

## SERVICE GUIDE

Welcome to the Service Guide of USA Mobility Wireless, Inc.. This is the "Service Guide" referenced in, and made a part of, your Sales and Services Agreement (or other applicable contract).

This Service Guide applies to all paging and messaging services, devices and accessories purchased or leased from USA Mobility Wireless, Inc. (the "Company"), except for those obtained under a National Accounts Agreement. The person obtaining such services, devices or accessories ("Subscriber" or "You") agrees to be bound by the terms and conditions of this Service Guide and Sales and Services Agreement or other applicable contract executed by Subscriber.

**THIS SERVICE GUIDE CONTAINS IMPORTANT TERMS AND CONDITIONS, WHICH ARE PART OF YOUR AGREEMENT WITH COMPANY.** BY ACCEPTING THE SERVICES IN ACCORDANCE WITH THE AGREEMENT, YOU ARE AGREEING TO THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT WISH TO AGREE TO THESE TERMS AND CONDITIONS, RETURN ALL COMMUNICATIONS DEVICES AND OTHER MATERIALS PROVIDED TO YOU BY THE COMPANY WITHIN **FOURTEEN (14) DAYS** OF THE DATE ON WHICH YOU RECEIVED THEM. If Your State's laws provide a longer period than fourteen (14) days to cancel Your Agreement, the period specified by Your State's laws will govern.

1. **Notice Regarding Customer Proprietary Network Information:** "Customer Proprietary Network Information" or "CPNI" is information that relates to the quantity, technical configuration, type, destination, and location of, and amount You use, the telecommunications service to which You subscribe, and that is made available to Company by You solely by virtue of the carrier-customer relationship. It does not include information such as name, telephone, number, address or advertising classification; that is, the kind of information that appears in a telephone book.

1.1 Company can use Your CPNI **without Your consent** to do any of the following:

- \* provide you with the services You ordered and bill You for them;
- \* protect Company's rights or property, or to protect our other users and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, Company's services;
- \* market service offerings to You in the same category of services (i.e., wireless services) to which you subscribe;
- \* provide You with paging units or other equipment to be used in providing services to You, and provide maintenance and repair services to that equipment;
- \* provide You with information services, such as the news feeds that You can receive over your paging unit; and/or
- \* comply with law or legal process (such as a warrant or subpoena).

1.2 Company does not otherwise access or use CPNI, or share CPNI with third parties. Under the rules of the Federal Communications Commission ("FCC"), You have rights to restrict the use of, disclosure of, and access to Your CPNI. Consequently, if in the future Company wishes to use or access Your CPNI for purposes other than those described in Section 1.1, or disclose it to third parties, it will give You written or electronic (i.e., e-mail) notice of the

type of use or disclosure it wishes to make of CPNI, explaining Your rights to “opt in” or “opt out” of such use or disclosure, in accordance with the FCC rules then in effect. BY ACCEPTING THE AGREEMENT, YOU AGREE TO OUR PROVIDING YOU WITH NOTICE REGARDING CPNI VIA E-MAIL.

2. **Definitions.** Capitalized terms shall have the meanings attributed to them in this Service Guide. In addition to the terms defined elsewhere in this Service Guide, the following capitalized terms shall have the following meanings:

Acceptable Use Policy or AUP: Company’s Acceptable Use Policy, available on Company’s Web site at [http://www.usamobility.com/acceptable\\_use\\_policy\\_agreements/index.html](http://www.usamobility.com/acceptable_use_policy_agreements/index.html).

Agreement: The Sales and Services Agreement executed by Customer, whether in hard copy or on-line, the Terms and Conditions thereto, this Service Guide, the Acceptable Use Policy, the Privacy Policy, and any documents incorporated by reference in any of the foregoing.

Contract Date: The date specified as the “Contract Date” or “Effective Date” on the Agreement or, if no such date is specified, the date on which the Device is activated (or if multiple Devices are ordered by Subscriber, the first Device so activated).

Device: A one-way receiving and/or two-way receiving and transmitting device.

FCC: Federal Communications Commission, and any successor agency.

Force Majeure Event: Any condition or event beyond the reasonable control of a party, including without limitation, electrical interference, terrain, weather, Acts of God, acts of governmental authority (including limitations on the availability of telephone numbers or spectrum), acts of public enemies, equipment failure, user error and/or the failure of any satellite or other connecting telecommunications facilities.

Numbers: Capcodes, personal identification numbers, email addresses and telephone numbers.

Privacy Policy: Company’s Privacy Policy, available on Company’s Web site at [http://www.usamobility.com/privacy\\_policy/index.html](http://www.usamobility.com/privacy_policy/index.html).

Service: Paging/messaging services and any related services ordered by Subscriber or otherwise provided by Company (by way of example and not limitation, news reports).

Service Agreement: The Sales and Services Agreement executed by Customer, whether in hard copy or on-line, and the Terms and Conditions thereto.

