



Terms and Conditions
Unwired Appeal Premium SMS Services

CONSUMER TERMS & CONDITIONS FOR USE OF PSMS SERVICES

NOTICE: Please read these terms and conditions carefully. They set out the terms and conditions upon which End-users may pay for the Content/Material/Premium Service which End-users wish to access using the Premium SMS. If End-users are under 18 years of age a parent or guardian should read and accept these terms & conditions before End-users use any Premium SMS Services.

1. Contract

By using any Unwired Appeal Premium SMS Services set out below, End-users agree to be bound by the terms and conditions herein and as amended from time to time. Premium SMS Services are open to subscribers of Verizon, Cingular, TMobile, Nextel, Sprint, Alltel, and Dobson. Prepaid wireless subscribers are not able to participate in Premium Rate Services.

If End-users do not wish to be bound by these terms and conditions, please exit this web page immediately and send STOP to the designated short code of the Unwired Appeal Premium SMS Service if you have subscribed.

2. Definitions

Within these terms and conditions the following words have the following meanings:

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| “Content/Material/Premium Service” | The digital assets or services including but not limited to text, video, audio, animations, still images, and other digital works, or the physical goods and services; |
| “Content Provider” | The entity providing the Content/Material/Premium Service which End-users wish to access; |
| “Keyword” | The Keyword used to opt-in to the PSMS Service; |
| “Intellectual Property Rights” | Patents, trade marks, service marks, designs, design rights (whether registered or otherwise), copyright, trade secrets, rights in databases and other similar rights or obligations whether registered or not in any country; |
| “Wireless Carrier” | The legal entity which exploits and operates a mobile telecommunications system or network; |
| “Premium SMS Services” | All services offered by Unwired Appeal that are billed via Premium SMS services. |

“Premium Rate SMS (PSMS)”	Services by which Content/Material/Premium Service is charged to End-user’s wireless bill;
“Privacy Policy”	Unwired Appeal Privacy Policy as contained on Unwired Appeal web site;
“SMS”	Short Message Services commonly referred to as Text-Messaging;
“SMS Shortcode”	The 5-digit number connected to the Premium Service to which End-users send and receive text-messages
“Service Charge”	The amount paid by End-users for the Content/Material/Premium Service End-users wish to access;
“Transaction”	Any payment made using Premium SMS;
“End-user”	The consumer who is using the Content/Material/Premium Service

3. Consideration

In consideration of the payment by End-users of the Service Charge Unwired Appeal provides the Service to End-users in accordance with the terms and conditions herein.

4. Premium Rate SMS Payments

End-users must create and send a text message containing the service keyword associated with the Content/Material/Premium Service that End-users wish to access to the designated SMS short code number. PSMS delivers a text message in response asking End-user to verify billing charge to End-user’s wireless bill. Upon confirmation a Premium SMS message will be sent to the End-users cell phone..

5. Rights, Obligations & Disclaimers by Unwired Appeal

5.1 End-user’s Personal Information

Unwired Appeal respects End-users personal information and undertakes to comply with applicable USA data protection legislation. Unwired Appeal has a separate Privacy Policy and asks End-users to review that Policy for more information on this topic.

5.2 Transaction Processing

Unwired Appeal shall make all reasonable efforts to ensure that payments made are processed in a timely manner, however, a number of factors, most of which are out of our control, will contribute to *when* and *how* payments are received and Content/Material/Premium Service thereafter accessed. Unwired Appeal makes no representations or warranties regarding the amount of time needed to complete processing, nor shall we be liable for any actual or consequential damages arising from any claim of delay.

5.3 Disclaimers

5.3.3 In no event shall Unwired Appeal be liable (a) for damages caused other than by intentional misconduct or (b) for any indirect, special, incidental, consequential or punitive damages whatsoever (including but not limited to damage for lost profits disclosure of confidential information or loss of privacy) arising out of or in any way related to End-Users use or inability to use the Premium SMS Services, even if Unwired Appeal has been advised of the possibility of such damages. Unwired Appeal shall not be liable for any act or omission of any third party (such as, for example, any provider of telecommunications services, internet access or computer equipment or software) or any circumstance beyond its control as set out in clause 14 below.

5.3.4 Nothing in these terms and conditions shall exclude or limit liability for death or personal injury resulting from Unwired Appeal negligence or that of Unwired Appeal agents or employees or any other liability which is prohibited from being excluded by law.

5.3.5 Subject to Clause 5.3.4 of these terms and conditions Unwired Appeal maximum liability to End-users in respect of the use of the Premium Service will be the amount of any Service Charge paid by End-users to Unwired Appeal at the time that the liability arose.

5.4.6 End-users agree that each of these limitations is reasonable having regard to the nature of the Service and in particular given that when End-users use a Premium SMS Service, Unwired Appeal has no control over the quality of the equipment used or services received

5.5 Other Rights

5.5.1 Unwired Appeal at its sole discretion reserve the right to close End-user's account at any time for any reason, including but not limited to breach of these terms and conditions.

5.5.2 Unwired Appeal reserve the right to deny access to all or any part of the Service and modify or discontinue, temporarily or permanently, the Service with or without notice to End-user

5.5.3 Unwired Appeal may change these terms and conditions from time to time. Unwired Appeal will notify End-users of any changes in a notice on its web site. End-user's continued use of the Service thereafter will constitute acceptance of such changes. Unwired Appeal reserves the right to terminate immediately without further notice End-user's access to and use of the Service if End-users do not accept any such changes.

