



**C L E A R   R A T E**

## **CLEAR RATE COMMUNICATIONS WIRELESS CUSTOMER AGREEMENT**

This Customer Agreement contains important information regarding your Clear Rate Communications Wireless service. Your Customer Agreement with Clear Rate includes, but is not limited to the terms of your individual service plan (including those outlined below and in your individual plan) and this Customer Agreement, as may be amended by Clear Rate, from time to time. Carefully read this Customer Agreement, as it includes Clear Rate's ability to make changes to your Service or this Customer Agreement's terms, Clear Rate's liability in the unlikely event that you have any issues with your service, and how and where any disputes between us must be resolved. If you are signing up for Service for a minimum contract term, you'll also find information about that contract term and what happens if you cancel a line of Service early or don't pay on time, including the possibility of an early termination fee you may owe Clear Rate Clear Rate.

### **1. YOUR CLEAR RATE COMMUNICATIONS WIRELESS SERVICE**

Your Clear Rate Communications Wireless Service terms and conditions are part of this Customer Agreement. Your Plan will include monthly allowances and features, where you can use them (your "Coverage Area"), and any monthly and pay-per-use charges. You can also subscribe to several Optional Services, like data add-on packages. Together, your Plan and any Optional Services that you select are your Service. Additional terms and conditions for your Service can be in any individual service plan you agree to when you activate, or online at [clearrate.com](http://clearrate.com).

### **2. ACCEPTANCE OF THE CLEAR RATE COMMUNICATIONS WIRELESS CUSTOMER AGREEMENT**

You accept this Customer Agreement by:

- Agreeing in writing, by email, over the phone, or in person;
- Opening a package that says you are accepting by opening it; or
- Activating your Service.

When you accept this Customer Agreement, you are representing that you are at least 18 years old and are legally able to accept an agreement. If you are accepting for an organization, are representing that you are authorized to bind that organization, and where the context requires, "you" means the organization. By accepting you are agreeing to every provision of this Customer Agreement whether or not you have to read it.

If you change your device or receive a Service promotion, you may be required to change your Plan to one that Clear Rate is currently offering at that time.

### **3. CUSTOMER SERVICE**

Clear Rate Customer Service is available at (877) 877-4799, Monday through Friday from 7:00 a.m. Eastern through 10:00 p.m. Eastern and on Saturday from 9:00 a.m. Eastern through 5:00 p.m. Eastern. Clear Rate Customer Support is closed on Sundays. If need to report a lost or stolen phone, you may do so 24 hours a day at (866) 366-4665 or by sending an e-mail to <repair@clearrate.com>.

Please note that dialing 6-1-1 will **NOT** connect you to Clear Rate's customer service line and may result in your incurring additional charges.

### **4. PERMITTED USES**

Unlimited voice Services are provided primarily for reasonably uninterrupted live dialog between two individuals. If your use of unlimited voice Services for conference calling or call forwarding exceeds 750 minutes per month, Clear Rate may, at its option, terminate your Service or change your plan to one with no unlimited usage components.

Clear Rate's wireless data services are intended to be used for the following permitted activities: (i) web browsing; (ii) email; and (iii) intranet access if permitted by your rate plan (for example, access to corporate intranets, email, and individual productivity applications like customer relationship management, sales force, and field service automation); (d) uploading and downloading applications and content to and from the Internet or third-party application stores, and (e) using applications and content without excessively contributing to network congestion.

### **5. PROHIBITED USES**

Clear Rate may, in its sole discretion, terminate your voice service or change your plan to one with no unlimited voice usage if it reasonably determines or has a reasonable basis to believe that you are engaged in any of the following prohibited activities: (1) maintaining an open line of communication to provide dispatch or monitoring services; (2) accessing or providing access to multi-party chat line services; (3) using the Service with a SIM box or SIM server network to generate or simulate voice calls; (4) transmitting broadcasts; (5) transmitting pre-recorded materials; (6) telemarketing; (7) initiating autodialed calls; (8) initiating any other calls or connections that are not for the purposes of reasonably uninterrupted live dialog between individuals; (9) using the Service for any fraudulent purpose; (10) reselling or rebilling the Service either alone or as part of any other good or service; or (11) any abusive use of our network or Services.

