

DEVICE PROTECT PLAN FEATURING APPLE CARE SERVICES
SERVICE CONTRACT/EXTENDED LIMITED WARRANTY

Please read this Agreement carefully, as it describes the protection You will receive in return for Your payment of the purchase price of this Agreement and it contains a Dispute Resolution/Arbitration Agreement and Class Action Waiver. You must maintain the Covered Device as recommended by the manufacturer's owner's manual and product warranty. You acknowledge Your understanding of the Limited Applicability of the Federal Magnuson-Moss Warranty Act as set out below in this Agreement.

The terms "You", "Your", "Customer" and "Subscriber" refer to the purchaser of this Agreement. The terms "We," "Us," "Our", "Provider", "Administrator", "Obligor" and "Brightstar" refer to the provider of this Agreement. Brightstar Device Protection, LLC is the provider and You may contact Brightstar Device Protection, LLC by mail at 2325 Lakeview Parkway, Suite 700 Alpharetta, GA 30009 or by phone at (888) 399-5296.

THIS AGREEMENT IS NOT AN INSURANCE POLICY. PURCHASE OF THIS AGREEMENT IS NOT REQUIRED TO PURCHASE OR OBTAIN FINANCING FOR THE DEVICE.

1. **DEFINITIONS:**

"Accidental Damage due to Handling" or "ADH" - any direct and accidental damage including damage, accidental destruction that is externally visible and which prevents the correct operation of the Covered Device, Screen Damage, that occurs in the normal use of handling.

"Agreement" - this Device Protect Plan Featuring AppleCare Services Service Contract/Extended Limited Warranty.

"Apple Damage Fulfillment" - up to two (2) repairs or replacements by Apple for Accidental Damage due to Handling in a rolling twelve (12) month period.

"Apple Malfunction Fulfillment" - Malfunction Failure fulfillment by Apple during the term of Your enrollment in the Plan.

"AppleCare Services" - (i) Technical Support, (ii) Apple Malfunction Fulfillment, and (iii) Apple Damage Fulfillment.

"AppleCare Eligibility Services Period" - the term of Your enrollment in the Plan, as measured from the Effective Date, during which You are eligible to receive AppleCare Services.

"Authorized Service Center" - the location or locations that serve as a repair or replacement service center for the Plan and supply replacements for Covered Device(s).

"Claim" - the request for service that You file with Us when Your Covered Device suffers a Failure.

"Computer Virus" - any unauthorized programming or intrusive codes that are entered by any means into covered data processing equipment, media, software, programs, systems or records and interrupt the operations of the Covered Device.

"Covered Device" - the eligible wireless device owned by You, exclusive of any accessory(ies), owned by You or Replacement Equipment provided by Us with the unique identification number (International Mobile Equipment Identity (IMEI), Electronic Serial Number (ESN), Mobile Equipment ID (MEID), or Serial Number) that is on record with Us when the wireless device first fails to operate properly. To be considered Covered Device, the wireless device must have logged outgoing access with Your Wireless Service Provider after the request for coverage for the Covered Device and within three (3) days prior to reporting the Covered Device failure.

"Processing Fee" - the amount that You pay toward Your Claim as specified in this Agreement.

"Effective Date" - the date You purchased this Agreement.

"Failure" - Accidental Damage from Handling or Malfunction.

"Malfunction" - the operational or structural malfunction of the Protected Equipment's ability to operate due to defects in parts or workmanship during the term of Your enrollment in the Plan.

"Monthly Service Fee" - the fee that You pay each month protection pursuant to the Plan.

"Plan" - refers to the specific Agreement.

"Program Guide" - refers to the documents You received from the Seller summarizing the coverages provided, enrollment limitations, program requirements, equipment, fees, processing fees, service fees or other charges or material terms. For any conflict between a Program Guide and this Agreement, this Agreement controls.