6. End-user's Obligations

6.1 Wireless Account Ownership

6.1.1 End-user warrants that they own and are responsible for the billing of the wireless account that the End-user are using to access the Premium SMS Service; and End-users agree to notify Unwired Appeal immediately of any ownership changes to the wireless account by emailing: support@unwiredappeal.com

6.2 Miscellaneous

6.2.2 End-users agree to use the Service only in accordance with all relevant laws and not for any illegal purpose.

6.2.3 End-users agree not to use the Service such that End-users cause the whole or part of the Service to be interrupted, damaged, rendered less efficient or to in any way impair effectiveness or functionality of the Service.

6.2.4 End-users agree not to use the Service in any manner which constitutes a violation or infringement of any person, firm or company or its rights (including, but not limited to, third party Intellectual Property Rights or confidentiality).

6.2.5 End-users agree that in the event that End-users have any right, claim or action against any consumer or Content Provider/Merchant or Service operator arising out of the use of the Service, then End-users will pursue such right, claim or action independently of and without recourse to Unwired Appeal.

6.3 Indemnity

End-users agree to indemnify Us, and its officers, directors and employees, immediately on demand, against all claims, liability, damages, costs and expenses, including legal fees, arising out of any breach of these terms and conditions by End-users or any other person who may be authorised by End-users or for whom End-users are responsible or any other liabilities arising out of End-user's use or the use by any person who may be authorised by End-users or for whom End-users are responsible (for example as an employer or as the parent or guardian of a child).

6.4 Unauthorised Use

In cases of unauthorised Transactions, payment problems, errors or questions about End-user's account End-users should notify Unwired Appeal immediately by e mail. End-users must 1) Tell Unwired Appeal End-user's name and cell phone number; 2) Describe the error or the Transaction that End-users are unsure about, and explain clearly why End-users believe it is an error or why End-users need more information; and 3) Tell Unwired Appeal the dollar amount of the suspected error. Unwired Appeal will respond to End-user's email query within 10 business days with the results of our investigation.

Notwithstanding the above Unwired Appeal will not be in any way responsible for any unauthorised use unless it arises from our own exclusive fault. Unwired Appeal do NOT act as agent of any Card issuer, Network Operator, equipment supplier, or Content Provider/Merchant involved in any Transaction or resulting dispute between End-users and them.

7. Service Charge

The Service Charge or price payable in respect of the Content/Material/Premium Service is clearly set out beside each item of Content/Material/Premium Service. The price of the Content/Material/Premium Service may vary depending on which Payment Method that End-users choose. If End-users fail to pay the Service Charge in accordance with these terms and conditions End-users will not obtain access to the Content/Material/Premium Service.

If End-users use or attempt to use the Service for purposes other than paying for and accessing Content/Material/Premium Service, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of the service, End-user's access to the Service will be terminated and End-users will be subject to damages and other penalties, including criminal prosecution where available.

8. Content Providers

Unwired Appeal provides the Premium SMS service to pay for the Content/Material/Premium Service. End-users acknowledge and agree that Unwired Appeal are not responsible for the Content/Material/Premium Service, and do not endorse and are not responsible or liable for any Content/Material/Premium Service, advertising, products or other content on or available from a Content Provider/Merchant web site. End-users agree that Unwired Appeal will not be responsible or liable, directly or indirectly, for any damage or loss caused, or alleged to be caused, by or in connection with use of or reliance on any such Content/Material/Premium Service, goods or services available on such Content Provider/Merchant web sites.

9. Notices

Unless otherwise stated in these terms and conditions, all notices from End-users to Unwired Appeal must be in writing and sent to its contact address at 15 Robinwood Avenue, Boston MA 02130 and all notices from Unwired Appeal to End-users will be displayed on its web site from time to time.

10. Unenforceability

Each provision of these terms and conditions shall be construed as separately applying and surviving even if for any reason one or other of those provisions is held to be inapplicable or unenforceable in any circumstances.

11. Assignability

End-users may not transfer any rights or obligations End-users may have under these terms and conditions. Unwired Appeal reserves the right to transfer any right or obligation under these terms and conditions without End-user's consent.

12. No Waiver

No waiver by Unwired Appeal shall be construed as a waiver of any proceeding or succeeding breach of any provision.

13. Entire Agreement

These terms and conditions together with payment details, contact details and our Privacy Policy, set out the whole of the agreement between Unwired Appeal with respect to the subject matter and exclude any representations and warranties previously given or made other than any negligent or fraudulent misrepresentation and may be amended only by Unwired Appeal on notice to End-users in accordance with clause 9 of these terms and conditions.

14. Events beyond our Control

Unwired Appeal shall not be liable to End-users for any breach of these terms and conditions or any failure to provide or delay in providing the Service resulting from any event or circumstance beyond its reasonable control including, without limitation, failure or shortage of power supplies, network failures, inability to obtain telecommunications services, any act or omission of Government, fire, explosion or accident.

15. No Partnership

Nothing in this Agreement shall be construed as creating any agency, partnership between the parties.

17. Governing Law

These terms and conditions shall be governed by and interpreted in accordance with law of the State of Massachusetts. Massachusetts courts shall have exclusive jurisdiction to resolve any disputes between End-users and Unwired Appeal