



**PLEASE NOTE YOUR ORGANIZATION MUST BE A NON-PROFIT ORGANIZATION OR EDUCATIONAL INSTITUTION IN ORDER TO ENTER INTO THIS AGREEMENT.**

### Organization Information

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

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Website: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Type of Organization: (Check one) ☐ Nonprofit ☐ Educational Entity ☐ Government ☐ Social Welfare ☐ Other

If "Other," please describe: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_ IRS Exemption Code: \_\_\_\_\_

### Terms and Conditions

**PLEASE SIGN BELOW AND FAX THE SIGNED AGREEMENT TO  
MOBILE BEACON AT (401) 934-0505.**

By signing below, you, as the Grantee, agree to the terms and conditions of this Agreement governing your use of the Mobile Broadband Service and the Provided Devices (as defined in Section 1 below). You represent and warrant that you are entering into this Agreement on behalf of a public school or state approved non-public school or nonprofit organization and that you have the authority to bind that organization to this Agreement as of the Effective Date set forth below.

Grantee (Organization accepting the Grant): \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

**1. Important - Read Carefully:** This Customer Agreement ("Agreement") is a legal agreement between the entity listed above ("Customer" or "you") and Mobile Beacon (referred to herein as "MOBILE BEACON" or "Mobile Beacon") for access to the mobile broadband service provided by Clearwire Corporation and Clearwire Spectrum Holdings LLC (collectively "Clearwire"), and may include associated media, equipment, devices, printed or electronic documentation (collectively the "Service"). By your signature on this Agreement or by accessing or using the Service, you agree to be bound by the terms of this Agreement, without limitation or qualification. If you do not agree to the terms of this Agreement, you may not access or use the Service.

## **2. Fees and Payment.**

- a. **Service.** The service fee ("Service Fee") for the Service is set forth in the order that accompanies this Agreement ("Order"). The first 30 calendar days that the Service is activated during your "Initial Subscription Term" (as defined in the Order) is the "Trial Period". If you would like to cancel the service, you must do so during the Trial Period. Please refer to Section 7 of this Agreement regarding termination and renewal of your Subscription Term.
- b. **Payment Method.** The Service Fee is due and payable upon activation of the Service. You may pay the Service Fee by check (payable to Mobile Beacon) or credit card according to your Order.
- c. **Changes to Service Fees.** The Service Fee is subject to change by Mobile Beacon following your Initial Subscription Term at any time following thirty (30) days written notice. Please refer to Section 7(c) of this Agreement regarding the procedure for paying for Renewal Subscription Terms.
- d. **Equipment.** If you selected any equipment ("Equipment"), you are required to pay the applicable fee for the Equipment upon acceptance of this Agreement. If you cancel this Agreement within the Trial Period and return all Equipment to Mobile Beacon according to the instructions in this paragraph, Mobile Beacon will issue you a credit in the amount you paid for the Equipment upon receipt of your Equipment in good condition. In order to return the Equipment and qualify for a refund as described in the preceding sentence, you must first call us at (401) 934-0500 to request a return authorization number. We will then send you a return label, which you must use to return the Equipment (mail or shipment charges will be at your own expense). If you do not cancel the Agreement within the Trial Period, you are entitled to keep the Equipment and you are deemed the owner thereof.

**3. Hardware Requirements; Activation of Service:** Requirements for modem and hardware compatibility with Clearwire's WiMAX network are set forth on <http://www.clear.com>. Mobile Beacon is not responsible for any failure of your modem to function properly with the Service. In addition, you are responsible for ensuring that all of your hardware meets the minimum technical requirements posted on Clearwire's website located at <http://www.clear.com>. If you purchase a modem, you should follow the process for activation set forth in the Quick Start Guide provided with the modem. Your modem will be activated and authenticated by Clearwire as described therein.

## **4. Use of Service.**

- a. **License and Use.** By entering into this Agreement, you are granted a license to access and use the Service, and to allow your Permitted Users (as defined below) to use the Service, during the term of this

Agreement. Your use and your Permitted Users' use of the Service are subject to the Clearwire Acceptable Use Policy ("AUP"), a copy of which is available on the Clearwire Website (currently located at [www.clear.com/legal/aup](http://www.clear.com/legal/aup)), and all users of the Service must comply with such AUP, as well as all applicable laws and regulations, at all times in their use of the Service. The Service may be subject to usage limits established by Clearwire, which are not controlled by Mobile Beacon. Once the status of a Permitted User changes so that such individual is no longer a Permitted User (for example, once an employee leaves your organization), Customer shall ensure that such individual no longer makes use of, or accesses, the Service and shall ensure that such individual promptly returns all Equipment and Security Credentials (as defined below) to Customer. You are not granted any rights to any firmware or software under this Agreement. All rights not expressly granted in this Agreement are reserved by Mobile Beacon. For the purposes of this Agreement, "Permitted Users" means any then-current employees or independent contractors of the Customer, or with regard to any educational institutions, any students, faculty, administrators and staff, while such persons are employed by or involved with the Customer, but not thereafter.

