.

**1.3 Changes to the Agreement.** We may change the Agreement at any time with notice. Any changes to the Agreement are effective when we publish them. If you use our Services or make any payment to us on or after the effective date of the changes, you accept the changes. If we change a material term of the Agreement and that change has a material adverse effect on you, you may terminate the Agreement without an Early Termination Fee by calling 1-866-300-3346 within 30 days after the changes go into effect. You understand and agree that taxes, fees, surcharges, Universal Service fees, and other charges imposed by the government or based on government calculations may increase or decrease on a monthly or quarterly basis, and that this paragraph does not apply to any increases in those charges.

**1.4 Activating Service; Credit Approval.** Before we activate your Services, we may request sufficient verification of your status as a customer of other EMBARQ™ products and services, check your credit, and verify your identity in our sole discretion. If required to maintain a specific offer or discount, you must remain a customer of other EMBARQ™ products and services for the period required by that offer or discount. You must have and maintain satisfactory credit at all times to receive and continue to receive Services. A deposit may be required to establish Service. We may charge a nonrefundable activation fee, deposit, prepayment or other fee to establish, maintain, or re-establish Services.

**1.5 Term Commitments.** Service plans and contract credits for equipment or wireless devices require that you maintain Service for a minimum term (“Term”) of 2 years (“Term Service Plan”). Your Term Service Plan will continue on a month-to-month basis after satisfying the Term. As discussed below, we may charge you an Early Termination Fee if you deactivate a Term Service Plan before the end of the Term.

**1.6 Beginning of Term.** If your Agreement requires you to keep a wireless device active or maintain a line of Service for a minimum Term, the Term begins on the device activation date; for customers changing Service plans, the Term continues uninterrupted despite the selection of a different Service plan.

**1.7 Termination of Services.** Consistent with this Agreement: (a) we may terminate Services at any time with notice to you and, in certain instances, without notice; and (b) you may terminate Services at any time with prior notice to us, including calling customer service at 1-866-300-3346.

**1.8 Early Termination Fee.** Except as otherwise provided in this Agreement, IF YOU TERMINATE YOUR TERM SERVICE PLAN EARLY, OR WE DO SO FOR GOOD CAUSE, YOU WILL BE REQUIRED TO PAY THE APPLICABLE EARLY TERMINATION FEE ASSOCIATED WITH YOUR SERVICES. Your EARLY TERMINATION FEE will be \$150 with the two-year Term (the applicable early termination charge is referred to in the Agreement as the "Early Termination Fee") for each line of Service terminated before the end of your Term. We will not charge an Early Termination Fee for deactivations consistent with our 30-Day Wireless Satisfaction Guarantee, where the Agreement permits you to terminate without requiring payment of the Early Termination Fee. If any Services are terminated before the end of your current invoicing cycle, we will not prorate charges to the date of termination, and you will not receive a credit or refund for any unused Services. Payment of the Early Termination Fee does not satisfy other outstanding obligations owed to us, including maintaining term commitments on other lines of service, or service or equipment related charges.

## 2. PROVISION OF SERVICES

**2.1 Network Coverage.** Network coverage is not available everywhere. EMBARQ™ Wireless network services are provided on the Nationwide Sprint PCS Network\* ("Network"). See the mapping information at [www.embarq.com](http://www.embarq.com) or an EMBARQ representative for approximate outdoor coverage, as well as coverage we make available to you through agreements with other carriers (i.e., roaming coverage). *All coverage maps are high level representations and there are gaps in coverage within areas shown as covered on the maps. We do not guarantee you will receive coverage at all times, or without interruptions or delays (e.g., dropped calls, blocked calls, etc.) in the coverage areas we identify.* Actual coverage and quality of Services may be affected by conditions within or beyond our control, including Network problems, software, signal strength, Customer's equipment, structures (including building where Customer may be located), atmospheric, geographic, or topographic conditions.

