

**INTRODUCTION.**

These Terms of Service ("Terms of Service" or "TOS") constitute the agreement between MossyTel LLC (here after referred to as 'MossyTel' or 'MossyTel LLC') and the user of MossyTel's communications services and any related products or services. This agreement governs both our service and any MossyTel -approved or MossyTel -branded devices used with our service. It applies to all lines on each MossyTel account. MossyTel is sometimes referred to as "we," "us," "our," or "MossyTel" and the user is sometimes referred to as "you," "your," "user," or "customer".

By subscribing to or using our service, including those services, features or functionality provided by means of mobile applications, you agree to these Terms of Service. All information linked to these Terms of Service is part of it. The term of this agreement will be either month to month or for the term specified in the plan you select when you initiate service with us (the "Term"). The Term begins on your Order Date. If you or we change your plan, your Term and monthly rate may change (depending on the new plan), and additional terms and conditions associated with that plan, may apply. Your acceptance of service from us constitutes your agreement with, and acceptance of, our Reasonable Use Policy and our Privacy Policy.

**REVISIONS TO THESE TERMS OF SERVICE.**

From time to time we may make revisions to these Terms of Service, our Reasonable Use Policy, our Privacy Policy and other policies. We will provide notice of such revisions by posting revisions to our website, or sending an email to the email address that you provide to receive communications from us. You agree to visit our website periodically and to check for any such revisions. You also agree to notify us immediately of any changes to your email address. By continuing to use our services after revisions are effective, you accept and agree to abide by those revisions.

By subscribing to our service, you agree that we may provide to you by use of electronic communications required notices, agreements, and other information concerning MossyTel, including changes to these TOS, Reasonable Use Policy and Privacy Policy.

**EMERGENCY SERVICES - e911 DIALING.**

MossyTel 911 Service differs from traditional 911 services due to limitations brought on by VoIP technology. It is nearly impossible to detect where a call originates from when placed over the internet. e911 allows users to associate physical addresses with their DIDs, allowing them to have service similar to traditional 911. When an emergency (911) call is placed over our VoIP network, the physical address you will enter at the time of e911 registration for a specific DID will be passed along to your local PSAP (Public Safety Answering Point) providing the dispatcher with the exact location help is required. You are required to update MossyTel with any physical address changes immediately after a move. Failure to notify MossyTel of such a move may result in incorrect information being passed to your local PSAP. MossyTel cannot be held liable for any delays in emergency response related to incorrect e911 information.

**SERVICE DISTINCTIONS.**

Our service may be subject to different regulatory treatment than traditional voice telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies. Our service requires high speed broadband or, for certain mobile applications, a WIFI or other data connection (e.g. 3G/4G) which we do not provide. Certain of our other services may be used with devices such as wireless telephones, mobile telephones, smartphones, PDA's, tablets or pads which we may or may not provide. Events beyond our control may affect our service, such as power outages, fluctuations in the Internet, your underlying ISP or broadband service, system maintenance or acts of God. We will act in good faith using commercially reasonable efforts to minimize disruptions to your use of and access to our service.

**NO OPERATOR ASSISTED CALLING; MAY NOT SUPPORT X11 CALLING.**

Our service does not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, or calling card calls. Our service may not support 311, 511, and other x11 services in one or more service areas. Our service may support specified dialing such as 911 and 411, although certain mobile applications may not provide such dialing services. 411 charges may vary by plan.

**DIRECTORY LISTING.**

MossyTel offers basic directory listing service with monthly plans for business, as a best effort. MossyTel makes no expressed promises to provide directory listing services, and availability of these services varies by state/city. If you purchase MossyTel directory listing, we make no guarantee that your listing will show in your rate center, however we make every effort possible to produce that result. This is because your local telephone company chooses who to pull directory listing information from, therefore we cannot guarantee your directory listing.

