



## End User Airtime Terms & Conditions

This Airtime Services Agreement is made by and between \_\_\_\_\_ (“Customer”), a \_\_\_\_\_ (state/entity ) and having offices at \_\_\_\_\_ and TRACPOINT SYSTEMS, LP, a limited partnership incorporated under the laws of Texas and having offices at 6712 Randolph Boulevard, San Antonio, TX 78233.

**NOW THEREFORE**, in consideration of the mutual premises, obligations and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### ARTICLE 1: DEFINITIONS

**1.01** The following terms shall have the following meanings:

“**Airtime**” means the transmission and switching of signals on PCS carrier services provided by TRACPOINT SYSTEMS, including voice, data, image and video transmissions using the System.

“**Airtime Fees**” means those fees as set forth in Schedule B for Airtime, or as otherwise modified in accordance with this Agreement from time to time.

“**Agreement**” means this agreement and any schedules appended hereto and referenced herein.

“**Business Hours**” means Monday to Friday, 9:00am to 5:00pm (Central Time), excluding provincial, state or federal holidays recognized in the United States.

“**Coverage**” means the areas of wireless services, as indicated in Schedule B.

“**Computer Systems**” means computing and data processing systems, including hardware and software.

“**Commercial Service**” means the commercially supported introduction and marketing of Services to Subscribers.

“**Device**” means any mobile radio apparatus or telecommunication equipment, including accessories enabling the transmission of data, which: (i) is approved under applicable legislation (ii) technically and operationally compatible with the System, and (iii) when used in conjunction with a SIM Card, enables a Subscriber to have access to the Services.

“**Effective Date**” means \_\_\_\_, \_\_\_\_\_, 200\_\_.

“**GPRS**” means General Packet Radio Service.

“**GSM**” means Global System for Mobile Communications.

“**Guidelines**” means the business processes, operational procedures and specific directions of TRACPOINT SYSTEMS in relation to the System, access to the System, Computer Systems, SIM cards, telephone numbers and communications between TRACPOINT SYSTEMS and Customer, as described in Schedule C.

“**MMS**” means Multimedia Messaging System and content delivery.

“**Network Operator**” means a designated operator that has been licensed to establish and operate a PCS network in a respective regulated market.

“**Non-Circumvent**” means that the Parties will not directly solicit to conduct business directly with any supplier, customer, known prospect or supplier of either Party on a direct or indirect basis for the term of this Agreement

“**Party**” means either TRACPOINT SYSTEMS or Customer and “**Parties**” means both TRACPOINT SYSTEMS and Customer.

“**PCS**” means a new generation wireless-phone technology that provides the user with an all-in-one wireless phone, paging, messaging and data service.

“**Proof-of-Concept**” shall mean any technical trial undertaken by the Parties with a limited set of customers designed to demonstrate the technical feasibility of providing Commercial Service during the Commercial Trial.

“**Roaming**” means the use by a Device having a valid subscription, of the wireless communications network established and operated by another licensed operator pursuant to an agreement between licensed Network Operators.



“**Schedule**” means a Schedule appended to this Agreement and referenced herein.

“**Services**” means TRACPOINT SYSTEMS wireless telecommunication products and services as described in Schedule A.

“**Subscriber**” means an individual, machine, corporation, partnership or entity authorized by the Customer to use the Service(s) for its own internal purposes, and not for the purposes or re-licensing, resale or redistribution.

“**Supplier**” means the wireless company(ies) contracted to supply TRACPOINT SYSTEMS with its wireless services.

“**System**” means the wireless communications network established and operated by the Network Operator pursuant to its PCS licence(s), in order to offer services using technology based on the Analog, GSM, GPRS CDMA, 1xRTT or other standards.

“**System Access Fees**” (“**SAF**”) means the monthly access fee charged to Subscribers for the provision of basic access to the Services.

## **ARTICLE 2: OBLIGATIONS OF THE PARTIES**

### **2.01 Obligations of TRACPOINT SYSTEMS.** TRACPOINT SYSTEMS agrees to:

1. Use all commercially reasonable efforts to provide Services in the coverage areas specified in Schedule D. The Customer acknowledges that quality and availability of the Services are reliant upon the products or services of third parties over which TRACPOINT SYSTEMS has no control and as such, may be affected by such factors.
2. Comply with all applicable laws, regulations respecting the Services.
3. Provide the Services on the System(s) of its Network Operator partner(s).
4. Provide the Customer with service support as described in Schedule C.

### **2.02 Customer Acknowledgment.**

Customer acknowledges and agrees that TRACPOINT SYSTEMS:

1. Is not required to provide Services, and may withhold Services from Subscribers or Customers who, in TRACPOINT SYSTEMS’ opinion, would compromise the business operations or goodwill of TRACPOINT SYSTEMS or of its Network Operator partner(s).
2. May interrupt the Services at any time and for any period of time, without any liability on its part, when Customer fails to comply with any of its obligations under this Agreement, or where necessary to prevent the improper or unlawful use of the System. Customer shall be responsible for all costs of TRACPOINT SYSTEMS related to testing or restoration, unless determined to be the fault of TRACPOINT SYSTEMS.
3. May charge to Customer any and all additional costs and expenses incurred by TRACPOINT SYSTEMS to the extent any delay in service is as a result of non-fulfillment of Customer’s obligation. TRACPOINT SYSTEMS agrees to provide Customer with written notice of such charges in advance.
4. Reserves its right not to provide Services where necessary facilities, equipment or services (that are not to be provided by TRACPOINT SYSTEMS under this Agreement) are not available for any reason whatsoever.
5. Reserves its right to interrupt Services at any time and for any duration to prevent improper or unlawful use of Services or System, without any liability on its part.

### **2.03 Obligations of Customer.**

To enable TRACPOINT SYSTEMS to provide the Services, Customer will:

1. Comply with all terms and conditions of this Agreement, including those set forth in the attached Schedules.
2. Carry out reviews and respond to requests for approval and information by TRACPOINT SYSTEMS on a timely basis.
3. Ensure at least one representative is available during regular Business Hours, and otherwise available by phone or pager after hours, to provide the required information and assistance in connection with the delivery of the Services, with appropriate



access to Customer's network, equipment or facilities to permit TRACPOINT SYSTEMS to provide the Services.

