

**1. Service.**

**1.1 AT&T Markets.** Service is available for purchase only in AT&T Markets, as may be modified by AT&T from time to time.

**1.2 Availability/Interruption.** Service will be available only within the operating range of each Carrier's wireless system in AT&T Markets and where roaming is available through other carriers (each, a "Service Area"). AT&T may from time to time add or delete Service Areas upon notice to Customer. Gaps in Service occur within the Service Areas shown on coverage maps, which, by their nature, are only approximations of actual coverage; therefore, AT&T does not guarantee Customer uninterrupted Service. Service is subject to: (a) transmission limitations caused by atmospheric and other conditions, availability of radio frequency channels, reduction in transmission speed, or interruption caused by Customer's Equipment, terrain, obstructions such as trees or buildings, or other conditions; (b) temporary suspension due to governmental regulations or orders, system capacity limitations, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, system repairs or modifications, problems with the facilities of interconnecting carriers, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses; (c) interruption for Customer's nonpayment of charges; and (d) blocking certain categories of numbers (e.g., 976, 900 and certain international destinations) or certain websites if, in AT&T's sole discretion, AT&T is experiencing excessive billing, collection, fraud problems or other misuse of AT&T's wireless network.

**2. Plans and Sales Information.** Customer may choose from Voice Service and Wireless Data Service Plans found at the "Plans" page of the Program Website, as may be modified by AT&T from time to time. The price, features and options of the Service depend upon the Plan, feature, promotion or other offer (including, without limitation, any Supplemental Service) selected when Service is activated or changed, which are described in a separate brochure, at [www.wireless.att.com](http://www.wireless.att.com), and/or in other corresponding AT&T marketing materials (collectively "Sales Information"). The Sales Information is part of this Agreement, and Customer must comply with the terms and conditions for the respective Plan, feature, promotion or other offer. End Users must qualify for the chosen Plan, feature, promotion or other offer. Customer can contact its AT&T representative for copies of the Sales Information. Rates, terms and conditions of any Plan, feature, promotion or other offer are subject to change. Any provisions in the terms and conditions governing the Plan, feature, promotion or other offer which, by their terms, are to exist for a specified period of time, will survive any termination or expiration of this Agreement.

**3. Equipment.**

**3.1 Availability.** With respect to Numbers provisioned from AT&T Markets, Customer may purchase available Equipment found at the "Equipment" page of the Program Website, the list of which may be modified by AT&T from time to time. Specific models of Equipment are subject to availability limitations.

**3.2 General.** Equipment must be compatible with, and not interfere with, the Service and must comply with all applicable laws, rules, and regulations. Customer is responsible for the purchase and maintenance of any additional hardware, software and/or Internet access from PCs required to use the Service. Equipment not purchased from AT&T or its authorized distributors (a) may not provide some or all of the features included in the Service; and (b) may not allow use of features and functions when off of AT&T's wireless network, including those that work while on AT&T's wireless network, and CALLS TO 911 MAY NOT GO THROUGH ON ANY NETWORK. AT&T may periodically program Customer's Equipment remotely with system settings for roaming and other features that cannot be changed manually. Call timers included in the Equipment are not an accurate representation of actual billed usage.

**3.3 Shipping, Title and Risk of Loss.** Subject to availability, and AT&T's receipt of complete order information, AT&T will ship Equipment ordered by Customer and/or its End Users to the address specified in the order within two (2) to five (5) business days of AT&T's receipt of the order. Title and risk of loss will pass to Customer upon delivery of the Equipment to the address specified in the order.

#### **4. Activation and Other Processes.**

**4.1 Service and Equipment.** Customer will follow the policies and processes established by AT&T to activate, migrate, terminate, or otherwise modify Service or to purchase Equipment, as may be modified from time to time. Any order for Service and/or Equipment that Customer's authorized representative submits to AT&T will be binding upon Customer pursuant to the terms and conditions of this Agreement. AT&T may reasonably rely on the authority of any person who executes an order on Customer's behalf.

