

Bark Defender Basic
SERVICE CONTRACT/EXTENDED LIMITED
WARRANTY

The terms “You”, “Your”, “Customer” and “Subscriber” refer to the purchaser of this service contract or extended limited warranty. The terms “We,” “Us,” “Our”, “Provider”, “Administrator”, “Obligor” and “Brightstar” refer to the provider of this Agreement. Brightstar Device Protection, LLC is the provider and You may contact Brightstar Device Protection, LLC by mail at 2325 Lakeview Parkway, Suite 700 Alpharetta, GA 30009 or by phone at (855) 687-5850.

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

- DEFINITIONS.** “**Accidental Damage due to Handling**” or “**ADH**” means any direct and accidental damage including damage, accidental destruction that is externally visible and which prevents the correct operation of the Covered Device, Screen Damage that occurs in the course of normal use or handling. “**Authorized Service Center**” means the location or locations that serve as a replacement service center for the Program and supply replacements for Covered Device(s) We agree to replace, in Our sole discretion, Your Covered Device if it experiences a Failure from the causes listed immediately below and reported during the month for which You have paid the required Monthly Service Fee. “**Claim**” means the request for service that You file with Us when Your Covered Device suffers a Failure. “**Computer Virus**” means any unauthorized programming or intrusive codes that are entered by any means into covered data processing equipment, media, software, programs, systems or records and interrupt the operations of the Covered Device. “**Covered Device**” means the eligible wireless device owned by you, exclusive of any accessory(ies), owned by You or Replacement Equipment provided by Us with the unique identification number (International Mobile Equipment Identity (IMEI), Electronic Serial Number (ESN), Mobile Equipment ID (MEID), or Serial Number) that is on record with Us when the wireless device first fails to operate properly. To be considered Covered Device, the wireless device must have logged outgoing access with your Wireless Service Provider after the request for coverage for the Covered Device and within three (3) days prior to reporting the Covered Device failure. “**Processing Fee**” means the amount that You pay toward Your Claim as specified in this Mobile Protection Plan Contract. “**Effective Date**” means the date You purchased the Plan Contract. “**Failure**” means Accidental Damage from Handling, or Extended Warranty. “**Extended Warranty**” means failure of the Covered Device to operate due to faulty part(s) or workmanship when operated according to the manufacturer’s instructions after the expiration of the original equipment manufacturer’s warranty. “**Monthly Service Fee**” means the fee that You pay each month protection pursuant to the Plan. “**Plan**” or “**Program**” refers to the specific service warranty or extended warranty. “**Program Guide**” refers to the documents You received from the Seller summarizing the coverages provided, enrollment limitations, program requirements, equipment, fees, processing fees, service fees or other charges or material terms. For any conflict between a Program Guide and this Agreement, this Agreement controls. “**Pollutants**” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. “**Replacement Equipment**” means a wireless device of the same make, storage and model (but not necessarily color), or if the same make, storage and model is not available, the replacement equipment will be a different model of similar feature, functionality and fair market price to the Covered Device at the time of the Claim (but may not be the same brand or model), with the same operating system and will not be a model that is older than the Covered Device, which We provide to You in the event of a Failure of the Covered Device. Replacement Equipment becomes the Covered Device once it has been delivered to You. “**Seller**” means the party from whom You purchased the Program specified in the Program Guide or as listed on your receipt. “**Retail Price**” means that suggested non-discounted, non-subsidized retail price of the Covered Device at the Effective Date of this Agreement. “**Terrorism**” means an act, including but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. “**Wireless Service Provider**” or “**Carolina West**” means Carolina West Wireless, Inc.
- SERVICE CONTRACT OR EXTENDED LIMITED WARRANTY:** This Plan complements and/or may overlap with the manufacturer’s warranty or may also overlap or duplicate other coverages You have (by example, coverage for a wireless device under Your home owner’s insurance). The Plan provides coverage for certain failures that an applicable manufacturer’s warranty may not provide. Please refer to the manufacturer’s warranty to understand what protection is offered and the duration of the manufacturer’s warranty. Confirmation of enrollment (either by email or text message) and applicable written communications from Us to You collectively comprise the Device Protection Plan (the “Contract”). The Contract governs the Device Protection Plan You purchased for Accidental Damage from Handling, and Extended Warranty, so You should keep this Contract and all of the other documents that comprise the Contract for Your reference. This Contract may be referred to as an extended warranty or a service contract depending on the state where you reside

