



## TeleMessage Terms of Service for the Network Archiver product line

### 1. The Service

The Service (“Service”) consists of the TeleMessage Network Archiver Product. You will be able to send and receive messages transmitted via your mobile carrier.

### 2. License and Restrictions

Subject to these Terms, TeleMessage grants you a non-sublicensable, non-exclusive and non-transferable license (“License”) to use the Service on your corporate mobile. You will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Service; modify, translate, or create derivative works based on the Service; or copy (except for archival purposes), rent, lease, distribute, assign, or otherwise transfer rights to the Service or any part thereof; or otherwise for the benefit of a third party; or remove any proprietary notices or labels from the Service or any part thereof. As between the parties, you acknowledge that TeleMessage retains ownership of the Service, any portions or copies thereof, and all rights therein. Any commercial copying or distribution, publication or exploitation of the Service, or any content, software, code, data or materials on or from the Service, are strictly prohibited unless you have received express prior written permission from TeleMessage or the applicable rights holder. Unless explicitly stated otherwise, the terms of the License will govern any upgrades provided by TeleMessage that replace or supplement the Service.

Upon termination of these Terms for any reason, this License will terminate, and you hereby agree to cease using the Service.

*THE SERVICE IS PROVIDED SUBJECT TO THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY FOUND IN THESE TERMS.*

### 3. Ownership Rights

The Service, and any other part thereof and any content or information contained therein and all copies thereof are the sole property of TeleMessage. TeleMessage owns all title, copyright, and other intellectual property rights to the Service and to all copies, derivative works thereof and the underlying software (“TeleMessage IP”). Your use of the Service does not grant you any ownership rights in the TeleMessage IP.

### 4. Content of Communications

The content of the communication via the Service is beyond the control of TeleMessage and is the sole responsibility of the person from whom such content originated. You understand, therefore, that by using the Service you, may be exposed to content that is offensive, harmful to minors, indecent or otherwise objectionable, and that you use the Service at your own risk.



You hereby acknowledge and agree that you are solely responsible for any content that you and any of your users upload, submit, post, transmit or display through the Service and that TeleMessage is not responsible to you or any third party for any Content that is Used by you or any other user of the Service.

## **5. Accounts, Passwords and Security**

5.1 To open an account to use the Service (an “Account”), you must complete the registration process by providing us with current, complete and accurate information as prompted by the registration form. You are entirely responsible for any and all activities that occur under your Account. You agree to notify TeleMessage of any unauthorized use of your Account or any other breach of security.

### **5.2. User Account**

You will be responsible for the administration and management of all User Accounts. The creation of a User Account, the purchase of and allocation to a User Account of any TeleMessage products by you, and the use of any TeleMessage products by your Users shall be governed by these Terms.

### **5.3. Reallocation and Deletion of Accounts**

After an Account has been allocated to a specific User, you may request that such Account be allocated to another User or deleted entirely. The traffic data (including text message history and messaging history) in connection with any Account is only visible whilst that Account exists. If you choose to delete an Account, such traffic data will no longer be accessible to you once that Account has been deleted. It is therefore your responsibility to back up the traffic data records (if you so wish) before deleting the relevant Account.

### **5.4. Personal and Traffic Data**

You shall inform each User that you and your Administrators may obtain and use their personal and traffic data. You acknowledge and agree that you shall process (and shall ensure that your Administrators shall process) such personal data in accordance with all applicable data protection laws. You represent and warrant to keep all such personal and traffic data and protect it strictly in compliance with applicable data protection laws.

### **5.5. No Unsolicited Communications**

Under no circumstances shall you send (or allow your Administrators and/or Users to send) unsolicited commercial communications with respect to your Service Account. You shall not (and you shall ensure that your Administrators and/or Users shall not) send or procure the sending of any communications, including email messages on behalf of, or purporting to originate on behalf of, TeleMessage.

## **6. Users Privacy**



TeleMessage cares deeply about the privacy of our users. Please find further details in the [Privacy Policy](#).

## **7. Message, Outbound Messages and Other Limitations**

TeleMessage assumes no responsibility for the deletion or failure to store information.

TeleMessage may, in the future, change its pricing, usage limitations and the limit and amount of storage space available. From time to time, TeleMessage may require users to update the Service software, and may send service and marketing updates, planned disruptions or other information related to the Service to some or all of its users.

## **8. Users Conduct**

When using the TeleMessage mobile archiving products in your organization, a user license is required per each company employee. Using the same license for archiving multiple employees is a violation of our Terms of Service.

Any client, user, customer and company using the TeleMessage Mobile Archiving products must be permitted to archive mobile communication of the company's employees he activates for the service. The archiving should be done only to meet compliance, regulation terms, and corporate governance policies. Client is not permitted to actively archive mobile communication for any individual who is not a Client employee. Client agrees to (a) notify TeleMessage immediately when an employee's employment contract with the company is terminated, and (b) Disable any mobile archiving services from employees who left the company within 24 hours of their termination (c) provide each employee with clear and conspicuous notice of policies regarding the receipt, transmission, storage and use of the employee's mobile communication. (d) The client is responsible for ensuring that each employee has agreed to such policies and that each employee has been made aware that such an employee has no reasonable expectation of privacy in such an employee's mobile communication.