**NON-VOICE EQUIPMENT LIMITATIONS.**

You acknowledge that our service may not be compatible with all non-voice communications equipment, including but not limited to home security systems, TTY, medical monitoring equipment, certain versions of TiVo, AOL, Netflix and other streaming services, cable television services, FiOS, satellite television systems, PBX, Centrex, other private telephone networks, or computer modems. You waive any claim against MossyTel for interference with or disruption of these services and equipment, as well as any claim that MossyTel is responsible for any disruption to your business, if applicable.

**CERTAIN BROADBAND, CABLE MODEM, AND OTHER SERVICES.**

You acknowledge that our service may not be compatible with certain cable broadband service (such as AOL) and certain versions of TiVo. There may also be other services with which our service may be incompatible. Some providers of broadband service may provide modems that prevent the transmission of communications using our service. We do not warrant that our services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of our service with any particular broadband service.

**PASSWORDS.**

You will be asked to create a password in order to gain access to your account information on-line or when contacting a MossyTel agent by phone. Certain applications may permit you to extend use of such application to others using your password information. You agree to keep all passwords and account information confidential and are solely responsible for any liability or damages resulting from your failure to maintain that confidentiality and for all activities that occur under your password, including without limitation usage by others. You must immediately notify us if you suspect any breach of security such as loss, or unauthorized disclosure or use of your password and account.

**CHANGES TO SERVICE PLANS.**

Your service plan includes terms and conditions such as monthly service allowances, limitations and features, and the associated charges, all as described at [www.MossyTel.com](http://www.MossyTel.com) or in other communications and materials made available to you in connection with your order or changes to your service. You acknowledge that your service plan is also subject to these Terms of Service. Our service is subject to our business policies, practices and procedures, which we can change at any time without notice. Unless otherwise prohibited by applicable law, we can also change the terms and conditions of your service plan (such as features and prices) at any time, with or without notice. If we do give you notice, it may be provided on your account web page or monthly bill, in a newsletter, in a mailing, by e-mail, by telephone or other communication permitted under applicable law. If your calling plan has been changed this does not affect the terms of your existing service agreement.

**LENGTH OF SERVICE.**

We provide our service to you indefinitely. Your service term refers to the period of time for which we will bill you periodically in advance (for example, one month or one year). The service term is the term that you selected from the options available when you signed up for our service. Your first service term begins on the Order Date. It is not the day you receive the equipment you ordered or the first time you use the service. Your service will continue until canceled by you or by us as provided for herein. Please note that your obligations begin on your Order Date and are indefinite. Your service term automatically renews for the same term you selected unless you call us at 1-855-MOSSYTEL (1-855-667-7983) to cancel your service before the end of your then current service term. The renewal begins on the day after the last day of your service term.

**OUR RIGHT TO DISCONNECT SERVICE; UPGRADE SOFTWARE.**

We have the right to suspend or discontinue service generally, or to disconnect your service, at any time. In addition, we reserve the right to immediately disconnect your service at any time without notice.

**DISCONNECTION BY US WITHOUT A REASON.**

If we discontinue service generally, or disconnect your service without a stated reason, you will only be responsible for the charges that have accrued through the date of the disconnection, including a pro-rated portion of the final service term charges, and, if applicable, any recovery and Early Termination Fees.

**DISCONNECTION BY US WITH A REASON.**

If we disconnect your service for any of the reasons listed above, you will be responsible for all charges through the end of your current service term, including unbilled charges, plus any applicable disconnection, Early Termination Fees and any recovery fees.

**ALL CHARGES OWED AT THE TIME OF DISCONNECT WILL BE IMMEDIATELY PAYABLE.**

At the time of disconnection, we will immediately charge the credit or debit card you have provided to us for payment, or initiate an electronic funds transfer if that is your payment method, for all amounts due at that time. We will pursue collection for unpaid amounts on disconnected accounts and may report these unpaid charges to credit bureaus.

