



LINGO Service Agreement

Thank you for choosing service from Primus Telecommunications, Inc. ("Primus").

I. THE AGREEMENT

The Agreement") is between Primus and the user ("you," "user" or "Customer") of Primus's Lingo residential and small business communications services and any related products or services ("Service"). The Agreement with Primus consists of this General Service Agreement and the current terms of any calling plan, promotion, and/or authorized written communications you have received from Primus. For purposes of the Agreement, "you" means the customer, defined as either (i) the person identified in Primus's account records as responsible for payment of all charges; or (ii) any other person with actual or apparent authority to represent that person or to use the service(s).

BY ENROLLING IN, USING, OR PAYING FOR THE PRIMUS SERVICES, YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE PRICES, CHARGES, TERMS AND CONDITIONS, DO NOT USE THE SERVICES, AND CANCEL THE SERVICES IMMEDIATELY BY CALLING PRIMUS AT THE TOLL FREE NUMBER ON THE FIRST PAGE OF YOUR INVOICE FOR FURTHER DIRECTIONS.

This Agreement governs the Service and any devices, such the Analog Telephone Adapter or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service. By activating the Service, you acknowledge that you have read and understand, and you agree to, the terms and conditions of this Agreement, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

Primus may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted. The Agreement posted supercedes all previously agreed to electronic and written Terms of Service.

The rates and charges for the Service, which may be found at www.Lingo.com, are effective as of May 1, 2004 and are subject to change. For your most current rates and charges, the most current version of this General Service Agreement, or if you have questions about your services, please visit our website at www.Lingo.com (see Rates and General Services Agreement link) or call us at the toll-free number listed on the first page of your invoice.

II. SERVICE

A. Term

Service is offered on a monthly basis for a term which begins on the date that Primus activates your Service and ends on the day before the same date in the following month. Subsequent terms of this Agreement automatically renew on a monthly basis without further action by you unless you give



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Primus written notice of non-renewal at least ten [10] days before the end of the monthly term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. Expiration of the term or termination of Service does not excuse the Customer from paying all unpaid, accrued charges due in relation to the Agreement.

B. Business Use of Service and Device - Prohibition on Resale

If you have subscribed to Primus's Lingo Business Plan, the Service and Device are provided to you as a small business user. This means that you are not to resell or transfer the service or device to any other person for any purpose. You agree that the Primus Lingo Business Plan does not confer the right to use the service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting. Primus reserves the right to immediately terminate, modify or upgrade the Service, if Primus determines, in its sole discretion, that Customer's Service is being used for any of these.

C. Notice of Rate Changes

Primus may change the prices and charges for the Services from time to time. We may decrease prices without providing advance notice. Changes to any other rates, charges, or terms or conditions in the Agreement will be published in Primus's website and will be incorporated by reference into this Agreement.

D. Rounding Policy

For billing purposes, the length of each metered call is rounded as described in each Calling Plan. If the computed charge for a call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charges for taxes and surcharges include a fraction of a cent, the fraction is rounded up to the nearest whole cent.

E. Calls to International Mobile Telephones; International Special Services Calls

Primus's advertised rates for international calls are generally the rates charged for calls to landline telephones. Some calls to international mobile telephones, or to international telephone numbers considered to be special services calls, are charged a different (usually higher) rate than calls to landline telephones. The rates you will be charged are set forth in the calling plan rate tables and are typically designated by a "MOB", "cellular", "mobile" or "M" notation.

F. Timing of Calls

Generally, timing of metered calls begins when the called party or an automated answering device (such as an answering machine or a facsimile machine) answers the call, and ends when one of the parties disconnects from the call. However, some foreign carriers (with whom Primus must interconnect in order to terminate calls to foreign countries) designate a call as "answered" when the called party's line rings or after a certain number of rings, and will charge Primus for a completed call. In these situations, Primus will charge for the call as if it were answered by the called party.



