

# XFINITY MOBILE EARLY DEVICE UPGRADE PROGRAM

## TERMS AND CONDITIONS

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY TO UNDERSTAND YOUR RIGHTS AS A DEVICE PAYMENT PLAN BORROWER OR AUTHORIZED USER AND PARTICIPANT IN THE XFINITY MOBILE EARLY DEVICE UPGRADE PROGRAM. BY PARTICIPATING IN THE XFINITY MOBILE EARLY DEVICE UPGRADE PROGRAM, YOU ENTER INTO A BINDING AGREEMENT WITH THE SIGNAL, PO BOX 47168, ATLANTA, GA 30362 (“THE SIGNAL”) AND AGREE TO ALL TERMS AND CONDITIONS OUTLINED BELOW.

### 1. Definitions.

**Credit:** The DPP balance amount credited to Your Account upon successful validation that Your Eligible Device is in Good Working Order.

**Device:** The cellular device or electronics that is subject to the DPP.

**DPP:** The Xfinity Mobile Device Payment Plan that allows You to make monthly payments toward the purchase of Your Device.

**Early Device Upgrade Program (Program):** An optional program designed for Xfinity Mobile customers who have purchased a new Device with a DPP from Xfinity Mobile, for use on Xfinity Mobile’s network. The Program enables Xfinity Mobile customers to purchase a new device before completely paying off their current DPP.

**Eligible Device:** A Device that is eligible to be upgraded under the Early Device Upgrade Program.

**Good Working Order:** Good Working Order means the Device (i) powers up and operates in a manner consistent with the original manufacturer’s specifications for both hardware and software, (ii) is free from liquid damage, (iii) does not have a cracked or broken screen, and (iv) has no physical damage to the housing, buttons and charging port. In addition, Find My iPhone must be turned off for iPhones.

**We/Our:** The Signal as the buyer of the Device You are trading in under the Program.

**Terms and Conditions:** The provisions of this agreement that govern the Early Device Upgrade Program.

**You and Your:** The borrower responsible to make the DPP payments for the Eligible Device.

### 2. Certification.

By participating in the Early Device Upgrade Program, You certify that:

- a) You are over the age of eighteen (18) and are free to enter into this agreement.
- b) You are lawfully the borrower responsible for the DPP for the Eligible Device.
- c) You agree to surrender ownership rights to Your Eligible Device when You turn it in as part of Your Early Device Upgrade, and understand that The Signal is under no obligation to return that Device to You.

- d) You agree to provide The Signal with the information necessary for The Signal to remit the Credit for Your benefit to Xfinity Mobile or its assignee creditor.

### 3. Eligibility.

a) **Program Eligibility.** You must have an active line of service with Xfinity Mobile, You must have purchased an Eligible Device from Xfinity Mobile with a DPP, and be enrolled in the Xfinity Mobile Protection Plan. Your account must be current and in good standing with Xfinity Mobile. You are subject to the Terms and Conditions specified in this document for the Program, as well as the Xfinity Mobile Agreements, defined in Section 8.

b) **Device Eligibility.** The International Mobile Equipment Identifier (“IMEI”) of the Device matches the IMEI identified on the DPP, or a replacement device provided by Xfinity Mobile, The Signal or the manufacturer. The Device is in Good Working Order. If You are an individual customer, You must have paid off at least 50% of the total price of the Device.

### 4. Program Term.

The Early Device Upgrade Program operates on a month-to-month basis. Your right to receive benefits are contingent upon Your continued eligibility for the Early Device Upgrade Program. Your participation in the Program is subject to modification by The Signal, as outlined in Section 17.

### 5. How to Initiate an Early Device Upgrade.

You may initiate an Early Device Upgrade in any initiation channels Xfinity Mobile makes available to You, which are subject to change. These may include: a) going to a participating Xfinity Mobile or affiliated 3<sup>rd</sup> party retail location; b) calling Xfinity Mobile Care at 1-888-936-4968; c) online via the Xfinity Mobile website at [www.xfinitymobile.com](http://www.xfinitymobile.com); or d) a direct sales transaction initiated at Your residence. After the upgrade process is initiated, You must surrender Your Eligible Device in Good Working Order through any of the available surrender channels listed in Section 6 to receive Credit.