"Pollutants" - any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

"Replacement Equipment" - a wireless device of the same make, storage and model (but not necessarily color), or if the same make, storage and model is not available, the replacement equipment will be a different model of similar feature, functionality and fair market price to the Covered Device at the time of the Claim (but may not be the same brand or model), with the same operating system and will not be a model that is older than the Covered Device, which We provide to You in the event of a Failure of the Covered Device. Replacement Equipment becomes the Covered Device once it has been delivered to You.

"Seller" - the party from whom You purchased the Plan specified in the Program Guide or as listed on Your receipt.

"Retail Price" - that suggested non-discounted, non-subsidized retail price of the Covered Device at the Effective Date of this Agreement.

“Technical Support” - unlimited web and technical support provided by Apple, Inc. or one or more of its affiliates (“**Apple**”) during the AppleCare Services Eligibility Period.

“Terrorism” - an act, including but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

“Wireless Service Provider” or **“Carolina West”** – means Carolina West Wireless, Inc.

2. **SERVICE AGREEMENT:** This Plan complements and/or may overlap with the manufacturer’s warranty or may also overlap or duplicate other coverages You have (by example, coverage for a wireless device under Your homeowner’s insurance). The Plan provides coverage for certain failures that an applicable manufacturer’s warranty may not provide. Please refer to the manufacturer’s warranty to understand what protection is offered and the duration of the manufacturer’s warranty. Confirmation of enrollment (either by email or text message) and applicable written communications from Us to You collectively comprise the Device Protection Plan featuring AppleCare Services. The Agreement governs the Device Protection Plan You purchased for Accidental Damage due to Handling and Malfunction Failure, so You should keep this Agreement and all of the other documents that comprise the Agreement for Your reference.
3. **COVERAGE:** In exchange for the Monthly Service Fee paid in accordance to the Payment Terms, We agree to repair or replace the Covered Device listed on Your receipt if, under normal conditions and use, the Covered Device fails to operate properly due to Malfunction or Accidental Damage due to Handling. All Covered Devices replaced under this Agreement shall become the property of the Obligor. In order to obtain a replacement or repair, You must:
 - (a) Visit barkmobile.brightstarprotect.com or call (844) 201-6376 to file a Claim.
 - (b) During the AppleCare Services Eligibility Period, if Your Covered Device experiences Malfunction, or Accidental Damage from Handling, You may also file a Claim via getsupport.apple.com or by calling 1-800-APL-CARE. You may file up to two (2) Claims pursuant to AppleCare Services for Accidental Damage due to Handling in a rolling twelve (12) month period, and unlimited Claims for Malfunction at any time during the AppleCare Services Eligibility Period. Each Accidental Damage Claim You file will be fulfilled pursuant to Apple Damage Fulfillment.
 - (c) You must file the Claim within sixty (60) days of the date Your Covered Device first fails to operate properly or is damaged and receive replacement or repair authorization. You will be required to provide the enrolled Subscriber and Covered Device information, including the make, model, IMEI/ESN/MEID or Serial Number, description of the covered cause, and if requested by Brightstar, proof of ownership of the Covered Device and any other reasonably requested documentation and verification.
 - (d) You must provide all required information pertaining to the Covered Device and Failure within sixty (60) days of initially reporting the Claim, and if approved, take possession of the Replacement Equipment or have Your Covered Device repaired within sixty (60) days of the approval.
 - (e) Upon Our request, You must take the Covered Device to an Authorized Service Center for inspection and/or repair.
 - (f) If Replacement Equipment is to be provided, return the claimed Covered Device as directed upon receipt of the Replacement Equipment.
 - (g) Be a valid, active, and current wireless subscriber of Seller.
 - (h) Not have any outstanding debts or fees owed to Us.
 - (i) Parts and service covered under any manufacturer, wireless service provider, or wireless retailer recall or warranty will be provided under that recall or warranty, as applicable. In neither circumstance will coverage be provided under this Agreement. If the Covered Device is part of a recall or similar effort, this Agreement does not apply.
 - (j) For Technical Support during the AppleCare Service Eligibility Period, visit getsupport.apple.com or by calling 1-800-APL-CARE.
4. **ELIGIBILITY:** Only Covered Device(s) purchased from Seller or provided to You as Replacement Equipment as a result of a Claim against this Agreement, or the original equipment manufacturer’s warranty are eligible for coverage. You must be able to provide a valid proof of ownership at the time of purchase and/or Claim. As the provider, Brightstar accepts enrollment into the Plan at its sole discretion. You must not be in breach of any material term of or have engaged in fraud with respect to this Agreement at any time.
 - (a) By entering this Agreement, You understand and authorize Brightstar to access Your account records with the Seller to validate Your enrollment and Claim eligibility.
 - (b) We may contact You regarding Your coverage, enrollment, and/or Claim via Short Message Service (SMS) text messaging, email or such other means as Brightstar determines to be most practicable. You will assume any and all fees assessed by Your wireless carrier for the SMS text messages. You may opt out of SMS messaging by updating Your account on barkmobile.brightstarprotect.com, or sending Your request via mail to Brightstar.

