

**PRIMUS TELECOMMUNICATIONS, INC.**  
**PRIMUS LD GENERAL SERVICE AGREEMENT**

Thank you for choosing service from the Primus LD division of Primus Telecommunications, Inc., or its successors ("Primus").

**I. THE AGREEMENT**

**Your agreement ("Agreement") with Primus consists of this Primus LD General Service Agreement and the current terms of any calling plan, promotion, and/or authorized written communications you have received from Primus. BY ENROLLING IN, USING, OR PAYING FOR THE PRIMUS VOICE SERVICES, YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE PRICES, CHARGES, TERMS AND CONDITIONS, DO NOT USE THE SERVICES, AND CANCEL THE SERVICES IMMEDIATELY BY CALLING PRIMUS AT THE TOLL FREE NUMBER ON THE FIRST PAGE OF YOUR INVOICE FOR FURTHER DIRECTIONS.**

This Agreement only applies to those customers purchasing services under a Primus LD rate plan, and does not apply to customers purchasing voice services from any other division of Primus, which may be found on Primus's corporate website at [www.primustel.com](http://www.primustel.com). Additionally, this Agreement does not apply to customers purchasing services from any of Primus's affiliates, including but not limited to the Lingo<sup>SM</sup> (voice over internet protocol ("VoIP")) product, which is offered by Lingo, Inc. or voice services offered by Least Cost Routing, Inc. ("LCR"), a wholly-owned subsidiary of Primus's parent company, Primus Telecommunications Holding, Incorporated. Lingo, Inc. customers can find the applicable terms and conditions on the Lingo<sup>SM</sup> website at [www.lingo.com](http://www.lingo.com) and LCR customers can find the General Service Agreement applicable to them on the LCR web site: [www.lcr.cc](http://www.lcr.cc).

This Agreement covers your state-to-state voice service(s) and charges. To the extent permitted by law, this Agreement also covers Primus's local or intrastate voice service(s) and charges, Primus's dial around voice service(s) and charges, Primus's calling card service(s), and Primus's international voice 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 Primus for specific rate information. Primus may change this Agreement at any time.

For purposes of the Agreement, "you" means the customer, defined as either (i) the person identified in Primus's account records as responsible for payment of all charges; or (ii) any other person with actual or apparent authority to represent that person or to use the service(s). "Service" or "Services" means: any new or additional Primus state-to-state and international consumer voice telecommunications services that you enroll in, use, or pay for, after July 31, 2001.

The rates and charges found in this Agreement and accompanying rate sheets are effective as of August 1, 2005 and are subject to change. For your most current rates and charges, the most current version of this Primus LD General Service Agreement, or if you have questions about your services, please visit our website at [www.primusld.com](http://www.primusld.com) or call us at the toll-free number listed on the first page of your invoice.

## **II. SERVICE**

### **A. Calling Plans**

Primus's calling plans are described in a separate document that is included along with this Primus LD General Service Agreement. For the current terms of any calling plan, please visit our website at [www.primusld.com](http://www.primusld.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.

### **B. Notice of Rate Changes**

Primus may change the prices and charges for the Services from time to time. Primus may decrease prices without providing advance notice. Any increase to your interstate rates will become effective only after Primus notifies you at least fifteen (15) days in advance of such change by postcard or letter; or by a message on or within your invoice. Written notice to you will be sent to your last known address as reflected in Primus's records. Written notice is deemed received three days after deposit in the U.S. mail, postage prepaid, and properly addressed according to the address in Primus's records. At a minimum, changes to any other rates, charges, or terms or conditions in the Agreement will be published in Primus's website at least fifteen (15) days in advance of such change and will be incorporated by reference into this Agreement.

### **C. Monthly Minimum and Account Maintenance Fees**

Monthly minimum usage requirements, package fees and/or account maintenance fees may be associated with some of the Primus LD calling plans. If applicable, these are set forth in the description for each calling plan on our website at [www.primusld.com](http://www.primusld.com). Monthly recurring package and maintenance fees will continue to apply even for accounts with zero (0) usage.

