

PRIMO COMMUNICATIONS, INC.
Terms and Conditions of Service Agreement

Thank you for choosing service from Primo Communications, Inc. (Primo), or its successors.

I. THE AGREEMENT

Your agreement ("Agreement") with Primo Communications, Inc. consists of this Terms and Conditions of Service Agreement and the current terms of any calling plan, calling card, promotion, and/or authorized written communications you have received from Primo. Primo may change or modify the AGREEMENT from time-to-time without notice other than posting the amended Terms on our website, www.primold.com. The amended Terms will automatically be effective when posted on our Site.

BY ENROLLING IN, USING, OR PAYING FOR THE PRIMO PRODUCTS OR 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 PRIMO AT THE TOLL FREE NUMBER ON THE FIRST PAGE OF YOUR INVOICE FOR FURTHER DIRECTIONS.

This Agreement covers your state-to-state service(s) and charges. To the extent permitted by law, this Agreement also covers Primo's local or intrastate service(s) and charges, Primo's dial around service(s) and charges, Primo's calling card service(s), and Primo's international service(s) and charges, where the Agreement's provisions relating to these services and charges are not in conflict with applicable tariffs. This Agreement applies to in-state long distance and local toll calls in those states that do not regulate rates through filings with the state public utility commission. Rates vary among such states, so please contact Primo for specific rate information. Primo may change this Agreement at any time. For purposes of the Agreement, "you" means the customer, defined as either (i) the person identified in Primo'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). "Service" or "Services" means: (1) the Primo state-to-state and international consumer telecommunications services you are enrolled in, use, or pay for that Primo provided to you under tariffs filed with the Federal Communications Commission as of May 31, 2002, or any new or additional Primo's state-to-state and international consumer telecommunications services that you enroll in, use, or pay for, after May 31, 2002.

The rates and charges found in the Agreement are effective as of August 1, 2002 and are subject to change. For your most current rates and charges, the most current version of this Terms and Conditions of Service, or if you have questions about your services, please visit our website at www.primold.com (Terms and Conditions of Service link) or call us at the toll-free number listed on the first page of your invoice.

II. SERVICE

A. Calling Plans

For the current terms of any calling plan, please visit our website at www.primold.com or call toll-free at the number listed on the first page of your invoice. The terms of your calling plan are incorporated by reference in this Agreement. A \$.49 per call surcharge shall apply to all calling card calls.

B. Notice of Rate Changes

Primo may change the prices and charges for the Services from time to time. International rates are subject to change without notice. Any changes in rates and charges that are not disputed within 30 days of receiving a notice, message, or an invoice will be considered correct and approved by the customer.

C. Because of the changing nature of services, Primo does not warrant that information, graphic depictions, product and service descriptions or other content is always accurate, complete, reliable, updated, current, or error-free. Despite our efforts, it is possible that a price for a product or service offered may be inaccurate or the product or service description may contain an inaccuracy. In the event Primo determines that a product or service contains an inaccurate price or description, Primo reserves the right to take any action it deems reasonable and necessary, in its sole discretion, to rectify the error, including without limitation canceling your order, unless prohibited by law. Primo may make improvements or changes to any of its content, information products, services, or programs any time without notice. You agree to notify Primo within 30 days if you become aware of any pricing or descriptive errors or inconsistencies with any products or services you order and comply with any corrective action taken by Primo.

D. Monthly Minimum and Account Maintenance Fees

There is a standard monthly account maintenance fee of \$15.00 for all business accounts that bill less than \$25.00 per month in long distance charges. Additionally, all residential customers will be subject to a \$10.00 per month minimum usage requirement (excluding taxes and surcharges). If, in any month, such customers do not satisfy the minimum usage requirement, then Primo will charge each customer a Low Usage Fee of \$5.00 per month. Package fees and/or other account maintenance fees (in addition to the standard maintenance fee) may be associated with some of Primo's calling plans. Monthly recurring maintenance fees will continue to apply even for accounts with zero (0) usage.

