



# Online Terms and Conditions

This agreement is strictly confidential and proprietary to Data & Audio-Visual Enterprises Wireless Inc. "Mobilicity" and the logo are trademarks of Data & Audio-Visual Enterprises Wireless Inc. Distribution, copy or any other use of this agreement and/or the trademarks without the written consent of Data & Audio-Visual Enterprises Wireless Inc. is strictly prohibited.

# ONLINE TERMS AND CONDITIONS

## AGREEMENT

- (1) **Please read these Terms and Conditions carefully.** In this Agreement, when we say “we”, “us” or Mobicity”, it means Data & Audio-Visual Enterprises Wireless Inc. operating as Mobicity, and when we say “you”, it means you, our customer or the individual who will be accessing our Site, our Newsroom or our Customer Online Portal. Our “Newsroom” shall mean the newsroom section of our Site and our “Customer Online Portal” shall mean the portions of the Site where access is only granted after you have successfully logged-in or where you can access your account information or make payments on your Device.
- (2) **You accept and acknowledge receipt of this Agreement by performing any of the following: (a) giving us a written or electronic signature, (b) activating or setting up the Customer Online Portal or using your Customer Online Portal (c) accessing or using mobicity.ca, which includes the mobile website (the “Site”), (d) downloading or using any of the images from our Site (where allowed), including the Newsroom or (e) accessing your account or making payments or changes to your account through the Site. If you do not want to accept this Agreement, please do not do any of the above.** Instead, please contact us through the original point of purchase or our call centre.
- (3) You should read this Agreement together with any other existing and future written agreements that you have with us and any terms, conditions or disclaimers provided on our web site. For example, our Services Terms and Conditions will include terms that govern your use of our Services or Devices. If there is a conflict between a term in this Agreement and any other written agreement with us, the term of the other agreement will apply to the extent necessary to resolve the conflict.
- (4) We may change this Agreement, Website, Newsroom or Customer Online Portal at any time. Your (a) written or electronic signature, (b) use of the Customer Online Portal, (c) access or use of the Site or (d) download or use of any of the images from our Site (where allowed), including the Newsroom shall mean you accept the changes we have made. If you do not agree to the change in the Agreement, you should immediately cease using the Site, Newsroom or the Customer Online Portal.

## SERVICES, PRODUCTS AND PROMOTION

- (1) All services, products and promotions referred to on this Site are subject to applicable terms and conditions as set out on this Site or at our stores and dealers. In no event shall this Site be constituted as an offer or solicitation to anyone in any jurisdiction in which such an offer or solicitation is not authorized or to any person to whom it is not lawful to make such an offer or solicitation.
- (2) Unless otherwise stated, the services, products and promotions referred to on this Site are intended to be available in Canada only. If a service, product or promotion referred to on this



Site is offered 'worldwide', it is only intended that such service, product or promotion is offered in jurisdictions where it may be legally offered.

## **COPYRIGHT AND INTELLECTUAL PROPERTY**

- (1) Material and information on this Site, including text, images, Newsroom Images, graphics, design, downloadable contents, links and any other material and information presented on this Site ("Information") is protected under the copyright laws of Canada and other countries. Some of this Information may be the copyright of others. You do not have permission to copy, redistribute or republish in any full or partial form any of this Information. Except as expressly provided herein this Agreement, you have no right to license, express or implied, directly or indirectly, to the Information. Upon our demand, you shall immediately assign to Mobicity (or someone designated by Mobicity) any copyright of or to the Information arising out of the publication of the Newsroom Images. Unless owned by a third party, all Information on this Site are and remain our properties.
- (2) All information, software, programs, codes and any other tools we provide online are proprietary to us (or to a third party if applicable). You agree not to sell, distribute, commercially exploit, reverse engineer or in any way infringe in our rights (or the third party's rights) such information, software, programs, codes or any other tools. You further agree not to use any part of the Customer Online Portal or the Site except for your own personal use.