**SERVICE DISCONNECTION ON NUMBER TRANSFER OR "PORT".**

**SINGLE LINE:** You may port your current number to another service provider. If you ask your new service provider to port a number from us, we will terminate our service for that number immediately after we receive notification that the porting of your number to your new service provider has been completed successfully. Once your service is terminated in this manner, you will remain responsible for all charges and fees through the end of the current billing cycle, including any unbilled charges, as well as for any applicable Early Termination Fees or recovery fees that may be applicable. If a port is unsuccessful for any reason, then unless you independently call us to request disconnection or unless we determine to disconnect your line as stated in these Terms of Service, your service and your agreement with us will not terminate, you will remain a MossyTel customer, and you will continue to be responsible for all charges and fees associated with your MossyTel service.

**MULTIPLE LINE:** If you request your new service provider to port a number from us and you have multiple numbers assigned to your account and/or additional devices you are required to inform us, by calling us as specified below in TERMINATION OF SERVICE, of your intent to terminate all the services on your account, prior to the successful completion of the requested port or we will select the most appropriate billing plan for any remaining numbers and/or devices on your MossyTel account, and you will continue to be responsible for all the charges and fees associated with the remaining services on your MossyTel account. Once the port of the requested number is completed, you will remain responsible for all charges and fees through the end of that billing cycle, including any applicable Fees and recovery fees that may apply to the ported number.

**TERMINATION OF SERVICE.**

In order to terminate your service, you must contact our office, via telephone, at the following toll-free number: 1-855-MOSSYTEL (1-855-667-7983). Our office is available to assist you Monday-Friday 9:00 a.m. to 5:00 p.m. Pacific Standard Time. If you decide to cancel your service with us, you must contact our office to do so - simply disconnecting or returning your device to us or one of our partners will not cancel your service and you will remain responsible for all costs and fees associated with your account, including, but not limited to, monthly recurring fees for your service plan and you may also be disqualified for an applicable money back guarantee.

**DEVICES.**

MossyTel will provide a limited warranty of up to one year on devices purchased directly from us. We cannot offer a warranty of any kind on devices that were not purchased from us.

**FEES.**

We will publish on our website the fees and charges. These fees and charges may change from time to time. We may introduce new products and services at special introductory pricing. At our discretion, we may change introductory pricing. Where required by law, we will send notification of invoices to your email address on file with us. We reserve the right to bill you more frequently if you have a past due balance.

**TAXES.**

State and local governments may assess taxes, surcharges, or fees, or all of these, on your use of our service. These charges may be a flat fee or a percentage of your MossyTel charges and may change without notice. These charges are based on the rates applicable to the address you provided to us. You are responsible for all applicable taxes, fees, or charges for your Order, use, or payment for our service or your device. These amounts are in addition to the payment for your service or devices. We will bill these charges to your selected payment method according to the terms in this agreement. If you are exempt from payment of any of these taxes, you must provide us with an original certificate that satisfies the legal requirements attesting to tax-exempt status by sending the original certificate to MossyTel, 230 8<sup>th</sup> Street, Astoria, OR 97103. Tax exemption will only apply from the date we receive your certificate.

**TOLL FREE FEES.**

If you use our toll free service, we will recover from you any charges imposed on us either directly or indirectly for toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent, or in any other way we decide is appropriate for the recovery of these costs.

**DIRECTORY ASSISTANCE (411).**

We reserve the right to charge you for each call you make to directory assistance.

**SHIPPING FEES.**

Unless such fee is changed or waived by us as part of an offer, we will charge you our then current shipping fees per device shipped.

**NO CREDIT ALLOWANCES OR REFUNDS FOR PREPAID SERVICES.**

Subject to law, we will neither credit nor refund any service fees or any other amounts you pay for any prepaid service plans.

**NO CREDIT FOR NON-USAGE OR MIS-DIALING.**

Neither non-usage of the service nor misdialing while using the service entitle you to a credit for, or refund of, any portion of a payment made to us.

