



# Services Terms and Conditions

This agreement is 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.



# SERVICES TERMS AND CONDITIONS

## Section 1. AGREEMENT

- (1) **Please read these Terms and Conditions carefully.** They cover important information about services provided to you by Mobicity ("Services") and your Mobicity phone, device, SIM card, data card, or other equipment ("Device"). 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 jointly you, our customer, the individual, the person, the corporation or the business who will be responsible for the use or the payment of the Service.
- (2) **You accept and acknowledge receipt of this Agreement by performing any of the following: (a) giving us a written or electronic signature, (b) stating verbally that you accept this Agreement, (c) activating the Service or using your Service, (d) using your Service after you made a change or addition, or (e) paying for the Service. 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.

## Section 2. ARBITRATION

- (1) As a precondition to pursuing any type of claim against the other party arising from this Agreement, or otherwise from the relationship of the parties, irrespective of the claim or cause of action, the aggrieved party will provide the other party with written notice. The parties will subsequently, and within thirty (30) days of such notice, negotiate in good faith a resolution of the alleged claim and type of remedy sought. The parties agree to keep all information relating to the arbitration including the reason for the arbitration and any information gained by the party during the arbitration process confidential.
- (2) Any disputed claim or other such disputes arising out of or related to this Agreement (including previous agreements), the Services, Devices, equipment, promotions, advertisements, statements, communications or any related matters, or otherwise from the relationship of the parties, will be settled under the *Arbitration Act* of Ontario by one arbitrator appointed pursuant to the agreement of the parties. Should the parties fail to appoint the arbitrator, the arbitrator shall be appointed by a court of Ontario on application by the parties. For greater certainty, the parties expressly state that the arbitrator shall have the power to determine all questions of law, facts, facts and law and procedure and shall make all original determinations as to his own jurisdiction. Any challenge of a decision of the arbitrator may only be brought after the arbitrator shall have rendered his or her decision on the merits of the dispute between the parties.

## Section 3. CHANGING THIS AGREEMENT

- (1) We reserve the right to change the agreement, fees, rates or plans from time to time by posting it on our website at <http://www.mobicity.ca/>. Although this does not create an

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obligation on us, we may try to notify you by sending you text messages, emails or any other means we choose. You are not obligated to accept these changes. You can contact us to terminate the Services if you do not accept the changes. If you do not terminate the Services, your continued use of the Services will mean that you have agreed to the changes.

### **Section 4. OUR FAIR USE POLICY**

- (1) When you are using our Services, you agree to abide to Our Fair Use Policy outlined in this Section 4. We may change this Section 4 – Our Fair Use Policy from time to time as we establish new policies regarding the use of our Services.
  
- (2) By using or accessing the Services, you agree to use our Services in compliance with applicable laws, this Agreement and other Mobicity price lists and policies or guidelines adopted from time to time by Mobicity. You agree not to use or allow others to use the Services and/or your Devices if such use, whether intentional or unintentional:
  - (a) is for, or results in, any illegal, abusive, annoying or offensive activities, including, without limitation, making available offensive content, the commission or encouragement of a criminal offence, stalking, harassment, spamming, generating unsolicited commercial or bulk emails, disrupting or interfering with the Internet, any network, computers or other devices, causing network instability, using auto-responders or cancel-bots, operating a server, transmission of a virus or other harmful component, defamation, intellectual property infringement, or interference with other subscribers' Services;
  - (b) is to access, or attempt to access without authority, the information, accounts or devices of others. You may not alter any of the hardware or software on your Device;
  - (c) access the Internet via the Services using Internet Protocol (IP) addresses other than the IP address(es) assigned to you by us;
  - (d) port scan a person's computer without that person's consent, or use any tools designed to facilitate these scans;
  - (e) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Services;
  - (f) invade another person's privacy or collect or store personal data about other users; "stalk" or harass another person or entity; harm minors; unlawfully use, possess, post, upload, transmit, disseminate or otherwise make available obscene, profane or pornographic material; post, upload, transmit, disseminate or otherwise make available content that is unlawful, threatening, abusive, libellous, slanderous, defamatory, deceptive or otherwise offensive or objectionable; unlawfully promote or incite hatred; or post, upload, transmit, disseminate or otherwise make available objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil

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liability or otherwise violate any municipal, provincial, federal or international law, order or regulation;

- (g) access any computer, software, data or any confidential, copyright-protected or patent-protected material of any other person, without the knowledge and consent of that person, or use any tools designed to facilitate access, such as "packet sniffers";
  - (h) sell, resell, share, transfer, distribute, exploit, loan, rent the Services / Devices or provide Internet access or any other feature of the Services to any third party; or
  - (i) unless your plan or add-on is a Business Plan or Business Add-on, use the Services or any part of the Services for anything other than your own personal purposes.
- (3) All Services, including all Services described or promoted as unlimited services, are subject to this Agreement including Section 4 – Our Fair Use Policy. If we determine in our sole discretion that you have violated this Agreement (including Section 4 – Our Fair Use Policy), our policies or our guidelines, or if we determine in our sole discretion that your usage is unreasonable, excessive or abusive, or if we determine in our sole discretion that your call or usage pattern(s) resembles these characteristics, we may suspend, block, limit, restrict, reduce the speed or set other conditions related to the unlimited offering, your Services, any part of your Services and to refuse to provide you Services thereafter without notice to you.

## Section 5. OUR SERVICES TO YOU

- (1) You understand that unless we specifically notify you otherwise, any information, content, software or any other items you access or download on the internet are likely provided by third parties even though your retrieval of these items are through our Services or Devices provided by us. You agree that you are solely responsible for your accessing, downloading or retrieving such materials and acknowledge that you may incur charges in doing so. We have no obligation or liability to you regarding your activities on the internet.
- (2) You may be required to use or download software before you are able to use some of our Services. The use of these software are subject to the software's terms of use and/or license agreement, which may be issued by third parties. Some or all of our Services may be subject to additional policies of use or other agreements.
- (3) You understand that from time to time, we may require certain rights to the content you choose to create, transmit, publish or otherwise communicate using the Services, in order to provide you with your Services, comply with legal demands or operate our business. Without limiting the generality of the foregoing, you hereby agree to grant us a worldwide, sublicensable, transferable and non-exclusive license or sublicense, without compensation, reimbursement or any other payment, to transmit, copy, modify, adapt, display, perform, distribute and publish any content you choose to create, transmit, publish or otherwise communicate using the Services, as reasonably required by us and/or our third parties.



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- (4) You do not own the telephone number, IP addresses, e-mail addresses, domains and other communication numbers or addresses we assign to you. We reserve the right to change or replace them from time to time. We will attempt to notify you in advance of such changes. We will not be liable to any costs, damages, liabilities or losses associated with these changes regardless of whether we notified you.
- (5) In the event that you request us to transfer a telephone number from another service provider to us, you warrant and represent that you are the listed account holder, you have full rights to the number, you have the right to make the request, you authorize us to make the transfer request on your behalf, including to provide when necessary, information such as your name, telephone number, address and any other personal information reasonably requested. If we request that you sign a form to confirm such authorizations and warranties, you agree to do so as soon as you can. You agree to pay for all outstanding amounts associated with the phone number on your account and any termination charges. We shall not be held liable for any costs, damages, liabilities or losses for any delay or failure to transfer the telephone number to us.
- (6) You understand that quality of the signal on your Device may vary depending on many factors, such as the area you are in, terrain, weather conditions, your Device itself, battery level, network capacity, malfunction of equipment, maintenance and upgrades.
- (7) With the intent to address congestion issues, ensure the quality of Internet services, attain equal access to our data bandwidth for better general user experience and any other reasonable reasons, from time to time we will (but are not obligated to) shape data traffic, manage Internet traffic, provide preferred or slower speed based on certain behavior(s) (including excessive or abusive behavior), location(s), data consumption(s), class(es) of application, time(s) or date(s).
- (8) You agree that we can change the Services from time to time including changing our coverage areas, changing roaming arrangements, placing restriction on the calling and receipt of certain phone numbers or area codes, suspending, terminating, restricting or setting conditions on the Services, at our sole discretion and without notice to you.