## **INFORMATION AND LINKS**

- (1) Information on this Site is general only. Unless otherwise explicated stated, no information on this Site shall be constituted as Mobicity's official representation. Information on this Site may be changed at any time in our sole discretion and is provided on an 'as is' basis. We do not warrant the accuracy, adequacy, timeliness, completeness or that the information on this Site are current. We do not provide any warranty, representation or condition of any kind, whether implied, express or statutory, in the Site or the information on this Site.
- (2) Your uses of any hyperlinks to other Internet resources or web sites are at your own risk. We cannot and do not make any representations about other Internet resources or other non-Mobicity web sites which you may access through this Site. Those sites are not subject to our privacy policy or any other policies we have in place to protect you. Despite providing hyperlinks on this Site or otherwise making references to the other Non-Mobicity sites on this Site, we do not endorse or accept any responsibility for any of these sites or their content.

## **ELECTRONIC COMMUNICATIONS**

- (1) When you visit the Site or send e-mail to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on the Site. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.



- (2) We offer the use of a secure server when you submit your credit card, debit card or other account numbers to make a payment or purchase. If you choose to use the secure server, the secure server software (SSL) encrypts the credit card information you submit before it is sent to us. This helps decrease the risk of the information being accessed without authority. We reserve the right to amend and update security procedures without notification.
- (3) Notwithstanding security procedures we may implement from time to time, you acknowledge that there are risks associated with Internet communications and transmitting credit/debit card, account or other confidential information over the Internet. We expressly disclaim, in so far as legally permissible, responsibility for any loss or damage arising out of the loss or delay of transmissions between Mobilicity and you. In respect of any other loss or damage caused, Mobilicity liability to you shall not, to the fullest extent permissible under applicable law, exceed the value of products and services purchased. Mobilicity recommends that you maintain some form of credit/debit card insurance/card protection scheme and in the event of loss, theft or unauthorized use of your credit/debit card you notify your credit/debit card provider in accordance with its standard terms.
- (4) Your visit to the Site, email and other communications sent over the Internet are not secure and may be lost, intercepted, or altered. Except where another written agreement with us says otherwise, you agree that we are under no obligation to accept or act on any instructions you provide to us by email.
- (5) If you send us confidential or personal information by email, we will not be liable if it is lost or intercepted, altered or misused by someone else. If you send us email, you agree that we may (at our sole discretion) respond to you by email, and provide by email any confidential or personal information that you have requested; you also agree we will not be liable if the information we provide is lost or intercepted, altered or misused by someone else.

## **PASSWORDS, SECURITY AND AUTHORIZATION**

- (1) You agree to keep your password(s) and any other information that may reasonably be used to gain access to your account ("Passwords") confidential and not to share your password(s) with anyone. You agree not to allow anyone else to use the Customer Online Portal under your login or account.
- (2) You agree to carefully select your Passwords so that it cannot be reasonably guessed, including refraining from using any of the following of yourself or of your relatives: name, dates of birth, telephone numbers, addresses, Mobilicity PIN, username, account number, credit card number, numbers on pieces of identifications, any numbers that can be found on your Mobilicity statements, password that you use for any other services, or any other passwords that may be reasonably guessed.
- (3) You will not record your Passwords electronically on your computer in any way, and you will not store your password near your computer. If we send you a Password, you agree to change the Password immediately and will destroy the document on which it is printed.



- (4) If your Password(s) become lost, stolen or known or if you suspect your Password(s) might have become lost, stolen or known, then you agree to immediately take all reasonable measures to ensure that others will not have access to your account, including changing your Passwords or notifying us. We will not be liable for any improper or unauthorized use of your account.
- (5) You agree that each instruction you provide on or while using the Customer Online Portal is final and that we can accept your instructions, including your electronic acceptance of this Agreement and any other agreements, terms, policies, notices or guidelines, as if you had provided us with a paper copy thereof. We may but are not obligated to record and maintain a record of your instructions.
- (6) The computer you use may be vulnerable to viruses, spyware, malware, online attacks or other methods of tracking, recording or hacking that seek to intercept sensitive information that you provide through the Internet. You acknowledge and agree that in order to reduce the chances of such harm, you would ensure that any computer you use to access the Customer Online Portal has an up-to-date anti-virus, anti-spyware, anti-malware, firewall, protection software and any other reasonable security software. You agree to sign-off of Customer Online Portal and close your browser as soon as you finish using it.
- (7) You agree that you will not use our Site or the Customer Online Portal or any information provided therein for an illegal or improper purpose, or take steps that would have a negative impact on the security, integrity or functioning of our systems. You further agree not to use a third party's Site, software or service to access Customer Online Portal or any other parts of our web site, or to stream any information we provide online.