### 6. Upgrade and Evaluation Process.

To upgrade Your Eligible Device under the Program, You must surrender the Eligible Device and its battery to The Signal via one of the available surrender channels, which may include In-Store, Self-Certify or any other channel

identified by Xfinity Mobile from time to time. **Once You surrender Your Eligible Device through any available surrender channel, We are unable to return Your Device to You.** If In-Store or Self-Certify options are available, You must surrender the Eligible Device as follows:

**In-Store surrender:** If You initiate Your Xfinity Mobile upgrade at a participating Xfinity Mobile or affiliated 3<sup>rd</sup> party store, and an authorized representative determines that Your Eligible Device is in Good Working Order, You will turn over Your Eligible Device to the authorized representative. Xfinity Mobile will apply a Credit equal to the remainder of Your DPP balance for the Eligible Device in accordance with the Application of Credit section of these Terms and Conditions.

If Your Device is not in Good Working Order, You may file a claim for a replacement Device under the Xfinity Mobile Protection Plan. If the claim is approved and You have paid the applicable deductible amount You may use the replacement Eligible Device as Your trade-in Device for Your upgrade benefit. The replacement Device's IMEI will be updated on Your DPP Agreement. If You file a claim that is approved and completed under the Xfinity Mobile Protection Plan and begin the Xfinity Mobile upgrade process using Your replacement Eligible Device, the claim will count towards the Xfinity Mobile Protection Plan and the Early Device Upgrade Program's benefit limits.

**Self-Certify and surrender by shipping directly to The Signal:** If You conduct Your Xfinity Mobile upgrade over the phone or online, or at a participating retail location but need to wait for Your new device to be shipped to You, You will confirm Your Device is in Good Working Order, and must ship Your Eligible Device directly to The Signal to **be received at The Signal within twenty (20) days** from the date Your new device is shipped. Your Eligible Device must be properly shipped to avoid damage during transit. If Your Eligible Device is received in Good Working Order, Xfinity Mobile will apply a Credit equal to the remainder of Your DPP balance for the Eligible Device in accordance with the Application of Credit section of these Terms and Conditions.

**Application of Credit:** Your Credit, equal to the remainder of Your DPP balance for the Eligible Device, will be applied within 3 billing cycles.

**Impact of Shipping Ineligible Devices to The Signal:** If You ship a Device to The Signal and the IMEI does not match the IMEI identified on Your DPP, or a replacement device provided by Xfinity Mobile, The Signal or the manufacturer, the Device is not considered an Eligible Device.

## 7. Data Security.

It is solely Your responsibility to protect and secure any information that is stored on Your Device. You are

responsible for removing data and personal information including, but not limited to, SIM cards, memory cards, passwords, contacts, emails, pictures and calendars. Consult Your Device User Guide to learn how to erase or remove such information. The Signal will securely destroy any SIM cards or memory cards upon receipt, and is unable to return these to You. If You are surrendering an iPhone, You must disable Find My iPhone. Failing to do so will make the Device ineligible for an upgrade.

## 8. Applicability.

This Agreement is supplemental to, and separate from, any other agreements You may have with Xfinity Mobile including, but not limited to, the Xfinity Mobile Customer Agreement, the Xfinity Mobile Privacy Policy and the Xfinity Mobile Device Payment Plan (collectively the "Xfinity Mobile Agreements"). To the extent that these Terms and Conditions conflict with any other provision of any other terms and conditions of the Xfinity Mobile Agreements, the provision(s) in the Xfinity Mobile Agreements shall apply. The Xfinity Mobile Protection Plan terms and conditions are hereby incorporated into this Agreement to the extent they apply to the Early Device Upgrade Program.

## 9. Transferability and Availability.

This Agreement is non-transferable. The Early Device Upgrade Program is available only in the United States.

## 10. Waiver of Liability.

IN NO EVENT SHALL THE SIGNAL OR XFINITY MOBILE OR THEIR RESPECTIVE AGENTS, AFFILIATES, OFFICERS OR EMPLOYEES BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES arising out of, from, or related to the participation by You in the Early Device Upgrade Program regardless of the form of action (including, but not limited to, negligence) and regardless as to whether The Signal or Xfinity Mobile has been advised of the possibility of any such loss or damage. In the event a court of competent jurisdiction finds this Section unenforceable, You agree that the extent of The Signal's or Xfinity Mobile's liability shall be no more than one hundred dollars (\$100.00).

## 11. Independent Contractor.

The Early Device Upgrade Program in no way constitutes or gives rise to a partnership, joint venture or other relationship between The Signal and Xfinity Mobile. The Signal operates under these Terms and Conditions as an independent contractor and not as an agent for Xfinity Mobile.

