

## GENERAL TERMS AND CONDITIONS Version 4.1

Effective as of August 23, 2007 to November 11, 2007

### 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 written 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, and 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 by Customer; and (d) call blocking for certain categories of numbers (e.g., 976, 900 and certain international destinations) or access to 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 a list of 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 or promotion selected when Service is activated or changed, and are described in a separate Plan brochure, at [www.att.com/wireless](http://www.att.com/wireless), in the AT&T Features Brochure and/or in related AT&T promotional and marketing materials (collectively, "Sales Information"). The Sales Information is incorporated herein by reference, and Customer must comply with the corresponding terms and conditions of the Sales Information for Customer's chosen Plan(s), feature(s) and/or promotion(s). Customer can contact AT&T for copies of the Sales Information. Customer's corresponding End Users must qualify for the chosen Plan, feature and/or promotion. Rates, terms and conditions of any Plan, feature or promotion are subject to change. Any provisions of the terms and conditions governing the Plans that, by their terms, are to exist for a specified period of time will survive any termination or expiration of the Agreement.

### 3. Equipment.

**3.1 Availability.** With respect to Numbers provisioned from AT&T Markets, Customer may purchase Equipment from AT&T, the models and prices of which may change from time to time and may vary by sales channel. 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 Title and Risk of Loss.** Title and risk of loss will pass to Customer upon delivery of the Equipment.

### 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 the 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 from time to time. 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 the 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.** Customer is solely responsible for maintaining adequate security and control of any and all user IDs, passwords, or other codes that are created by Customer, or issued to Customer by AT&T, for purposes of giving Customer access to certain AT&T enrollment, configuration, account management and other support services. AT&T is entitled to rely on information it receives from anyone using such ID, passwords or codes 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 Service 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, directory and operator assistance, Equipment, premium content, and charges for 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 the AT&T 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. 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 prorations. 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 and billed in full kilobyte increments. One kilobyte equals 1024 bytes. One megabyte equals 1024 kilobytes. Utilizing compression solutions may or may not impact the amount of kilobytes for which Customer is billed. Wireless Data Service usage for each billing record will be rounded up to the next kilobyte and the charge will be rounded up to the nearest cent. 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. 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.

**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 in §5.4.1 for California customers, Customer must notify AT&T of all disputed charges in writing within sixty (60) days after the date the charge appears on the invoice, or the right to dispute is waived. Unless otherwise prohibited by law, 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.

**5.4.1 Unauthorized Charges to Equipment.** *(California Customers Only)* – Customer is not liable for charges it did not authorize, but the fact that a call was placed from a CRU's Equipment is evidence that the call was authorized. Unauthorized charges may include calls made to or from a CRU's Equipment after it was lost or stolen. (See §11.2.1 ("If Equipment is Lost or Stolen").) If Customer notifies AT&T of any charges on its bill that Customer claims are unauthorized, AT&T will investigate. AT&T will advise Customer of the result of AT&T's investigation within 30 days. If Customer disagrees with the outcome, it may file a complaint with the California Public Utilities Commission. While an investigation is underway, Customer does not have to pay any unauthorized charges it disputes and may have other rights.

**5.5 Late Payment Fee.** Time is of the essence for payment. Therefore, 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.

**5.6 Advance Payments and/or Deposits.** AT&T may require Customer to make deposits or advance payments for Service, which AT&T may offset against any unpaid balance on Customer's account. Interest will not be paid on advance payments or deposits unless required by law. AT&T may require additional advance payments or deposits if AT&T determines that the initial payment was inadequate. Based on Customer's creditworthiness as determined solely by AT&T, AT&T may establish a credit limit and restrict Service. If Customer's account balance goes beyond the established limit, AT&T may immediately interrupt or suspend Service until the balance is brought below the limit. Any charges incurred by Customer in excess of the limit become immediately due. If Customer has more than one account, Customer must keep all accounts in good standing to maintain Service. If one account is past due or over its limit, all accounts in Customer's name are subject to interruption and all other available remedies.

## **6. Termination and Remedies.**

**6.1 Default and Termination.** If either party fails to perform or observe any material term or condition of the 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 and §6.3 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. Such written notice must specify the default(s) giving rise to the right to terminate the Agreement and must specify the 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 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 all applicable Cancellation Fee(s). 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 its rights and remedies under the Agreement.