4. Maintain the necessary services from third party service providers required to receive the Services from TRACPOINT SYSTEMS or to use the System, that are not otherwise identified as being provided by TRACPOINT SYSTEMS in this Agreement.
5. Obtain and maintain, at Customer expense, insurance against loss of and/or damage to the System or any equipment of TRACPOINT SYSTEMS located or installed at the Customer site(s) for not less than the full replacement value of the System or sub-systems, with such insurance being primary, without right of contribution by TRACPOINT SYSTEMS or its insurers. No insurance will limit Customer's liability to TRACPOINT SYSTEMS and TRACPOINT SYSTEMS' right of recovery under any applicable insurance policy is in addition to any other remedy that TRACPOINT SYSTEMS may have (including the right to seek further damages). Upon request, Customer agrees to provide TRACPOINT SYSTEMS with an insurance certificate evidencing such insurance.
6. Maintain the safety and security of any TRACPOINT SYSTEMS equipment located or installed at Customer site(s).
7. Comply with the terms and conditions of the TRACPOINT SYSTEMS Subscriber License Agreements for all Services as defined in Schedule A, and as may be updated by TRACPOINT SYSTEMS from time to time.

Further, Customer agrees to comply with the conditions of any required PCS licences mandated by TRACPOINT SYSTEMS, together with any law, regulation, directive, ordinance and decision of any regulatory authority applicable to TRACPOINT SYSTEMS as if they directly bind Customer. Customer agrees to comply with any law, regulation, directive, ordinance, and decision of any regulatory authority applicable to Customer or to the business operated by Customer, including preserving the confidentiality and privacy of information relating to Subscribers. Customer agrees to ensure that all of its network equipment and connecting facilities are technically and operationally compatible with the System and to ensure that they comply with all applicable rules and directives of the regulatory authorities and do not cause any interference affecting other users of the System. TRACPOINT SYSTEMS will provide Customer with a copy of all such Guidelines and will provide reasonable advance notice of any changes to the Guidelines. Customer agrees to comply with all terms and conditions of the Guidelines. Customer shall provide, upon written request, access to its premises to the person(s) designated by TRACPOINT SYSTEMS to review Customer's compliance with the above requirements.

### **ARTICLE 3: TERM AND SERVICE TERM**

- 3.01 This Agreement shall be effective as of the Effective Date, and shall remain in full force and effect until otherwise terminated as provided herein.
- 3.02 The **Initial Service Term** will be for a period of 12 months, commencing upon signed execution of this document.. After such period, the Service Term will automatically renew for additional and subsequent 90-day periods until terminated by either party giving to the other 30 days prior written notice.

### **ARTICLE 4: PAYMENT**

- 4.01 Unless otherwise provided for within a Schedule:
  1. Airtime Fees will be invoiced monthly and will be due and payable on the 15<sup>th</sup> of the month following the date of invoice. Monthly access fees will be billed in advance at the beginning of each month, and airtime usage will be billed on subsequent month invoice.
  2. Payment terms may be limited to automatic payment via credit card or ACH bank draft.
  3. Devices ordered by TRACPOINT SYSTEMS and designated "Customer owned" in this Agreement will be invoiced on the shipment date and amounts owing are due and payable on such date.
  4. Activation charges will be invoiced as of the date of activation and are due and payable on such date.
  5. All payments to TRACPOINT SYSTEMS shall be made in the lawful currency of the United States of America and all amounts referred to in this Agreement are in the lawful currency of the United States of America unless otherwise stated.
  6. Fees do not include duties, import taxes or any other government charges or taxes assessed or payable. Customer is responsible for payment of all taxes (including without limitation, withholding, value added and use taxes) and duties applicable to the amounts payable under this Agreement, including any amounts (an interest applicable to such charges) charged in lieu thereof, and interest thereon.
  7. TRACPOINT SYSTEMS shall have the right to change any fees for Services upon 30-days prior notice to Customer. In the event of such changes, the customer may cancel this agreement upon the effective date of the rate increase with written notice received prior to the date of the rate change.



8. The Customer shall pay TRACPOINT SYSTEMS all amounts billed by TRACPOINT SYSTEMS, including any disputed amounts.

**4.02 Credit Review.** TRACPOINT SYSTEMS reserves its right to review Customer credit worthiness and to require a deposit or other security, before providing, continuing, or reinstating Services. Should TRACPOINT SYSTEMS at any time consider a credit deposit to be insufficient, a further credit deposit may be required. TRACPOINT SYSTEMS will determine, at its discretion, how the Customer deposit or other security will be allocated to satisfy outstanding amounts owed by Customer to TRACPOINT SYSTEMS. Customer authorizes TRACPOINT SYSTEMS to investigate Customer's creditworthiness and agrees, from time to time, to provide appropriate authorizations and financial information as TRACPOINT SYSTEMS may reasonably request for this purpose. Payment terms

**4.03 Disputed Invoices.** In the event Customer disputes any invoice, Customer shall notify TRACPOINT SYSTEMS in writing of any amounts in dispute within twenty (20) days of date of the TRACPOINT SYSTEMS invoice. Failure to notify TRACPOINT SYSTEMS as required herein shall be deemed an acceptance of the accuracy of the invoiced amounts by the Customer. TRACPOINT SYSTEMS shall promptly review any amounts in dispute and notify the Customer in writing within fifteen (15) days of the receipt of the Customer notice of the results of TRACPOINT SYSTEMS' review. For any disputed amount agreed to by TRACPOINT SYSTEMS, TRACPOINT SYSTEMS shall provide a credit to the Customer for this amount and/or may apply such credit against amounts otherwise owing by Customer. Customer is required to remit all amounts, which are not disputed as required herein, whether or not contained on the same invoice.

In the event TRACPOINT SYSTEMS does not agree with the disputed amounts claimed by Customer, the following dispute process shall be utilized:

- a. Each party shall appoint a Representative and shall advise each other party of the name and relevant contact information for such Representative. The Representative of the Customer shall be responsible for coordinating an initial meeting of all Representatives, via teleconference call or otherwise, to discuss the alleged dispute and to determine a course of resolution; and
- b. Should the Representatives not have agreed to a written resolution of the dispute within thirty (30) days of the initial meeting under paragraph 'a', then the parties may extend this resolution period for an additional period of time. However, at any point after the initial 30-day period, should a party determine (acting reasonably) that a timely resolution will not occur, then such party shall be entitled to terminate this dispute resolution process upon written notice to the other.

