

## **Terms of Service**

**Premium Choice Broadband Wireless Broadband Internet Access Service (Effective May 5<sup>th</sup>, 2008)**

**THESE TERMS OF SERVICE CONSTITUTE A LEGALLY BINDING AGREEMENT (THE “AGREEMENT”) BETWEEN YOU, THE CUSTOMER, AND V V D FUNDING, LLC d/b/a PREMIUM CHOICE BROADBAND (“PCB”). BY USING ALL OR ANY OF THE SERVICES PROVIDED BY PCB, INCLUDING WITHOUT LIMITATION WIRELESS BROADBAND INTERNET ACCESS SERVICE, HIGH-SPEED INTERNET ACCESS, VOICE OVER INTERNET PROTOCOL SERVICES, AND DIAL-UP INTERNET ACCESS, AND ANY RELATED SERVICES, SOFTWARE, EQUIPMENT OR COMPONENTS (COLLECTIVELY, THE “SERVICE”), YOU AGREE TO BE BOUND BY AND COMPLY WITH THE FOLLOWING TERMS AND CONDITIONS. ANY ADDITIONAL TERMS STATED IN YOUR ORDER FORM (WHICH DETAILS THE SERVICE PLAN OR PLANS YOU HAVE AGREED TO PURCHASE) ARE INCORPORATED HEREIN BY REFERENCE AND ARE PART OF THIS AGREEMENT.**

**PLEASE READ THIS AGREEMENT CAREFULLY BECAUSE IT INCLUDES MANY IMPORTANT TERMS, CONDITIONS AND LIMITATIONS RELATING TO MATTERS INCLUDING:**

- **LIMITS AND DISCLAIMERS ON PCB'S LIABILITY AND WARRANTIES;**
- **THE REQUIREMENT THAT YOU COMMIT TO A MINIMUM TERM OF SERVICE AND RELATED FEES FOR EARLY TERMINATION;**
- **THE REQUIREMENT THAT DISPUTES BE SETTLED BY ARBITRATION AND NOT BY LAWSUIT;**
- **A WAIVER OF ANY RIGHT TO A JURY TRIAL OR PARTICIPATION IN A CLASS ACTION LAWSUIT; and,**
- **ADDITIONAL TERMS AND CONDITIONS THAT APPLY TO INTERNET PHONE SERVICE (“IPS”).**

**BY ACTIVATING OR USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY ALL OF THE TERMS, CONDITIONS AND LIMITATIONS SET FORTH IN THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACTIVATE OR USE ANY SERVICE AND YOU MUST CONTACT PCB IMMEDIATELY TO TERMINATE YOUR ACCOUNT, IF YOU HAVE ONE.**

**1. Agreement Governing Use of Service.** The current version of this Agreement (including the Service Plans) can be found at <http://www.premiumchoicebroadband.com/Legal.html>.

**2. Amendments to the Agreement.** PCB reserves the right to amend this Agreement or the Service at any time and from time to time by posting a revised version of this Agreement or announcing Service changes in the "Service Announcements" section of PCB's website at <http://www.premiumchoicebroadband.com/Legal.html>. Such changes will become effective once you have been notified of them, and your continued use of the Service will constitute your acceptance of any such changes. If you choose not to continue Service after a change that is materially disadvantageous to you, you may terminate this Agreement by providing written notice to PCB within twenty (20) days of the effective date of the modification, and you will not be charged any Early Termination Fee (as defined herein). You are responsible for regularly reviewing the PCB website for notice of any amendments. You may not modify this Agreement in any manner for any purpose. Additional terms and conditions for IPS can be found at <http://www.premiumchoicebroadband.com/Legal.html>.

**3. Term of the Service and Early Termination Fees.** You will maintain Service for the duration of any minimum "Initial Term" (as set forth on the Order Form) and any Renewal Term (defined below). If during the Initial Term or any Renewal Term (collectively, the "Term") you decide to change to another PCB plan with different rates or features or add optional services to your existing Service, then you agree that PCB may restart the Initial Term or any Renewal Term for the Service, as applicable, from the beginning of such change in plan or addition of service. At the end of an Initial Term or any Renewal Term you will be prompted to let us know if you wish (i) to terminate your Service, (ii) accept a new Service plan for an additional Term (each a "Renewal Term"), or (iii) to continue to use the Service on a month-to-month basis according to the then-current fee schedule in effect. If you elect option (iii), you are hereby advised that your monthly-rate may be changed by PCB at any time to be effective the following month.

