

**RETAILER ACKNOWLEDGEMENT**  
**For 2007**

The undersigned Retailer acknowledges and agrees as follows:

1. That Retailer has received a copy of the TERMS AND CONDITIONS OF SUPPLY pertaining to the Prepaid Wireless Product Agreement for Boost Mobile™ products entered into between Nextel Communications, Inc. (“Sprint Nextel”) and \_\_\_\_\_ (“Distributor”) dated \_\_\_\_\_, (such TERMS AND CONDITIONS OF SUPPLY without Section 43 thereof, which Retailer acknowledges may be omitted from such copy, hereinafter the “Terms and Conditions”).

2. That Retailer signs this Retailer Acknowledgement to evidence its agreement to comply with the said Terms and Conditions as the same are applicable to Retailer, including and without limitation the express provisions of Sections 27 and 28 set forth therein.

3. That Retailer has received a copy of the said Terms and Conditions, agrees that the same may be enforced against it by Distributor, and by Supplier should Supplier so elect.

4. Retailer represents and warrants that: (a) it has not received any statements, whether written, verbal, or electronic from Sprint Nextel, or from any person or entity purporting to be a representative or affiliate of Sprint Nextel, regarding the Systems, the Services, or Subscribers (each as defined in the Terms and Conditions), or the potential business arrangement with Retailer; and (b) Retailer’s decision to enter in an agreement with Distributor was based solely on Retailer’s evaluation of the business opportunity, discussions with representatives of Distributor, and receipt of materials from Distributor, and such decision was not based, in any way, on any materials, representations, or statements that may have been prepared or furnished by, or attributed to, Sprint Nextel. In the event any information or material that Retailer received from Distributor regarding the potential business arrangement is determined to be false, inaccurate or misleading, Retailer hereby agrees that its only remedy, if any, shall be recourse against Distributor, and not against Sprint Nextel.

Retailer:

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Retailer Address and contact information:

\_\_\_\_\_  
\_\_\_\_\_  
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**\*BOOST, RE-BOOST and BOOST MOBILE are trademarks of Boost Worldwide, Inc.**

## ATTACHMENT I

### TERMS AND CONDITIONS OF SUPPLY (RETAILER)

1. **Term; Acceptance; No Conflicts:** This Agreement expires at the end of the Term unless renewed in writing by the parties. If no Term is stated in the Letter, then the stated Term of this Agreement is one (1) year from its Effective Date. Distributor represents and warrants that nothing contained in this Agreement will conflict with or result in the breach of any other agreement or contract to which Distributor is a party. Distributor will not sell Products to any Retailer who is subject to such contractual or other obligations, restrictions or limitations. Distributor agrees to indemnify, defend and hold harmless Supplier and Boost Mobile with respect to Distributor's representations, warranties and obligations under this section.
2. **Order:** Distributor agrees that Subscribers are entitled to access the Systems only by using units that have been approved in writing by Boost Mobile or Supplier or furnished by a Boost Mobile or Supplier approved source. Boost Mobile or Supplier may increase, decrease or alter the range of Products or alter the Products in any manner whatsoever at any time
3. **SRP:** Supplier's suggested retail price ("SRP" or "MSRP") for the Products is not binding. Distributor and any Retailer are free to set the actual amount for which the Products are sold. The Price is payable to Supplier regardless of the actual price at which the Products are sold.
4. **Taxes:** Retailer is responsible for all present and future federal, state and local sales, use, excise and other taxes or fees due in conjunction with Retailer's purchase and sale of the Products and computed in accordance with the appropriate tax laws.
5. **Responsibilities of the Distributor (and/or any Retailer):** The Distributor must (and must ensure that its Authorized Locations and each of its Retailers at Authorized Locations and Distributor's agents, representatives and employees):
  - (a) conduct any and all activities in connection with this Agreement in compliance with all applicable laws, regulations, standards and codes applicable to the Distributor's and Retailer's business, and cooperate with any requests from Supplier or Boost Mobile regarding any governmental inquiries and/or investigation requests;
  - (b) comply with Boost Mobile's and Supplier's respective privacy policies and privacy statements as provided to the Distributor from time to time;
  - (c) comply with all written Boost Mobile and Supplier policies and guidelines with respect to this Agreement or with respect to Distributor's Retailers as Boost Mobile or Supplier may implement or amend from time to time, including the Boost Mobile Expectations for Distributors (as amended from time to time by Supplier), any operational requirements and instructions in relation to the Products or their sale warranty handling processes for the Products, any written point of sale process communicated to Distributor by Boost Mobile;
  - (d) sell each Product in its original packaging and in good condition, promptly assist consumers and advise Boost Mobile and Supplier immediately after Distributor and/or any Retailer becomes aware of any defective Products, and ensure that the Products are sold by Retailers only at Authorized Locations within the Territory, unless otherwise agreed in writing by Supplier;
  - (e) maintain customer satisfaction performance standards established by Boost Mobile or Supplier with Distributor's participation; provide to Retailers of the Products the current materials regarding the PIN delivery and activation process and pricing plans for Services, and attend any training reasonably required by Boost Mobile and/or Supplier in relation to the Products;
  - (f) comply with all point of sale technology and associated processes, for proper inventory, security, issuance, recordation and reporting of Electronic PIN Transactions, as established by Supplier and the PIN Service Provider (which may be Distributor if it has entered into a PIN Services Agreement) to comply with the requirements of the PIN Services Agreement, and ensure that mechanisms/solutions acceptable to Supplier and Boost Mobile are in place for any PIN transactions between Distributor/Retailer and Supplier or any PIN Service Provider and bear any costs related to such transactions not payable by a PIN Service Provider;

- (g) with respect to Supplier's System, Service, and Subscribers, in the case of Distributor, represent itself as an independent contractor that is an authorized Distributor selling Supplier Services and Boost Mobile Product;
- (h) use best efforts to meet any targets for a calendar quarter with respect to Eligible New Subscriber Activations notify Supplier or Distributor of any parties known by Retailer to be conducting fraudulent activities concerning Boost Mobile Products and Services.

Distributor will promptly advise Boost Mobile and Supplier of any failure of a Retailer to comply with a material obligation specified in this Agreement.