**4.04 Late Payments.** If Customer payments are more than fifteen (15) days in arrears, TRACPOINT SYSTEMS will give written notice to Customer that Customer is responsible for payment of all outstanding amounts (including applicable finance charges). If Customer does not pay the outstanding amounts within ten (15) days of receipt of such notice by Customer, TRACPOINT SYSTEMS has the right to suspend further Service provision and impose a SIM deactivation fee of \$100 per SIM in accordance with Schedules B and C of this Agreement. Late payments will be assessed a 1% finance charge per month (12% per annum) or the highest finance charge permitted by applicable law, whichever is less. All such finance charges shall automatically begin to accrue on overdue amounts starting on the thirty-first (31st) day after payment of such amounts was due. Customer shall pay all costs, including reasonable attorney's fees, incurred by Licensor in collecting overdue amounts. Any NSF checks will be subject to a \$50.00 NSF charge for each NSF check.

## **ARTICLE 5: TERMINATION AND EFFECTS OF TERMINATION**

**5.01** Either party will have the right to terminate this Agreement:

- (a) Upon written notice to the other at least 30 days prior to the end of the Initial Service term or any Service Renewal Term;
- (b) If the other party is in breach of any of its material obligations and the breach is not cured within thirty (30) calendar days of the other party's written notice specifying the nature of the breach or within ten (10) calendar days of such notice in the case of non-payment of any sums due; or
- (c) Immediately and without further notice, in the event a party ceases business operations, is the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, or makes an assignment for the benefit of creditors, or a receiver is appointed for a substantial part of such party's assets, or becomes unable to pay its debts when due.

**5.02** Further, TRACPOINT SYSTEMS may terminate this Agreement if Customer is in breach of its authorized use of telephone numbers provided by TRACPOINT SYSTEMS and fails to cure such breach within five (5) business days of TRACPOINT SYSTEMS' written notice.

**5.03** In addition to the foregoing, this Agreement will terminate at the end of any Commercial Trial should the Acceptance Test Plan not be achieved and the parties determine they do not wish to proceed with further or additional Commercial Trials.

**5.04 Effects of Termination.** In the event of termination or expiration of this Agreement for any reason:

- (a) Customer will remit all amounts due and owing within 30 days of the date of termination;



- (b) TRACPOINT SYSTEMS will cease to provide any services or support to Customer;
- (c) Subscribers will continue to be provided with the Service offering until the end of the applicable Subscriber Service Term and TRACPOINT SYSTEMS may assume responsibility for such Services, should it chose to do so, or TRACPOINT SYSTEMS may require Customer to continue to support such Subscribers, in which case Customer shall undertake all diligent efforts to do so. However, TRACPOINT SYSTEMS' assumption of responsibility for such Services will be subject to TRACPOINT SYSTEMS' then-current terms and conditions and TRACPOINT SYSTEMS shall not be obligated or required to assume any obligations, commitments or liabilities (whether contractual or otherwise) made by Customer to Subscribers.
- (d) After the expiration of the Service Term, the Subscriber will be transferred to an alternate supplier, Service Provider or Network Operator, at TRACPOINT SYSTEMS' option.

## **ARTICLE 6: WARRANTIES AND LIMITATIONS OF LIABILITY**

### **6.01 Limited Warranty**

TRACPOINT SYSTEMS WARRANTS THAT IT WILL PROVIDE ALL SERVICES IN A PROFESSIONAL MANNER, IN KEEPING WITH INDUSTRY STANDARDS. TO THE EXTENT TRACPOINT SYSTEMS FAILS TO DO SO, TRACPOINT SYSTEMS WILL RE-PERFORM THE SERVICES AT ITS SOLE COST AND EXPENSE. THE FOREGOING SHALL BE TRACPOINT SYSTEMS'S SOLE LIABILITY FOR BREACH OF THIS WARRANTY AND CUSTOMER'S SOLE REMEDY (OTHER THAN ITS RIGHTS OF TERMINATION AS PROVIDED HEREIN). OTHER THAN AS EXPRESSLY SET OUT HEREIN, TRACPOINT SYSTEMS MAKES NO REPRESENTATION, COVENANT OR, WARRANTY, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY OPERATION OF STATUTE, LAW, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE WITH RESPECT TO THE SERVICES, SYSTEM, COMPUTER SYSTEMS OR OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY QUALITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. MOREOVER, TRACPOINT SYSTEMS MAKES NO WARRANTY WITH RESPECT TO SIM CARDS, DEVICES AND TELEPHONE NUMBERS, OR OTHER THIRD PARTY SUPPLIED COMPONENTS. ANY APPLICABLE WARRANTY RELATING TO THE FOREGOING SHALL BE THAT OF THE MANUFACTURER OR SUPPLIER OF SUCH ITEMS.

CUSTOMER IS RESPONSIBLE FOR ENSURING THAT CUSTOMER AND SUBSCRIBER ACCESS TO THE SERVICES AND SYSTEM WITHIN THE APPLICABLE JURISDICTION IS IN COMPLIANCE WITH APPLICABLE LAWS AND TRACPOINT SYSTEMS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO. TRACPOINT SYSTEMS RESERVES THE RIGHT, IN ITS SOLE DISCRETION AND WITHOUT ANY OBLIGATION, TO MAKE IMPROVEMENTS TO, OR CORRECT ANY ERROR OR OMISSIONS IN ANY PORTION OF THE SYSTEM, WHICH MAY OR MAY NOT AFFECT CUSTOMER AND SUBSCRIBER ACCESS TO THE SYSTEM.

TRACPOINT SYSTEMS MAKES NO REPRESENTATIONS CONCERNING ANY ENDEAVOR TO REVIEW ANY OF THE SITES ACCESSED THROUGH THE SYSTEM, AND TRACPOINT SYSTEMS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIALS CONTAINED IN SITES ACCESSED THROUGH THE SYSTEM.