If you terminate your Service for any reason, including relocation outside a coverage area, or your Service is terminated by PCB because of any violation of the Agreement by you prior to the then current Term, you will be liable for an termination fee as may be specified on your Order Form (the "Termination Fee").

Subject to applicable law, you expressly agree that all applicable monthly subscription and/or other fees and charges will accrue until this Agreement has terminated, the Services have been disconnected, and any and all equipment owned by PCB, or leased to you by PCB, has been returned to PCB. Upon termination or expiration of this Agreement for any reason, PCB and its suppliers reserve the right, to the extent permitted by applicable law, to delete any voicemails, data, files, electronic messages or other information stored on PCB's or its suppliers' servers or systems (collectively, the "Data"). PCB, its Affiliates and their respective agents and suppliers will have no liability whatsoever as the result of the loss of any Data.

**4. Payments and Billing.** You agree to pay all charges associated with the Service, including but not limited to, installation charges, monthly service charges, equipment charges, service call charges, usage charges, and applicable federal, state and local taxes. You will be invoiced as set forth in your agreement with PCB. All amounts invoiced are due and payable upon receipt of the invoice. You will make payments to PCB for the Service using your credit, debit, or other acceptable bank card (the "Card") or through an electronic funds transfer ("EFT") that debits funds directly from a bank account that you designate. You must provide PCB with information necessary to establish the applicable method of payment. It is your responsibility to ensure that the Card and/or EFT-related information you have provided to PCB is valid at all times and you are responsible for providing PCB with adequate notice of any changes. You will be responsible for arranging for alternative means of payment, acceptable to PCB, if changes cannot reasonably be made prior to any payment due date, and will be subject to late fees set forth below for any unpaid amounts. Fees and charges for Service are stated in the Order Form. Upon accepting your Order Form, PCB will bill you for any equipment, installation fees and activation fees. Monthly charges will be automatically charged to your credit, debit, or e-check account on record, as specified in any applicable recurring payment plan you enter with PCB. You will pay PCB all outstanding balances when due. Additional fees may apply to balances not paid when due, as set forth in Section 5 below.

**5. Late and Unpaid Amounts/Rejected Payments/Late Fees/Suspension.**

**a. Late Payments/Non-payment.** If your account is not paid in full by the due date, you may be billed fees, charges, and assessments related to such late payment or non-payment.

**b. Rejected Payments.** Any payment that you make that is rejected or returned will be subject to a fee as set forth in the Order Form, and your account may be subject to suspension as set for the below.

**c. Late Fees.** All delinquent charges and charges not honored by your Card issuer or bank will be subject to a late fee as set forth in the Order Form. Except to the extent prohibited by law, this late fee may be charged regardless of any disputes you may have raised regarding your invoiced charges.

**d. Suspension.** Accounts not paid in full by the due date for any reason are subject to suspension or termination by PCB. In the event of such suspension or termination by PCB, you will pay PCB any outstanding fees and all collection costs and fees, including attorneys' fees and late fees incurred or charged by PCB. PCB may, but is not required to, reactivate your Service after Service has been suspended or terminated. Before Service may be reactivated, you must pay PCB all past due amounts and late payment fees plus a suspension charge per account, any

reactivation fees, and applicable taxes, and you may be required to provide PCB with a deposit.

**6. Billing Disputes.** Unless you notify PCB of any billing errors or irregularities in writing within thirty (30) days after the charge posts to your designated account, you will be deemed to have accepted the charges for all purposes and you agree to release any and all liability and claims of loss resulting from any such errors or irregularities, subject to applicable law. PCB will resolve all billing disputes in its sole discretion.

**7. Availability of Service/Variation of Speed.** You acknowledge that PCB service may not be available in all areas, and even within PCB coverage areas, service quality, signal strength and network speeds may vary, be lower than advertised or be insufficient for use of the Service. You must provide PCB with the correct address of your primary place of residence in order for PCB to determine whether adequate coverage is available. You agree to promptly notify PCB of any changes in the primary Service address. PCB makes no guarantee or representation that the Service will operate with any particular equipment or software, and it is your responsibility to ensure that your equipment and software, as applicable, meet current minimum requirements as specified from time to time by PCB. Please carefully review the Order Form for additional information regarding possible limitations of the Service.