**2.2 Using Services.** You will not use our Services in an unlawful, fraudulent, or abusive manner. You will not resell or lease Services to anyone. We are not responsible for any opinions, advice, statements, services applications or other information provided by third parties and accessible through our various Services, including the internet. EMBARQ has no responsibility, obligation, or liability related to the lack of security you may experience due to your use of the Services or any personal information you or any authorized or unauthorized user of the Services share through your use of Services. Neither EMBARQ nor its vendors or licensors guarantees the accuracy, completeness or usefulness of information that is obtained through these Services. You are responsible for evaluating such content. *You are also responsible for any use of our Services through any wireless device on your account including, but not limited to, use by children or minors. We strongly recommend that you closely monitor any such usage.*

**2.3 Changes to Services.** Changes to Services will generally be effective at the start of your next full invoicing cycle. In certain instances, the changes may take place sooner, in which case your invoice will reflect pro-rated charges. Certain changes may be conditioned upon payment of an Early Termination Fee or certain other charges.

**2.4 Basic Services.** All device usage, including incoming and outgoing calls and messaging, incurs charges. Unused plan minutes or text messages do not carry forward. Except where specifically permitted, included plan minutes may not be valid for local or long-distance off Network international roaming calls. International roaming rates and per-minute usage charges will apply and vary in amount. On a call that crosses time periods, minutes are deducted or charged based on the call start time.

**2.5 Inclusion of Domestic Roaming.** Domestic roaming is included in Term Service Plans where specified, but is not available with single-band or digital mode only phones, or to customers residing in an area not covered by the Network. Domestic roaming minutes count toward the anytime minute allotment in a Term Service Plan. Domestic roaming that exceeds the anytime minute allotment will be charged the applicable per-minute overage rate. International roaming charges apply on your calls from international locations, including Canada and Mexico. International long distance and international roaming charges will apply to calls that terminate to a country (except the United States) outside of the country from where the call is made. Due to the agreements with other providers regarding roaming, usage in some coverage areas may be invoiced after 30 to 60 days. When roaming off of the Network: (a) EMBARQ™ Wireless Internet and EMBARQ™ Wireless My Contacts<sup>SM</sup> calling services are not available; and (b) certain calling features (Voicemail, Caller I.D., Call Waiting, etc.) may not work.

**2.6 EMBARQ™ Wireless Internet.** EMBARQ™ Wireless Internet requires an EMBARQ™ Wireless Internet-capable device, and is not available while roaming off the Network. You will not receive voice calls while using EMBARQ™ Wireless Internet. EMBARQ™ Wireless Internet is not available for use with server devices or host computer applications, other systems that drive continuous heavy traffic or data sessions, or as substitutes for private lines or frame relay connections. EMBARQ™ Wireless Internet also is not available: (a) with any other device used in connection with a computer or PDA - including devices, smart devices or other devices used with connection kits or similar device-to-computer/PDA accessories; and (b) with Bluetooth-capable devices or other wireless technology used as a modem in connection with other devices. We may terminate Services without notice for any misuse. You may have access to certain games, ringtones, screen savers and other items ("Premium Services") that are available for an additional charge. You will be billed for Premium Service purchases on your EMBARQ™ Wireless invoice or as directed by the Premium Service provider based on the charges as specified at purchase. All Premium Services are priced separately. We provide no warranties and make no representations or claims with regard to Premium Services. Subject to the terms of the content purchased, we may delete premium and non-premium items downloaded to any storage areas we may provide, including any pictures, games, and other content. We may limit the amount of Premium Services you may purchase in a specific timeframe (month, week, day, or other time period). Credits for Premium Services do not carry forward and are not available for use with all Services. Estimates of data usage will vary from actual use.

**2.7 Wireless Devices, Numbers & E-mail Addresses.** Services require a device compatible with the Network. We did not manufacture your wireless device and we are not responsible for any defects or for the acts or omissions of the manufacturer. The only warranties on your device are any limited warranties extended by the manufacturer directly to you or passed on to you through us. Your device may not accept Services directly from any other carrier. You do not have any rights to any number, e-mail address or other identifier we may assign to your device or account; you may not modify, change or transfer any of these except as we allow or as allowed for by law.