6. **Prohibitions on the Distributor (and/or any Retailer):** The Distributor must not (and must ensure that each of its Retailers at the Authorized Locations and each of Distributor's agents, representatives and employees do not):
  - (a) appoint any third party to sell the Products, whether by agency or otherwise, except for Distributor's appointment of Retailer(s);
  - (b) make any representations or give any warranties in relation to the Products, other than those given by Supplier to the Distributor from time to time;
  - (c) purchase or otherwise acquire Products, other than PINs, from anyone other than Supplier or a Fulfilment Intermediary (or Distributor in the case of a Retailer);
  - (d) unlock (i.e. alter in any way) any Product that is a handset;
  - (e) separate components of the Products for sale, or attempt to sell separate components of the Products, including, without limitation, any of the contents included in the packaging of a Product, such as any debit card or other stored value card;
  - (f) sell any Products outside the Territory, to any Retailer outside the Territory, or at any locations that are not Authorized Locations;
  - (g) sell Products to anyone other than retail consumers, Subscribers and/or Retailers only, for the subsequent sale by such Retailers solely to retail consumers or Subscribers;
  - (h) distribute any Product in a manner that is inconsistent with any conditions on allocation and/or distribution of such Product specified by Boost Mobile or Supplier;
  - (i) represent itself in any manner (i.e., through advertising) to the public as Supplier, Boost Mobile, or any of Supplier's other affiliates;
  - (j) purchase PINs from any source during any period during this Agreement when Supplier has advised Distributor not to make such PIN purchases; or
  - (k) engage in investment purchases of PINs (i.e. purchases in excess of levels consistent with typical practice of the Distributor/Retailer) in advance of a margin change on purchases of PINs from Supplier.
7. **Compliance with Agreement:** Distributor will ensure that its Retailers, and all of Distributor's and Retailer's employees, representatives, affiliates, agents, contractors, franchisees, assignees or third parties (whether or not permitted), comply with the applicable Terms in this Agreement and with all written Supplier policies and guidelines with respect to this Agreement or Retailers as Supplier may implement from time to time. Distributor shall obtain from each Retailer, a written acknowledgement in the form of the "Retailer Acknowledgement for 2007" that Retailer has agreed to comply with the terms and conditions of this Agreement applicable to Retailer, and Distributor shall forward each such written acknowledgement executed by Retailer to Supplier within thirty (30) days of its receipt by Distributor. A copy of each such acknowledgement must be provided to Supplier. Distributor will enforce the provisions of this Agreement against Retailer, and agrees to assign to Supplier any necessary rights for Supplier to enforce the Agreement. Nothing herein relieves Distributor of primary liability under this Agreement.
8. **Trademarks, Copyright:** Neither Distributor nor any Retailer will acquire any right to goodwill, trademark, service mark, copyright, or other form of intellectual or other property interest of Boost Mobile and/or Supplier. Neither Distributor nor any Retailer shall use Supplier's or Boost Mobile's trademarks, service marks, logos or

copyrighted materials in any manner in connection with this Agreement or the sale of the Products, except (i) during the Term of this Agreement Distributor and/or any Retailer may identify itself as a seller of the Products provided Supplier has given prior written approval to all such identifications, and (ii) as set forth in Section 12 below. Distributor acknowledges and agrees, and will adequately inform its Retailers, that the name "Sprint Nextel," the name of any of Supplier's affiliates (or the registered fictitious name of such) and all other names, marks and logos used by Supplier are service marks and trademarks (collectively "Supplier Trademarks") belonging solely to Supplier and/or its affiliates, and that the name "Boost Mobile," the name of any of Boost Mobile's affiliates (or the registered fictitious name of such) and all other names, marks and logos used by Boost Mobile are service marks and trademarks (collectively "Boost Trademarks") belong solely to Boost Mobile and/or its affiliates. Supplier Trademarks and Boost Trademarks will not be used without the prior written consent, respectively, of Supplier or Boost Mobile. Distributor agrees that it will use Supplier's and Boost Mobile's trademarks, service marks, and logotypes only in the manner and to the extent specifically as licensed pursuant to this Agreement or as otherwise authorized in writing by Supplier and Boost Mobile, respectively. Distributor further agrees that an unauthorized use of any Supplier or Boost Mobile trademark, service mark, or logotype, including but not limited to use as or within a domain name, during the Term of or after the expiration or the earlier termination of this Agreement shall constitute an incurable default causing irreparable harm to Supplier and/or Boost Mobile, as applicable, subject to injunctive relief. Supplier and/or Boost Mobile at all times have the right to alter or change the names, logos and/or other trademarks and service marks related to its company, products and/or services, or otherwise re-brand some or all of the rights and benefits herein granted or reserved, in accordance with its business needs.

9. **Advertising Guidelines:** Any sales literature, advertising or other materials employed in connection with the sale of Products, which uses Supplier Trademarks, Boost Trademarks, or copyright or other form of intellectual property owned by Supplier or Boost Mobile, must be submitted to Supplier or Boost Mobile, for written approval, which may be conditioned or withheld for any reason.
10. **Point of Sale Materials:** If Boost Mobile or Supplier provides the Distributor with point of sale merchandising, promotional or other material, such material;
  - (a) is and remains the sole and exclusive property of Boost Mobile or Supplier and must be returned upon request;
  - (b) may only be used by the Distributor, and must be redistributed to Retailers for the purposes of display and promotion of the Products; and
  - (c) must be prominently displayed in accordance with Boost Mobile's or Supplier's directions.
11. **Insurance:** Distributor must maintain at its own expense, and will ensure that each Retailer maintains at its own expense, the following insurance: (i) Commercial General Liability insurance in an amount not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$1,000,000 personal and advertising injury; (ii) Workers' Compensation in statutory amounts and Employers Liability insurance of not less than \$1,000,000 bodily injury by each accident, \$1,000,000 bodily injury by each disease, each employee, each incident and \$1,000,000 bodily injury by disease policy limit, each incident; (iii) fire, theft, and extended coverage with respect to Products in Distributor's possession in an amount not less than the replacement value of such Products; (iv) Auto Liability covering all vehicles used in connection with this Agreement with a combined single limit of not less than \$1,000,000; and (v) umbrella insurance of not less than \$4,000,000. All insurance policies must be with companies with an A.M. Best's rating of not less than A-, VII and licensed to do business in all applicable states. Liability policies will name Supplier and Boost Mobile as additional insureds and contain a waiver of subrogation clause waiving all rights of subrogation it may have under such policies as related to Supplier and Boost Mobile. Each insurance policy will contain a clause requiring the insurer to give Supplier thirty (30) days prior written notice of any alteration in the terms of such policy or cancellation (ten (10) days for non-payment of premium). Distributor will promptly provide either an electronic Memorandum of Insurance or a Certificate of Insurance for all required coverage upon Supplier's request
12. **Authorized Locations:** Distributor is authorized to distribute the Products to authorized Retailers' approved store locations only ("Authorized Locations") as listed in **Attachment B**. Distributor will maintain sufficient Authorized Locations to maintain the maximum retail distribution of the Products, as determined by Supplier, within each Territory described in **Attachment G**. No products will be distributed to any new facility until Boost Mobile or Supplier has approved of such facility in writing as an Authorized Location, which shall