## **Section 6. WHEN YOU ARE OUTSIDE OUR UNLIMITED COVERAGE AREA**

- (1) The Services will be provided in geographic areas covered by our network or by our third party service provider. Coverage maps only approximate our anticipated wireless coverage area outdoors; actual Services area, coverage and quality may vary and change without notice depending on a variety of factors including network capacity, terrain and weather. You agree we are not liable for problems relating to Service availability or quality.
- (2) You may review a list of countries where you can use our pay-per-use Services on our website. We suggest you do this before you leave our coverage areas. Your Device may connect to another provider's network (commonly referred to as roaming) when you are outside of Mobicity's coverage area. Check your Device to determine if you are connected to another provider's network. There may be extra charges (including long distance, tolls, data



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usage, failed messages or calls) and higher rates for using or accessing your Services while you are outside Mobicity's coverage area (including voice, data, internet, accessing voicemail and call forwarding). You may be required to activate the connection to another provider's network before you can use your Device outside of our coverage areas. Your pay-per-use usage outside of Mobicity's coverage area will be limited by the balance on your My Wallet™ account.

- (3) Your primary use of your Device must be within the Mobicity network coverage area and we may suspend, limit or terminate your Service or partial Service if your primary use of your Device is, in our reasonable but sole discretion, outside this area or if you reside outside of this area. We may suspend, limit or terminate your Service or partial Service without prior notice if in our discretion, your voice and/or data usage pattern or call patterns indicates that your usage of the Services is not primarily within the Mobicity's network coverage area.

## Section 7. 9-1-1 SERVICE

- (1) When making 9-1-1 or other emergency calls, you should be prepared to provide information about where you are located. 9-1-1 operators may not know your phone number or have information about your location. If you are porting a phone number to or from us, we may not be able to provide you with some Services, such as 9-1-1 location services, while the port is being implemented. Mobicity is not responsible for failures to connect or complete 9-1-1 calls or if inaccurate or no location information is provided.
- (2) 9-1-1, other emergency calls, special service or toll-free numbers may not operate properly or be available when you are outside Mobicity's coverage area. You are responsible for confirming the correct numbers, connections, charges, fees and liabilities incurred by access these numbers while you are outside Mobicity's coverage area.

## Section 8. CONTENT WE PROVIDE TO YOU

- (1) At times and subject to your plan, you may be provided with messages, data, information, music, ringtones, games, articles, photographs, pictures, logos, images, graphics, text, audio clips, video clips, software or other materials and content (collectively "Content"). You understand that the Content is provided by us, our business partner(s), other Mobicity customers or any other party as the case may be. Your use of the Content is subject to the owner's authorization, restrictions on use or terms and conditions. Restrictions on the use of the Content commonly (non-exhaustive) include, you may not (i) broadcast the Content, (ii) resale the Content, (iii) use the Content for any commercial purposes, (iv) use the Content other than for the intended personal purpose, and (v) infringe or violate copyrights, trademarks or any other laws. We shall have the right to terminate or suspend your Services or terminate this Agreement if you breach any of the authorizations, restrictions on use, or terms and conditions set by the Content owner.
- (2) You are solely responsible and liable for your use, access, transmission, download or transfer of the Content. We do not make any representations with respect to any of the Content. We shall not be held liable for any costs, damages, liabilities or losses for your use, access, transmission, download or transfer of the Content.

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- (3) Additional charges may apply when you access, download or receive the Content or other services by third parties. Please ensure that you read any pricing information for these additional charges before you access, download or receive the Content.
- (4) We are not required to monitor any Content, its accessibility or restrict transmission through or posted through our Services. Not all Content is accessible by all Devices. If we restrict access to certain Content, you agree that this is done in our sole discretion.

## Section 9. END OF SERVICES

- (1) If you wish to terminate the Services at any time, you can contact our call centre. We will try to initiate your request to terminate within forty-eight (48) hours. During this process, so long as we continue to provide you with the Services, this Agreement will continue to apply. A transfer of your telephone number to another service provider shall be deemed as your request to terminate the Services.
- (2) WE MAY LIMIT, BLOCK, RESTRICT, SUSPEND OR TERMINATE YOUR SERVICE OR ANY PART OF YOUR SERVICE OR THIS AGREEMENT WITHOUT NOTICE FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, if you, any user of your Device, any user on your account or if your usage pattern or call pattern in our sole discretion indicates that you:
  - (a) breach(es) the Agreement;
  - (b) breach(es) any of our policies or guidelines;
  - (c) transfer(s) the Services to another person without our consent;
  - (d) become(s) insolvent, go(es) bankrupt or threaten(s) bankruptcy (except as prohibited by law);
  - (e) misus(es) your Service or Device;
  - (f) is/are on a plan that we determine is no longer available to you, or
  - (g) if you do not have sufficient funds in your account to pay for the Services.