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G. Use of Service and Device by Customers Outside the United States:

While we encourage use of the Service within the United States to other countries, Primus does not presently offer or support the Service to customers located in other countries. If you remove the Device to a country other than the United States and use the Service from there, you do so at your own risk, including the risk that such activity violates local laws in the country where you do so. You are liable for any and all use of the Service and/or Device by any person making use of the Service or Device provided to you.

H. Loss of Service Due to Power Failure

The Service does not function without power. Should there be an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require you to reset or reconfigure equipment before using the Service. Power disruptions or failures will also prevent dialing to emergency service numbers including the Emergency Calling Service calling feature.

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

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

J. Tampering with the Device

You agree not to change the electronic serial number or equipment identifier of the Device, or to perform a factory reset of the Device, without express permission from Primus. Primus reserves the right to terminate your Service should you tamper with the Device, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

K. Theft of Service



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

L. Number Transfer on Service Termination

Primus may, solely at Primus's discretion, release the telephone number that was ported in to Primus by you and used in connection with your Service provisioned by Primus to your new service provider, if such new service provider is able to accept such number, upon your termination of the Service, and provided (i) your account has been terminated; and (ii) your Primus account is completely current including payment for all charges and disconnect fees; and (iii) you request the transfer upon terminating your account. Customer will not be able to port away the telephone number if Customer cancels within thirty days of account activation.

M. Service Distinctions

You acknowledge and understand that the Service is not a telephone service. Important distinctions exist between telephone service and the enhanced Service offering provided by Primus. The Service is subject to different regulatory treatment than phone service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

N. Collect Call and Operator Services

Primus does not offer collect call or operator services via this Service.

O. International Services

1. Foreign Carrier Restrictions

Foreign carriers or regulatory agencies may impose, upon the portion of the end-to-end international service or facilities they provide, certain limitations or restrictions that may limit your ability use the Primus services. You must conform to any limitations or restrictions imposed by the foreign carriers or agencies.

2. Foreign Carrier Acts or Omissions.

- a. When other U.S. or foreign carriers and foreign telecommunications administrations use facilities to establish connections to points not reached by Primus's network, Primus is not liable for acts or omissions of other carriers or foreign telecommunications administrations.
- b. International calls are priced on the basis of the country and city codes dialed by you.



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When the facilities of other U.S. or foreign carriers are used in establishing connections to points not reached by Primus's network, Primus is not liable for refunds or damages if those calls do not terminate in the country, city or area codes associated with the called number.

P. Surcharges

In addition to surcharges which may be found in the applicable Calling Plan, Primus may adjust its rates and charges or impose additional rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from others or pay to others in support of statutory or regulatory funds or programs ("Governmental Charges").

Q. Taxes

1. All taxes, tax-like charges, and tax-related surcharges are referred to collectively as "Tax(es)." Primus may elect to impose and collect such Taxes, unless otherwise constrained by court order or direction.
2. You agree to pay all Taxes imposed. If Primus has collected Taxes and a challenged Tax is found to have been invalid and unenforceable, Primus, in its sole discretion, will either reduce service rates for a fixed period of time in the future in order to flow-through to customers an amount equivalent to the amounts collected, or it will credit or refund such amounts to affected customers (less its reasonable administrative costs), if the amounts collected were retained by Primus or if they were delivered to the jurisdiction and returned to Primus, or it will negotiate an arrangement with the jurisdiction to provide a future benefit for customers in that jurisdiction.
3. If you provide Primus with a duly authorized tax exemption certificate, Primus will exempt you in accordance with law, effective on the date Primus receives the certificate.
4. Taxes on Primus's net income will be Primus's responsibility.
5. If you are required by the laws of any foreign tax jurisdiction to withhold income or profit taxes from a payment, within 90 days of the withholding, you will provide Primus with official tax certificates documenting remittance of the taxes. The tax certificates will be in a form sufficient to document qualification of the taxes for the foreign tax credit allowable against Primus's U.S. corporate income tax, and will be accompanied by an English translation. Upon receipt of the tax certificate, Primus will issue you a credit for the amounts represented thereby.