Any unauthorized commercial use of the Service, or the resale of the Service, is expressly prohibited. You agree to abide by all applicable local, state, national and international laws and regulations and shall be solely responsible for all acts or omissions that occur under any and all of your accounts or passwords, including the content of any of your transmissions via the Service. By way of example, and not as a limitation, you agree not to:

- a) Transmit through the Service unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature.
- b) Transmit any material that is the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity.
- c) Libel, defame or slander any person, or infringe upon any person's privacy rights.
- d) Transmit any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs.



e) Violate any applicable law regarding the transmission of technical data or software through the Service.

f) Violate any applicable law with respect to child pornography or solicitation of minors for sex via the Internet.

g) Interfere with or disrupt networks connected to the Service or violate the regulations, policies or procedures of such networks.

h) Attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means.

i) Engage in any other activity that could subject it to criminal liability or civil penalty or judgment.

## **9. Fees**

a) In consideration for the use of the Service, you shall pay to TeleMessage a subscription and/or usage fees for messages delivered using any available delivery method and additional user accounts at the applicable rate then in effect. The current fees are posted in your contract or as otherwise agreed between TeleMessage and you.

b) **Payment.** Transaction fees are due and payable at the time of or before TeleMessage delivers a message to your recipients via every method of delivery, based upon the billing plan you select. The various payment plans are described in on the site or on your contract or as otherwise agreed between TeleMessage and you.

c) **Credit Card Payment.** If you have elected to pay for the Service by credit card, and TeleMessage does not receive payment from the credit card issuer, you agree to pay all amounts due TeleMessage immediately upon demand by TeleMessage. Each time you use the Service, you agree that TeleMessage is authorized to charge your designated credit card account (or other means of payment) for the applicable rate for the Service then in effect. Please note that your agreement with your credit card issuer or bank governs your use of your credit card, and you must refer to that agreement to ascertain your rights and liabilities as a cardholder.

d) **Other Payment Plans (if available).** If TeleMessage does not receive full payment of your TeleMessage messaging account balance within thirty (30) days of the date your account statement is made available to you, an additional 1.5% (or the highest amount permitted by law, whichever is lower) per month late charge may be added to your bill and will be immediately due and payable.

e) **Refunds.** We do not provide refunds. Our customers are free to send messages until their accounts are empty and we can keep your account open and active if you would like to continue to send messages until the account is empty. The company may consider compensating customers in case there is any fault or problem related to the TeleMessage service.



## 10. Modification of Terms; Termination, Cancellation, and Suspension

a) Termination, Cancellation and/or Suspension by TeleMessage; Disclosure of Information. These Terms and the License granted hereunder may be terminated, canceled and/or suspended by TeleMessage at any time if, in TeleMessage's determination, you breach any of these Terms.

b) Obligations Upon Termination and/or Cancellation. Upon any termination, cancellation and/or suspension of TeleMessage's engagement with you. You are responsible for any obligations then accrued including, but not limited to, payment of any costs or charges that may arise in connection with such termination, cancellation and/or suspension, and payment of all outstanding transaction fees for use prior to said termination, cancellation and/or suspension occurs. your payment and other obligations under these Terms are not suspended, stayed, or otherwise affected by a suspension of your access to or use of Service (in whole or in part) where said suspension arises from your failure to comply with, or your violation of, these Terms or of any law or legal obligation. Upon termination and/or cancellation, for any reason, you agree to immediately cease using the Service and remove all TeleMessage messaging software installed on any computer in your possession or under your control.

**11. External Terms of Service** In addition to the TeleMessage Terms of Service as set forth in this document, when using other networks, you are subject to their privacy policies and terms of service as set forth in their respective notifications, as follows:

- **AT&T** (Also, see below)  
Archiving T&Cs: <https://www.telemessage.com/mobile-archiver/network-archiver/att-message-archiving-resource-page/att-message-archiving-terms-of-service/>  
General T&Cs: <https://www.att.com/legal/terms.consumerServiceAgreement.html>
- **Verizon** (Also, see below)  
Archiving T&Cs: <https://www.telemessage.com/mobile-archiver/network-archiver/verizon-message-archiving-resource-page/verizon-wireless-archived-messages-service-terms-and-conditions/>  
General T&Cs: <https://www.verizon.com/about/terms-conditions/overview>
- **O2**  
Archiving T&Cs: [https://www.telemessage.com/wp-content/uploads/2023/01/Hosted\\_Mobile\\_Recording\\_Schedule.pdf](https://www.telemessage.com/wp-content/uploads/2023/01/Hosted_Mobile_Recording_Schedule.pdf)  
General T&Cs: <https://www.o2.co.uk/termsandconditions/business>
- **Rogers**  
Archiving T&Cs: [https://www.telemessage.com/wp-content/uploads/2023/02/Rogers\\_Hosted\\_Mobile\\_Recording\\_Schedule.pdf](https://www.telemessage.com/wp-content/uploads/2023/02/Rogers_Hosted_Mobile_Recording_Schedule.pdf)  
General T&Cs: <https://www.rogers.com/support/terms>
- **Bell**  
General  
T&Cs: [https://www.bell.ca/styles/common/all\\_languages/all\\_regions/pdfs/Bell\\_Terms\\_of\\_Service.pdf](https://www.bell.ca/styles/common/all_languages/all_regions/pdfs/Bell_Terms_of_Service.pdf)
- **TELUS**  
General T&Cs: <https://www.telus.com/en/support/article/service-terms-between-you-and-telus>