**4.2 Additional Products, Services, Equipment, and Programs.** AT&T may make additional products, services, equipment and/or programs available to Customer. To the extent Customer orders, pays for, or otherwise receives the benefit of any products, services, equipment and/or programs, Customer will be bound by the terms and conditions of their respective Attachments found in the "Additional Products, Services, Equipment and Programs" section of the Program Website, as such terms and conditions may be modified by AT&T from time to time, all of which are incorporated herein by reference. AT&T's additional products, services, equipment and/or programs may incur charges in a different manner than set forth in this Agreement. AT&T will advise Customer of any such differences in the corresponding terms and conditions and/or Sales Information.

**4.3 Identification and Password.** Before Customer may use certain AT&T online activation, enrollment, configuration and/or support services, an authorized representative of Customer must register with AT&T and create a login identification ("ID") and password. Use of this login ID and password will enable Customer and/or its employees and agents to make certain changes to Customer's and/or CRUs' account(s). Customer is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are created by Customer, or issued to Customer by AT&T, for purposes of giving Customer access to activation, enrollment, configuration and support services. AT&T is entitled to rely on information it receives from Customer or its agents and may assume that all such information was submitted by or on behalf of Customer.

#### **5. Payment and Charges.**

**5.1 Payment.** Customer must pay all charges incurred in accordance with Plans (including, without limitation, charges for airtime, recurring monthly access (or monthly service), activation, features, voice mail access, voice mail delivery, data usage, text and multi-media messages, downloadables, alerts, roaming, long distance, and directory and operator assistance), Equipment, premium content, Supplemental Services, and any other goods and services that are charged through Customer's or CRUs' bill(s). Customer may be billed for multiple types of usage simultaneously. Customer must also pay Taxes and any license fees, late payment fees, and any Regulatory Cost Recovery Fee. For any termination (including when a Number is switched to another carrier), Customer will be responsible for payment of all fees and charges through the end of the billing cycle in which termination occurs. Payment is due upon receipt of the invoice. Monthly service and certain other charges for Service using AT&T's wireless network and related systems are billed in advance, and there is no proration of such charges if Service is terminated on other than the last day of the applicable billing cycle. Monthly service and certain other charges for Service using certain legacy networks and related systems are billed in arrears. In either case, to the extent Customer receives invoices for Service combined with a landline phone bill (where available), Customer will be billed in advance as provided above.

**5.1.1 Taxes.** Taxes include any applicable sales, public utilities, gross receipts, or other taxes, surcharges, fees and assessments imposed by governments (regardless of whether they are imposed on Customer, CRU, AT&T or a Carrier) including, without limitation, assessments to defray costs for government programs such as universal connectivity, enhanced 911 service, local number portability, and number pooling relating to Service, Equipment, goods or services purchased, and/or the wireless network.

**5.1.2 Regulatory Cost Recovery Charge.** In addition to other charges, AT&T may assess a Regulatory Cost Recovery Charge, which is a monthly charge with respect to each CRU, that is created, assessed and collected by AT&T to help defray AT&T's costs incurred in complying with State and Federal telecom regulation; State and Federal Universal Service charges; and surcharges for customer-based and revenue-based State and local assessments on AT&T. These are not taxes or government-required charges. AT&T may change the amount of the Regulatory Cost Recovery Charge without notice.

## **5.2 Charges.**

**5.2.1 Generally.** Unless otherwise provided in the corresponding Sales Information, if a selected Plan includes a predetermined allotment of services (for example, a predetermined amount of airtime, data, megabytes or text messages), any unused allotment of such services from one billing cycle will not carry over to any other billing cycle. Service may be billed in a subsequent month due to delayed reporting between Carriers and will be charged as if used in the month billed. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, AT&T may make reasonable adjustments and proration. Service charges may differ by Service Area. AT&T's additional products and services may incur charges in a different manner than set forth herein, and AT&T will advise Customer of any such differences in the corresponding Sales Information.