**b. Security Credentials.** Security Credentials that are provided to you in order for a Permitted User to access and use the Service may not be shared with any individual other than such Permitted User. Customer is responsible for any access or use of the Service with any Security Credential that is provided to you. You agree to notify Mobile Beacon immediately of any unauthorized use of the Service, suspected security breach or suspected loss or theft of a Security Credential. Security Credentials that are assigned to you to administer the Service shall not be assigned to any other person, device or equipment. Your Security Credentials for the Service may be changed by Clearwire at any time. Clearwire will assign a new IP address each time the Service is accessed by you or a Permitted User. "Security Credentials" may include, but not be limited to, login information such as the user's personal identification code ("User ID"), password, digital certificate and security token, which token will provide such individual a new access number periodically.

**c. Limitations.** The Service is not available in all locations, and you will only be able to access the Service when within the operating range of the Clearwire network, which may change from time to time in the sole discretion of Clearwire. You understand that the Service may be unavailable from time to time due to maintenance of the Service, emergencies, or other factors, access to the Service may be interrupted or refused, and performance of the Service may be limited or curtailed from time to time. Mobile Beacon has no liability with regard to any failure or lack of performance of the Service. The Service and Equipment may not function in the event of a power failure or disruption, and you may be required to reset or reconfigure your modem or other hardware in order to use the Service thereafter.

**d. Prohibitions.** You and your Permitted Users are prohibited from reselling the System, permitting third parties to access the System, granting any sublicense, distributing or transmitting the Service in whole or in part, or using the Service for purposes other than your internal business purposes. If your organization is a membership organization (e.g. an association with various non-profit organizations as members), you may not sell or otherwise transfer the Service to your members, but may use the Service only for your organization's administrative and/or programmatic activities. You and your Permitted Users are further prohibited from engaging in any activities with regard to the Service that would violate the AUP, including, without limitation, engaging in any fraudulent, unlawful, harassing, or abusive activities, using the Service in a manner that could damage any property of any other party or otherwise interfering with the Service, or violating any federal, state, or local law, regulation or rule, or the rights of any third party. You and your Permitted Users' use of the Service is subject to immediate suspension or termination without notice if any Mobile Beacon Party (as defined in Section 9 below) believes you or a Permitted User has engaged in any prohibited activity.

- 5. Service Quality and Maintenance:** The speed and bandwidth available to each computer or device accessing the Service may vary for a variety of reasons. Clearwire reserves the right to engage in

network management for the Service, including without limitation taking various measures to prevent or eliminate malicious traffic patterns and preventing the distribution of viruses or other malicious code, as provided in the AUP. In addition, Clearwire must perform maintenance on the Service, which may include planned or unplanned interruptions of the Service. You acknowledge and agree that the Mobile Beacon Parties will not be responsible for any losses or damages suffered by you as a result of any Service interruptions. You acknowledge that the Service may not be available in all areas, and even within coverage areas service availability, quality, signal strength and network speeds may vary, be lower than advertised or be insufficient for use of the Service. No credit or adjustment will be made for interruptions or degradations of the Service except as agreed by Mobile Beacon or as required by applicable law.

- 6. Modification and Termination of Service:** The Mobile Beacon Parties reserve the right at any time to modify, edit, delete, suspend or discontinue, temporarily or permanently the Service, the Support Services (as defined in Section 13 below) or any Mobile Beacon Party's website (or any portion thereof) with or without notice. The Mobile Beacon Parties will not be liable to you or to any third party for any such modification, editing, deletion, suspension or discontinuance.
- 7. Term and Termination:** This Agreement will commence on the date you have entered into this Agreement (the "Effective Date") and will continue for the Initial Subscription Term set forth in the Order.

