

**Proximiti MessagePro service
Terms of Service
August 1, 2017**

These Terms of Use are legally binding and govern the use of the Proximiti MessagePro services, the underlying software and applications, and all associated program and data interfaces. PLEASE READ THESE TERMS OF USE CAREFULLY AND COMPLETELY. By using the Proximiti MessagePro services(s), you represent that:

- 1) That you have read, understand and agree to these Terms of Use and further agree to unconditionally comply with them;
- 2) That you will utilize the services only in a lawful manner;
- 3) That you are of legal age to form a binding contract; and,
- 4) That you have the authority to accept these Terms of Use on your personal behalf or in the case of a business you have the authority to bind the service subscriber.

Contained within these Terms of Uses are provisions that:

- a) Note that Proximiti may restrict utilization of Proximiti MessagePro services without notice;
- b) Note that Proximiti provides no warranty relative to its Proximiti MessagePro services;
- c) Note that Proximiti's liability in association with its Proximiti MessagePro services is limited;
- d) Note that Customer is responsible for all authorized and unauthorized activity (including fraudulent activity) generated in association with their Proximiti MessagePro account;
- e) Note that Proximiti's MessagePro service may not be utilized in any manner to provide access to emergency services including but not limited to 911 or E911 service; and,
- f) Incorporate a Customer waiver of any-and-all class action claims as well as waiver of any-and-all rights to trial by jury;

**If you do not unconditionally accept these Terms of Use,
do not register for or use the Proximiti MessagePro services(s).**

Proximiti reserves the right, at its sole discretion, to modify these Terms of Use at any time without prior notice. Upon change, the revised Terms of Use will supersede prior versions. You are advised to visit the Proximiti web site at www.proximiti.com/TOS on a regular basis to review the current Terms of Use as it they apply to the Proximiti MessagePro services.

Throughout these Terms of Use the terms "we", "us", "our" or "Proximiti" shall refer to Proximiti Communications, Inc., 5410 Mariner Street, Suite 175, Tampa, FL 33609. The terms "you", "your", "subscriber" and "customer" will refer to you or the company that you represent.

Proximiti MessagePro services enables for a fee the delivery of SMS (Short Message Service) and MMS (Multimedia Messaging Service) message via a variety of interfaces. The Proximiti MessagePro services may provide multiple mechanisms to collect and store names, phone numbers, e-mail addresses and other information ("subscriber data"). However, utilization of Proximiti MessagePro services(s) are fully dependent on the express consent of party to whom messages are to be delivered. Proof of consent is required in connection with the utilization of Proximiti MessagePro services(s). Prior consent is required even in instances where you have an existing business relationship with the recipient.

Proximiti MessagePro service is offered and controlled by Proximiti from its facilities in the United States of America. Proximiti MessagePro services, including any software we may provide in connection with that services, may be subject to applicable U.S. export control laws and economic sanctions regulations. The Company makes no representations that Proximiti MessagePro services is appropriate or available for use in other locations. Those who access or use the Proximiti MessagePro service from other jurisdictions do so at their own volition.

Subject to your compliance with these Terms of Use and applicable law as well as timely payment of applicable fees, Proximiti grants you a limited, non-exclusive, non-assignable, non-transferable, non-sub licensable, revocable license to access Proximiti provided software, applications and documentation as necessary to utilize the Proximiti MessagePro services(s) solely for your own personal and business use and not for further resale. You acknowledge that updates to Proximiti MessagePro services may require re-installation of subscriber software and applications from time to time and that updated services may not contain all features and functions of prior releases.

All rights not expressly granted under these Terms of Use are specifically withheld and reserved by Proximiti and no Proximiti intellectual property rights, including but not limited to all patents, source code, copyrights, trademarks, service marks, trade secrets, proprietary processes and all other intellectual property, are granted, transferred, assigned to Customer. Customer is specifically prohibited from modifying, adapting, merging, translating, making derivative works of, disassembling, decompiling, reverse compiling or reverse engineering any aspect or portion of the Proximiti provided software and applications.

Issuance of invoices shall be at Proximiti's sole discretion. Any applicable setup and/or installation charge(s) will be invoiced in advance. Recurring charges, including but not limited to subscription and maintenance fees, will be billed in advance. Usage charges and termination charges, if applicable will be billed in arrears. In regard to Proximiti MessagePro service, usage may be billed on a metered, block or flat rate/unlimited basis. Customer may also be billed for overages where they exceed specified usage limits. Service involving toll free numbers may also incur separate charges.