5. **EFFECTIVE PERIOD OF COVERAGE:** This Agreement shall become effective upon Your payment of the Monthly Service Fee due upon the purchase date of this Agreement.

YOUR COVERAGE FOR THE FAILURES UNDER THIS AGREEMENT SHALL BECOME EFFECTIVE IMMEDIATELY IF YOU PURCHASED THE COVERED DEVICE NEW, IN ORIGINAL PACKING, OR CERTIFIED LIKE NEW FROM SELLER AND AT THE SAME TIME YOU PURCHASED THIS AGREEMENT, OR WITHIN SIXTY (60) DAYS FROM THE DATE OF PURCHASE OF THE COVERED DEVICE.

6. **COMMUNICATIONS AND CONSENTS:** As the provider, Brightstar accepts subscriptions at its sole discretion. You must not be in breach of any material term of or engage in fraud with respect to this Agreement at any time. It is Your obligation to keep Carolina West or Brightstar informed of Your mailing address, electronic mail address, telephone number or other messaging addresses. If You do not update the contact information, You agree and consent to waiving any dispute that a notification sent to an address on record with Carolina West or Brightstar was not adequate. This consent also allowed Brightstar to contact You for marketing or other business-related purposes.
- (a) You understand and authorize Brightstar to access your account records with Carolina West to validate Your enrollment and Claim eligibility.
 - (b) We may contact You regarding Your coverage, enrollment, and/or claims via electronic mail, Multimedia Messaging Services (MMS), Short Message Service (SMS) text messaging or a voice call. You will assume all fees assessed by Carolina West for the SMS text messages. You may opt out of SMS messaging by updating your account on barkmobile.brightstarprotect.com or sending your request via mail to Brightstar.
 - (c) If You use a mobile application, We may contact You through the mobile application via both notifications posted on the mobile application or via messages issued through the mobile application.
 - (d) You agree that You may be contacted regarding renewals and upgrade plans.
 - (e) If the payment card for the Plan expires or cancels, You agree that the payment card replacing the expired or canceled card may be charged the applicable Monthly Service Fee. By accepting coverage in this Plan, You authorize the financial institution issuing the payment card to (i) release required subscriber information for the purpose of validating claims and (ii) charge your credit/debit card on file, or the replacement card issued by the payment card issuer for the card on file, which may include updated validated card information, including but not limited to expiration date(s), card number(s), and security code(s), as received by your financial institution in accordance with applicable law and to release your contact information. You expressly authorize and agree for Brightstar Device Protection, LLC to obtain information from the financial institution regarding an expired or canceled credit/debit card and authorize the replacement credit/debit card be charged the applicable. For clarity, expiration or cancellation of the credit card used to pay the Fees does not cancel Your subscription to the Plan.
7. **TERM AND RENEWAL:** The term period (“Term Period”) is monthly. You understand and agree that this Agreement will be automatically renewed for successive months on a continuous basis unless You or We terminate this Agreement pursuant to Section “CANCELLATION/TERMINATION AND REFUNDS”. Your failure to pay the Monthly Service Fee in advance or ceasing to be an active subscriber of Carolina West, regardless of cessation reason, is considered termination of the Agreement by You and the Agreement may not be renewed. No party is obligated to renew this Agreement. Prices, conditions and limitations of this Agreement may change upon renewal. By purchasing this Agreement, You agree that You may be contacted regarding renewals and upgrade plans.
8. **CHANGE IN COVERED DEVICE:** This Agreement only provides coverage for the Covered Device listed on Your receipt. If a change in the Covered Device being used on Your account occurs, You must apply for coverage of the new device. The new device will be subject to this Agreement at the time of request for a change in Covered Device to the new device, which may include a higher fee and/or processing fee and/or a wait period for coverage. If You continue to pay the Monthly Service Fee after We have been notified of such change in Your Covered Device or a change in Your Covered Device results from a Claim against this Agreement or the Device Protect Plan Featuring AppleCare Services, You have agreed to all changes to coverage, service fees and processing fees. Changes to Covered Device are subject to approval by Brightstar; You will be notified within thirty (30) days of request if such change was denied.
9. **REPAIR OR REPLACEMENT OF PRODUCTS:** At Our sole discretion, We may replace or repair the Covered Device. During the AppleCare Services Eligibility Period, any Replacement Equipment provided to You will be either a new Apple device or a certified pre-owned Apple device. If We elect to replace the Covered Device and the identical make and model is no longer available or unavailable in inventory, We will replace it with a product of comparable functionality. In all cases, We will determine product comparability, including functionality at Our sole discretion. Technological advances and product availability may result in a replacement product with a lower selling price than the original product. Non-original manufacturer parts may be used in refurbished products or to repair the Covered Device. Any time Your Covered Device is to be replaced or repaired in