**2.8 EMBARQ™ Wireless Add-a-Line.** EMBARQ™ Wireless Add-a-Line is an additional line of Service added to your primary line. The first device activated on the Service plan is the primary line and the Add-a-Line(s) may have different Term commitment end dates. If the primary line on the account is terminated prior to the expiration of the Term of the oldest Add-a-Line or there is no term, an Add-a-Line must move to the primary line position or a non-shared service plan, if available.

**2.9 EMBARQ™ Wireless Unlimited Nights & Weekends.** This voice-only calling feature requires you to have EMBARQ™ wireline long distance service on your EMBARQ™ home phone. This feature does not include international, EMBARQ™ Wireless Internet, Text Messaging, and wireless prepaid calling plans. This feature covers voice-only Service usage from Monday through Thursday, 9:00pm to 7:00am, each evening, and Friday at 9:00pm to Monday at 7:00am. All times listed are local times from the physical location of the applicable wireless device.

**2.10 International Voice Usage.** For updated international calling rates for calls placed from the United States to international locations, a listing of countries available for international roaming, international roaming rates for calls placed from international locations, and to verify if your device will work for international roaming, please see our website, [www.embarq.com](http://www.embarq.com), or call customer service at 1-866-300-3346.

You must work with us to provision your account for international wireless service outside of the North American Dialing Pattern (“NADP”) prior to you having the ability to place these types of international wireless calls. International wireless service outside of the United States will incur international roaming charges, and may incur additional toll charges. For verification purposes, activation of certain international plans may take approximately 1 to 3 days, and additional information may be required during verification process.

**2.11 Price Guarantee Policy.** If the net, retail price (after application of all credits, promotions, and discounts) of a device falls below the net, retail price you paid for your identical device within 30 days of your purchase of that identical device, you may return the device to the store where you purchased that device or call customer service at 1-866-300-3346 to receive an account-level invoice credit for the price difference. You have 60 days from the date of your purchase to contact us to receive the credit. This policy only includes EMBARQ™ Wireless devices sold through EMBARQ direct sales channels. This policy does not apply to any devices offered by competitors or any third party providers. This policy has no effect on your Service plan or your obligation to pay for Service usage under your Term Service Plan.

**2.12 EMBARQ™ Wireless 30-Day Satisfaction Guarantee.** To be eligible, you must, within 30 days of purchase, (1) return your complete, undamaged EMBARQ™ Wireless device (including battery) with the original proof of purchase, and (2) request deactivation of your Service. In all instances, you must still pay all charges based on actual usage (including any pro-rated monthly recurring charges for Service, taxes and surcharges) incurred prior to return of your device. All purchases that were originally paid by cash will be refunded at any EMBARQ retail store up to the amount of safe funds available at the retail store. If the amount of safe funds available at the retail store does not cover the refund amount, EMBARQ will follow the check refund procedures described in this section. All purchases that were originally paid by check will be refunded by check within 15 business days of return. All refunds for merchandise purchased with a credit card will be refunded to the same credit card account. Credit card must be present at time of refund. The Early Termination Fee is inapplicable and we will refund the Activation Fee (if already paid), if you meet all requirements of this policy. But we will charge you a \$25 fee per device for failing to return the original device packaging that contained the wireless device or for failing to include any components that were in the original packaging (device charger, headset, etc.) that were included with the device at the point of sale. All returns must be in like-new condition (no cracks, scratches, etc.). EMBARQ has the final decision, in its sole discretion, whether the item(s) may be returned or exchanged. If equipment is exchanged, it must be completed within 30 days, and the exchange becomes the final sale and no further exchanges are permitted. EMBARQ may use reconditioned phones for warranty exchanges. You may return accessory-only purchases to us (a) within 30 days of purchase with the original proof of purchase if the accessory package is opened and undamaged, and (b) 12 months from the date of purchase with the original proof of purchase if the accessory package is unopened and undamaged.