Clear Rate's wireless data services may not be used in any manner that defeats, obstructs or penetrates, or attempts to defeat, obstruct or penetrate the security measures of Clear Rate's wireless network or systems, or another entity's network or systems; that accesses, or attempts to access without authority, the accounts of others; or that adversely affects the ability of other people or systems to use either Clear Rate's wireless services or other parties' Internet-based resources. For example, this includes, but is not limited to, malicious software or "malware" that is designed, intentionally or unintentionally, to infiltrate a network or computer system such as spyware, worms, Trojan horses, rootkits, and/or

crimeware; "denial of service" attacks against a network host or individual user; and "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk e-mail).

Clear Rate's wireless data services may not be used in any manner that has the effect of excessively contributing to network congestion, hindering other customers' access to the network, or degrading network performance by maintaining a sustained and continuous wireless data service connection or active wireless Internet connection. For example, this includes, but is not limited to, server devices or host computer applications such as continuous Web camera posts or broadcasts, automatic data feeds, or automated machine-to-machine connections; "auto-responders," "cancel-bots," or similar automated or manual routines that generate excessive amounts of traffic or that disrupt user groups or email use by others; use of the service as a substitute or backup for private lines or full-time or dedicated data connections; peer-to-peer (P2P) file sharing services; and software or other devices that maintain continuous active Internet connections when a connection would otherwise be idle or any "keep alive" functions.

## **6. YOUR PRIVACY**

While Clear Rate collects personal information about you, such as information about the quantity, technical configuration, type, destination and amount of your use of our telecommunications services, that information is solely used to improve our operation and network. Clear Rate does not sell personal information about you and Clear Rate only share such information with our network partners. By entering this Customer Agreement, you consent to our data collection, use and sharing practices. If there are additional specific advertising and marketing practices for which your consent is necessary, Clear Rate will seek your consent (such as through the privacy-related notices you receive when you purchase or use our products and services) before engaging in those practices. If you subscribe to Service for which usage charges are billed at the end of the billing period ("Postpay Service"), Clear Rate may investigate your credit history at any time and share credit information about you with credit reporting agencies. If you would like the name and address of any credit agency that gives us a credit report about you, Clear Rate will make such available upon request.

Many services and applications offered through your device may be provided by third parties. Before you use, link to or download a service or application provided by a third party, you should review the terms of such service or application and applicable privacy policy. Personal information you submit on those services and applications may be read, collected or used by the service or application provider and/or other users of those forums. Clear Rate has no control over those services or applications.

You consent to allow Clear Rate and anyone who collects on our behalf to contact you about your account status, including past due or current charges, using prerecorded calls, email and calls or messages delivered by an automatic telephone dialing system to any wireless phone number or email address you provide. Clear Rate will treat any email address you provide as your private email that is not accessible by unauthorized third parties. Unless you notify us that your wireless service is based in a different time zone,

calls will be made to your cellular device during permitted calling hours based upon the time zone affiliated with the mobile telephone number you provide.

**7. CANCELLING POSTPAY SERVICE BEFORE THE END OF YOUR CONTRACT TERM.**

If you have signed up for Postpay Service, you have agreed to subscribe to a line of Service either on a month-to-month basis or for a minimum contract term, as shown on your receipt or order confirmation. (If your Service is suspended without billing, that time doesn't count toward completing your contract term.) Upon completion of your contract term, you will automatically become a customer on a month-to-month basis for that line of Service. If you cancel a line of Service, or if Clear Rate cancels it for good cause, during a contract term, you will have to pay an Early Termination Fee. Cancellations will become effective on the last day of that month's billing cycle, and you are responsible for all charges incurred until then. If you purchased your wireless device from a third-party, you should check whether they charge a separate termination fee.

Clear Rate Service that includes a telephone from Clear Rate also has an applicable Early Termination Fees. If you cancel a line of Service, or if Clear Rate cancels it for good cause, during a contract term, you will be responsible for the amortized cost of that telephone device. To ascertain your individual Early Termination Fee, please call a Clear Rate Customer Service Representative.