### **6.02 Limitation of Liability:**

NEITHER TRACPOINT SYSTEMS NOR ITS NETWORK OPERATOR PARTNERS OR SUPPLIERS SHALL HAVE ANY LIABILITY TO CUSTOMER OR SUBSCRIBER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFIT, LOST OR DAMAGED DATA, DOWNTIME OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF TRACPOINT SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THEY ARE FORESEEABLE. TRACPOINT SYSTEMS IS ALSO NOT RESPONSIBLE FOR CLAIMS BY A THIRD PARTY.

IN ADDITION AND WITHOUT LIMITING THE FOREGOING, TRACPOINT SYSTEMS IS NOT LIABLE FOR ANY DELAYS IN SERVICE IMPLEMENTATION OR DELIVERY, EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE. CUSTOMER ACKNOWLEDGES AND AGREE THAT THE CUSTOMER IS RESPONSIBLE FOR ENSURING THAT THE SERVICES MEET CUSTOMER REQUIREMENTS.

TRACPOINT SYSTEMS'S AGGREGATE LIABILITY FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH) OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), SHALL BE LIMITED TO CUSTOMER'S DIRECT, PROVEN DAMAGES AND SHALL NOT EXCEED IN THE AGGREGATE THE FEES PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE CLAIM IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

THE LIMITED WARRANTY, EXCLUSIVE REMEDIES AND LIMITED LIABILITY SET OUT HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE CUSTOMER AND TRACPOINT SYSTEMS. CUSTOMER ACKNOWLEDGES AND AGREES THAT TRACPOINT SYSTEMS WOULD NOT BE ABLE TO PROVIDE THE SERVICES AT THE PRICES CHARGED WITHOUT SUCH LIMITATIONS.



## ARTICLE 7: CONFIDENTIALITY AND OWNERSHIP

Each party agrees to keep confidential any and all information with respect to the other party, supplier or the Network Operator partners which it has received or may in future receive in connection with this Agreement, which shall include without limitation, the terms and conditions of this Agreement and, with regard to TRACPOINT SYSTEMS Confidential Information, includes any information with regard to the Services which TRACPOINT SYSTEMS provides to Customer (the “**Confidential Information**”) and shall only disclose such information (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement and who have a non-disclosure agreement at least as protective of the disclosing party’s confidential information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

TRACPOINT SYSTEMS, Network Operators and any other suppliers or licensors of TRACPOINT SYSTEMS shall own and retain all right, title and interest in and to all products, materials or services, including without limitation, all Confidential Information, provided under this Agreement or in connection with this Agreement. Customer gains no right, title or interest with respect thereto except for the limited rights to use as expressly granted herein. All rights not expressly granted herein are hereby reserved.

## ARTICLE 8: MISCELLANEOUS

**8.01 Entire Agreement; Amendment.** This Agreement and the Schedules sets out the entire agreement between the parties concerning the matters described above and supersede all prior written or oral agreements, understandings. No order, invoice or similar document shall amend or modify the terms of this Agreement, even if accepted by the receiving party. TRACPOINT SYSTEMS expressly reserves its right to amend Schedules upon 30 days prior notice to Customer. Except as provided for herein, this Agreement may only be amended by consent in writing of both parties.

**8.02 Assignment.** TRACPOINT SYSTEMS may assign all or any part of this Agreement, but no assignment or transfer of any interest in this Agreement (including sublicenses, pledge, security interests, and the like) may be made by the Customer without the prior written consent of TRACPOINT SYSTEMS. The Customer agrees that if the Customer is permitted to assign this Agreement, or to transfer or assign any of the Customer's interests in receiving Services or within which Devices are installed to the System, that it shall first be required to obtain the assignees prior written consent to agree to be bound by and comply with this Agreement and further, that to the extent TRACPOINT SYSTEMS has provided discount or other preferred pricing to Customer, such pricing may not be applicable to Customer’s assignee. Customer acknowledges that TRACPOINT SYSTEMS may sub-contract the provision of Services under this Agreement including but not limited to its Network Operator partners.

**8.03 No Limitation.** Except as expressly set out herein, nothing in this Agreement is intended to waive or limit any remedy available to either party at law or in equity, including without limitation any remedy available to TRACPOINT SYSTEMS under copyright laws or other laws to protect the ownership or intellectual property rights of TRACPOINT SYSTEMS or its suppliers.

**8.04 Failure To Enforce; Severance.** A failure by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be deemed severed from the Agreement and the other provisions shall remain in full force and effect.

**8.05 Force Majeure.** Except for obligations of payment arising hereunder, neither party will be liable for delays in its performance hereunder due to causes beyond its reasonable control, including but not limited to, acts of God, acts of public enemy, acts of government, regulatory authorities, or courts of law or equity, civil war, insurrection or riots, fires, floods, explosions, earthquakes or other casualties, strikes or other labor troubles, or failure of third party service providers or telecommunications networks or devices always provided that the party so relieved of its obligations hereunder provides notice to the other party and takes all reasonable and necessary steps to resume performance of its obligations as soon as possible.

**8.06 Notice.** Any notice to a party required or permitted hereunder shall be sufficiently given only when provided in writing, and either personally delivered to a responsible officer of the addressee, or sent via certified or registered mail (return receipt required) or facsimile (with proof of transmission) to the party's address indicated herein and shall be deemed to have been received when such notice should have reached the addressee in the ordinary course, provided there is no strike by postal employees in effect or other circumstances delaying mail delivery, in which case notice shall be delivered by facsimile (with proof of transmission).

**8.07 Non-Circumvent Agreement.** Customer will act as a primary user and/or reseller of TRACPOINT SYSTEMS airtime services. Customer agrees that if they are seeking to strike a direct relationship with supplier, supplier will refer customer back to TRACPOINT SYSTEMS. Customer will not, during the term of this Telecommunications Service Agreement, knowingly and actively seek to undercut TRACPOINT SYSTEMS’ preferential pricing to their customer base with a view to creating direct relationships.



The addresses and designated individuals as set forth below or as otherwise notified to the other Party from time to time:

For TRACPOINT SYSTEMS, LP.