accordance with this Agreement, at our sole discretion, We may provide cash reimbursement, gift card or voucher for replacement equipment, not to exceed the lesser of retail purchase price You paid for the original Covered Device or the cost of a replacement product of like kind and quality, less any Processing Fee. If You are eligible for a reimbursement, You will be required to provide proof of purchase for the replacement equipment. If You select monthly coverage, Your coverage does not expire while Your device is being repaired for a covered service.

- (a) Equipment Warranty: Replacement Equipment shall be in good, working order, with housing that is free from major marks, gouges, cracks or other faults or blemishes. If repaired or Replacement Equipment malfunctions within its ninety (90) day warranty period and is returned, such equipment will not result in an additional Claim per the Claim limits outlined in this Agreement.
- (b) Replacement Equipment or a repaired Covered Device may not be shipped to a P.O. Box.
- (c) If the Covered Device is operated outside any state or territory of the United States, the Replacement Equipment will only be shipped to the address on record.
- (d) You are solely responsible for backing up the Covered Device prior to submitting the Covered Device for repair. Brightstar has no responsibility for lost or damaged applications, data or program lost or damaged during the repair of the Covered Device. You should remove any records on the Covered Device that contain personal or sensitive information (by example, credit card information, pictures or personally identifiable information).

10. **PAYMENT AND FEES:**

- (a) Payment: For each Term Period You desire coverage under this Agreement, You shall remit to Us a Monthly Service Fee payable in accordance to these Payment Terms (“Payment Terms”). Your Monthly Service Fee is based on the Retail Price of the Covered Device at the time You purchased this Agreement. Refer to the following table for Your Monthly Service Fee.

Monthly Service Fees – iPhones and iPads		
Tier	Device Retail Price at the Time of Enrollment	Monthly Service Fee for Agreement
1	\$0.00 - \$599.99	\$5.57
2	\$600.00 - \$1000.00	\$7.44
3	\$1000.01 - \$1500.00	\$9.33
4	\$1500.01 - \$2000.00	\$8.95

Your Monthly Service Fee will be included on Your bill with Your Wireless Service Provider.