R. Disconnect Fee

Customer will be charged a disconnect fee of \$39.95 per voice line upon termination of Service for any reason or for convenience by Customer. The disconnect fee becomes due and payable immediately upon termination and will be billed directly to Customer's credit card. If Customer has multiple lines, Customer will be charged a disconnect fee of \$39.95 per line for each line disconnected.



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S. Money Back Guarantee

Primus offers a 30-day money back guarantee, applicable to one primary line per account, not additional or secondary lines. Under terms of the Money-Back Guarantee, Primus refunds the activation fee, first month of service and waives the disconnect fee. Primus reserves the right to terminate or revoke the Money-Back Guarantee at any time, without prior notice.

User must cancel service within 30 days of the account activation. Equipment must be returned within 30 days. Usage must not exceed 500 minutes within the first 30 days of service. User is responsible for any charges for overage, international traffic or directory assistance. Cancellation may take up to two business days. Any usage after contacting Primus is Customer's responsibility. Accounts exceeding 500 minutes of usage are not eligible for refund. User may not port away a new phone number (DID) if User cancels within thirty days.

All returned equipment must be in the original packaging with the UPC or bar code intact. All components, manuals and registration card(s) must be included. Equipment must be returned with a valid return authorization number obtained from Primus Customer Care. User is responsible for return shipping of equipment. The money back guarantee will not be honored if user fails to meet all above requirements.

III. EMERGENCY CALLING SERVICE EMERGENCY DIALING

A. Non-Availability of Traditional 911 or E911 Dialing Service:

You acknowledge and understand that the Service does NOT support traditional 911 or E911 access to emergency services. Primus offers a limited Emergency Calling Service available only on Primus Devices as described herein, but you acknowledge and understand that such Emergency Calling Service dialing is different in a number of important ways from traditional 911 services, as described herein. Primus Emergency Calling Service dialing is only available on Primus-certified Devices or Equipment. You agree to inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service as to the non-availability of traditional 911 or E911 dialing from your Primus Service and Device(s). If you activate Primus Emergency Calling Service dialing, you agree to inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service as to the important differences and limitations of Primus Emergency Calling Service dialing as compared with traditional 911 or E911 dialing, as set forth in this Agreement.

B. Description of Emergency Calling Service-Type Dialing Capabilities - Activation Required

Primus does offer a Emergency Calling Service that is different in a number of important ways from traditional 911 services. When you dial 911, your call is routed from the Primus network to the Public Safety Answering Point (PSAP) or local emergency service personnel designated for the address which the Customer indicated on the sign-up information. You acknowledge and understand that when you dial 911 from your Primus Equipment you will be routed to the general telephone number for the PSAP or local emergency service provider, and may not be routed to the 911 dispatcher(s) who are specifically



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designated to receive incoming 911 calls using traditional 911 dialing. As described herein, this Emergency Calling Service dialing currently is NOT the same as traditional 911 or E911 dialing, and at this time, does not necessarily include all of the capabilities of traditional 911 dialing.

C. Service Outage:

1. Power Outage

You acknowledge and understand that Emergency Calling Service dialing does not function without power. Should there be an interruption in the power supply, the Service and Emergency Calling Service dialing will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment before using the Service or Emergency Calling Service dialing.

2. Broadband Service Outage

You acknowledge and understand that service outages by your broadband provider will prevent ALL Service including Emergency Calling Service dialing.

3. Service Outage Due to Suspension of Your Account

You acknowledge and understand that service outages due to suspension of your account as a result of billing issues will prevent ALL Service, including Emergency Calling Service dialing.