## **8. Equipment.**

**a. General.** If PCB leases you any equipment (the "Equipment"), you must return all such Equipment in good working order, reasonable wear and tear excepted, to PCB upon the termination or expiration of this Agreement or upon PCB's request. Equipment pickups by PCB may be subject to a fee as set forth on the Order Form. If you fail to return all leased Equipment in good working order, reasonable wear and tear excepted, within thirty (30) days after expiration of this Agreement or by the date otherwise specified or requested by PCB, you agree to pay PCB the replacement cost of such Equipment in the amount listed on the Order Form for such Equipment. You acknowledge that such amount is a reasonable estimate of the repair or replacement cost of the Equipment. If no amount is specified on the Order Form, you will instead pay to PCB the retail value of the Equipment as new. You will continue to be charged monthly Service charges in the same manner set forth herein until you return the Equipment, and hereby irrevocably authorize PCB to charge such amounts to any Card or bank account you provide or previously provided to PCB for any purpose. This authorization may not be revoked even if you revoke authorization to charge your Card or bank account for other purposes. This section, including all authorizations herein, will survive expiration or termination of this Agreement for any reason.

**b. Ownership.** You acknowledge and agree that any Equipment leased by PCB to you is at all times owned by PCB, and nothing in this Agreement gives to you any right, title or interest

in or to such Equipment except as specifically set forth herein. You hereby agree not to sell, transfer, lease, assign any interest in, or otherwise encumber all or any part of the Equipment.

**c. Use and Alteration.** All Equipment leased by PCB is exclusively for use in connection with the Service provided by PCB, and you agree not to modify, tamper with or otherwise alter the Equipment in any manner. You further agree not to access or utilize the Service with any Equipment that has been modified, tampered with or otherwise altered.

**d. Replacement.** PCB may replace, upgrade, repair, or otherwise modify any Equipment, and will repair or replace, as determined by PCB in its sole discretion, any properly maintained Equipment that fails to operate as required for the delivery of the Service. You acknowledge and agree that the equipment may be refurbished, and there shall be no offset, discount, or other reduction in purchase or lease price to do any such refurbishing.

**9. Equipment and Installation Warranty.** PCB warrants to you that the Equipment and its installation by PCB will be substantially free from material defects in material and workmanship, under normal use in compliance with PCB's instructions, for a period of one (1) year from the date you receive the Equipment or installation (the "Limited Warranty"). The Limited Warranty excludes any defects resulting from abuse, misuse, neglect, theft, vandalism, fire, unusual physical or electrical stress, effects of water, extremes of temperature, an act of God, your failure to comply with PCB's policies or other instructions provided by PCB, actual or attempted alteration of or additions to the Equipment not approved by PCB, or any other cause beyond the reasonable control of PCB, all as determined by PCB (collectively, "Excluded Causes"). Repair or replacement, as determined by PCB in its sole discretion, of the Equipment and reinstallation is PCB's only responsibility, and your exclusive remedy, for breach of any warranty regarding the Equipment or the installation, as applicable. This Limited Warranty is personal to you, and will terminate immediately upon the sale or transfer of the Equipment or expiration or termination of this Agreement.

**10. Third Parties.** Certain services may require third party software to be installed in order to function. PCB shall not be liable for any use or installation of such software. Any third party software installed shall be governed by that third party's end user license agreement.

**11. Support.** You must use the troubleshooting guides and user information provided by PCB or available at [www.premiumchoicebroadband.com](http://www.premiumchoicebroadband.com) prior to contacting PCB Customer Care for assistance. In the event that you request a service call to your Service location and PCB determines that the problem is your responsibility, you authorize PCB to charge your Card or bank account or require you to otherwise pay for the cost of the service call.

**12. Credits.** In the event of an interruption of the Service that continues for a period of in excess of twenty-four (24) hours, PCB will grant you a credit for an amount not to exceed the prorated

monthly charges for your Service during the affected period. This credit will be your sole and exclusive remedy for any interruption or degradation of the Service, and constitutes the only credit or adjustment that may be made for any interruption or degradation of Service. To receive the credit granted under this section, you must request the credit in writing within sixty (60) days of the commencement of the interruption or degradation. No credit will be available if the interruption period results from any Excluded Causes.

**13. Network Management.** PCB reserves the right, in its sole and absolute discretion, to employ network management activities including without limitation (i) reducing, limiting, or otherwise restricting speeds and transfer rates, (ii) reducing or limiting sessions during periods of high network congestion, (iii) preventing the delivery of spam, (iv) detecting malicious internet traffic and preventing the distribution of viruses or other harmful code or content, and (v) using other tools and techniques to control bandwidth overuse. Further details are set forth in PCB's Acceptable Use Policy, which is available at <http://www.premiumchoicebroadband.com/Legal.html>.

