

## TERMS AND CONDITIONS

The terms and conditions stated herein are part of the Sales and Service Agreement and, if applicable, are in addition to any additional terms stated in any Special Offering and shall govern the relationship between the customer identified in the Sales and Service Agreement (the "Subscriber") and USA Mobility Wireless, Inc. (the "Company") with respect to the subject matter hereof. **In addition, the Company's "Service Guide," posted on the Company's website at [www.usamobility.com/pdf/serviceguide.pdf](http://www.usamobility.com/pdf/serviceguide.pdf), a copy of which will be provided to you by your sales representative upon request (the "Service Guide") is incorporated by reference herein, and the terms and conditions contained in the Service Guide, as amended from time to time, are made a part hereof as fully as if set forth herein.** Collectively, the Sales and Service Agreement, these terms and conditions, the Service Guide and any Special Offering are the "Agreement." Capitalized terms not defined herein will have the meaning attributed to them in the Service Guide. By signing the Sales and Services Agreement, you are accepting the terms and conditions of this Agreement and you agree to the terms and conditions of Company's **Acceptable Use Policy** and **Privacy Policy** (as either may be amended from time to time), which are available at [www.usamobility.com](http://www.usamobility.com) and incorporated into this Agreement. **IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE SERVICE GUIDE, PLEASE RETURN YOUR COMMUNICATION DEVICE(S) WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT THEREOF. UPON THE EARLIER OF YOUR USE OF THE SERVICES (AS DEFINED BELOW) OR THE EXPIRATION OF THE FOURTEEN-DAY PERIOD, SUBSCRIBER AGREES TO BE BOUND HEREBY. THE LAWS OF YOUR STATE MAY GIVE YOU A LONGER PERIOD OF TIME IN WHICH TO REJECT OR TERMINATE THIS AGREEMENT, IN WHICH CASE THE LONGER PERIOD PROVIDED BY THE LAWS OF YOUR STATE WILL APPLY.**

1. Services: Subject to the terms and conditions stated herein, Company shall provide the services ordered by Subscriber (the "Services") consistent with the prevailing and reasonable standards of the wireless messaging industry. Service may include telecommunications services or facilities supplied by other carriers or other third parties and selected by Company at its sole option and discretion.

2. Service Interruptions; Credits: Company's policies with respect to service interruptions and billing credits are contained in the Service Guide.

3. Warranty Disclaimer: EXCEPT AS EXPRESSLY STATED IN THE SERVICE GUIDE, COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, CONCERNING THE SERVICE OR DEVICE OR COMPANY'S FACILITIES, NETWORK OR SYSTEM, OR THE CONTENT, CONFIDENTIALITY OR ACCURACY OF ANY INFORMATION TRANSMITTED VIA COMPANY'S FACILITIES, NETWORK OR SYSTEM, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH COMPANY SPECIFICALLY DISCLAIMS.

4. Limitation on Liability: NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER COMPANY NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY DESCRIPTION ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE CAUSE THEREFORE, AND REGARDLESS OF WHETHER SUCH LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER CLAIM.

5. Indemnity: Other than as specifically provided to the contrary elsewhere herein, Subscriber hereby indemnifies and holds Company harmless from any and all claims, actions, proceedings, expenses, damages and liabilities (including reasonable attorneys' fees) (each, a "Claim") resulting from or arising out of: (i) any breach by Subscriber of its obligations under this Agreement (including without limitation, breach of Company's Acceptable Use Policy, Privacy Policy, and any other materials that are incorporated herein by reference); (ii) any violation by Subscriber of a third party's Intellectual Property rights (as defined in the Service Guide) in connection with the use of the Device or Services under this Agreement; (iii) any violation by Subscriber of any federal, state or local laws governing the use of the Device or Services; (iv) the use or operation of the Device or the Services; (v), or any acts, errors, negligence, representations or omission of the Subscriber or its employees, affiliates or agents; and (vi) any costs or expenses incurred by Company in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof, including, without limitation, any Claim arising out of any exposure to or arising from Radiofrequency (RF) emissions, if any. This indemnification shall survive the termination or expiration of this Agreement by two (2) years.