E. Rounding Policy

For billing purposes, the length of each 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.

F. Calls to International Mobile Telephones; International Special Services Calls Primo'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.

G. Moves, Telephone Number Changes, or Cancellation

You are responsible for notifying Primo of any changes in service, including cancellation. If you change your telephone number or change your residence and wish to maintain an account with Primo at your new residence, you must contact the Primo Customer Care Department at least five (5) business days in advance of the change or move in order to ensure that your account is properly transferred. If you cancel service with Primo, you must contact Primo and advise them of the cancellation. Primo is not responsible for any interruptions in service or other charges you incur (including but not limited to monthly recurring fees described in II(C) above) if you fail to notify Primo in the manner described herein.

H. Timing of Calls

Generally, timing of calls begins when the called party or an automated answering device (such as, but not included, an answering machine, caller ID, or a facsimile machine) answers the call, and ends when one of the parties disconnects from the call. However, some foreign carriers (with whom Primo 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 Primo for a completed call. In these situations, Primo will charge for the call as if it were answered by the called party.

I. International Services

A. Limitation of Liability

Primo is not liable for any deficiency in performance caused in whole or in part by act or omission of an underlying carrier or service provider, dealer, equipment or facility supplier, by unavailability or discontinuation of services to Primo or to other services utilized by Primo, by network problems, lack of connections or network problems, equipment failure or incidents in the course of upgrade or modification, Acts of God, strikes, fire, terrorism, war, riot, emergency, government actions, equipment or facility unavailability or relocation, or causes beyond our reasonable control, including without limitation the failure of an incoming or outgoing call, failure of 9-1-1 service or location services, priority access or secured call service.

B. 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 to use the Primo services. You must conform to any limitations or restrictions imposed by the foreign carriers or agencies.

C. Foreign Carrier Acts or Omissions

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

D. Government Charges and Surcharges

In addition to charges and surcharges which may be found in the applicable Calling Plan, Primo may adjust its rates and charges or impose additional rates and charges as follows:

1. Basic Surcharges: These surcharges are imposed by Primo on a per-month, per invoice basis unless otherwise indicated:

- a. Telecom Fund.
- b. Federal Fund.
- c. Universal Service Fund.
- d. State Taxes.
- e. County Taxes.
- f. Local Taxes.
- g. Late Fee.
- h. NSF Fee.
- i. Credit Recovery Fee.
- j. Collection Fee.
- k. Directory Assistance
- l. Regulatory Assistance
- m. Carrier Charge
- n. Universal Subscriber Fund
- o. Network Access Contribution
- p. Monthly Fee

Toll Free Service Fees.

- q. A \$5.00 monthly maintenance charge will apply to each toll free number active with Primo. New toll free numbers will incur an additional one time set up fee of \$10.00.
- r. A Monthly Recurring Charge of \$15.00 will be charged to each toll free number for access to Primo's Toll Free

Directory Assistance Services.

2. Per Call Charges:

Operator Assisted Directory Lookup \$2.50

s. Rate Center Abuse Surcharge. Primo reserves the right upon notice to Customer, to assess a surcharge on each call made, of up to \$.25 per minute, in instances where Primo believes that a customer is abusing or exploiting its rate plan by targeting or routing excessive amounts of traffic to or from locations or LATAs in which Primo charges less than average origination or termination fees.

3. Payphone Use Charge: Charges for calls that originate from any domestic payphone and are carried over Primo's network will include a \$.99 per call charge. This charge will be in addition to applicable basic charges and surcharges.