**5.2.2 Voice Service Charges.** On all of AT&T's wireless networks, Voice Service on each call is billed in full minute increments, with partial minutes of use rounded up to the next full minute. AT&T will charge 800, 866, 877, 888 and other "toll free" calls at domestic airtime or roaming rates. Puerto Rico residents will be billed for these calls based on the corresponding Plan, feature(s) and/or promotion. If an incoming call has been forwarded to another Number, Customer will be charged for the entire time that AT&T's switch handles the call. Calls that begin in one rate period and end in another rate period may be billed in their entirety at the rates for the period in which the call began. All outgoing calls on AT&T's wireless network for which AT&T's systems receive answer supervision or which have at least thirty (30) seconds of airtime or other measured usage shall incur a minimum of one (1) minute airtime charge. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voice mail systems, private branch exchanges, and interexchange switching equipment. Airtime and other measured usage may (a) include time for AT&T to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time, and (b) occur from other uses of our facilities, including by way of example, voice mail deposits and retrievals, and call transfers.

**5.2.3 Wireless Data Service Charges.** Wireless Data Service will be calculated in full kilobyte increments. Actual data transport will be rounded up to the next full kilobyte increment at the end of each data session. One kilobyte equals 1024 bytes. One megabyte equals 1024 kilobytes. Transport is billed either by the kilobyte or megabyte. If billed by the megabyte, the full kilobytes calculated for each data session during the billing period are totaled and rounded up to the next full megabyte increment to determine billing. If billed by the kilobyte, the full kilobytes calculated for each data session during the billing period are totaled to determine billing. Overage is billed by the kilobyte or megabyte depending on the applicable pay per use rate. Utilizing compression solutions may or may not impact the amount of kilobytes calculated for data transport. For Wireless Data Service that permits Voice Service usage at pay per use rates, airtime and other measured usage will be billed in full minute increments and rounded up to the next full minute increment at the end of each call. Customer is responsible for all Wireless Data Service usage sent through AT&T's wireless network and associated with Equipment regardless of

whether the Equipment actually receives the information. Network overhead, software update requests, and resend requests caused by network errors can increase measured kilobytes. Data sent and received includes, but is not limited to, downloads, email, overhead and software update checks. If Customer or a CRU chooses to connect Equipment to a PC for use as a wireless modem, standard Wireless Data Service charges will apply in accordance with the corresponding Plan. Wireless Data Service usage is compiled as often as once per hour or only once every 24 hours. AT&T's system will then create a billing record representing (a) the Wireless Data Service usage for each data gateway or service accessed (e.g. WAP, RIM) while on AT&T's wireless network; (b) the usage for each Carrier's domestic network; and (c) the Wireless Data Service usage for each international network. In some situations billing for Wireless Data Service usage may be delayed; any delayed usage will create additional billing records for the actual day of the usage. Usage on networks not owned by AT&T is limited as provided in Customer's Wireless Data Service Plan. Unless designated for international or Canada use, Plan prices and included use apply only to EDGE/GPRS and BroadbandConnect access and use on AT&T's wireless network and its roaming partners' wireless networks within the United States and its territories (Puerto Rico and the U.S. Virgin Islands), excluding areas within the Gulf of Mexico.

**5.3 License Fees.** If Customer elects to acquire third party software licenses through AT&T, then Customer will pay any license fees for such software as set forth in the corresponding Sales Information, plus any applicable shipping and handling charges and Taxes. Customer agrees that its use of such software is subject to the terms of the Agreement and/or any applicable third party software license agreements.

**5.4 Disputed Charges.** Except as otherwise provided by law with respect to unauthorized charges, disputed charges must be disputed to AT&T in writing within sixty (60) days after the date the charge appears on the invoice, or the right to dispute is waived. In the event of a disputed invoice, Customer will pay the entire undisputed amount of the invoice. AT&T, Customer and Carriers will use their good faith efforts to reconcile the dispute within sixty (60) days of submission of the dispute to AT&T.

