

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT AND CLASS ACTION AND JURY OR JURY TRIAL WAIVER CLAUSES IN SECTION 9 BELOW THAT IS APPLICABLE TO YOU AND US.**

## **Via Wireless Terms and Conditions and Agreement to Arbitrate Disputes and Judge or Jury Trial Waiver**

**Last Updated:** February 6, 2023

### **Summary of Changes Since Last Update (September 23, 2022 version):**

- Renamed document from “Terms and Conditions” to “Terms and Conditions and Agreement to Arbitrate Disputes and Judge and Jury or Trial Waiver”;
- Edited terms in the introduction to reflect governance of more specific policies;
- Updated terms in Usage Requirement, section 1.11, to reflect availability of data-only plans;
- Removed Use of Text and Multimedia Message allotment (former section 2.5);
- Edited terms in Device Options, section 3.1 to reflect ACP co-payment amounts and remove reference to Hearing Aid Compatible devices in Accessibility Policy;
- Edited terms in Software Updates, section 3.4, to reflect possible changes to your device and data;
- Edited terms in Billing and Payment, section 4.2, to clarify invoice availability and prepayment and removed references to postpaid plans;
- Removed reference to 911 calls in Wireless Coverage, section 5.3, to reflect availability of data-only plans;
- Removed Wireless Roaming, previous section 5.4;
- Edited terms in 911 and Other Emergency Services, section 5.7, to reflect availability of data-only plans;
- Removed Phone Numbers and Porting, previous section 5.9, to reflect availability of data-only plans;
- Edited terms in first paragraph of Acceptable Use Policy, section 6, to clarify the provision of service for lawful, personal and non-commercial use;
- Updated Termination, Suspension, Modification, and Limitations of Your Services, section 7, to reflect ACP benefits denial;
- Renamed section 9 from “Dispute Resolution and Arbitration” to “Agreement to Arbitrate and Class Action Waiver” and edited Section 9 to reflect jurisdictional issues, related claims, and describe the arbitration process;
- Added new section 9.3, “Waiver”;

- Updated section 9.3.1, “CLASS ACTION WAIVER” to adjust consent language;
- Added new section 9.3.1, “JUDGE OR JURY TRIAL WAIVER”;
- Removed terms relating to survivability of arbitration in section 9.4, “Small Claims”;
- Added terms relating to arbitration via teleconference and videoconference in section 9.5, “Governing Law, Venue and Jurisdiction, and Court Proceedings”;
- Added sections 9.7, 9.7.1, 9.7.2, and 9.7.3, “Miscellaneous,” “Severability,” “Survivability,” and “Modifications to this Arbitration Agreement,” respectively;
- Updated Consent to Receive Communications section 10.2, to reflect use of CPNI;
- Removed State Specific Provisions section (former section 12), edited terms in Order of Precedence, section 10.14, to reflect removal of former section 12; and
- Renumbering and stylistic changes throughout.

This Agreement governs the provision of the Services by Via Wireless (“Via Wireless,” the “Company,” “we,” “us,” or “our”) to you (“your,” “applicant,” “customer,” “subscriber,” “participant,” or “user”) and your use of the Services and Devices. As used in this Agreement, the term: (A) “Services” means voice telephony (“talk”), text messaging (“text”), broadband Internet access services (“data”), and any other services provided to you by Via Wireless, services and devices subject to Affordable Connectivity Program discounts, and prepaid wireless service; (B) “Device” means any phone, smartphone, tablet, accessory, or other device provided or sold to you by Via Wireless or that you activate or use with our Services; and (C) “Underlying Carrier” means the wireless provider whose facilities we use to provide you wireless Services. The complete Agreement between you and Via Wireless consists of:

- (1) these Terms and Conditions and Agreement to Arbitrate Disputes and Judge and Jury or Trial Waiver (“Terms and Conditions”);
- (2) any terms of service associated with your selected Service Plan;
- (3) any tariff we have filed with respect to any of the Services we provide you;
- (4) the Via Wireless Privacy Policy, available at [www.viawirelessllc.com](http://www.viawirelessllc.com);
- (5) the Via Wireless Broadband Transparency Policy, available at [www.viawirelessllc.com](http://www.viawirelessllc.com);
- (6) the Via Wireless Accessibility Policy, available at [www.viawirelessllc.com](http://www.viawirelessllc.com); and
- (7) any other policies or documents incorporated herein or therein by reference.

To the extent that any provision or clause in these Terms and Conditions conflicts with any provision or clause of our more specific policies or a specific service plan offer, the terms of those specific documents will govern.

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY** as they contain important information about your rights and obligations related to the Services and Devices we provide to you. These Terms and Conditions: (1) require the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions; (2) limit our liability and the remedies available to you in the event of a dispute; (3) permit us to terminate, suspend, modify, or limit your Services at any time, without prior notice, and for any reason, including your violation of these Terms and Conditions; and (4) reserve our right to modify these Terms and Conditions at

any time, in our sole discretion, and with limited notice requirements, with most modifications becoming binding on you once posted on the Via Wireless website, which you should check regularly for updates.

**THIS AGREEMENT BECOMES EFFECTIVE AND LEGALLY BINDING ON YOU WHEN YOU:**

(a) initiate, enroll in, or subscribe to the Services; (b) use or attempt to use the Services; (c) pay for the Services; (d) upgrade or modify the Services, (e) start any application, program, or software that states you are accepting this Agreement, or (f) accept the Services or Agreement through any written, oral, or electronic statement or signature. This Agreement continues until we or you terminate your Services. You must be 18 years or older to enter into this Agreement. When you accept these Terms of Service, you represent that you are at least 18 years of age and that you meet the eligibility standards for Via Wireless' Services. If you disagree with any of the terms or conditions stated herein or you are not 18 years of age, do not initiate Services with Via Wireless or contact Via Wireless Customer Service immediately to terminate your Services by calling toll-free at 1-877-356-1501. We may deny requests to subscribe to our Services for any lawful reason.

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### 1. AFFORDABLE CONNECTIVITY PROGRAM

#### 1.1. Program Description

The Affordable Connectivity Program (ACP) is a government assistance program administered by the Universal Service Administrative Company (USAC). The ACP program provides discounts on monthly communications services for eligible consumers, including voice calls, text messages, and broadband Internet access services. The ACP presently provides discounts of up to \$30 per eligible household on monthly broadband Internet access service (or up to \$75 per eligible household on Tribal lands). Eligible households can also receive a one-time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers if they contribute more than \$10 and less than \$50 toward the purchase price. Discounts are applied to the retail rates of Via Wireless' Service Plans (discussed in Section 2) for eligible Via Wireless subscribers.