**8. TRANSFERRING YOUR WIRELESS PHONE NUMBER BETWEEN CARRIER?**

You may be able to transfer, or "port", your wireless phone number to Clear Rate or another carrier. If you port a number away from Clear Rate, Clear Rate will treat it as though you asked us to cancel your Service for that number. After the porting is completed, you will not be able to use Clear Rate service for that number, but you'll remain responsible for all fees and charges through the end of that billing cycle, just like any other cancellation. If you are a Prepaid customer, you will not be entitled to a refund of any balance on your account. If you port a number to Clear Rate, please be aware that Clear Rate may not be able to provide some services right away, such as 911 location services. You do not have any rights to your wireless phone number, except for any right you may have to port it.

**9. DIRECTORY INFORMATION**

Clear Rate will not publish your wireless phone number in any available directory or give it to anyone for that purpose, unless you ask us to.

**10. ADDING AUTHORIZED USERS TO YOUR POSTPAY ACCOUNT**

You can appoint someone to manage your Postpay account for a single transaction, or until you tell us otherwise. The person you appoint will be able to make changes to your account, including adding new lines of Service, buying new wireless devices, and extending your contract term. Any changes that person makes will be treated as modifications to this Customer Agreement. To protect your privacy, you will have to let Clear Rate Customer

Service know who you are authorizing to make changes to your account before they can do so.

## **11. CHANGES TO THIS CUSTOMER AGREEMENT**

Clear Rate may change prices or any other term of your Service or this Customer Agreement at any time. Clear Rate will provide notice to you before making any such changes, including written or e-mail notice if you have Postpay Service. If you use your Service after the change takes effect, that will mean you have accepted the change. If you are a Postpay customer and a change to your Plan or this Customer Agreement has a material adverse effect on you, you can cancel the line of Service that has been affected within 60 days of receiving the notice with no early termination fee if Clear Rate fail to negate the change after you notify us of your objection to it. Notwithstanding this provision, if Clear Rate make any changes to the dispute resolution provision of this Customer Agreement, such changes will not affect the resolution of any disputes that arose before such change.

## **12. YOUR WIRELESS DEVICE**

If you are provided a wireless device by Clear Rate, you must immediately inspect that device upon receipt. If the device is not what you were expecting or arrives damaged, you must call Clear Rate Customer Service at (877) 877-4799 within 48 hours of receipt of that device. Your failure to call to report a problem with a newly received device within 48 hours of receipt will be deemed an acceptance of that device.

Your wireless device must comply with Federal Communications Commission regulations, be certified for use on our network, and be compatible with your Service. You may not modify your device in any way, including the use or addition of any regeneration equipment or similar mechanism (for example a repeater) to originate, amplify, enhance, retransmit, or regenerate a transmitted signal. Please be aware that Clear Rate may change your wireless device's software, applications or programming remotely, without notice. This could affect your stored data, or how you've programmed or use your wireless device. By activating Service that uses a SIM (Subscriber Identity Module) card, you agree that Clear Rate owns the intellectual property and software in the SIM card, that Clear Rate may change the software or other data in the SIM card remotely and without notice, and that Clear Rate may utilize any capacity in the SIM card for administrative, network, business and/or commercial purposes. If you bought a wireless device for Postpay Service from Clear Rate that doesn't use a SIM card, and you want to reprogram it for use with another wireless network, the default programming code is set to "000000" or "123456." But please note that your wireless device may not work with another wireless network, or the other wireless carrier may not accept your wireless device on its network. If you have Pre-paid Service, your device cannot be used with any other service until it is first activated on Prepaid Service and the first monthly payment is made.

### **13. WHERE AND HOW DOES CLEAR RATE WIRELESS SERVICE WORK?**

Wireless devices use radio transmissions. You can only use your device when you are in range of a transmission signal. Even within your Coverage Area, there are many factors that can affect the availability and quality of your Service, including network capacity, your device, terrain, buildings, foliage and weather.

### **14. UNINTENDED CHARGES**

You agree to pay all access, usage and other charges that you or any other user of your wireless device incurred. If multiple wireless devices are associated with your account, you agree to pay all charges incurred by users of those wireless devices. Many services and applications are accessible on or through wireless devices, including purchases of games, movies, music and other content. Some of these services are provided by Clear Rate. Others are provided by third parties that may offer the option to bill the charges to your Clear Rate bill or other methods of payment. Charges may be one-time or recurring. For services provided by Clear Rate, the amount and frequency of the charges will be disclosed to you or the person using your device or a device associated with your account at the time a purchase is made. If the purchaser chooses to have the charges billed to your account, such charges will become part of the amount due for that billing cycle. Clear Rate offers tools to block or restrict these services, and to block all billing for third-party services on your Clear Rate bill, please contact Clear Rate Customer Service for assistance.