3. **COVERAGE:** In exchange for the Monthly Service Fee paid in accordance to the Payment Terms, We agree to replace the Covered Device listed on Your receipt if, under normal conditions and use, the Covered Device fails to operate properly due to Extended Warranty or Accidental Damage from Handling (the “Covered Failures”). All Covered Devices replaced under this Agreement shall become the property of the Obligor. In order to obtain a replacement, You must:
- (a) Visit barkmobile.brightstarprotect.com or call (844) 201-6376 to file a Claim.
 - (b) You must file the Claim within sixty (60) days of the date Your Covered Device first fails to operate properly or is damaged and receive replacement authorization. You will be required to provide the enrolled Subscriber and Covered Device information, including the make, model, IMEI/ESN/MEID or Serial Number, description of the Covered Cause, and if requested by Brightstar, proof of ownership of the Covered Device and any other reasonably requested documentation and verification.
 - (c) You must provide all required information pertaining to the Covered Device and Failure within sixty (60) days of initially reporting the Claim, and if approved, take possession of the Replacement Equipment within sixty (60) days of the approval.
 - (d) Upon Our request, You must take the Covered Device to an Authorized Service Center for inspection.
 - (e) If Replacement Equipment is to be provided, return the claimed Covered Device as directed upon receipt of the Replacement Equipment.
 - (f) Be a valid, active, and current wireless subscriber of Seller.
 - (g) Not have any outstanding debts or fees owed to Us.
 - (h) Parts and service covered under any manufacturer, wireless service provider, or wireless retailer recall or warranty will be provided under that recall or warranty, as applicable. In neither circumstance will coverage be provided under this Agreement. If the Covered Device is part of a recall or similar effort, this Agreement does not apply.
 - (i) Purchase of this Agreement is not required in order to purchase or obtain financing for the Covered Device.
4. **ELIGIBILITY:** Only Covered Device(s) purchased from Seller or provided to You as Replacement Equipment as a result of a Claim against this Contract, or the original equipment manufacturer’s warranty are eligible for coverage. You must be able to provide a valid proof of ownership at the time of purchase and/or Claim. As the program provider, Brightstar accepts enrollment into the Program at its sole discretion. You must not be in breach of any material term of or have engaged in fraud with respect to this Agreement at any time.
- (a) By entering this Contract, You understand and authorize Brightstar to access Your account records with the Seller to validate Your enrollment and Claim eligibility.
 - (b) We may contact You regarding Your coverage, enrollment, and/or Claim via Short Message Service (SMS) text messaging, email or such other means as Brightstar determines to be most practicable. You will assume any and all fees assessed by Your wireless carrier for the SMS text messages. You may opt out of SMS messaging by updating Your account on barkmobile.brightstarprotect.com or sending Your request via mail to Brightstar.
5. **EFFECTIVE PERIOD OF COVERAGE:** This Agreement shall become effective upon Your payment of the Monthly Service Fee due upon purchase date of this Agreement.

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

6. **COMMUNICATOINS AND CONSENTS:** As the program provider, Brightstar, accepts subscriptions at its sole discretion. You must not be in breach of any material term of or engage in fraud with respect to this Agreement at any time. It is Your obligation to keep Carolina West or Brightstar informed of Your mailing address, electronic mail address, telephone number or other messaging addresses. If You do not update the contact information, You agree and consent to waiving any dispute that a notification sent to an address on record with Carolina West or Brightstar was not adequate. This consent also allowed Brightstar to contact you for marketing or other business-related purposes.
- (a) You understand and authorize Brightstar to access your account records with Carolina West to validate Your enrollment and claim eligibility.
 - (b) We may contact You regarding Your coverage, enrollment, and/or claims via electronic mail, Multimedia Messaging Services (MMS), Short Message Service (SMS) text messaging or a voice call. You will assume all fees assessed by Carolina West for the SMS text messages. You may opt out of SMS messaging by updating your account on barkmobile.brightstarprotect.com or sending your request via mail to Brightstar.
 - (c) If You use a mobile application, We may contact You through the mobile application via both notifications posted on

the mobile application or via messages issued through the mobile application.

- (d) You agree that You may be contacted regarding renewals and upgrade plans.
- (e) If the payment card for the Plan expires or cancels, You agree that the payment card replacing the expired or canceled card may be charged the applicable Monthly Service Fee. By accepting coverage in this program, you authorize the financial institution issuing the payment card to (i) release required subscriber information for the purpose of validating claims and (ii) charge your credit/debit card on file, or the replacement card issued by the payment card issuer for the card on file, which may include updated validated card information, including but not limited to expiration date(s), card number(s), and security code(s), as received by your financial institution in accordance with applicable law and to release your contact information. You expressly authorize and agree for Brightstar Device Protection, LLC to obtain information from the financial institution regarding an expired or canceled credit/debit card and authorize the replacement credit/debit card be charged the applicable. For clarity, expiration or cancellation of the credit card used to pay the Fees does not cancel Your subscription to the Program.

