



SPECIAL TERMS AND CONDITIONS – AT&T

These Special Terms and Conditions may be incorporated by reference into and form part of a master agreement under which Application Provider is authorized to resell or otherwise furnish AT&T Services to its Subscribers (the “Master Agreement”). All capitalized terms not otherwise defined herein have the meanings assigned to them in the Master Agreement. These Special Terms and Conditions apply only with respect to Service provided by or through AT&T Mobility II or its Affiliates (“AT&T”) that are resold by Application Provider to its Subscribers under the Master Agreement (“AT&T Services”). The AT&T Services are offered to Application Provider by ORBCOMM and Application Provider acknowledges that it has no contractual relationship with AT&T or any of its Affiliates as a result of entering into or performing under the Master Agreement. The Master Agreement, including without limitation these Special Terms and Conditions, sets forth the legal rights and obligations governing ORBCOMM's offer, provisioning and delivery of AT&T Services and Reseller's receipt and resale or other provision thereof to its Subscribers. The exact nature, scope and technical requirements of the AT&T Service are subject to change by AT&T from time to time.

Section 1 - TERMS OF SALE

ORBCOMM Services purchased under this Agreement are not simply telecommunications services but include bundled information technology services provided by ORBCOMM. Separate telecommunication services are not available under this Agreement. The Services purchased under this Agreement may be sold to Subscribers only as a part of a data service bundle that incorporates Application Provider's unique Application. Application Provider (including its Agents, if any) shall not (i) characterize the services or devices it provides to Subscribers as involving the sale, resale or provision of wireless services; (ii) advertise that it is selling or providing wireless service, or (iii) charge its customers separately for wireless service.

Section 2 - SUBSCRIBERS.

Application Provider is solely responsible for all interactions with Subscribers with respect to the AT&T Service. The Parties agree that the relationship created by this Agreement is that of independent contracting parties and not that of dealer, agent, joint venture, joint employers or partnership. Application Provider may not identify itself as related to AT&T or ORBCOMM unless explicitly approved in writing by AT&T or ORBCOMM, respectively. Application Provider must refrain from any business practice or advertising that may be injurious to ORBCOMM or AT&T. ORBCOMM is obligated only to Application Provider and not to Subscribers, who are not to be deemed third-party beneficiaries of this Agreement. Application Provider is solely responsible for all risks and expenses incurred in its provision of Service to Subscribers. Application Provider agrees to, and agrees that each Subscriber will enter into a contract with Application Provider containing, the language similar in all material aspects to the following. ORBCOMM may modify the terms of this Section 2 at any time by written notice to Application Provider in order to effect a change of which ORBCOMM has received written notice from AT&T:

[SUBSCRIBER] HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS SERVICE CARRIER AND [SUBSCRIBER] IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN [APPLICATION PROVIDER] AND UNDERLYING CARRIER. [SUBSCRIBER] UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO [SUBSCRIBER], WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. [SUBSCRIBER] AGREES TO INDEMNIFY AND HOLD HARMLESS THE UNDERLYING WIRELESS SERVICE CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THE AGREEMENT. [SUBSCRIBER] HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. [SUBSCRIBER] UNDERSTANDS THAT [CUSTOMER] AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES. THE [SUBSCRIBER] MAY NOT RESELL THE SERVICE TO ANY OTHER PARTY.

Section 3 - DISCLAIMERS.

The following disclaimers are applicable to Application Provider and to all Subscribers:

THE ORBCOMM NETWORK HAS MANY COMPLEX ELEMENTS AND IS NOT GUARANTEED AGAINST EAVESDROPPERS, HACKERS, DENIAL OF SERVICE ATTACKS, VIRUSES, OR INTERCEPTORS. CUSTOMER AGREES THAT COMPANY WILL NOT BE LIABLE TO CUSTOMER OR TO SUBSCRIBERS FOR ANY LACK OF PRIVACY OR SECURITY.