### **D. Credit Limits**

Primus reserves the right to set credit limits based on each Customer's payment history or credit score from consumer credit reporting agencies. In the event Primus sets such a limit, Primus will notify Customer of the initial credit limit and all changes to each individual's set credit limit. If Customer exceeds this credit limit, Primus reserves the right to restrict Customer's access to the Services, and will provide notice of the same as reasonably practicable thereafter.

### **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**

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

#### **G. Moves, Telephone Number Changes, or Cancellation**

You are responsible for notifying Primus of any changes in service, including cancellation. If you change your telephone number or change your residence and wish to maintain an account with Primus at your new residence, you must contact the Primus LD 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 Primus, you must contact Primus and advise them of the cancellation. Primus 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 Primus 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 an answering machine or a facsimile machine) answers the call, and ends when one of the parties disconnects from the call. However, some foreign carriers (with whom Primus must interconnect in order to terminate calls to foreign countries) designate a call as "answered" when the called party's line rings or after a certain number of rings, and will charge Primus for a completed call. In these situations, Primus will charge for the call as if it were answered by the called party.

#### **I. Casual Calling**

Casual rates, as set forth in the Primus rate tables, will be charged when calls are completed over the Primus network and the caller does not have an active account with Primus. An example of when casual rates will be charged include the situation when you sign up for Primus service by contacting your local telephone company, but the local telephone company fails to notify Primus of your selection. Casual rates will apply will apply when you either (a) use Primus's dial around service, (*e.g.*, dial 1010024) or (b) use Primus's dial one services before placing an interstate long distance call from a telephone that is not associated with an active account with Primus. If you believe that you are being charged casual rates and surcharges in error, please contact a Primus Customer Care representative immediately. If these rates are being charged due to an error caused by the Company, your local telephone company, or some other cause beyond your control, you will receive appropriate credits.

#### **J. International Services**

##### **1. Foreign Carrier Restrictions**

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

## **2. Foreign Carrier Acts or Omissions.**

- a. When other U.S. or foreign carriers and foreign telecommunications administrations use facilities to establish connections to points not reached by Primus's network, Primus is not liable for acts or omissions of other carriers or foreign telecommunications administrations.
- b. International calls are priced on the basis of the country and city codes dialed by you. When the facilities of other U.S. or foreign carriers are used in establishing connections to points not reached by Primus's network, Primus is not liable for refunds or damages if those calls do not terminate in the country, city or area codes associated with the called number.

## **K. Surcharges**

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

1. Basic Surcharges: These surcharges are imposed by Primus on a per-month, per invoice basis unless otherwise indicated:
  - a. Local Connect Surcharge. Primus will assess a monthly, per invoice fee of \$1.50 which is aimed at recouping a portion of Primus's costs and expenses associated with originating and terminating long distance calls through the networks of local telephone companies.
  - b. International Connect Surcharge . Primus will assess a monthly fee of \$1.00 in any month in which an international call is placed which is aimed at recovering costs of maintaining equipment, proper routing, completion of direct dialed calls to destinations and countries outside of the US.
  - c. Environmental Fees. As part of its commitment to the preservation of the environment, Primus will assess the following fees:
    - i. Billing Service Fee. When paper bills are offered in the Primus LD plans, Primus will charge a monthly, per-invoice fee of \$2.00.
    - ii. Paper Welcome Kit Fee. A surcharge of \$1.00 will be assessed for every paper copy of Primus's welcome kit that is requested by customer.
  - d. PICC Fee. Primus charges \$5.00 per line, per month on multi-line (greater than 2 lines) business accounts. Pursuant to applicable regulations, single line business customers and residential customers are not charged this fee.