#### 1.2. Application Process

To request enrollment in Via Wireless' ACP-supported services, you must complete an ACP service application. The application requires that you certify, under penalty of perjury, that you understand and agree to the laws, regulations, and other requirements for receiving ACP services. By submitting an application, you consent to Via Wireless or its representatives assisting you with applying for ACP services or doing so on your behalf and to the release necessary information (e.g., name, telephone number, address, and eligibility information) to process your application or for administration of ACP services to federal government entities, or USAC. Failure to consent will result in denial of ACP services.

This consent is ongoing while you are a Via Wireless ACP subscriber and survives any termination of this Agreement. Via Wireless addresses subscriber data use and subscriber privacy rights in detail in its Privacy Policy, available at [www.viawirelessllc.com](http://www.viawirelessllc.com). Via Wireless' Privacy Policy is incorporated into this Agreement by this reference.

### **1.3. Eligibility**

You must meet the applicable eligibility standards to be eligible for Via Wireless' ACP services. ACP eligibility standards are determined by federal law and regulations. These eligibility requirements include program-based eligibility or income-based eligibility. You must also be at least 18 years old (unless you are an emancipated minor) and must not be listed as a dependent on another person's tax return (unless over the age of 60).

Eligibility is determined when applicants enroll in eligibility databases, which may request documentation as evidence of an applicant's eligibility. Acceptable documentation is determined by USAC and third-party administrators and will be explained to you when such documentation is requested.

#### **1.3.1. ACP Program-Based Eligibility**

Via Wireless subscribers may qualify for ACP program-based eligibility if they participate in one or more of the following programs:

- a) Programs applicable to all subscribers:
  1. Lifeline Program
  2. Supplemental Nutrition Assistance Program (SNAP)
  3. Federal Public Housing Assistance (FPHA)
  4. Medicaid (not Medicare)
  5. Supplemental Security Income (SSI)
  6. Veterans and Survivors Pension Benefits
  7. Federal Pell Grant in the current award year
  8. Free and Reduced Price School Lunch Program or School Breakfast Program including at US Department of Agriculture Community Eligibility Provision schools
  9. Special Supplemental Nutritional Program for Women, Infants and Children (WIC)
  
- b) Additional programs applicable to subscribers residing on Tribal lands:
  1. Food Distribution Program on Indian Reservations (FDPIR)
  2. Bureau of Indian Affairs General Assistance (BIA)
  3. Tribally-Administered Temporary Assistance for Needy Families (TANF)
  4. Tribal Head Start (meeting income qualifying standards)

### **1.4. Income-Based Eligibility**

You may qualify for the ACP based on income (income-based eligibility) if your total gross income is at or below 200% of the Federal Poverty Guidelines. Please visit USAC's eligibility website for details. Federal regulations define "gross income" as all income actually received by

all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code.

### **1.5. One Per Household Rule**

Under federal law, only one ACP benefit is permitted per household, which may be applied to wireless or landline service. For purposes of the ACP program, a household is defined as any individual or group of individuals who live together at the same address and share income and expenses. Separate households that live at the same address are eligible, including, for example, residents of homeless shelters and nursing homes. A household is not permitted to receive ACP benefits from multiple providers, but the ACP benefit associated with your household may be transferred from another provider to Via Wireless, subject to certain restrictions.

### **1.6. Availability**

To receive ACP service through Via Wireless, an applicant's principal and permanent residential address must be within Via Wireless' service area. Applicants cannot apply for ACP service using a second home or business address. If you move to a new address, you must provide that new address to Via Wireless within 30 days of moving. Visit [www.viawirelessllc.com](http://www.viawirelessllc.com) to check whether you reside in Via Wireless' service area.

### **1.7. Annual Recertification**

ACP subscribers are required to recertify, on an annual basis (once per calendar year), that they continue to meet eligibility requirements and other qualifications to receive ACP services. Recertification is conducted or facilitated by USAC, but Via Wireless may send you text messages and other communications reminding you to complete your recertification. If a subscriber fails to complete the annual recertification by the deadline, Via Wireless will notify the subscriber that the subscriber will be de-enrolled from the ACP. If the subscriber fails to recertify by the deadline or no longer meets eligibility requirements or other qualifications, the subscriber will be de-enrolled from the ACP, and the phone number the subscriber was using may be assigned to another subscriber. To continue utilizing the Services, the subscriber may re-enroll in the Via Wireless ACP, if eligible, or choose from any of the then available prepaid plans under the applicable terms and conditions for that plan. Upon re-enrollment, the subscriber may be assigned a new phone number.

### **1.8. Ongoing Eligibility Verification**

You must notify Via Wireless within 30 days if for any reason you no longer satisfy the criteria for receiving ACP services, including if (1) you no longer meet the income-based or program-based eligibility criteria, or (2) you or a member of your household begins receiving another ACP benefit. Via Wireless may conduct checks to verify your continued eligibility for receiving

ACP service at any time. If we determine that you no longer satisfy the criteria, we will de-enroll you from Via Wireless' ACP service and deactivate your Services.

### **1.9. Non-Transferable and Non-Assignable**

Eligibility for Via Wireless' services is personal to you. Under federal law, you may not transfer to any third party any of your rights or benefits received under the Via Wireless Service, including, but not limited to, any voice, text, or data allotments you receive to use the Via Wireless Services. Similarly, you may not assign your rights or delegate any of your duties to any third party, including any individual that may be eligible to receive ACP service, without the prior written consent of Via Wireless, and any attempted assignment or delegation without such consent shall be void. Via Wireless may assign all or part of these terms or your debts to us without notice.

### **1.10. Service Activation**

Subscribers activate service by submitting the application form and completing the eligibility verification, enrollment and plan selection processes, as applicable or as otherwise described by Via Wireless at the time you enroll in the service.