**2.13 Lost or Stolen Equipment; Fraud.** If your device is lost or stolen, please notify us immediately by calling 1-866-300-3346. ***You are responsible for all charges incurred before you notify us of the loss or theft.*** You will cooperate reasonably with us in investigating suspected unlawful or fraudulent use. We may require that you provide evidence of the loss or theft (e.g., a police report or affidavit). You also will immediately notify our customer service at 1-866-300-3346 regarding any suspected fraudulent use of our Services. You will fully cooperate with us in the investigation of the incident. We will attempt to contact you before interrupting Services in the case of suspected fraud.

**2.14 Messaging.** You may incur charges in accessing, sending or receiving messages on your device. We may impose limits on the number of voicemail, text, email or other messages that can be retained through your account. Indicators of messages on your device, including mailbox icons, may not always provide an up to date indication of new messages and you may at times need to manually reset or clear your mailbox indicator. Legitimate messages may be interrupted by software aimed at prevention of SPAM or similar messages. When using this portion of the Service, it is possible that your wireless phone number, mobile device number, or other account information may be transmitted over the internet. We have no responsibility or liability related to the distribution of this information when you use this portion of the Service.

**2.15 EMBARQ™ Wireless Equipment Protection Programs (Insurance and Warranty).** EMBARQ™ Wireless Equipment Insurance is underwritten by Continental Casualty Company, a CNA company (CNA) and administered by Asurion Protection Services, LLC, a licensed agent of CNA (Asurion

Protection Services Insurance Agency, LLC CA Lic. #OD63161). EMBARQ™ Wireless Equipment Warranty is administered by Asurion Warranty Protection Services, LLC, or one of its affiliates. Claims may be fulfilled with new or refurbished equipment. Each approved insurance replacement request (up to 2 replacements in any 12 month period) is subject to a non-refundable \$50 deductible. For complete terms and conditions, visit any participating EMBARQ location or [www.embarq.com](http://www.embarq.com). May not be available in all states. Eligibility varies by device. Terms and Conditions are subject to change.

**2.16 EMBARQ™ Wireless Press & Talk<sup>SM</sup>.** EMBARQ™ Wireless Press & Talk<sup>SM</sup> requires an EMBARQ™ Wireless Press & Talk<sup>SM</sup>-enabled phone. Service will only work in conjunction with other EMBARQ™ Wireless Press & Talk<sup>SM</sup> phones while on the Network. EMBARQ™ Wireless Press & Talk<sup>SM</sup> is designed to complement primary dispatch radio systems. When making a voice call or using EMBARQ™ Wireless Internet Service, EMBARQ™ Wireless Press & Talk<sup>SM</sup> calls will not be completed. EMBARQ™ Wireless Press & Talk<sup>SM</sup> may take a few seconds to establish the initial connection. EMBARQ™ Wireless Press & Talk<sup>SM</sup> connections do not incur domestic long distance charges.

### 3. CHARGES AND PAYMENT

**3.1 Activation Fee.** A non-refundable, activation fee of \$14.95 applies to new activations of each primary line and each Add-a-Line.

**3.2 Taxes and Surcharges.** We invoice you for taxes, fees and other charges levied by or remitted directly to federal, state, local or foreign governments including, without limitation, sales, gross receipts, Universal Service Fund (“USF”), use, and excise taxes, and wireless pooling and wireless number portability fees, and state and federally-required E911 fees. We also charge certain cost-recovery charges that are not taxes or governmental-required charges. All taxes, fees, and other charges are subject to change and may vary by market. Our prices do not include these taxes, fees, surcharges, cost recovery charges of \$0.55 per line, and local surcharges of up to 15% in certain areas but in most instances less than 2%. Call 1-866-300-3346 for the up to date amount of the USF charge and information on cost recovery charges. If you claim any tax exemption, you must provide us with a valid tax-exempt document. Tax exemptions are not applied retroactively. We also invoice you for surcharges that we collect and keep to pay for the costs of complying with government programs such as number pooling and portability, and enhanced 911 service; these charges are not the taxes nor government imposed assessments.