Charges to Customer for Proximiti MessagePro service will include Proximiti specified fees and applicable taxes. If Customer is exempt from any taxes for any reason, you must provide dated valid exemption certificates to our tax department at legal@proximiti.com. Once our tax department has received and approved your exemption certificate, Proximiti will exempt you from those taxes on a going forward basis. Exemption from taxes will not automatically exempt a Customer from certain regulatory fees such as universal service charges.

Customer will provide current, accurate and complete information relative to their subscription during the signup process. Person or employee establishing service with Proximiti represents and warrants that they are duly authorized to bind Customer. Customer will update information relative to their account in a timely manner in the event of change(s). By submitting content in conjunction with the Proximiti MessagePro service(s), Customer hereby grants Proximiti a worldwide, non-exclusive, perpetual, royalty-free, fully paid license to use, modify, distribute and display submitted content in conjunction with

providing the Proximiti MessagePro service. Customer represents and warrants that they have all rights necessary to grant such license to Proximiti without infringement or violation of any third-party rights.

Where Customer provides a telephone number during the signup process, the Customer shall represent and warrant that (i) they have procured all rights and licenses and have all power and authority necessary to use and text enable the specified phone number(s) without the consent of any third party, (ii) they will not use the services on a phone number that has been exchanged, rented, or purchased from a third party without the permission of the phone number owner, and (iii) the phone number is not a mobile subscriber phone number. In association with Proximiti MessagePro service, Customer shall provide internet connectivity and compatible equipment as required to utilize the service. No relationship will exist between Customer and Proximiti until Proximiti accepts your order by confirmatory e-mail, SMS/MMS message, or other appropriate means of communication.

Unless authorized in writing by Proximiti, all fees and charges for the Proximiti MessagePro service(s) shall be by credit card or ACH transaction and shall be due and payable in US dollars. If Customer has authorized payment by credit card or ACH transaction, no further notice or consent will be required and Customer authorizes Proximiti to process payments up to thirty (30) days after Customer withdraws the authorization. Proximiti reserves the right to continue processing credit card transaction for all outstanding invoices as of that date. If paying by credit card or ACH transaction, Customer will advise Proximiti of any change in account information (e.g. account number, expiration date, verification code) that is necessary to process Customer's payment. Customer acknowledges and accepts that Proximiti will charge and Customer will pay a processing charge of the lesser of thirty-five dollars (\$35.00) or the maximum allowed by law for any Customer payment returned for non-payment or chargeback. In instances denial of payment and/or chargeback, Proximiti shall make reasonable effort to contact Customer and advise them of failed payment and outstanding balance due. Notwithstanding the above, Proximiti reserves the right to disconnect Customer Services and terminate the Customer's account if Customer's payment method is returned, declined or fails for any reason. Customers with a past due balance on previous or multiple accounts will be charged the full balance due upon opening a new account or providing updated payment information. Until all prior due balances are brought current, Proximiti may limit or suspend access to new services. In the process of verifying and validating credit card transactions, Proximiti may place a temporary \$1.00 hold on Customer's credit card. Release of this hold should occur within 3 – 4 business days but subject to the terms and conditions of Customer's financial institution. Amounts paid for service are not refundable. Payments for partial service periods will not be prorated.

The term of service will be as established at the time of service initiation. Subscriptions shall automatically renew for the same period of time at Proximiti's then current price for such subscription unless either party gives 30 day notice of termination to the other party. Customer notices for non-renewal and/or termination of services shall be sent to termination@MessagePro.com. Lack of use without notice of termination shall not terminate an account. Customer authorizes Proximiti to charge credit cards on file relative to service renewal.

You are solely responsible for all use (authorized and unauthorized) of the Proximiti MessagePro services. You are also solely responsible for all acts and omissions related to utilization of your Proximiti MessagePro services account. We are in no manner liable for any loss or damage arising from the utilization of Proximiti MessagePro services(s). You acknowledge and accept that all messages sent through use of Proximiti MessagePro services may not be received in a timely manner or received at all by the intended recipient. You will not utilize third party software or services to avoid the restrictions set

forth in these Terms of Use. You accept and acknowledge that Proximiti may periodically delete Customer messages and other data associated with your account. Proximiti shall have no liability whatsoever for any damage, losses or any other consequences that Customer may incur relating to loss or deletion of data associated with your account.