## **YOUR USE**

- (1) Customer Online Portal offered through this Site may require registration. Should you choose to register for such services or related features, you agree to provide accurate and current information about yourself as required by the relevant registration process, and to promptly update such information as necessary to ensure that it is kept accurate and complete.
- (2) You agree that we may decline to act on entries, actions or instructions (collectively "Instructions") made through the Customer Online Portal at our sole discretion, including when we may suspect that the Instructions are not from you, are inaccurate or unclear, lacks authorization, or is otherwise illegal, improper or against our terms and conditions, policies or guidelines from time to time. You agree not to hold us liable if we decline to act on an Instruction made through the Customer Online Portal.
- (3) You are solely responsible for all Instructions performed to your account via the Customer Online Portal, regardless of (i) whether the entries or actions were performed by you or some other third party, (ii) whether that third party was authorized by you or not and (iii) how that third gained access (unless as a result of our negligence or willful misconduct). This responsibility stops you from claiming a mistaken entry or change to your account or your account has been or is being accessed by someone else.

## **WARRANTIES AND LIMITATIONS ON LIABILITIES**

- (1) Without limiting any other provisions herein, in no event shall we be responsible or liable for:
  - (a) Failure to sign off of the Customer Online Portal after you finish using it;
  - (b) Failure to use up to date anti-virus software, anti-spyware software, firewall or any other reasonable security software or measures on the personal computer you use to access the Customer Online Portal;
  - (c) A situation in which our Site or Customer Online Portal is unavailable for any reason, or is available but subject to delays or errors;
  - (d) Any other sections herein which we have indicated that we are not liable or responsible for; and
  - (e) Any other sections herein which we have indicated that you are liable or responsible for;

These limitations apply to any act or omission of us or our officers, directors, affiliates, agents or suppliers, whether or not the act or omission would otherwise give rise to a cause of action in contract, tort, statute or any other doctrine of law, and even we were advised of the possibility of damages or were negligent.

- (2) We disclaim liability for any errors, omissions, ambiguities, programming deficiencies (including security deficiencies) in or on this Site and the information on this Site. Mobicity will not be liable for any damages, including direct, indirect, special, incidental, consequential or punitive damages, losses or expenses arising from this Site, including the use or inability to use this Site, information on this Site, errors, omissions, interruptions, defects, delays, computer virus, system failure, loss of data, programming deficiencies, security deficiencies or any other liability relating to the use of this Site.
- (3) WE EXPRESSLY DISCLAIM ALL WARRANTIES REGARDING THE CUSTOMER ONLINE PORTAL OF ANY KIND, WHETHER EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITIONS OF WORKMANSHIP, SATISFACTORY QUALITY, DEFECTS, ERRORS, BUGS, TITLE AND NON-INFRINGEMENT. INFORMATION ARE PROVIDED ON AN "AS IS" BASIS AND WE MAKE NO REPRESENTATION AS TO THE ACCURACY OF ANY IMAGES OR THAT THEY REPRESENTS THE ACTUAL OBJECTS. WE MAKE NO WARRANTY THAT THE CUSTOMER ONLINE PORTAL WILL MEET YOU REQUIREMENTS OR THAT IT WILL BE TIMELY OR ERROR FREE; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE CUSTOMER ONLINE PORTAL OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE CUSTOMER ONLINE PORTAL OR THAT DEFECTS IN THE CUSTOMER ONLINE PORTAL WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE WEBSITE OR THE CUSTOMER ONLINE PORTAL SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.
- (4) TO THE FULLEST EXTENT AVAILABLE BY LAW, WE EACH AGREE TO LIMIT CLAIMS FOR DAMAGES OR OTHER MONETARY RELIEF AGAINST EACH OTHER TO DIRECT AND ACTUAL DAMAGES. THIS LIMITATION AND WAIVER WILL APPLY REGARDLESS