- 7. **TERM AND RENEWAL:** The Term Period is monthly. You understand and agree that this Agreement will be automatically renewed for successive months on a continuous basis unless You or We terminate this Agreement pursuant to Section "CANCELLATION/TERMINATION AND REFUNDS". Your failure to pay the Monthly Service Fee in advance or ceasing to be an active subscriber of Carolina West, regardless of cessation reason, is considered termination of the Agreement by You and the Agreement may not be renewed. No party is obligated to renew this Agreement. Prices, conditions and limitations of this Agreement may change upon renewal. By purchasing this Agreement, You agree that You may be contacted regarding renewals and upgrade plans.
- 8. **CHANGE IN COVERED DEVICE:** This Agreement only provides coverage for the Covered Device listed on Your receipt. If a change in the Covered Device being used on Your account occurs, you must apply for coverage of the new device. The new device will be subject to this Agreement at the time of request for a change in Covered Device to the new device, which may include a higher fee and/or processing fee and/or a wait period for coverage. If you continue to pay the Monthly Service Fee after We have been notified of such change in Your Covered Device or a change in Your Covered Device results from a Claim against this Agreement or the Device Protection Plan, You have agreed to all changes to coverage, service fees and processing fees. Changes to Covered Device are subject to approval by Brightstar; You will be notified within thirty (30) days of request if such change was denied.
- 9. **REPLACEMENT OF PRODUCTS:** Any Replacement Equipment provided to You will be either a new device or a certified pre-owned device. If We elect to replace the Covered Device and the identical make and model is no longer available or unavailable in inventory, We will replace it with a product of comparable functionality. In all cases, We will determine product comparability, including functionality at Our sole discretion. Technological advances and product availability may result in a replacement product with a lower selling price than the original product. At Our option, Replacement Equipment may be either new or refurbished and of a different brand, model, and/or color. Non-original manufacturer parts may be used in refurbished products. Any time Your Covered Device is to be replaced in accordance with this Agreement, at our sole discretion, We may provide cash reimbursement, gift card or voucher for replacement equipment, not to exceed the lesser of retail purchase price You paid for the original Covered Device or the cost of a replacement product of like kind and quality, less any Processing Fee. If You are eligible for a reimbursement, You will be required to provide proof of purchase for the replacement equipment.
 - (a) Equipment Warranty: Replacement Equipment shall be in good, working order, with housing that is free from major marks, gouges, cracks or other faults or blemishes. If Replacement Equipment malfunctions within its ninety (90) day warranty period and is returned, such equipment will not result in an additional Claim per the Claim limits outlined in this Agreement.
 - (b) Replacement Equipment may not be shipped to a P.O. Box.
 - (c) If the Covered Device is operated outside any state or territory of the United States, the Replacement Equipment will only be shipped to the address on record.
- 10. **PAYMENT AND FEES:**
 - (a) Payment: For each Term Period You desire coverage under this Agreement, You shall remit to Us a Monthly Service Fee payable in accordance to these Payment Terms ("Payment Terms").Your Monthly Service Fee is based on the Retail Price of the Covered Device at the time You purchased this Agreement. Refer to the following table for Your Monthly Service Fee.

Tier	Retail Price at the Time of Enrollment	Monthly Service Fee for Service Contract
1	\$0.00 - \$250.00	\$4.99

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

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

Tier	Retail Price at Time of Enrollment	Processing Fee
		Replacement
1	\$0.00 - \$250.00	\$35.00

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

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

- (d) Invalid Claim: If, within the latter of twenty (20) days after You receive the Replacement Equipment or Brightstar receives the claimed Covered Device, Brightstar determines, in its sole discretion, that Your Claim for Replacement Equipment is not for a Covered Failure under this Agreement, the Subscriber’s Account shall automatically be charged an amount not to exceed the manufacturer’s suggested retail price of the replacement equipment less any Processing Fee/ Service Fee Damage Fulfillment Fee received.

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

11. LIMITATION OF LIABILITY AND EXCLUSIONS: BRIGHTSTAR’S LIABILITY HEREUNDER SHALL BE LIMITED TO THE COST OF TWO (2) REPLACEMENTS WITHIN ANY TWELVE (12) MONTH PERIOD OF TIME. IN NO EVENT SHALL THE COST OF SUCH REPLACEMENT EQUIPMENT FOR THE COVERED DEVICE/ENROLLED DEVICE/PROTECTED DEVICE EXCEED \$250.00 PER CLAIM OCCURRENCE.