E. Taxes

All taxes, tax-like charges, and tax-related surcharges are referred to collectively as "Tax(es)." Primo may elect to impose and collect such Taxes, unless otherwise constrained by court order or direction. You agree to pay all Taxes imposed. If Primo has collected Taxes and a challenged Tax is found to have been invalid and unenforceable, Primo, 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 Primo or if they were delivered to the jurisdiction and returned to Primo, or it will negotiate an arrangement with the jurisdiction to provide a future benefit for customers in that jurisdiction. If you provide Primo with a duly authorized tax exemption certificate, Primo will exempt you in accordance with law, effective on the date Primo receives the certificate. Taxes based on Primo's net income will be Primo's sole responsibility. 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 Primo 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 Primo's U.S. corporate income tax, and will be accompanied by an English translation. Upon receipt of the tax certificate, Primo will issue you a credit for the amounts represented thereby. As applicable, Primo will include some or all of the following taxes and other charges on your invoice in addition to the charges incurred for service: State, local, and foreign sales, use, excise, utility, gross receipts and value added taxes; any tax imposed by an authority on the benefits of a promotion offered by Primo involving services or goods of a third party; tax-like charges to recover amounts Primo is required by a governmental or quasigovernmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs; and/or a tax-related surcharge imposed on all charges (net of bad debts) for outbound service originating in, or inbound service terminating in, a jurisdiction which levies, or asserts a claim of right to levy: (i) a gross receipts tax, a license tax, or other tax-like charge on Primo's operations in that jurisdiction based on Primo's gross receipts, revenues or operations in that jurisdiction; or (ii) a tax on interstate access charges incurred by Primo for access to telephone exchanges in that jurisdiction based on the amount paid for interstate access charges in that jurisdiction; or (iii) an ad valorem tax on Primo's property located in that jurisdiction which is used in providing interstate or international service, based on Primo's property located in that jurisdiction and used by Primo to provide interstate or international service, the amount for which is derived by multiplying the ratio of interstate plus international revenue in the jurisdiction's state to total revenue in that state times total ad valorem taxes imposed on Primo in that state during the current calendar year.

III. RESTRICTIONS ON THE USE OF SERVICE

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

B. Services provided by Primo under this General Service Agreement will not be used:

- 1. For any unlawful purpose; or
- 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. Primo may (a) deny, for any lawful reason, your request for service, or (b) 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.

D. Primo 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 Primo 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.

E. Due to the portable nature of Primo's calling card codes that are issued to Primo's customers, Primo reserves the right to block, without notice, any calling card code that Primo deems to have been used, or that might be used, for fraudulent purposes. Primo may also intercept calling card calls for the dual purposes of verifying customer information and fraud avoidance. Primo will unblock as soon as it determines it can do so without undue risk, and it will, upon request by an affected customer, assign new card authorization codes to replace any that were deactivated.

F. Whenever call blocking occurs on lines designated to Primo at the local telephone company's switch, customers or former customers will be unable to access Primo's network in order to make long distance and local toll calls, including, but not limited to, placing calls by dialing 1+ or 1010024 or by using any dial-around code belonging to Primo.