4. Other Service Outages

You acknowledge and understand that if there is a service outage for ANY reason, such outage will prevent ALL Service, including Emergency Calling Service dialing. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

5. Limitation of Liability and Indemnification

You acknowledge and understand that Primus's liability is limited for any Service outage and/or inability to dial Emergency Calling Service from your line or to access emergency service personnel, as set forth in this document. You agree to defend, indemnify, and hold harmless Primus, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third party or user of Customer's Service relating to the absence, failure or outage of the Service, including Emergency Calling Service dialing and/or inability of Customer or any third person or party or user of Customer's Service to be able to dial 911 or to access emergency service personnel.

D. Failure to Designate the Correct Physical Address for Emergency Calling Service Dialing:

The address which the Customer indicated on the sign-up information is the address which is applied to your Service for Emergency Calling Service dialing. Should you need to change this address, you must



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contact Primus Customer Service immediately to correct this address. It may take up to three business days to put through a change of address or update of an address. Failure to provide the current and correct physical address and location of your Primus equipment will result in any Emergency Calling Service communication you may make being routed to the incorrect local emergency service provider.

E. Requires Re-Activation if You Change Your Number:

You acknowledge and understand that Emergency Calling Service dialing does not function if you change your phone number unless and until you have contacted Primus Customer Service and have been informed by them that your new Emergency Calling Service service address is re-activated. Emergency Calling Service dialing must be re-activated. Although you may have activated Emergency Calling Service dialing with your former Primus phone number, you must separately activate Emergency Calling Service dialing for any new number.

F. Change of Physical Location of Primus Equipment:

You acknowledge and understand that Emergency Calling Service dialing does not function properly or may not function at all if you take your equipment with you away from the address or physical location that you have designated.

G. Requires Re-Activation if You Move:

You acknowledge and understand that Emergency Calling Service dialing does not function properly or at all if you move or change the physical location of your Primus equipment to a different street address, unless and until you have successfully contacted Primus Customer Service and received confirmation from them that your Emergency Calling Service dialing is active. Emergency Calling Service dialing must be re-activated although you may have activated Emergency Calling Service dialing using your former address, and you must separately activate Emergency Calling Service dialing for any new physical address. Failure to provide the current and correct physical address and location of your Primus equipment will result in any Emergency Calling Service dialing you may make being routed to the incorrect local emergency service provider

H. Possibility of Network Congestion and/or Reduced Speed for Routing Emergency Calling Service:

You acknowledge and understand that there is a greater possibility of network congestion and/or reduced speed in the routing of an Emergency Calling Service communication made using your Primus Equipment as compared to traditional 911 dialing over traditional public telephone networks. You acknowledge and understand that Emergency Calling Service dialing from your Primus equipment will be routed to the general telephone number for the local emergency service provider, and will not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls at such local provider's facilities when such calls are routed using traditional 911 dialing. You acknowledge and understand that there may be a greater possibility that the general telephone number for the local emergency service provider will produce a busy signal or will take longer to answer, as compared to those 911 calls routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing.



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I. Automated Number Identification:

It is not possible for the Public Safety Answering Point (PSAP) and the local emergency personnel to identify your phone number when you dial 911 to access Emergency Calling Service dialing. Primus's system is configured in most instances to send the automated number identification information; however, the phone system routes the traffic to the PSAP and the PSAP itself must be able to receive the information and pass it along properly, and they are not yet always technically capable of doing so. You acknowledge and understand that PSAP and emergency personnel may or may not be able to identify your phone number to call you back if the call is unable to be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

J. Automated Location Identification:

It is not possible to transmit identification of the address that you have listed to the Public Safety Answering Point (PSAP) and local emergency personnel for your area when you use Emergency Calling Service dialing. You acknowledge and understand that you will need to state the nature of your emergency promptly and clearly, including your location, as PSAP personnel will NOT have this information. You acknowledge and understand that PSAP and emergency personnel will not be able to find your location if the call is unable to be completed, is dropped or disconnected, if you are unable to speak to tell them your location and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

K. Alternative Emergency Calling Service Arrangements

You acknowledge that Primus does not offer primary line or lifeline services. You should always have an alternative means of accessing traditional E911 services.