Special Offer: A promotion or other unusual event under which Company offers Services or Equipment under terms and conditions other than those contained in the Service Agreement and this Service Guide.

Term: The “Term” of the parties’ relationship is defined in, and shall have the meaning attributed in, the Service Agreement. The Term may include an “Initial Term” of one or more years, and subsequent “Renewal Terms,” all as defined in the Agreement. If the Agreement does not specify a Term, then the Initial Term shall be twelve (12) months from the Contract Date, and thereafter shall renew on a month-to-month basis, with each calendar month being a Renewal Term.

3. **Delivery Terms:** All deliveries of Devices and/or accessories shall be FOB Company's place of business nearest Customer's location. Risk of loss shall pass to Subscriber upon delivery.

4. **The Device:** Subscriber has requested to purchase or lease the Device(s) described in the Agreement. Company agrees to sell the Device and any accessories (the "Purchased Device"), or lease the Device and any accessories (the "Leased Device") to Subscriber on the terms and conditions stated in the Agreement and this Service Guide. Each Purchased Device and Leased Device is a "Device." The Device may be encrypted by the Company with a password to prevent theft, misuse, inventory control and certain contract protections, and, Subscriber shall not disable or remove that password. If, during the Term, Subscriber orders additional Devices, the Term of service for those Devices (and of the lease of Leased Devices) shall expire concurrently with the Term of Subscriber's Agreement.

4.1 Leased Device:

(a) Title in each Leased Device remains with Company.

(b) Subscriber agrees to maintain the Leased Device(s) in good operating condition and appearance, free from any liens or encumbrances. Subscriber agrees to return Leased Device to Company in its original condition, ordinary wear and tear excepted, upon the expiration or termination of the Agreement. In the event the Leased Device is not returned in its original condition, ordinary wear and tear excepted, Subscriber shall be charged for the necessary repairs or if the Leased Device is not returned at all or is damaged beyond commercially reasonable repair, Subscriber shall be charged the original purchase price of the Leased Device.

(c) In the event the Leased Device needs repairs during the Term, and the Leased Device is not damaged beyond commercially reasonable repair, Company shall send a replacement Leased Device, Subscriber shall deliver the damaged Leased Device to Company and Subscriber shall be responsible for all shipping costs associated therewith. Upon receipt of the damaged Device, Company will repair or replace the same in Company's sole discretion, and shall charge Subscriber for the repairs or replacement in accordance with the level of Protection (if any) that Subscriber has purchased.

(d) In the event the Leased Device is lost, stolen or damaged beyond commercially reasonable repair, then (a) if Subscriber has not purchased Protection (as defined below), Company shall send a replacement Leased Device and Subscriber shall be billed for the entire purchase price of such replacement Leased Device, along with all shipping costs associated therewith; or (b) if Subscriber has purchased Protection, Company shall send a replacement Leased Device and Subscriber shall be billed for the applicable Deductibles (as defined below), along with all shipping costs associated therewith. Company is under no obligation to repair or return the original Leased Device.

(e) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4.1, COMPANY OFFERS NO WARRANTY WITH THE LEASED DEVICE, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

4.2 Purchased Device:

(a) Title in Purchased Device passes to Subscriber upon payment in full of the purchase price. TO THE EXTENT THAT LOCAL LAW CONSIDERS TITLE TO PASS WITH RISK OF LOSS UPON DELIVERY, SUBSCRIBER HEREBY GRANTS TO COMPANY A PURCHASE MONEY SECURITY INTEREST IN THE PURCHASED DEVICE(S) UNTIL THE

SAME ARE PAID IN FULL. SUBSCRIBER HEREBY AUTHORIZES COMPANY TO EXECUTE ALL FINANCING STATEMENTS OR OTHER DOCUMENTS REQUIRED TO PERFECT THE PURCHASE MONEY SECURITY INTEREST GRANTED UNDER THIS SECTION. If local law requires Subscriber to execute the financing statements or other documents, Subscriber will do so within two (2) business days after receiving the same from Company.

(b) COMPANY OFFERS NO WARRANTY WITH THE PURCHASED DEVICE, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. In the event the Purchased Device has defects or faulty workmanship, Subscriber shall contact the manufacturer pursuant to the manufacturer's warranty, if any.

(c) Under certain circumstances, Subscribers may purchase Devices pursuant to special arrangements with Company whereby Subscriber shall make Automatic Payments (as defined below), in equal amounts, over a specified period (the "Purchase Period") of time ("Auto Pay Devices"). In the case of an Auto Pay Device, in the event of early termination prior to the expiration of the Purchase Period, Subscriber shall, among other things, pay the outstanding purchase price (the "Outstanding Purchase Price") due thereon.

