

UTAM, Inc.

SUBSCRIBER AGREEMENT

THIS SUBSCRIBER AGREEMENT (this "Agreement") is made as of the date set forth on the signature page hereof between UTAM, Inc., a Delaware corporation ("UTAM"), and the subscriber set forth on the signature page hereof ("Subscriber").

RECITALS:

WHEREAS, UTAM is authorized by the Federal Communications Commission ("FCC") to manage the transition of the unlicensed personal communications services ("UPCS") frequency spectrum from use by microwave stations to use by UPCS devices and systems;

WHEREAS, the FCC requires all those who seek FCC equipment authorization for UPCS devices or systems to enter into an agreement with UTAM to share the costs associated with such transition; and

WHEREAS, Subscriber intends to secure FCC equipment authorization for UPCS devices or systems.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, UTAM and Subscriber agree as follows:

Section I. *Definitions.* As used herein, the following terms have the following meanings: (i) "UPCS Radiating Part" means intentional radiator equipment making use of any part of the UPCS Frequency Spectrum; (ii) "Customer" means an end-user or other operator of a UPCS Radiating Part; and (iii) "UPCS Frequency Spectrum" means the band from 1920-1930 MHz designated for UPCS operation.

Section 2. *UPCS Device Information.* Subscriber shall deliver to UTAM reports containing information requested by UTAM which is necessary for the performance of UTAM's frequency coordination responsibilities for the UPCS frequency spectrum,

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including where required the model number and number of all UPCS Radiating Parts shipped by Subscriber, together with any supporting documentation ("Reports"). The timing and delivery requirements of such Reports shall be as specified by UTAM from time to time, but the number of such Reports shall not exceed more than four (4) per year. If Subscriber certifies to UTAM in writing that it has discontinued all manufacture, sale, distribution and activation of UPCS Radiating Parts, then Subscriber shall not be obligated to deliver Reports for any period thereafter during which Subscriber does not manufacture, sell, distribute or activate a UPCS Radiating Part.

Section 3. *UPCS Fees.* Prior to shipping any UPCS Radiating Parts, Subscriber shall pay UTAM an initial fee of \$50,000 (Fifty Thousand US Dollars). In addition, Subscriber shall pay UTAM a fee in an amount determined by UTAM for each and every UPCS Radiating Part shipped by the Subscriber. Such fees shall be published by UTAM, and each subscriber shall be charged the same fee per UPCS Radiating Part. For all UPCS Radiating Parts shipped after January 1, 2008, the fee shall be \$0.05 (Five US Cents) per UPCS Radiating Part. All UPCS fees paid shall be final and non-refundable. All payments due under this agreement must be delivered to UTAM by the 21st of each month for each UPCS Radiating Part shipped during the previous month.

Section 4. *FCC Rules and UTAM Requirements.* Subscriber shall comply with (i) all applicable FCC rules and regulations and (ii) all requirements established and instructions given from time to time by UTAM to all UTAM subscribers with respect to UPCS spectrum use. Subscriber shall not directly or indirectly sell, distribute or activate a UPCS Radiating Part, except in compliance with such rules, regulations, requirements and instructions.

Section 5. *FCC Equipment Authorization.* Following execution of this Agreement, Subscriber may, if it elects and is otherwise qualified, apply for FCC equipment authorization for its UPCS devices or systems. UTAM does not warrant FCC approval of any such application. An affidavit by UTAM that Subscriber is a participating member of UTAM is a prerequisite for FCC equipment authorization. Subscriber is responsible for obtaining such UTAM affidavit at Subscriber's cost and expense.

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Section 6. *UTAM Voting Membership.* Entities which execute this Agreement, and which participate in the mechanism for and recovery of the costs of clearing the UPCS frequency spectrum, relocating incumbent licensees, and achieving UTAM's other purposes, will become eligible for voting membership in UTAM if they are otherwise eligible under, and comply with, the membership provisions of UTAM's Certificate of Incorporation and Bylaws. Upon becoming voting members of UTAM, Subscribers will be entitled to the rights and privileges and be bound by the obligations of such members.

Section 7. *Audit.* UTAM shall have the right to audit annually Subscriber's records relating to shipments of UPCS Radiating Parts. All audits will be conducted by a third party auditor, selected by UTAM, who shall provide to subscriber reasonable notice of the date and time that such audit will occur. For such audits, Subscriber shall make its books and records relating to such shipments available during normal business hours to enable UTAM to verify the number and type of UPCS Radiating Parts shipped by Subscriber. The cost of all annual audits shall be paid by Subscriber. Except as required by the FCC or as otherwise required by law or compulsory legal process or to enforce UTAM's rights hereunder, such books and records shall remain confidential and the information contained therein shall not be disclosed by UTAM to any other subscriber or to any third party. It is the understanding of the parties that under current FCC reporting requirements, UTAM will be required to disclose only aggregate information with respect to UPCS Radiating Parts sold and UTAM revenues from subscribers.