## 12. Indemnity.

You agree to indemnify and hold The Signal and Xfinity Mobile and their respective parents, subsidiaries, affiliates, officers, directors, agents, and employees harmless from any claims or demands, including

reasonable attorneys' fees, made by any third parties due to, connected to, or arising out of, the breach of this agreement, any acts or omissions, or violation of any law or the rights of any third party by You.

### 13. Dispute Resolution.

You understand that Comcast OTR1, LLC is not a party to this agreement, and that any disputes that may arise with Comcast OTR1, LLC are governed by Your agreement(s) with Comcast OTR1, LLC including, and not limited to, the Dispute Resolution and Arbitration provision set forth under the heading "Binding Arbitration" in Your Xfinity Mobile Customer Agreement with Comcast OTR1, LLC.

### 14. Mandatory Arbitration Provision.

THE FOLLOWING ARBITRATION PROVISION ("PROVISION") MUST BE READ CAREFULLY. IT LIMITS CERTAIN OF YOUR RIGHTS, INCLUDING YOUR RIGHT TO OBTAIN RELIEF OR DAMAGES THROUGH COURT ACTION. To begin arbitration, either You or We must make a written demand to the other party for arbitration. All arbitrations shall be administered by the American Arbitration Association ("AAA") in accordance with its Consumer Arbitration Rules ("Rules") in effect at the time the claim is filed. The terms of this Provision shall control any inconsistency between the Rules and this Provision. Upon written request, We will advance to You either all or part of the fees of the AAA and of the arbitrator. The arbitrator will decide whether You or We will be responsible for these fees. Unless You and We agree, the arbitration will take place in the county and state where You live. The Federal Arbitration Act, 9 U.S.C. § 1, et seq., will govern and no state, local or other arbitration law will apply. **IF ANY PORTION OF THIS PROVISION IS DEEMED INVALID OR UNENFORCEABLE, IT SHALL NOT INVALIDATE THE REMAINING PORTIONS OF THE PROVISION, EXCEPT THAT IN NO EVENT SHALL THIS PROVISION BE AMENDED OR CONSTRUED TO PERMIT CLASS ARBITRATION OR ARBITRATION ON BEHALF OF ANY INDIVIDUAL OTHER THAN YOU.** You agree that any arbitration proceeding will only consider Your claims. Claims by or on behalf of other individuals will not be arbitrated in any proceeding that is considering Your claims. **YOU AND WE UNDERSTAND AND AGREE THAT BECAUSE OF THIS PROVISION, NEITHER YOU NOR WE WILL HAVE THE RIGHT, EXCEPT AS MAY BE PROVIDED ABOVE, TO GO TO COURT, OR TO HAVE A JURY TRIAL, OR TO PARTICIPATE AS ANY MEMBER OF A CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. California Residents Only** – Notwithstanding any other terms of the Provision, which

otherwise fully apply, Claims seeking statutorily authorized injunctive relief that, if granted, would have the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public may be arbitrated.

### 15. Notice.

You expressly consent to be contacted, for any and all purposes, at any telephone number, or physical or electronic address You provide at the time of Your Early Device Upgrade Program enrollment or Upgrade transaction. All notices or requests pertaining to these Terms and Conditions will be in writing and may be sent by any reasonable means including; e.g., by mail, email, facsimile, text message or recognized commercial overnight courier. Notices to You are considered delivered when sent to Your Device or by email or fax number You provided, or three (3) days after mailing to Your billing address.

### 16. Waiver; Severability.

The failure of either party to require performance by the other party of any provision of these Terms and Conditions will not affect the full right to require such performance at any time thereafter; nor will the waiver by either party of a breach of any provision of these Terms and Conditions be taken or held to be a waiver of the provision itself. If any provision of these Terms and Conditions is unenforceable or invalid under any applicable law so held by applicable court decision, such unenforceability or invalidity will not render these Terms and Conditions unenforceable or invalid as a whole and in such event, such provisions will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

### 17. Modification.

Your participation in the Early Device Upgrade Program is subject to Our business policies, practices, and procedures, which We can change without notice. The Signal reserves the right to modify these Terms and Conditions or to cancel Your participation in the Early Device Upgrade Program at any time, at Our sole discretion. If We cancel or materially change the Early Device Upgrade Program or a term in these Terms and Conditions in a manner that is materially adverse to You, We will provide You with written notice of the effective date of the cancellation or change and may provide You with a refund, credit, or one Upgrade benefit, at Our sole discretion.