**5.5 Late Payment Fee.** Customer will pay AT&T a late payment fee equal to the lesser of up to one and one-half percent (1.5%) per month (prorated daily) of any amount not paid within ten (10) days of the due date, or the highest amount allowed by applicable state law or tariff; provided, however, that, with respect to amounts not paid by Customer in accordance with §5.4 above, AT&T and Customer agree that the late payment fee will accrue on the unpaid disputed amount as set forth above during the dispute resolution process but that Customer will only be liable for the late payment fee to the extent the dispute is resolved in favor of AT&T.

## **6. Default, Termination, Cure and Remedies.**

**6.1 Default and Termination.** If either party fails to perform or observe any material term or condition of this Agreement, then such party will be in default of the Agreement, and the non-defaulting party may terminate the Agreement in accordance with the terms and conditions of §6.2 below.

**6.2 Notice and Opportunity to Cure.** The party seeking to terminate the Agreement under §6.1 above must notify the defaulting party in writing at least thirty (30) days prior to the proposed termination date. This written notice must specify the default(s) giving rise to the right to terminate the Agreement, and must specify a proposed termination date. The defaulting party will have thirty (30) days in which to cure the default(s), unless such cure period is extended by agreement of the parties. If the default is not cured within this thirty (30) day cure period or any extension thereof, then the Agreement will automatically terminate at the close of business on the termination date specified in the written notice or any agreed extension.

**6.3 Termination for Deletion of Service Area.** If the deletion of any Service Area materially reduces the Service provided to Customer hereunder, then Customer, within thirty (30) days of the effective date of the Service Area deletion, must notify AT&T in writing of its intent to terminate. Such

written notice must specify the material Service Area deletion and must specify a proposed termination date no earlier than thirty (30) days from the date of the notice.

**6.4 Remedies.** Upon termination for any reason, the parties may seek any remedies available at law or in equity, and Customer will pay to AT&T all amounts incurred hereunder as of the termination date, including any Cancellation Fee(s). If the Agreement includes a Termination Charge in lieu of Cancellation Fees, then (a) upon termination resulting from Customer's default under §6.1 above, Customer must pay AT&T the Termination Charge; and (b) upon termination resulting from AT&T's default under §6.1 above or upon termination under §6.3 above, Customer will not be required to pay the Termination Charge. In addition, Customer will pay to AT&T all collection costs and expenses, including reasonable attorneys' fees and costs, incurred by AT&T in exercising any of its rights and remedies when enforcing any provisions of this Agreement.

## **7. DISCLAIMERS AND LIMITATIONS OF LIABILITY.**

**7.1 Disclaimer of Warranties.** AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, OF (a) MERCHANTABILITY, (b) FITNESS FOR A PARTICULAR PURPOSE, (c) TITLE, (d) NON-INFRINGEMENT, AND/OR (e) ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT WIRELESS CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND INFORMATION. AT&T DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF, AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS. AT&T IS NOT THE MANUFACTURER OF EQUIPMENT PURCHASED BY OR PROVIDED TO CUSTOMER IN CONNECTION WITH USE OF THE SERVICE.

### **7.2 Limitation of Liability.**

(a) AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERROR OR DEFECTS IN THE SERVICE THAT LAST MORE THAN TWENTY-FOUR (24) HOURS, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, WILL IN NO EVENT EXCEED THE RECURRING SERVICE CHARGES DURING THE AFFECTED PERIOD. IN NO EVENT SHALL AT&T BE LIABLE TO CUSTOMER FOR ANY DAMAGES OR REIMBURSEMENT FOR ANY MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERROR OR DEFECTS IN THE SERVICE THAT LAST LESS THAN TWENTY FOUR (24) HOURS.

(b) §7.2(a) WILL NOT APPLY TO:

(i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE;

(ii) BREACH OF §12 (Publicity and Advertising) OR §13.6 (Confidential Information); OR

(iii) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) NEITHER AT&T NOR CUSTOMER WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL

DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

**7.3 Disclaimer of Liability.** AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICE WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, END USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK, OR SYSTEMS.