Utilization of Proximiti MessagePro services(s) are subject to applicable law and regulation. Proximiti MessagePro services may not be utilized for sending unsolicited text messages except in regard to specific healthcare and financial alerts. In utilizing our service(s), you agree to review and fully comply with all aspects of the TCPA and CAN-SPAM Act and to adhere to the best practices principles of the Mobile Marketing Association and the Cellular Telecommunications Industry Association. You agree that you will not access, upload or otherwise utilize or upload any third-party marketing list in association with the Proximiti MessagePro services(s). You agree that you will not utilize the services to engage in any illegal activity including but not limited to the production and delivery of SPAM. Furthermore, you agree that that your account transmissions will in no manner violate, infringe or misappropriate the intellectual property rights of any third party including but not limited to trademarks, copyrights and rights of publicity. You will not utilize the Proximiti MessagePro service to mislead others to the identity of the sender of origin of a message by any mechanism.

You agree to assume full responsibility for all action undertaken by all users in regard to your Proximiti MessagePro services subscription. You are solely responsible for maintaining the confidentiality of your password, account and files. Customer acknowledges and accepts that all parties with access to Proximiti systems and components shall utilize, at a minimum, a reasonable degree of care and diligence relative to the protection of Customer's account information and Proximiti's intellectual property. Customer further agrees to ensure that all Proximiti MessagePro services settings are effectively managed to prevent any unauthorized access/utilization and that Customer and its end users will not defeat, disable or circumvent any security mechanism of the Proximiti MessagePro service(s).

You agree that you will not utilize our services in manner that would result in the transmission of undesirable or illegal content such as violence, physical threats, harassment, pornography, alcohol, illegal drugs, viruses or harmful code or other material prohibited by law or regulation. In use of the Proximiti MessagePro services(s), you agree to represent yourself, your organization, your product and your service(s) accurately. Furthermore, all messages originated via the Proximiti MessagePro services(s) must contain mechanisms by which the receiver of the message may unsubscribe from your message list. You must promptly notify Proximiti of any unauthorized use of your account or any other breach of security relative to your Proximiti MessagePro service. Customer is responsible for all unauthorized activity and/or fraud associated with use of their Proximiti MessagePro account.

In the provision of Proximiti MessagePro services(s), in our sole discretion we may limit without notice the number of SMS and MMS messages generated by a subscriber, the maximum message size, the type and size of content that may be attached to messages and anything else that is accessed or delivered by the Proximiti MessagePro service(s). We may impose and/or modify these limitations without prior notice. Furthermore, SMS and MMS message length may be technically limited with specific capacities subject to rules implemented by intermediary and terminating carriers.

You acknowledge and accept that Proximiti's Text service(s) may in no manner be utilized for access to emergency personnel and 911 and E911 based public safety answering points (PSAPs). Subscriber relieves Proximiti of any and all liability associated with the blocking of SMS and MMS origination to 911

destinations in association with the provision of Proximiti MessagePro services. Customer further acknowledges and accepts that Proximiti MessagePro service is not authorized for use in critical safety applications or situations that require continuous uninterrupted service. Utilization in any application where failure of service could reasonably be expected to result in bodily injury, loss of life or catastrophic damage to property or person is prohibited.

Proximiti reserves the right to suspend and/or terminate your account at its sole discretion without prior notice or refund if your account is reasonably believed to violate applicable law or any aspect of these Terms of Use as well as for non-payment of fees as due. You acknowledge and accept that utilization of the Proximiti MessagePro services(s) in violation of anti-spam and other law may result in third party legal action against you. You accept and acknowledge that Proximiti reserves the right to monitor messages and other content sent through Proximiti MessagePro services(s) for compliance with these Terms of Use and applicable law. However, Proximiti assumes no duty or obligation to ensure messages initiated through its Proximiti MessagePro service(s) comply with state and federal law and regulation.

Proximiti agrees that It will not utilize any subscriber data stored in association with your services for any purpose other than the provision of subscribed services or to comply with legal requirements. Except as required by law, information stored in association with provided services may be deleted 90 days after use. Proximiti's Privacy Policy relative to customer data is published separately at <http://www.proximiti.com/Privacy.aspx>. If you do not agree and accept Proximiti's Privacy Policy, do not utilize Proximiti's services and/or download any Proximiti applications or software.