**3.3 Invoicing & Payment.** Invoicing cycles and dates may change from time to time. Monthly recurring and related charges for Services are generally invoiced one invoicing cycle in advance. Unused plan minutes, text messages, or bytes of data do not carry forward. Other charges are invoiced soon after they are incurred. Most usage is generally applied to the invoicing cycle in which they are incurred, but in some instances may be applied to subsequent invoicing cycles. You are responsible for all charges associated with any device activated on your account, regardless of who used the device. You must pay all charges by the due date on the invoice. You will be assessed charges based on the terms of your Services including, without limitation, monthly recurring charges and charges based on actual usage (e.g., charges for long distance, roaming, call forwarding, 411, etc.).

***Past due amounts may accrue late charges until paid at the rate of 5% per month or at the highest rate allowed by law and may result in immediate suspension of your account.*** If you agree to any auto-payment option through banking or credit account, we may initiate payment from the account for all amounts we invoice you without additional authorization or notice. Based on your credit or payment history, we may require certain forms of guaranteed payment as a condition of maintaining Services. If we invoice you for amounts on behalf of a third-party, payments received are first applied to amounts due to us. You may be charged additional fees for certain methods of payment and for payments denied by a financial institution. Acceptance of payments (even if marked "paid in full") does not waive our right to collect all amounts that you owe us. Services that are a part of a bundled offering with other EMBARQ™ services will be subject to all requirements of the bundled offering, including payment requirements. Your failure to pay all amounts due related to a bundled offering that includes Services may result in suspension or termination of your Services (in addition to suspension or termination of other services in the bundled offering).

**3.4 Disputed Charges.** Disputes concerning any charges invoiced must be raised within 60 days of the date of the invoice. You accept all charges not disputed in this time period. Disputes can only be made by calling or writing us as directed on your invoice.

**3.5 Voice Charges.** Airtime and other time based usage charges are calculated from the time your device first initiates contact with a network until that network connection is broken or dropped, whether or not you were actually successful in connecting to the intended destination. But you will not be charged for voice calls that ring and do not pick up, or if you get a busy signal. For voice calls received by your device, you are charged from the time shortly before the phone starts ringing until the call is terminated. You are charged for an entire voice call based on the time period in which the call is initiated. Voice usage is incurred in one-minute increments. Partial minutes of use are rounded up to the next minute. A call will count against your allotment of anytime minutes for the entire duration of call initiated during your anytime minutes Service period.

**3.6 EMBARQ™ Wireless Internet Charges.** EMBARQ™ Wireless Internet includes unlimited internet access, unless otherwise noted. If unlimited internet access is not included, data usage is measured in bytes, not in minutes. Data usage is rounded up to the next whole kilobyte. Usage charges will be rounded up to the next full cent. Rounding up occurs at the end of each separate session or each clock hour (at the top of each hour), if the session spans more than 1 clock hour, then charged to you based on the terms of your Services. Depending on your Services, usage may be charged against an allowance or on a fixed price per kilobyte. In certain instances, you may not know that your session has not ended. As long as your device is connected to the Network, you will incur data usage charges. This includes, but is not limited to, the amount of data associated with the particular information or item (e.g. game, ringer, email, etc.), additional data used in accessing, transporting and routing this information or item on the Network, data from partial or interrupted downloads, re-send data, and data associated with unsuccessful attempts to reach websites or use applications. Based on these and a number of other factors (e.g., the specific application, Network performance, etc.), data used and charged to you will vary widely, even for the same activity. Estimates of data usage - for example, the size of downloadable files - will not be accurate or a reliable predictor of actual usage. Your invoice will not separately identify the number of kilobytes attributable to your use of specific sites, sessions or services.