- d. **Rate Center Abuse Surcharge.** Primus reserves the right, effective January 1, 2005 and upon notice to Customer, to assess a surcharge on each call made, of up to \$.25 per minute, in instances where Primus 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 Primus charges less than average origination or termination fees.
2. **Governmental Charges:** These surcharges are imposed to recover amounts Primus is required or permitted by governmental or quasi-governmental authorities to collect from others or pay to others in support of statutory or regulatory funds or programs ("Governmental Charges"). Examples of such Governmental Charges include, but are not limited to, Universal Service funding, utility and other fees imposed on communications providers and compensation payable to payphone service providers for use of their payphones to access Primus's service.
  - a. **Federal Universal Service Fee:** Primus includes a Federal Universal Service Fee to each bill at the rate determined by the FCC. The Universal Service Fee for the first quarter of 2007 is 9.7%. In the second quarter of 2007, the Universal Service Fee will increase to 11.7%.
  - b. **Payphone Use Charge:** Charges for calls that originate from any domestic payphone and are carried over Primus's network will include a \$0.99 per call charge. This charge will be in addition to applicable basic charges and surcharges.

## **L. Taxes**

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

1. Federal excise tax (3.0% all invoiced interstate, intrastate, local toll, and international charges, not including certain taxes);<sup>1</sup>
2. applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts and value added taxes;
3. any tax imposed by an authority on the benefits of a promotion offered by Primus involving services or goods of a third party;
4. tax-like charges to recover amounts Primus 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
5. 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 Primus's operations in that jurisdiction based on Primus's gross receipts, revenues or operations in that jurisdiction; or (ii) a tax on interstate access charges incurred by Primus 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 Primus's property located in that jurisdiction which is used in providing interstate or international service, based on Primus's property located in that jurisdiction and used by Primus 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 Primus in that state during the current calendar year.

### **III. RESTRICTIONS ON THE USE OF SERVICE**

- A.** Primus offers its services subject to availability of facilities, limitations of service offerings, and the provisions of this Agreement.
- B.** Services provided by Primus under this General Service Agreement will not be used:
  1. For any unlawful purpose; 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 audio text 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.

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<sup>1</sup> Effective July 31, 2006, Primus will cease charging FET on all interstate and intrastate long distance calls in accordance with IRS Notice 2006-50.

- C. Primus 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. Primus may, without notice (consistent with governing laws or regulations), block traffic to or from specific countries, country codes, cities, city codes, local telephone exchanges ("NXX exchanges"), individual telephone stations, groups or ranges of individual telephone stations, or calls using certain customer authorization codes, whenever Primus deems it necessary to take such action to prevent (1) the unlawful use of service; (2) nonpayment for service; (3) the use of service in violation of this Agreement; or (4) network blockage or the degradation of service furnished to you or other customers.
- E. Due to the portable nature of Primus's calling card codes that are issued to Primus's customers, Primus reserves the right to block, without notice, any calling card code that Primus deems to have been used, or that might be used, for fraudulent purposes. Primus may also intercept calling card calls for the dual purposes of verifying customer information and fraud avoidance. Primus will provide subsequent written notification by mail, and/or voice notification, of such blocking or termination. Primus 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 Primus at the local telephone company's switch, customers or former customers will be unable to access Primus'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 Primus.

#### **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. This responsibility is not changed by virtue of any use, misuse, or abuse of your service undertaken or caused by third parties.
- B. You must promptly notify Primus of any change in your invoicing address or, if applicable, in the credit card or bank account used for payment. You should notify the Primus Customer Care Department by calling the toll-free number listed on the first page of your Primus invoice or by U.S. mail to the following address: Primus Telecommunications, Inc., Attn: Primus LD Customer Care Department, 625 First Avenue, Suite 201, Coralville, IA 52241.
- C. The minimum period for which Services are provided (and for which rates and charges are applicable) is one (1) month, unless mutually agreed under a separate written agreement with Primus. Primus will not pro-rate any monthly fees associated with the Primus LD products. Usage charges and any recurring monthly charges are billed after

each billing period. In the event Primus changes its rates, recurring monthly charges affected by such change will be assessed at the new rate for the full billing period during which the new recurring charge rate became effective.