### **1.11. Usage Requirement**

To maintain Via Wireless ACP service, FCC regulations require that, unless a subscriber has a regular billing and payment relationship with us, the subscriber must use the service every 30 days. Subscribers can "use" the Services by: (1) using data; (2) purchasing data from Via Wireless to add to the subscriber's service plan (if available); or (3) responding to direct contact from Via Wireless and confirming that the subscriber wants to continue receiving the ACP service. At or before 30 days of non-use, Via Wireless will provide subscribers with notice that failure to use the ACP services within a 15-day notice period will result in de-enrollment. Via Wireless may also send messages reminding a subscriber to use the service. If a subscriber does not respond to the notice or use the service before the end of the 15-day notice period, Via Wireless is required to and will de-enroll the subscriber from the ACP. At that time, the subscriber's Services will be deactivated.

### **1.12. Non-Payment**

Via Wireless may offer prepaid and postpaid wireless services. For postpaid services, Via Wireless may disconnect the subscriber's ACP-supported service after 90 consecutive days of non-payment. At or before 90 days of non-payment, Via Wireless may provide subscribers with notice that failure to pay will result in de-enrollment. Via Wireless may also send text messages reminding a subscriber to pay for their ACP-supported service. If payment is not made, the subscriber's Services will be deactivated, except that the subscriber still will be able to use the Device associated with the Services to contact 911 emergency services, provided it is charged



and able to connect to a wireless network. Please also see section 4 below, regarding Via Wireless' Charges and Payments terms.

### **1.13. Fraud and Violation of ACP Rules**

The ACP is a federal benefit, and any violation of ACP laws and regulations can result in fines, imprisonment, de-enrollment, or permanently being barred from the program. Willfully providing false or fraudulent information to obtain or continue to receive ACP benefits, violating the one-per-household limitation, or otherwise violating or failing to follow ACP requirements or limitations all constitute violations of federal ACP laws or regulations. Via Wireless may suspend or de-enroll you from receiving ACP-supported service, without notice, if we suspect or determine that you have engaged in fraud or violated any ACP laws or regulations.

### **1.14. ACP Termination or Concurrent Service**

The subscriber will be subject to Via Wireless' undiscounted rates and general Terms and Conditions if the ACP ends, if the subscriber transfers their benefit to another provider but continues to receive service from Via Wireless, or upon de-enrollment from the ACP.

If the Federal Communications Commission (FCC) terminates ACP funding (or if funding for the ACP is otherwise exhausted), Via Wireless will notify the subscriber. In that event, the subscriber will have the option of subscribing to Via Wireless' services at standard rates, as described in section 4 below; or terminating your services with Via Wireless entirely.

### **1.15. De-enrollment**

In addition to de-enrollment for any of the reasons described in these Terms and Conditions, you may request to be de-enrolled from ACP service for any reason and at any time by contacting Via Wireless Customer Service. De-enrollment requests (including name, wireless number, and identity related information) can be made by phone (calling toll-free at 1-877-356-1501), or electronically (via our website at [www.natwireless.com](http://www.natwireless.com) ). Upon receiving a request, you will be de-enrolled within two (2) business days. Upon de-enrollment from the ACP program, you will no longer receive free minutes, text messages, or data each month and will be required to re-qualify for ACP service if you choose to enroll in another Via Wireless ACP service plan. Additionally, a subscriber may be de-enrolled at the request of a federal government authority.

### **1.16. ACP Benefit Transfer**

You may transfer your ACP benefit from another ACP provider to Via Wireless or from Via Wireless to another ACP provider. Via Wireless complies with the FCC's rules regarding transferring ACP benefits. The effect of an ACP benefit transfer is that the subscriber's ACP

benefit will be applied to Via Wireless' ACP service and will no longer be applied to service from the subscriber's former ACP service provider. Subscribers transferring ACP benefits to Via Wireless may be subject to their former ACP provider's undiscounted rates as a result of the transfer if the subscriber elects to maintain service from that provider. ACP rules limit subscribers to one ACP benefit transfer transaction per service month, with limited exceptions for situations where a subscriber seeks to reverse an unauthorized benefit transfer or is unable to receive service from a specific provider.

### **1.17. FCC Consumer Complaint Center**

In addition to the resources outlined in section 11 of these Terms and Conditions, subscribers with complaints related to Via Wireless' ACP services may file a complaint via the FCC's Consumer Complaint Center. The FCC Consumer Complaint Center is available at: <https://consumercomplaints.fcc.gov/hc/en-us>.

## **2. SERVICE PLANS AND "TOP UP" PLANS**

### **2.1. Service Plans**

Except as otherwise described in this Agreement, you must be enrolled in a Service Plan to utilize our Services. Wireless Service Plan descriptions, including rates and associated talk, text, and data allotments (collectively, "Allotments"), are available on the Via Wireless website at [www.viawirelessllc.com](http://www.viawirelessllc.com). Service Plan availability, rates, and Allotments may vary by state and are subject to change at any time. You may not be eligible for certain Service Plans or rates. Service Plans that include allocations of voice minutes include caller ID, voicemail, call waiting, and 3-way calling. ACP discounts are automatically applied to the retail rate of the Service Plan you select, and you must pay any additional co-pay. Service Plans are non-refundable, cannot be transferred to any third party (including another Via Wireless account or customer), and may not be exchanged or resold. Notwithstanding the foregoing, Via Wireless may, from time to time, provide refunds in its sole discretion. New subscribers select a Service Plan upon enrollment and existing subscribers can contact Customer Service to change their Service Plan by calling toll-free at 1-877-356-1501. Service Plan changes are usually effective at the start of the next monthly service renewal date.

### **2.2. "Top up" Plans**

If available, Via Wireless subscribers may purchase "Top up" Plans to receive allotments talk, text, and data by calling Via Wireless Customer Services by dialing 1-877-356-1501. "Top up" Plans, including rates and associated talk, text, and data allotments, are available on the Via Wireless website at [www.viawirelessllc.com](http://www.viawirelessllc.com). "Top up" Plan availability, rates, and Allotments may vary by state and are subject to change at any time. "Top up" Plans are non-refundable, cannot be transferred to any third party (including another Via Wireless account or customer),

and may not be exchanged or resold. Notwithstanding the foregoing, Via Wireless may, from time to time, provide refunds in its sole discretion.