**7. DISCLAIMER OF WARRANTIES.** AT&T MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING EQUIPMENT, SERVICE, PREMIER (INCLUDING, WITHOUT LIMITATION, ANY SOFTWARE, TOOLS, GRAPHICS, DESIGNS, LOOK-AND-FEEL, FEATURES, FORM, FORMAT, INFORMATION AND CONTENT), OR SUPPLEMENTAL SERVICES (AS DEFINED IN §8.5 OF THESE GENERAL TERMS AND CONDITIONS) AND AT&T HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, OF (a) MERCHANTABILITY, (b) FITNESS FOR A PARTICULAR PURPOSE, (c) SUITABILITY, (d) USE, (e) NON-INFRINGEMENT, AND/OR (f) SERVICE OR PREMIER BEING ERROR-FREE, VIRUS-FREE, UNINTERRUPTED, OR FREE FROM UNAUTHORIZED ACCESS (INCLUDING THIRD

PARTY HACKERS OR DENIAL OF SERVICE ATTACKS). 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.

## **8. LIMITATIONS OF LIABILITY.**

**8.1 SERVICE FAILURES.** AT&T'S LIABILITY FOR ANY SERVICE FAILURE GREATER THAN TWENTY-FOUR (24) HOURS 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 SERVICE FAILURE LESS THAN TWENTY-FOUR (24) HOURS.

**8.2 CONSEQUENTIAL DAMAGES AND INJURIES TO PERSONS OR PROPERTY.** NEITHER AT&T NOR CUSTOMER WILL BE LIABLE TO THE OTHER PARTY FOR (A) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (B) INJURIES TO PERSONS OR PROPERTY ARISING FROM THE OTHER PARTY'S USE OF THE EQUIPMENT OR SERVICE. Nothing in this §8.2 will limit AT&T's or Customer's obligation to fully indemnify the other party under §9.1 below for actions brought by third parties, even if such actions include claims by third parties for special, punitive, indirect, incidental or consequential damages.

**8.3 OTHER FACTORS BEYOND AT&T'S CONTROL.** AT&T AND EACH CARRIER WILL HAVE NO LIABILITY TO CUSTOMER FOR DAMAGES OR DELAYS DUE TO FIRE, EXPLOSIONS, LIGHTNING, POWER SURGES OR FAILURES, STRIKES OR LABOR DISPUTES, WATER, ACTS OF GOD, THE ELEMENTS, WAR, RIOT, CIVIL DISTURBANCE, ACTS OR ORDERS OF CIVIL OR MILITARY AUTHORITIES, ACTS OF THE PUBLIC ENEMY, INABILITY TO SECURE PRODUCTS OR TRANSPORTATION FACILITIES, FUEL OR ENERGY SHORTAGES, ACTS OR OMISSIONS OF COMMUNICATIONS CARRIERS OR SUPPLIERS, OR OTHER CAUSES BEYOND AT&T'S OR A CARRIER'S EXCLUSIVE CONTROL.

**8.4 SUPPLEMENTAL SERVICES.** Customer may from time to time subscribe to services provided by third parties including, but not limited to, operator services, loss protection, messaging, email, email forwarding or other server software based services (collectively, "Supplemental Services"). Customer acknowledges that access to Supplemental Services requires a separate agreement between Customer and a third party. AT&T WILL HAVE NO LIABILITY TO CUSTOMER, OR TO ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER, FOR THE ACCURACY, TIMELINESS, OR CONTINUED AVAILABILITY OF SUCH SUPPLEMENTAL SERVICES.

**8.5 PRIVACY.** AT&T AND CARRIERS WILL HAVE NO LIABILITY TO CUSTOMER FOR ANY LACK OF PRIVACY OR SECURITY EXPERIENCED WHEN USING EQUIPMENT AND/OR WHILE SERVICE IS IN USE.