## 12. No Warranties or Liabilities

a) GENERAL. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICE AND THE INTERNET GENERALLY IS AT YOUR OWN RISK AND THAT THE SERVICE IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED. TELEMESAGE WILL USE COMMERCIALY REASONABLE EFFORTS TO MAKE ACCESS TO THE SERVICE AVAILABLE TO YOU THROUGH THE REQUIRED ACCESS PROTOCOLS, BUT MAKES NO WARRANTY OR GUARANTEE THAT YOU WILL BE ABLE TO ACCESS THE SERVICE OR ANY PART THEREOF AT ANY PARTICULAR TIME OR ANY PARTICULAR LOCATION.

b) ADDITIONAL LIMITATIONS. WITHOUT LIMITING THE GENERALITY OF THE TERMS SET FORTH IN SECTION 11(a), TELEMESAGE AND ITS AFFILIATES, AGENTS, CONTENT PROVIDERS, SERVICE PROVIDERS, AND LICENSORS:

(I) HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE ACCURACY, COMPLETENESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OF THE SERVICE GENERALLY, AND ANY CONTENT OR SERVICES CONTAINED THEREIN, AS WELL AS ALL EXPRESS AND IMPLIED WARRANTIES THAT THE OPERATION OF THE SERVICE GENERALLY AND ANY CONTENT OR SERVICES CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR-FREE;

(II) SHALL IN NO EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INACCURACY, ERROR OR OMISSION IN, OR LOSS, INJURY OR DAMAGE CAUSED IN WHOLE OR IN PART BY FAILURES, DELAYS OR INTERRUPTIONS IN THE SERVICE, OR INSTALLATION AND COMPUTER, MOBILE PHONE OR TABLET DISRUPTIONS RELATED TO THE SERVICE, AND ANY CONTENT OR SERVICES CONTAINED THEREIN;

(III) SHALL IN NO EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES ARISING OUT OF, RESULTING FROM, OR RELATING IN ANY MANNER TO THE USE OR INABILITY TO USE THE SERVICE ENERALLY, AND ANY CONTENT OR SERVICES CONTAINED THEREIN. WITHOUT IN ANY WAY LIMITING THE FOREGOING, TELEMESAGE SHALL IN NO EVENT HAVE (IN THE AGGREGATE) ANY LIABILITY WHATSOEVER IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF AN AMOUNT EQUAL TO THE MONTHLY TRANSACTION FEES.

(IV) DELIVERY METHODS OF MESSAGES TO VARIOUS COMMUNICATION DEVICES IS SUBJECT TO A COMBINATION OF NETWORK PROVIDERS AND SERVICE PROVIDERS TERMS AND CONDITIONS AND NETWORK STATUS OVER WHICH TELEMESAGE HAS NO CONTROL. TELEMESAGE SHALL IN NO EVENT BE LIABLE TO REIMBURSE MESSAGE CREDITS, REIMBURSE PAYMENTS OR HAVE ANY OTHER LIABILITY FOR MESSAGES THAT WHERE SENT VIA THE SERVICE BUT NOT DELIVERED, NOT RECEIVED OR NOT ACCURATELY DISPLAYED, HEARD OR



REPRESENTED ON ANY SUCH COMMUNICATION DEVICE.

(V) TELEMESAGE ALSO SPECIFICALLY DISCLAIMS ANY LIABILITY OF ANY KIND FOR COSTS OR DAMAGES ARISING OUT OF PRIVATE OR GOVERNMENTAL LEGAL ACTIONS RELATED TO YOUR USE OF ANY OF THE TELEMESAGE SERVICES IN ANY COUNTRY.

c) HIGH RISK ACTIVITIES. THE SERVICE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF SERVICE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). IN ADDITION TO THE OTHER DISCLAIMERS AND LIMITATIONS CONTAINED WITHIN THESE TERMS, TELEMESAGE AND ITS AFFILIATES, AGENTS, CONTENT PROVIDERS, SERVICE PROVIDERS AND LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES INCLUDING EMERGENCY NOTIFICATION SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, TELEMESAGE'S LIABILITY (AND THE LIABILITY OF ITS AFFILIATES, AGENTS, CONTENT PROVIDERS AND SERVICE PROVIDERS) SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