### **2.3. Talk, Text, and Data Allotments**

Talk, text, and data allotments have no cash value, are non-refundable, cannot be transferred to any third party (including another Via Wireless account or customer), and may not be exchanged, resold, redeemed, or substituted for cash, merchandise, or services. If you terminate your service, you will forfeit and are not entitled to a full or partial refund for any unused Allotments. Notwithstanding the foregoing, Via Wireless may, from time to time, provide refunds in its sole discretion. If you use your full talk, text, or data allotment before the start of a new monthly cycle, the Service associated that allotment will be suspended for the remainder of the monthly cycle, except that you will be able to continue contacting emergency services by dialing 911 and Via Wireless Customer Services by dialing 1-877-356-1501. Suspensions may occur while you are engaged in calls, text communications, or data usage, in which case, Via Wireless is not responsible for any costs, losses, or damages caused by such interruptions, including to reestablish communications. You may check your Allotment balances at any time free of charge by calling 1-877-356-1501. You are responsible for all usage of Allotments regardless of who uses or possesses your Device and regardless of whether the Device is used with your consent or knowledge. Unused Service Plan Allotments, including Top Up Allotments, expire on the last day of your monthly cycle and will not carry over to the next monthly cycle unless specifically provided for by the Service Plan.

### **2.4. Use of Voice Allotments**

All incoming and outgoing voice calls on your Device, regardless of whether the call is on the network of our Underlying Carrier or roaming, use talk minute allotments, including calls to toll-free numbers but excluding 911 emergency calls, Via Wireless Customer Service Calls to 1-877-356-1501 and other calls specified herein. Call time is measured in one-minute increments, with a minimum time per call of one (1) minute. Partial minutes of use are rounded up to the next full minute at the end of each call. Via Wireless does not allow free calls to other Via Wireless subscribers. Outgoing calls begin the moment you initiate a call and incoming calls begin the moment the signal connection from the caller is established with our facilities. Calls end after you or the other party terminates the call, but not until we receive a signal that the call has disconnected. Call length information displayed on your Device may not be accurate for calculating use of voice allotments. For simultaneous calls (incoming call waiting calls and 3-ways calls), talk minutes may be deducted for each call. Call time may include ring time, incomplete calls, unanswered calls, busy signal calls, voicemail deposit and retrieval time, and time to process call transfers. Calls that begin during one monthly cycle and end in another monthly cycle are generally deducted from talk allotments from the starting monthly cycle. No credit or refund is given for dropped calls.

## **2.5. Use of Data Allotments**

All data usage that occurs through your wireless Device (except for data usage that occurs when your Device is connected to Wi-Fi provided by a third party) will be deducted from your data allotment, including all active and passive usage, regardless of who initiates the usage, and whether or not the data transmissions are successful. All data usage is calculated in full-kilobyte increments and actual usage is rounded up to the next full-kilobyte increment at the end of each data session. Data usage may occur whenever your Device is connected to the network of our Underlying Carrier or roaming and transmitting data, including, but not limited to: (a) sending, receiving, or downloading any type of content, including emails, documents, files, pictures, MMS messages, and any other content, (b) accessing websites, (c) downloading and using applications, (d) streaming content, or (e) requesting software updates. Data usage may also occur from normal operation of software used by the network and/or your device, including (i) for access, transport, and routing of data on the network of our Underlying Carrier, (ii) from partial or interrupted downloads and resend requests caused by network errors or when you cancel or attempt to cancel a transmission, and (iii) from unsuccessful attempts to reach websites or use applications. Some applications, content, programs, and software that you download or that come pre-installed on your Device regularly send and receive data transmissions when your Device is powered on to function properly, without you affirmatively initiating transmissions. For example, applications that provide real-time information, location-based services, or synchronization with cloud services frequently or continually send and receive updated information so that it is available to you when you want to access it. In addition, any advertisements or advertiser-related messages or data delivered to your Device, even if delivered to an application, and any messages or content that are initiated in response to an advertisement, use data. Based on several factors (e.g., the specific application, network performance, etc.) data usage may vary widely, even for the same activity. Estimates of data usage (e.g., the size of downloadable files) will not necessarily be an accurate predictor of actual usage. To prevent unintended data usage, you should connect your device to third-party-provided Wi-Fi when available and supported by your Device or power off your Device when it is not in use.

## **3. WIRELESS DEVICES**

### **3.1. Device Options**

Upon enrolling in Via Wireless' service, you may be eligible to receive a free wireless Device from Via Wireless to use with the wireless Services, in which case, you can upgrade to higher grade device offered by Via Wireless for an additional cost, if available. ACP-supported devices are subject to a co-payment of between \$10-\$50. If you are not eligible for a free Device, Via Wireless will provide you with a free SIM that you can use with a wireless Device you purchase from us or with your own wireless Device. Device models offered by Via Wireless are selected at our sole discretion and comply with the FCC's requirements for devices. Your Via Wireless Device can only be used with our Services and cannot be activated by or used on the network of any other wireless service provider. Via Wireless' device unlocking policy is addressed in detail

in section 3.7 below. Via Wireless reserves the right to substitute or replace any Device provided by Via Wireless with another Via Wireless Device of comparable quality at any time. Devices provided by Via Wireless will be delivered to you in-person or to your home address. Via Wireless Devices may not be purchased in bulk or sold to third parties. If you provide your own Device, you are responsible for ensuring your Device is unlocked, compatible with and does not interfere with our Services or the network of our Underlying Carrier, and complies with all applicable laws, rules, regulations, and standards. Additionally, your Device cannot be reported as lost or stolen or associated with fraudulent activity. You are responsible for the maintenance of your Device and the purchase and maintenance of any additional hardware or software necessary to use your Device with our Services. Not all Services are available with all Devices, on all networks, or at all times, and we do not guarantee the availability of all Services on all Devices. Some functions and features referenced in the manufacturer's manual for your Device may not be available when using your Device with Via Wireless' Services, whether the Device is provided by Via Wireless or by you.

### **3.2. Returns and Refunds**

Devices purchased directly from Via Wireless may be returned for a full refund within 30 days of purchase with the original receipt. Devices must be returned in their original package and with all original components, including, but not limited to the: handset, box, charger, battery, battery cover, manuals, and accessories. All items must be undamaged and in like-new condition, including free from cracks, scratches, liquid damage, or any other damage and free from engravings or attachments that alter the original out of box appearance. Refunds will not be issued for Device returns that are missing components or damaged. Via Wireless also will issue a refund for defective Devices, as determined by us in our sole discretion, if returned within 30 days. Prior to returning a Device, erase all personal data and disable or remove all security features. Please contact Via Wireless at 1-877-356-1501 for instructions. Via Wireless is not responsible for lost or mishandled returns. If you ship a Device return, we recommend that you obtain a tracking number. Via Wireless does not exchange Devices. If an exchange is necessary, you must follow the instructions for returning the Device and purchase a new one. SIM cards are not eligible for returns and/or refunds.