For The Customer

Attention: Brian Sherman

Attention:

Address: 6712 Randolph Blvd  
San Antonio, TX 78233

Address:

Phone #: 210-590-3596

Facsimile #: 210-656-5182

Facsimile #:

**8.08 Applicable Laws.** If Customer is located within the United States, this agreement will be with TRACPOINT SYSTEMS and will be governed by the laws of the State of Texas. Conflicts of laws provisions, the UN Convention for the International Sale of Goods, and the Uniform Commercial Code, and any legislation implementing the foregoing Convention and Code, are expressly excluded. Each party waives trial by jury, except where such waiver is not permissible at law.

**8.09 Surviving Provision.** The following Articles and Sections will survive termination or expiration of this Agreement for any reason: Articles: 1, 4, 6, 7 and 8 and Sections: 2.02 and 5.04.

**8.10 Language.** The original of this Agreement has been written in English and Customer waives any right it may have under the laws of its territory to have this Agreement written in any other language. Customer represents that it has the ability to read and write in English and has read and understands this Agreement. If this Agreement is translated into a language other than English, the English version and interpretation shall govern and prevail. All communications between the parties hereunder shall be in English.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by duly authorized signing authorities this \_\_\_\_ day of \_\_\_\_\_ 200\_\_.

TRACPOINT SYSTEMS

CUSTOMER

TRACPOINT SYSTEMS, LP

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Brian Sherman

Name: \_\_\_\_\_

Position: Vice President

Position: \_\_\_\_\_

Attached and forming part of this Agreement:

- Schedule A: TRACPOINT SYSTEMS Services to Customer
- Schedule B: Commercial Pricing
- Schedule C: TRACPOINT SYSTEMS Technical Support and Operations
- Schedule D: Coverage, Roaming
- Schedule E: Subscriber License Agreements
- Schedule F: Interconnection
- Schedule G: Dispute Resolution Process



## **Schedule A** **TRACPOINT SYSTEMS Services to Customer**

### **Services and Network**

TRACPOINT SYSTEMS will be responsible for all of the activities in connection with the provisioning of its network in order to meet the Customer's forecast.

The Parties will determine the manner in which their respective networks will be interconnected, and their respective obligations and responsibilities in connection therewith, as provided in Schedule F.

TRACPOINT SYSTEMS will be entitled at any time to modify, expand, improve, test, maintain or repair the System and to suspend providing the access to the System for such purposes as described in this Schedule A or the Agreement.

### **Service Level**

TRACPOINT SYSTEMS will endeavor to support the Customer's wireless services, which apply to the system elements, controlled by supplier. However, given the nature of Customer's wireless services, the majority of these services reside on the systems of Network Operators that are not controlled by TRACPOINT SYSTEMS. As such, TRACPOINT SYSTEMS is only obligated to use its reasonable commercial efforts to provide a timely to resolution.

### **Telephone Numbers**

TRACPOINT SYSTEMS shall provide all telephone numbers to be used by Customer in connection with the offering of Services by TRACPOINT SYSTEMS, in quantities of the greater of (a) blocks of one hundred (100) or (b) an amount equal to the projected number of Subscribers forecasted by Customer for the three (3) month period following the month in which telephone numbers are ordered by Customer. TRACPOINT SYSTEMS has no obligation to make available telephone numbers in quantities less than those above or materially greater than the projected number of Subscribers forecasted. Customer agrees to obtain telephone numbers in the quantities forecast and, when ordering telephone numbers, Customer will provide an estimate of their distribution between the different services for which they may be used if distinct telephone numbers are required.

Customer will order telephone numbers exclusively from TRACPOINT SYSTEMS, and each order shall be per point of interconnection or as otherwise required by a regulatory authority and will register them all in its Computer System, or other such recording system. Customer has no right of ownership to the telephone numbers, which are a limited public resource. TRACPOINT SYSTEMS reserves the right to transfer or change telephone numbers, when, in its discretion exercised in a reasonable manner, it determines that such transfer or change is necessary in the conduct of its business, or when a change is required by a regulatory authority or by industry agreement concerning the administration and assignment of telephone numbers, including number portability. Customer shall use the telephone numbers provided by TRACPOINT SYSTEMS only for the provision of Services to Subscribers in accordance with the terms of this Agreement.

In the event that TRACPOINT SYSTEMS cannot obtain a sufficient quantity of telephone numbers and an allocation is required in any coverage area, TRACPOINT SYSTEMS may allocate telephone numbers on a pro rata basis among its customers and TRACPOINT SYSTEMS' service providers based on the relative number of subscribers across all coverage areas. TRACPOINT SYSTEMS may also withdraw from a Customer any telephone number made available to Customer which remains unused or is unassigned for any reason for a continuous period of three (3) months, subject to a ten (10) day prior notice, and allocate it in the same manner as above without any liability. TRACPOINT SYSTEMS will endeavour to keep telephone number changes to a minimum. TRACPOINT SYSTEMS shall provide Customer with written notice of any intended change reasonably in advance of making any such change.

### **GPRS Network Services**

General Packet Radio Service (GPRS) is a non-voice value-added service that enables Subscribers to send and receive data by utilizing a packet-switched network, which is overlaid with the existing GSM air interface. With GPRS, the information is split into separate but related "packets" before being transmitted and reassembled at the receiving end.

GPRS provides the transparent transport for services and applications that use IP or X.25 protocols, and provides Subscribers "always on" connectivity without the need to dial-in to initiate the session. Data can be transmitted at speeds up to 115 kbps, depending on the Device used and other parameters, although this is restricted by device design and is more usually in the 30-40Kbps ranges.

### **GPRS Related services**

#### **Access Point Names (APN)**

Customized APN's can be created on a per-request basis, at an additional cost.

#### **Authentication**

Authentication may be required in addition to the regular authentication mechanism already provided by the GSM network (i.e., the IMSI).



#### **Dynamic IP addresses**

Dynamic IP addresses are supported. Redundancy options can be considered on a case-by-case basis.

#### **DNS**

The Domain Name Server (DNS) is used to resolve Internet Names (FQDNs – Fully Qualified Domain Names) into routable IP addresses.

#### **IP Routing**

The GPRS network and IP backbone are configured to route all IP packets to, and from the mobile subscribers. IP connections can be established with Internet remote hosts or to service nodes within the network.