(d) Under certain circumstances, Subscribers may purchase Devices pursuant to special arrangements with Company whereby Subscriber shall make payments in equal amounts, over the Purchase Period ("Time Purchase Devices"). In the case of a Time Purchase Device, in the event of early termination prior to the expiration of the Purchase Period, Subscriber shall, among other things, pay the outstanding balance (the "Outstanding Balance") due thereon.

4.3 Additional Devices: Notwithstanding anything to contrary contained elsewhere herein, in the event a Device is, or Devices are, added to an account hereunder, such Devices shall be deemed added to Subscriber's Agreement and the Term of Service with respect to such additional Device, or Devices, shall be co-terminous with the Term of the Agreement.

## 5. **USE OF SERVICES AND EQUIPMENT BY CUSTOMER.**

5.1 **General**. Company provides the Services through authority granted to it by the FCC. The use and provision of the Services and Equipment are subject to the rules and regulations of the FCC and applicable federal, state and local regulatory authorities in effect during the term hereof, and Subscriber agrees to comply with all of such laws, and with such reasonable conditions as Company may require from time to time, including but not limited to compliance with the Acceptable Use Policy, its Privacy Policy, and all other policies and procedures related to the Services and Equipment, in connection with its use of the Services and Equipment under this Agreement. Subscriber shall not use Services for any unlawful purpose (including, without limitation, violation of any applicable law, regulation or ordinance) or in a manner that could adversely affect Company's business reputation or service to others. Subscriber may not use, nor permit any of its employees or other persons under Subscriber's account (if permitted), to use the Services and/or Device(s) for promotional purposes or for resale. Subscriber may not transfer any of the Services or Devices without the prior written approval of Company. Subscriber may only use the Services and Device(s) for personal and lawful purposes and for the purposes intended.

5.2 **Unlimited Use Plans/Excessive Use of Network**. (a) Subject to Company's Acceptable Use Policy, and other general terms and conditions contained in this Agreement or incorporated herein and available at [www.usamobility.com](http://www.usamobility.com), all uses of Company's networks, including without limitation under Service plans that allow for an unlimited number of messages or

characters ("Unlimited Use Plans") are subject to all reasonable restrictions on use that Company may impose, at its sole discretion and without prior notice, for protection of the networks and other Company customers. Unless otherwise expressly agreed by Company in writing, Services, including those under Unlimited Use Plans cannot be used for: (1) uploading, downloading or streaming of movies, music or games, (2) with server devices or with hosted computer applications, including, but not limited to, automatic data feeds, automated machine-to-machine connections, or peer-to-peer (P2P) file sharing, or (3) as a substitute or backup for dedicated data connections.

(b) Unlimited Use Plans are for individual use only and not for resale. Company reserves the right to limit throughput or amount of data transferred, and deny or terminate service, without notice, to Customer if the Company believes Subscriber is using an Unlimited Use Plan in any manner prohibited herein or that adversely impacts Company's network or service levels. Company reserves the right to protect its network from harm, which may impact legitimate data flows, by disconnecting customers or limiting their access to the network in the event of any violations of these provisions. Company also reserves the right to treat excessive use of the Service as a material breach of this Agreement and to permanently terminate service to Subscriber for such excessive use.

**6. Maintenance and Protection:** Subscriber may be offered, and may elect to purchase, maintenance or loss protection, as more fully described in this Service Guide. Subscriber's election is noted on the Agreement.

6.1 Types of Coverage Available. Subscribers using Leased Devices may elect to purchase loss protection ("Protection"). Subscribers using Purchased Devices may elect to purchase maintenance protection ("Maintenance") and, under certain circumstances, if available, Subscribers using Purchased Devices may elect to purchase maintenance and loss protection ("Coverage"). Maintenance, Protection and/or Coverage are sometimes collectively referred to as "Care." Care may not be available on all Devices at Company's sole discretion. Consult Company for the applicability of Care for the Leased Device and the Purchased Device and for applicable Deductibles and details relating to the Care program.

6.2 Deductibles; Payments. Subscriber shall be responsible for all deductibles (the "Deductible"), as in effect from time to time, applicable to the level of Care purchased by Subscriber. In the case of two-way Devices, Subscriber shall be responsible for the equipment swap fees (the "Swap Fees"), which shall be charged to Subscriber each time a two-way Device is exchanged by Company.

6.3 Support Provided. Except as otherwise provided herein, and in accordance with Subscriber's payment of Deductibles and applicable Swap Fees:

(a) in the case of Protection: if the Leased Device is (i) malfunctioning or damaged but reasonably subject to repair, Company shall, at its option, replace the Leased Device or perform repairs thereto, or (ii) lost, stolen or damaged beyond commercially reasonable repair, Company shall provide Subscriber with a replacement Leased Device, which replacement Device may new, refurbished or of a different make or model; or

(b) in the case of Maintenance: Company's sole obligation, at its option, is to replace, or perform minor repairs to a malfunctioning Purchased Device; or

(c) in the case of Coverage, if available: if the Purchased Device is (i) malfunctioning or damaged but reasonably subject to repair, Company shall, at its option, replace the Purchased Device or perform repairs thereto; or (ii) lost, stolen or damaged beyond commercially reasonable repair, Company shall provide Subscriber with a replacement Purchased Device.