If you are on a Clear Rate Plan that includes a limited data usage, please note that applications loaded on your device may incur data usage in the background when you are not actively using those applications; when you are using other applications, and when the device is in standby or sleep mode. For example, these can include push/pull applications such as e-mail, sports score applications, and social media applications.

While Clear Rate's plans include unlimited long distance calling, such is restricted to the Continental United States. Additional per call charges will apply to calls from and to areas outside the Continental United States, including international. While you can have Clear Rate restrict your device to prevent long distance calling, such restriction will not prevent calls to locations that are members of the North American Numbering Plan ("NANP"). For locations that are part of the NANP, the international dialing feature code may not have to be added in order you to have the ability to make calls from and to such locations. These calls typically include, but are not limited to, calls to and from Alaska, Hawaii, Canada, Puerto Rico, and various Caribbean nations. Additional charges will apply to these calls, on a per call basis. For a complete list of these locations, please contact Clear Rate Customer Service.

There will be additional charges for roaming outside of the Continental United States. These additional roaming and per call charges also apply in Canada.

## **15. CLEAR RATE CHARGES**

For Postpay Service, Clear Rate's charges include Federal Universal Service, Regulatory and Administrative Charges, and Clear Rate may also include other charges related to our governmental costs. We set these charges; they aren't taxes, they aren't required by law, they are not necessarily related to anything the government does, they are kept by us in whole or in part, and the amounts and what they pay for may change.

## **16. GOVERNMENT TAXES, FEES AND SURCHARGES**

You must pay all taxes, fees and surcharges set by federal, state and local governments. Please note that Clear Rate may not always be able to notify you in advance of changes to these charges.

## **17. ROAMING CHARGES**

You're "roaming" whenever your wireless device uses a transmission site outside your Coverage Area or uses another company's transmission site. Sometimes roaming happens even when you are within your Coverage Area. There may be higher rates and extra charges (including charges for long distance, tolls or calls that don't connect) for roaming calls, depending on your Plan.

## **18. CALCULATION OF CHARGES**

For charges based on the amount of time used or data sent or received, we'll round up any fraction to the next full minute or, depending on how you are billed for data usage, the next full megabyte or gigabyte. For outgoing calls, usage time starts when you first press Send or the call connects to a network, and for incoming calls, it starts when the call connects to a network (which may be before it rings). Usage time may end several seconds after you press End or after the call disconnects. For calls made on our network, Clear Rate charge only for calls that are answered, including by machines. For Postpay Service, usage cannot always be processed right away and may be included in a later bill, but the usage will still count towards your allowance for the month when the Service was used.

## **19. DISPUTING CHARGES**

If you are a Postpay customer, you can dispute your bill within 180 days of receiving it, but unless otherwise provided by law or unless you are disputing charges because your wireless device was lost or stolen, you still have to pay all charges until the dispute is resolved. If you are a Prepaid customer, you can dispute a charge within 180 days of the date the disputed charge was incurred. **YOU MAY CALL US TO DISPUTE CHARGES ON YOUR BILL OR ANY SERVICE(S) FOR WHICH YOU WERE BILLED, BUT IF YOU WISH TO PRESERVE YOUR RIGHT TO BRING LEGAL ACTION REGARDING SUCH DISPUTE, YOU MUST WRITE TO US AT THE CUSTOMER SERVICE ADDRESS ON YOUR BILL WITHIN THE 180-DAY PERIOD MENTIONED ABOVE. IF YOU DO NOT NOTIFY US IN WRITING OF SUCH DISPUTE WITHIN THE 180-DAY PERIOD, YOU WILL HAVE WAIVED YOUR**

RIGHT TO DISPUTE THE BILL OR SUCH SERVICE(S) AND TO BRING AN LEGAL ACTION REGARDING ANY SUCH DISPUTE.