**8.6 PREMIER.** CUSTOMER AGREES THAT AT&T WILL HAVE NO LIABILITY TO CUSTOMER FOR ANY UNAUTHORIZED INTERCEPTION OF AND/OR ACCESS TO PREMIER. AT&T's security features for Premier include secure socket layer (SSL) encryption technology and password restrictions. In addition, CUSTOMER AGREES THAT AT&T WILL HAVE NO LIABILITY TO CUSTOMER FOR ANY DELAYS IN PROVIDING INFORMATION ON PREMIER OR ANY FAILURE OF PREMIER. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGES, LOSSES, CLAIMS, COSTS AND EXPENSES ARISING OUT OF OR RELATING TO PREMIER WILL BE THE TERMINATION OF CUSTOMER'S ACCESS TO PREMIER.

**8.7 Definitions.** For purposes of this §8, (a) "Customer" includes Customer and its employees (including, without limitation, CRUs and IRUs), officers, agents and contractors and (b) "third parties" means any person or entity other than AT&T, Carriers, or Customer.

## **9. Indemnification.**

**9.1 Third Party Actions.** WITH RESPECT TO ACTIONS BROUGHT BY THIRD PARTIES, AT&T AND CUSTOMER AGREE TO DEFEND, INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM AND AGAINST ANY DAMAGES, LIABILITIES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFYING PARTY. IF THE INDEMNIFYING PARTY FAILS, WITHIN THIRTY (30) DAYS AFTER NOTICE, TO ACCEPT THE DEFENSE, THE PARTY SEEKING INDEMNIFICATION WILL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO UNDERTAKE THE DEFENSE OF, AND TO COMPROMISE OR SETTLE ANY CLAIMS ON BEHALF OF, FOR THE ACCOUNT OF, AND AT THE RISK OF THE INDEMNIFYING PARTY. IF THE CLAIMS CANNOT BY THEIR NATURE BE DEFENDED SOLELY BY ONE PARTY, THE OTHER PARTY SHALL MAKE AVAILABLE ALL INFORMATION AND ASSISTANCE THAT MAY REASONABLY BE REQUESTED, REGARDLESS OF ANY OBLIGATIONS TO INDEMNIFY HEREUNDER.

**9.2 Procedures.** The following procedures will apply to any indemnification obligation under this §9: (a) the party seeking indemnification will promptly notify the indemnifying party in writing of any claim or suit; (b) the indemnifying party will have sole control of the defense or settlement; provided, however, that the indemnifying party will not enter into any settlement that obligates the party seeking indemnification to make an admission of guilt or incur any expense for which the party seeking indemnification is not indemnified, without such party's prior written consent, which will not be unreasonably withheld; (c) the

party seeking indemnification will have the right to be represented separately by counsel of its own choosing, at its own expense, in connection with any claim or suit; and (d) the party seeking indemnification will provide reasonable cooperation to the indemnifying party at the indemnifying party's expense.

**10. Arbitration.** The parties agree to exercise their best efforts to settle any dispute arising out of or related to the Agreement through good faith negotiation. Any dispute arising out of or related to the 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 the 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 Customer's primary city of business. 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. The 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. Notwithstanding the foregoing, either party may bring an individual action in small claims court. CUSTOMER AGREES THAT, BY ENTERING INTO THE AGREEMENT, CUSTOMER AND AT&T ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. 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.

**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 will not use or assist others to use the Service or Equipment for any unlawful, unauthorized, abusive or fraudulent purpose. Except as otherwise provided in §11.2.1 for California customers, 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. 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 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.

**11.2.1 If Equipment is Lost or Stolen.** *(California Customers Only)* -- Customer is not liable for charges it did not authorize, but the fact that a call was placed from a CRU's Equipment is evidence that the call was authorized. (California customers see §5.4.1 ("Unauthorized Charges to Equipment").) Once Customer or its CRU reports to AT&T that the Equipment is lost or stolen and the Equipment is suspended, Customer will not be responsible for subsequent charges incurred by that Equipment. Customer or its CRU can report the Equipment as lost or stolen and suspend service without a charge by contacting AT&T at the phone number listed on the bill. If there are charges on the bill for calls made after the Equipment was lost or stolen, but before Customer or its CRU reported it to AT&T, Customer must notify AT&T of the disputed charges and AT&T will investigate. Customer may be asked to provide information, and Customer may submit information to support its claim. AT&T will advise Customer of the result of its investigation within 30 days. While the Equipment is suspended Customer will remain responsible for complying with all other obligations under the Agreement, including, but not limited to, payment of the monthly service charge. Customer has a duty to act in a reasonable and responsible manner in reporting the Equipment as lost or stolen and AT&T has a duty to act in a reasonable and responsible manner in responding to Customer's report.