Customer acknowledges and consents to the monitoring and recording of calls involving Proximiti service personnel relative to the provision and support of the Proximiti MessagePro service. Customer consents to the placement of outbound calls, texting and e-mails to Customer relative to the provision and support of Proximiti MessagePro service. In the event that during communications between the Customer and Proximiti, the Customer provides any feedback, answers, ideas, input, survey response, suggestions, comments or other information, Customer hereby grants Proximiti a perpetual, non-revocable, royalty free, fully paid up, worldwide right and license to utilize the provided information.

Customer acknowledges and agrees that Proximiti may initiate changes to its applications, services, network infrastructure and underlying software without notice and that continued utilization of Proximiti MessagePro services may require modification of subscriber systems, equipment and/or software. Customer further accepts that services may be limited due to other operational issues including but not limited to network capacity limitations, network maintenance and modification, vendor restrictions and fraud control. Proximiti shall not be responsible in any manner for any service issues, delays or interruptions associated with Customer's internet and broadband connectivity.

EXCEPT TO THE EXTENT SPECIFICALLY PROHIBITED BY APPLICABLE LAW, SERVICES ARE PROVIDED OR MADE ACCESSIBLE "AS IS" AND "AS AVAILABLE", WITHOUT CONDITION, ENDORSEMENT, GUARANTEE, REPRESENTATION OR WARRANTY OF ANY KIND, BY PROXIMITI. PROXIMITI DOES NOT WARRANT UNINTERRUPTED USE OR OPERATION OF ANY SERVICES, CONTINUED AVAILABILITY OF ANY SERVICES, OR THAT ANY MESSAGES, CONTENT OR INFORMATION SENT BY OR TO CUSTOMER WILL BE ACCURATE,

TRANSMITTED IN UNCORRUPTED FORM, UNINTERRUPTED, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR WITHIN A REASONABLE PERIOD OF TIME.

CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT ALL CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS, OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED. THE LIMITED WARRANTIES SET OUT IN THIS AGREEMENT GIVES THE CUSTOMER SPECIFIC LEGAL RIGHTS. THE CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE OR PROVINCE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES AND CONDITIONS. TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTIES OR CONDITIONS RELATING TO THE SERVICES, TO THE EXTENT THEY CANNOT BE EXCLUDED AS SET OUT ABOVE, BUT CAN BE LIMITED, ARE HEREBY LIMITED TO NINETY (90) DAYS FROM THE DATE YOU UTILIZED PROXIMITI SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROXIMITI BE LIABLE FOR ANY OF THE FOLLOWING TYPES OF DAMAGES: CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR AGGRAVATED DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUES, FAILURE TO REALIZE ANY EXPECTED SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF BUSINESS OPPORTUNITY, OR CORRUPTION OR LOSS OF DATA, FAILURES TO TRANSMIT OR RECEIVE ANY DATA, PROBLEMS ASSOCIATED WITH ANY APPLICATIONS USED IN CONJUNCTION WITH THE PROXIMITI SERVICES, DOWNTIME COSTS, LOSS OF THE USE OF CUSTOMER'S SERVICES OR ANY PORTION THEREOF OR OF ANY AIRTIME SERVICES, THIRD PARTY SOFTWARE, THIRD PARTY SERVICES OR THIRD PARTY CONTENT, OR ANY THIRD PARTY PRODUCTS, COST OF SUBSTITUTE GOODS, COSTS OF COVER, FACILITIES OR SERVICES, COST OF CAPITAL, OR OTHER SIMILAR PECUNIARY LOSSES ARISING OUT OF OR RELATED TO THESE TERMS OF USE AND THE PROXIMITI SERVICES INCLUDING THE USE OR INABILITY TO USE, PERFORMANCE OR NONPERFORMANCE OF THE PROXIMITI SERVICES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND EVEN IF PROXIMITI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROXIMITI SHALL BE LIABLE TO CUSTOMER ONLY AS EXPRESSLY PROVIDED IN THESE TERMS OF USE AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION, SHALL HAVE NO OTHER OBLIGATION, DUTY, OR LIABILITY WHATSOEVER IN CONTRACT, TORT, OR OTHERWISE TO YOU OR YOUR AUTHORIZED USERS INCLUDING ANY LIABILITY FOR NEGLIGENCE OR STRICT LIABILITY. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THESE TERMS OF USE SHALL APPLY: (i) IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY YOU INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THESE TERMS OF USE OR OF ANY REMEDY CONTAINED HEREIN; AND (ii) TO PROXIMITI AND ITS AFFILIATED COMPANIES, THEIR SUCCESSORS, ASSIGNS, AGENTS, SUPPLIERS (INCLUDING AIRTIME SERVICE PROVIDERS), AUTHORIZED PROXIMITI DISTRIBUTORS (ALSO INCLUDING AIRTIME SERVICE PROVIDERS) AND THEIR RESPECTIVE DIRECTORS, EMPLOYEES AND INDEPENDENT CONTRACTORS.