- (b) Processing Fee Per Replacement or Repair: You shall pay a non-refundable Processing Fee on a per claim basis prior to receiving any repair or replacement or reimbursement for the Covered Device (the “Processing Fee”). Your Processing Fee is based on the Retail Price of the make and model of the Covered Device at the time You purchased the Covered Device. Refer to the following table for Your Processing Fee:

The following Processing Fees apply during the AppleCare Services Eligibility Period:

iPhones				
Tier	Retail Price at time of Enrollment	Processing Fees		
		Apple Damage Fulfillments - Screen Damage Only	Apple Damage Fulfillments - Other	Apple Malfunction Fulfillments
1	\$0.00 - \$599.99	\$29.00	\$99.00	\$0.00
2	\$600.00 - \$1000.00	\$29.00	\$99.00	\$0.00
3	\$1000.01 - \$1500.00	\$29.00	\$99.00	\$0.00
4	\$1500.01 - \$2000.00	\$29.00	\$99.00	\$0.00

iPads			
Tier	Retail Price at time of Enrollment	Processing Fees	
		Apple Damage Fulfillments	Apple Malfunction Fulfillments
1	\$0.00 - \$599.99	\$49.00	\$0.00

2	\$600.00 - \$1000.00	\$49.00	\$0.00
3	\$1000.01 - \$1500.00	\$49.00	\$0.00
4	\$1500.01 - \$2000.00	\$49.00	\$0.00

- (c) Failure to Return Equipment/Non-return Charge: If Your Replacement Equipment is mailed to You, the Covered Device/ approved for replacement must be returned to Us at Our shipping expense within fifteen (15) days of receipt. Otherwise, You must surrender the Covered Device immediately upon receipt of replacement device to the Authorized Service Location providing the Replacement Equipment and You must solely bear the costs of transporting the Covered Device to the Authorized Service Location.

You must return the Covered Device as directed by Us, or pay the non-returned equipment charge applicable to the model of Covered Device that We replace. The non-return fee will be the lesser of the cost to Brightstar to replace the Covered Device less any Processing Fee or the Retail Price of Your Covered Device at the time of enrollment.

- (d) Invalid Claim: If, within the latter of twenty (20) days after You receive the Replacement Equipment or Brightstar receives the claimed Covered Device, Brightstar determines, in its sole discretion, that Your Claim for Replacement Equipment is not for a Covered Failure under this Agreement, the Subscriber's Account shall automatically be charged an amount not to exceed the manufacturer's suggested retail price of the replacement equipment less any Processing Fee/ Service Fee Damage Fulfillment Fee received.
- (e) Claim Conversion Fee. In the event We determine that Your Claim for a Covered Failure was improperly filed requiring fulfillment for an alternative Covered Failure, fulfillment of Your Claim will be subject to a Claim Conversion Fee as set out in the Table below (the "Claim Conversion Fee"):

Claim Conversion Fees - iPhone				
Tier	Device Retail Price at time of Enrollment	CCF		
		Screen Damage Only to Apple Damage Fulfillment - Other	Apple Malfunction to Screen Damage Repair	Apple Malfunction to Apple Damage Fulfillment - Other
1	\$0.00 - \$599.99	\$70.00	\$29.00	\$99.00
2	\$600.00 - \$1000.00	\$70.00	\$29.00	\$99.00
3	\$1000.01 - \$1500.00	\$70.00	\$29.00	\$99.00
4	\$1500.01 - \$2000.00	\$70.00	\$29.00	\$99.00

Claim Conversion Fees - iPad		
Tier	Device Retail Price at time of Enrollment	CCF
		Apple Malfunction to Apple Damage Fulfillment - Other
1	\$0.00 - \$599.99	\$49.00
2	\$600.00 - \$1000.00	\$49.00
3	\$1000.01 - \$1500.00	\$49.00
4	\$1500.01 - \$2000.00	\$49.00

If You elect not to pay the Claim Conversion Fee, the Covered Device will be returned to You by mail if You originally mailed in Your Covered Device or will be made available to You for collection at the location you originally dropped it off at, and the Processing Fee You paid will be refunded to You. If You do not collect Your Covered Device within thirty (30) days from the date You are first notified that the Covered Device is available for collection, after that time We will return the Covered Device to You by mail.