**BILLING.**

If you subscribe to a prepaid annual plan, we will bill you in advance for the service plan fee due for the entire year, plus any associated taxes, fees and surcharges. We will charge you in arrears on a monthly basis for usage and calls not covered by your plan, and immediately on disconnection for any unbilled amounts and, if applicable, any recovery fees that are due. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic transfer from your account as soon as the same day you make your payment, or to process your check as a check transaction in which case you may not receive your check back from your financial institution. Late payments will be subject to late payment fees and returned electronic check payments will be subject to returned check fees, each of which are further detailed as part of our fees and charges. When you subscribe to our service, you must give us a valid email address and a payment method that we accept. We reserve the right to stop accepting your payment method or your payments. You must advise us at once if your payment method expires, you close your account, your billing address changes, your email address changes, or your payment method is cancelled and replaced on account of loss or theft.

**PAYMENT.**

When you subscribe to our service, you authorize us to collect from your payment method, including, if applicable, late fees, check return fees, recovery fees and any other outstanding charges. This authorization will remain valid until 30 calendar days after you terminate our authority to charge your payment method.

**COLLECTION.**

If we disconnect your service, you will remain liable to us for all charges under this agreement and all the costs we incur to collect these charges, including, without limitation, collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

**NOTICES.**

You agree to promptly update your account information whenever your personal or billing information changes (including, for example, your name, address, e-mail address, telephone number, credit/debit card number and expiration date or other payment method information). You authorize MossyTel to send you notices and information regarding your service, including via e-mail, over the Internet. If notices are sent by us to the last email address provided by you, you agree that we have provided sufficient email notice and you waive any rights to assert failure of notice.

**BILLING DISPUTES.**

If you want to dispute any charges on your statement, you must notify MossyTel within seven (7) calendar days after you receive your statement from your bank or credit card issuer. Financial regulations require you to notify your financial institution within sixty (60) days after you receive your statement and report any alleged errors to them within this timeframe. Please contact 1-855-MOSSYTEL (1-855-667-7983) if you want to dispute any MossyTel charges on your statement.

**LAWFUL PURPOSES ONLY.**

You may use our service and your device only for lawful, proper and appropriate purposes. You may not use our service or your device in any way that is illegal, fraudulent, improper or inappropriate. For a non-exhaustive list of examples of illegal, fraudulent, improper or inappropriate uses of our service and/or devices, click here.

**MONITORING.**

We may monitor the use of our service for violations of these Terms of Service. We may remove or block all communications if we suspect a violation of this agreement, or if we think it necessary in order to protect our service, or

MossyTel, its parent, affiliates, directors, officers, agents, and employees from harm.

#### **PROVIDING INFORMATION TO AUTHORITIES AND THIRD PARTIES.**

If we believe that you have used our service or your device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You consent to our forwarding of any such communications and information to these authorities. In addition, we may disclose your name, telephone number, credit card information, and other personal information, any communications sent or received by you, and any other information that we may have about your account, including but not limited to, types of service, length of service, MAC address(es), IP address(es), email address(es), registered 911 address, and all other account information, as follows:

- in response to law enforcement or other governmental agency requests;
- as required by law, regulation, rule, subpoena, search warrant, or court order;
- as necessary to identify, contact, or bring legal action against someone who may be misusing the service, the device, or both;
- to protect MossyTel LLC's rights and property; or
- in emergency situations where disclosure of such information is necessary to protect MossyTel LLC customers or third parties from imminent harm.

#### **USE OF SERVICE AND DEVICE BY CUSTOMERS OUTSIDE THE UNITED STATES.**

Technical and customer care support is offered only in the United States. Our service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection you are using is not within a MossyTel service area, or your ISP or broadband provider places restrictions on using VoIP services, we do not claim that they will allow you to use our service. You will be solely responsible for any violations of local laws and regulations or violations of ISP and broadband provider terms of service because of your use of our service. If you ship a device outside the United States for use in another country, you are solely responsible for determining and adhering to compliance with all applicable customs, import/export, regulatory, tax (including VAT) and other laws regarding the transport, distribution and use of such device and the service.