## Section 10. YOUR DEVICES

- (1) You agree that the Services may only be used by the Devices that are (i) provided by us, (ii) provided by our authorized dealers and approved by us, or (iii) approved by us in writing (Devices not meeting these conditions shall be hereinafter referred to as "Unauthorized Devices"). We have the right to suspend, restrict or terminate all or part of the Services or Agreement at any time if you use Unauthorized Devices. Our continuation to provide Services to you despite your use of Unauthorized Device (even when we are notified of such use), shall not be deemed as our authorization or acceptance of your use of the Unauthorized Devices. You agree and acknowledge that certain Services may not be available or function properly on Unauthorized Devices.
- (2) You agree not to infringe, misappropriate or injure the intellectual property rights of Mobicity or any third party. You acknowledge that the act of infringement, misappropriation or injuring the intellectual property rights shall include without limitation you performing the following: reverse engineering, decompiling, disassembling, downloading, redistributing, reselling, deriving source code, unlocking, modifying, reprogramming, copying, spoofing, monitoring, probing or scanning of the Devices or Services or any component of the Devices or Services, including the software. You agree that a violation of this section may harm Mobicity or a third party, which cannot be fully redressed by money damages, and that Mobicity or a third

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party shall be entitled to immediate injunctive relief in addition to any other remedies available.

- (3) You acknowledge and agree that we may transmit or remotely install software, firmware, updates or other modifications to your Devices from time to time in our sole discretion. Instances when we may do such modifications may include to upgrade, enhance, better, maintain or correct the Services or Devices. You agree that we shall not be liable for any for any costs, damages, liabilities or losses for performing any modifications to the Devices and/or Services.
- (4) The Devices may be covered by the manufacturer's limited warranty ("Manufacturer's Warranty"). Any representations we make regarding the Manufacturer's Warranties are our interpretations only. You understand that it is your responsibility to consult the manufacturer regarding the Manufacturer's Warranty (if any) on your Devices. Unless we specifically advise in writing that we are responsible for the Manufacturer's Warranty, you acknowledge and agree that we are not responsible for any warranty on your Devices.
- (5) You acknowledge and agree that certain Services may be unavailable to you because of the Device you choose, either as a result of restrictions on the Device or restrictions we may impose on the Device(s) from time to time.

## Section 11. PAY IN ADVANCE

- (1) In general, you will have two accounts when you purchase Services and set up your account with us: "Recurring Charges" and "My Wallet" for two categories of Services you may use. You can transfer funds between the two accounts by calling our call centre or, if available, online at [www.mobicity.ca](http://www.mobicity.ca).
- (2) "Recurring Charges" are all periodic charges and include your rate plan charges, any add-ons you have selected and all applicable taxes. "Monthly Fees" account is for your recurring monthly charges. "Multi-Month Fees" is when you pay more than one month of Services in advance as we make such Multi-Month Fees program available to you from time to time. Recurring Charges include both Monthly Fees and Multi-Month Fees. Once your Device is activated, your payment will be due on the same day each month if you are under the Monthly Fees program; your payment is due on the same day at the end of your Multi-Month Fees period if you are under the Multi-Month Fees program (collectively and individually hereinafter referred to as "Payment Date"). You must pay in advance for your Recurring Charges on each Payment Date in order to receive Services. We may terminate, suspend or restrict all or part of your Services if you have insufficient funds in your Monthly Fees or Multi-Month Fees account on your Payment Date to allow for the deduction of all Recurring Charges that you have chosen and all applicable taxes to such charges. If this happens, we may (but are not obligated to) notify you by any means we deem appropriate, including sending a text message to your Device or notifying you when you make a call. If you provide sufficient payment to allow for the deduction of the Recurring Charges and all applicable taxes within thirty (30) days from your Payment Date, we will reinstate your account. Your Payment Date will not be changed as a result of your payment. At our discretion and for a fee, we may offer you the option to change your Payment Date to the day you have