- D.** Primus's bills for service are due within twenty-nine (29) from the date of invoice. Any payments made via telephone shall be assessed a \$2 fee. Customers that are not enrolled in Primus's online billing program will be assessed a \$2 fee for any one time web payments.
- E.** Customer must dispute any charges in writing within thirty (30) days of receipt of his/her invoice. All disputes may be sent to Primus at the following address:

Primus Telecommunications, Inc.  
Attn: Primus LD Customer Care Department  
625 First Avenue, Suite 201  
Coralville, IA 52241

- F.** Amounts not paid within twenty-nine (29) days of the invoice date will be considered past due. If you make any late payments, and we bill you for the Services, we will charge you a late fee equal 1.5% or the maximum percentage allowed by applicable law which we apply to that period's charges and any outstanding charges and late payment charges that remain unpaid at the time of the next bill. If the state law where you receive the Primus services requires a different rate, we will apply that rate. 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.
- G.** If Primus becomes concerned at any time about your ability to pay for services, Primus may require that you pay its charges within a specified number of days and that you make such payments in cash or the equivalent of cash.
- H.** If your telecommunications payment history is not acceptable to Primus 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 Primus and authorization for Primus to charge usage to your credit card account; or (iii) agreement that your usage of Primus network and services will be subject to toll usage limits to be determined by Primus. Prior to your compliance with this request, Primus reserves the right to cease accepting and processing service orders. Primus may request subsequent additional pre-invoice payments for usage and may increase or decrease toll usage limits as it deems appropriate. Primus may refuse to furnish services if any charges owed by you to Primus are past due for service(s) provided to you.
- I.** When billing and collection for Primus service is performed on Primus'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 Primus-provided service.

- J.** If Primus hires a collection agency to collect, or attempt to collect, any charges owed Primus, you will be liable to Primus for an additional payment equal to the greater of \$50 or thirty-five percent (35%) of the charges owed, where permitted by applicable law. If Primus incurs any fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed Primus other than by hiring a collection agency, you will be liable to Primus for the payment of all such fees and expenses reasonably incurred.
- K.** In the event payment is made by personal check and your check is not honored by the institution on which it was drawn, Primus 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 Primus.
- 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, Primus will bill for that service, feature, surcharge, or other charge element as soon as it is capable of doing so.

**M. Handling of Certain Specific Credits**

- 1.** If your account has been closed but has a credit balance remaining, Primus will transfer the credit to another of your accounts, if there is one. If you do not have another account, then Primus will mail a check for the balance to you upon your request, provided that you make your request within one year of your account being closed.
- 2.** The following credit allowances for interruptions of Primus services will be made:
  - a.** For all of Primus's domestic services for which charges are specified on the basis of per minute of use, or on usage of a fraction of a minute, and in which there may be interruption of an individual call, due to a condition in Primus's shared interexchange facilities or in shared access or termination facilities provided by other carriers, which interruption can be remedied by redialing the call:
    - (i)** A credit allowance will be made for that portion of a call that is interrupted due to poor transmission (for example, noisy circuit), one way transmission (one party is unable to hear the other), or involuntary disconnection caused by deficiencies in Primus's service. You may also be granted credit for reaching a wrong number. To receive a credit, you must notify a Primus 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. This credit allowance for reaching wrong numbers is limited to an aggregate total of \$100.00 over a 12-month period.

- b. For interruptions in service due to the performance of the telecommunications network furnishing Primus service where such interruptions exceed an individual call and cannot be remedied by redialing the call, you will be given a credit allowance for an interruption subject to conditions related to location, timing, and other pertinent conditions. To receive a credit, you must notify the Primus Customer Care Department and furnish information, including the called number, the service subscribed to, the difficulty experienced, and the approximate time of the service interruption.
- 3. No credit allowances will be made for:**
- a. Interruptions caused by your negligence or the negligence of others authorized by you to use your service;
  - b. Interruptions due to the failure of power, equipment, systems, or services not provided by Primus;
  - c. Interruptions during any period during which Primus 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 Primus 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 Primus. (For the purposes of this subsection (g), an interruption period begins when you report to Primus 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. Primus will issue you full credit for invoiced charges for calls when the charges are determined to result from a "theft of service" (for example, unauthorized usage following the involuntary theft or loss of a Primus product or the establishment of service that you did not intentionally facilitate) involving (a) verified "Clip-on Fraud" associated with equal access services (1010XXX or 1+/0+/0-); or (b) theft of identity or theft of service. To qualify for credit, you must notify Primus in writing within 90 days of receipt of an invoice containing alleged fraudulent charges.