Via Wireless does not manufacture any Devices or equipment you may use with the Services, including Devices we may provide or sell to you. We are not liable for any defects, acts, or omissions of the manufacturers. Your Device's manufacturer may provide you with a warranty directly or that we may pass through from the manufacturer to you. If your Device becomes defective after the standard 30-day return policy, you must contact the manufacturer for any warranty options.

### **3.3. Loss, Theft, Damage, or Destruction**

Upon accepting a Device from us, all risk of loss, theft, damage, or destruction of your Device or its accessories, whether provided by us or by you, is borne by you. Via Wireless is not responsible for, nor will we issue refunds for any lost, stolen, damaged, or destroyed phones or

accessories. In the event your Device is lost, stolen, damaged, or destroyed, you may purchase a replacement Device from Via Wireless at your own expense. If a Device provided by Via Wireless is lost, stolen, damaged, or destroyed while in transit to you and before delivery, we may replace the Device in our sole discretion. When you activate a replacement Device, we will apply any remaining Allotments associated with your monthly Service Plan. If your Device is lost or stolen, you are responsible for any usage of your Allotments or charges incurred using your Device until you report the loss or theft to us by contacting Via Wireless Customer Service at 1-877-356-1501. Upon receiving notice of a lost or stolen Device, Via Wireless will take immediate steps to suspend the Services. If you do not activate a replacement Device or fail to notify Via Wireless that you have found a lost or stolen Device within thirty days (30) days, we may cancel your subscription to Via Wireless Services and reassign the number associated with your account to another user. If your Services are canceled or if you choose to terminate your Services following the loss, theft, damage, or destruction of your Device, we will not prorate charges to the date of the cancellation or termination, and you will not receive a credit or refund for any unused Allotments. You agree to cooperate and act in good faith and in a reasonable manner in connection with any investigation of the loss or theft of your Device (e.g., by providing facts, sworn statements, or other information that would help the investigation). Except as otherwise provided herein, if your Device is lost, stolen, damaged, or destroyed, you remain responsible for complying with your other obligations under this Agreement including, but not limited to, payment of any charges.

### **3.4. Software Updates**

Via Wireless may, from time-to-time remotely check, update or change your Device's software, applications, or programming, including your Device's electronic SIM card, without notice, to address security, safety, or other issues that may impact your service, our Underlying Carrier's network, or your Device. These changes may result in the following: data use; modification of your Device; alteration or erasure of data stored on your Device; how you have programmed your Device; or how you are able to use your Device. Via Wireless is not responsible for lost data or functionality. While your Device is receiving a software update, whether by our action or yours, you may be unable to use your Device in any manner until the software update is complete, including to contact 911 or other emergency services.

### **3.5. Device Software, Content, and Applications**

Via Wireless may offer software, content, and applications, which you may choose to download from Via Wireless or third-party sources or that may come preinstalled on your Device. These may or may not be branded as Via Wireless software, content, and applications. These software, content, and applications are licensed, not sold, to you by Via Wireless and/or its licensors/suppliers for personal, lawful, non-commercial use solely in connection with your use of your Via Wireless Device with our Services. You may be subject to additional license terms between you and the third-party creator or owner of such software, content, and applications. You acknowledge Via Wireless or its licensors/suppliers are the intended third-party beneficiaries of these licenses. Your use of these software, content, and applications must

comply with their intended purposes, the license, this Agreement, and all applicable laws. You may only make such copies as is reasonably necessary for your personal non-commercial use. You may not (and you agree not to enable others to) otherwise copy, decompile, reverse engineer, disassemble, reproduce, attempt to derive the source code of, decrypt, modify, defeat, or circumvent protective and other digital rights management mechanisms, combine, or create derivative works of the software, content, and applications or any portion thereof. You may not rent, lease, lend, sell, redistribute, transfer, sublicense, broadcast, or cause public performance of the software, content, and applications or any portion thereof. You agree the software, content, and applications contain proprietary information owned by Via Wireless, its licensors/suppliers, or the creator/owner. Via Wireless and its licensors/suppliers reserve the right to update, modify, delete, suspend or terminate access to, or impose limits on the use or access of the software, content, and applications at any time, without notice. Without limitation, the warranty disclaimer, limitation of liability, and indemnification provisions found in this Agreement apply to these software, content, and applications.

### **3.6. Unauthorized Modifications**

Except as provided in section 3.7, you are not permitted to unlock, re-flash, tamper with, or otherwise alter the hardware or software on your Via Wireless Device for any purpose. Your Via Wireless Device may have a software programming lock that protects certain of the handset's operating parameters against unauthorized reprogramming.

### **3.7. Device Unlocking Policy**

Subject to certain limitations, Via Wireless complies with the CTIA Consumer Code regarding the ability of our current and former subscribers and individual owners to request that we unlock eligible Via Wireless Devices that are locked by or at the direction of Via Wireless. Specifically, Via Wireless adheres to the following principles:

1. **Disclosure.** Via Wireless has posted this clear, concise, and readily accessible policy regarding postpaid and prepaid mobile wireless Device unlocking on its website.
2. **Prepaid Unlocking Policy.** Via Wireless will, upon request, unlock prepaid Devices no later than one year after initial activation, for subscribers that are in full compliance with our Terms and Conditions.
3. **Unlocking Policy.** Via Wireless will, upon request, unlock Devices used to access Via Wireless' services no later than one year after initial activation, for subscribers that are in full compliance with our Terms and Conditions.
4. **Notice.** Via Wireless will clearly notify customers that their Devices are eligible for unlocking at the time when their Devices are eligible for unlocking or automatically unlock Devices remotely when Devices are eligible for unlocking, without additional fee. Via Wireless reserves the right to charge non-customers/non-former-customers with a reasonable fee for unlocking requests. Notice to prepaid customers may occur at point of sale, at the time of eligibility, or through a clear and concise statement of policy on the Via Wireless website.