#### 6.4 Exclusions.

(a) Company shall not provide services under any Care program, where available, unless Subscriber (i) pays all Deductibles and applicable Swap Fees, (ii) is current on all payments, (iii) pays for shipping and handling (including, without limitation, for the return of the affected Device to Company), (iv) if applicable, furnishes an affidavit of loss in a form satisfactory to Company and (v) exhausts all remedies under manufacturer's warranty, if any. Care shall be void if the Device is damaged due to misuse, tampering or repairs or modifications not authorized by Company.

(b) Subscriber shall be responsible for all costs associated with batteries and the Device's housing, clip and battery cover, whether or not Subscriber has purchased Protection, Maintenance and/or Coverage.

(c) Company is under no obligation to repair or return the original Device. Company reserves the right at its sole discretion, (i) not to offer Care to Subscriber or (ii) to terminate Subscriber's Care upon not less than five (5) days' notice, provided Company shall issue a pro rata credit for any prepaid amounts for Care for the period from and after the effective date of termination. Company shall not, however, issue any credit for any portion of Care in the event that the Term of the Agreement expires or terminates prior to the Care period. Care is void for any Device provided to another person.

7. **Repair/Delivery of Device:** Unless the parties have made alternative return arrangements, upon termination or expiration of the Agreement for Leased Devices, or in connection with repairs under a Care program for any Device, Subscriber shall return such Device(s) using packaging with ample padding to prevent damage in transit and shall prepay all shipping costs. If the returned Device is missing parts or is not in the condition it was provided to Subscriber, ordinary wear and tear excepted, Subscriber shall be responsible for the cost of the missing parts or for cost of returning the Device to its original condition.

#### 8. **Service Interruptions; Credits:**

8.1 In the event that Service is interrupted for any reason, Subscriber's sole remedy shall be the pro rata adjustment to the fixed monthly charges for Service of the affected Device (an "Adjustment") as provided for in this Service Guide, and subject to the terms, conditions and limitations set for herein. Notwithstanding the foregoing, an Adjustment shall only be made (i) for interruptions of more than 36 consecutive hours in duration and (ii) from the time Company receives written notice of such interruption until the termination of such interruption.

8.2 No Adjustment shall be made if the interruption is caused by (i) Subscriber's or any person's use of Subscriber's Device, including, among other things: (a) failure to comply with the Device's operating instructions or (b) any breach of the Agreement; (ii) any act or event beyond the reasonable control of Company (a Force Majeure Event); (iii) activities reasonably necessary or appropriate for the proper maintenance or improved operations of Company and the Services; or (iv) signal or coverage limitations.

#### 9. **Payment Terms:**

9.1 "Charges" for Service and Device(s) shall be set forth on the invoice. Charges shall be in accordance with Company's applicable charges in effect from time to time, and except as provided elsewhere herein, the Company may change the rate of Charges without prior notice. Charges may include charges for shipping, activation or connection, and programming. Company may require the payment of certain Charges upon execution of the Agreement ("Initial Charges"). Additional charges may apply for overcalls and changes to Service or Device(s). Charges, other than overcall charges, shall be payable in advance. In the event of rebates, special offers or promotional offerings (collectively, "Special Offers"), the initial charges shall remain in effect until

the termination of the Special Offers and Company shall have the right, without further notice, to implement the then-current charges.

9.2 **Taxes and Fees:** Company reserves the right to pass on to Subscriber, in addition to the Service and Device Charges, payment obligations imposed upon Company, costs incurred by Company, or contributions Company is required to make pursuant to any tax, levy, surcharge, or fee under federal, state or local law. Taxes and fees passed through to Customer may include, but not be limited to, state and federal Universal Service Fund ("USF") charges, similar charges arising out of the provision of Services or Devices to Subscriber, and administrative costs incurred by Company in complying with any of the foregoing. Subscriber shall pay, in addition to any Charges described above, any assessment, duty, tax, or similar charge imposed by any local, state or federal government or governmental agency with respect to Service or the Device. Taxes, fees and similar assessments applicable to the Service, Devices or Charges on an invoice will generally be billed monthly, and specified in one or more line items on Company's invoice to Subscriber.