IV. RESTRICTIONS ON THE USE OF SERVICE

A. Primus offers its services subject to availability of facilities, limitations of service offerings, and the provisions of this Agreement.

B. Services provided by Primus under this General Service Agreement will not be used: (1) For any unlawful purpose; (2) For making telephone calls that use automatic dialing devices and terminate into electronic information services, pay-per-call services, or other domestic or international audiotext services; or (3) For international call-back offerings using uncompleted call signaling to any country, when that country has prohibited such an offering by statute or regulatory decision.

C. Primus may (1) deny, for any lawful reason, your request for service, or (2) limit or allocate the facilities available to or utilized by any Service, if necessary, to manage its network in an efficient manner; meet reasonable service expectations; furnish service to existing and future customers based on forecasted customer requirements; or for any other lawful reason.



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D. Primus may, without notice (consistent with governing laws or regulations), block traffic to or from specific countries, country codes, cities, city codes, local telephone exchanges ("NXX exchanges"), individual telephone stations, groups or ranges of individual telephone stations, or calls using certain customer authorization codes, whenever Primus deems it necessary to take such action to prevent (1) the unlawful use of service; (2) nonpayment for service; (3) the use of service in violation of this Agreement; or (4) network blockage or the degradation of service furnished to you or other customers.

V. PAYMENT OBLIGATIONS

A. You must provide Primus with a valid credit card number when the Service is activated. If the credit card expires, you close your credit card account or your billing address changes, or the credit card is cancelled and replaced because of loss or theft, you must advise Primus immediately. Primus will invoice all charges on a monthly basis, in advance, to your credit card, including but not limited to: activation fees and monthly Service fees, advanced feature charges, equipment purchases and shipping and handling charges. Any charges not included in your rate plan and any additional usage charges are billed after each billing period. If Primus changes its rates, recurring monthly charges affected by such change will be assessed at the new rate for the full billing period during which the new recurring charge rate became effective.

B. Primus may terminate your Service at any time in its sole discretion, if any charge to your credit card on file with Primus is declined or reversed, your credit card expires and you have not provided Primus with a valid replacement credit card or in case of any other non-payment of account charges. Termination of Service for declined or expired card, reversed charges or non-payment leaves you fully liable to Primus for all charges accrued before termination and for all costs incurred by Primus in collecting such amounts, such as (but not limited to) collection costs and attorney's fees.

C. You are responsible for payment of all charges for services furnished to you and anyone authorized by you to use your service. This responsibility is not changed by virtue of any use, misuse, or abuse of your service undertaken or caused by third parties.

D. You must promptly notify Primus of any change in your invoicing address or, if applicable, in the credit card or bank account used for payment. You should notify the Primus Customer Care Department by e-mailing Primus at the following address: CustomerCare@Lingo.com.

E. Primus will invoice Customer for Services on a monthly basis in advance and all payments are due and payable by Customer without demand or setoff within thirty (30) days from the invoice date (the "Due Date"). Amounts not paid within twenty-nine (29) days of the invoice date will be considered past due. If you make any late payments, and we bill you for the Services, we will charge you a late fee of 1.5%, which we apply to that period's charges and any outstanding charges and late payment charges that remain unpaid at the time of the next bill. If the state law where you receive the Primus services requires a different rate, we will apply that rate.



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F. If Primus becomes concerned at any time about your ability to pay for services, Primus may require that you pay its charges within a specified number of days and that you make such payments in cash or the equivalent of cash.

G. If Primus hires a collection agency to collect, or attempt to collect, any charges owed Primus, you will be liable to Primus for an additional payment equal to 35% of the charges owed, where permitted by applicable law. If Primus incurs any fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed Primus other than by hiring a collection agency, you will be liable to Primus for the payment of all such fees and expenses reasonably incurred.