**7.4 Supplemental Services.** Customer may from time to time subscribe to services, features or software applications provided by third parties including, but not limited to, (a) operator services, (b) loss protection, (c) fleet tracking, field service, sales force automation and other software-based features and applications, and (d) messaging, email, email forwarding or other server software-based services (collectively, "Supplemental Services"). Customer acknowledges that access to such Supplemental Services requires a separate licensing or other agreement between Customer and the third party and that certain Supplemental Services will be billed to Customer's or CRUs' invoices on behalf of the third party pursuant to the terms and conditions of AT&T's Alliance Billing Service Attachment. In addition to the other disclaimers and limitations of liability set forth in this §7, AT&T WILL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER OR ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER FOR THE ACCURACY, TIMELINESS, OR CONTINUED AVAILABILITY OF SUCH SUPPLEMENTAL SERVICES.

**7.5 Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of AT&T, Customer and their respective Affiliates, employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this §7 will survive failure of any exclusive remedies provided in this Agreement.

**8. Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

**9. Arbitration.** The parties agree to exercise their best efforts to settle any dispute arising out of or related to this Agreement through good faith negotiation. Any dispute arising out of or related to this Agreement that cannot be resolved by negotiation shall be resolved by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules in effect at the time that a dispute is submitted for resolution (the "Rules"), as modified by this Agreement. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall be held in New York, New York. The parties shall, within (twenty) 20 days of the issuance of a written notice of intent to arbitrate, as provided by the Rules, jointly select one (1) independent arbitrator licensed to practice law and familiar with the wireless telecommunications industry. If the parties cannot agree on an arbitrator within the specified 20-day period, then the selection shall promptly be made by the AAA in accordance with the Rules and the criteria set forth above. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act, 9 U.S.C. § 1, *et seq*, governs the interpretation and enforcement of this provision. In the event of a conflict between the FAA and the Rules, the FAA shall govern. In no event shall the arbitrator have the authority to make any

award that is in excess of or contrary to what the Agreement provides. THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Furthermore, unless both parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific proviso is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

**10. No Class Actions.** All claims between AT&T and Customer related to this Agreement will be litigated individually, and Customer will not consolidate or seek class treatment for any claim unless previously agreed to in writing by AT&T.

**11. Use of Service.**

**11.1 Changes to Numbers.** Except as otherwise provided by law, Customer has no property rights to any Number and AT&T may change any such Number.

**11.2 Fraud Prohibited.** Customer and its respective CRUs and IRUs (if applicable) will not use or assist others to use the Service or Equipment for any unlawful, unauthorized, abusive or fraudulent purpose. If Customer's Equipment is lost or stolen, Customer is responsible for all charges incurred until Customer or its CRU reports the theft or loss to AT&T except as otherwise provided by law. Any Carrier may cancel Service to any Number if AT&T or that Carrier believes the Number is being used in an unlawful, abusive or fraudulent manner. Before a Carrier cancels any Service under this paragraph, the Carrier will attempt to give Customer notice of its intent to cancel. In the event Customer instructs the Carrier to retain Service, Customer will be responsible for paying all charges, authorized, unauthorized or fraudulent, associated with such Number, including but not limited to charges incurred by any clone or duplication of that Number; provided, however, that Customer will not be liable for IRUs' charges under any such circumstance. Additionally, Customer agrees to adopt, at no additional charge to Customer, any reasonable fraud prevention or fraud reduction processes or products recommended by AT&T or, if not adopted by Customer, to be responsible for any unauthorized charges on Numbers which do not adopt such processes or products.

**11.3 Acceptable Use; Restrictions Regarding Service.** Use of Service is subject to any restrictions and/or prohibited uses described in the applicable Sales Information. AT&T reserves right to deny or terminate Service, without notice, to Customer if AT&T believes Customer is using Service in any prohibited manner or if Customer's usage adversely impacts AT&T's wireless network or service levels.

