

XFINITY MOBILE ELITE 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 ELITE UPGRADE PROGRAM. BY PARTICIPATING IN THE XFINITY MOBILE ELITE UPGRADE PROGRAM, YOU ENTER INTO A BINDING AGREEMENT (“AGREEMENT”) WITH THE SIGNAL, PO BOX 47168, ATLANTA, GA 30362 (“THE SIGNAL”) AND AGREE TO ALL TERMS AND CONDITIONS OUTLINED BELOW.

1. **Elite Upgrade Program Overview.** The “Elite Upgrade Program” or “Program” is an optional program for Xfinity Mobile customers who are (i) enrolled in an Eligible Plan, (ii) upgrading to a New Device on a DPP, and (iii) trading in an Existing Device. The Program enables customers to upgrade to a New Device without retail Upgrade fees or paying off any Existing Device DPP balance and receive an Offer Credit on a New Device DPP (“Upgrade”).

By enrolling in the Program, You may Upgrade to a New Device up to two (2) times in a rolling twelve (12) month period (measured from the date of Your first Upgrade). Your eligibility to upgrade is subject to these Program Terms and Conditions, including, but not limited to, the eligibility requirements in Section 4 below. You must wait a minimum of two (2) billing cycles after subscribing to an Eligible Plan before initiating an Upgrade. After upgrading, You must wait a minimum of two (2) billing cycles before initiating another Upgrade.

If You Upgrade Your Existing Device, but do not maintain an Eligible Plan for the length of the DPP on your New Device, (a) You must pay any DPP Credit that was applied to Your Existing Device DPP when You traded it in (if applicable), (b) You will lose any Offer Credits still to be applied to Your Account, and (c) You must pay the remaining DPP payments owed on Your New Device without any Offer Credits or other discounts or promotions provided to You under the Elite Upgrade Program.

2. Definitions.

- a) **Device:** A cellular device or electronics that You have obtained from Xfinity Mobile and that is subject to a DPP.
- b) **DPP:** The Xfinity Mobile Device Payment Plan that allows You to make monthly payments toward the purchase of Your Device.
- c) **DPP Credit:** The DPP balance amount credited to Your Account upon successful validation that Your Existing Device meets all eligibility requirements and is in Good Working Order.
- d) **Eligible Plan:** means Xfinity Mobile’s Premium Unlimited mobile service plans.
- e) **Existing Device:** A Device with a then-current DPP balance that is eligible to be upgraded under the Elite Upgrade Program.
- f) **Good Working Order:** means the Existing 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, all security features (such as Find My iPhone (“**FMiP**”) for iPhones) must be turned off.

- g) **New Device:** the upgraded Device You intend to obtain as part of the Program that will be purchased with a DPP.
- h) **Offer Credit:** means the amount to be applied to Your Xfinity Mobile account monthly, divided evenly over Offer Period.
- i) **Offer Period** means the twenty-four (24) months during which the Offer Credit amount will be credited to Your Account beginning upon the purchase of Your New Device.
- j) **Terms and Conditions:** The provisions of this Agreement that govern the Elite Upgrade Program.
- k) **We:** The Signal as the buyer of the Device You are trading in under the Program.
- l) **You and Your:** The Xfinity Mobile customer subscribing to an Eligible Plan who is participating in the Program and responsible to make the DPP payments for a Device.

3. Certification.

By participating in the Elite 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 applicable Devices included in the Upgrade.
- c) You agree to surrender ownership rights to Your Existing Device when You turn it in as part of Your Elite Upgrade.
- 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.

4. Eligibility. You may participate in the Program if the following eligibility requirements are met:

- a) The Existing Device
 - i. must be on an active Xfinity Mobile line of service on an Eligible Plan;
 - ii. must be under a DPP with a balance as of the Upgrade date;
 - iii. have an International Mobile Equipment

Identifier (“IMEI”) that matches the IMEI identified on the DPP and enrolled in the Eligible Plan, or a replacement device provided by Xfinity Mobile, The Signal or the manufacturer; and

iv. must be in Good Working Order.

b) Your Account must be current and in good standing with Xfinity Mobile at the time You seek to Upgrade Your Existing Device.