H. If billing systems or other support is not available for a service, feature, surcharge, tax or other charge element at the time of service provision, Primus will bill for that service, feature, surcharge, or other charge element as soon as it is capable of doing so.

I. Handling of Certain Specific Credits

1. If your account has been closed but has a credit balance remaining, Primus will transfer the credit to another of your accounts, if there is one. If you do not have another account, then Primus will mail a check for the balance to you upon your request.

2. An interruption period begins when you report to Primus that the service has been interrupted. An interruption period ends when the service is operative again. If you report the service to be inoperative but decline to release it for testing and repair, the service is deemed to be impaired, but not interrupted. If you elect to use another means of communication during the period of interruption, you must pay the charges for the alternative service used.

3. No credit allowances will be made for: (a) Interruptions caused by your negligence or the negligence of others authorized by you to use your service; (b) Interruptions due to the failure of power, equipment, systems, or services not provided by Primus; (c) Interruptions during any period when you have released the service to Primus for maintenance or rearrangement purposes, or for the implementation of your order; (d) Interruptions during periods when you elect not to release the service for testing or repair and continue to use it on an impaired basis; (e) Non-completion of calls due to network busy conditions; or (f) Interruptions not reported to Primus;

4. Fraud Credits

Primus will issue you full credit for invoiced charges for calls when the charges are determined to result from a "theft of service" (for example, unauthorized usage following the involuntary theft or loss of a Primus product or the establishment of service that you did not intentionally facilitate) involving (a) verified "Clip-on Fraud" associated with equal access services (1010XXX or 1+/0+/0-); or (b) theft of identity or theft of service. Primus will not issue credit for invoiced charges for fraudulent use resulting from your negligent or willful acts or those of



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an authorized user of your service. To qualify for credit, you must notify Primus in writing promptly after receipt of an invoice containing alleged fraudulent charges.

VI. CANCELLATION OF SERVICE

A. By the Customer

1. If you cancel your Service after the 30 day Money Back Guarantee period, described in section II.S. above, you will be charged a cancellation fee, pursuant to section I.R. above.
2. If you cancel your Service with Primus, you will not be able to use the Device or Equipment.
3. Cancellation may take up to two business days.
4. Your credit card will be charged for any usage after contacting Primus to cancel your Service.

B. By Primus

1. Primus reserves the right to discontinue furnishing services, cancel your account, and/or block your access to Primus network, without incurring any liability, immediately and without notice if

Primus deems that such action is necessary to prevent or to protect against fraud or to otherwise protect Primus's personnel, agents, facilities, or services. Without limitation, Primus may take such actions if:

- a. You refuse to furnish information or furnish false information that (i) is essential for billing; or (ii) pertains to your creditworthiness, your past or current use of common carrier communications service, or your planned use of such service;
- b. You indicate that you will not comply with a request for security for the payment for services;
- c. Your service usage charges exceed established parameters based on your history of usage, which may indicate a likelihood of non-payment or possible fraud;
- d. You have been given written notice by Primus of any past due amount (which remains unpaid, in whole or in part) for any of Primus's or an affiliated carrier's service to which you either subscribe or had subscribed or used;
- e. You either refuse to pay when billed for service or indicate to Primus or an entity billing on Primus' behalf that you do not intend to pay for service used by you;