### **13. Application Duplication or Enhancement ("Reverse Engineering")**

You must not (or assist others to) access, use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sublicense, transfer, display, perform, or otherwise exploit our Services in impermissible or unauthorized manners, or in ways that burden, impair, or harm us, our Services, systems, our users, or others, including that you must not directly or through automated means: (a) reverse engineer, alter, modify, create derivative works from, decompile, or extract code from our Services; (b) send, store, or transmit viruses or other harmful computer code through or onto our Services; (c) gain or attempt to gain unauthorized access to our Services or systems; (d) interfere with or disrupt the integrity or performance of our Services; (e) create accounts for our Services through unauthorized or automated means; (f) collect the information of or about our users in any impermissible or unauthorized manner; (g) sell, resell, rent, or charge for our Services; or (h) distribute or make our Services available over a network where they could be used by multiple devices at the same time.

### **14. Misc.**

The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent



necessary so that these Term will otherwise remain in full force and effect and enforceable. These Terms are not assignable, transferable or sub-licensable by you except with TeleMessage's prior written consent. These Terms will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the United States of America without regard to the conflict of laws provisions thereof. You and TeleMessage agree to submit to the exclusive jurisdiction of the courts located in the county of Middlesex in the Commonwealth of Massachusetts. The Service shall be deemed a passive server that does not give rise to personal jurisdiction over TeleMessage, whether specific or general, in jurisdictions other than Massachusetts, USA. Both parties agree that these Terms are the complete and exclusive statement of the mutual understanding of the parties and supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind TeleMessage in any respect whatsoever. All notices under these Terms will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. You and TeleMessage agree that any cause of action arising out of or relating to the Service must commence within 1 year after the cause of action occurs, Otherwise, such cause of action is permanently barred.

#### **15. AT&T Message Archiving Terms of Service**

Any user signing for the TeleMessage AT&T Network Archiver is agreeing to the AT&T Message Archiving Terms of Service stated at <https://messagearchiving.att.com/legal> and the end user licensing agreement stated in the section below:





# End User License Agreement for AT&T Message Archiving

THIS LICENSE IS ENTERED INTO BY AND BETWEEN AT&T AND THE AT&T BUSINESS SERVICE CUSTOMER ("COMPANY") WHO ACCEPTS THESE TERMS BY USING THE AT&T MESSAGE ARCHIVING SERVICE. THIS LICENSE AMENDS THE AGREEMENT BETWEEN AT&T SOLELY WITH RESPECT TO THE PROVISION AND USE OF THE MESSAGE ARCHIVING SERVICE.

BY USING AT&T MESSAGE ARCHIVING, COMPANY AFFIRMS THAT YOU ARE OVER THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE AND THAT YOU ARE FULLY ABLE AND COMPETENT TO ENTER INTO THE TERMS, CONDITIONS, OBLIGATIONS, AFFIRMATIONS, REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS LICENSE AND IN THE RELATED AGREEMENTS, AND TO ABIDE BY AND COMPLY WITH THIS LICENSE AND THE RELATED AGREEMENTS YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND COMPANY, ITS AFFILIATES, AND ALL USERS WHO ACCESS THE MESSAGE ARCHIVING SERVICES THROUGH THE COMPANY ACCOUNT TO THIS LICENSE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE AT&T MESSAGE ARCHIVING.

Please read this end user license agreement ("License") carefully before using the AT&T Message Archiving platform ("Platform"). As used herein, "Platform" includes, without limitation, any services specific to the Platform (excluding, however, applicable wireless service plan), software code, scripts, interfaces, graphics, displays, text, images, artwork, music or video clips, documentation and other components or content and any updates, modifications or enhancements to these items accompanying the Platform or this License.

This Platform is licensed, not sold, to Company by AT&T for use strictly in accordance with the terms and conditions of this License. By using the Platform, Company is entering into and agreeing to be bound by the terms of this License, the AT&T Acceptable Use Policy located at [att.com/aup](http://att.com/aup), and the AT&T Privacy Policy located at [att.com/privacy](http://att.com/privacy), each as amended from time to time, which policies are incorporated herein by reference. The AT&T Privacy Policy will only apply to information that is provided to or accessed by AT&T. Company represents that Company has, and will abide by, policies and practices which govern the use and disclosure of information, including personally identifiable information.



Company's use of the Platform also may be governed by terms and conditions required by (i) any applicable third party content and service providers, (ii) the applicable wireless service agreement, (iii) any applicable open source or third party software license, (and (iv) Company's policies and practices regarding information provided to and/or accessed by Company ((i) through (iv), including without limitation those terms listed in the "Third Party Terms" section of this License, collectively being referred to as the "Related Agreements"). No Related Agreement, however, shall have the effect of limiting, encumbering or otherwise restricting AT&T's rights and remedies or Company's obligations under this License, or waiving any restrictions to use the Platform under this License. This License shall not have the effect of limiting, encumbering or otherwise restricting AT&T's rights and remedies or Company obligations under any Related Agreement between Company and AT&T, or waiving any restrictions on Company's rights under any Related Agreement between Company and AT&T.