This Agreement does not cover the following:

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

- n) **on or to the Covered Device by any person other than Brightstar, or their respective authorized representatives;**
- n) **Claimed obsolescence of the Covered Device including technological obsolescence; or**
- o) **The Subscriber's failure to use reasonable means to protect the Covered Device/Enrolled Device/Protected Device from further damage after a failure occurs.**
- p) **Products that are not purchased from Seller or its authorized dealers.**
- q) **Products with a Retail Price above \$250.00.**

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

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

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

- (a) You may cancel this Agreement at any time for any reason by calling Seller at (855) 309-8345. Your right to void this Agreement during the first thirty (30) days following receipt is not transferable and applies only to the original Agreement purchaser. Brightstar may cancel this Agreement immediately for any reason by notifying You in writing. Any cancellation of this Agreement by Brightstar shall be in accordance with applicable state laws and regulations.
- (b) Unless otherwise required under applicable law, if You or Brightstar cancels this Agreement within thirty (30) days after You purchase this Agreement and You have not made a Claim under this Agreement, the Agreement is considered void and Brightstar shall remit to You a full refund of the Monthly Service Fee paid by You under this Agreement.
- (c) Unless otherwise specified under applicable law, if You or Brightstar cancels this Agreement within thirty (30) days after You purchase this Agreement and You have made a Claim under this Agreement, Brightstar shall remit to You a full refund of the Monthly Service Fee paid by the Subscriber under this Agreement less the value of any replacement equipment provided for such service request by Brightstar to the Subscriber.
- (d) Unless otherwise required under applicable law, if the Subscriber or Brightstar cancels this Agreement more than thirty (30) days after the Subscriber purchases this Agreement, Brightstar shall remit to the Subscriber the Service Fees paid by the Subscriber under this Agreement allocable to the remainder of the term of this Agreement, prorated on a daily basis, less the value of any replacement equipment previously provided by Brightstar to the Subscriber under this Agreement.
- (e) Unless otherwise required under applicable law, Our obligations under this Agreement will be fulfilled in their entirety if we have fulfilled two (2) service requests in any rolling twelve (12) month period, as applicable by replacing the Covered Device/Enrolled Device/Protected Device or by providing reimbursement.

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

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

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

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

15. **CLASS ACTION WAIVER**. WE EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If a court or arbitrator determines in an action between you and us that this Class Action Waiver is unenforceable, the arbitration agreement will be void as to you. Neither you, nor any other customer, can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding.
16. **JURY TRIAL WAIVER**. If a claim proceeds in court rather than through arbitration, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.
17. **NOT A CONTRACT OF INSURANCE**: This Agreement is not an insurance policy or a contract of insurance. In North Carolina, the obligations of Brightstar under this Agreement are backed by Brightstar Device Protection, LLC.
18. **SELLER**: The Seller of this Agreement is not the administrator, obligor nor provider of this Plan.
19. **NOTICES**: Any notices required to be given under this Agreement shall be in writing and either delivered by mail, email, website posting or another functionally equivalent electronic means of transmission. By providing Us with Your email address you expressly consent to receive notices electronically either to the email address We have on file or via website posting. Further, You expressly agree that any electronic communication delivered to You will be deemed to have been given or made and received on the day that it was delivered to You, regardless of if You actually view the electronic communication.
20. **ENTIRE AGREEMENT**: This Agreement sets forth the entire understanding of the Parties relating to the subject matter hereof, and all prior understandings, written or oral, with respect to the subject matter hereof, are superseded by this Agreement. This Agreement may not be modified, amended, waived or supplemented except as provided herein. This Agreement includes a "State Specific Variations" Exhibit that specifies any changes to these terms specific to an applicable warranty provided by state law that may be applicable. All capitalized terms have the meaning provided as defined in Section 1 or within the section the capitalized term is defined or used.
21. **GOVERNING LAW**: This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia (without regard to its conflicts or choice of laws principles that could or would cause the application of law any

other state or jurisdiction).

22. **AMENDMENT; WAIVER**: No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless contained in a writing specifically referencing this Agreement and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by either of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by either of the Parties, on one or more occasions to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

23. **SEVERABILITY**. If any portion of the Contract is deemed invalid or unenforceable, it shall not invalidate the remaining portion of the Contract.