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- f. You use, or attempt to use, service with the intent to avoid the payment, either in whole or in part, of the charges for the service by (i) using or attempting to use service by rearranging, tampering with, or making connections to service in an unauthorized manner; or (ii) using tricks, schemes, false or invalid numbers, false credit devices, or other fraudulent means or devices;
 - g. You act, or fail to act, in a manner that hinders or frustrates any investigation by Primus or others having legal authority to investigate your legal obligations;
 - h. Your telephone equipment fails to pass back to Primus the appropriate signal to start and stop billing for a call;
 - i. You were previously provided with notice of breach of contract, took corrective action, but thereafter engage in the same breach activity;
 - j. Primus has made available service to you and you have failed to place the available service into actual and substantial use during the 90-day period immediately following its availability, or, if during any service term, you have not actually and substantially used the available service for any consecutive 90-day period (as used in this paragraph, "actual and substantial use" will mean a pattern of use that discloses an intent on your part to employ the service to transmit information of your choosing); or
 - k. You act in a manner that is threatening, obscene, harassing, or abusive to Primus personnel.
- 2.** Primus reserves the right to discontinue furnishing services, cancel your account, and/or block your access to Primus network, without incurring any liability, immediately upon written notice to you if:
- a. Any invoice charges remain outstanding and owed by you after the 30th day from the date of the invoice notifying you of the charges; or
 - b. You fail to comply with a request by Primus for security for the payment for services.
- 3.** The discontinuance of service(s) by Primus pursuant to these provisions does not relieve you of any obligation to pay Primus for charges due and owing for service(s) furnished up to the time of discontinuance.

VII. LIABILITY



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A. Except for granting credit allowances for interruptions of service as provided for in Paragraph V.J above, Primus will not be liable for: (i) any failure of performance due to causes beyond its control, including, but not limited to, acts of God, fires, floods or other catastrophes; national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppages or other labor difficulties; and any law, order, regulation or other action of any governing authority or agency thereof; or (ii) delayed installation of Primus' facilities or commencement of service.

B. With respect to any other factual allegation, legal claim, or dispute by you or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair, interruption, or restoration of any service or facilities offered by Primus, Primus's liability, if any, will be limited to credit allowances for interruptions of service as provided for in Paragraph V.J above. In addition to these credit allowances, if any, Primus's liability is limited as follows:

1. With respect to the routing of calls by Primus to public safety answering points or municipal emergency service providers, Primus' liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by you as the direct result of Primus' action, or failure to act, in routing the call, or (b) the sum of \$1,000.00.
2. With respect to the provisioning of, or any error or omission in, data, information, or content furnished in connection with any service provided by Primus, for example, Directory Assistance, Primus' liability will be limited to the lesser of: (a) the amount of actual money damages proven by you to have been incurred as the proximate result of your reliance on such data, information, or content; or (b) \$100.00.

C. IN NO EVENT WILL PRIMUS BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT PRIMUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES) BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT. THIS SECTION SURVIVES TERMINATION OF THIS AGREEMENT.

D. Primus will be indemnified, defended, and held harmless by you against all claims of loss or damage arising from the use of service furnished by Primus, including:

1. Allegations or claims for libel, slander, invasion of privacy, or infringement of copyright arising out of the material, data, information, or other content transmitted via Primus service; and
2. All other allegations and claims arising out of any intentional act or omission by you or others authorized by you to use the service, in connection with any service provided by Primus.



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E. PRIMUS MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ABOUT ITS SERVICES AND DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NONINFRINGEMENT.

PRIMUS DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON PRIMUS'S BEHALF AND YOU MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY BY PRIMUS.

F. Primus will not be liable for any act or omission of any other company or companies furnishing a portion of the service, or from any act or omission of a third party, including those vendors participating in Primus offerings made to you, or for damages associated with service, or equipment that it does not furnish, or for damages that result from the operation of customer provided systems, equipment, facilities or services that are interconnected with Primus services.

VIII. DISPUTE RESOLUTION

IT IS IMPORTANT THAT YOU READ THIS ENTIRE SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

A. Binding Arbitration

The arbitration process established by this section is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16. Both you and Primus have the right to take any dispute that qualifies to small claims court rather than arbitration. All other disputes arising out of or related to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration. This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a small claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect. The arbitration of any dispute involving \$10,000 or less shall be conducted in accordance with the Consumer Arbitration Rules of the American Arbitration Association ("AAA"), as modified by this Agreement, which are in effect on the date a dispute is submitted to the AAA. The AAA's Commercial Arbitration Rules and fee schedules will apply to any disputes in excess of \$10,000. You have the right to be represented by counsel in an arbitration. In conducting the arbitration and making any award, the arbitrator shall be bound by and strictly enforce the terms of this Agreement and may not limit, expand, or otherwise modify its terms. The arbitrator may not award punitive, exemplary or similar damages. The parties agree that an award of such damages will be void if issued.