**14. Acceptable Use Policy.** The Acceptable Use Policy (the "Policy") is incorporated by reference into these Terms of Service. PCB reserves the right to immediately restrict, limit, suspend, or terminate your Service or terminate this Agreement for any violation of the Policy.

**15. Privacy.** PCB's Privacy Policy describes how PCB may collect and use your personally identifiable and other information, and is available at <http://www.premiumchoicebroadband.com/Legal.html>.

**16. Ownership; No Licenses.** PCB shall all times remain the exclusive owner of the Service and Equipment, along with any hardware or software used to provide the Service, whether embedded in any Equipment or used in connection with the Service (collectively "Software"), all information regarding the Service, including documents and materials delivered to you by PCB or located on PCB's website (collectively "Information"), and all names, service marks, trademarks, trade names, logos and domain names (collectively the "Trademarks"). Nothing in this Agreement grants you the right or license to use any Software, Information, or Trademarks except for your nonexclusive use of the Software and Information in connection with your personal use of the Service, which must at all times be in accordance with terms and conditions of this Agreement.

**17. Credit Reporting Agencies.** You authorize PCB to make inquiries and receive information about your credit experience from others, to include this information in your account file and disclose the information to appropriate third parties for reasonable business purposes, subject to applicable law. Upon receipt of adverse credit information about you at any time, PCB reserves the right to suspend or terminate Service to you or require a deposit for Service, at PCB's option.

**18. Termination of Service.** PCB may suspend, alter, or discontinue providing the Service in general, or terminate your Service, either in whole or in part, at any time in its sole discretion. If PCB discontinues providing the Service generally or terminates your Service for a reason other than your breach of this Agreement, you will be responsible only for charges accrued through the date of termination, including a pro-rated portion of the final month's charges, and you will not be charged any Early Termination Fee.

**19. Theft of the Service or Equipment.** You agree to notify PCB immediately, in writing or by calling PCB Customer Care, if any Equipment is lost or stolen or if you become aware at any time that the Service is being stolen or fraudulently used.

**20. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** THE ONLY WARRANTIES MADE BY PCB WITH REGARD TO THE SERVICE AND EQUIPMENT ARE THOSE EXPRESS WARRANTIES SET FORTH IN SECTION 9 HEREIN. PCB, ITS PARENTS, SUBSIDIARIES, AFFILIATES, AND THEIR RESPECTIVE MANAGERS, DIRECTORS, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS, AND DISTRIBUTORS (THE "PCB PARTIES") DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AVAILABILITY, NON-INTERFERENCE WITH YOUR ENJOYMENT OF THE SERVICE OR EQUIPMENT, OR NON-INFRINGEMENT. ANY STATEMENTS NOT EXPRESSLY INCORPORATED HEREIN, WHETHER MADE BY ANY PCB EMPLOYEES OR REPRESENTATIVES, OR CONTAINED ON ANY EQUIPMENT, MANUALS OR RELATED PACKAGING, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS REPRESENTATIONS OR WARRANTIES OF ANY KIND BY ANY PCB PARTIES. PCB DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. YOU AGREE TO ASSUME ALL RESPONSIBILITY FOR AND RISK OF USE OF THE SERVICE AND THE EQUIPMENT. THIS SECTION 19 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR ANY REASON.

**21. LIMITATION OF LIABILITY.**

(A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL ANY OF THE PCB PARTIES BE LIABLE OR OBLIGATED IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, PRIVACY, SECURITY, STRICT OR PRODUCT LIABILITY, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES

FOR LOSS OF PROFITS, GOODWILL, LOSS OF EARNINGS, USE OR DATA, WHETHER ARISING DIRECTLY OR INDIRECTLY FROM OR RELATING TO THIS AGREEMENT OR USE, NON-USE, OR INSTALLATION OF THE SERVICES OR EQUIPMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL PCB BE LIABLE FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE OF THE FEES PAID TO PCB FOR THE APPLICABLE SERVICE OR EQUIPMENT HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO LIABILITY. FURTHERMORE, PCB SHALL NOT BE LIABLE FOR (I) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICE, PRODUCTS, OR RIGHTS; (II) ANY DELAYED, DEGRADED OR INTERRUPTED USE OF THE SERVICE OR ACCESS TO THE INTERNET; (III) ANY LOSS OR DAMAGE TO YOUR EQUIPMENT, SOFTWARE, OR DATA ARISING DIRECTLY OR INDIRECTLY OUT OF USE OR NON-USE OF THE SERVICE OR ANY EQUIPMENT OR RELATED COMPONENT; (IV) ANY LACK IN OR BREACHES OF SECURITY OF THE SERVICE, OR THE STORAGE OR INTEGRITY OF YOUR DATA OR ANY OTHER USER'S DATA; (V) THE VIEWING, DOWNLOADING, TRANSMITTING, ACCESSING, PURCHASING OR OTHER MEANS OF ACQUIRING INFORMATION, PRODUCT OR MATERIAL ACCESSIBLE THROUGH THE SERVICES; (VI) ANY DELAYS, ERRORS, OMISSIONS, INTERRUPTIONS, VIRUSES, SPYWARE, SPAM, OR TRANSMISSION DEFECTS IN ANY INFORMATION, MATERIAL OR DATA TRANSMITTED THROUGH THE SERVICE; OR (VII) ANY DAMAGES ARISING FROM ANY DELAY OR FAILURE IN PERFORMANCE OF THE SERVICE DUE TO EVENTS OR CAUSES OUTSIDE PCB'S REASONABLE CONTROL.

(B) THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION SHALL APPLY TO THE FULLEST EXTENT OF THE LAW, REGARDLESS OF WHETHER PCB WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES, AND REGARDLESS OF ANY REMEDIAL ACTIONS THAT PCB MAY TAKE. IF YOU ARE DISSATISFIED WITH THE SERVICE OR EQUIPMENT OR IF YOU HAVE ANY OTHER DISPUTE WITH PCB, OR CLAIM AGAINST PCB, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE AND ANY LIABILITY WILL BE LIMITED AS SET FORTH HEREIN. THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. THIS SECTION SHALL BE ENFORCED TO THE FULLEST EXTENT OF APPLICABLE LAW.

**22. Complaints.** All complaints must be in writing and sent to PCB Customer Care at the address set forth at [customerservice@premiumchoicebroadband.com](mailto:customerservice@premiumchoicebroadband.com), or obtained by calling (207) 735-2611 or (888) 488-3638.

**23. Notice.** Written notice hereunder from PCB will be deemed given to you: (i) when sent to the email address specified on your Order Form, or such other email address previously designated by you, in writing at least 30 days before the date of the notice, (ii) three (3) days following the date deposited in the U.S. Mail addressed to your last known address in PCB's files, or (iii) the date of delivery or rejection when sent by a nationally recognized courier. You are responsible for notifying PCB of any changes in your contact information. Written notice by you or on your behalf to PCB will be effective when directed to PCB's Customer Care Department and received at the address set forth at [www.premiumchoicebroadband.com](http://www.premiumchoicebroadband.com) or obtained by calling (207) 735-2611 or (888) 488-3638. All notices must be in writing to be effective. You agree that all correspondence and notices, including invoices, sent to you by PCB may be sent electronically to the last e-mail address you provided to PCB.

**24. Indemnification.** You agree to defend, indemnify, and hold harmless the PCB Parties from and against any and all claims, damages, losses, awards, actions, proceedings, charges, expenses, and liabilities (collectively, the "Claims") arising from the use or misuse of the Service or Equipment by you or by any person using your Service or Equipment, or any breach of this Agreement by you or associated with PCB's installation of Equipment, including, but not limited to, claims by any owner of the Service location. You also agree to reimburse the PCB Parties for any and all charges arising from or in connection with any Claim, including reasonable attorneys' fees and costs, and including fees and costs related to enforcing this Agreement. This Section 24 will survive termination or expiration of this Agreement for any reason.

**25. Assignment and Successors in Interest.** This Agreement will be binding upon, inure to the benefit of, and be enforceable against your successors, heirs and permitted assigns. PCB may assign this Agreement and its rights and obligations hereunder without prior written notice and without consent. You may not assign this Agreement or any of your rights, interests, or obligations hereunder without the prior written consent of PCB.

**26. Entire Agreement/Severability.** This Agreement consists of the terms set forth herein, the Order Form, the Internet Phone Service Addendum, the Acceptable Use Policy, the Privacy Policy and your Service Plan (each as they may be amended from time to time)(collectively, the "Documents"). The Documents represent the entire agreement and understanding of you and PCB regarding the subject matter of this Agreement and supersedes all other representations, whether electronic written, or verbal, regarding the subject matter herein. There are no agreements, understandings, warranties, or representations between the parties with respect to such matters or subjects, except as set forth and referenced herein. In the event of any inconsistency between this Agreement and any other document incorporated herein by reference or any other agreement between you and PCB, this Agreement will control, unless PCB has expressly stated or agreed otherwise. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforceability of the remaining

provisions hereof.