constitute an amendment to **Attachment B**. Failure on the part of Distributor to notify Supplier in writing of any new facility prior to distributing Products to such facility is a material breach of this Agreement. Boost Mobile or Supplier may determine, in its sole discretion, that not all geographic areas and store locations of Distributor's Retailers will be approved as Authorized Locations. Neither Supplier nor Boost Mobile makes any representations or warranties that the facilities of other distributors or retailers, or the facilities used by any of Supplier's or Boost Mobile's own sales forces, will not be in the same geographic proximity as Distributor or the Authorized Locations. Distributor is not authorized to sell Products at or from any other location or by any other means (including soliciting sales over the Internet), without the express prior written approval of Boost Mobile/Supplier. Supplier and Boost Mobile expressly assume no duties, and Distributor agrees that Supplier and Boost Mobile have no duties, with regard to the safety and well-being of employees, customers, and others at Distributor's Authorized Locations or other facilities.

13. **Indemnity:** Distributor will indemnify, defend and hold harmless each of Supplier and Boost Mobile, and each of their respective employees, representatives, affiliates, dealers, agents and assignees against any claims brought by third parties for liability, losses, damages and/or expenses suffered or incurred by Supplier and/or Boost Mobile:
- (a) any breach of this Agreement by Distributor and/or a failure by any Retailer to comply with any of the Terms of this Agreement;
  - (b) any fraudulent, unauthorized use or other misuse of Products (including theft) by the Distributor or any Retailer; or
  - (c) any other act, omission or misrepresentation by the Distributor or any Retailer relating to the sale of Products.

Moreover, the indemnification obligations described in (a) through (c) above shall equally apply to all such matters caused by or attributable to Distributor's or any Retailer's respective employees, representatives, affiliates, dealers, agents, assignees, franchisees or third parties (whether or not permitted).

For purposes of this indemnification, "claims" means and includes all claims, complaints, proceedings, investigations or actions, brought by a third party, including any government agency or entity, arising from or resulting from activities pursuant to this Agreement, including advertising activities, business conducted or sales made by Distributor, including actual compensatory, incidental and consequential damages, taxes, and out-of-pocket costs (including those incurred in the defence of any claim such as accountants, attorneys and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, travel and living expenses). The persons and entities entitled to indemnification hereunder shall have the right to defend any such claim against them without limiting their rights to indemnification hereunder. This indemnity shall survive expiration or earlier termination of this Agreement.

14. **Warranties:** The Warranty and Repair Guidelines provided by the manufacturer of the Products will control servicing and repairs of Products under warranty. Manufacturers' warranties may change from time to time. Warranty terms will be contained with the phone or other Product to which the warranty is applicable. An illustrative Boost Mobile phone handset warranty is set forth in **Attachment E**. This Agreement does not exclude or modify any condition or warranty implied into this Agreement or any liability imposed on Supplier and/or Boost Mobile by any law if to do so would contravene that law or make any part of this clause void or unenforceable. However, to the maximum extent permitted by law, Supplier and Boost Mobile exclude and disclaim all conditions, liabilities and warranties that may be expressed or implied into this Agreement. **NEITHER SUPPLIER NOR BOOST MOBILE MAKES ANY WARRANTIES OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED, TO DISTRIBUTOR, ANY RETAILER, OR TO ANY OTHER PURCHASER OR END-USER OF THE PRODUCTS. SUPPLIER AND BOOST MOBILE SPECIFICALLY MAKE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DO THEY WARRANT THE RESULTS OF PRODUCT USAGE, THAT A PRODUCT WILL OPERATE UNINTERRUPTED OR ERROR FREE, OR THAT A PRODUCT'S FUNCTIONALITY WILL MEET ANY USER REQUIREMENTS. DISTRIBUTOR HEREBY WAIVES, AND SHALL CAUSE ITS RETAILERS TO WAIVE, ALL OTHER WARRANTIES, GUARANTEES, CONDITIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE. DISTRIBUTOR'S AND ITS RETAILERS' SOLE AND EXCLUSIVE REMEDY RELATING TO THIS AGREEMENT**

**AND/OR PRODUCTS SHALL BE THE REMEDY, IF ANY, AFFORDED BY THE MANUFACTURER OF SUCH PRODUCTS TO DISTRIBUTOR, ITS RETAILERS AND/OR DISTRIBUTOR'S OR SUCH RETAILERS' CUSTOMERS.**