OF THE THEORY OF LIABILITY, WHETHER FRAUD, MISREPRESENTATION, BREACH OF CONTRACT, PERSONAL INJURY, PRODUCTS LIABILITY, OR ANY OTHER THEORY OR EVEN IF WE CAN REASONABLY FORESEE SUCH DAMAGES. NEITHER OF US WILL SEEK ANY INDIRECT, SPECIAL, CONSEQUENTIAL, TREBLE, OR PUNITIVE DAMAGES FROM THE OTHER. THE LIMITATION AND WAIVER IN THIS SECTION ALSO APPLIES TO ANY CLAIMS YOU MAY BRING AGAINST OUR OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, CONTRACTORS, SERVICE PROVIDER, MANUFACTURER, OTHER THIRD PARTY PROVIDING THE WEBSITE OR THE CUSTOMER ONLINE PORTAL TO THE EXTENT THAT WE WOULD BE REQUIRED TO INDEMNIFY THAT PARTY FOR SUCH CLAIM. OUR LIABILITY FOR ANY CLAIMS YOU MAY HAVE AGAINST US IS LIMITED TO A REFUND OR REBATE OF THREE TIMES THE PRORATED MONTHLY CHARGES YOU PAID OR OWE US FOR THE APPLICABLE SERVICES. YOU AGREE WE ARE NOT LIABLE FOR ANY DAMAGES, LIABILITIES OR CLAIMS CAUSED BY YOU OR A THIRD PARTY.

## **INDEMNIFICATION**

- (1) You are solely responsible for your download, use, reproduction, publication or any other use of the Information, including the Newsroom Images (collectively "Use"), whether or not the Use is authorized or anticipated for by or in this Agreement. You agree to indemnify and hold Mobilicity, its affiliates, Mobilicity's and its affiliates' directors, officers, employees, contractors and agents (the "Indemnified Parties") harmless against any claim for damages, loss or any costs, including legal or other professional fees, arising in any manner whatsoever from (a) infringement of any third party intellectual property rights, copyrights, trademarks or other rights or licenses, (b) Use of the Information contrary to this Agreement, (c) libel, slander, defamation, invasion of privacy, violation of right to publicity, and (d) any other Use of the Information by you or any other third party. All costs incurred by the Indemnified Parties in enforcing this indemnity, including but not limited to legal or other professional fees and court costs, shall be borne by you when such costs are due.

## **NEWSROOM IMAGES**

- (1) Subject to the rights on Newsroom Images owned by the respective owners (e.g. manufacturer) and subject to other terms and conditions as set out herein, we hereby grants to you a non-exclusive, non-transferrable, non-assignable and non-sublicensable limited right to use and reproduce the images within the Newsroom section of our Site ("Newsroom Images") provided that:
  - (a) your use or reproduction is in connection with your non-commercial, print journalism featuring Mobilicity products or services;
  - (b) your use or reproduction is in compliance with this Agreement or other terms as set out in the Newsroom Images section of our website;
  - (c) you obtain the Newsroom Images from the Newsroom Images prior to each use (because this Agreement, your rights to use or reproduce the Newsroom Images and the Newsroom Images itself may be subject to changes or updates);