IV. PAYMENT OBLIGATIONS

- A. You are responsible for payment of all charges for services furnished to you and anyone authorized by you to use your service. Once a calling card has been purchased, it is nonrefundable. This responsibility is not changed by virtue of any use, misuse, or abuse of your service undertaken or caused by third parties. If a card has been lost, it is Primo's sole discretion to replace the lost card for a fee.
- B. You must promptly notify Primo of any change in your invoicing address or, if applicable, in the credit card or bank account used for payment. You should notify the Primo Customer Care Department by calling the toll-free number listed on the first page of your Primo invoice or by U.S. mail to the following address; PO Box 81965, Rochester MI 48306 Attn: Customer Care Department.
- C. Usage charges and any recurring monthly charges are billed after each billing period. Each billing period can vary in length from 21 days to 32 days, but is generally 30 days. If enrollment is in the midst of a billing period, your first bill may contain as little as a portion of a day of usage and charges. In the event Primo 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.
- D. Primo's bills for service are due on the due date listed on the invoice.
- E. Amounts not paid on, or before, the due 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 equal to the maximum percentage allowed by applicable law which will be applied 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 Primo services requires a different rate, we will apply that rate. If a local telephone company or other entity bills you for the Services on our behalf, that company's late payment charges and policies will apply.
- F. If Primo becomes concerned at any time about your ability to pay for services, Primo may require that you pay its charges within a specified number of days independent of the due date or invoice date.
- G. If your telecommunications payment history is not acceptable to Primo or if your telecommunications payment history is unknown or indeterminable, you may be required, at any time, to provide (i) pre-invoice payment based on usage incurred; (ii) a valid major credit card account number from an issuer acceptable to Primo and authorization for Primo to charge usage to your credit card account; or (iii) authorization for Primo to charge usage to your debit card or EFT (electronic bank fund transfer) (iv) to agreement that your usage of Primo network and services will be subject to toll usage limits to be determined by Primo. Prior to your compliance with this request, Primo reserves the right to cease accepting and processing service orders. Primo may request subsequent additional preinvoice payments for usage and may increase or decrease toll usage limits as it deems appropriate. Primo may refuse to furnish services if any charges owed by you to Primo are past due for service(s) provided to you.
- H. When and if your balance becomes past due, you agree and give Primo authorization to automatically charge your credit card, debit card, or EFT for any remaining balance.
- I. When billing and collection for Primo service is performed on Primo's behalf by a local telephone company, the security deposit requirements and late payment provisions set forth in your service agreement with your local telephone company and/or in its local tariff will apply to your Primo-provided service.
- J. If Primo hires a collection agency to collect, or attempt to collect, any charges owed Primo, you will be liable to Primo for an additional payment equal to the greater of \$100 or thirty-five percent (35%) of the charges owed, where permitted by applicable law. If Primo incurs any fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed Primo other than by hiring a collection agency, you will be liable to Primo for the payment of all such fees and expenses reasonably incurred.
- K. In the event payment is made by personal check and your check is not honored by the institution on which it was drawn, Primo will impose, and you will be required to pay, a \$25.00 fee, where permitted by applicable law, in addition to other remedies available to Primo.
- L. If billing systems or other support are not available for a service, feature, surcharge, or other charge element at the time of service provision, Primo will bill for that service, feature, surcharge, or other charge element as soon as it is capable of doing so, up to 18 months after error occurred.

M. Handling of Certain Specific Credits

All requests for credit must be made within 30 days of receiving an invoice, or within 30 days of an account cancellation. All requests made after 30 days are considered null and void.

1. If your account has been closed but has a credit balance remaining, Primo will transfer the credit to another of your accounts, if there is one. If you do not have another account, then Primo will mail a check for the balance to you upon your request, provided that you make your request within 30 days of your account being closed.

2. The following credit allowances of Primo services may be made:

You may also be granted credit for reaching a wrong number. To receive a credit, you must notify a Primo Customer Care Representative and furnish information, including the called number, the service subscribed to, the difficulty experienced, and the approximate time the call was placed.

(ii) Where a call has been disconnected, you will be given a credit allowance equivalent to the charge for the initial minute of the call made to reestablish communications with the other party. If you reach a wrong number, you will be given a credit allowance equivalent to the charge for the initial minute of the call to the wrong number if you report the situation promptly to a Customer Care Representative.

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 provided by Primo or any of its affiliates;
- c. Interruptions during any period during which Primo or its agents are not afforded access to the premises where access lines associated with your services are terminated;
- d. Interruptions during any period when you have released the service to Primo for maintenance or rearrangement purposes, or for the implementation of your order;
- e. Interruptions during periods when you elect not to release the service for testing or repair and continue to use it on an impaired basis;

f. Non-completion of calls due to network busy conditions; and/or
g. Interruptions not reported to Primo. (For the purposes of this subsection (f), an interruption period begins when you report to Primo that the service has been interrupted and release it for testing and repair, and 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.)