If AT&T makes any updates or upgrades to the Platform available to Company, such updates or upgrades shall be subject to the terms and conditions of this License unless the Platform is expressly provided to Company under other, or additional terms and conditions, in which case, those other, or additional terms and conditions (which may include the payment of additional fees), shall apply. Continued use of the Platform after any such changes shall constitute Company consent to such changes.

## 1. THE PLATFORM:

AT&T Message Archiving enables Company to store short message service ("SMS") text messages and/or multimedia messaging service ("MMS") messages ("Messages"). AT&T Message Archiving consists of a website ("Website"); mobile, desktop, and tablet applications ("Apps"); and related end clients, widgets, tools, applications, data, software, Application Programming Interfaces ("APIs") and other related services (the "Services"). The Website, Apps and Services are collectively referred to herein as the "Platform". Company may backup the Messages ("Content") of Company's employees or other users under Company's account, either to the Company's storage facility or to AT&T's storage facility. Content stored on AT&T's storage facility is made available to Company's authorized administrative users via the web application interface. Voice, data and messaging rates may apply when Company uses the Platform. Company is solely responsible for its use of the Platform.



## 1.1 Disclaimer Regarding Use of the Platform.

AT&T disclaims all liabilities for any claims of infringement or misappropriation of intellectual property rights from any third party related to or arising from Company's use of the Platform. In addition, Company agrees that AT&T, its suppliers, licensors, and their subsidiaries and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to information about all Company Devices which backup Messages via the Platform, Company's or any authorized administrative user's use of the Platform. AT&T, its suppliers and their subsidiaries and agents may use this information to improve its or their products or to provide services or technologies to Company. TO THE FULLEST EXTENT ALLOWED BY LAW, AT&T AND ITS APPLICABLE SUPPLIER(S) AND LICENSOR(S) HEREBY DISCLAIM ALL LIABILITY FOR DAMAGES THAT MAY BE CAUSED TO COMPANY OR OTHERS BY ANY TRANSMISSION, ERASURE OR DISABLEMENT OR BY ANY UNAUTHORIZED DISCLOSURE OR ALTERATION OF ANY SUCH INFORMATION.

## 1.2 Messages, Privacy and SPAM

AT&T is a strong supporter of a SPAM-free communication environment. Any account found to be using AT&T Message Archiving for SPAM may be suspended without notice. If Company knows of or suspects any violators, please notify AT&T immediately at [mobilityabuse@att.com](mailto:mobilityabuse@att.com) or deliver an SMS message to 7726.

Company, and Company's users may not transmit any communication that would violate any applicable federal, state or local law, court order or regulation, including but not limited to the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), the rules governing the DoNotCall Registry, currently found at [www.donotcall.gov](http://www.donotcall.gov), and the CAN-SPAM Act. Company agree to comply with the Guidelines of the Mobility Marketing Association, currently found at <http://www.mmaglobal.com/bestpractices.pdf>, and of the CTIA, currently found at [http://www.wmcglobal.com/images/CTIA\\_playbook.pdf](http://www.wmcglobal.com/images/CTIA_playbook.pdf), as such guidelines may be amended from time to time.

## 1.3 Message Retention

Company self-storage: Messages stored using AT&T Message Archiving will be retained by AT&T for a period of up to five (5) days or until downloaded and stored by Company, whichever time period is shorter. Messages may be retained by Company even if the Message has been deleted on the applicable Device.



AT&T storage: Messages stored using AT&T Message Archiving will be retained by AT&T for a period of up to seven (7) years and as long as Company remains a customer of the AT&T Message Archiving service. Message retention periods within the Platform will be set by Company. However, Company may also download and store the Messages for as long as it desires. Messages may be retained regardless of whether they are deleted from the end user Device. All Messages stored by AT&T will be deleted within 30 days of termination or expiration of the Service.

LICENSE GRANT, USE RESTRICTIONS AND ELIGIBILITY.

## 1.4 License Grant.

Subject to the restrictions set forth in this License, AT&T grants Company a revocable, non-exclusive, non-transferable, limited right to access and use the Platform in accordance with the terms and conditions of this License, the Related Agreements, and all applicable local, national, and international laws and regulations. Company further represents and warrants that Company will not access or use the Platform for any illegal or unauthorized purpose, and Company will not use the Platform to violate any applicable laws or regulations in Company jurisdiction.

