

End-User Agreement

These Terms and Conditions (the “Agreement”) are provided by APPSware Wireless L.L.C., an Arizona Limited Liability Company, dba Apriva (“Apriva”). The communications service provided by Apriva (the “Service”) is used in connection with certain Apriva software and hardware devices and is only available in select Apriva service areas. Contact Customer Service for availability in Your market area. Rates and Service are subject to change by Apriva. Any such changes shall be posted on Apriva’s Web site at www.apriva.com. “You,” as referred to in this Agreement, means any entity, organization or individual using the Service.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE SERVICE PROVIDED BY APRIVA. YOUR USE OF THE SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the Service. Apriva is willing to provide the Service only if You agree to be bound by the following terms:

1. Services and Information. Apriva is not responsible for the accuracy or completeness of information sent or received by You through the Service. In certain instances, Apriva may make available through the Service certain information, data, or messages (collectively referred to as “Information”) independently obtained by Apriva from various sources, their affiliates, and others (collectively referred to as “Information Providers”). Such Information may be the subject of additional terms and conditions of the Information Providers. Your use of and access to the Information shall constitute Your acceptance of those terms and conditions. If You do not agree to the additional terms and conditions, do not use and access the Information. The accuracy, completeness, timeliness, or correct sequencing of the Information is not guaranteed by Apriva, the Information Providers, or any parties processing Information or payments (the foregoing parties are collectively referred to as the “Disseminating Parties”).

2. Disclaimer. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE SERVICE AND INFORMATION. NEITHER APRIVA NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF, (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY APRIVA OR ANY DISSEMINATING PARTY. THE SERVICE AND INFORMATION ARE PROVIDED “AS IS,” WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. APRIVA AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Although Apriva uses commercially reasonable efforts to provide for the secure transmission of information through the Service, confidential use of the Service by You cannot be guaranteed by Apriva or the Disseminating Parties. Apriva is not responsible for any harm that You or any person may suffer as a result of a breach of confidentiality in respect to Your use of the Service.

YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN APRIVA AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S). YOU UNDERSTAND AND AGREE THAT THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY FOR CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY YOU FOR THE SERVICES DURING THE TWO (2)-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE.

YOU SHALL INDEMNIFY AND HOLD HARMLESS APRIVA AND THE UNDERLYING WIRELESS, AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND THEIR OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE SERVICE AND/OR NUMBER EXCEPT WHERE THE CLAIMS RESULT FROM APRIVA'S OR THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

YOU HAVE NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.

YOU UNDERSTAND THAT APRIVA AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) CANNOT GUARANTY THE SECURITY OF WIRELESS OR OTHER TELECOMMUNICATIONS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES.

3. Exclusion of Damages. IN NO EVENT WILL APRIVA, ANY UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S), OR ANY DISSEMINATING PARTY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF THE USE OF SERVICE), EVEN IF APRIVA, THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S), OR ANY DISSEMINATING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

4. Force Majeure. Neither Apriva, the underlying wireless and/or telecommunications service carrier(s), nor any Disseminating Party shall be liable for any loss resulting from a cause over which such entity does not have direct control, including but not limited to, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

5. Limitations on Your Use of The Service and Information. You agree not to reproduce, re-transmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information in any manner without the express written consent of Apriva, and the relevant Information Provider(s). You agree to immediately notify Apriva if You become aware of any of the following: (a) any loss or theft of Your access number(s) and/or password(s) to the Service or Information, or (b) any unauthorized use of any of Your access number(s) and/or password(s), or of the Service or any Information. You agree to abide by all federal, state and local laws, rules, and regulations when utilizing the Service and Information. You agree to defend, indemnify, and hold Apriva and the Disseminating Parties harmless from and against any and all claims, losses, liabilities, costs and expenses (including but not limited to attorney's fees) arising from Your violation of this Agreement or any third party's rights.

6. No Reliance on Information. You acknowledge that neither the Service nor any of the Information is intended to supply advice of any nature. Although the Service may provide Information on a number of topics, none of the Information is endorsed by Apriva, the underlying wireless service and/or telecommunication carrier(s), or any Disseminating Party. Neither Apriva nor the Disseminating Parties recommend any service or product offered or advertised in the Information.

7. Ownership. All copyrights, patents, patent rights, trade secrets, trademarks, servicemarks, tradenames, moral rights and other intellectual property and proprietary rights in the Service and Information are and will remain the sole and exclusive property of, as applicable, Apriva and its vendors/licensors and Disseminating Parties. The Service and Information contain material that is protected by United States copyright law and trade secret law, and by international treaty provisions. All rights not expressly granted to You under this Agreement are expressly reserved by Apriva and its vendors/licensors and the Disseminating Parties. You may not remove or modify any proprietary notice of Apriva and its vendors/licensors and Disseminating Parties from the Service or Information.

8. Termination. Apriva reserves the right to terminate Your access to the Service and Information or any portion of them in its sole discretion, without notice, and without limitation, for any reason whatsoever, including but not limited to the unauthorized use of Your access number(s) and/or password(s), breach of this Agreement, failure to amounts due Apriva and/or the Disseminating Parties, discontinuance of the Service or loss of access to any Information from any of the Disseminating Parties. Upon termination, Apriva and the Disseminating Parties shall have no liability to You; provided, however, that if the termination is without cause, Apriva shall refund the pro rata portion of any fee which may have been pre-paid by You for the portion of the Service not furnished to You as of the date of such termination.

9. Motient Addendum. To the extent the Service is provided through Motient Communications, Inc., you acknowledge that in addition to this Agreement, You agree to be bound by the attached terms and conditions of the Motient Addendum in Your use of the Service.

10. General. You acknowledge that, in providing You with the Service, Apriva has relied upon Your assent to be bound by the terms of this Agreement. Subject to Apriva's right to change applicable pricing and Service terms by posting such changes on its Web site, this Agreement and any license or other restrictions provided with the Information constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. This Agreement and performance hereunder will be governed by and construed in accordance with the laws of the State of Arizona. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration by a single arbitrator conducted in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association then applicable. Any negotiation or arbitration pursuant to this Section will take place in Scottsdale, Arizona. The award of the arbitrator shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

11. Survival. The terms and conditions of Sections 2 through 10, above, shall survive any expiration or termination of this Agreement.