## **20. PAYMENTS**

If you are a Postpay customer and Clear Rate does not get your payment on time, Clear Rate will charge you a late fee of 1.5% of your total monthly bill, if allowed by law in the state of your billing address. Late fees are part of the rates and charges you agree to pay us. If you fail to pay on time and Clear Rate refers your account(s) to a third party for collection, a collection fee will be assessed and will be due at the time of the referral to the third party. The fee will be calculated at the maximum percentage permitted by applicable law, not to exceed 18 percent. We may require a deposit at the time of activation or afterward, or an increased deposit. We'll pay simple interest on any deposit at the rate the law requires. We may apply deposits or payments in any order to any amounts you owe Clear Rate on any account. If your final credit balance is less than \$1, Clear Rate will refund it only if you ask. If your service is suspended or terminated, you may have to pay a fee to have service reactivated.

If you are a Prepaid customer, you may replenish your balance at any time before the expiration date by providing Clear Rate with another payment. Your balance may not exceed \$1,000 and you may be prevented from replenishing if your balance reaches \$1,000. Clear Rate will suspend service when your account reaches the expiration date and any unused balance will be forfeited.

Clear Rate may charge you up to \$25 for any returned check.

## **21. LOST OR STOLEN WIRELESS DEVICES**

Please notify Clear Rate right away if your device is lost or stolen. If notified, Clear Rate can suspend your Service to keep someone else from using the device. If you are a Postpay customer and your wireless device is used after the loss or theft but before you report it, and you want a credit for any charges for that usage, Clear Rate will review your account activity and any other information you would like us to consider. You may be held responsible for the charges if you delayed reporting the loss or theft without good reason, but you don't have to pay any charges you dispute while they are being investigated. If Clear Rate has not given you a courtesy suspension of recurring monthly charges during the past year, we'll give you one for 30 days or until you replace or recover your wireless device, whichever comes first.

You are responsible for the replacement cost of your device if it is lost or stolen. If you do not replace, or have Clear Rate replace, your device in a timely manner, your contract will be suspended and the term extended from the date you notified Clear Rate of the loss, for any period you are without a device and service.



## 22. INCLUDED DEVICE INSURANCE

Clear Rate offers a Telephone Device Insurance Policy for loss or damage of a Clear Rate provided device. Device Insurance is provided in two tiers:

|               | <b>Replacement</b>                      | <b>Deductible</b> |
|---------------|---|-------------------|
| <b>Tier 1</b> | Galaxy S5, iPhone 5, 5s, ZTE Cymbal LTE | \$10              |
| <b>Tier 2</b> | Galaxy S6, iPhone 6                     | \$30              |

Replacement device will be provided within two (2) business days. Clear Rate cannot guarantee that a replacement device will be the exact same model as the lost or damaged device. Customers will be limited to one claim during any twelve (12) month period with a maximum value of \$600 per occurrence. For any single claim, the limit of liability under this Plan is the lesser of (1) cost of authorized repairs, (2) cost of product replacement with a product of like kind and quality that performs to the factory specifications of the original product, (3) cost of reimbursement for repairs or replacement authorized in advance by Us, or (4) the price that you originally paid for the product. UNDER NO CIRCUMSTANCES SHALL OUR LIABILITY UNDER THIS PLAN EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT COVERED. In the event that the total of any and all authorized repairs exceeds the purchase price paid for the product, or we replace the product, we shall have satisfied all of our obligations under this Plan.

This Plan covers parts and labor costs to repair your product in the event your product experiences a breakdown including those due to unintentional and accidental damage from handling (ADH), such as drops, liquid spills or cracks that arise from your normal daily usage of the product as the manufacturer indicates, which is not concurrently covered under any other warranty or service plan or any insurance policy. Breakdowns manifesting from power surges or ADH are covered from date of purchase. We may replace your product or we may at our discretion issue you a gift card or check for the original purchase price of that product, including taxes, as indicated on your sales receipt.