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reinstated your account. If your Service is not reinstated within thirty (30) days from your payment date, you will be deemed to have forfeited any remaining balance in both your Monthly Fees account, Multi-Month Fees account and your My Wallet account, and any rights you may have on your telephone number. ALL REMAINING BALANCES IN YOUR "MY WALLET" ACCOUNT WILL BE DEEMED TO BE FORFEITED IF YOUR ACCOUNT BECOMES INACTIVE, INCLUDING INACTIVITY DUE TO TERMINATION, NON-PAYMENT OR SERVICE AND PHONE REFUND.

- (3) Funds in your "My Wallet" account are used to pay for all charges to any per use Services (such as usages while roaming) ("Per Use Charges"). Insufficient funds in your "My Wallet" account may result in the restrictions, refusal or suspension of any pay per use Services. However, your ability to use any pay per use Services shall not be deemed as our representation that you have sufficient funds in your My Wallet account.
- (4) You agree to be responsible for the payment of the charges that are applicable to the Services whether or not the Services have been incurred or used by you personally and any taxes that are applicable to such charges. The charges or fees for each Service will be based on the charges or fees in effect for such Service from time to time and may be subject to change at our discretion without notice. Your use of that Service shall be deemed as your acceptance to the change in the charges or fees for that Service. Do not use the Service if you do not accept to pay for the amount of charges or fees.
- (5) You are responsible for the payment of the Recurring Charges when you activate the Services. You are responsible for the Per Use Charges when we provide you with the related Services. You are responsible for all applicable taxes, duties, governmental or regulatory fees, surcharges or levies that apply to the Services or our charges.
- (6) You can change your plan and add or remove Services by contacting us. If you are under the Monthly Fees program, your plan charges will be prorated in respect to your Payment Date. If you are under the Multi-Month Fees program, we will prorate your refund based on the remaining days left on your plan minus an administrative fee. You agree that the one month's regular plan charge is a reasonable charge for us to recuperate any discounts, subsidies or other costs associated to your change under the Multi-Month Fees program. We may at our discretion limit your number of changes allowed to your plan within a short period of time.
- (7) From time to time, we may offer you different preauthorized payments options, including payments by your bank account, credit card or other means ("Preauthorized Payments"). The terms and conditions of your instrument and our additional terms and conditions may apply on all Preauthorized Payments. By subscribing to Preauthorized Payments, you agree that we may charge your instrument all outstanding charges at anytime up to ten (10) business days prior to your Payment Date and you agree to notify us should you make any changes to your account or instrument. If we are unable to process any Preauthorized Payments from the account or instrument you provided us, you may be required to pay us additional costs or charges.

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- (8) You may notify us of any reasonable dispute regarding charges charged to your account within thirty (30) days from the date it was charged. You agree that you will be deemed to have accepted the charges if you do not notify us within thirty (30) days from the date they were charged.
- (9) If you have purchased an Unlimited To Go™, Unlimited Prepaid or other packages that include both a phone and services (“Phone and Service Package”), you are deemed to be on the Monthly Fee program if your Phone and Service Package includes only one month of Service, otherwise, you are deemed to be on the Multi-Month Fee program.