ORBCOMM WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY ORBCOMM'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER, SUBSCRIBERS OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS; 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, SUBSCRIBERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

Section 4 - LIMITATIONS ON AND REQUIREMENTS FOR ROAMING SERVICE

- a. ORBCOMM WILL PROVIDE THE SAME ACCESS TO ROAMING CAPABILITIES (INCLUDING "IN-AREA" ROAMING WHERE AVAILABLE) THAT IS MADE

AVAILABLE BY AT&T TO OTHER SIMILARLY SITUATED SUBSCRIBERS PROVIDED THAT EQUIPMENT WITH SIMILAR TECHNICAL CAPABILITIES AND PROGRAMMING IS USED BY THE APPLICATION PROVIDER OR SUBSCRIBERS. THE AVAILABILITY OF ROAMING SERVICES, AND THE CHARGES FOR THOSE SERVICES, IS DEPENDENT IN PART ON THE TYPE OF EQUIPMENT USED BY APPLICATION PROVIDER OR SUBSCRIBERS AND THE PROGRAMMING OF THAT EQUIPMENT. ORBCOMM MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE AVAILABILITY OR QUALITY OF ROAMING SERVICE PROVIDED BY OTHER WIRELESS CARRIERS, AND ORBCOMM WILL NOT BE LIABLE IN ANY CAPACITY FOR ANY ERRORS, OUTAGES, OR FAILURES OF ROAMING SERVICES PROVIDED BY OTHER WIRELESS CARRIERS.

- b. IF ORBCOMM, AT&T, OR ANOTHER ENTITY WITH WHOM AT&T HAS A ROAMING AGREEMENT, DISCOVERS OR SUSPECTS ABUSE OR FRAUD WITH RESPECT TO CERTAIN NUMBERS, THEN ROAMING PRIVILEGES MAY BE SUSPENDED WITH RESPECT TO SUCH NUMBERS. ORBCOMM WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE APPLICATION PROVIDER WITH PRIOR, OR PROMPT SUBSEQUENT, NOTIFICATION OF THE SUSPENSION OF THE ROAMING SERVICE. ORBCOMM WILL NOT BE LIABLE IN ANY CAPACITY TO APPLICATION PROVIDER FOR THE UNAVAILABILITY OR SUSPENSION OF ROAMING SERVICE BY OTHER CARRIERS.
- c. TO THE EXTENT ACCESS TO ROAMING CAPABILITIES IS PROVIDED BY ORBCOMM TO APPLICATION PROVIDER, THE USE OF SUCH ROAMING BY APPLICATION PROVIDER OR SUBSCRIBERS WILL BE GOVERNED BY THE PROVISIONS OF THIS AGREEMENT.
- d. Provisions applicable to International Roaming
 - i. Application Provider represents and warrants that it (and its Agents, if any) will obtain and hold any necessary licenses or authorizations to operate its business using the Service, and shall comply with any laws and regulations relating to the operation of its business. Application Provider will notify and obtain necessary consents from Subscribers for any use or processing of personal data, including the transfer to and processing of such data in a country other than where Subscribers are located and, where required, allowing such Subscribers to opt in or out of such use of their personal data. Application Provider is solely and exclusively responsible for compliance with any applicable laws and regulations governing the use of encryption technology, including any requirements to report or obtain use licenses. In addition to, and not in limitation of, any indemnification obligations of Application Provider under this Agreement, Application Provider further agrees to indemnify and hold ORBCOMM and AT&T harmless in the event a court, governmental authority or arbitrator finds that Application Provider's sale of its services or devices constitutes or includes an unauthorized sale, resale or provision of wireless service or has failed to comply with its legal or regulatory obligations in the conduct of its business, including but not limited to laws or regulations governing the use of encryption technology or personal data.

- ii. Upon request by ORBCOMM, Application Provider will provide, and will ensure that its Subscribers will provide, to ORBCOMM and AT&T all assistance reasonably required to enable ORBCOMM and/or AT&T to comply with the requests or requirements of a roaming carrier, regulator, authority or other competent governmental body relating to Application Provider's use of international roaming Service, including in respect of, but not limited to, lawful interception and data retention.
- iii. In addition to, and not in limitation of, ORBCOMM's suspension or termination rights under this Agreement, ORBCOMM may suspend, alter and/or withdraw international roaming Service in the event an order, direction, ruling or guidance from a regulator or international roaming carrier adversely affects ORBCOMM's offer of AT&T's international roaming Service to Application Provider.