**27. Arbitration.** Any dispute, controversy or claim arising out of or relating to this Agreement or the rights and obligations of the parties hereunder, other than your failure to make payments in accordance with this Agreement and any action to collect amounts due to PCB under this Agreement, which may be brought in any court of competent jurisdiction, shall be conclusively settled by arbitration in Bangor, Maine in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date demand for arbitration is made except that the arbitrators shall be appointed as follows: (i) within fifteen (15) days after receipt of written notice of any such dispute, the parties shall jointly appoint a single arbitrator whose resolution of the dispute shall be final, binding and conclusive, or (ii) if the parties fail jointly to appoint a single arbitrator within said fifteen (15) day period, either party may appoint one arbitrator by notice to the other such party, and the other party shall name a second arbitrator within fifteen (15) days after receipt of such notice, whereupon the two arbitrators so named shall jointly select a third arbitrator within fifteen (15) days after the date of appointment of the second arbitrator, failing which the third arbitrator shall be appointed by the President of the American Arbitration Association. In the event that any party entitled to name the second arbitrator as set forth in this section fails to do so within the time period provided herein, the arbitrator appointed by the other party shall be the sole arbitrator. Any arbitrator or arbitrators shall conduct an arbitration within sixty (60) days of the date the final arbitrator is appointed and shall render a decision resolving the dispute within thirty (30) days of the arbitration, and the parties agree to abide by the decision of any single arbitrator or by a decision of a majority of any three arbitrators appointed as aforesaid and any such decision (and, if applicable, the allocation of fees and expenses) shall be binding, non-reviewable and non-appealable, and may be entered as a final judgment in any court having jurisdiction. The costs and expenses of any arbitrator shall be borne by the party appointing such arbitrator, except that the costs and expenses of any arbitrator jointly named or appointed as a third arbitrator shall be borne fifty percent (50%) by you and fifty percent (50%) by PCB, provided that such arbitrator, as part of his/her decision, may award costs (including attorneys' fees) to the prevailing party if such arbitrator believes that a party has not brought or prosecuted such a claim in good faith. The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of this Agreement.

**28. Governing Law.** This Agreement shall be governed by the laws of the State of Maine, without regard to choice of law principles.

**29. WAIVER OR JURY TRIAL; STATUTE OF LIMITATIONS. YOU AND PCB WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIMS OR DISPUTES RELATING TO THIS AGREEMENT OR THE SERVICE OR EQUIPMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO PARTICIPATE IN A CLASS ACTION (INCLUDING ANY CLASS ARBITRATION), EITHER AS A CLASS REPRESENTATIVE OR A CLASS**

**MEMBER, ACT AS A PRIVATE ATTORNEY GENERAL, OR JOIN OR CONSOLIDATE CLAIMS WITH CLAIMS OF ANY OTHER PERSON. YOU AND PCB AGREE THAT ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICE OR THIS AGREEMENT MUST BE COMMENCED WITHIN TWO (2) YEARS AFTER THE CLAIM ARISES, OR THE CLAIM WILL BE PERMANENTLY BARRED. NOTHING IN THIS AGREEMENT WILL PREVENT PCB FROM SEEKING CONSERVATORY, PROTECTIVE OR INJUNCTIVE RELIEF WITH RESPECT TO A VIOLATION OF ITS INTELLECTUAL PROPERTY RIGHTS IN ANY COURT OF COMPETENT JURISDICTION PENDING THE OUTCOME OF ANY ARBITRATION, OR ENFORCEMENT OR RECOGNITION OF ANY AWARD OR ORDER IN ANY COURT OF COMPETENT JURISDICTION. SHOULD ANY TERM OF THIS SECTION 24 BE HELD IN CONFLICT WITH A MANDATORY PROVISION OF APPLICABLE LAW, THE CONFLICTING TERM OF THIS SECTION 24 SHALL BE MODIFIED AUTOMATICALLY TO COMPLY WITH SUCH PROVISION AND THE REMAINDER OF THIS SECTION 29 SHALL REMAIN ENFORCEABLE AND SHALL NOT BE AFFECTED.**