## 1.5 Restrictions on Use.

Company shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code or structure of, or decrypt the Platform, for any reason, including for research purposes; (b) make any modification, alteration, adaptation, improvement, enhancement, translation or derivative work from the Platform; (c) violate any applicable laws, rules or regulations in connection with Company's access or use of the Platform; (d) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of AT&T or its collaborators, suppliers or licensors; (e) use the Platform in a manner that derives revenue directly from such use, or use the Platform for any other purpose for which it is not designed or intended; (f) install, use or permit the Platform to exist on any mobile device or computer; (g) distribute the Platform to any unauthorized device(s); (h) make the Platform available over a network or other environment permitting access or use by multiple Devices or users at the same time; (i) use the Platform for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by AT&T; (j) use the Platform to send automated queries; (k) use any proprietary information or interfaces of AT&T or its suppliers or licensors or other intellectual property of



AT&T or its suppliers or licensors in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the Platform; (l) circumvent, disable or tamper with any security-related components or other protective measures applicable to the Platform, or (m) reproduce, archive, retransmit, distribute, disseminate, sell, lease, rent, exchange, modify, broadcast, synchronize, publicly perform, publish, publicly display, make available to third parties, transfer or circulate the Platform. Company is solely responsible and liable for any such prohibited activity, behavior, use and conduct.

Company agrees to abide by the rules and policies established from time to time by AT&T. These obligations survive termination of this License.

In addition, Company agrees:

- not to access (or attempt to access) the Platform by any means other than through the interface that is provided by AT&T, unless Company has been specifically allowed to do so in a separate agreement with AT&T. Company specifically agrees not to access (or attempt to access) the Platform or any part thereof through any automated means (including use of any scripts, web crawlers, spiders, robots, site/search retrieval application);
- Company will not engage in any activity that interferes with, disrupts, damages, impairs, or disables the Platform or the servers and networks connected thereto;
- not to harass or advocate harassment of another person or entity;
- not to impersonate any person or entity or misrepresent in any way Company's affiliation with a person or entity; and
- that the technical processing and transmission of the service, including Company's Content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

## 2. INTELLECTUAL PROPERTY RIGHTS.

### 2.1 Rights to the Platform.

Company acknowledges and agrees that the Platform, and all copyrights, patents, trademarks, trade secrets and other intellectual property rights associated therewith are, and shall remain, the property of AT&T or its collaborators, licensors, or suppliers. Furthermore, Company acknowledges and agrees that the source and object code of the Platform and the format, directories, queries, algorithms, structure and organization of the Platform are the intellectual property and proprietary and confidential information of AT&T and its collaborators, licensors



and suppliers. Title to the Platform shall remain with AT&T and its collaborators, licensors, and suppliers, who reserve the right to change, suspend, terminate, remove, impose limits on the use of or access to, disable access to, or require the return of the Platform (or any copy thereof) at any time without notice and will have no liability for doing so. Except as expressly stated in this License, Company is not granted any intellectual property rights in or to the Platform by implication, estoppel or other legal theory, and all rights in and to the Platform not expressly granted in this License are hereby reserved and retained by AT&T and its collaborators, licensors, and suppliers. These obligations survive termination of this License.

## 2.2 AT&T Marks.

Company acknowledges and agrees that the following company names and their related logos and all related product and service names, design marks and slogans are trademarks and service marks owned by and used under license from AT&T: "AT&T" (the "AT&T Marks"). Company is not authorized to use the AT&T Marks in any advertising, publicity or in any other commercial manner without the prior written consent of AT&T, which may be withheld for any or no reason. These obligations survive termination of this License.

## 2.3 Third Party Software.

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# 3. TERM AND TERMINATION.

This License shall be effective until terminated. AT&T may, in its sole and absolute discretion, at any time and for any or no reason, suspend or terminate this License and the rights afforded to Company hereunder with or without prior notice.

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NOTWITHSTANDING AND WITHOUT WAIVING THE FOREGOING, THE TERMS AND CONDITIONS OF THE RELATED AGREEMENTS MAY PROVIDE LIMITED REMEDIES TO COMPANY.

## 5. LIMITATION OF LIABILITY.

EXCEPT TO THE EXTENT PROHIBITED BY LAW, UNDER NO CIRCUMSTANCES SHALL AT&T, ITS COLLABORATORS, SUPPLIERS OR LICENSORS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, BE LIABLE FOR ACCIDENTS, PROPERTY DAMAGE, PERSONAL INJURY, DEATH, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE OR DISTRIBUTION OF, THE PERFORMANCE OR NON-PERFORMANCE, OR COMPANY'S ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE PLATFORM, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AT&T'S AGGREGATE LIABILITY TO COMPANY (WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE) SHALL NOT EXCEED THE GREATER OF (i) THE INITIAL PURCHASE PRICE PAID BY COMPANY FOR THE PLATFORM, (ii) THE AGGREGATE AMOUNT COMPANY PAID TO AT&T FOR THE PLATFORM DURING THE ONE MONTH





PRECEDING THE DATE THAT THE CLAIM ARISES, OR (iii) ONE HUNDRED DOLLARS (\$100.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THIS LICENSE.