Section 8. *Investigations and Inquiries.* Subscriber shall reasonably assist UTAM in the conduct of any investigation or inquiry concerning interference and with regard to compliance with UTAM requirements. The costs of any such investigation or inquiry shall be paid for by Subscriber.

Section 9. *Term.* The term of this Agreement shall commence on the date set forth on the signature page hereof and shall continue in effect until the date UTAM's FCC designation to manage the transition of the UPCS frequency spectrum expires; provided

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however, should a successor to UTAM be designated by the FCC, UTAM will, upon written notice to Subscriber, assign and delegate its rights and obligations hereunder to such successor.

Section 10. *Remedies.* If Subscriber fails to comply with any covenant or agreement of Subscriber set forth in this Agreement or makes a material misrepresentation to UTAM or omits material information required by UTAM, then UTAM, after written notice to Subscriber of such failure, misrepresentation, or omission which is not corrected within 30 days, may suspend or terminate Subscriber's right to sell, distribute, and activate any UPCS Radiating Parts. Upon any such suspension or termination, the provisions of this Agreement shall otherwise remain in full force and effect. Any such failure to comply or misrepresentation could result in the revocation by the FCC of any equipment authorization then held by Subscriber and other penalties under the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. If Subscriber fails to comply with any covenant or agreement of Subscriber set forth in this Agreement, then, in addition to any other remedies available to UTAM at law or in equity, UTAM shall be entitled to immediate court ordered injunctive relief to prevent or restrain any such failure, it being understood and agreed that UTAM would suffer irreparable harm in the event of any such failure and that the remedy at law for such failure would be inadequate. If Subscriber does not comply with UTAM's fee requirements in a timely manner for one or more UPCS Radiating Parts, as required by Section 3, then Subscriber shall pay UTAM an amount equal to the fee Subscriber would have paid under Section 3 had it complied therewith plus interest on such amount from the date of noncompliance until paid in full at a rate per annum (the "Default Rate") equal to the highest prime rate accurately published in The Wall Street Journal during the period of noncompliance plus 6%. Subscriber shall also pay UTAM on demand the costs of enforcing UTAM's rights under this Agreement, including reasonable attorneys' fees and costs, plus interest thereon from the date incurred by UTAM until paid in full by Subscriber at the Default Rate. The rights and remedies of UTAM under this Agreement are cumulative and shall be in addition to and not exclusive of any other right or remedy set forth herein or otherwise available to UTAM.

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Section 11. *Indemnification.* Subscriber shall indemnify, defend and hold UTAM harmless from and against any and all loss, claim, damage, liability and expense (including reasonable attorneys' fees) arising from (i) Subscriber's negligence or willful misconduct in any act or omission of Subscriber, including without limitation the manufacture, sale, distribution or activation of UPCS devices or systems or the use thereof provided, however, that Subscriber shall not be obligated to indemnify UTAM for losses, claims, damages, liabilities and expenses resulting from compliance with UTAM requirements where such Subscriber negligence or willful misconduct is not present, or (ii) any failure by Subscriber to comply with any covenant or agreement of Subscriber set forth herein or any misrepresentation made by Subscriber to UTAM. The provisions of this section shall survive and remain in full force and effect following the expiration or termination of this Agreement.

Section 12. *Arbitration.* Any controversy or claim arising out of or relating to this Agreement or the breach hereof shall, upon the written request of either party, be settled by arbitration in Washington, D.C. in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware.

Section 13. *Miscellaneous.* Subscriber shall provide the Subscriber information identified in Appendix A. Notices hereunder shall be effective when delivered personally or by overnight courier or registered mail, return receipt requested, to Subscriber at its address as set forth in Appendix A or to such other address as may be specified by Subscriber by written notice to UTAM at its address specified on the signature page of this agreement or to such other address as may be specified by UTAM by written notice to Subscriber. All UPCS fees to be paid to UTAM pursuant to this Agreement shall be delivered to: UTAM, INC., Department 3465, Washington, DC 20042-3465. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and communications relating thereto. This Agreement and the rights and obligations hereunder may not be assigned or delegated by either party without the prior written

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consent of the other, except that UTAM may, upon written notice to Subscriber, assign and delegate its rights and obligations hereunder to any successor designated by the FCC to perform UTAM's functions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. The invalidity of any provision of this Agreement shall not affect the validity of any other provisions. The failure by either party to insist upon the performance of any provision of this Agreement shall not be construed as a waiver of such performance or any future performance.

UTAM, Inc.

IN WITNESS WHEREOF, UTAM and Subscriber have executed this Agreement as of the date written below.

UTAM, INC.

By: _____

Name: Michael Stima

Title: Managing Director

Return this document to:

Address: UTAM, INC.
P.O. Box 8126
Bridgewater, NJ 08807

NAME OF SUBSCRIBER: _____

STATE OF INCORPORATION: _____

By: _____

Name _____

Title: _____

Address: _____

DATE: _____

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APPENDIX A

	<u>Primary Contact</u>	<u>Secondary Contact</u>
Name:	_____	_____
Address:	_____	_____
City, State:	_____	_____
Zip Code:	_____	_____
Phone:	_____	_____
Email:	_____	_____