## Section 12. MOBILICITY SERVICE AND PHONE REFUND

- (1) You may request a service refund and we will repay the Monthly Fees or Multi-Month Fees you paid for the Services and any unused money in your My Wallet account (“Mobicity Service Refund”) if we determine that: (i) you requested the service refund with your original receipt within seven (7) days of activation, (ii) your usage does not exceed thirty (30) minutes, thirty (30) text messages and/or one (1) megabyte of data, (iii) you have provided us your phone or other Devices for examination (upon our request), (iv) you have provided us with relevant personal information including your legal name and your valid mailing address (upon our request for purposes including to issue and mail a cheque to you), (v) if you purchased from a store, you made your refund request at the same location where you made your purchase, (vi) if you purchased through our call centre or online, you made your request at a corporate store, and (vii) you are not and have not been in breach of this Agreement, our policies and guidelines. Please note that the money you paid for your SIM card will not be refunded.
- (2) You may request a phone refund and we will repay you the money you paid on the phone (“Mobicity Phone Refund”) if we determine that: (i) you return the phone and all accessories and parts that came with the phone with the original receipt within fourteen (14) days of your purchase, (ii) the phone is in its original packaging in a resaleable state, (iii) any identifying numbers or labels such as the IMEI, ESN, MEID or serial number(s) had not been removed, damaged or otherwise rendered illegible, (v) if you purchased the phone from a store, you returned the product to the same location where you made your purchase, (v) if you purchased through our call centre or online, you returned the product to a corporate store, and (vi) you are not and have not been in breach of this Agreement, our policies and guidelines.
- (3) You may request Phone and Service Package refund and we will repay you the money you paid on the Phone and Service Package (“Phone and Service Package Refund”) if we determine that: (i) you return the Phone and Service Package and all original SIM card and accessories and parts that came with the phone with the original receipt within fourteen (14) days of your purchase, (ii) the Phone and Service Package is returned with its original packaging in a resaleable state, (iii) there are no damages to the product(s) included in the Phone and Service Package, (iv) you have not abused this return policy, such as using the Phone and Service Package in an excessive manner before returning, (v) any identifying numbers or labels such as the IMEI, ESN, MEID or serial number(s) had not been removed, damaged or otherwise rendered illegible, (vi) if you purchased the Phone and Service

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Package from a store, you returned the product to the same location where you made your purchase, (vii) if you purchased through our call centre or online, you returned the product to a corporate store, and (viii) you are not and have not been in breach of this Agreement, our policies and guidelines.

- (4) All Mobicity Good As New™ products are sold “as is” and are considered “final sale”. Mobicity Good As New™ may not be refunded or exchanged. For greater clarity, the above policies shall not apply to Mobicity Good As New™ products.
- (5) The Mobicity Service, Phone and Phone and Service Package Refunds are not transferable or assignable to anyone else and are extinguished as soon as you transfer, sell, assign, gift or otherwise give your product to anyone else.
- (6) You acknowledge and agree that your refund may not be provided to you in the same method as you made your payment and that considerable time may pass before you receive the refund. Without limiting the generality to the foregoing, at our discretion we may choose to mail you a cheque for your refund.

## Section 13. **DISCLAIMER AND LIMITATION OF LIABILITY**

- (1) WE EXPRESSLY DISCLAIM ALL WARRANTIES 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, LATENT DEFECTS, MERCHANTABILITY, TITLE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE DEVICES OR SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE DEVICES OR SERVICES 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 DEVICES OR SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE DEVICES OR SERVICES OR THAT DEFECTS IN THE DEVICES OR SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE DEVICES OR SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.
- (2) 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 DEVICES OR SERVICES AND ANY OTHER PARTY TO THE EXTENT THAT WE WOULD BE REQUIRED TO INDEMNIFY THAT PARTY

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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 OR OTHER CHARGES YOU PAID OR OWE US FOR THE APPLICABLE SERVICES OR DEVICES. YOU AGREE WE ARE NOT LIABLE FOR ANY DAMAGES, LIABILITIES OR CLAIMS CAUSED BY YOU OR A THIRD PARTY.

- (3) Without limiting the generality to the foregoing, to the fullest extent available by law, we specifically disclaim any and all loss or liability resulting from (i) failures, delays or interruptions to the Services or Devices; (ii) loss of data; (iii) acts of God; (iv) errors, omissions, or misstatements in any information transmitted through or by the Services, (v) your use of the Services or Devices, (vi) slander, libel or defamation arising from any information or content transmitted, downloaded or received through the use of the Services or Devices, (vii) any accident or injury caused by or to a vehicle, watercraft or aircraft as a result of your use of the Services or Device while operating the vehicle, watercraft or aircraft, (viii) physical injuries or death (except as required by law) or (ix) loss of profits or business opportunities.
- (4) Without limiting the generality to the foregoing, except when required by law, Mobicity, our officers, directors, employees, affiliates, contractors, service provider, manufacturer, other third party providing the devices or services and any other party to the extent that we would be required to indemnify that party for such claim shall not be liable for any claims, damages or liabilities related to the provision of emergency service on a mandatory basis (pursuant to Telecom Decision CRTC 2003-53) including for failures to connect or complete 9-1-1 calls or if no or inaccurate location information is provided whether caused by Mobicity or other third parties.