- b. For fraudulent usage charges, that are established, to the reasonable satisfaction of Primus, to arise out of the compromise of a Calling Card, through no intentional or negligent act or omission by you, Primus will credit you the total amount of charges resulting from such fraudulent usage. To qualify for credit, you must notify Primus in writing within 90 days of receipt of an invoice containing the alleged fraudulent charges, and you must notify Primus by telephone immediately upon learning that a Calling Card has been compromised.
- c. Notwithstanding anything herein to the contrary, Primus 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. Primus 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.

## **V. CANCELLATION OF SERVICE**

**A. By the Customer.** If you wish to change your service to another long distance carrier at any time, you should: (1) contact Primus 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. All Primus LD subscribers will be assessed a \$5 administrative fee to their final bill in the event of any such cancellation.

### **B. By Primus**

1. Primus reserves the right to discontinue furnishing services, cancel your account, and/or block your access to Primus network, without incurring any liability, immediately and without notice if Primus deems that such action is necessary to prevent or to protect against fraud or to otherwise protect Primus's personnel, agents, facilities, or services. Without limitation, Primus may take such actions if:
  - a. You refuse to furnish information or furnish false information that (i) is essential for billing; or (ii) pertains to your creditworthiness, your 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. Primus 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 notice by Primus of any past due amount (which remains unpaid, in whole or in part) for any of Primus's or an affiliated carrier's service to which you either subscribe or had subscribed or used;

- f. You either refuse to pay when billed for service or indicate to Primus or an entity billing on Primus'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 Primus or others having legal authority to investigate your legal obligations;
  - j. Your telephone equipment fails to pass back to Primus 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 Primus-issued calling card service and have not used the service (with the exception of calls to Directory Assistance) for 24 months. In such case, Primus will deactivate the calling card to reduce the risk of fraud or abuse. If you wish to renew service, Primus will promptly provide a new card;
  - m. Primus has made available service to you and you have failed to place the available service into actual and substantial use during the 90-day period immediately following its availability, or, if during any service term, you have not actually and substantially used the available service for any consecutive 90-day period (as used in this paragraph, "actual and substantial use" will mean a pattern of use that discloses an intent on your part to employ the service to transmit information of your choosing); and/or
  - n. You act in a manner that is threatening, obscene, harassing, or abusive to Primus personnel.
- 2.** Primus reserves the right to discontinue furnishing services, cancel your account, and/or block your access to Primus network, without incurring any liability, immediately upon written notice to you if:
- a. Any invoice charges remain outstanding and owed by you after the 30th day from the date of the invoice notifying you of the charges; or
  - b. You fail to comply with a request by Primus for security for the payment for services.
- 3.** The discontinuance of service(s) by Primus pursuant to these provisions does not relieve you of any obligation to pay Primus for charges due and owing for service(s)

furnished up to the time of discontinuance. In the event Primus discontinues service under this Section V, Primus will assess a fee of \$25 to reactivate any account.

## **VI. LIABILITY**

- A.** Except for granting credit allowances for interruptions of service as provided for in Section IV(M) above, Primus will not be liable for: (i) any failure of performance due to causes beyond its control, including, but not limited to, acts of God, fires, floods or other catastrophes; national emergencies, 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 Primus'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 Primus, Primus's liability, if any, will be limited to credit allowances for interruptions of service as provided for in Section IV(M) above. In addition to these credit allowances, if any, Primus's liability is limited as follows:
  - 1. With respect to the routing of calls by Primus to public safety answering points or municipal emergency service providers, Primus's liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by you as the direct result of Primus's action, or failure to act, in routing the call, or (b) the sum of \$1,000.00.
  - 2. With respect to the provisioning of, or any error or omission in, data, information, or content furnished in connection with any service provided by Primus, for example, Directory Assistance, Primus's liability will be limited to the lesser of: (a) the amount of actual money damages proven by you to have been incurred as the proximate result of your reliance on such data, information, or content; or (b) \$100.00.
- C.** Primus's liability for willful misconduct, if established as a result of judicial or administrative proceedings, is not limited by this Agreement.
- D. IN NO EVENT WILL PRIMUS BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT PRIMUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES) BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT. THIS SECTION SURVIVES TERMINATION OF THIS AGREEMENT.**
- E.** Primus 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 Primus, including:

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

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

**G.** Primus will not be liable for any act or omission of any other company or companies furnishing a portion of the service, or from any act or omission of a third party, including those vendors participating in Primus offerings made to you, or for damages associated with service, 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 Primus 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 Primus have the right to take any dispute that qualifies to small claims court rather than arbitration. All other disputes arising out of or related to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration. This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a small claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect. The arbitration of any dispute involving \$10,000 or less shall be conducted in accordance with the Consumer Arbitration Rules of the American Arbitration Association ("AAA"), as modified by this Agreement, which are in effect on the date a dispute is submitted to the AAA. The AAA's Commercial Arbitration Rules and fee schedules will apply to any disputes in excess of \$10,000. You have the right to be represented by counsel in an

arbitration. In conducting the arbitration and making any award, the arbitrator shall be bound by and strictly enforce the terms of this Agreement and may not limit, expand, or otherwise modify its terms. The arbitrator may not award punitive, exemplary or similar damages. The parties agree that an award of such damages will be void if issued. **NO DISPUTE MAY BE JOINED WITH ANOTHER LAWSUIT, OR IN AN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON, OR RESOLVED ON A CLASS-WIDE BASIS. THE ARBITRATOR MAY NOT AWARD DAMAGES THAT ARE NOT EXPRESSLY AUTHORIZED BY THIS AGREEMENT AND MAY NOT AWARD PUNITIVE DAMAGES OR ATTORNEYS' FEES UNLESS SUCH DAMAGES ARE EXPRESSLY AUTHORIZED BY A STATUTE. YOU AND PRIMUS BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES THAT ARE EXCLUDED UNDER THIS AGREEMENT.**

#### **B. Arbitration Information and Filing Procedures**

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

Primus Telecommunications, Inc.  
Attn: Primus LD Customer Care Department  
625 1<sup>st</sup> Avenue, Suite 201  
Coralville, IA 52241

Or to the Primus headquarters:

Primus Telecommunications, Inc.  
7901 Jones Branch Drive, Suite 900  
McLean, VA 22102  
Attn: Customer Care Department

Any written correspondence must include your account number. You must describe your dispute and provide Primus with any supporting documentation. Likewise, if Primus has a dispute with you, it will notify you by letter sent to your billing address and attempt to resolve it before pursuing arbitration. If the dispute cannot be satisfactorily resolved within sixty days from the date you or Primus is notified by the other of a dispute, then either party may then contact the AAA in writing at AAA Service Center, 134555 Noel Road, Suite 1750, Dallas, Texas 75240-6620 and request arbitration of the dispute. Information about the arbitration process and the AAA's Arbitration Rules and its fees are available from the AAA on the Internet at [www.adr.org](http://www.adr.org). The arbitration will be based only on the written submissions of the parties and the documents submitted to the AAA relating to the dispute, unless either party requests that the arbitration be conducted using the AAA's telephonic, on-line, or in-person procedures. Additional charges may apply for these procedures. Any in-person arbitration will be conducted at a location that the AAA selects in the state of your primary residence. Any arbitration shall remain confidential. Neither you nor Primus may disclose the existence, content or results of any arbitration or

award, except as may be required by law, or to confirm and enforce an award. Judgment of the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.**

**C. Fees and Expenses of Arbitration**

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

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

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

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

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

**E. Binding Effect.** This Agreement is binding upon you and Primus and upon, respectively, your and Primus'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 Commonwealth of Virginia and applicable federal law, without regard to its choice of law principles, except that the arbitration provisions in Section VII shall be governed by the Federal Arbitration Act. This governing law provision applies no matter where you reside, or where you use or pay for the services.

**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.