#### **NO TRANSFER OF SERVICE.**

You are the sole account holder for the service for all purposes and are solely responsible for all charges incurred on the account, regardless of changes to the account, including billing information. You are also responsible for all usage and charges on all devices and features including phone(s) registered with MossyTel, as well as charges for aggregated domestic and international usage made by you and others you have authorized to use your service. You may not resell or transfer your service or account or provide a telephone service to anyone else by using your MossyTel service or features of your MossyTel service without first getting our written consent. In no event may your account be assigned to a non-U.S. resident. IF YOU ACQUIRE A DEVICE FROM SOMEONE OTHER THAN MOSSYTEL OR A MOSSYTEL AUTHORIZED RESELLER, OR THAT PREVIOUSLY WAS ASSIGNED TO ANOTHER'S ACCOUNT, MOSSYTEL DISCLAIMS ALL WARRANTIES, DAMAGES AND LIABILITIES YOU MAY INCUR BY VIRTUE OF YOUR USE OF SUCH DEVICE, INCLUDING BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Attempted assignments of service and accounts through changes in account and billing information does not relieve you of liability and responsibility for use of the service and features, or for charges on the account unless we have not consented to the assignment in writing or unless we actively facilitate the assignment as evidenced in our customer records. You may elect to authorize others to access your account by calling us at 1-855-MOSSYTEL (1-855-667-7983).

#### **NO ALTERATIONS OR TAMPERING.**

If you copy or alter or have someone else copy or alter the firmware or software of the device in any way that facilitates a compromise of our service, you are responsible for any charges that result and damages incurred by MossyTel as a result. You may not attempt to hack or otherwise alter or disrupt our service or make any use of our service that is inconsistent with its intended purpose.

#### **THEFT OF SERVICE.**

You may not use, obtain or facilitate use of our service, directly or indirectly through others, in any manner that avoids MossyTel policies and procedures, including an illegal or improper manner. You will notify us immediately at 1-855-MOSSYTEL (1-855-667-7983) if your device is stolen or if you believe that your service is being stolen, fraudulently used, or otherwise being used in an unauthorized manner. When you notify us of one of these events, you must provide your account number and a detailed description of the circumstances of the theft, fraudulent use, or unauthorized use of service. If you fail to notify

us in a timely manner, we may disconnect your service and levy additional charges on you as permitted under these Terms of Service. Until you notify us, you will be liable for all use of our service using a device stolen from you and any stolen, fraudulent, or unauthorized use of our service whether or not it involves a stolen device.

#### **UNAUTHORIZED USAGE OF DEVICE: FIRMWARE OR SOFTWARE.**

Except as stated for Business customers, you have not been granted any license to use the firmware or software we use to provide our service or that we provide to you in providing our service, or that is embedded in your device, or accessible via mobile application other than a nontransferable, revocable license to use the firmware or software in object code form (without making any modification to it) strictly according to the terms and conditions of these Terms of Service. You also agree that you will use your device exclusively for our service. We will not provide any passwords, codes, or other information or assistance that would enable you to use your device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. You warrant that you possess all required rights, including software or firmware licenses, or both, to use any interface device that we have not provided to you. You may not undertake, cause, permit or authorize the modification, creation of derivative works, or translate, reverse compile, disassemble, hack or reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software. You shall not use the mobile application software to develop any software or other technology having the same primary function, including but not limited to using the software in any development or test procedure that seeks to develop like software or other technology, or to determine if such software or other technology performs in a similar manner as the software

#### **NO WARRANTIES ON SERVICE OR SOFTWARE.**

We make no warranties, express or implied, including but not limited to, any implied warranties of merchantability, fitness of the service or device for a particular purpose, title or non-infringement or any warranty arising by usage of trade, course of dealing or course of performance. In addition, we do not warrant that the service, software or device will be without failure, delay, interruption, error, omission, degradation of voice quality, or loss of content, data, or information. Neither MossyTel nor its officers, directors, employees, affiliates or agents, or any other service provider or vendor who furnishes services, devices, or products to the customer for our service will be liable for unauthorized access to our or your transmission facilities or premises or equipment or for unauthorized access to, or alteration, theft, or destruction of, customer's data files, programs, procedures, or information through accident, fraudulent means, devices, or any other method, regardless of whether such damage occurs as a result of MossyTel's or its service provider's or vendors' negligence. Statements and descriptions concerning our service or device, if any, by MossyTel or MossyTel's agents or installers are informational and are not given as a warranty of any kind.

