

EXADIGM WIRELESS – TERMS AND CONDITIONS OF RETAIL DATA PLAN SERVICE

Carefully read this legal agreement (“Agreement”). By using the ExaDigm Wireless Retail Data Plan Service (the “Wireless Service”) you agree to and accept these terms. If you do not agree to the terms of this Agreement, do not sign the Wireless Activation Form or activate the Wireless Service.

As used in this Agreement “you” means both the individual activating the Wireless Service and any entity responsible for the payment of the corresponding account. Upon written or electronic notice to you, ExaDigm may modify this Agreement, may modify the Wireless Service rules or prices, and may discontinue or revise any or all other aspects of the Wireless Service.

The Basic Provisions of the ExaDigm Wireless Retail Data Plan Service (“Basic Provisions”) contain the basic terms of this Agreement between you and ExaDigm. These terms and conditions (“Terms and Conditions”) explain and define the Basic Provisions and are to be read in conjunction with the Basic Provisions. If there is a conflict between any provisions contained in the Terms and Conditions and Basic Provisions, the Terms and Conditions shall control.

You acknowledge and agree as follows:

1. **Definitions, General Information & Operating Policies**

- a. **Description.** The Wireless Service consists of various wireless data communication services using radio base stations and switching facilities. The Wireless Service is provided by ExaDigm, Inc. (“ExaDigm”) through the facilities of wireless service provider(s) to ExaDigm (“Provider”). ExaDigm has acquired the right to resell and sublicense the Wireless Service. The “Network” is the method by which an ExaDigm wireless point-of-sale terminal connects to the Wireless Service (“Wireless Equipment”). A “Merchant Processor” is a third party data provider to the Wireless Service. By subscribing to the Wireless Service, you agree to use the Wireless Service in a manner consistent with this Agreement and all applicable laws and regulations. If any information provided by you is incomplete or inaccurate, ExaDigm retains the right to terminate your access to the Wireless Service.
- b. **Accounts.** To use the Wireless Service, you must have an open, active account that corresponds to your Wireless Equipment.
- c. **Password Responsibility.** Once you subscribe to the Wireless Service, you will receive a password and an account. You are solely and entirely responsible (1) maintaining the confidentiality of your password and (2) for all activities which occur under your account. You will immediately notify ExaDigm of any unauthorized use of your account or any other breach of security known to you. The complete privacy of your data and messages transmitted while using the Wireless Service cannot be guaranteed. For the purposes of this Agreement, “use” means to transfer data over the Network.
- d. **Lost or Stolen Units.** You must notify ExaDigm immediately if your Wireless Equipment is lost or stolen. If you fail to do so, any charges incurred on your account will be your responsibility.
- e. **Transaction Counts.** The transaction counts set forth in the Basic Provisions are approximations only. Your actual transaction count will vary based on, by way of example: the type of your transaction, the data submitted and/or the batch size.
- f. **Downloads.** ExaDigm or Provider may provide enhancements, updates or fixes (“Applications”) to your ExaDigm wireless point-of-sale terminal using the Wireless Service. Downloading of Applications may use significant amounts of data bytes and impact the amount of data bytes available in your prepaid plan.
- g. **Coverage Availability.** You may obtain information regarding the general availability and reception quality of the Wireless Service in a given location within the United States (“Service Ratings”) through the ExaDigm site on the World Wide Web at the URL <http://www.exadigm.com> (the “ExaDigm Site”) by entering the corresponding U.S. Postal Service zip code in the space provided. The Wireless Service Ratings are merely approximate guidelines, and shall not be considered to be a warranty or

representation of ExaDigm or the Provider as to the availability or reception quality of a Network connection from any given location at any given time. Neither ExaDigm nor the Provider shall be liable to you if the actual Wireless Service in a given location is not available or is not of the same reception quality as the posted Wireless Service Rating for that location.

- h. **Cancellation of Service.** If you are not completely satisfied with the wireless data plan or wireless service chosen, you have the ability to deactivate service within 30 days of the date of activation. Cancellation of service during the 30 day period will not be subject to an early termination fee. ExaDigm will bill for activation fees and /or wireless usage fees and for any usage in excess of plan allocation incurred before the date of deactivation. Cancellation of service after the 30 day period will be subject to an early termination fee.
- i. **Interruptions of Wireless Service.** If the Wireless Service is interrupted or you experience some other difficulty with the Wireless Service (including any problems or outages with the Network) ExaDigm will use commercially reasonable efforts to try to correct problems with the Wireless Service as soon as reasonably possible. ExaDigm is not responsible for performance degradation and delays due to conditions on the Provider's or the Merchant Processor's network, or due to the equipment or actions of the Provider or the Merchant Processor.