15. **Exclusion of Liability:** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SUPPLIER OR BOOST MOBILE BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR OTHER MONETARY LOSS, ARISING OUT OF SUPPLIER'S AND/OR BOOST MOBILE'S PERFORMANCE OR FAILURE TO PERFORM, WHETHER OR NOT ANY SUCH MATTERS OR CAUSES ARE WITHIN SUPPLIER'S AND/OR BOOST MOBILE'S CONTROL OR DUE TO NEGLIGENCE OR OTHER FAULT ON THE PART OF SUPPLIER, BOOST MOBILE, OR THEIR RESPECTIVE AGENTS, AFFILIATES, EMPLOYEES OR OTHER REPRESENTATIVES, OR WHETHER RESULTING FROM THE FAILURE IN THE OPERATION OF OR OTHER DEFECT IN ANY PRODUCT DISTRIBUTED OR SOLD HEREUNDER.
16. **Inspection; License to Enter:** The Distributor grants, and will cause each of its Retailers to grant, to Supplier and Boost Mobile the right, on reasonable notice, to enter any of the facilities, Authorized Locations, and/or other premises of Distributor and/or any such Retailer immediately (and/or at any time thereafter) upon the occurrence of an Event of Default, to repossess and remove all Products for which title remains with Supplier, and/or which are otherwise required to be delivered or returned to Supplier under this Agreement. Supplier and Boost Mobile shall also have the right at all mutually agreed upon times during business hours to inspect Distributor's facilities, each Authorized Location and other Retailer premises, to inspect Distributor's and/or any Retailer's Product inventory, to inspect Distributor's and/or any Retailer's books and records as they pertain to performance of Distributor's obligations under this Agreement, and to make copies and extracts from them. Distributor will maintain, and will cause its Retailers to maintain, all such books and records for the minimum time required by law but in no event less than twenty-four (24) months after their creation.
17. **Termination:** This Agreement may be terminated for any reason or no reason, at the Supplier's sole discretion.
18. **Distributor Duties Upon Termination (and/or any Retailer):** Upon termination of this Agreement, the Distributor must:
  - (a) cease using and promptly return to Supplier all displays, fittings, point of sale material and information (including Trade Secrets) belonging to Supplier and/or Boost Mobile;
  - (b) immediately cease, and immediately cause all Retailers to cease, distributing or selling the Products, and representing the legal ability to do so, and cease all use or display of Supplier Trademarks and Boost Trademarks, Distributor shall be responsible for taking all action necessary to properly and lawfully terminate the sale of the Products by Retailers consistent with any termination of this Agreement.
19. **Severability:** If any provision of this Agreement is determined to be invalid or unenforceable, the provision will be construed more narrowly and equitably, sufficient to render it enforceable without the entire provision failing of its purpose, or if such construction is not feasible, then the provision will be severed from the remainder of this Agreement, and in all circumstances the balance of this Agreement remains enforceable.
20. **Supplier Amendments:** Certain provisions of this Agreement may be amended unilaterally by Supplier (for example, Product price increases, or changes in the Distributor Program under **Attachment C**). Distributor agrees that such amendments have the same full force and effect as the original terms of this Agreement, even if not executed by Distributor via a formal amendment.
21. **Confidentiality; Trade Secrets; Non-solicitation:**
  - (a) Distributor acknowledges that it and/or its Retailers both possess and will acquire confidential information belonging to Supplier and/or Boost Mobile, concerning sales methods, services, business, credit, training, merchandising, and marketing techniques, and other Trade Secrets and proprietary business information.

- (b) Distributor agrees that the respective Trade Secrets of Supplier and/or Boost Mobile have been developed through substantial expenditures of time, effort and money, constitute their valuable and unique property, making their protection as herein set forth a necessary consideration of this Agreement. Distributor specifically acknowledges that all Trade Secrets, whether reduced to writing, maintained on any form of electronic media, or maintained in the mind or memory of or any compilation prepared by or made available to Distributor and/or any of its Retailers, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made by Supplier and/or Boost Mobile to maintain the secrecy of the Trade Secrets, that their respective Trade Secrets are the sole property of Supplier and/or Boost Mobile, and that any retention and use of such Trade Secrets by Distributor or any of its Retailers during the term of this Agreement (except solely in the course of the performance of this Agreement) or after the termination or expiration of this Agreement shall constitute a misappropriation of such Trade Secrets.
  - (c) Except as strictly authorized solely in the course of performance of this Agreement, Distributor will, and will cause its Retailers to, (i) keep in strict confidence, and not directly or indirectly, whether during or subsequent to the termination of this Agreement, disclose, furnish, disseminate, make available or use any Trade Secrets, including without limitation as to when or how Distributor and/or any Retailer may have acquired such information; and (ii) not make any unauthorized copy or memoranda of any kind and/or on any media, of or relating to any Trade Secret, including without limitation customer and/or Subscriber lists, names and/or information.
  - (d) Distributor will implement and maintain, and cause its Retailers to implement and maintain, responsible procedures described from time to time by Supplier and/or Boost Mobile to prevent unauthorized use and disclosure of Trade Secrets by Distributor, its Retailers, and any employee, representative, affiliate, agent, contractor, franchisee, assignee or third party (whether or not permitted), and in the absence of such, shall protect said Trade Secrets as it would its own most valuable confidential information.
  - (e) During the term of this Agreement and after its termination, the Distributor will not without Supplier's prior written consent disclose any terms of this Agreement to any third party, except its Retailers for the purposes of obtaining compliance with its Terms.
  - (f) Distributor agrees that during the Term of this Agreement and for a period of one (1) year after its expiration or earlier termination, Distributor will not, and will not permit its Retailers to, solicit directly or indirectly any Subscriber on behalf of another wireless service provider or other person.
  - (g) Distributor agrees Distributor will not, and will not permit its Retailers to, solicit directly or indirectly any retailer or other distribution channel with whom Supplier and/or Boost Mobile has a direct selling relationship, for the purpose of distributing Products for subsequent retail sale.
22. **Customer Privacy:** Distributor and/or Retailer will comply with all privacy requirements and obligations set forth in the Privacy Addendum to this Agreement, which may be amended by Supplier from time to time.
23. **Assignment:** Supplier may assign or transfer any or all of its (and/or Boost Mobile's, as an agent of Supplier) rights, under this Agreement to any successor, including, without limitation, any successor firm or entity in connection with a merger, consolidation, or sale of all or substantially all of its assets, stock or other equity interests with or to such firm or entity, or to any other firm or entity capable of performing its (or Boost Mobile's) obligations hereunder, at any time or from time to time without notice to the Distributor. Supplier's use of Fulfilment Intermediaries shall not be deemed an assignment. Neither this Agreement, nor any right or obligation of Distributor under this Agreement may be assigned or transferred without Supplier's prior written consent, which Supplier may withhold in its sole discretion. Any purported transfer, assignment or encumbrance without such consent shall be void.
24. **Relationship of the parties:** Distributor is an independent contractor and has no express or implied right or authority to assume or create any obligation on behalf of Supplier, or represent that it has any right or authority to do so. Distributor has not paid any fee for this Agreement or for the right to solicit subscriptions for Supplier Services. Distributor is not required to purchase any products from Supplier for the operation of

business under this Agreement. The parties do not intend to create an agency, franchise, dealership, employment, partnership, landlord-tenant, or joint venture relationship, or any other relationship to Supplier than that of an authorized representative for the limited purposes described in this Agreement. Distributor does not have, nor may it hold itself out as having, the power to make contracts in the name of or binding on Supplier, nor does Distributor have the power to pledge credit or extend credit in the name of Supplier.