Section 5 - TECHNOLOGY CHANGES

ORBCOMM is not obligated to maintain any particular technology, and ORBCOMM or AT&T may reduce or terminate ORBCOMM Network technologies at any time in its sole discretion. ORBCOMM will provide Application Provider twelve (12) months prior written notice of its intention to terminate a significant wireless technology (which shall include AT&T's 2G Network) on a nationwide basis. 2G Service provided by roaming carrier Networks may be reduced or terminated on a different schedule with or without prior notice. Application Provider may terminate its AT&T wireless services for particular Devices without penalty and any minimum purchase requirements shall be equitably adjusted, to the extent that AT&T or its roaming carriers no longer provide the technology on which affected Devices operate. New 2G devices may not be activated on AT&T Service.

Section 6 - SIM REQUIREMENTS

- a. Application Provider may only request activation of SIMS for use with the Application and using devices approved by AT&T for use on its network. AT&T may impose a minimum or maximum order quantities of SIMs on ORBCOMM, which may affect ORBCOMM's ability to fill Application Provider orders at any given time. Application Provider is only authorized to purchase SIMs directly from ORBCOMM for use on the AT&T network. Application Provider must not:
 - (i) insert the SIMs into anything other than a device approved for use on AT&T's network;
 - (ii) sell SIMs separate from an device approved for use on AT&T's network;
 - (iii) sell or convey SIMs, separately or with a device, other than for use by the expected End User of that SIM and device for use only with the Application;
 - or (v) program, reprogram, or tamper with the SIMs in any manner.
- b. A number may not be associated with more than one SIM at the same time, unless otherwise approved by ORBCOMM and AT&T. ORBCOMM or AT&T may deny AT&T Service without liability to SIMs appearing on AT&T's service deny lists for reasons including, but not limited to, cases where the SIM is stolen, has been used for fraudulent purposes, is not used in an Approved Device or with the Application, or is defective. ORBCOMM will notify Application Provider in such cases when notified by AT&T. ORBCOMM or AT&T may, at the option of either, require Application Provider to provide additional information about how the Application interacts with the

Network, and AT&T may limit, restrict or prohibit use of applications in its sole discretion.

Section 7 - Liability for Abuse or Fraudulent Usage. Liability for charges and other costs or damages resulting from abuse or fraudulent use are as follows:

- a. Application Provider is solely liable for charges, costs or damages resulting from (i) subscription fraud, (ii) any theft of a device, a user ID number, or password associated with the Service; (iii) any abuse or fraud facilitated by Application Provider, its employees, its agents or Subscribers or End Users, or (iv) any failure to give prompt notice of suspected abuse or fraudulent use based on information available to Application Provider.
- b. Application Provider has no liability for abuse or fraudulent use charges, costs or damages incurred after: i) Application Provider has taken any and all actions under its control to stop such abuse or fraudulent use; and ii) either six business hours after Application Provider has notified ORBCOMM of such abuse or fraudulent user or four business hours after AT&T independently learns of such abuse or fraudulent use.
- c. Customer will not be liable for any charges relating to Unauthorized Access (as defined by AT&T) if Customer provides ORBCOMM with clear and convincing evidence of the Unauthorized Access, such as: (i) call detail information for the Subscriber or End User's account; and (ii) a statement by Application Provider that it has thoroughly investigated the alleged Unauthorized Access and that it will cooperate reasonably in obtaining affidavits or other required documentation required for any prosecution of the person fraudulently using the Service. ORBCOMM reserves the right to modify this provision to require affidavits prior to issuing any credits if Application Provider does not comply with this Section. Such investigation by Application Provider should include contacting or attempting to contact a sufficient number of recipients of calls at issue of each Subscriber or End User so as to establish reasonable basis for inferring that the remainder of such calls were the result of Unauthorized Access

[End of Special Terms and Conditions – AT&T]