**11.4 Ownership.** AT&T owns or leases the exclusive rights to the frequencies related to the Service, Numbers and transmission facilities used by AT&T in the provision of Service to AT&T customers. FCC regulations strictly forbid any party that is not a wireless communications licensee from altering, enhancing or maintaining cellular radio signals. FCC regulations require AT&T to maintain control over any transmitting device that operates within AT&T's assigned frequencies. Neither Customer nor any of its Affiliates may install any amplifier, enhancer, repeater or other device or system on AT&T's wireless network or frequencies without AT&T's prior written approval.

**11.5 Content.** Customer is solely responsible for all content that it permits to be posted or transmitted onto or through the Service or any of AT&T's systems, including materials, code, data, text (whether or not perceptible by End Users), multimedia information (including but not limited to sound, data, audio, video, graphics, photographs, or artwork), e-mail, chat room content, bulletin board postings, or any other items or materials accessible through the Service or any of AT&T's systems ("Content"). Customer has sole responsibility for any losses resulting from Customer's or CRUs' downloading, access to, or use of any third-party Content, or from Customer's or CRUs' access to or use of the Service or the Internet, in any manner and for any purpose whatsoever. In providing Service, AT&T may permit End Users to transmit, receive and host content over its network and the Internet and may act as a "services provider" as defined in the Digital Millennium Copyright Act.

**11.6 Customer's Notices to End Users.** Customer will advise all its End Users that they must read all collateral materials concerning Service and use of the Equipment, including, without limitation, the Welcome Guide, Plan brochures, coverage maps, and materials related to Equipment and accessories. AT&T will make copies of such materials available to Customer upon request. Customer will also provide to End Users, and advise End Users to read, any additional printed materials and consumer information reasonably requested by AT&T from time to time to be so provided. Similarly, for purposes of determining which jurisdiction's taxes and other assessments to collect, federal law requires AT&T to obtain End Users' Place of Primary Use ("PPU"), which must be their residential or business street address and which must be within a Carrier's licensed Service Area. Customer agrees to provide its respective CRUs' PPU when ordering Service on behalf of such person(s), and to inform its End Users that they must provide their proper PPU when ordering Service in connection with this Agreement.

**11.7 Location-Based Services.** The Equipment may be location-enabled, meaning that the Equipment is capable of using (at Customer's request or the request of a CRU on Customer's account) optional goods and services including, without limitation, fleet tracking, navigational services, concierge services or news alerts offered by AT&T or third parties that make use of the CRU's location ("Location-Based Services") using location technology such as Global Positioning Satellite, wireless network location, or other location technology. Customer should review, and will advise all of its CRUs to read, the Sales Information and the associated privacy policy for each Location-Based Service to learn how the location information will be used and protected. AT&T may also use location information to create aggregate data from which the CRUs' personally identifiable information has been removed or obscured and share such aggregate data with third parties for purposes of developing services like traffic-monitoring. Customer will advise all of its CRUs that the Equipment they are using may be location-enabled. The use of certain Location-Based Services or the disclosure of location information may be restricted. Customer can contact its AT&T representative for details.

**11.8 AT&T 411 Info.** In some cases AT&T's directory assistance service (411) will use the location of Equipment to deliver relevant customized 411 information based upon an End User's request for a listing or other 411 service. Customer understands, and will advise all of its CRUs, that when a CRU uses this directory assistance service, such CRU is consenting to AT&T's use of his or her location information for such purpose. This location information may be disclosed to a third party to perform the directory assistance service and for no other purpose. Such location information will be retained only as long as is necessary to provide the relevant customized 411 information and will be discarded after such use.