- (f) No Trouble Found Fee. If We determine, in Our sole discretion, that upon receipt of the Covered Device that there is no Failure present on or with the Covered Device, We may charge You an additional No Trouble Found Fee equal to \$100.00 (the "No Trouble Found Fee").

11. LIMITATION OF LIABILITY AND EXCLUSIONS: BRIGHTSTAR'S LIABILITY HEREUNDER SHALL BE LIMITED TO THE COST OF TWO (2) REPAIRS AND REPLACEMENTS WITHIN ANY TWELVE (12) MONTH

PERIOD OF TIME. IN NO EVENT SHALL THE COST OF SUCH REPLACEMENT EQUIPMENT FOR THE COVERED DEVICE/ENROLLED DEVICE/PROTECTED DEVICE EXCEED \$2,000.00 PER CLAIM OCCURRENCE. THIS LIMITATION DOES NOT APPLY TO MALFUNCTION CLAIMS UNDER APPLICABLE SERVICES.

This Agreement does not cover the following:

- a) **Products owned by a subscriber with a billing address or service address outside any state or territory of the United States, the District of Columbia.**
- b) **Any and all pre-existing conditions or defects that exist before the effective date of this Agreement;**
- c) **Products with altered or removed serial numbers;**
- d) **Products used for rental purposes;**
- e) **Any failure resulting from any cause other than normal use and operation of the Covered Device in accordance with the manufacturer's specifications and owner's manual, including, without limitation, damages or injury caused in whole or in part by acts of God, theft, loss, neglect, abuse, intentional misuse, negligence, mishandling, misuse, vandalism, insects, vermin, wild animals, power failure, power surge, power reduction, software viruses or exposure to weather conditions, including exposure to extreme changes in temperature or humidity;**
- f) **Damage that is cosmetic in nature, including but not limited to scratches, tears, dents and broken plastic on parts when the damage does not otherwise affect or impede its functionality or materially impair Your use of the Covered Device/Enrolled Device/Protected Device;**
- g) **Preventative maintenance;**
- h) **Batteries, chargers and car kits;**
- i) **Data lost, corrupted, damaged or otherwise unusable;**
- j) **Claim due to diminished battery life;**
- k) **Accessories that are non-essential to the functioning of the product;**
- l) **Software including, but not limited to, personalized data or customized software, such as personal information managers (PIMs), ring tones, games or screen savers;**
- m) **Any alteration, adjustment, modification, installation, disassembling, repair, servicing or maintenance performed on or to the Covered Device by any person other than Brightstar, or their respective authorized representatives;**
- n) **Claimed obsolescence of the Covered Device including technological obsolescence; or**
- o) **The Subscriber's failure to use reasonable means to protect the Covered Device/Enrolled Device/Protected Device from further damage after a failure occurs.**
- p) **Products that are not purchased from Seller or its authorized dealers.**

UNDER NO CIRCUMSTANCES SHALL THE OBLIGOR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES, WHETHER ARISING DIRECTLY OR INDIRECTLY FROM THE FAILURE OF THE COVERED DEVICE DELAYS IN REPLACEMENT OF THE WIRELESS DEVICE OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO THE SUBSCRIBER IF THE SUBSCRIBER LIVES IN SUCH STATE.

12. **NO TRANSFER; NO THIRD-PARTY BENEFICIARIES:** This Agreement and any rights and remedies You have hereunder shall inure solely to the benefit of the Subscriber and nothing herein is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement and any rights or remedies You have hereunder are non-transferable by You and do not cover any Claim made under this Agreement by any other person or entity, and any attempt by You to transfer or assign this Agreement or any rights or remedies You have hereunder shall be null and void and of no force or effect.