**WHAT IS NOT COVERED:** (1) incidental or consequential damages or pre-existing conditions; (2) damage from accident, abuse, misuse, introduction of foreign objects into the product, unauthorized product modifications or alterations, or failure to follow the manufacturer's instructions; (3) accessories and supplies, including but not limited to: batteries, antennas, cartridges, styluses, records, audio/video disks, tapes, computer software or disks, print elements, external power supplies; (4) loss or damage due to acts of god; (5) preventative maintenance; (9) damage which is not reported within 30 days after expiration of this plan; (10) this plan does not cover loss or damage to stored data, repairs related to installed software, viruses, or hardware which is added after the original purchase; (13) any damage to recording media including any software programs, data, or configuration/setup information resident on any mass storage devices such as hard drives, as a result of the malfunctioning or damage of an operating or non-operating part, or as a result of any repairs or replacement under this plan; (14) products with removed or altered serial numbers; (15) loss or corruption of data and/or the restoration of software and operating systems; (16) any failures, parts and/or labor costs or other expenses incurred as a result of a manufacturer's recall, regardless of the manufacturer's ability to pay for such

repairs; (17) cosmetic damage such as scratches, peelings, or dents that do not impede the functionality of the product; and (18) loss or damage due to war, invasion or act of foreign enemy, hostilities, civil war, rebellion, riot, strike, labor disturbance, lockout or civil commotion.

## **23. CLEAR RATE'S RIGHTS TO LIMIT OR END SERVICE OR END THIS CUSTOMER AGREEMENT**

Clear Rate can, without notice, limit, suspend or end your Service or any agreement with you for any good cause, including, but not limited to: (1) if you: (a) breach this Customer Agreement; (b) resell your Service; (c) use your Service for any illegal purpose, including use that violates trade and economic sanctions and prohibitions promulgated by any US governmental agency; (d) install, deploy or use any regeneration equipment or similar mechanism (for example, a repeater) to originate, amplify, enhance, retransmit or regenerate an RF signal without our permission; (e) steal from or lie to us; or, if you are a Postpay customer; (f) do not pay your bill on time; (g) incur charges larger than a required deposit or billing limit, or materially in excess of your monthly access charges (even if Clear Rate has not yet billed the charges); (h) provide credit information Clear Rate cannot verify; or (i) are unable to pay us or go bankrupt; or (2) if you, any user of your device or any line of service on your account, or any account manager on your account: (a) threaten, harass, or use vulgar and/or inappropriate language toward our representatives; (b) interfere with our operations; (c) "spam," or engage in other abusive messaging or calling; (d) modify your device from its manufacturer's specifications; or (e) use your Service in a way that negatively affects our network or other customers. We can also temporarily limit your Service for any operational or governmental reason.

## **24. SPECIAL DISCOUNTS**

If you are a Postpay customer, you may be eligible for a discount if you are and remain affiliated with an organization that has an agreement with us. Unless your discount is through a government employee discount program, Clear Rate may share certain information about your Service (including your name, your wireless telephone number and your total monthly charges) with your organization from time to time to make sure you are still eligible. We may adjust or remove your discount according to your organization's agreement with us, and remove your discount if your eligibility ends or your contract term expires. In any case, this won't be considered to have a material adverse effect on you.

## **25. DISCLAIMER OF WARRANTIES**

Clear Rate makes no representations or warranties, express or implied, including, to the extent permitted by applicable law, any implied warranty of merchantability or fitness for a particular purpose, about your Service, your wireless device, or any applications you access through your wireless device. We do not warrant that your wireless device will work perfectly or will not need occasional upgrades or modifications, or that it will not be negatively affected by network-related modifications, upgrades or similar activity. If you download or use applications, services or software provided by third parties (including voice applications), 911 or E911, or other calling functionality, may work differently than

services offered by us, or may not work at all. Please review all terms and conditions of such third-party products. Clear Rate is not responsible for any third-party information, content, applications or services you access, download or use on your device. You are responsible for maintaining virus and other Internet security protections when accessing these third-party products or services.

## **26. WAIVERS AND LIMITATIONS OF LIABILITY**

Both Clear Rate and you agree to limit claims against each other for damages or other monetary relief to direct damages. This limitation and waiver will apply regardless of the theory of liability. That means neither of us will try to get any indirect, special, consequential, treble or punitive damages from the other. This limitation and waiver also applies if you bring a claim against one of Clear Rate's suppliers, to the extent Clear Rate would be required to indemnify the supplier for the claim. You agree that Clear Rate is not responsible for problems caused by you or others, or by any act of God. You also agree Clear Rate is not liable for missed or deleted voice mails or other messages, or for any information (like pictures) that gets lost or deleted if Clear Rate performs any work on your device. If another wireless carrier is involved in any problem (for example, while you are roaming), you also agree to any limitations of liability that it imposes.