9.3 **Payment Methods:** Payments may be made by automatic withdrawal from Subscriber's checking account (other than the deposit, if any, and the Initial Charges) or by credit card (collectively, "Automatic Payments") by providing the appropriate information to Company. Subscriber's election to use Automatic Payments authorizes Company to seek payment from Subscriber's credit card issuer or bank, as applicable, for the full amount of the Charges. By electing Automatic Payment, Subscriber (i) acknowledges receipt of Service for the total Charges set forth on each invoice and, as applicable, (ii) as the cardholder, agrees to perform the obligations pursuant to Subscriber's agreement with the credit card issuer. After the expiration of the Initial Term, Subscriber may cancel Automatic Payments for future Charges by providing Company with not less than thirty (30) days written notice, provided Subscriber of Auto Pay Devices shall pay the Outstanding Purchase Price due thereon prior to canceling Automatic Payments. Subscribers using Automatic Payments are solely responsible for the maintenance of appropriate balances in their checking accounts and credit availability in their credit card accounts, including, without limitation, the valid non-expiration of their credit cards.

9.4 IF SUBSCRIBER HAS ELECTED AUTOMATIC PAYMENTS, THEN COMPANY, IN ITS SOLE DISCRETION AND WITHOUT PRIOR NOTICE TO SUBSCRIBER, RESERVES THE RIGHT TO CHARGE ANY AMOUNTS DUE HEREUNDER BY SUBSCRIBER AGAINST SUBSCRIBER'S CREDIT CARD AND/OR CHECKING ACCOUNT, INCLUDING WITHOUT LIMITATION, TAXES AND FEES UNDER SECTION 9.2 AND EARLY CANCELLATION CHARGES UNDER SECTION 15.2. BY ACCEPTING SERVICE, SUBSCRIBER HEREBY AUTHORIZES COMPANY TO MAKE SUCH CHARGES AGAINST SUBSCRIBER'S CREDIT CARD AND/OR CHECKING ACCOUNT.

9.5 **Credit Information:** Subscriber consents to Company's disclosure of credit information to consumer reporting agencies, credit bureaus, or private credit reporting associations. Subscriber warrants that all information furnished to Company was, at the time of application for credit and delivery of the Device, true and correct, and acknowledges any inaccuracy shall entitle Company to suspend Service and Subscriber shall be responsible for payment of all Charges through the date thereof and any disconnection and/or reconnect fees, including without limitation the Account Disconnect Fee, plus in the case of the (i) Leased Devices, Subscriber shall return the Device to Company, (ii) Auto Pay Devices, Subscriber shall make payment of the Outstanding Purchase Price and (iii) Time Purchase Devices, Subscriber shall make payment of the Outstanding Balance.

10. **Deposit:** At Company's sole discretion, Subscriber may be required to pay a deposit for Service or the Device(s). Company may apply the deposit in its discretion against amounts owed and unpaid during the Term and upon termination of the Agreement. To the extent that Company applies all or any part of the deposit, Company may require Subscriber to provide

Company with an additional deposit. Interest will not be paid on the deposit unless required by law.

11. **Price Adjustments:** Subscriber shall pay Company for Services and Equipment on behalf of itself and all of its end-users in accordance with the applicable rates set forth on the Service Agreement. Upon the expiration of the Initial Term, or at any time and from time to time after such expiration of the Initial Term, Company may increase the prices set forth on the Service Agreement by providing Subscriber not less than thirty (30) days advanced written notice. The Equipment charges set forth on the Service Agreement may be increased at any time during the term of this Agreement in the event of a manufacturer price increase.

12. **Indemnification:** SUBSCRIBER SHALL INDEMNIFY COMPANY, IN ACCORDANCE WITH THAT SECTION OF THE SERVICE AGREEMENT CAPTIONED "INDEMNITY."

13. **Disclaimer of Warranties; Limitation of Liability.** Company's liability to Subscriber hereunder shall be limited in accordance with that Section of the Service Agreement captioned "Limitation of Liability." Company further disclaims any and all warranties in accordance with that Section of the Service Agreement captioned "Warranty Disclaimer." WITHOUT LIMITING THE FOREGOING OR THE AGREEMENT, COMPANY EXPRESSLY DISCLAIMS ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

14. **Termination; Default**

14.1 Events of default, and any applicable period to cure, are specified in the Service Agreement.

14.2 IF CUSTOMER FAILS TO TIMELY PAY ANY INVOICE, THEN WITHOUT PRIOR WRITTEN NOTICE BY COMPANY, COMPANY MAY TAKE ANY OR ALL OF THE FOLLOWING ACTIONS:

(a) Service may be temporarily interrupted or terminated;

(b) a reconnection charge of up to \$25 per Device may be charged to Subscriber's account;

(c) late charges shall accrue at the rate of 1.5% per month (or fraction thereof) or the highest lawful rate, if lower;

(d) Company may apply Subscriber's deposit, if any, against the unpaid balance; and/or

(e) Company may require an additional deposit to continue Service.

14.3 Subscriber agrees to pay all collection costs and reasonable legal fees incurred by Company as a result of Subscriber's late payment or non-payment. In addition to disconnection and/or reconnection charges, if any, Subscriber shall pay the Outstanding Purchase Price and/or the Outstanding Balance, as applicable.