#### **HTTP Acceleration**

HTTP Acceleration allows faster web browsing for the mobile GPRS user. This service, as with a number of these special applications, is not offered however by default, as it may have application support implications. However, it can be provided as a VAS service based on business requirements.

#### **Rating, Usage and Billing Services**

TRACPOINT SYSTEMS will provide the Customer with a detailed monthly billing file in a TRACPOINT SYSTEMS standard electronic file format, inclusive of account activity by Subscriber.

For all activations, TRACPOINT SYSTEMS creates a master billing account for which all SIM's and accounts will be invoiced on a monthly basis. If the date of activation is prior to the receipt of the invoice, the customer is invoiced for the prorated services fees for the month. The service activation fee includes the prorated service fees for service prior to the beginning of the subsequent month.

#### **Subscriber Interface Modules ('SIM's')**

Customer agrees to purchase SIM cards from TRACPOINT SYSTEMS either directly or indirectly through an authorized reseller.

TRACPOINT SYSTEMS will invoice the cost of SIM cards at the prices listed in Schedule B, plus shipping and handling charges and applicable taxes. Customer is responsible for payment of all taxes (including without limitation, withholding, value added and use taxes) and duties applicable to the amounts payable under this Agreement, including any amounts (an interest applicable to such charges) charged in lieu thereof, and interest thereon.

Customer will use the SIM's solely in the assembly of their Devices. TRACPOINT SYSTEMS is not responsible for hardware programming or operation related to customer's Devices. TRACPOINT SYSTEMS requests each Customer provide the manufacturer and model of Device in which the SIM is installed so TRACPOINT SYSTEMS may keep records on equipment types in service in the event there may be a Service compatibility problem.

#### **Devices**

Customer will be required to provide to TRACPOINT SYSTEMS a listing of Devices for use on the System, and will work with TRACPOINT SYSTEMS to ensure basic compatibility and Device certification and accreditation. Where 3rd party Device certification is deemed by TRACPOINT SYSTEMS or the Network Operator to be necessary or mandated by the local Network Operator, the certification shall be undertaken by the Customer and all costs involved shall be the sole responsibility of Customer and/or the Device manufacturer.

Customer will, at its own cost and expense, be responsible for all of the activities in connection with the fulfillment of Devices and, for this purpose, make necessary arrangements with the manufacturer or distributor (or other supplier acceptable to TRACPOINT SYSTEMS) for the shipment of Devices to the Customer. Customer will, at its own cost and expense, be responsible for all of the activities in connection of Subscribers, including the issuance of the monthly invoices, billing inquiries, issuance of credits and collection, except in circumstances where the Customer arranges with TRACPOINT SYSTEMS for the Subscribers to be billed directly by TRACPOINT SYSTEMS under the terms of the Subscriber Services Agreement, in which case TRACPOINT SYSTEMS will be responsible for monthly invoices, billing inquiries and issuance of credit and collections.

#### **Interconnection and Interface**

Customer will establish and use suitable Computer Systems and related processes and procedures to interface with TRACPOINT SYSTEMS computer systems, which are satisfactory in both form and function to TRACPOINT SYSTEMS. Any special computer systems or special interface equipment or facilities reasonably necessary to achieve compatibility with the System or with Network Operator's computer systems shall be provided by Customer, at its own cost and expense.



If Customer does not comply with the foregoing requirements, and such non-compliance threatens to interfere with the operation of the TRACPOINT SYSTEMS System, including computer systems, TRACPOINT SYSTEMS will (where practical) notify the Customer in writing that temporary discontinuance of access by the Customer to the System may be required. When prior notice is not practical, TRACPOINT SYSTEMS may temporarily discontinue such access, without notifying the Customer. In cases of such temporary discontinuance, the Customer will be notified verbally and in writing as soon as possible after the temporary discontinuance and afforded the opportunity to correct the situation. The System may be interconnected with other communications networks. The use of such communications networks by the Customer as part of its access to the System is subject to the applicable terms and conditions of TRACPOINT SYSTEMS' contractual arrangements for such interconnection to the System(s).



**Schedule B  
End User Pricing**

**Pricing Terms**

Pricing terms under this agreement have been established upon TRACPOINT SYSTEMS Terms. All units activated under this Service Agreement will be on a 12-month fixed term contract. Customer will be charged a \$100 early termination fee per SIM if service is canceled before the fixed term period expires. At the end of the initial term, contract will renew for subsequent 90-day terms.

**Monthly Access Fee per Unit**

SMS & GPRS SIM access fee *\$9.99 perSIM per month*

**TRACPOINT SYSTEMS will provide an aggregate monthly price as follows:**

One Rate North America GPRS Services – North America Wide (Microcell, T-Mobile, Cingular and AT&T Wireless networks)

*\$10.00 per MB – aggregated by account*

Airtime Fees SMS Services – North America Wide

*\$.12 per SMS message – aggregated by account*

**Prepaid Bundle – Includes Monthly Access Fee and Prepaid Data**

500KB data plan *\$13.99 per SIM*

1MB data plan *\$17.99 per SIM*

Overage (pooled account usage) *\$10.00 per MB*

**INITIAL ACTIVATION FEES**

SIM card *\$20 each*

Activation Fee *\$15 per SIM*

Shipping costs only apply to SIM cards plus applicable taxes.

**Airtime Fees (GPRS Services)**

For clarity, a description of counting method is shown. One (1) megabyte is equal to 1,048,576 bytes. Data transmission will be calculated on a per byte basis. For invoicing purposes, total bytes per SIM will be rounded up to the nearest kilobyte.



## **Schedule C**

### **TRACPOINT SYSTEMS Technical Support & Operations**

#### **System Operations and Support**

Customer will be responsible for all of activities in connection with its Subscriber inquiries ('1st line support') regarding issues with devices, applications, network, roaming and coverage to the extent that those inquiries are at mutually agreeable levels.

A review of these activities is done quarterly to ensure that the allocation of responsibilities is clear for both Parties. Technical Support and operational procedures are outlined in this Schedule "C".

#### **System Surveillance**

TRACPOINT SYSTEMS will provide surveillance of the System on a 24 hour per day, 7-day a week basis from its partners' Network Control Center (NCC). This service includes continuous watch on all network element generated alarms and service alarms, Level 1 fault diagnosis/restoration and appropriate technical dispatch to correct faults.