4. Fraud Credits

a. Primo will not 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 Primo 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.

b. For fraudulent usage charges, that are established, to the reasonable satisfaction of Primo, to arise out of the compromise of a Calling Card, Primo will not credit you charges resulting from such fraudulent usage. You must notify Primo by telephone immediately upon learning that a Calling Card has been compromised.

c. Notwithstanding anything herein to the contrary, Primo will not issue credits for charges resulting from fraud or other theft of service arising out of your equipment. This includes, but is not limited to, PBX hacking, modem hijacking or other fraud arising out a failure of your internal/corporate procedures. Primo will not issue credit for invoiced charges for fraudulent use resulting from your negligent or willful acts or those of an authorized user of your service.

5. Free Minute Promotions. Any promotions that include an offering of free minutes to any destination require a minimum usage of \$100 per billing cycle. All payments must be received before each billing cycle due date and must be paid in full with no outstanding balance. Free minute promotions cannot be used in conjunction with any other promotions or credits during the promotional period. Promotional offerings cannot be combined, deferred, or transferred. All free minute promotions are to home phones only and will be credited at the promotional rate. Credits will appear on the customer fourth billing statement. Any cancellation requests prior to the third billing cycle will be subject to a \$39.95 cancellation fee as well as adjustments of any promotional, special, or discounted destination rates that were provided along with the promotion.

M. Disputed Charges. If you have a dispute with Primo relating to any matter, including any disputed charges, you agree to first notify Primo in writing at P.O. Box 81965 Rochester MI 48306, Attn: Customer Care Department within thirty (30) days of the date of the invoice. Notices must include all relevant information, including but not limited to account number, amount in dispute, reasons for dispute, a contact number and/or e-mail address for the account holder, and any other detail sufficient for Primo to appropriately evaluate the dispute. If after following this dispute process, Primo is unable to resolve the dispute to your satisfaction, you may pursue resolution of the dispute following the procedures set forth below in Section VII. All charges not disputed within thirty (30) days shall be deemed valid, and you agree to pay the same.

V. CANCELLATION OF SERVICE

All cancellations made before three billing cycles will be subject to a \$20 cancellation fee.

A. By the Customer. If you wish to change your service to another long distance carrier at any time, you should: (1) contact Primo at the toll-free number listed on the first page of your invoice to cancel your account; and (2) call your new preferred long distance carrier or your local telephone company to set up service.

B. By Primo

1. Primo reserves the right to discontinue furnishing services, cancel your account, and/or block your access to Primo network, without incurring any liability, immediately and without notice if Primo deems that such action is necessary to prevent or to protect against fraud or to otherwise protect Primo's personnel, agents, facilities, or services. Without limitation, Primo 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 status under federal and/or state low income programs, 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. Primo has received notice from your local telephone company that the local telephone company has cancelled your local exchange service;

d. Your service usage charges exceed established parameters based on your history of usage, which may indicate a likelihood of non-payment or possible fraud;

e. You have been given written or verbal notice by Primo of any past due amount (which remains unpaid, in whole or in part) for any of Primo's or an affiliated carrier's service to which you either subscribe or had subscribed or used;

f. You either refuse to pay when billed for service or indicate to Primo or an entity billing on Primo's behalf that you do not intend to pay for service used by you;

g. You use the service to transmit or receive a message, locate a person, or otherwise give or obtain information without payment for the service (i.e., signaling);

h. 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;

i. You act, or fail to act, in a manner that hinders or frustrates any investigation by Primo or others having legal authority to investigate your legal obligations;

j. Your telephone equipment fails to pass back to Primo the appropriate signal to start and stop billing for a call;

k. You were previously provided with notice of breach of contract, took corrective action, but thereafter engage in the same breach activity;

l. You subscribe to a Primo-issued calling card service and have not used the service (with the exception of calls to Directory Assistance) for 12 months. In such case, Primo will deactivate the calling card to reduce the risk of fraud or abuse. If you wish to

renew service, Primo will promptly provide a new card with its most current pricing. Primo 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); and/or you act in a manner that is threatening, obscene, harassing, or abusive to Primo personnel.