#### **NO CREDIT ALLOWANCES FOR INTERRUPTION OF MOSSYTEL SERVICE.**

We will not give you credit for any interruption of MossyTel service, including international calling services.

#### **LIMITATION OF LIABILITY.**

We will not be liable for any delay or failure to provide service, including 911 Dialing, at any time or any interruption or degradation of voice quality.

#### **DISCLAIMER OF LIABILITY FOR DAMAGES.**

In no event will MossyTel, its officers, directors, employees, affiliates or agents or any other service provider who furnishes services or devices to you in connection with our service be liable for any damages, including but not limited to personal injury, wrongful death, property damage, loss of data, loss of revenue or profits, or damages arising out of or in connection with the use or inability to use a device or the service, including inability to access emergency service personnel through the 911 dialing service, or delays in the delivery of emergency services accessed through the 911 dialing service, or to obtain emergency help. MossyTel further disclaims any and all liability arising out of any resale, reuse, or refurbishment of the device without MossyTel's prior authorization. These limitations apply to claims founded in breach of agreement, breach of warranty, product liability, tort, and any and all other theories of liability. These limitations apply whether or not we were informed of the likelihood of any particular type of damages.

Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you however, with respect to 911 dialing and other aspects of MossyTel's service, there may be federal or state laws that exclude such damages and provide other protections to MossyTel which MossyTel does not waive or limit in any manner whatsoever.

**DISCLAIMER OF 911 LIABILITY.**

We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We do not have any control over any local emergency response center. Therefore, we are not responsible for whether they answer calls using our 911 dialing service, how they answer these calls, or how they handle them. We rely on third parties to assist us in routing 911 dialing calls to local emergency response centers and to a national emergency calling center. We are neither liable nor responsible if the data used by a third party to route calls is incorrect or produces an erroneous result or results in the delay of the delivery of emergency services. Neither MossyTel nor its officers or employees may be held liable for any claim, damage, or loss, fine, penalty, cost, and expense (including, without limitation, attorneys fees) by, or on behalf of, you or any third party or user of our service, relating to our service, including, without limitation, 911 Dialing, or your device.

**LIMIT ON TOTAL LIABILITY.**

Our total liability under this agreement will not exceed the service charges for the affected time period. MossyTel will not be responsible for third party fees or charges, including but not limited to, banking fees, overdraft fees, wireless or cellular fees, or other wireline, broadband or internet service charges, technician charges, or other similar charges.

**INDEMNIFICATION.**

You shall defend, indemnify, and hold harmless MossyTel, its officers, directors, employees, affiliates and agents, and any other service provider who furnishes services to you for our service, from any and all claims, losses, damages, fines, penalties, costs, and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party or user of our service, relating to our service, including, without limitation, 911 Dialing, or your device(s), or use of our service by you or others using your account (whether or not such usage is expressly authorized by you).

**WAIVER OF CLAIM OR CAUSES OF ACTION.**

You waive all claims or causes of action arising from or relating to our 911 dialing service unless the claims or causes of action arise from our gross negligence, recklessness, or willful misconduct.

**CONTENT.**

You are liable for all liability that may arise from the content transmitted to any person, whether or not you authorize it, using your service or device(s). You promise that you and anyone who uses your service and all your and their content comply at all times with all laws, regulations, and written and electronic instructions for using our service and the device.

**ACCOUNT INFORMATION.**

You are liable for all damages and liability that may arise from your failure to provide true, accurate, current and complete information and to maintain and promptly update such information. If you provide any information that is, or we have reasonable grounds to suspect is, untrue, inaccurate, misleading, not current or incomplete, we may suspend or terminate or refuse any and all current or future use of the service, or any portion thereof.