5. **Response Time.** Via Wireless will, within two days of receiving an unlocking request, do one of the following: (i) unlock or provide information to facilitate the unlocking of an eligible phone; (ii) initiate a request to the original equipment manufacturer to unlock a Device; (iii) explain to the requesting customer why the phone is ineligible for unlocking; or (iv) offer a reasonable explanation as to why Via Wireless needs more time to process the unlocking request.
6. **Deployed Personnel Unlocking Policy.** For deployed military personnel who are in full compliance with the Via Wireless Terms and Conditions, we will unlock Devices upon receiving a valid copy of deployment papers.

“Unlocking” refers only to the disabling of software that prevents a Device from being used on another carrier’s network, even if that network is technologically compatible. It does not pertain to hardware changes and does not guarantee that a Via Wireless Device will be compatible with any particular carrier’s network or that all functionality of the Device can be enabled on any other network. Devices that work on the network of Via Wireless’ Underlying Carrier may not work with other carriers’ networks due to the use of different frequencies and technologies to provide wireless network access.

As a reseller of wireless service, Via Wireless’ unlocking policy may be subject to limitations imposed by its Underlying Carrier. Additionally, Via Wireless may deny a Device unlocking request if, in our sole discretion, we have a reasonable basis to believe that the request is an effort to defraud the company or its subscribers or that the Device is stolen.

## **4. CHARGES AND PAYMENTS**

### **4.1. Charges, Fees, and Taxes**

You are responsible for paying all one-time and recurring charges that result from your commercial relationship with Via Wireless and from the use of our Services, whether accrued by you or by another person using your Device or Services, including, but not limited to: (i) one time or recurring Service Plan charges; (ii) Top Up Plan charges; (iii) Device purchase, upgrade, and replacement charges; (iv) activation, reconnection, prepayment, and other administrative or customer service charges or fees; (v) returned and late payment charges or fees; (vi) roaming, network, and other surcharges; (vii) optional feature charges, such as operator and directory assistance, toll and collect calls, voicemail, and call forwarding, if applicable; and (viii) all required or applicable federal, state, and local taxes, surcharges, fees, and any other regulatory or governmental assessments, whether assessed directly upon you or upon Via Wireless and billed to you for cost recovery. We do not assess early termination fees. Taxes, fees, and surcharges may vary depending on the billing address associated with your account and may vary from month-to-month based on our or the government’s calculations. We may, but are not obligated to, provide notice of such variances. Advertised rates may not include federal, state, and local taxes, fees, surcharges, and other assessments. With the exception of taxes or other charges that are required by law, no additional surcharges are assessed on ACP-supported services and charges and fees associated with ACP-supported Services are all



inclusive and fully disclosed to ACP applicants and subscribers. All charges, fees, and taxes, once paid, are non-refundable.

#### **4.2. Billing and Payment**

You may access your monthly invoice by logging into your account at [www.viawirelessllc.com](http://www.viawirelessllc.com) or emailing us at [customerservice@viawirelessllc.com](mailto:customerservice@viawirelessllc.com). If your service plan is not fully covered by an ACP discount, you will receive your bill electronically on a monthly basis. You must prepay the balance due before receiving the allotment specified in your service plan. If you do not prepay, we may suspend your service.

You are responsible for reviewing your bills to ensure that all charges are accurate. Via Wireless bills will distinguish (a) charges collected and retained by the carrier, including charges for Service Plans, “Top up” Plans, and features, from (b) taxes, surcharges, fees, and any other regulatory or governmental assessments collected by us and remitted to federal, state, or local governments. Cost recovery fees and charges will not be labeled as taxes. You agree to pay for all prepaid charges immediately when billed and all postpaid charges on or before your payment due date or monthly expiration date using a credit or debit card or other valid payment method. You must promptly notify us of any change in your billing address or payment method.

*For prepayments:* If we attempt to charge your credit card or any other payment account for a charge and the credit card company or other financial institution withholds or declines such payment because there is an insufficient balance or the charge has been disputed (a “Chargeback”), we reserve the right to suspend or terminate your access to our service until the payment is processed or the Chargeback is reversed, or for ACP participants, we may de-enroll you from the ACP until payment is processed or the Chargeback is reversed.

**By providing payment information and accepting this agreement, you authorize us or our payment service provider to charge your payment method in advance for prepaid payments to ensure that payments are received by any due date. You may cancel the automatic renewal of your Service Plan at any time. We will not, except in our sole discretion, refund, prorate, or credit any charges, fees, or taxes, including if you modify or terminate your service before or have remaining Allotments at the end of your monthly cycle.** If you wish to dispute a charge, you must do so in accordance with the dispute resolution process described in Section 9.

#### **4.3. Creditworthiness**

Via Wireless does not condition the provision of Services on a subscriber’s credit rating, credit history, or other method of determining creditworthiness. Via Wireless does not provide subscriber payment history and other account billing and charge information to any credit reporting agency or industry clearinghouse. No deposits are held or required as a condition of receiving Services nor do we have any preset account spending limits.

#### **4.4. Promotions and Rewards**

Via Wireless may, from time to time, provide you with promotional credits, promotional offers, or loyalty rewards (collectively, “Promotions and Rewards”). Promotions or Awards cannot be applied to any device co-pay required under the ACP. Promotional credits are typically courtesy account credits due to service issues, device issues, or customer inconveniences. Promotional offers are typically plan, device, and pricing offers that are available for a limited time or when you meet certain conditions. Loyalty rewards are typically rewards for being a Via Wireless customer. Promotions and Rewards are offered at the sole discretion of Via Wireless. Promotions and Rewards can only be claimed and redeemed by accountholders and only will be associated with the account of the customer who was offered the Promotions and Rewards. Promotions and Rewards may not be sold or transferred to another Via Wireless account or to any other person. Promotions and Rewards have no fixed or cash value or equivalent, and may not be exchanged, transferred, resold, redeemed, or substituted for cash, merchandise, or services. If your Via Wireless Services are terminated for any reason, any Promotions and Rewards offered to you or associated with your account are forfeited. If you fail to make payments on your account or otherwise violate this Agreement, you may lose the ability to claim or redeem Promotions and Rewards. Promotions and Rewards are not your property and Via Wireless may, in its sole discretion, change, modify, discontinue, suspend, revoke, cancel, or terminate them at any time, with or without notice. Promotions and Rewards may not be available to all subscribers, in all locations, or combinable with other Promotions and Rewards. Promotions and Rewards may be subject to additional terms and conditions as described to you when offered to you.