TO THE EXTENT ALLOWED BY LAW, PROXIMITI'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIM, LOSS, EXPENSE OR DAMAGE WILL IN NO EVENT EXCEED THE LESSER OF (a) SUMS ACTUALLY PAID BY CUSTOMER TO PROXIMITI FOR THE SERVICES WHICH GIVE RISE TO THE CLAIM DURING THE NINETY (90) DAYS IMMEDIATELY PRIOR TO THE DATE OF THE EVENT(S) GIVING RISE TO THE LIABILITY OR (B) US \$500.00.

CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS PROXIMITI AND ITS EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, AFFILIATES, AGENTS, RESELLERS, VENDORS AND OTHER REPRESENTATIVES

FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES (INCLUDING LOSS OF PROFITS, REVENUE AND GOODWILL), LIABILITIES, PENALTIES AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND DISPUTE RESOLUTION EXPENSE, ARISING OUT OF OR IN CONNECTION WITH THE USE OF SERVICES PROVIDED HEREUNDER, INCLUDING (I) CLAIMS ARISING OUT OF CUSTOMER'S VIOLATION OF LAW, CODE, REGULATION OR ORDINANCE INCLUDING BUT NOT LIMITED TO VIOLATION OF THE TCPA, TRUTH IN CALLER ID ACT AND THE JUNK PROTECTION ACT OF 2005, (II) CLAIMS FOR DEFAMATION LIBEL, SLANDER, OR INVASION OF PRIVACY, (III) CLAIMS FOR INFRINGEMENT OF COPYRIGHT ARISING FROM ANY COMMUNICATION, (IV) CLAIMS ARISING FROM ANY FAILURE, MISTAKE, INTERRUPTION, OMISSION, DELAY, ERROR, DETERIORATION OR DEFECT OF THE SERVICES, (V) CLAIMS OF PATENT INFRINGEMENT ARISING FROM COMBINING OR USING THE SERVICE IN CONNECTION WITH SERVICES OR EQUIPMENT FURNISHED BY OTHERS (VI) CLAIMS INVOLVING RIGHTS OF PRIVACY INCLUDING BUT NOT LIMITED TO THOSE FOR IMPROPER NOTICE AND/OR ILLEGAL UTILIZATION OF CALL RECORDING FEATURES AND THE RECORDING OF CALLS, (VII) CLAIMS RESULTING FROM CUSTOMER'S BREACH OF THESE TERMS OF USE AND (VIII) CLAIMS OF FRAUD IN ASSOCIATION WITH UTILIZATION OF SERVICES BY EMPLOYEES AND CUSTOMERS OF CUSTOMER.

CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, EXCLUSIONS, LIMITATIONS AND INDEMNITION SET FORTH IN THESE TERMS OF USE ARE REASONABLE AND CONSTITUTE AN ESSENTIAL ELEMENT OF THE TERMS OF USES BETWEEN PROXIMITI AND THE CUSTOMER AND THAT IN THE ABSENCE OF SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS: (x) THE FEES AND OTHER TERMS IN THESE TERMS OF USE WOULD BE SUBSTANTIALLY DIFFERENT; AND (y) PROXIMITI'S ABILITY TO OFFER AND CUSTOMER'S ABILITY TO PURCHASE THE PROXIMITI SERVICES OR ANY PORTION THEREOF WOULD BE IMPACTED.

IN ADDITION TO THE LIMITATIONS AND EXCLUSIONS SET OUT ABOVE, IN NO EVENT SHALL ANY DIRECTOR, EMPLOYEE, AGENT, DISTRIBUTOR, SUPPLIER, INDEPENDENT CONTRACTOR OF PROXIMITI OR ANY AFFILIATES OF PROXIMITI HAVE ANY LIABILITY ARISING FROM OR RELATED TO THE PROXIMITI SERVICES AND THESE TERMS OF USE. NOTHING IN THESE TERMS OF USE ARE INTENDED TO SUPERSEDE ANY EXPRESS WRITTEN AGREEMENTS OR WARRANTIES PROVIDED BY PROXIMITI.