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

B. Arbitration Information and Filing Procedures

Before you take a dispute to arbitration or to small claims court, you must first contact our Customer Care Department representative at the customer service number on your Primus invoice for the Services, or write to us at the following address and give us an opportunity to resolve the dispute:

Primus Telecommunications, Inc.
1700 Old Meadow Road
2nd Floor
McLean, VA 22102
Attention: Research Department

You must describe your dispute and provide Primus with any supporting documentation. Likewise, if Primus has a dispute with you, it will notify you by letter sent to your billing address and attempt to resolve it before pursuing arbitration.

If the dispute cannot be satisfactorily resolved within sixty days from the date you or Primus is notified by the other of a dispute, then either party may then contact the AAA in writing at AAA Service Center, 134555 Noel Road, Suite 1750, Dallas, Texas 75240-6620 and request arbitration of the dispute.

Information about the arbitration process and the AAA's Arbitration Rules and its fees are available from the AAA on the Internet at www.adr.org. The arbitration will be based only on the written submissions of the parties and the documents submitted to the AAA relating to the dispute, unless either party requests that the arbitration be conducted using the AAA's telephonic, on-line, or in-person procedures. Additional charges may apply for these procedures. Any in-person arbitration will be conducted at a location that the AAA selects in the state of your primary residence. Any arbitration shall remain confidential. Neither you nor Primus may disclose the existence, content or results of any arbitration or award, except as may be required by law, or to confirm and enforce an award. Judgment of the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.



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C. Fees and Expenses of Arbitration

Each party must pay its own expenses associated with any arbitration, including its attorney's fees. If you file a request for arbitration, you will have to pay a filing fee in accordance with the AAA fee schedule. Under AAA rules, some costs such as the arbitrator's fees and expenses will be allocated between the parties.

D. In addition to the procedures described in this Section for resolving a dispute, you may also have the right to file a complaint with an appropriate federal or state regulatory agency.

IX. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement and the terms of any calling plan, promotion, and/or authorized written communications you have received constitute the entire Agreement between you and Primus, and supersede any and all prior agreements, oral or written, concerning the subject matter. If there is any inconsistency or conflict between the terms of any calling plan, promotion, and/or authorized written communications you have received and the provisions of this Agreement, the provisions of this Agreement will control.

B. No Obligation to Assist in Switching Carriers. If you either voluntarily cancel your Primus account or if Primus cancels your service for any reason set forth above, Primus will have no obligation whatsoever to assist you in any respect in switching from Primus to another carrier.

C. Assignment. Customers may not modify or assign this Agreement. In its sole discretion, Primus may assign this Agreement.

D. No Waiver of Rights. If either party fails to enforce any right or remedy under this Agreement, that does not waive the right or remedy for any other breach or failure.

E. Binding Effect. This Agreement is binding upon you and Primus and upon, respectively, your and Primus' agents and heirs.

F. Severability. If any part or provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, then that part or provision will be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining parts or provisions of this Agreement.

G. Governing Law. This Agreement is governed by and construed under the laws of the Commonwealth of Virginia and applicable federal law, without regard to its choice of law principles, except that the arbitration provisions in Section VII shall be governed by the Federal Arbitration Act. This governing law provision applies no matter where you reside, or where you use or pay for the services.



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H. Survival. Any liability or obligation of a party to the other party under the provisions of Sections I, IV, V and VII as applicable, will, in each case, survive cancellation or termination of this Agreement.

I. Headings of No Force or Effect. Headings in this Agreement are for reference only and have no effect on the meaning of any provision.