#### **4.5. Third-Party Purchases**

Devices associated with your Services may be used to purchase content, information, applications, and other goods and services from third parties, including in-app purchases (collectively, “Third-Party Purchases”). You are responsible for all charges resulting from Third-Party Purchases and are presumed to have provided the consent and representations required for those purchases regardless of whether the purchases were made by you or someone using a Device associated with your account, including consent for the use and disclosure of your account information to provision and bill for the purchases, consent to use location information to deliver the purchases to the Device, and representations of age for the person using the Device when a purchase is made. If you cancel or attempt to cancel a download or purchase that is in progress, or if a download or purchase is otherwise interrupted through no action on your part, you may nevertheless be charged in accordance with the terms and conditions associated with the purchase. Via Wireless will not be liable for any such charges. If you believe your Services were used fraudulently to make purchases, you must notify us immediately and provide us with such documentation and information as we may request (including affidavits and police reports) as evidence of the fraudulent use. After you notify us, we will attempt to help you prevent the fraud by terminating existing Services if possible and practicable, but you will remain responsible for all charges. You agree to cooperate with us in any fraud

investigation and to use any fraud prevention measures we prescribe. Failure to provide reasonable cooperation may result in your liability for all fraudulent usage and charges. Via Wireless makes no representations or warranties (expressed or implied), to the fullest extent permitted by law, including for merchantability or fitness for a particular purpose, of Third-Party Purchases nor are we responsible for proper download, installation, functionality, or security of Third-Party Purchases.

## **5. SERVICE FEATURES, LIMITATIONS, AND NOTICES**

### **5.1. Account Access**

You can access your subscriber account information by contacting Via Wireless Customer Service and providing necessary authentication information. You will only be able to access Customer Proprietary Network Information (“CPNI”), as defined by the FCC, see 47 CFR § 64.2003, by providing a password associated with your account. If you are not able to provide a password, Via Wireless can only disclose your CPNI by sending it to your address of record or by calling you at your telephone number of record. We may, but are not obligated to, allow you to authorize other individuals to access your account. If you authorize another person to access your account or provide such person with your authentication information, those individuals may be permitted to make changes to your account. You authorize us to provide information about and make changes to your account, including changes to your Service Plan and features, upon the direction of any person able to provide your authentication information. Those changes will be binding on you and Via Wireless takes no responsibility for those changes. To protect the security of your CPNI, your password should be unique and complex. You should not provide your account authentication information, including your password, to third parties, and such information should be stored safely to prevent third-party access. If you believe your account authentication information was disclosed or accessed by an unauthorized person, we advise you to change the information immediately.

### **5.2. International Calling and Messaging**

Via Wireless’ talk and text allotments can only be used for domestic calls and text messages. At this time, international calls and text messages are not included with our Service Plans or “Top up” Plans.

### **5.3. Wireless Coverage**

The availability of Via Wireless’ Services is subject to the geographic coverage area of our Underlying Carrier and its roaming partners. Only domestic U.S. coverage is available; we do not offer international coverage. Coverage is not available everywhere in the domestic U.S., and you will not have access to our Services outside the coverage area. A coverage map reflecting the approximate geographic coverage area of our Underlying Carrier and its roaming partners can be accessed from our website, at [www.viawirelessllc.com](http://www.viawirelessllc.com). Areas without coverage are shown as gaps. Coverage maps are generated using generally accepted methodologies and

standards but are only approximations of actual coverage. There may be locations within the estimated coverage area where actual coverage is limited and you may experience interruptions or reductions in Service quality, including due to interference from buildings and other structures, terrain, and foliage. Additionally, actual coverage at any given time may vary by Service and be affected by factors beyond our control, as described in Section 5.4. Coverage maps and any statements by us, our agents, or dealers about coverage are only intended to provide high-level estimates of our coverage area when you are using our Services outdoors under optimal conditions and do not mean that service will be available under all circumstances, at all times, or without interruption. **Via Wireless does not guarantee or warrant the coverage of the network of our Underlying Carrier or its roaming partners.** Coverage maps may be updated periodically and without notice to reflect the current operations of our Underlying Carrier and its roaming partners.

#### **5.4. Service Availability and Quality**

In addition to factors that affect coverage, Service availability and quality may be subject to “Service Limitations,” which may depend on whether you are using wireless or landline Services. These include interruptions, delays, or reductions, due to a variety of factors, including, but not limited to: weather and atmospheric conditions; obstructions; electromagnetic interference; use of the Services inside a building or moving vehicle; your geographic location relative to our coverage area; your proximity to wireless cell sites; the capacity of a cell site; the number of other customers connected to the same cell site; other network capacity limitations and congestion; the capabilities and compatibility of your device; network outages or issues on the network of our Underlying Carrier or interconnecting carriers; and priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency. Additional factors that may affect our Services are described in our Broadband Transparency Policy, available at [www.viawirelessllc.com](http://www.viawirelessllc.com). Once identified, Via Wireless takes reasonable steps to attempt to remedy Service Limitations that are within its control. Service Limitations may also occur as a result of network maintenance, including equipment modifications, upgrades, relocations, repairs, or similar activities necessary or proper for network operation or improvement imposed by Via Wireless, its Underlying Carrier, or interconnecting carriers. Via Wireless will use reasonable efforts to notify you prior to the performance of such maintenance and will attempt to schedule its maintenance during non-peak hours. Service Limitations may result in dropped or blocked calls, inability to make or receive calls, inability to send or receive text messages, or inability to access the Internet and other data services. You acknowledge that the Services are provided through the nationwide wireless network of the underlying carrier of our choosing and may be subject to the service availability and quality of our Underlying Carrier. **We do not guarantee or warrant the availability or quality of the Services at any given time or geographic location, we are not liable for Service Limitations, and you are not guaranteed compensation or reimbursement for Service Limitations.** Notwithstanding the foregoing, if your Services experience Service Limitations for 24 or more continuous hours by a cause within our control, and you notify Via Wireless at 1-877-356-1501 within seven (7) days of the Service Issue, we may, in our sole discretion and on a case-by-case basis, issue you a credit.