**3.7 Shipping Fees.** We will directly ship devices and accessories (if accessories are ordered at the same time as the devices) to you for a standard two-day air ship rate. Products to those location(s) specified in your order, and title and risk of loss to the devices and accessories pass to you upon arrival at your specified location(s). If you order accessories separately from devices, we will ship the accessories to you via standard ground shipping. Additional shipping charges may apply to bulk shipments.

#### **4. LIMITATIONS AND DISPUTE RESOLUTION**

**4.1 TTY Access; Caller ID.** A TTY device (also known as TDD or Text Telephone) is a telecommunications device that allows people who are deaf or hard of hearing, or who have speech or language disabilities, to communicate by telephone. TTY doesn't work with all devices. If you have a TTY-capable device, it may not function effectively, or at all, when attempting 911 calls and should not be relied on for such calls. Caller identification information may not be available for all incoming calls.

**4.2 Telephone Numbers and Portability.** We will comply with any FCC-issued regulations that require us to allow you to retain your assigned telephone number(s) upon switching wireless service to another carrier. Before a telephone number previously used with another carrier can be used on the Network, you must provide information about the account with the other carrier (account name, account number, address, and social security number or tax identification number) and purchase our wireless devices. Until the port from the previous carrier is successful, the wireless device will only be able to call 911 and EMBARQ customer service. Once the port is completed, your old wireless device will no longer work. **However, due to system limitations and issues outside EMBARQ's control, some requests to port a telephone number from another carrier to EMBARQ, or from EMBARQ to another carrier, may not be successful.** If a transfer to us is not successful, you will return to us any wireless devices within the return period to receive a credit for the wireless device, and you will repay any discounts or service credits provided with the Services or the wireless device. If you transfer a number to another carrier before the end of the Term, you may be subject to Early Termination Fees.

**4.3 Disclaimer of Warranties.** WE MAKE NO REPRESENTATIONS OF WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (TO THE EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICES OR WIRELESS DEVICE. WE DO NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICES AND YOU WILL HOLD US HARMLESS FOR ALL SUCH PROBLEMS.

**4.4 Limitation of Liability.** Neither we nor our vendors, suppliers or licensors are liable for any damages, including personal injury or death, arising out of or in connection with any: (a) act or omission by you, or another person or company; (b) providing or failing to provide Services, including deficiencies or problems with your wireless device, the Network coverage or Services (e.g., dropped, blocked, interrupted calls/messages, etc.); (c) traffic or other accidents, or any health-related claims allegedly arising from the use of Services, any wireless devices or related accessories; (d) content or information accessed while using our Services, such as through the internet; (e) interruption or failure in accessing or attempting to access emergency services from your phone, including through 911, E911 or otherwise; or (f) events due to factors beyond our control, including acts of God (including, without limitation, weather-related phenomena, fire or earthquake), war, riot, strike, or orders of governmental authority. *In the event we are found to be responsible to you for monetary damages relating to the Services (including wireless devices), you agree that any such damages will not exceed the pro-rated monthly recurring charge for your Services during the affected period.*

**4.5 NO CONSEQUENTIAL OR OTHER DAMAGES.** UNDER NO CIRCUMSTANCES ARE WE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES, PHONES OR OTHER EQUIPMENT USED IN CONNECTION WITH THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, OR COST OF REPLACEMENT PRODUCTS AND SERVICES. THIS SECTION SURVIVES TERMINATION OF THIS AGREEMENT.