  - a. Termination During Trial Period.** You may terminate this Agreement without penalty during the Trial Period by calling (401) 934-0500 or sending an email to [trial@mobilebeacon.org](mailto:trial@mobilebeacon.org) with "cancel account" in the subject line. If you cancel during the Trial Period, we will refund the Service Fee by the same payment method that you used to pay the Service Fee. After the Trial Period, the Service Fee is non-refundable.
  - b. Renewal.** Upon the conclusion of the Initial Subscription Term, this Agreement will automatically renew for subsequent terms as specified in the Order or as otherwise offered by Mobile Beacon to you in writing (each a "Renewal Subscription Term") unless you inform Mobile Beacon in writing at least fifteen (15) days prior to the end of your then-current Subscription Term that you do not wish to renew this Agreement. The Initial Subscription Term and the Renewal Subscription Term are referred to collectively in this Agreement as the "Subscription Term."
  - c. Payment of Service Fee for Renewal Subscription Terms.** We will attempt to contact you by a telephone call (to the last telephone number you provided to us), mail (to the last mailing address provided to us), or email (to the last e-mail address provided to us) to inform you that your Subscription Term is drawing to a close and to confirm that you wish to renew the Service for another year. If you inform us in writing that you wish to terminate your Service at the end of the current Subscription Term, we will do so. If you have chosen to have us send you an invoice for the Service Fee for the Renewal Subscription Term, and payment is not received by the due date set forth in the invoice, Mobile Beacon will notify you by sending an e-mail to the last email address you provided to us, and if payment is not received within ten (10) days thereafter, Mobile Beacon reserves the right to immediately suspend or terminate your use of the Service.
  - d. Termination by Mobile Beacon.** Mobile Beacon has the right to terminate this Agreement immediately at any time with or without cause, including without limitation for violations of the AUP or for repeat infringers of the copyrights of others. If Mobile Beacon terminates this Agreement without cause more than one month prior to the expiration of your then-current Subscription Term, Mobile Beacon will issue a pro-rata refund of the Service Fee as soon as administratively possible for the remainder of the applicable Subscription Term.
  - e. Effect of Termination.** Upon termination, you will no longer be able to access the Service. Sections 4d, 6, 7e, 8, 9, 10, 11, 12, 14, 16, 17, 18 and 19 will survive termination of this Agreement.
- 8. Representations and Warranties:** Customer represents and warrants that: i) it is a non-profit organization or

educational institution, (ii) it is listed on <http://www2.guidestar.org> (or if not listed there, Customer may notify Mobile Beacon where it is listed as a non-profit organization or educational institution); (iii) it has sufficient authority to enter into this Agreement (iv) all information provided to Mobile Beacon will be accurate, complete, and current; and (v) it and its Permitted Users of the Service will comply with applicable laws, rules and regulations, the AUP, and the terms of this Agreement at all times in the use of the Service.

**9. Disclaimer of Warranties:** Except as expressly set forth herein, Mobile Beacon, its related entities, suppliers, and affiliates, including without limitation Clearwire (collectively the “Mobile Beacon Parties”) make no warranties and hereby disclaim all warranties or representations, express or implied with regard to the Service. This includes, without limitation, any implied warranties of title, non-infringement, merchantability, fitness for a particular purpose or use, and any warranties arising from course of dealing, usage or trade practice. Your use of the Service is at your own risk. The System is provided on an “as is” and “as available” basis.

**10. Limitation of Liability:** The Mobile Beacon Parties will have no liability with regard to any defect or failure of the Service, any Equipment, or Support Services (as defined in Section 13), any lack or breaches of security of the Service or in the storage or integrity of your data, any cost of obtaining substitute goods, services or technology. In no event shall any Mobile Beacon Party be responsible for any lost, stolen, or damaged Equipment. The risk of loss for each piece of Equipment shall transfer to you upon delivery of such Equipment to you.

In no event will the Mobile Beacon Parties be responsible for any consequential, indirect, incidental, special or exemplary damages whatsoever (including, without limitation loss of profits, business interruption, or loss of business information) arising out of or in any way related to the use of or inability to use the Service or any Equipment under any theory, whether contract, tort, negligence, privacy, security, strict or product liability, or other legal or equitable theory even if such damages are foreseeable and whether or not they have been advised of the possibility of such damages.

The sole liability of the Mobile Beacon Parties to you or any third party for all claims arising out of or relating to this Agreement will be limited to the lesser of (i) \$120.00 US dollars or (ii) the total fees (excluding equipment fees) paid by you to Mobile Beacon in the twelve (12) months prior to the date on which any such claim arose.