- (d) you shall never sell, share, loan or license the Newsroom Images; and
  - (e) only you, whom has agreed to this Agreement may use the Newsroom Images.
- (2) We grant no right and make no warranty with regards to the use of names, persons, trademarks, trade dress, registered, unregistered or copyrighted designs or works of art (except those owned by Mobicity) or architecture depicted in any Newsroom Images, including any Newsroom Images of handsets, devices, accessories or other products not manufactured by Mobicity. You acknowledge and agree that you must satisfy yourself that all necessary rights or consents be obtained before you can use or reproduce any of the Newsroom Images. We do not grant any exclusivity to the Newsroom Images and make no warranty or representation regarding the use of the Newsroom Images by third parties.
- (3) You agree that use of Newsroom Images in a manner not expressly authorized by this Agreement may constitute an infringement of the proprietary rights of Mobicity or a third party to which you are required to indemnify Mobicity of, including but not limited to damages resulting from any claims for infringement of intellectual property of Mobicity or third party.
- (4) We may suspend or terminate your use of the Newsroom Images by providing one (1) day prior written notice to you or by providing a notice on under the Newsroom Images of our website. It is your responsibility to check for such notices prior to your use or reproduction of the Newsroom Images. In the event of such termination, you agree to:
- (a) immediately cease the use or reproduction of the Newsroom Images; and
  - (b) remove at your own expense all Newsroom Images in your possession, including Newsroom Images stored electronically and on printed materials.
- (5) If (i) we provide you with at least three (3) days prior written notice, (ii) we provide you with notice via the Newsroom of our website or (iii) you suspect or gain knowledge that the Newsroom Images or your Use of the Newsroom Images are subject to a threatened or actual claim of infringement, violation of rights, or any other claim, you agree to:
- (a) immediately cease the use or reproduction of the Newsroom Images; and
  - (b) remove at your own expense all Newsroom Images in your possession, including Newsroom Images stored electronically and on printed materials.
- It is your responsibility to check for such notices prior to your Use of the Newsroom Images.
- (6) It is your responsibility to examine all Newsroom Images and its description for accuracies and defects before you Use any Newsroom Images.
- (7) You agree to provide copyright notices, credits and / or protections as may be required in the Newsroom Images section of our website or as we may require from time to time.

- (8) You may not in any way alter the Newsroom Images, including not removing any copyright information which may be associated with the digital file.

## **GENERAL PROVISIONS**

- (1) In this Agreement (i) (y) the words "including" and "includes" mean "including (or includes) without limitation" and (z) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of", and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".
- (2) All references in this Agreement to dollars or to "\$" are expressed in Canadian currency unless otherwise specifically indicated.
- (3) Whenever payments are to be made or an action is to be taken on a day which is not a business day, such payment shall be made or such action shall be taken on or not later than the next succeeding business day.
- (4) We shall not be responsible for delays or failures of deliveries or for losses or damages resulting from force majeure, including without limitation, industrial disputes, riots, mobs, fires, floods, wars, embargo, shortages of labour, power, fuel, means of transportation or general lack of necessities (whether relating to the Company or its suppliers or subcontractors) or resulting from regulations or order of any government or governmental agency or any other circumstance beyond our control.
- (5) This Agreement shall be binding on and shall enure to the benefit of the parties and their respective successors and permitted assigns. Mobicity shall have the right, at Mobicity's discretion, to assign this Agreement.
- (6) If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect, and such invalid or unenforceable provision shall be construed by limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law.
- (7) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar); nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver. No failure on the part of either party to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.
- (8) Time is of the essence of this Agreement.

- (9) The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, oral or written, between the parties in connection with the subject matter of this Agreement, except as specifically set forth herein.
- (10) Except where prohibited by the laws of your jurisdiction, this site will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the principles of conflicts of law but the reference to such laws shall not, by conflict of law rules or otherwise, require the application of the law of any jurisdiction other than the Province of Ontario, and shall be construed and treated in all respects as an Ontario contract. The parties agree that each party irrevocably attorns and submits to the exclusive jurisdiction of the Courts of the Province of Ontario in respect of all matters arising under and in relation to this Agreement, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.
- (11) The parties waive the application of any laws or rule of construction providing that ambiguities in the Agreement or any other document shall be construed against the party drafting the Agreement or such other document.