**11.9 American Recovery and Reinvestment Act.** Service, Equipment and Supplemental Services provided under this Agreement shall not be used to support the performance of any portion of a project or program which has been funded in whole or in part with grants, loans or payments made pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"), without the prior written agreement of AT&T and Customer regarding any specifically applicable terms, conditions and requirements. Customer shall provide AT&T with prior written notice before placing any order that may be funded in whole or in part with ARRA funds. If Customer fails to provide such prior written notice of ARRA funding; or if the parties cannot agree on the terms and conditions (if any) applicable to an ARRA funded order; or if any terms, conditions or requirements (other than those to which AT&T specifically agrees in such separate writing) are found to be applicable, then AT&T may, in its sole discretion, reject such order or immediately terminate provision of any affected Service, Equipment and/or Supplemental Service without further liability or obligation.

**12. Publicity and Advertising.** Neither party will publish or use any advertising, sales promotion, press release or other publicity that uses the other party's name, logo, trademarks or service marks without the prior written approval of the other party.

**13. Miscellaneous.**



**13.1 Defined Terms.** Unless specifically excepted, all defined terms, regardless of where defined, will have the same meaning in all documents comprising this Agreement including, without limitation, the Cover Page (if applicable), the Program Description, the General Terms and Conditions, and all attachments. In addition to the terms defined elsewhere, these terms will have the following meanings in the Agreement:

**13.1.1 "Affiliate"** (a) when referring to an affiliate of AT&T, means and includes legal entities controlling or controlled by or under common control with AT&T; and (b) when referring to an affiliate of Customer, means and includes an entity controlling or controlled by or under common control with Customer, where control is defined as (i) the ownership of at least thirty five percent (35%) of the equity or beneficial interest of such entity; or (ii) the right to vote for or appoint a majority of the board of directors or other governing body of such entity.

**13.1.2 "Carrier" or "Carriers"** means a licensed Affiliate of AT&T that operates commercial mobile radio telecommunications systems in the geographic areas covered by the Agreement and, with respect to §8 of these General Terms and Conditions, includes the Carriers' respective employees, officers, agents and subcontractors.

**13.1.3 "AT&T" or "party"** when it refers to AT&T includes AT&T, its Affiliates, and their respective employees, officers, agents and subcontractors.

**13.1.4 "AT&T Markets"** means a geographic area served by Affiliates under common control with AT&T.

**13.1.5 "Equipment"** means the wireless receiving and transmitting equipment or SIM (Subscriber Identity Module) Card that AT&T has authorized to be programmed with a Number or Identifier, and any accessories.

**13.1.6 "Number" or "Identifier"** means any number, IP address, e-mail address or other identifier provisioned by Carriers, their agents or the Equipment manufacturer to be used with Service.

**13.1.7 "Plan"** means a wireless calling plan, Service plan or rate plan from AT&T.

**13.1.8 "Service"** means commercial mobile radio service, including Voice Service and Wireless Data Service. For the avoidance of doubt, Service does not include Equipment or Supplemental Services.

**13.1.9 "Voice Service"** means wireless voice telecommunications services.

**13.1.10 "Wireless Data Service"** means wireless data telecommunications services.

**13.2 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other and such consent will not be unreasonably withheld. However, either party may, without the other party's consent, assign this Agreement to an Affiliate or to any entity that acquires substantially all of the party's business or stock and AT&T may assign its right to receive payments hereunder. Subject to the foregoing, this Agreement will be binding upon the assignees of the respective parties.

**13.3 Compliance with Laws.** AT&T and Customer agree to comply with all applicable federal, state and local laws and regulations in the performance of their respective obligations under this Agreement.

**13.4 Entire Agreement.** Unless specifically set forth herein, this Agreement is the entire agreement between the parties with respect to the subject matter herein and supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral. Any change, modification or waiver of any of the terms and conditions of the Agreement will not be binding unless made in a writing manually signed by both parties. If the terms contained in this Agreement conflict or are inconsistent with the terms of any purchase order or other document provided by Customer, the terms of this Agreement will control.

**13.5 Governing Law.** This Agreement is subject to applicable federal laws, federal or state tariffs, if any, and the laws of the State of Georgia. Where Service terms and conditions are regulated by a state agency or the FCC, the applicable regulations are available for inspection. If there is any inconsistency between the Agreement and those regulations, this Agreement will be deemed amended as necessary to conform to such regulations.