**GOVERNING LAW.**

These Terms of Service are applicable for VoIP-based service initiated in the United States of America and mobile services worldwide. For US based customers, the law of the state of your residence will govern this agreement as well as the relationship between you and us, except to the extent such law is preempted by or inconsistent with applicable federal law. For users of MossyTel applications outside the United States, the laws of the State of Oregon will govern your use of our Service under this agreement as well as the relationship between you and us, except to the extent such law is preempted or inconsistent with applicable local law. Because this agreement is a transaction in interstate commerce, the Federal Arbitration Act ("FAA"), and not state arbitration law, shall govern the interpretation and enforcement of the arbitration provision.

**NO WAIVER OF RIGHTS.**

Our failure to exercise or enforce any right or provision of this agreement will not constitute a waiver of the right or provision. MossyTel reserves all of its rights at law and equity to proceed against anyone who uses its services or device illegally or improperly. All determinations by MossyTel under these Terms of Service and exercise of its rights are made and done in our sole and absolute discretion.

**SURVIVAL.**

The provisions of this agreement that by their sense and context are intended to survive the termination or expiration of this agreement shall survive.

**THIRD PARTY BENEFICIARIES.**

If you are not a party to this agreement, you do not have any remedy, claim, liability, reimbursement, or cause of action. This agreement does not create any third party beneficiary rights provided, however, that with regard to provisions related to mobile applications made available for download through a third party marketplace such as the iTunes store or the Android Market, you acknowledge and agree that such third party's, and its or their subsidiaries, are third party beneficiaries of this agreement, and that, upon your acceptance of the terms and conditions of this agreement, such third parties will have the right (and will be deemed to have accepted the right) to enforce specific terms of this agreement against you as a third party beneficiary thereof.

**LEGAL AGE.**

You promise that you are of legal age to enter into this agreement and that you have read and understand fully its terms and conditions.

**ENTIRE AGREEMENT.**

This agreement, including any future modifications to its terms, and the rates for services found on our web site constitute the entire agreement between you and MossyTel. This agreement governs your use of our service, and the use of our services by the members of your household and your guests and employees. This agreement supersedes any prior agreements between you and MossyTel. It also supersedes all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

**SEVERABILITY.**

If any part of this agreement is legally declared invalid or unenforceable, all other parts of this agreement will remain valid and enforceable. This invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this agreement.

**ARBITRATION.**

It is important that you read this entire section carefully. This section provides for mandatory resolution of disputes through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury. Any arbitration under this agreement will take place on an individual basis; class arbitrations and class actions are not permitted.

MossyTel and you agree to arbitrate any and all disputes and claims between you and MossyTel. Arbitration means that all disputes and claims will be resolved by a neutral arbitrator instead of by a judge or jury in a court. This agreement to arbitrate is intended to be given the broadest possible meaning under the law. It includes, but is not limited to:

- disputes and claims arising out of or relating to any aspect of the relationship between you and MossyTel LLC, whether based in agreement, tort, statute, fraud, misrepresentation or any other legal theory;
  - disputes and claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising);
  - disputes and claims that may arise after the termination of this agreement;
  - disputes and claims that are currently the subject of individual litigation;
  - disputes and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
  - disputes and claims concerning the scope of this arbitration provision.
- References to "MossyTel," "us" and "you" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of the service under these Terms of Service or any prior agreements between you and MossyTel.

**INFORMAL RESOLUTION OF DISPUTES.**

Our office can resolve most customer concerns quickly and to the customer's satisfaction. If you have a dispute or claim against us, you should first contact the MossyTel customer support by telephone at 1-855-MOSSYTEL (1-855-667-7983). In the event your dispute or claim is not resolved to your satisfaction, you may seek to have that dispute or claim resolved through mandatory arbitration as set forth below.

**FORMAL NOTICE OF DISPUTES.**

A party who intends to seek arbitration must first send to the other party a written Notice of Dispute.