2. Charges & Billing Practices.

- a. **Fees.** You will pay the fees for the Wireless Service as set forth in the Basic Provisions. In addition, you are responsible for paying any fees or surcharges imposed on your use of the Wireless Service, including, but not limited to carrier regulatory fees, and licensing and processing fees, ExaDigm may change the fees upon written notice to you as provided in Section 9.2, below.
- b. **Payment.** To establish direct billing account, payment must be made by direct payment through Automated Clearinghouse transactions (ACH), or a credit card on file. For the Compass Group account, payment terms of net forty five (45) may be extended. Cash will not be accepted.
- c. **Activation and Excess Usage Charges.** Upon activation of your account, you will be charged the activation fee set forth in the Basic Provisions. Usage of data bytes in excess of your Plan will be billed at the rate set forth in the Basic Provisions rounded up to the nearest half Megabyte (MB) for a 500KB plan or the nearest Megabyte (MB) for all other plans. For example if your Plan allows for the use of 2 MB and you use 3.2 MB, you will be charged for an additional 2 MB.
- d. **Billing Information.** You will be billed each month in arrears for any previously unbilled usage. Each time you use the Wireless Service you agree and reaffirm that ExaDigm is authorized to charge your designated account.
- e. **Additional Charges.** You will be charged and billed for any additional charges beyond the monthly rates and applicable usage surcharges that have accumulated through the date of termination of your account.
- f. **Late Payment; Discrepancies.** If ExaDigm does not receive the full amount of your Wireless Service account balance within thirty (45) days of the Billing Date, a late payment charge of one and one half percent (1.5%) per month (or the highest amount allowed by law, whichever is lower) may be added to your bill and immediately become due and payable. Unless you notify ExaDigm of any discrepancies within sixty (60) days after they first appear on your account statement, they will be deemed accepted by you for all purposes. You release ExaDigm from all liabilities and claim of loss resulting from any error or discrepancy that is not reported to ExaDigm within sixty (60) days of its first appearance on an invoice or credit card statement.
- g. **Deactivation for Non-Payment.** You agree to pay ExaDigm all reasonable attorneys' fees and costs incurred by ExaDigm to collect any past due amounts. Your account may be deactivated without further notice if payment is thirty (30) days past due, regardless of the dollar amount.
- h. **Reservation of Rights.** ExaDigm reserves the right, at any time, to change its fees and billing methods, including the addition of supplemental fees or separate charges for services provided by ExaDigm, effective thirty (30) days after written notice to you through your desktop e mail or through the U.S. mail. If a material change is unacceptable to you, you may terminate your subscription to the

Wireless Service upon written notice to ExaDigm. Your continued use of the Wireless Service following the effective date of a change to the fees and billing methods shall constitute your acceptance of the change.

3. Licenses and Copyrights.

ExaDigm hereby grants to you a nonexclusive, nontransferable limited sub-license to use any Software solely in connection with your use of the Wireless Service only under the terms of this Agreement.

“Software” means all software used in, for or in connection with the Wireless Equipment, the Wireless Service, or the access thereto in whatever form (including without limitation, source code, object code and microcode, including any computer programs and any documentation relating to or describing the software). No title to the intellectual property in, or transmitted by, the Wireless Service or the Wireless Equipment is transferred to you.

4. Term and Termination

- a. **Term.** This Agreement shall be effective as of the date you activate the Wireless Service and will remain in effect for a minimum of one (1) year from that date until terminated as set forth in this Agreement.
- b. **Suspension or Termination of Access and Use.** ExaDigm reserves the right, in its sole discretion, to suspend or terminate your access to and use of Wireless Service without further notice if you breach any of the terms and conditions of this Agreement.
- c. **Termination.** This Agreement will terminate upon the occurrence of any of the following:
 - a) Upon thirty (30) days prior written notice by either ExaDigm or you for any reason; however if you terminate prior to one (1) year from the date you activate the Wireless Service, you will be subject to an early termination fee as set forth in section 4.4 below unless the cancellation is due to a material change to the fee and billing methods as set forth in section 2.8.
 - b) Immediately upon termination of the agreement between ExaDigm and the Wireless Provider.
 - c) Immediately if either ExaDigm or the Provider is prevented from providing the Wireless Service by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority.
 - d) **Early Termination Fee.** Except for cancellation due to the provisions set forth in section 1.8 or due to a change to the fee and billing methods as set forth in section 2.8, if you terminate this Agreement prior to the expiration of the Term, you will be obligated to pay an Early Termination Fee.
 - e) **Payment Due upon Termination.** Termination of this Agreement shall not relieve you of any obligations to pay accrued charges, including any prorated charges accrued for the billing cycle in which this Agreement is terminated. Upon termination of this Agreement for any reason, you will immediately pay to ExaDigm all fees due and owing to ExaDigm under this Agreement.

5. Compliance with Laws.

You shall not use the Wireless Service in any manner contrary to local, state or federal law. ExaDigm expressly disclaims any and all responsibility or liability for any action by you that is contrary to such law(s) by you and reserves the right to terminate your Wireless Service immediately upon notice for your failure to comply with any such local, state or federal law.

6. Disclaimer of Wireless Service Warranties.

- a) Subscription to Wireless Service does not affect the warranty that came with your Wireless Equipment. No additional warranty of the Wireless Equipment is provided as a result of subscribing to the Wireless Service.
- b) EXADIGM DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO THE WIRELESS SERVICE.