5. Program Term. The Elite Upgrade Program operates on a month-to-month basis. Your right to receive benefits is contingent upon Your continued eligibility for the Elite Upgrade Program. Your participation in the Program is subject to modification by The Signal, as outlined in [Section 17](#).

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

7. Upgrade and Evaluation Process. To upgrade Your Existing Device under the Program, You must surrender the Existing 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. You must surrender the Existing Device as follows:

a) **In-Store surrender:** If You initiate Your Xfinity Mobile upgrade at a participating Xfinity Mobile or affiliated 3rd party store, and an authorized representative determines that Your Existing Device is in Good Working Order, You will turn over Your Existing Device to the authorized representative. Xfinity Mobile will apply a Credit equal to the remainder of Your DPP balance for the Existing Device in accordance with the Application of Credit section of these Terms and Conditions. If Your Device is not in Good Working Order, Your upgrade will be denied, Your DPP balance will remain unchanged, and You will retain Your Device.

b) **Self-Certify and surrender by shipping directly to The Signal:** If You initiate Your 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 Existing Device is in Good Working Order, and ship Your Existing Device directly to The Signal. Your Existing Device must **be received at The Signal within twenty-one (21) days** from the date Your New device is shipped. Your Existing Device must be properly shipped to avoid damage during

transit. If Your Existing Device is received in Good Working Order, Xfinity Mobile will apply a Credit equal to the remainder of Your DPP balance for the Existing Device in accordance with the Application of Credit section of these Terms and Conditions.

c) Application of Credit:

i. Any DPP Credit, equal to the remainder of Your DPP balance for the Existing Device, will be applied within three (3) billing cycles.

ii. Any Offer Credit will appear on Your Xfinity Mobile Account within the first month *after* Your Existing Device is received and accepted by Us. You will receive catch-up amounts for the months before Your Offer Credit is first applied. By way of example only: if You are offered a \$600 Offer Credit (credited at \$25 per month) and You ship Your Device to Us within the required time period, Your Offer Credit will be applied in month two of Your Credit Period and will equal a \$25 catch-up amount plus the current \$25 monthly amount.

iii. **Impact of Shipping Ineligible Devices to The Signal:** If Your security features (e.g., FMiP) are still active on Your Device, We will contact You to request that You deactivate the security features. If You do not deactivate the security features within the timeframe identified in Our communication, the Device is not considered an Existing Device eligible for Upgrade. If You ship a Device to The Signal and the IMEI does not match (i) the IMEI identified on Your DPP, or a replacement device provided by Xfinity Mobile, The Signal or the manufacturer, and (ii) the Device enrolled in the Unlimited Premium wireless service plan, the Device is not considered an Existing Device. If Your Device is not in Good Working Order, the Device is not considered an Existing Device. In all instances, if You ship an ineligible Devices to The Signal, Your upgrade will be denied, **You will immediately be charged the remainder of Your DPP balance for the Device**, and Your Device will be returned to You.

d) **For Customers Enrolled in Xfinity Mobile Care.** If Your Device is not in Good Working Order, You may separately file a claim for a replacement Device under Your Xfinity Mobile Care plan. If the claim is approved and You have paid the applicable deductible amount You may use the replacement Existing Device You receive as Your Device for Your upgrade benefit under the Program. The replacement Device’s IMEI will be updated on Your DPP Agreement and Your Unlimited Premium wireless service plan. If You file a claim that is approved and completed under Your Xfinity Mobile Care plan and begin the Program upgrade process using Your

replacement Existing Device, the claim will count towards both the Xfinity Mobile Care and the Elite Upgrade Program's benefit limits.

8. **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. **Before surrendering a Device, You must disable all security features, including the Find My iPhone feature for iPhones. Failing to do so will make the Device ineligible for an upgrade.**
9. **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.
10. **Transferability and Availability.** This Agreement is non-transferable. The Elite Upgrade Program is available only in the United States.
11. **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 Elite 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).
12. **Independent Contractor.** The Elite 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.
13. **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.
14. **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.

15. **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.
16. **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 Elite 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.

17. 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.

18. Modification. Your participation in the Elite 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 Elite Upgrade Program at any time, at Our sole discretion. If We cancel or materially change the Elite 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.