13. **CANCELLATION/TERMINATION AND REFUNDS:**

- (a) You may cancel this Agreement at any time for any reason by calling Seller at (855) 309-8345. Your right to void this Agreement during the first thirty (30) days following receipt is not transferable and applies only to the original Agreement purchaser. Brightstar may cancel this Agreement immediately for any reason by notifying You in writing. Any cancellation of this Agreement by Brightstar shall be in accordance with applicable state laws and regulations.
- (b) Unless otherwise required under applicable law, if You or Brightstar cancels this Agreement within thirty (30) days after

You purchase this Agreement and You have not made a Claim under this Agreement, the Agreement is considered void and Brightstar shall remit to You a full refund of the Monthly Service Fee paid by You under this Agreement.

- (c) Unless otherwise specified under applicable law, if You or Brightstar cancels this Agreement within thirty (30) days after You purchase this Agreement and You have made a Claim under this Agreement, Brightstar shall remit to You a full refund of the Monthly Service Fee paid by the Subscriber under this Agreement less the value of any replacement equipment provided for such Claim by Brightstar to the Subscriber.
- (d) Unless otherwise required under applicable law, if the Subscriber or Brightstar cancels this Agreement more than thirty (30) days after the Subscriber purchases this Agreement, Brightstar shall remit to the Subscriber the Service Fees paid by the Subscriber under this Agreement allocable to the remainder of the term of this Agreement, prorated on a daily basis, less the value of any replacement equipment previously provided by Brightstar to the Subscriber under this Agreement.
- (e) Unless otherwise required under applicable law, Our obligations under this Agreement will be fulfilled in their entirety if we have fulfilled two (2) Claims in any rolling twelve (12) month period, as applicable by repairing or replacing the Covered Device/Enrolled Device/Protected Device or by providing reimbursement.

14. **Dispute Resolution and Arbitration:** WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL CLAIMS, DISPUTES, OR CONTROVERSIES OF ANY NATURE IN ANY WAY RELATED TO OR CONCERNING THIS AGREEMENT, OUR PRIVACY POLICY, OR OUR SERVICES OR PRODUCTS, INCLUDING ANY BILLING DISPUTES, WILL BE RESOLVED BY BINDING ARBITRATION OR IN SMALL CLAIMS COURT. This agreement to arbitration extends to the relationships which result from this Agreement, including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement or this arbitration provision. The validity, scope, or enforceability of this arbitration provision or the entire Agreement shall also be resolved by final and binding arbitration before a single arbitrator. This includes any claims against other parties relating to services or products provided or billed to you whenever you also assert claims against us in the same proceeding. We each also agree that this arbitration agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1, et. seq. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. THE ARBITRATOR MUST FOLLOW THIS AGREEMENT AND CAN AWARD THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING ATTORNEYS' FEES) ON AN INDIVIDUAL BASIS.

Notwithstanding the above, YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION IF YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS AGREEMENT (the "Opt Out Deadline"). You may opt out of these arbitration procedures by sending a letter to Brightstar Device Protection, LLC, P.O. Box 03, Alpharetta, GA 30009, Attn: Legal Department. Any opt-out received after the Opt Out Deadline will not be valid, and you must pursue Your claim in arbitration or small claims court.

For all disputes, whether pursued in court or arbitration, you must first give us an opportunity to resolve Your claim by sending a written description of Your claim to Brightstar Device Protection, LLC, P.O. Box 03, Alpharetta, GA 30009 Attn: Legal Department. We each agree to negotiate Your claim in good faith. If we are unable to resolve the claim within sixty (60) days after we receive Your claim description, you may pursue Your claim in arbitration. We each agree that if you fail to timely pay amounts due, we may assign Your account for collection, and the collection agency may pursue, in small claims court, claims limited strictly to the collection of the past due amounts and any interest or cost of collection permitted by law or this Agreement.