14.4 If Subscriber in good faith disputes any portion of the invoice, Subscriber shall nonetheless make payment in full of the invoice and Subscriber shall notify Company of such dispute, in writing with supporting documentation, within fifteen (15) days of receipt of the invoice. The parties shall use commercially reasonable efforts to resolve any dispute. In the event the dispute is resolved in Subscriber's favor, Company shall issue a credit to Subscriber's account. In

the event the parties are unable to resolve the dispute, the dispute shall be resolved as provided elsewhere herein.

14.5 Nothing in this Section 13 is intended to limit any other remedies available to Company under the Agreement, at law or in equity.

14.6 Notwithstanding anything in the Agreement to the contrary, if Subscriber or any of its employees or end-users (a) violates Company's Acceptable Use Policy; or (b) uses any Service or Device provided hereunder for any fraudulent, abusive, harassing or unlawful purpose, Company may, in addition to all other rights and remedies available to it and in its sole discretion, suspend Service immediately upon sending to Subscriber a notice of breach pursuant to the terms of the Agreement. Company shall have no obligation to reinstate Service during the cure period unless Subscriber provides Company with evidence satisfactory to Company that the activities described in subsections (a) and/or (b) have ceased.

**15. Non-use; Cancellation:**

15.1 Subscriber's use of Services is at Subscriber's discretion, and except for usage-based or overage charges assessed by Company, Subscriber remains liable for payment of the monthly charges invoiced by Company regardless of whether or the degree to which Subscriber actually uses the Services.

15.2 (a) Subscriber may cancel the Agreement for any reason or no reason upon thirty (30) days' prior written notice to Company; provided that if Subscriber elects to cancel Services prior to the expiration of the Initial Term, or if the Agreement is terminated by Company during the Initial Term due to Subscriber's breach, Subscriber shall be obligated to pay the following amounts: (i) all recurring charges and outstanding balances through the end of the Initial Term; (ii) an account disconnection fee (the "Account Disconnect Fee") specified in the Agreement; and (iii) the Outstanding Purchase Price and/or the Outstanding Balance, as applicable. Nothing in the foregoing shall relieve Subscriber of liability for any other amounts hereunder, including without limitation overage charges, taxes, fees or other applicable amounts accruing prior to the effective date of termination which are difficult or impossible to ascertain in advance.

(b) If Subscriber subscribes to Service for more than one Device, Subscriber may cancel Service for one or more Devices without canceling this Agreement in its entirety, upon thirty (30) day's prior written notice to Company; provided, that during the Initial Term, Subscriber shall pay the amounts described in the foregoing subsections 15.2(a)(i), (ii) and (iii) that are applicable to the cancelled Devices. Nothing in the foregoing shall relieve Subscriber of liability for overage charges, taxes, fees or other applicable amounts applicable to the cancelled Devices and accruing prior to the effective date of termination which are difficult or impossible to ascertain in advance. Written notice under this Section should include the following information:

- Device telephone number
- cap code
- serial number
- requested disconnect date
- reason for return

Note that in the event a Device is returned to Company without, or after expiration of, the thirty (30) day notice, Company will bill Subscriber's account through the period ending an additional thirty (30) days after Company's receipt of the Device.

(c) If Subscriber (i) provides a termination or cancellation notice specifying an effective date less than thirty (30) days following the notice, or (ii) returns any or all Devices in Subscriber's possession without formal notice of cancellation or termination, Company will bill

Subscriber for, and Subscriber shall be liable to pay, all charges up through the thirtieth (30<sup>th</sup>) day following the occurrence described in (c)(i) or (ii).

(d) Each Device for which Company receives a notice of cancellation, under an Agreement for which Company has received a notice of termination, will be "lost billed" (ENR – Equipment Not Returned or Lost) until the Device is returned to Company. When the Device is returned, Company will credit the account for the amount paid by the Subscriber (Equipment Returned or Found).

**16. E-Mail Addresses, Telephone and Personal Identification Numbers:**

Company shall assign the Numbers to Subscriber, as applicable, in its sole discretion. Subscriber shall not acquire any proprietary interest in any specific Numbers assigned, rather, Subscriber acknowledges that all Numbers are proprietary to Company to the fullest extent allowed under law. Company does not guarantee the assignment of any particular Number, prefix, or exchange and reserves the right to assign, designate, reassign or change Numbers as reasonably necessary in the conduct of its business. Company hereby grants the use of a Number only on a revocable basis; no rights shall accrue to Subscriber relating to such Number even if Subscriber has made all required payments. The use of a Number is subject to Company's Acceptable Use Policy and Privacy Policy, available online at [www.usamobility.com](http://www.usamobility.com).