## 6. INDEMNIFICATION.

Company shall indemnify, defend and hold harmless AT&T and its collaborators, suppliers and licensors, and their officers, directors, agents and employees (the "Indemnified Parties") from and against any claim, proceeding, loss, damage, fine, penalty, interest and expense (including, without limitation, fees for attorneys and other professional advisors) arising out of or in connection with Company's: (i) access to or use of the Platform; (ii) breach of this License; (iii) violation of law; (iv) negligence or willful misconduct; or (v) violation of the rights of a third party. Company will promptly notify AT&T in writing of any third-party claim arising out of or in connection with Company's access to or use of the Platform. These obligations survive termination of this License.

## 7. MISCELLANEOUS.

The following provisions survive termination of this License:

### 7.1 Governing Law, Limitation on Actions.

This License shall be deemed to take place in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflicts of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. To the maximum extent permitted by applicable law, Company and AT&T agree that any cause of action arising out of or relating to the Platform or Company's use thereof must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred. This Section is not intended to and does not alter any provisions of Company's applicable wireless service agreement.

### 7.2 Contact Information.

In the event that Company's authorized user has a question, complaint or claim regarding Company's use of the Platform, please contact the Company corporate Telecom Manager for service support.



### 7.3 Severability.

If any provision of this License is held to be invalid or unenforceable with respect to a party, the remainder of this License, or the application of such provision to persons other than those to whom it is held invalid or unenforceable shall not be affected and each remaining provision of this License shall be valid and enforceable to the fullest extent permitted by law.

### 7.4 Waiver.

Except as provided herein, the failure to exercise a right or require performance of an obligation under this License shall not affect a party's ability to exercise such right or require such performance at any time thereafter nor shall the waiver of a breach constitute waiver of any subsequent breach.

### 7.5 Jurisdictional Issues, Export Control.

If Company chooses to access or use the Platform outside the United States, Puerto Rico, the U.S. Virgin Islands and Canada, Company does so on Company's own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Access to the Platform from jurisdictions in which the Platform, in whole or in part, is illegal or penalized is prohibited. Company may not use or otherwise export or re-export the Platform except as authorized by United States law. Company represents and warrants that Company is not (a) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, or (b) listed on any U.S. Government list of prohibited or restricted parties including the Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. Company also agrees that Company will not use the Platform for any purposes prohibited by United States law.

### 7.6 U.S. Government Restricted Rights.

The Platform was developed at private expense and is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS and in similar clauses in the NASA FAR Supplement, and their successors, and all other



Federal laws and regulations that protect Licensor rights in privately developed commercial software.

## 7.7 Performance or Benchmark Testing.

Company may not disclose the results of any benchmark test using the Platform to any third party without AT&T's prior written approval.

## 7.8 Modification or Amendment.

AT&T may modify or amend the terms of this License at any time, with or without notice to Company, by posting a copy of the modified or amended License available through the Platform login page. Company will be deemed to have agreed to any such modification or amendment by Company's continued use of the Platform following the date in which the modified or amended License is made available through the Platform.

## 7.9 Survival.

Any provisions of this License which by their express language or by their context are intended to survive the termination of this License shall survive such termination.

## 7.10 Third Party Beneficiaries.

Except as explicitly provided in this License or in the Related Agreements, nothing contained in this License is intended or shall be construed to confer upon any person (other than the parties hereto) any rights, benefits or remedies of any kind or character, or to create any obligations or liabilities of a party to any such person.

## 7.11 No Transfer by Company.

Company may not rent, lease, lend, sublicense, assign or transfer the Platform, this License or any of the rights granted hereunder. Any attempted transfer in contravention of this provision shall be null and void and of no force or effect. These obligations survive termination of this License. AT&T may assign this License without restriction.



## 7.12 Entire Agreement.

This License including the AT&T business agreement and documents incorporated herein by reference constitute the entire agreement with respect to the use of the Platform made available hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter.

### 16. Verizon Wireless Message Archiving Terms of Service

Any user signing for the TeleMessage Verizon Wireless Network Archiver is agreeing to the Verizon Wireless Message Archiving Terms of Service and the terms in the section below:

## VERIZON WIRELESS TERMS AND CONDITIONS FOR ACCESS TO ARCHIVED MESSAGES

### Customer Control of Opt-In/Opt-Out terms

#### 1. Definitions.

- 1.1 Archived Messages** means the Participating Employee's Messages available for retrieval by TeleMessage from VZW.
- 1.2 Archived Messages Service** means TeleMessage's service that provides Archived Messages to you.
- 1.3 Corporate Liable VZW MDNs** means a VZW Mobile Directory Number (MDN) that is established under your corporate account and corporate name for which you are financially responsible for the payment to VZW for VZW service.
- 1.4 Messages** means messages sent or received by the Participating Employee via the short message service (SMS) or the multimedia message service (MMS).
- 1.5 Participating Employee** means your employee who has opted into the Archived Messages Service via your Corporate Liable VZW MDN.