25. **Governing Law:** This Agreement is governed by the laws of the Commonwealth of Virginia, regardless of conflicts of law provisions.
26. **Non-Exclusive Relationship:** Distributor's relationship with Supplier and Boost Mobile hereunder is not on an exclusive basis. Supplier and/or Boost Mobile may enter into other relationships, may permit other distributors and retailers, may distribute via the Internet, and may utilize their own stores and sales forces (and those of their affiliates) to sell the Products in the same geographic areas, and by the same and/or different methods than Distributor and/or its Retailers.
27. **Equitable Relief:** Any breach of this Agreement by Distributor or caused by any Retailer may result in irreparable harm to either or both Supplier and/or Boost Mobile for which damages may be an inadequate remedy and, therefore, notwithstanding anything to the contrary, in addition to their respective rights and remedies otherwise available at law, Supplier and/or Boost Mobile will be entitled to equitable relief, including both preliminary and permanent injunctions as may be granted by any court of competent jurisdiction. Any requirement for the posting of a bond or other security as a condition of Supplier and/or Boost Mobile seeking or obtaining injunctive or other equitable relief is hereby waived.
28. **Entire Agreement; Conflicts:** This Agreement, including its exhibits, constitutes the final and full understanding between the parties and supersedes all previous agreements, understandings, negotiations and promises, whether written or oral, between the parties with respect to its subject matter. This Agreement is intended to supersede all previous agreements on the same subject matter that Distributor previously signed with Supplier. No amendments to this Agreement will be binding on either party unless executed by both parties in writing. In the event of a conflict between this Agreement and any other document, including but not limited to purchase orders (including those executed by either or both parties), this Agreement shall control.
29. **Non-Waiver:** No waiver of any term or condition of this Agreement, either generally or in a particular instance, will be effective unless the waiver is in writing and signed by an authorized person of the party against which the waiver is being asserted. If a written waiver of a term or condition is limited to a particular instance, then nothing in that waiver will preclude the party from later enforcement of that term or condition. Either party's failure to require the performance of any of the terms or conditions of this Agreement will not prevent the later enforcement of that term or condition, nor be deemed a waiver of any later breach.
30. **Notices:** Any notice or other written communication required or permitted to be given by this Agreement shall be deemed given when personally delivered or delivered by reliable overnight carrier or three (3) business days after it has been mailed; shall be delivered by personal delivery, by certified mail, or by reliable overnight carrier; and shall be addressed to Supplier d/b/a Nextel Communications at 2001 Edmund Halley Drive, Mail Stop A4-3, Reston, Virginia, 20191, Attn: Boost Counsel, Legal Department, with a copy to Boost Mobile, LLC at 8845 Irvine Center Drive, Suite 200, Irvine, California 92618 (Attn: Vice President, Sales), or Distributor at the address set forth in the Letter on the front of this Agreement (or to which any of the foregoing has been changed in accordance with a notice sent or delivered pursuant hereto).
31. **Force Majeure:** Neither party shall be in breach of this Agreement solely due to causes beyond its control including fire, flood, earthquake, acts of God, acts of terrorism or of a public enemy, acts of the government in its sovereign or contractual capacity, epidemics, quarantine, strikes, lockouts, riots or other civil insurrection, freight embargoes, power failure, or failure of the U.S. postal system or other shipping providers, provided the foregoing shall not excuse or delay payment obligations.
32. **Dispute Resolution:** The provisions of the Dispute Resolution Addendum to this Agreement.
33. **Accessories:** Accessories for the Products are available for purchase only from third parties, unless otherwise agreed in writing by Supplier or Boost Mobile. Any authorization for any third party to sell any accessories for Products does not constitute an endorsement or representation as to the quality of any accessory or accessories offered or sold by such third party. This Agreement does not apply to any accessory that Distributor or any Retailer may purchase from any third party rather than Supplier.



34. **Injury to Goodwill:** Distributor (and/or Retailer) agrees that it shall not divert or attempt to divert any Subscriber of Supplier to any competitor, by direct or indirect inducement or otherwise, or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Systems or Supplier's or Boost Mobile's trademarks, service marks, or logotypes.
42. **Definitions:** In this document, the following definitions apply:
- (a) "Agreement" means the (1) Letter to which these Terms are attached, and (2) all referenced Attachments, including these Terms.
  - (b) "Boost Mobile" means Boost Mobile LLC of 8845 Irvine Center Drive, Suite 200, Irvine, California, 92618, acting as a special, limited agent of Supplier;
  - (c) "Boost Mobile Starter Kit" means a packaged kit containing the following components, each printed with Boost Mobile artwork: a subscriber identity module (SIM) card and a guide containing an Activation PIN with a specified value and other identifying marks including but not limited to voucher number.
  - (d) "CPNI Rules" means the Federal Communications Commission's Customer Proprietary Network Information rules, implementing 47 U.S.C. § 222.
  - (e) "Distributor" means the party described within the Letter as such.
  - (f) "Eligible New Subscriber Activation" has the meaning set forth in **Attachment C**.
  - (g) "Event of Default" means any of the events set out in Section 22 below or elsewhere in the Agreement deemed to be a default.
  - (h) "Fulfilment Intermediaries" means the entity Supplier utilizes to perform fulfilment functions ("Fulfilment Intermediaries") such as sales, service, distribution, shipping/delivery, invoicing, payment/collection, returns, Electronic Data Interchange functions and other operations, to which Distributor consents and which shall not be deemed an assignment. The parties agree to act reasonably and in good faith to accommodate each other's operational needs with respect to their respective Fulfilment requirements. Notwithstanding Supplier's use of Fulfilment Intermediaries, Supplier retains all rights and remedies available under this Agreement, at law or in equity, including the right to assert claims and bring actions in its own name without the joinder of its Fulfilment Intermediaries and to utilize the books and records of its Fulfilment Intermediaries to support same.
  - (i) "Letter" means the letter between Supplier and the Distributor to which these Terms are attached.
  - (j) "Market Transfer" has the meaning set forth in Section 41 (b).
  - (k) "New Activation" means activation of a new customer on Supplier's System for pre-paid phone service.
  - (l) "New Subscriber Activation" has the meaning set forth in **Attachment C**.
  - (m) "PIN" has the meaning set forth in **Attachment F**.
  - (n) "PIN Service Provider" or "POS Service Provider" or Technology Service Provider (TSP) means the entity that performs Electronic PIN Transactions and related services ("PIN Services", see **Attachment F**) in order to activate PINs or deliver active PINs to the point of sale, in either case as necessary for Subscribers to access the Systems.
  - (o) "PIN Services Agreement" means the written agreement between Supplier and the PIN Service Provider to provide PIN Services.
  - (p) "Preactivation" means the activation of a unit by a Distributor or any Retailer prior to that unit being sold to a subscriber. If any unit is determined a preactivation, it is subject to a similar chargeback amount as defined in Section 41.
  - (q) "Privacy Laws" means all applicable federal, state and local laws, rules and regulations relating to customer privacy, marketing, data security or consumer protection, including, without limitation, (i) the requirements enumerated in the CPNI Rules, (ii) laws governing direct-marketing, such as the Telephone Consumer Protection Act and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-Spam Act"), and (iii) the California Cybersecurity Law (SB 1386).