A Notice of Dispute to MossyTel must be sent:

- by certified mail addressed to: MossyTel LLC, 230 8<sup>th</sup> Street, Astoria, OR 97103; or
- by email addressed to admin@mossytel.com

A Notice of Dispute to you must be sent to you

- by certified mail or overnight express delivery with verification at the last mailing address that you registered with MossyTel; or

- by email addressed to you at the last email address you registered with MossyTel.

The Notice of Dispute must

- describe the nature and basis of the dispute or claim; and
- set forth the specific relief sought.

#### **WAIVER OF JURY TRIAL.**

You and MossyTel agree that, by entering into this agreement, you and MossyTel are waiving the right to a trial by jury.

#### **STATUTE OF LIMITATIONS.**

State laws may limit the time period after which you may assert a claim; in some cases, you may be required to assert a claim within one (1) year after the occurrence of the event or facts giving rise to a dispute (except for billing disputes which are subject to the terms of the agreement). Your failure to timely assert your claim may result in a waiver of your legal rights.

#### **EXCEPTIONS TO ARBITRATION AGREEMENT.**

You and we agree:

- you may take your dispute to small claims court, if your dispute qualifies for hearing by such court;
- if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or the Agreement;
- you or we may take any disputes over the validity of any party's intellectual property rights to a court of competent jurisdiction;
- any dispute related to or arising from allegations associated with fraudulent or unauthorized use, theft, or piracy of service may be brought in a court of competent jurisdiction; and
- either you or we may seek any interim or preliminary relief from a court of competent jurisdiction, necessary to protect the rights or property of you or MossyTel, pending the completion of arbitration.

#### **CHANGES TO THIS AGREEMENT.**

We may change the terms and conditions of this agreement from time to time. By subscribing to our service, you agree that we may provide to you by use of electronic communications required notices, agreements, and other information concerning MossyTel, including changes to this agreement. We may give you notice of a change by posting the change on the home page of MossyTel.com, on your account web page or monthly bill, in a newsletter, by e-mail, on the relevant web page of the applicable service, or by other permitted communication. Such notices will be considered given and effective on the date posted. These changes will become binding on you on the date they are posted and we are not required to give you further notice in order for you to continue using our service. By continuing to use the service after revisions are in effect, you accept and agree to all revisions. If you do not agree to the changes, you must terminate your service immediately. When posted, this agreement supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of your device. It also supersedes any written terms provided to retail customers with retail distribution, including, without limitation, any written terms in the packaging of your device. If you want to withdraw your consent to receive notices electronically, you must discontinue your use of MossyTel services. If you continue to use our service, we will consider this your acceptance of any changes.

#### **PRIVACY.**

MossyTel Service uses, in whole or in part, the public Internet, the public switched telephone network, and third party networks to transmit voice and other communications. MossyTel is not liable for any lack of privacy which you may experience from using our service. Please refer to our Privacy Policy for additional information, such as how we use your information and how you can opt out of receiving marketing messaging. Your acceptance of service from us constitutes your agreement with, and acceptance of, our Privacy Policy.

You authorize us:

- to investigate and/or review your credit history, including requesting a consumer report, both when you sign up for our service and at any time after you sign up, for any purpose, including, but not limited to, your initial qualification for an account, your continued compliance with the terms of your account and general customer base evaluation purposes not specifically associated with your account; and
- to share credit information about you with credit reporting agencies. Upon your request we will inform you whether or not we have requested a consumer report, and if a report was requested, the name and address of the consumer reporting agency that furnished the report, and
- In addition, you acknowledge MossyTel may monitor calls for quality assurance and testing purposes.

#### **EXPORT CONTROLS.**

You agree to comply fully with all relevant export laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations, administered by the Department of Commerce, Bureau of Industry and Security. You also expressly agree that you shall not export, directly or indirectly, re-export, divert, or transfer any portion of our service or any direct product to any destination, company, or person restricted or prohibited by U.S. export controls.

I agree to the current MossyTel TOS, which I have had the opportunity to review.