## Section 14. INDEMNITY

- (1) You agree to defend, indemnify and hold us, our officers, directors, employees, affiliates, contractors, service providers, manufacturers, other third parties providing the devices or services and any other party to the extent that we would be required to indemnify that party for such claim harmless from any claims arising out of (i) the use or misuse of the Services or Devices, (ii) breach of this Agreement, our guideline or our policies, (iii) violation of any laws or regulations or the rights of any third party by the use or misuse of the Services or Devices.

## Section 15. COMMUNICATIONS BETWEEN US

- (1) You agree that we may communicate to you via either text message, calling your phone or any other number provided by you, voicemail, emailing you at the email address provided by you or by mailing/couriering you at the address provided by you. You agree that any notifications to you shall be deemed effective if we use any of these methods.
- (2) You may notify us by mail to Mobicity, 101 Exchange Avenue, Vaughan, Ontario, Canada, Attention: Legal Counsel.

## Section 16. SECURITY AND YOUR PIN / PASSWORD

- (1) From time to time, you may be required to choose your own personal identification number (“PIN”), security questions, username, password, or other information for the purpose of identifying you and your rights to access your account (“Security Information”). Your Security Information may be required from time to time in order for you to activate your SIM card, add or make any changes to your account or Services, obtain information or enquire about the account or as a proof of identity and authority to provide instructions to us.
- (2) You agree to be fully responsible to keep your Security Information safe and secure. You are responsible for any actions taken using your Security Information, including any changes or additional charges to your account or Services or any purchases made using your account.
- (3) You shall notify our call centre immediately upon any of the following: if your Devices or SIM card is lost or stolen, the security of your Security Information has been compromised, you suspect unauthorized use or access to your account, if you suspect your Devices or SIM card has been tampered with or damaged or any other similar reasons. We may recommend, but is not obligated to recommend, the appropriate action once you notify us, including resetting any of your Security Information, changing your account, suspending or terminating your account or all or any part of your Services. If we provide you with our recommendation, our recommendations are provided to you without any warranties. It is your sole responsibilities to ensure that the situation is corrected and shall be responsible for all fees and charges incurred. No credits will be given to you for the time you are unable to use the Services or Devices.
- (4) We may terminate, suspend or restrict all or any part of your Services if we suspect that fraudulent or abusive activities on your account or that your account is being used without your authority (but we are not obligated to do so).

## Section 17. YOUR PERSONAL INFORMATION AND PRIVACY

- (1) From time to time, we may require you to provide us or you may provide us voluntarily with certain identifiable information about you (“Personal Information”). Personal Information includes information about an identifiable individual other than the name and address, such as credit card information, information collected through our website or other information we may collect from you from time to time. Your Personal Information will be treated in accordance to our Privacy Policy, which forms part of this Agreement and may be amended from time to time.
- (2) You acknowledge and agree that we may, but are not obligated to, monitor, record, observe or investigate the use of the Services in order to (i) satisfy any legal, regulatory, governmental or other authorized authority’s requests, (ii) evaluate, monitor, improve or upgrade the quality of Services, (iii) operate and maintain the operation of the Services or (iv) protect other customers or ourselves in accordance to our Privacy Policy.



## Section 18. TRADEMARKS

- (1) The "Mobilicity" name, logos and certain other marks are trademarks of Data & Audio-Visual Enterprises Wireless Inc. Any unauthorized uses of any of our marks are strictly prohibited.

## Section 19. GENERAL PROVISIONS

- (1) In this Agreement (i) the words "including" and "includes" mean "including (or includes) without limitation" and 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) Mobilicity 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 or resulting from regulations or order of any government or governmental agency or any other circumstance beyond the control of Mobilicity.
- (4) 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.
- (5) 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 Mobilicity or you 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.
- (6) 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.
- (7) This Agreement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of Ontario and the laws of Canada applicable therein 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. You and Mobilicity agree that each party irrevocably attorns



## Services Terms and Conditions

and submits to the exclusive jurisdiction of the Courts of Toronto, 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.

- (8) You and Mobicity 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.