Proximiti and Customer will use reasonable efforts to resolve any dispute, claim, question or disagreement through negotiated settlement. As part of the settlement negotiation process, the initiating party will provide the other party with written notice, in a timely manner and in reasonable detail, outlining the basis of such dispute, claim, question or disagreement. Neither party shall pursue any legal filing with any court, arbitrator or other adjudicative body prior to engaging in good faith negotiation and consultation toward resolution of all outstanding matters. Except in regard to bankruptcy, Proximiti and Customer expressly waive any right to bring, undertake, enter or join any class or collective action lawsuit or proceeding. The costs of any litigation or arbitration, whether incurred at the trial or appellate level (including attorneys' fees, court or arbitration costs and the costs of experts and of paralegal, accounting, financial and other legal and investigative support personnel), will be borne by the ultimate non-prevailing party. A party awarded less than 60% of its claimed damages will be deemed a non-prevailing party.

Notwithstanding the above, as it relates to billing, all Customer disputes must be raised in writing within sixty (60) days of the date of billing. Billing disputes not raised within this period shall be automatically waived. Bill credits shall be the sole and exclusive remedy with respect to any billing errors by Proximiti.

Neither party will be in default or otherwise liable for any delay in or failure of its performance hereunder, except for a failure to pay, due to any act of God, adverse weather condition, fire, flood, lightning,

earthquake, riot, strike, accident, war, power failure, act of terrorism, governmental requirement, inability to secure materials, labor or transportation, cable cut or other cause beyond the reasonable control of the affected party. Neither party will be liable for any delay or failure to the extent it results from the requirements of law or the acts, delays or failures to act of any regulatory authority, or any provider with which Proximiti has an interconnection agreement. Any such delay or failure may suspend the service until the delay or failure ceases.

These Terms of Use are deemed to be made in and governed by the laws of the State of Florida without regard to choice of law provisions. The United Nations Convention on Contracts for International Sale of Goods shall not apply to these Terms of Use nor do they apply to Customer's use of Proximiti MessagePro service. Regardless of any statute or law to the contrary, Customer agrees that any suit or litigation arising from Proximiti's provision of Proximiti MessagePro services to the Customer and these Terms of Use must be filed within the earlier of one (1) year from (i) the date the cause of action arose or (ii) the date service to Customer were terminated.

Venue for the purposes of any litigation in connection with Proximiti MessagePro service(s) and these Terms of Use will lie solely in the Circuit Court in and for Hillsborough County, Florida or the United States District Court in and for the Middle District of Florida. Customer hereby consents to the jurisdiction of the federal and state courts located in Florida, irrevocably waives any right to assert that such venue is not convenient or lacks jurisdiction, and agrees not to bring any disputes in any other court or adjudicative body. Customer and Proximiti hereby irrevocably waive all rights to demand a jury trial. Relative to litigation, Customer hereby consents to service of process by certified U.S. mail, return receipt requested, at the address provided in the Customer service order.

Proximiti's provision of Proximiti MessagePro service is not intended or shall be construed to create and employer-employee relationship or a partnership, agency, joint venture or franchise. Proximiti and Customer are independent contractors in the performance of each and every part of the provision of service and these Terms of Use.

If any provision of these Terms of Use is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms of Use shall otherwise remain in full force and effect and enforceable. Proximiti's failure to enforce at any time any provision of these Terms of Use does not waive any right to enforce such provision at a later time.

Any notice to Customer given or made pursuant to these Terms of Use may be made at Proximiti's discretion via electronic delivery to Customer's specified e-mail address or in writing via postage prepaid United States mail or commercial delivery service. Effective delivery date for notices sent by Proximiti shall be on the date sent for electronic notice, three days after postmark for notices sent via US mail and on the date of confirmed delivery for notices sent via commercial delivery service. Customer shall be responsible for ensuring that e-mail and address information is current and correct in Proximiti systems. Notices to Proximiti must be in writing and addressed and delivered to Attention of Legal at the address of Proximiti Communications, Inc. 5410 Mariner Street, Suite 175, Tampa, Florida, 33609. Effective delivery date for notices sent to Proximiti shall be on the date received.

The terms, conditions and warranties contained in these Terms of Use that by their sense and context are intended to survive the performance hereof by either or both Proximiti and Customer shall so survive the completion of performance, cancellation or termination of the Proximiti MessagePro service.

If you know or suspect violation of any aspect of these Terms of Use or any application law or regulation in association with the Proximiti MessagePro services, please notify us at: legal@proximiti.com.