#### 2. Archived Messages Service.

- 2.1** You will only access, use, copy, store or disclose Archived Messages in accordance with these Terms and Conditions. Customer will not access, use, copy, store or disclose Archived Messages for any other purpose.
  - (a) TeleMessage.** You will enter into an agreement with TeleMessage Inc. ("**TeleMessage**") for the Archived Messages Service and you will pay all of TeleMessage's charges for such Archived Messages Service in accordance with such agreement.
  - (b) Corporate Liable VZW MDNs Only.** You will enroll only Corporate Liable VZW MDNs in the Archived Messages Service. You will not enroll any Employee Liable VZW MDNs in the Archived Messages Service. "**Employee Liable VZW MDN**" means a VZW MDN that is established in the



name of an individual employee of your company and such individual employee is financially responsible for the payment to VZW for VZW services.

- (c) **Notice and Consent.** Prior to enrolling any employee in the Archived Messages Service and accessing, using, storing, copying or disclosing any Participating Employee's Archived Messages, you will provide advance disclosure to each employee containing clear and conspicuous notice of how you and TeleMessage will access, use, copy, retain, protect or disclose such employee's Archived Messages, as well as the duration and purpose of such access, use, copying or retention. Prior to enrolling any employee in the Archived Messages Service, you will obtain the employee's consent to the archiving of the employee's Archived Messages, including a consent for a carrier to share the Archived Messages with you and TeleMessage and you will not access, use, store, copy or disclose any employee's Archived Messages until such consent has been obtained.
- (d) **Termination of Participating Employee.** TeleMessage You have stated that capturing Messages is a requirement of the Participating Employee's employment. You agree that upon the termination of a Participating Employee's employment the Participating Employee's Messages will no longer be retrieved by you.
- (e) **Periodic Reminders.** You will provide periodic reminders to each Participating Employee of its enrollment in the Archived Messages Service.
- (f) You acknowledge that VZW will make available to TeleMessage the Archived Messages for use in connection with the Archived Messages Service and VZW will have no further control or responsibility for the Archived Messages once they are provided to TeleMessage.
- (g) **Limitations and Restrictions.** You may access the Participating Employee's Archived Messages only with that Participating Employee's express knowledge and consent. You must maintain records of each employee's express, informed consent for you to collect such Participating Employee's Archived Messages.

**2.2 Customer Business Records.** You will maintain full, complete and accurate records related to your performance under these Terms and Conditions, and shall preserve such records for five (5) years from the date of preparation; provided, however, that you will retain, for at least five (5) years following the latest access to Archived Messages, records sufficient to demonstrate each employee's consent to access and use its Archived Messages. Such records shall be available for inspection and copying by VZW during your normal business hours, upon five (5) days' notice, but not more than once per quarter, unless otherwise required by applicable law, rule or regulation. If you refuse to comply with the obligations set forth in this Section or if VZW's review of such records reveals that you are in violation of any of these Terms and Conditions, then, in addition to its other remedies under these Terms and Conditions, your account agreement with VZW or at law or in equity, VZW may terminate your access to the Archived Messages.

**2.3 Compliance with Laws, Policies and Practices.** You will comply with all applicable laws, rules and regulations, including all applicable consumer protection, marketing, data security, export and privacy laws and Federal Trade Commission privacy initiatives. You are solely responsible for making any disclosures required by law, rule, regulation, or otherwise regarding the nature, accuracy, effectiveness, or limitations of the Archived Messages Service.

**2.4 Responsibility and Indemnification.**



2.4(a) **Responsibility.** You assume all responsibility and risk for the Notice and Consent of Participating Employees and the Periodic Reminders as set forth above.

2.4(b) **Indemnification.**

2.4(b)(1) You will defend, indemnify and hold harmless VZW, its Affiliates, and their respective directors, officers, employees, contractors, agents, shareholders, any successors and assigns and their respective heirs and legal representatives (collectively, the "VZW Indemnitees"), from and against any and all Claims and Losses, reasonable attorney's fees and defense costs arising out of, relating to or resulting from your acts or omissions or your failure to comply with the terms of Section 2.1. For any Claims that are the subject of your indemnification obligations herein, VZW will have sole control of the defense, unless VZW tenders such defense thereof to you, and will provide you with reasonable information throughout the course of such defense. (i) "Claims" means any third party claims, demands, actions, disputes, controversies or requests for equitable or injunctive relief by a Participating Employee that you have not complied with your notice and/or consent requirements and (ii) "Losses" means any damages or settlement amounts payable to a Participating Employee as a result of the final adjudication or settlement of a Claim, including, without limitation, judgments, arbitration awards, payments of interest, fines, assessments, penalties and deficiencies, and any other losses, obligations, liabilities, costs or expenses suffered or incurred as a result of a Claim.

2.5(b)(2) Your indemnification obligations are subject to the following: (a) You will cooperate reasonably with VZW in connection with any Claim; (b) You will not consent to the entry of any judgment or enter into any settlement of Claim without VZW's prior written consent, which will not be unreasonably withheld; and (c) You are obligated to VZW for its reasonable attorney's fees and expenses incurred in the enforcement of the indemnification hereunder.

**3. Billing and Payment.** The billing and payment terms set forth in your account agreement with VZW applies to all of the Archived Messages.