#### **Trouble Reporting and Status Update Methods**

The point of contact for Customer to report any fault or problems on services provided will be via TRACPOINT SYSTEMS' Technical Support Group. All troubles reported by TRACPOINT SYSTEMS will be logged into the trouble ticket system, and a trouble ticket number given for future reference. Routine status updates will be provided.

#### **Escalation Process**

Customer may escalate to TRACPOINT SYSTEMS operational, engineering or commercial issues using the prescribed Escalation Process. Use of this process ensures timely response, resolution and, as needed, management escalation to occur.

#### **Planned Service-Affecting Work**

TRACPOINT SYSTEMS will provide the Customer with advanced notification of service affecting work that TRACPOINT SYSTEMS is informed will be carried out. This could be of a 'restorative' nature, or as a result of routine capacity increase or enhancements to the functionality of the System and the Services.

#### **Un-Planned Service-Affecting Work**

TRACPOINT SYSTEMS will use its reasonable commercial efforts to provide the Customer with immediate notification of service affecting work it intends to carry out due to un-planned events. This could be of a 'restorative' nature, or as a result of routine capacity increase or enhancements to the functionality of the System and the Services.

#### **Support Hotline Number**

TRACPOINT SYSTEMS will provide the Customer with a Hotline telephone number. This number is for exclusive use by the Customer. Calls that are received at this number are treated as priority calls, and are answered as shown in Technical Support section below.

#### **Service Performance Reports**

Post Mortems are special investigations undertaken after an incident has been cleared or resolved. Its purpose is to establish the cause of an incident and to prevent a further occurrence. The investigation will be carried out, and findings will be reported.

#### **Technical Support**

TRACPOINT SYSTEMS acts as the single point of contact for Customer to report network problems, receive updates on particular troubles, or answer any network questions or operational problems with existing services.

TRACPOINT SYSTEMS' access to supplier's Technical Support Group is available during Business Hours.

Additionally, TRACPOINT SYSTEMS, through its supplier, is made aware of 24/7 Network monitoring and reporting for all major network continuity functions. Major network related matters arising outside of normal Business Hours are handled through a pre-determined escalation process documented with the Customer.

If the issue reported to the TRACPOINT SYSTEMS Technical Support Group over the phone cannot be resolved immediately, the Technical Support Group will open a trouble ticket. Please note that all trouble tickets will be opened via telephone to ensure quick and efficient resolution. The TRACPOINT SYSTEMS agent will provide a trouble ticked reference number to Customer.

TRACPOINT SYSTEMS will provide first line support to Customer Technical Services. In addition, supplier is paired with satellite



support groups at Network Operator partners that also contribute to problem resolution.

TRACPOINT SYSTEMS can, through its supplier, access individual Subscribers and verify the state of the Network for all supported services. TRACPOINT SYSTEMS can request network trace testing in conjunction with its network suppliers as needed for individual customers.

**Subscriber Activities**

Customer will be responsible for all of the activities in connection with Subscriber inquiries regarding issues with Devices, Customer applications, network, Roaming and coverage to the extent that those inquiries are at mutually agreeable levels. TRACPOINT SYSTEMS reserves the right to charge Customer for those activities that extend beyond TRACPOINT SYSTEMS service levels, at an hourly rate of \$135.00.

The Customer support activities described above will be performed at Customer’s own cost except as otherwise expressly provided for.

**Service Interruption, Testing and Trouble Reporting**

TRACPOINT SYSTEMS suppliers will be entitled at any time to modify, expand, improve, test, maintain or repair the System and to suspend providing the access to the System for such purposes. TRACPOINT SYSTEMS undertakes to keep such planned interruption at a minimum and will use commercially reasonable efforts to interrupt the access to the System at times which are outside TRACPOINT SYSTEMS’ normal Business Hours and to notify the Customer at least three (3) days in advance of any planned interruption and the anticipated length of such interruption. In the case of un-planned service interruptions TRACPOINT SYSTEMS will use its reasonable commercial efforts to notify the Customer as quickly as possible. In the case of unanticipated interruptions, Customer will endeavour to restore the service of their Subscribers or their Network by all means technically and commercially reasonable. For the purpose of restoration, Customer acknowledges that TRACPOINT SYSTEMS or its supplier may require access to Customer’s premises. Customer agrees to provide such access upon reasonable notice at no charge to TRACPOINT SYSTEMS. TRACPOINT SYSTEMS may interrupt the service at any time and for any period of time, without any liability on its part, when Customer fails to comply with any of its obligations under this Agreement, or where necessary to prevent the improper or unlawful use of the System. Customer shall be responsible for all costs of TRACPOINT SYSTEMS related to testing or restoration, unless determined to be the fault of TRACPOINT SYSTEMS or its supplier.

**Fault Resolution Objectives**

Every Network Priority event will be followed by an event report. The report will be issued to TRACPOINT SYSTEMS and will be available to Customer 72 hours after the occurrence of the priority event. The report will be sent by e-mail to Customer and will contain the following information:

- Services affected
- Time (start and stop)
- Downtime (duration of the outage)
- Impact on customer

Type of Faults	Description	Objectives	Update Frequency
Network Priority	More than 50% of a particular service is affected. GPRS	Reasonable Commercial Efforts	As soon as problem determination details are available

**SIM Card Activation**

Requests for activation should be submitted to TRACPOINT SYSTEMS via website at <http://www.tracpointsystems.com/activation> to ensure a timely response.

TRACPOINT SYSTEMS’ regular business hours are from Monday to Friday, 8:00am to 5:00pm CST.

TRACPOINT SYSTEMS can be reached at 210-590-3596



Details should be e-mailed to: [support@tracpointsystems.com](mailto:support@tracpointsystems.com)

Individual activation will be completed by TRACPOINT SYSTEMS within 8 Business Hours of the receipt of the request. Batch activations will be completed within 48 business hours of receipt of the request by TRACPOINT SYSTEMS.

Upon processing the activation, TRACPOINT SYSTEMS will generate a report identifying the status:

For individual activations, the report will be provided to the Customer within 8 business hours of the receipt of the request.

For batch activations, the report will be provided to the Customer within 48 business hours of receipt of the request.