**17. Applicable Law/Venue/Remedies:** The Agreement, including this Service Guide and all other documents incorporated by reference therein or herein, will be governed by internal laws of the Commonwealth of Virginia, without reference to its choice of law rules. Any and all disputes directly or indirectly related to the Agreement or the relationship of the parties shall be resolved by the Circuit Courts for Fairfax County, Virginia, or the U.S. District Court for the Eastern District of Virginia. SUBSCRIBER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SAID COURTS AND HEREBY WAIVES ANY CLAIM OR DEFENSE THAT SUCH FORUM IS NOT CONVENIENT OR LACKS JURISDICTION. SUBSCRIBER AGREES THAT ANY SUCH COURT SHALL HAVE IN PERSONAM JURISDICTION OVER IT AND THAT SERVICE OF PROCESS MAY BE EFFECTED IN ANY MANNER AUTHORIZED BY THE COMMONWEALTH OF VIRGINIA'S LAWS. SUBSCRIBER FURTHER WAIVES THE BENEFITS, IF ANY, OF ANY STATUTE OF LIMITATIONS, STATUTES OR COURT RULES PERMITTING A CHANGE OF VENUE, REMOVAL, DISMISSAL OR CONSOLIDATION WHICH WOULD HAVE THE EFFECT OF ADJUDICATING ANY DISPUTE UNDER THIS AGREEMENT IN ANY COURT OTHER THAN THOSE ENUMERATED. In the event either party shall be required to resort to judicial remedies to defend or enforce any term or condition hereunder, the prevailing party in such action shall be entitled to recover costs, including a reasonable award of attorneys' fees, including allocable costs of in-house counsel.

**18. Waiver of Jury Trial:** SUBSCRIBER HEREBY WAIVES, AND AGREES THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION TO OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE SUBJECT MATTER HEREOF, ANY SUBSCRIBER AGREEMENT OR ANY GUARANTIED OBLIGATION, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING OR WHETHER IN CONTRACT OR IN TORT OR OTHERWISE.

**19. Interpretation:** The Agreement shall not be construed against the party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both parties. Without limiting the generality of the foregoing, Subscriber has had the opportunity to review the terms of the Agreement in consultation with counsel of its choosing.

**20. Severability; Amendment:** If any provision of the Agreement, including this Service Guide, is declared or found to be illegal, unenforceable, or void, the parties shall negotiate in good faith to agree on a substitute provision that is legal and enforceable and is as nearly

possible consistent with the intentions underlying the original provision. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law. In the event of a change in applicable law, including without limitation, the rules, regulations or policies of the FCC, that impacts the provision of the Services or the agreed-upon conduct of the parties, this Agreement shall be amended to conform to the requirements of such applicable law. If a change in applicable law substantially deprives a party of its rights or benefits under this Agreement, or makes such party's performance materially more difficult or costly, then such party may terminate this Agreement upon thirty (30) days' prior written notice to the other.

21. **Amendments:** All terms and conditions of the Agreement may only be amended in writing when signed by duly authorized representatives of each party.

22. **Waiver:** No waiver or consent by either party to a variation from any provision of the Agreement shall be effective unless made in a written instrument duly executed by its duly authorized officer. Each such waiver or consent shall be effective only to the extent set forth in such instrument. No delay or failure by either party in exercising any right under the Agreement, including this Service Guide, and no partial or single exercise of that right, will constitute a waiver of that right or any other right. Failure by either party to enforce any right under the Agreement and/or this Service Guide will not be deemed a waiver of future enforcement of that or any other right.

23. **Intellectual Property:**

23.1 All intellectual property (copyrights, patents, trade secrets, confidential and proprietary information, license rights and the like) included in any of the Services or Devices provided by Company under the Agreement ("Intellectual Property") shall remain the sole and exclusive property of Company and its licensors, and shall be subject to any standard end-user license agreements of Company and/or its licensors, as the case may be, for such Intellectual Property. To the extent that no end-user license agreement is required, Company hereby grants to Subscriber a non-exclusive, royalty-free license, for the Term hereof and in the service area in which Subscriber subscribes to the Service, to use, perform, and display the Intellectual Property contained in the Service and Device(s), solely for the purposes of receiving and using such Service and Device(s). Any such license rights shall automatically terminate immediately upon the termination or expiration of the Agreement.

23.2 In no event shall Subscriber (a) make any copies of any Intellectual Property, except as specifically permitted by an end-user license agreement; (b) rent, lease, or loan the Intellectual Property; (c) electronically transmit the Intellectual Property over a network except as necessary for Subscriber's licensed use of the Intellectual Property; (d) use run-time versions of third-party products embedded in the Intellectual Property, if any, for any use other than the intended use of the Intellectual Property; (e) modify, disassemble, decompile, or reverse engineer the Intellectual Property; (f) transfer possession of any copy of the Intellectual Property to another party, except as expressly permitted herein; or (g) use the Intellectual Property in any way not expressly provided for in the Agreement or this Service Guide. There are no implied licenses and Subscriber agrees not to exceed the scope of the written licenses granted.