**11.3 Acceptable Use; Restrictions Regarding Wireless Data Service.** Use of Service is subject to any restrictions and/or prohibited uses described in the applicable Sales Information. PROHIBITED USES INCLUDE, WITHOUT LIMITATION, USING WIRELESS DATA SERVICE FOR VOICE OVER IP (VoIP). AT&T reserves right to limit throughput or amount of data transferred and/or 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 Customer. FCC regulations strictly forbid any party that is not a wireless communications licensee from altering, enhancing or maintaining cellular radio signals. Customer may not 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.

**12. Publicity and Advertising; Trademarks.** The rights to use all names, logos, service marks, trademarks, and trade names (collectively, "Marks") of a party, now owned or hereafter acquired, are the property of such party, and neither party will use any of the other party's Marks in any advertising, sales promotion, press release or other publicity or materials without the other party's specific prior written approval.

**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 the Agreement including, without limitation, the Program Description and the General Terms and Conditions. In addition to the terms defined elsewhere, these terms will have the following meanings in the Agreement:

**13.1.1 "Affiliate"** means and includes legal entities controlling or controlled by or under common control with AT&T.

**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 geographic areas served by Affiliates under common control with AT&T.

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

**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, and other related products, services and programs provided under the Agreement.

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

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

**13.2 Assignment.** The 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 other party's consent, assign the 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, the 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 the Agreement.

**13.4 Entire Agreement.** Unless specifically set forth herein, the 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 the Agreement conflict or are inconsistent with the terms of any purchase order or other document provided by Customer, the terms of the Agreement will control.

**13.5 Governing Law.** The Agreement is subject to applicable federal laws, and, unless otherwise prohibited by law, 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, the Agreement will be deemed amended as necessary to conform to such regulations.

**13.6 Confidentiality.** Information relating to the Agreement (including the terms and conditions thereof) is confidential and will not be disclosed by a party to any third party without the other party's prior written consent; provided, however, that each party may disclose such information to its employees and agents, and in the case of AT&T, to its subcontractors and the Carriers, who have a direct need to know. Notwithstanding the foregoing, Customer must first obtain AT&T's written permission before disclosing any information relating to the Agreement to any third party telecommunications manager or consultant. Nothing herein will prevent AT&T or Customer from supplying such information, or making such statements or disclosures, relating to the 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 and regulations. Such party will furnish prior notice thereof to the other party prior to such disclosure.

**13.7 Customer's Notices to End Users.** Customer will advise all of its End Users that they must read all collateral materials concerning Service and use of the Equipment, including, without limitation, the Sales Information 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 each End User's 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 End Users' 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 the Agreement.

**13.8 Notices.** All notices and communications required or permitted under the Agreement may be sent by first class mail (to Customer at the address confirmed during the online program registration and fulfillment process and to AT&T at the address indicated below), electronic messaging (to Customer at the legal notice email address confirmed during the online program registration and fulfillment 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 when mailed by overnight delivery service or certified mail, postage prepaid, return receipt requested, to Customer at the address provided during the online program registration and fulfillment process and to AT&T at the address(es) indicated below:

To AT&T:  
AT&T Mobility National Accounts, LLC  
ATTN: NBO Research and Fulfillment Profile Supervisor  
4300 Market Pointe Road Ste. 400  
Bloomington, MN 55435

With a copy to:  
AT&T Mobility National Accounts, LLC  
ATTN: Legal – Business Markets Group  
P.O. Box 97061  
Redmond, WA 98073-9761

**13.9 Severability.** If any portion of the 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.

**13.10 Survival.** The terms and provisions of the Agreement which by their nature require performance by either party after the termination or expiration of the 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 the Agreement for any reason whatsoever.

**13.11 Third Party Beneficiaries.** Unless expressly set forth herein, the Agreement will not be deemed to provide third parties with any remedy, claim, right of action, or other right.

**13.12 No Waivers.** 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.

**13.13 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.

**13.14 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.