2. Primo reserves the right to discontinue furnishing services, cancel your account, and/or block your access to Primo network, without incurring any liability, immediately upon written or verbal notice to you if:

- a. Any invoice charges remain outstanding and owed by you after the due date, or
- b. You fail to comply with a request by Primo for security for the payment for services.

3. The discontinuance of service(s) by Primo pursuant to these provisions does not relieve you of any obligation to pay Primo for charges due and owing for service(s) furnished up to the time of discontinuance.

4. In the case of Toll-Free service, in addition to the above rights described in Section V.B. 1-3 above, subject to applicable law, Primo reserves the right to refuse to make your toll free number available for transfer to another provider until you have satisfied any undisputed, outstanding invoiced balance due to Primo.

VI. LIABILITY

A. Except for granting credit allowances for interruptions of service as provided for in Paragraph IV.J above, Primo 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, acts of terrorism, insurrections, riots or wars, strikes, lockouts, work stoppages or other labor difficulties; preemption of existing services to restore service in compliance with the FCC's Rules and Regulations; and any law, order, regulation or other action of any governing authority or agency thereof; or (ii) delayed installation of Primo's 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 Primo, Primo's liability, if any, will be limited to credit allowances for interruptions of service as provided for in Paragraph IV.J above. In addition to these credit allowances, if any, Primo's liability is limited as follows:

C. IN NO EVENT WILL PRIMO 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 PRIMO 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. Primo will be indemnified, defended, and held harmless by you and/or by others authorized by you to use the service against all claims of loss or damage arising from the use of service furnished by Primo, 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 Primo 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 Primo.

E. PRIMO MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ABOUT ITS SERVICES AND DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT. PRIMO DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON PRIMO'S BEHALF AND YOU MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY BY PRIMO.

F. Primo 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 Primo offerings made to you, or for damages associated with service, channels, 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 Primo services.

VII. 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 Primo 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. 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 PRIMO 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 Primo invoice for the Services, or write to us at the following address and give us an opportunity to resolve the dispute:

Primo
PO Box 81965
Rochester MI 48306
Attention: Customer Care Department

Any written correspondence must include your account number. You must describe your dispute and provide Primo with any supporting documentation. Likewise, if Primo 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 30 days from the date you or Primo shall continue mediation in Oakland County court, then arbitration in small claims court, located in Oakland County Michigan. Any mediation or arbitration shall remain confidential.

ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN 30 DAYS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.

C. Fees and Expenses of Arbitration

If you file a request for arbitration, you will have to pay a filing fee in accordance with the AAA fee schedule. You may also have to pay such fees as attorney, courier, administration, filing fees, or any other charges incurred by and for Primo.

D. Mandatory Venue, Jurisdiction, and Applicable Law.

Any claim or dispute arising out of or relating to this agreement shall be determined solely in the 52-3 District Court, Oakland County state of Michigan, to the exclusion of all other courts, and the customer and Primo each agree to submit to the personal jurisdiction of that court; you and Primo agree that equity and judicial efficiency require that a single action shall resolve all claims, disputes, or questions arising out of claims or disputes.

E. 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.

VIII. 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 Primo, and supersedes 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 Primo account or if Primo cancels your service for any reason set forth above, Primo will have no obligation whatsoever to assist you in any respect in switching from Primo to another carrier.

C. Assignment. Customers may not modify or assign this Agreement. In its sole discretion, Primo 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 Primo and upon, respectively, your and Primo's 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 State of Michigan 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.

H. Survival. Any liability or obligation of a party to the other party under the provisions of Sections I, III, IV, and VI 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.