- (r) "POS System" means an electronic activation and reporting point of sale hardware and service system with respect to PINs.
- (s) "Products" means the goods set out in **Attachment A** as amended from time to time, including the Boost Mobile Pay-As-You-Go Service PINs referred to in **Attachment F** to this Agreement (which shall be delivered by a PIN Voucher as defined therein), except that any accessory listed in **Attachment A** shall not be included in "Products" unless Boost Mobile or Supplier expressly agree in writing that such accessory is available for purchase directly from Supplier or such accessory is purchased directly from Supplier (see Section 40 of this Agreement), or goods which met the definition of "Products" under previous versions of this Prepaid Wireless Product Agreement;
- (t) "Reactivation" means a subsequent activation of the same SIM ID that was involved in a New Subscriber Activation.
- (u) "Retailer" means the approved retail entity or business with whom Distributor has contracted for the retail sale of Boost Mobile Products to consumers or Subscribers from an Authorized Location. Supplier and Boost Mobile make no representation to Distributor that additional Retailers or additional Authorized Locations beyond those specified on the initial list included as **Attachment B** to this Agreement will be approved by Supplier.
- (v) "Services" means access to the Systems and all other services provided by Supplier to the Subscribers.
- (w) "SIM ID" means the unique subscriber identification associated with a Subscriber Identity Module, also called a Smart Card or SIM Card, which is used to facilitate or complete a call from a mobile telephone in which the SIM Card is installed or inserted.
- (x) "Subscribers" means those persons who will have access to the Systems through the purchase of units of prepaid calling value.
- (y) "Supplier" means the Sprint Nextel Contracting Party, which shall be the appropriate operating subsidiary or affiliate (or subsidiaries and/or affiliates) of Nextel Communications, Inc. doing business as "Sprint Nextel" determined, as of the Effective Date or until further notice, as follows, based on the location of the Territory, any Authorized Locations outside the Territory, and the Delivery Location for Products specified in the Letter, or such other Delivery Location as may be agreed from time to time by the parties (i.e. if either the Territory, an Authorized Location, or the Delivery Location is in an area identified below, then the corresponding entity noted shall be included within the Nextel Contracting Party): If CT, DC, DE, MA, MD, ME, NH, PA (except Pittsburgh metro area), RI, VA VT and southern NJ: Nextel Communications of the Mid-Atlantic, Inc. (a Delaware corporation). If CA or NV, Nextel of California, Inc. (a Delaware corporation). If NY or Northern NJ, Nextel of New York, Inc. (a Delaware corporation). If Texas, Nextel of Texas, Inc. (a Texas corporation). If AL, AR, FL, GA, LA, MS, NC, SC, TN, Nextel South Corp. (a Georgia corporation). If AZ, CO, HI, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WV, WI, WY, and Pittsburgh, PA metro area, Nextel West Corp. (a Delaware corporation).
- (z) "Supplier Information" means any information relating to an existing or potential customer of Supplier that Distributor may collect or receive during the course of this Agreement. This information may include without limitation the existing or potential customer's name, address, rate plan, handset type, telephone numbers, email addresses, credit card information, CPNI (Customer Proprietary Network Information as defined in Section 222 of the Federal Communications Act, 47 U.S.C. section 222) or any other information related to the quantity, technical configuration, type, destination, location, and use of a telecommunications service provided to the existing or potential customer, including information contained in bills provided to the existing or potential customer. Supplier makes no representations or warranties about Supplier Information
- (aa) "Systems" means the wireless telecommunications systems owned and/or operated by Supplier and other companies (which other companies are affiliated with Supplier or have contractual arrangements with Supplier) as a national network, and which provides Services to its subscribers in certain geographic areas throughout the United States.
- (bb) "Terms" means these Terms and Conditions.
- (cc) "Territory" means the geographic territory set forth in **Attachment G** to this Agreement, which Supplier may unilaterally change by deleting all or any part(s) of such geographic territory where Distributor has failed

to meet targets established pursuant to Section 8 or, within the time period(s) specified in a performance improvement plan provided to Distributor by Supplier pursuant to Section 8 of this Agreement, targets established in such performance improvement plan.

(dd) "Trade Secrets" means confidential information concerning the Services, equipment, sales methods, installation and maintenance techniques, sources or suppliers of materials, insurance, credit policies, advertising, promotion and marketing techniques, prices, and customer referral programs, including, without limitation, Supplier's and/or Boost Mobile's unique selling, and servicing methods and business techniques, training, service and business manuals, promotional materials, training courses and other training and instructional materials, vendor and product information, customer and prospective Subscriber lists that Supplier or Boost Mobile supplies to Distributor for marketing purposes, other Subscriber and prospective Subscriber information and other business information.