**13.6 Confidentiality.** The terms and conditions of this Agreement are confidential and will not be disclosed by a party to any third party without the other party's prior written consent (except that each party may disclose the terms and conditions of this Agreement to its employees and, in the case of AT&T, its agents and subcontractors, who have a direct need to know the terms and conditions of the Agreement.) Nothing herein will prevent AT&T or Customer from supplying such information or making such statements or disclosures relating to this Agreement before any competent governmental authority, court or agency, or as such party may consider necessary in order to satisfy its obligations under applicable laws, regulations or generally accepted accounting principles (including, without limitation, statements or disclosures to such party's lawyers or accountants). Such party will furnish notice thereof to the other party prior to such disclosure unless such disclosure is in response to a lawful requirement or request from a court or governmental agency regarding a criminal inquiry or matter, in which case no prior notice will be required.

**13.7 Notices.** All notices and communications required or permitted under the Agreement may be sent by first class mail (to Customer at the address indicated on the Cover Page (or, in the case of online versions of the Agreement, to Customer at the address confirmed during the online contracting process) and to AT&T at the address indicated below), electronic messaging (to Customer at the email address indicated on the Cover Page (or, in the case of online versions of the Agreement, to Customer at the legal notice email address confirmed during the online contracting process), bill inserts or other reasonable means. Notwithstanding the foregoing, any such notice or communication with respect to non-renewal, disputes, breach and/or termination under the Agreement must be in writing and will be deemed to have been duly made and received when personally served or delivered by facsimile with a confirmation report, or when mailed by overnight delivery service or certified mail, postage prepaid, return receipt requested, to Customer at the address indicated on the Cover Page (or, in the case of online versions of the Agreement, to Customer at the address provided during the online contracting process) and to AT&T at the address(es) indicated below. A party may change its address upon thirty (30) days' prior written notice to the other party.

(If via regular or certified mail)  
AT&T Mobility National Accounts, LLC  
P.O. Box 97061  
Redmond, WA 98073  
Attn: Offer, Development & Negotiation  
Facsimile Number: 425-580-9886

(If via overnight delivery)  
AT&T Mobility National Accounts, LLC  
16331 NE 72nd Way, RTC 1  
Redmond, WA 98052  
Attn: Offer, Development & Negotiation

With a copy to AT&T Legal  
Facsimile Number: 908-532-1263

**13.8 Severability.** If any portion of this Agreement is found to be unenforceable, the remaining portions will remain in effect and the parties will begin negotiations for a replacement of the invalid or unenforceable portion.

**13.9 Survival.** The terms and provisions of this Agreement which by their nature require performance by either party after the termination or expiration of this Agreement, including, but not limited to, limitations of liability, exclusions of damages, and indemnities, will be and remain enforceable notwithstanding such termination or expiration of this Agreement for any reason whatsoever.

**13.10 Third Party Beneficiaries.** Other than as expressly set forth herein, this Agreement will not be deemed to provide third parties with any remedy, claim, right of action, or other right.

**13.11 No Waiver.** Neither the acceptance by AT&T of any payment, partial payment or any other performance by Customer, nor any act or failure of AT&T to act or to exercise any rights, remedies or options in any one or more instances will be deemed a waiver of any such right, remedy or option or of any breach or default by Customer then existing or thereafter arising. No claimed waiver by AT&T of any rights, remedies or options will be binding unless the same is in a writing signed by AT&T.

**13.12 TTY Users.** Although some digital wireless phones and TTYs are compatible, the FCC recommends TTY users consider other options when calling 911, including using a landline phone or Telecommunications Relay Services.

**13.13 Remedies Nonexclusive.** Except where otherwise expressly provided, no remedy conferred upon either party in the Agreement is intended, nor shall it be construed, to be exclusive of any other remedy provided in the Agreement or as allowed by law or in equity; rather, all such remedies shall be cumulative.