You agree to be solely responsible for all subscription fraud and/or system fraud incurred as a result of activity on the System caused by your device. Additionally, you will be responsible for usage on lost or stolen Equipment that you fail to deactivate. You further agree that if You or someone using your device, causes Clear Rate losses, damages, or other monetary penalties including fees or penalties levied by any regulatory agency, you will bear all costs related to the fraud caused by you or your device, including attorney's fees and any actually incurred expenses in relation to your activity..

## **27. DISPUTE RESOLUTION**

While Clear Rate hopes there is never a dispute between itself and you, our customer, this section sets forth how any dispute can be resolved.

YOU AGREE THAT IN THE EVENT OF A DISPUTE THAT CANNOT BE SETTLED BY THROUGH NEGOTIATION, THE PARTIES AGREE TO SUBMIT THE MATTER TO A COURT OF APPROPRIATE JURISDICTION FOR OAKLAND COUNTY, MICHIGAN. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY AND ANY RIGHT TO PURSUE ANY CLAIM OR ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. ALL NOTICES UNDER THIS AGREEMENT SHALL BE IN WRITING AND SHALL BE DEEMED TO HAVE BEEN DULY GIVEN WHEN RECEIVED, IF PERSONALLY DELIVERED; WHEN RECEIPT IS ELECTRONICALLY CONFIRMED, IF TRANSMITTED BY FACSIMILE OR E-MAIL; THE DAY AFTER IT IS SENT, IF SENT FOR NEXT DAY DELIVERY BY RECOGNIZED OVERNIGHT DELIVERY SERVICE; AND UPON RECEIPT, IF SENT BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT

REQUESTED. CUSTOMER RECOGNIZES AND AGREES THAT THE WARRANTY, LIABILITY AND REMEDY DISCLAIMERS AND LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED-FOR BASIS OF THIS AGREEMENT, THAT WITHOUT, CLEAR RATE WOULD NOT ENTER INTO THIS AGREEMENT, AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN THE DECISION BY CUSTOMER TO ENTER INTO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS PARAGRAPH MAY BE FILED TO SHOW WRITTEN CONSENT TO JURISDICTION, VENUE, AND TRIAL BY THE COURT.

## **28. ABOUT THIS CUSTOMER AGREEMENT**

If Clear Rate does not enforce its rights under this Customer Agreement in one instance, that doesn't mean Clear Rate won't or can't enforce those rights in any other instance. You cannot assign this Customer Agreement or any of your rights or duties under it without Clear Rate's permission. However, Clear Rate may assign this Customer Agreement or any debt you owe to Clear Rate us without notifying you. If you are a Postpay customer, please note that many notices Clear Rate send to you will show up as messages on your monthly bill. If you have online billing, those notices will be deemed received by you when your online bill is available for viewing. If you get a paper bill, those notices will be deemed received by you three days after Clear Rate mail the bill to you. If Clear Rate sends other notices to you, they will be considered received immediately if Clear Rate sends them to your wireless device, or to any email or fax number you've given us, or after three days if Clear Rate mail them to your billing address. If you need to send notices to us, please send them to the customer service address on your latest bill.

If you are a Prepaid customer and Clear Rate sends notices to you, they will be considered received immediately if Clear Rate sends them to your wireless device or to any email or fax number you've given us, or if Clear Rate posts them as a precall notification on your Service, or after three days if Clear Rate mail them to the most current address Clear Rate have for you.

If any part of this Customer Agreement, is ruled invalid, that part may be removed from this Customer Agreement and the remainder of the Customer Agreement remains enforceable.

This agreement and the documents it incorporates form the entire Customer Agreement between you and Clear Rate. You cannot rely on any other documents, or on what is said by any Sales or Customer Service Representatives, and you have no other rights regarding Service or this Customer Agreement. This agreement is not for the benefit of any third party except our parent companies, affiliates, subsidiaries, agents, predecessors and successors in interest. Except where we've agreed otherwise elsewhere in this Customer Agreement, this Customer Agreement and any disputes covered by it are governed by federal law and the laws of the state encompassing the area code of your wireless phone number when you accepted this Customer Agreement, without regard to the conflicts of laws and rules of that state.