- c) EXADIGM MAKES NO WARRANTY THAT THE WIRELESS SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE WIRELESS SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NOR DOES EXADIGM MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WIRELESS SERVICE OR AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE WIRELESS SERVICE.
- d) ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WIRELESS SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR WIRELESS EQUIPMENT AND/ OR YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF THE MATERIAL AND/OR DATA.
- e) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EXADIGM OR THROUGH THE WIRELESS SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THIS AGREEMENT.
- f) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

7. Limitation of Liability for the Wireless Service.

- a) ExaDigm shall not be liable for and you waive your right to claim any loss, injury, claim, liability or damage of any kind resulting in any way from your use of or inability to use the Wireless Service (including without limitation any third party(s) unauthorized access to your data transmission).
- b) YOUR SOLE REMEDY FOR LOSS OR DAMAGES CAUSED BY PARTIAL OR TOTAL FAILURE, DELAY OR NONPERFORMANCE OF THE WIRELESS SERVICE, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) WILL BE CLIENT'S DIRECT DAMAGES, IF ANY RESULTING FROM THAT FAILURE. THE MAXIMUM LIABILITY OF EXADIGM SHALL BE LIMITED SOLELY TO THE AMOUNT PAID BY YOU TO EXADIGM FOR THE WIRELESS SERVICE DURING THE PERIOD OF FAILURE, DELAY, OR NONPERFORMANCE.
- c) EXADIGM SHALL NOT BE LIABLE FOR, AND YOU WAIVE YOUR RIGHT TO CLAIM, ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), DIRECTLY OR INDIRECTLY RELATING TO OR ARISING FROM, (1) YOUR USE OR INABILITY TO USE THE WIRELESS SERVICE, OR (2) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA , REGARDLESS OF THE FORM OF ACTION AND WHETHER THE DAMAGES WERE FORESEEN OR UNFORESEEN.
- d) SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

8. Indemnifications.

- a) **By You.** You will indemnify and hold ExaDigm harmless from and against any claim, loss, liability, damage, cost or expense (including attorney fees) arising from or relating to: (a) the purchase, delivery, acceptance, rejection, use or condition of the Wireless Service, (b) your breach of any obligation under this Agreement, and (c) your negligent act or omissions.
- b) **By ExaDigm.** ExaDigm will indemnify and hold you harmless from and against any claim, loss, liability, damage, cost or expense (including attorney fees) arising from any claim by a third party that the Wireless Service infringes upon the patent, copyright, trademark, or other proprietary right of that third party. This indemnification is expressly conditioned upon you providing ExaDigm with prompt notice of any claim.

9. **General.**

- a) **Entire Agreement.** This Agreement is intended as the complete, final and exclusive statement of the terms of the agreement between the parties relating to the subject matter of this Agreement and supersede all prior understandings, writings, proposals, representations or communications, oral or written, relating to that subject matter. ExaDigm may make changes to this Agreement by notifying you in accordance with Section 9.2. No change requested by you shall be binding upon ExaDigm unless agreed to in writing executed by both parties.
- b) **Notices.** You may send notices to ExaDigm by postal mail or by express delivery, addressed to ExaDigm, Inc., 2871 Pullman Street, Santa Ana, CA 92705 or at such other address as ExaDigm may provide. ExaDigm may send notices to you electronically by facsimile, desktop e mail, or by postal mail, addressed to you at your last known address or number. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.
- c) **Waiver.** A waiver of any default under this Agreement or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which the waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.
- d) **Severability.** If any provisions of this Agreement are found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.
- e) **Assignment.** ExaDigm shall be free to assign this Agreement in its sole discretion or subcontract all or any part of the Wireless Services. Assignment of this Agreement by you shall be prohibited without the express written consent of ExaDigm. Any attempted assignment in violation of this provision shall be null and void.
- f) **Governing Law.** THE VALIDITY, PERFORMANCE, CONSTRUCTION, AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, EXCLUDING CONFLICTS OF LAWS PRINCIPLES. THE SUPERIOR COURT OF ORANGE COUNTY, CALIFORNIA AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA SHALL HAVE JURISDICTION AND VENUE OVER ALL CONTROVERSIES IN CONNECTION WITH THIS AGREEMENT.
- g) **Arbitration.** All disputes, claims, and controversies between the parties arising out of or related to this Agreement or its breach (except for non payment or late payment and breach of any obligation of confidentiality or infringement of any intellectual property right for which an injunction may be sought) shall be settled by arbitration. The arbitration shall be conducted by one arbitrator under the then current Commercial Arbitration Rules of the American Arbitration Association. The power of the arbitrator shall be limited to that possessed by a Superior Court Judge in California. The arbitrator is prohibited from awarding damages or remedies in excess of those allowed by the provisions of this Agreement. The decision and award of the arbitrator shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in Orange County, California, or a mutually convenient location, and the award shall be deemed to be made in California.
- h) **Survival.** The following provisions shall survive the expiration or termination of this Agreement: Section 2 (“Charges and Billing Practices”), Section 6 (“Disclaimer of Wireless Service Warranties”), Section 7 (“Limitation Of Liability For the Wireless Service”), Section 8 (“Indemnifications”), and Section 9 (“General”) shall survive the expiration or termination of this Agreement.