23.3 Without limiting the generality of the foregoing, nothing contained in the Agreement or this Service Guide shall be deemed to confer upon Subscriber any right to use in advertising, publicity, marketing activities or otherwise any name, trademark, service mark or other designation of Company or its affiliates, including any contraction, abbreviation or simulation of any of the foregoing, without the prior written consent of Company.

24. **Miscellaneous:** (a) Subscriber warrants that the person entering into the Agreement is authorized to do so. (b) The Service Agreement, along with this Service Guide and the other materials incorporated by reference therein or herein, constitutes the entire agreement between

the parties and supersedes all prior agreements, written or oral, and may not be amended except in writing and signed by an authorized representative of each party. (c) Subscriber may not assign the Agreement without Company's prior written consent. (d) In the event of any conflict between the terms stated herein and any Special Offer, the terms of the Special Offer shall supersede the terms stated herein. (e) The Agreement shall not be effective or binding until (i) executed by Company (ii) Company's activation of Service or (iii) by the transmittal of an invoice. (f) The Agreement shall inure solely to the benefit of Company and Subscriber. There are no third party beneficiaries to the Agreement or the Services and Devices provided hereunder, including but not limited to any employee or family member of Subscriber. Subscriber will indemnify and hold harmless Company, its officers, directors, employees, shareholders and agents, from and against any employee, family member's or other third party's claims, complaints, liabilities, damages or costs of any kind arising out of or related to the Services provided by Company to Subscriber hereunder. (g) Nothing contained in the Agreement shall constitute either party as agent and principal, partner, joint venture or employer and employee of the other. Moreover, neither party has the authority to act on behalf of the other or otherwise bind the other in any manner. (h)

25. **Notices:** To be effective, any notice must be served by registered or certified U.S. mail or by any regular delivery service that provides receipt and evidence of delivery. Notice shall be deemed delivered two (2) days after the date of registration or certification with the U.S. mail or on the date of actual delivery if served by any other method. Notices to Subscriber shall be sent to the address on Subscriber's Agreement, unless Subscriber notifies Company of a different address in accordance with the procedures of this Section. Notices sent to Company should be sent to P.O. Box 169005, Irving, TX 75016-9005, Attn: TNC2002, with a copy, which shall not constitute notice, to: Company, Inc., ATTN: General Counsel, 6677 Richmond Highway, Alexandria, Virginia 22306.

## 26. **Force Majeure:**

26.1 Without limiting the generality of any disclaimer of warranty or limitation of liability contained herein or in the Agreement, Subscriber understands, acknowledges and agrees that telecommunications services, including the Services, may be adversely affected by Force Majeure Events, which include various conditions, including but not limited to electrical interference, terrain, weather, Acts of God or governmental authority (including limitations on the availability of telephone numbers or spectrum), equipment failure, user error and the failure of any satellite or other connecting telecommunications facilities. Additionally, periodic service interruptions may be necessary to perform maintenance on the networks and facilities. COMPANY THEREFORE CANNOT AND DOES NOT GUARANTEE THE AVAILABILITY OF THE SERVICES AT ALL TIMES AND UNDER ALL CIRCUMSTANCES, NOR THAT ALL MESSAGES WILL BE RECEIVED IN A TIMELY MANNER. WIRELESS MESSAGING SERVICES ARE NOT SECURE METHODS OF TRANSMISSION, AND COMPANY CANNOT AND DOES NOT GUARANTEE AGAINST IMPROPER ACTIONS OF THIRD PARTIES THAT INTERFERE WITH THE PRIVACY OF MESSAGES OR THE INTEGRITY OF THE SERVICES. SERVICES RELATED TO DATABASES AND INFORMATION CONTENT MAY CONTAIN INACCURACIES FROM TIME TO TIME THAT OCCUR AT THE SOURCE OR IN THE TRANSMISSION PROCESS (INCLUDING BUT NOT LIMITED TO ERRORS IN STOCK QUOTATIONS, SPORTS RESULTS AND NEWS REPORTS), AND COMPANY CANNOT AND DOES NOT GUARANTEE THE ACCURACY OR AVAILABILITY OF SUCH SERVICES. COMPANY'S PRICES FOR THE SERVICES DO NOT INCLUDE INSURANCE FOR THESE INHERENT RISKS.

26.2 Notwithstanding anything to the contrary contained in this Service Guide or the Agreement, Company shall not be liable for loss or damage or deemed to be in breach of this Agreement due to Company's failure or delay of performance, wholly or in part, under this Agreement if such failure or delay of performance is due to a Force Majeure Event. Any delay

resulting from a Force Majeure Event shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

**WARRANTY DISCLAIMER**

Wireless messaging services are not secure methods of transmission, and Company cannot and does not guarantee against improper actions of third parties that interfere with the privacy of messages or the integrity of the Services.