#### **SIM Card Activation - VIA ONLINE ACTIVATION FORM**

Online activation is provided at <http://www.tracpointsystems.com/activation>.

Customer will activate their device electronically during regular Business Hours between Monday to Friday 8:00am and 5:00pm (Central time). The Customer will need to provide TRACPOINT SYSTEMS with the installed SIM ID based upon the inventory list provided by Customer. The Subscriber's SIM will be activated and a phone number assigned for each Device. Activation should occur in advance of the Device being installed to ensure the device is functional and to facilitate post installation testing and to ensure that the device is located within a proper coverage area. Customer shall be responsible for all implementation costs of the Parties for implementation of electronic activations.

#### **SIM Card Deactivation**

TRACPOINT SYSTEMS will also deactivate individual SIM cards where TRACPOINT SYSTEMS suspects fraudulent use, misuse, loss or theft of a SIM card. Requests can be made by phone or email directly to TRACPOINT SYSTEMS or to TRACPOINT SYSTEMS Technical Support line outside of TRACPOINT SYSTEMS operating hours. All requests made during Business Hours will be completed within 4 Business Hours.

It is agreed that these incidents should be isolated and few. More than 10 requests for SIM deactivation will automatically trigger the requirement for a review of Customer's operating procedures.

SIMs deactivated before the end of the initial 12 month contract will be assessed a \$100 fee.

Regular deactivation of SIM cards will be processed within 48 Business Hours of receipt of the deactivation request from the Customer by TRACPOINT SYSTEMS.



## **Schedule D Coverage and Roaming**

### **Coverage**

The coverage provided by TRACPOINT SYSTEMS is defined by the service areas of its supplier's Network Operator partners in North America and can be determined by going to partner web sites at [www.microcell.ca](http://www.microcell.ca), [www.cingular.com](http://www.cingular.com), [www.t-mobile.com](http://www.t-mobile.com) and [www.attws.com](http://www.attws.com).

### **Roaming**

The Services provided to the Customer are made available through Roaming agreements with other Network Operators. At the time of the Effective Date of this Agreement, TRACPOINT SYSTEMS supplier's roaming agreements include T-Mobile, Cingular and AT&T Wireless. A listing of roaming coverage can be found respectively at [www.t-mobile.com](http://www.t-mobile.com), [www.cingular.com](http://www.cingular.com) and [www.attws.com](http://www.attws.com). TRACPOINT SYSTEMS may assist Customer with more detailed related requests on a case-by-case basis.

As and when commercially and technically feasible, TRACPOINT SYSTEMS agrees to make Roaming services available to the Customer. TRACPOINT SYSTEMS will keep Customer regularly updated with regard to Roaming services available.

Each of the foregoing partners may be changed with or without notice. Further, the terms of offering by each of these partners is also subject to change and, as such, Customer should review these websites on a regular basis. However, it is supplier's responsibility to ensure that service remains available throughout any service change to its Customer.



**Schedule E**  
**Subscriber License Agreements**

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**Schedule F  
Interconnection**

Systems will be connected using commercial Internet services

IP-VPN supported hardware and software will be supported, as needed in the future, for GPRS interconnectivity

Relevant IP connectivity tests will be scheduled following hardware, IOS release version compliance and IPsec compatibility on both ends.



## **Schedule G Dispute Resolution Process**

The Parties agree that any dispute, controversy or claim arising out of or relating to this Agreement, (except for an amount billed by TRACPOINT SYSTEMS to the Customer which shall be settled according to the terms described for invoice disputes), shall first be attempted to be settled by the following dispute process:

Each party shall appoint a representative (the "Representative") to represent it and they shall consult and negotiate with each other, in good faith and understanding of their mutual interest, to reach a just and equitable resolution satisfactory to both as follows:

### **1. Internal Dispute Process.**

A. The party alleging the dispute shall provide written notice to the other parties, which notice sets out the relevant and material issues surrounding the alleged dispute, or other issues as such party determines are relevant to resolution of the dispute;

B. Within forty eight (48) hours of receipt of such notice, each party shall appoint a Representative and shall advise each other party of the name and relevant contact information for such Representative. The Representative of the party providing the original notice under paragraph 'A' shall be responsible for coordinating an initial meeting of all Representative, via teleconference call or otherwise, to discuss the alleged dispute and to determine a course of resolution;

C. Should the Representatives not have agreed to a written resolution of the dispute within sixty (60) days of the initial meeting under paragraph 'B', then any party shall be entitled to terminate this dispute resolution process upon written notice to the other.

### **2. Arbitration.**

Failing settlement as outlined above, the dispute claim or controversy shall be settled by arbitration in accordance with (a) the rules and procedures of the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules (including the emergency Interim Relief Procedures), and its successor rules or replacement rules for Customers located in the United States. The parties shall cooperate with the arbitrator and with each other in selecting one (1) arbitrator from a panel of neutrals, and in scheduling the arbitration proceedings. To decide the dispute, the arbitrator shall apply the federal laws of the United States and the state laws of the State of Texas. The Parties covenant that they will share equally in the costs for the arbitration proceedings; however, the arbitrator shall have the authority to award the prevailing party recovery of all costs, fees and expenses, including attorneys' fees to be paid by the party against whom enforcement is ordered.

The decision of the arbitrator shall be binding upon the parties, and judgment on the award may be entered in any court of competent jurisdiction. The Parties agree that the arbitrator shall have the authority to issue interim orders for provisional relief, including, but not limited to, orders for injunctive relief, attachment or other provisional remedy, that shall be enforceable in any court of competent jurisdiction. Additionally, although the procedures specified in this section of this Agreement are the sole and exclusive procedures for the resolution of disputes arising out of or relating to this Agreement, nothing in this Agreement shall be deemed as preventing either party from seeking provisional relief from any court of competent jurisdiction if the party seeking such relief reasonably believes such action is necessary to avoid irreparable harm to itself or to preserve its rights under this Agreement or from seeking indemnification pursuant to the indemnification provisions of this agreement.

Pending final disposition of any dispute under this Agreement the parties agree to proceed diligently and in good faith with the performance of this Agreement, including without limitation the dispute resolution process described above, and to comply with all terms and conditions herein.