(ee) "Transshipping" has the meaning set forth in Section 41 (a).

## **PRIVACY ADDENDUM**

1. **Compliance with Law.** Distributor will comply with all U.S. laws relating to the collection, use, access, maintenance and disclosure of Supplier Information. To the extent Distributor has access to CPNI under this Agreement, Distributor may use CPNI only for the purpose of marketing or providing the communications-related products and services similar to the products and services to which the customer already subscribes. Distributor may not use, allow access to, or disclose CPNI to any other party, unless required to make such disclosure under force of law. Distributor must have in place and maintain appropriate protections to ensure the ongoing confidentiality of customers' CPNI.
2. **Safeguards.** Distributor is fully responsible for Supplier Information. Distributor will utilize administrative, physical, and technical safeguards that prevent the unauthorized collection, access, disclosure, and use of Supplier Information. These Safeguards will:
  - 2.1 assign random passwords and other access controls so that only employees, representatives, agents, contractors, and Subcontractors of Distributor who have a business need to access or use Supplier Information may access or use it;
  - 2.2 encrypt Supplier Information when not directly being used by an authorized person while on Distributor's network and at all times while in course of transmission;
  - 2.3 use appropriate firewalls, virus protection and other technical safeguards against intrusion upon, and harmful transmissions to, any network or facility on which Supplier Information is stored;
  - 2.4 grant access privileges to Supplier Information only as needed by employees, representatives, agents, contractors and Subcontractors of Distributor who have a business need to use that information, and prompt revocation of such privileges when no longer required; and
  - 2.5 train employees and other persons with access to Supplier Information in proper security practices and procedures.
3. **Notice of Security Breach.** Distributor will promptly notify Supplier of any facts known to Distributor concerning any accidental or unauthorized access, disclosure or use, or accidental or unauthorized loss, damage or destruction of Supplier Information by any current or former employee, representative, contractor, Subcontractor or agent of Distributor or by any other person or third party. Distributor will fully cooperate with Supplier in the event of any accidental or unauthorized access, disclosure or use, or accidental or unauthorized loss, damage or destruction of Supplier Information by any other person or third party, to limit the unauthorized access, disclosure or use, seek the return of any Supplier Information, and assist in providing notice if requested by Supplier.
4. **Disclosure of Supplier Information.** Distributor will not disclose Supplier Information to any person unless Supplier has given its prior written consent to the disclosure. Before disclosing Supplier Information to any person, Distributor must ensure that that person is bound by the same obligations as Distributor under this Agreement, including the obligation to protect Supplier Information that also is classified as CPNI. In the event that Distributor receives a request to disclose Supplier Information through legal process, such as a private party subpoena or a subpoena, warrant or other process from a governmental authority, Distributor will:
  - 4.1 notify Supplier as soon as practicable of the request so that Supplier at its option may seek a protective order or take other action to prevent or limit such disclosure; and
  - 4.2 cooperate with Supplier's efforts to obtain a protective order or other reasonable assurance to preserve the confidentiality of the Supplier Information.

5. **Return of Supplier Information.** Distributor will return, or at Supplier's election, destroy (and certify the destruction in writing) all Supplier Information upon the termination or expiration of this Agreement, or earlier if requested to do so in writing by Supplier.
6. **Privacy Exhibit and Annual Certification.** Distributor will certify annually its continued compliance with all of the obligations in Supplier's Privacy Policy, this Addendum and the related provisions in the Agreement.
7. **Audits and Corrective Action Plans.** In addition to any other rights of Supplier under this Agreement, if any audit under this Agreement identifies a customer privacy related failure in any of Distributor's privacy or confidentiality obligations, Distributor will promptly develop a corrective action plan in cooperation with Supplier. This plan is subject to Supplier's approval. Distributor will implement this plan at its sole expense, if
  - 7.1 any audit shows that Distributor has failed to perform any of its obligations under this Section; or
  - 7.2 Supplier notifies Distributor in writing of its breach of its privacy obligations under this Agreement.
8. **Miscellaneous.** The acts or omissions of Distributor and anyone with which it is associated (like its employees, representatives, affiliates, agents, contractors, Subcontractors, and their employees) are Distributor's acts or omissions. The rights and obligations in this Exhibit F and any other provision in the Agreement that is reasonably necessary to enforce them, will survive the termination or expiration of this Agreement for any reason. The provisions of this Exhibit F control if they conflict with any other provision in the Agreement. Because a breach of any Supplier Information provision may result in irreparable harm to Supplier, for which monetary damages may not provide a sufficient remedy, Supplier may seek both monetary damages and equitable relief.

## DISPUTE RESOLUTION ADDENDUM

- 1. Dispute Resolution.** All Disputes under this Agreement are subject to the following dispute resolution process. Only a Senior Representative (i.e. a Vice President or Owner/Proprietor of the Distributor or person holding a position of equivalent or greater authority within Distributor's organization, or a Director as to Supplier) may initiate, respond to, negotiate, resolve or otherwise direct the resolution of a Dispute.

**1.1 Negotiation.** A Senior Representatives will first attempt to negotiate a resolution to the Dispute.

- (A) *Notice of the Dispute.* The disputing party initiates negotiations by providing written notice to the other party, explaining the subject of the Dispute and the relief requested.
- (B) *Procedures.* The party receiving a notice of Dispute must respond in writing within 30 calendar days with a statement of its position on, and recommended resolution of, the Dispute. If the Dispute is not resolved by this exchange of information, the Senior Representatives of each party will meet (either by phone, or, if agreed to, in person,) at a mutually agreeable time and place within 60 calendar days of the date of the initial notice and thereafter as often as they reasonably deem necessary in order to exchange relevant information and perspectives and to attempt to resolve the Dispute.
- (C) *Participants in the Negotiations.* Senior Representatives will negotiate the Dispute. If necessary, non-Senior Representatives of the Distributor or Supplier may, upon the request and at the direction of a Senior Representative, participate in the resolution of a Dispute.
- (D) *Failure of Negotiation.* If the Dispute is not resolved within 90 calendar days of the date of the disputing party's initial notice, or if the Senior Representatives fail to meet within 60 calendar days of the date of the initial notice, either party may initiate non-binding mediation of the Dispute as specified below.