If the arbitration provision applies or you choose arbitration to resolve Your disputes, then either you or we may start arbitration proceedings. You must send a letter requesting arbitration and describing Your claim to our registered agent at CT Corporation, 1201 Peachtree Street NE, Atlanta, GA 30361 and the American Arbitration Association ("AAA") to begin arbitration. All arbitration shall be administered by the AAA in accordance with its Wireless Industry Rules and Procedures in effect at the time the claim is filed. The AAA Wireless Industry Rules and Procedures are available at www.adr.org or by calling 1-800-778-7879. Any arbitration that you attend will take place at a location within the federal judicial district that includes Your billing address at the time the claim is filed. The arbitrator shall apply relevant, substantive law and applicable statutes of limitation and shall provide written, reasoned findings of fact and conclusions of law. Upon filing of the arbitration demand, we will pay all filing, administration, and arbitrator fees for claims that total less than \$75,000. In addition, for claims under \$75,000 as to which you provided notice and negotiated in good faith as required above before initiating arbitration, if the arbitrator finds that you are the prevailing party in the arbitration, you will be entitled to a recovery of reasonable attorneys' fees and costs. Except for claims determined to be frivolous, we agree not to seek an award of attorneys' fees in arbitration even if an award is otherwise available under applicable law.

15. **CLASS ACTION WAIVER:** WE EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If a court or arbitrator determines in an action between you and us that this Class Action Waiver is unenforceable, the arbitration agreement will be void as to you. Neither you, nor any other customer, can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding.
16. **JURY TRIAL WAIVER:** If a claim proceeds in court rather than through arbitration, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.
17. **NOT A CONTRACT OF INSURANCE:** This Agreement is not an insurance policy or a contract of insurance. In North Carolina, the obligations of Brightstar under this Agreement are backed by Brightstar Device Protection, LLC.
18. **SELLER:** The Seller of this Agreement is not the Administrator, Obligor nor Provider of this Agreement.
19. **NOTICES:** Any notices required to be given under this Agreement shall be in writing and either delivered by mail, email, website posting or another functionally equivalent electronic means of transmission. By providing Us with Your email address you expressly consent to receive notices electronically either to the email address We have on file or via website posting. Further, You expressly agree that any electronic communication delivered to You will be deemed to have been given or made and received on the day that it was delivered to You, regardless of if You actually view the electronic communication.
20. **ENTIRE AGREEMENT:** This Agreement sets forth the entire understanding of the Parties relating to the subject matter hereof, and all prior understandings, written or oral, with respect to the subject matter hereof, are superseded by this Agreement. This Agreement may not be modified, amended, waived or supplemented except as provided herein. This Agreement includes a "State Specific Variations" Exhibit that specifies any changes to these terms specific to state law that may be applicable. All capitalized terms have the meaning provided as defined in Section 1 or within the section the capitalized term is defined or used.
21. **GOVERNING LAW:** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia (without regard to its conflicts or choice of laws principles that could or would cause the application of law any other state or jurisdiction).
22. **AMENDMENT; WAIVER:** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless contained in a writing specifically referencing this Agreement and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by either of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by either of the Parties, on one or more occasions to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.
23. **SEVERABILITY.** If any portion of the Agreement is deemed invalid or unenforceable, it shall not invalidate the remaining portion of the Agreement.
24. **LIMITED APPLICABILITY OF THE FEDERAL MAGNUSON MOSS WARRANTY ACT:** You agree and acknowledge that You have paid an additional fee for this Agreement that is separate and apart from the purchase price You paid for the Covered Device. Because of that separately stated consideration, You agree and acknowledge that this Agreement is not part of the basis of the bargain for Your purchase of the Covered Device. You further agree and acknowledge that We, and the Administrator under this Agreement, are not the supplier of the Covered Device(s). Consequently, this Agreement is not a "written warranty" under the federal Magnuson Moss Warranty Act. As a result, this Agreement is not subject to the provisions of the Magnuson Moss Warranty Act that apply only to a "written warranty".

END OF AGREEMENT