

AT&T MOBILITY PREPAID AND PREPAID HYBRID (GOPHONE) PRODUCT

TERMS AND CONDITIONS

Customer acknowledges that it has read and understands each of the provisions below, and agrees to be bound by them.

1. Definitions.

- a). "Airtime Cards" means wireless airtime cards or similar vehicles for sale to end-users of the Prepaid Wireless Service at Customer locations.
- b) "Approved Location" means (i) a retail location owned and operated by an approved Customer with a current agreement with InComm, and (ii) the sale of Prepaid Products is not already occurring at that retail location under either an agreement with AT&T or one of AT&T's other distributors without AT&T's written approval.
- c). "Claims" means, collectively, any and all liability, damages, punitive damages, fines, expenses, including reasonable attorneys' fees and disbursements, claims, demands, or suits.
- d) "Customer(s)" means those retail merchants with whom InComm or its affiliates have agreements to offer products such as the Prepaid Products for sale to end-users of Prepaid Wireless Service.
- e) "Marks" means a party's name, logo, trademarks or service marks.
- f) "Prepaid Equipment" means wireless prepaid equipment, including the SIM cards, designated by AT&T to be used with its Prepaid Wireless Service.
- g) "Prepaid Products" means Wireless Airtime and Prepaid Equipment.
- h) "Prepaid Wireless Service" means, collectively, AT&T's prepaid wireless service and prepaid/post-paid hybrid wireless service.
- i) "Transshipping" means conveying Prepaid Equipment in a manner other than selling it to consumers or businesses that InComm or Customers believe are the actual end users of the Prepaid Equipment and that these end users will activate the Prepaid Equipment on AT&T's GoPhone Service in the area.
- j) "Wireless Airtime" means wireless airtime for selected Prepaid Wireless Service which is offered for sale by AT&T in various formats and denominations.

2. Terms and Conditions for Customers Selling Prepaid Products.

- a) Customers must sell Prepaid Equipment to end-users of the Prepaid Wireless Service within the area in the original packaging provided with nothing removed, added or altered.
- b) Customers must display or make available the appropriate coverage maps and rate plan brochures and other collateral material provided by AT&T for the Prepaid Wireless Service at all Approved Locations.
- c) Customers must not sell Prepaid Equipment, without the reasonable expectation that it will be activated via the Prepaid Wireless Service within the area.
- d) Customers must not sell Prepaid Equipment that it knows, or with reasonable diligence should know, will be activated on AT&T's post-paid service plans.

- e) Customers must not sell more than three (3) pieces of Prepaid Equipment to any one individual or entity.
- f) In the event a Customer violates any of the requirements listed in Sections 2(c) through 2(e) twice, AT&T may request such Customer's ability to sell Prepaid Products be immediately terminated.
- g) Customers may only use AT&T's Marks in a manner approved by AT&T. Customers must receive AT&T's prior written approval before using any AT&T Marks, except that Customers are authorized without the need for further approval, to use (i) any pre-packaged Prepaid Equipment or Wireless Airtime that is provided by InComm and which contains or displays AT&T's Marks, and (ii) any materials or collateral containing AT&T Marks which are provided by AT&T for use with such Prepaid Equipment or Wireless Airtime.
- h) A Customer is not a third-party beneficiary of any agreement between AT&T and InComm, and any claims it may have under its agreement with InComm must be resolved with InComm.
- i) Customers must comply with AT&T's terms regarding the confidentiality of information concerning AT&T's customer information. All information collected on behalf of AT&T regarding Prepaid Wireless Service customers or end-users is deemed confidential by AT&T, and may not be divulged in any manner without the prior consent of the disclosing party. All such information is the exclusive property of the disclosing party and the improper disclosure of this information would cause irreparable injury to the disclosing party. Customers must use commercially reasonable efforts to prevent the improper disclosure of AT&T's customer information and will take reasonable security precautions with respect to this information.
- j) Upon notification by InComm that AT&T has disapproved an Approved Location, Customer shall be permitted to continue the sale of Prepaid Products for a thirty (30) day period, and following such period, must cease selling the Prepaid Products and using the Marks, and remove them from use or display.
- k) Customers must comply with all applicable laws and must already have obtained any and all required business licenses to sell the Prepaid Products.
- l) Customers agree to indemnify, defend and hold harmless AT&T from and against any and all Claims brought by a third party that arise from (i) Customers' non-compliance with law; (ii) Customers' negligent, willful, or fraudulent acts or failure to act; (iii) Customers' breach of any obligation to AT&T; (iv) any allegedly unauthorized use of any of AT&T's Marks by Customer; (v) false or misleading advertising of a Customer; or (vi) bodily injury, death, or damage to property to the extent occasioned by the acts or omissions of Customer or its affiliates, employees, or agents.
- m) With respect to protection and enforcement of AT&T's Marks and protecting the confidentiality of AT&T's customer information, and without limiting the remedies that otherwise may be available to AT&T, Customers must agree that AT&T is entitled, without the requirement of a bond, to seek any temporary, preliminary, or permanent injunctive relief that may be necessary to prevent any actual or threatened breach, whether or not an adequate remedy at law exists in favor of AT&T. AT&T is further entitled to recover reasonable attorneys' fees and costs incurred for the purpose of protecting and enforcing its Marks.
- n) A Customer shall use its best efforts to prevent Prepaid Equipment it purchases from being Transshipped.
- o) Customers shall collect all federal, state or local taxes or other charges Customers are required by law to collect from consumers at the point of sale, and will cooperate with AT&T in any efforts relating to Customer's improper collection of such taxes or charges.

p) Customers shall agree to periodic visits to Approved Locations by AT&T personnel to review or audit compliance with these terms and conditions.

3. Additional Terms and Conditions Specific to the Sale of Wireless Airtime.

a) Customers must display the appropriate AT&T coverage maps and rate plan brochures provided by AT&T for the Prepaid Wireless Service in all Approved Locations. These materials will be provided at no charge.

b) Customers must collect appropriate sales taxes and fees at all Approved Locations at the point of sale as required by applicable federal, state, and local laws.

c) Customers must ensure that the Airtime Cards sold to the end-user properly state AT&T's name and the brand name of the Wireless Prepaid Service being sold. Customers must not sell the Wireless Airtime under any brand other than AT&T's brand, without prior permission from AT&T.

d) Customers must ensure that the Airtime Cards sold to each end-user must state the dollar value of the Wireless Airtime being sold (e.g. "\$25", "\$50", etc.).

e) Customers must ensure that the Airtime Cards sold to the end-user

1. (i) contain the appropriate phone number to connect to the prepaid platform;
2. (ii) state the appropriate access number/PIN number combination for the Wireless Airtime that was purchased,
3. (iii) explain how to add Wireless Airtime to the end-user's account, and
4. (iv) explain when Wireless Airtime expires.

f) Customers must ensure that every end-user purchaser of Wireless Airtime is provided with a copy of approved terms and conditions for using Wireless Airtime, which terms and conditions may be printed on the Airtime Card or otherwise provided to the end-user. Such terms and conditions must be approved by AT&T prior to being printed.

g) In the event AT&T revises any branding, terms and conditions or other requirements (except for a change required by law) which would require any modification to content on the Airtime Cards, InComm and Customer shall have twelve (12) months to sell through the inventory of the old Airtime Cards, after necessary revisions to the Airtime Cards have been made.