**1.2 Mediation.** If a Dispute is not resolved through negotiation in accordance with this Agreement, either party may submit the Dispute for mediation under the Commercial Mediation Procedures and Rules of the American Arbitration Association (AAA).

(A) *Conduct of Mediation.*

- (1) *Governing Rules.* The Commercial Mediation Procedures and Rules of the American Arbitration Association ("AAA") will govern the selection of a mediator and the conduct of the mediation, subject to this Agreement.
- (2) *Mediation Briefs.* Mediation briefs or statements not to exceed 15 pages will be submitted to the Mediator.
- (3) *Additional Rules for Mediation.* Unless the parties both agree otherwise, the mediation:
  - (a) will last no longer than one business day;
  - (b) must be attended by a Senior Representative of each party who may bring counsel and/or other representatives of the party; and
  - (c) will take place in Irvine, CA, unless an alternative location is agreed upon by the parties.

(B) *Costs of Mediation.* Each party will bear one-half of the cost of the fees and expenses of the mediation. Each party will bear all its own (and their advisors') costs and fees incurred initiating, preparing, and presenting its case with respect to the mediation.

(C) *Failure of Mediation.* If the Dispute is not resolved through mediation, the mediation will be terminated by a written declaration of the mediator that the Dispute has not been resolved.

**1.3 Arbitration.** No party may commence arbitration until a Dispute has been subject to both negotiation and mediation in accordance with this Agreement. Either party may initiate arbitration with respect to a Dispute by filing a written demand for arbitration pursuant to the Wireless Industry Arbitration Rules of the AAA at any time after the 45th calendar day following the date that a request for mediation of such Dispute was first submitted, or, if earlier, the date that mediation is terminated. This applies to all causes of action, whether nominally a “claim”, “counterclaim”, or “cross-claim”, arising under common law or any state or federal statute. The mediation may continue after the commencement of arbitration if the parties so desire.

- (A) *Identification and Location of Arbitrators.* Unless otherwise agreed by the parties, Arbitration will be conducted by a panel of three arbitrators in New York, New York. All three arbitrators will be "neutrals," and the parties will select arbitrators in accordance with the Wireless Industry Arbitration Rules of the AAA.
- (B) *Conduct of Arbitration.* The arbitration will be governed by the Wireless Industry Arbitration Rules of the AAA, except as otherwise set forth in Section 1.3 to this Addendum.
- (C) *Scope of Discovery.* Except as stated in this Agreement, all discovery will be governed by the Federal Rules of Civil Procedure. Discovery will include the request for and production of documents, depositions and interrogatories as specified below.
  - (1) *Depositions.* Depositions are limited to no more than 3 fact depositions per party for a period of no more than 4 hours each.
  - (2) *Expert Witnesses.* Each party may have up to 2 expert witnesses and depositions of experts, in addition to the 3 fact depositions above, for 4 hours of testimony each, to be preceded by the expert's written report to comply with Fed.R.Civ.P.26(a)(2)(B).
  - (3) *Interrogatories.* Interrogatories will be limited in scope for the purpose of identifying persons with knowledge of facts relevant to the Dispute; and requesting specification of damages.
  - (4) *Production of Documents.* Requests for production of documents will be limited to a one-time request and will only seek documents related to the specific subject matter of the Dispute.
  - (5) *Settlement of discovery disputes.* Any issues concerning discovery upon which the parties cannot agree will be submitted to the arbitration panel for determination.
- (D) *Award.* The arbitration panel will, upon the concurrence of at least 2 of its 3 members, have the authority to render an appropriate decision or award, including the power to grant all legal remedies consistent with the terms of this Agreement and the law in the Commonwealth of Virginia. The arbitration panel will have no power to award punitive damages of any kind, or damages that are prohibited elsewhere in this Agreement. The binding or preclusive effect of any award will be limited to the actual Dispute arbitrated, and to the parties, and will have no collateral effect on any other dispute or claim of any kind whatsoever. Within 30 calendar days of the conclusion of the arbitration, the arbitrators will prepare in writing and provide to the parties the award, including factual findings and the reasons on which the award is based.
- (E) *Motions to Dismiss/Summary Judgment.* The arbitrators are empowered and encouraged, under appropriate circumstances, to grant motions to dismiss or motions for summary judgment, applying standards under the Federal Rules of Civil Procedure and the Federal Rules of Evidence.
- (F) *No Change of Venue/Forum.* Neither party will seek a transfer of venue or forum.

(G) *Costs.* Each party will bear one-half of the costs of the fees and expenses of the arbitrators. Each party will bear all its own (and their advisors') costs and fees incurred initiating, preparing, and presenting its case with respect to the arbitration.

(H) *Arbitration is Confidential.* The arbitration, along with all filings and decisions, will be confidential except as necessary to enforce the award.

**2. Waiver of Rights.** Supplier and Distributor each waive:

- 2.1 their rights to litigate Disputes in court, except as set forth in Section 4 of this Addendum below;
- 2.2 to receive a jury trial; and
- 2.3 to participate as a plaintiff or as a class member in any claim on a class or consolidated basis or in a representative capacity.

**3. No Class Action Arbitration.** Supplier and Distributor both agree that any arbitration will only be conducted on an individual basis and that if it is determined, despite the clear and unambiguous intent of the parties as stated in this Agreement, to permit arbitration other than on an individual basis, such arbitration will immediately be terminated and neither party will be under any obligation to continue in such arbitration. In the case of such termination, or if the arbitration clause is deemed inapplicable or invalid, or otherwise is deemed to allow for litigation of disputes in court, Supplier and Distributor both waive, to the fullest extent allowed by law, any right to pursue or participate as a plaintiff or a class member in any claim on a class or consolidated basis or in a representative capacity.

**4. Injunctive Relief.** Notwithstanding anything to the contrary herein, if Supplier determines, in its sole discretion, that it may suffer irreparable harm as a result of Distributor's breach, or threatened breach, of this Agreement, then Supplier may, without complying with any other dispute resolution procedures in this Addendum seek injunctive relief from a court of competent jurisdiction.

**5. Survival.** The provisions of Addendum will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.