6. The Device: As indicated on the Sales and Service Agreement, Subscriber has requested to purchase or lease the one-way receiving and/or two-way receiving and transmitting device(s) described thereon (each a "Device"). 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 Service Guide. Subscriber may be offered, and may elect to purchase, maintenance or loss protection, as more fully described in the Service Guide. Subscriber's election is noted on the Sales and Service Agreement.

7. Security Interest: Subscriber hereby grants to Company a purchase money security interest in all Purchased Devices for which Subscriber has not paid in full on or before the Contract Date listed on the first page of this Agreement. Subscriber consents to Company's filing of any and all appropriate financing statements to perfect such purchase money security interest, without the need for Subscriber's signature on the same. If local law requires Subscriber to sign any such financing statement, Subscriber will do so upon Company's request and return the same to Company within two (2) business days of Subscriber's receipt of the financing statement(s).

8. Term: The initial term of this Agreement shall commence on the date that the Device is activated and shall continue for the period set forth in the "Contract Term" box on the first page hereof (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall remain in full force and effect for additional one (1) year Terms; provided that either party may give thirty (30) days' prior written notice of non-renewal in accordance with the procedures of the Service Guide. The Initial Term, together with any extensions shall be referred to as the "Term."

9. Default; Termination:

(a) Subscriber will be in default hereunder (i) if Subscriber fails to pay an invoice in full within fifteen (15) days of the date specified on the invoice (unless disputed in accordance with the terms and conditions of the Service Guide) or (ii) in the event of any other material breach by Subscriber that remains uncorrected for more than thirty (30) days after written notice describing the breach from Company. **IF CUSTOMER IS IN DEFAULT HEREUNDER, THEN WITHOUT PRIOR WRITTEN NOTICE BY COMPANY, COMPANY MAY TAKE ANY OR ALL OF ACTIONS SPECIFIED IN THE SERVICE GUIDE UNDER THE SECTION ENTITLED "DEFAULT, TERMINATION."**

(b) Company will be in default hereunder in the event of a material breach by Company that remains uncorrected for more than thirty (30) days after written notice describing the breach from the Subscriber. In addition to the other remedies specified herein, and subject to the limitations specified herein or in the Service Guide, Subscriber may pursue any and all remedies available to it at law and equity, including termination.

(c) This Section is subject to the provisions of the Service Guide under the heading "Force Majeure."

10. Cancellation:

(a) Subscriber may cancel this Agreement, in whole or with respect to fewer than all Devices, on no less than thirty (30) days' prior written notice, subject to the terms, conditions and procedures detailed in the Service Guide. Without limiting the generality of the foregoing, cancellation for reasons other than Company's breach may result in liability for a termination fee, as provided for in the Service Guide.

(b) Company reserves the right to terminate this Agreement upon not less than thirty (30) days' notice to Subscriber, subject to the terms and conditions in the Service Guide

11. Charges; Payment Terms: "Charges" for Service and Device(s) shall be set forth on the invoice. The terms and conditions of the Service Guide govern pricing policies, price adjustments, payment methods and procedures, taxes and fees, credit policies, and payment dispute procedures. Customer shall be responsible for all taxes, fees, surcharges or assessments imposed on the Service or the Device(s) in accordance with the terms of the Service Guide. **IF SUBSCRIBER HAS AGREED TO AUTOMATIC PAYMENTS, AS INDICATED ON THE SALES AND SERVICE AGREEMENT, SUBSCRIBER AGREES THAT ITS CREDIT CARD LISTED THEREON WILL BE AUTOMATICALLY CHARGED FOR ALL CHARGES, INCLUDING TAXES, FEES, OVERCHARGES OR OTHER APPLICABLE AMOUNTS. IN THE EVENT SUBSCRIBER DESIRES TO CANCEL PRIOR TO THE EXPIRATION OF THE INITIAL TERM AND SUBSCRIBER HAS AGREED TO MAKE PAYMENTS BY AUTOMATIC PAYMENTS, SUBSCRIBER'S CREDIT CARD AND/OR CHECKING ACCOUNT SHALL BE BILLED FOR THE BALANCE OF THE INITIAL TERM.**

12. Miscellaneous. The Service Guide governs issues regarding the interpretation and enforcement of this Agreement, including without limitation, choice of law, venue for litigation, waivers and modifications of the terms of this Agreement, construction of provisions of the Agreement, severability, compliance with laws, use of intellectual property and notices.

13. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.