**4.6 MANDATORY ARBITRATION OF DISPUTES.** INSTEAD OF SUING IN COURT, YOU AND EMBARQ AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND (“CLAIMS”) AGAINST EACH OTHER. THIS INCLUDES BUT IS NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AS WELL AS CLAIMS ARISING OUT OF OR RELATING TO EMBARQ’S SERVICES, BILLING OR ADVERTISING, OR ARISING OUT OF OR RELATING TO PHONES/EQUIPMENT YOU OR EMBARQ MAY USE IN CONNECTION WITH EMBARQ’S SERVICES. THE REQUIREMENT TO ARBITRATE APPLIES EVEN IF A CLAIM ARISES AFTER YOUR SERVICES HAVE TERMINATED; APPLIES TO ALL CLAIMS YOU MAY BRING AGAINST EMBARQ’S EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES; AND APPLIES TO ALL CLAIMS THAT EMBARQ MAY BRING AGAINST YOU. THE FEDERAL ARBITRATION ACT, NOT STATE LAW, APPLIES TO THIS AGREEMENT AND ITS PROVISIONS AND, GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR EMBARQ FROM BRINGING APPROPRIATE CLAIMS IN A SMALL CLAIMS COURT HAVING VALID JURISDICTION, OR BEFORE THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION.

YOU AND EMBARQ FURTHER AGREE THAT NEITHER EMBARQ NOR YOU WILL JOIN ANY CLAIM WITH A CLAIM OR CLAIMS OF ANY OTHER PERSON(S) OR ENTITY(IES), WHETHER IN A LAWSUIT, ARBITRATION, OR ANY OTHER PROCEEDING. YOU AND EMBARQ AGREE THAT NO CLAIMS WILL BE ASSERTED IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE, THAT NO CLAIMS WILL BE RESOLVED ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATOR OR ARBITRATION FORUM WILL HAVE JURISDICTION TO ACCEPT OR DETERMINE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO RULES FOR CLASS-WIDE OR COLLECTIVE ARBITRATION WILL APPLY. THIS PARAGRAPH AND EACH OF ITS PROVISIONS ARE INTEGRAL TO, AND NOT SEVERABLE FROM, THIS SECTION ON MANDATORY ARBITRATION OF DISPUTES.

A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of either JAMS or the National Arbitration Forum ("NAF"), or, alternatively, as we may mutually agree. We agree to act in good faith in selecting an arbitrator. Except as expressly provided in the preceding paragraph, the arbitration will be conducted by and under the then-applicable rules of JAMS or NAF, wherever the arbitration is filed or, if the arbitrator is chosen by mutual agreement of the parties, the then-applicable rules of JAMS will apply unless the parties agree otherwise. All expedited procedures prescribed by the applicable rules will apply. We agree to pay our respective arbitration costs, except as otherwise required by rules of JAMS or NAF, as applicable, but the arbitrator can apportion these costs as appropriate. The arbitrator's decision and award is final and binding, and judgment on the award may be entered in any court with jurisdiction.

IF FOR ANY REASON, THE ABOVE PROVISIONS ON ARBITRATION ARE HELD UNENFORCEABLE OR ARE FOUND NOT TO APPLY TO A CLAIM, YOU AND EMBARQ AGREE TO WAIVE TRIAL BY JURY. If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys' fees.

Except as expressly provided above, if any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the section remains in full force and effect.

**4.7 Miscellaneous.** You may notify us by calling us at 1-866-300-3346, or use that number to get our current address for written notice. We may send you notice to your last known address in our invoicing records, or by calling leaving you a voice message or text message on your wireless device or home phone. Properly addressed written notice is effective three days after deposit in the U.S. mail, postage prepaid. This Agreement is governed by and must be construed under federal law and the laws of the State of Kansas, without regard to choice of law principles. If we waive or fail to enforce any requirement under this Agreement in any one instance, that does not waive our right to later enforce that requirement. If any part of this Agreement is held invalid or unenforceable, the rest of this Agreement remains in full force and effect. Section headings are for descriptive, non-interpretive purposes only. You may not assign this Agreement to any other person or entity without our prior written approval. This Agreement (including any referenced documents and attachments) makes up the entire agreement between us and replaces all prior written or spoken agreements.

\*Sprint is a trademark of Sprint Nextel.