**11. Content and Security:** Any material downloaded or otherwise obtained through use of the Service is accessed at your own discretion and risk. The Mobile Beacon Parties do not control and are not responsible for any third party websites, content, services or products that Customer may access or encounter during use of the Service, and the Mobile Beacon Parties reserve the right to block certain content or transmissions, or delete certain messages or other content, as they deem necessary to protect any individual or entity, comply with applicable laws, regulations, or government requests, or to enforce the terms of this Agreement. The Mobile Beacon Parties reserve the right to install, manage and operate software or other monitoring solutions in order to track potentially illegal activities or violations of this Agreement. Customer acknowledges that the Internet and wireless communications are not inherently secure means of data communication and the Mobile Beacon Parties shall have no liability for breaches of security beyond their reasonable control, including, without limitation, Customer's negligence with respect to controlling access to the Service or Customer's data. It is the sole responsibility of Customer to obtain and implement appropriate security devices, software, and other measures (including without limitation firewalls) to protect Customer's systems and data from viruses, worms, Trojan horses, or other security threats, and the Mobile Beacon Parties have no responsibility or liability with regard thereto.

**12. Indemnification:** Customer (and its agency or representatives who have entered this Agreement on behalf of a Customer) will indemnify, defend, and hold harmless the Mobile Beacon Parties and their directors, officers, agents, contractors, licensors, vendors, suppliers and employees from and against all claims, actions, losses, expenses,

costs or damages of every nature and kind whatsoever (including reasonable attorneys' fees) arising out of or relating to Customer's and its Permitted Users' (or other individuals who have gained access to Customer's account on the Service due to the fault or negligence of Customer or its Permitted Users) actions or omissions in connection with this Agreement, use of the Service or Equipment, including without limitation any breach of this Agreement, or negligence of any of the foregoing. Customer further agrees to pay the reasonable attorneys' and expert witness fees and costs incurred in enforcing this Agreement, including in connection with any appeal.

- 13. Support Services:** All support services related to the Service and Equipment will be provided by Mobile Beacon and/or Clearwire ("Support Services"). Neither Mobile Beacon nor Clearwire will provide support for any other service or equipment, hardware, software, materials or devices other than the Service and associated Clearwire modems.

You may obtain support by calling a Clearwire technical support representative at (877) 537-1458 or emailing [techsupport@mobilebeacon.org](mailto:techsupport@mobilebeacon.org), and you may view answers to support FAQs and obtain other information by visiting <http://www.clear.com/support/faq> or <http://www.mobilebeacon.org/resources>.

Mobile Beacon and Clearwire may need to, and you agree that Mobile Beacon and Clearwire may, access your Equipment or other hardware and information stored on it (such as drivers, software, etc.) to troubleshoot issues related to the Equipment or the Service, to enable, operate and update the Service and software, to investigate activity that may be in violation of this Agreement, and/or to comply with law.

Clearwire modems that are defective should be returned to Clearwire as instructed by Mobile Beacon or Clearwire, and should under no circumstances be returned to Mobile Beacon. Mobile Beacon may require the use of a return label issued by Clearwire for purposes of the return of a defective Clearwire modem, and if so, Grantee must use such return label.

MOBILE BEACON AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF CLEARWIRE OR ANY OTHER THIRD PARTY, WITH REGARD TO THE SUPPORT SERVICES OR OTHERWISE, AND MOBILE BEACON DISCLAIMS ALL LIABILITY FOR THE SUPPORT SERVICES OR THE RESULTS THEREOF.

- 14. No Assignment:** Customer's rights under this Agreement may not be transferred, leased, assigned, or sublicensed, including without limitation to any successor in interest, without the prior written consent of Mobile Beacon. Any purported attempt to transfer, lease, assign, or sublicense your rights without the consent of Mobile Beacon will be void, and Mobile Beacon may immediately terminate this Agreement without liability. Notwithstanding the foregoing, all provisions of this Agreement will be binding upon your successors and permitted assigns.
- 15. Changes in Agreement:** Mobile Beacon reserves the right to change the terms of this Agreement from time to time. Any modified versions of this Agreement will be emailed to the last provided email address you provided to us. You agree that the foregoing is sufficient notice of modifications and agree to be bound by such modified versions of this Agreement, subject to the termination rights of this paragraph. If we modify any material terms of this Agreement and the modifications would be materially adverse to you, we will notify you via email to the email address above and you will have the right to terminate this Agreement by sending us written notice. We will not provide any refund in the event you terminate this Agreement under this Section 15. If you do not terminate this Agreement within five (5) days of our sending you an email with the revised terms, you will be deemed to have agreed to any such revised terms.
- 16. Notifications of Claimed Copyright Infringement:** In the event that you believe the Service or any Web site of a Mobile Beacon Party may contain an infringement of the copyright ownership or other intellectual property rights of you or any third party, you are requested to immediately contact the Mobile Beacon Copyright Agency as described below. To report any alleged infringement, you may contact us in writing by providing a signed

statement containing the following information:

- your name, address, telephone number, and email address, and if you are acting of behalf of the owner of the intellectual property, the name of the owner;
- a statement, made under penalty of perjury, that you are the owner of the copyright or are authorized to act on behalf of the owner;
- a detailed description of the copyrighted work or other intellectual property that you claim has been infringed;
- if your claim is based on a registered work, the trademark, patent, or copyright registration number, and the date of the issuance of the registration;
- a description of the infringing material and the URL where such material is located;
- your written statement that you believe, in good faith, that the identified use of the work has not been authorized by the true owner of the work, its agent, or as a matter of law; and
- a statement that all of the information you have provided is true.

Please send your notice of alleged infringement to: Copyright Agent at Mobile Beacon (i) by mail at 2419 Hartford Avenue, Johnston, RI 02919 or (ii) by fax (401) 934-0505.

**17. Governing Law; Statute of Limitations:** This Agreement and the rights and obligations of the parties with respect to the Service will be governed by, and construed in accordance with the laws of the State of Rhode Island, USA, without reference to the choice of law principles thereof. ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT MUST BE COMMENCED WITHONE ONE (1) YEAR AFTER THE CLAIM ARISES, OR THE CLAIM WILL BE PERMANENTLY BARRED.

**18. Arbitration; Waiver of Jury Trial:** ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, OTHER THAN ANY ACTION FOR INJUNCTIVE RELIEF OR ANY ACTION TO COLLECT AMOUNTS DUE HEREUNDER, BOTH OF WHICH MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION (A "DISPUTE"), WILL BE FINALLY DETERMINED BY BINDING ARBITRATION IN RHODE ISLAND, USA, IN ACCORDANCE WITH THE COMMERCIAL RULES ("RULES") OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). The arbitration will be heard and decided by a single arbiter mutually agreed upon by the parties, with experience in the subject matter of the Dispute, or if the parties are unable to agree, such arbiter will be selected by the AAA according to the Rules. The judgment of the arbitration will be final, nonappealable (to the extent not inconsistent with applicable law) and binding upon the parties, and judgment may be entered up on the arbitral award of competent jurisdiction. The arbiter will not have any authority to award any special or punitive damages, or any damages other than as permitted by this Agreement. The arbiter will issue a written opinion setting forth the decision and the reasons therefore within forty-five (45) days after the final hearing of the proceeding is concluded, specifying such remedy (including money damages) as will (a) fully implement the intent and purposes of this Agreement and (b) allocate all losses, costs, and expenses (including costs of arbitration and reasonable attorneys' fees) in accordance with the findings of the arbiter with respect to the respective conduct of the parties. Notwithstanding the foregoing, any Mobile Beacon Party may seek injunctive relief to enforce or protect any of its intellectual property rights or any of its interests that may be subject to irreparable harm in any court of competent jurisdiction without reference to the arbitration proceedings set forth herein. YOU AND THE MOBILE BEACON PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIMS OR DISPUTES RELATING TO THIS AGREEMENT OR THE SERVICE OR EQUIPMENT. NEITHER PARTY SHALL, AND EACH PARTY WAIVES ANY RIGHT TO, PARTICIPATE IN A CLASS ACTION (INCLUDING ANY CLASS ARBITRATION) WITH REGARD TO THE SUBJECT MATTER OF THIS AGREEMENT.

**19. General:** None of the Mobile Beacon Parties will be responsible or liable in any manner for any failure in the Service or in the performance of this Agreement to the extent that such failure is due to causes beyond its control.

If any part of this Agreement is found invalid (including without limitation any conflict with any applicable law or regulation) such invalidity will not affect the remaining portions of this Agreement, and the parties will substitute for the invalid provision a provision that most closely approximates the intent and economic effect of the invalid provision. Failure by either party to complain or any act or failure to act of the other party or to declare the other party in default, irrespective of the duration of such default, will not constitute a waiver of rights hereunder. This Agreement constitutes the complete agreement between Customer any Mobile Beacon Party with respect to the subject matter hereof and supersedes all proposals (oral or written), all previous negotiations, and all other communications, including without limitation communications on the Web site of any Mobile Beacon Party, except as set forth above.