## 5.5. Service Security and Optimization

Via Wireless or our Underlying Carrier may, but are not obligated to, take any action we deem necessary to: (1) address security threats and otherwise protect the networks, Services, systems, and equipment from harm or degradation; (2) optimize, improve, or manage the networks, Services, systems, and equipment; (3) preserve and protect their rights and interests and those of their subscribers and third parties; and (4) otherwise ensure the activities of some users do not impair the ability of Via Wireless or our Underlying Carrier to provide their subscribers with access to reliable Services provided at reasonable costs. Such actions may include, but are not limited to:

- a) discontinuing, blocking, or terminating certain categories of Services;
- b) restricting, reducing, or limiting the amount of usage of the Services;
- c) limiting data throughput speeds or quantities;
- d) reducing the size of data transfers;
- e) limiting, disabling, or preventing access to particular features;
- f) blocking, limiting, or disconnecting access to individual phone numbers or certain categories of phone numbers (e.g., 976, 900), countries, destinations, or providers;
- g) limiting the provision of Services at certain times or in certain areas, including due to changes in coverage of our Underlying Carrier or changes in roaming agreements;
- h) filtering or blocking certain calls, texts, and data transmissions sent through the network, including spam, unlawful and unwanted telemarketing calls and messages, and malware (we do not guarantee that you will not receive and we are not liable for such calls, text, or transmissions; if you are receiving unwanted telemarketing messages, contact the source and unsubscribe or remove your mobile phone number from the service);
- i) blocking calls to you at your request or to other called parties at their request;
- j) blocking or otherwise preventing access to third party services or other premium services, features, or content that would generate additional fees or charges billed to Via Wireless, either directly or through your account as a result of your use of or access to the service, feature, or content;
- k) blocking hacking and other attempts for unauthorized access; and
- l) blocking or terminating usage that is indicative of uses prohibited by the Acceptable Use Policy (Section 6), including uses that result in abnormally long calls, high costs, or high usage.

Some of these actions may interrupt or prevent legitimate communications and usage, including by resulting in dropped or blocked calls, inability to make or receive calls, inability to send or receive text messages, or inability to access the Internet and other data services. For additional information about our network security practices for our data Service, please review our Broadband Transparency Policy at [www.viawirelessllc.com](http://www.viawirelessllc.com).

## 5.6. Wireless Device Location Information

Your wireless Device may be location enabled, which means the location of your Device can be determined by using Global Positioning Satellite (“GPS”), wireless network location information, or other location technology when your device is turned on. Your location information may be used by us, our Underlying Carrier, or third-party services, as described in our Privacy Policy, available at [www.viawirelessllc.com](http://www.viawirelessllc.com). Additionally, your location information may be used by 911 and other emergency services, as described in Section 5.7. Your location information may be unavailable if your Device is unable to acquire satellite signals and network coverage, which may prevent you, us, and other services from accessing your location. Satellite signals and network coverage may be unavailable due to a variety of factors beyond our control, as described in Sections 5.3 and 5.4. We do not warrant or guarantee that location-based services will be available at any specific time or geographic location. You may be able to configure the settings on your Device or in third-party services to restrict or disable the sharing of your location information. It is your responsibility to notify individuals who may use your Device that it may be location enabled.

## 5.7. 911 and Other Emergency Services

**Your data-only plan does not allow you to contact 911 or other emergency services. Please use a non-data-only line or a landline phone to contact 911 or other emergency services. Via Wireless does not guarantee that your location information will be transmitted to emergency dispatchers or that any location information that is transmitted will be accurate. Nor does Via Wireless guarantee that you will be able to contact emergency services in areas where there is limited or no wireless coverage.**

## 5.8. Third-Party Content and Applications

Devices may be used to access and disseminate third-party content and applications through the Services. Some content and applications may: (i) harm your Device or its software; (ii) infringe on the rights of others; (iii) be unreliable, inaccurate, or incomplete; (iv) be offensive, indecent, or objectionable; or (v) be unsuitable for minors. When you access, download, install, or use third-party content and applications, you may voluntarily or involuntarily provide information to third-party content and applications providers. You are solely responsible for evaluating the third-party content and applications accessed while using the Device and Services. By allowing a minor to use the Device and Services, you are consenting to the minor being able to access any third-party content and applications available through the Services and provide information to the third-party content and application providers; we strongly recommend that you monitor the third-party content and applications accessed by minors using the Device and Services. Via Wireless does not control and is not responsible for the third-party content and applications accessed or disseminated using the Device or Services. We may, but do not have the obligation to, monitor, review, and restrict or refuse to transmit certain third-party content and applications. **Via Wireless is not a publisher of third-party content and applications.** When you access, download, install, or use third-party content and applications,

you are subject to the terms and conditions and privacy policies of those third-party content and applications. You may review our Privacy Policy, at [www.viawirelessllc.com](http://www.viawirelessllc.com) to learn how you may provide information to third-party content and applications. For assistance with third-party content and applications, contact the third-party developers or owners directly.

## 6. ACCEPTABLE USE POLICY

You are only permitted to use Via Wireless' Devices and Services for lawful, personal, and non-commercial uses. Subject to those limitations, voice and text service is solely for live dialogue between, and initiated by, individuals. Data services are provided only for lawful, personal and non-commercial uses initiated by you, including web surfing, sending and receiving email, using messaging services for live dialogue between and initiated by individuals, sharing photographs, and the non-continuous streaming of videos, downloading files, participation in online gaming, and use of applications.

Prohibited uses included those that are unlawful, harmful, or otherwise impact our ability or the ability of our Underlying Carrier to provide the Services to our or its subscribers. You are responsible for all activity through your Device and Services, including any conduct by others, and are liable to Via Wireless for any prohibited uses or damages resulting from prohibited activities or uses that occur using your Device or Services. Prohibited uses include, but are not limited to:

- a) **Infringement:** Infringing or otherwise violating any intellectual property rights or other proprietary rights including, without limitation, material protected by copyright, trademark, patent, trade secret, or other intellectual property right, which may result from the unauthorized copying, distribution, posting, editing, or modifying of pictures, logos, software, articles, musical works, and videos.
- b) **Unlawful, Offensive, and Harmful Conduct or Content:** Engaging in conduct or dissemination of content that is unlawful, libelous, slanderous, defamatory, obscene, indecent, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory, inciting unlawful or violent acts, or otherwise objectionable. Without limiting the foregoing, you may not access or use our Devices or Services in any manner for the transmission or dissemination of images containing child pornography. We reserve the right to remove or delete any content you have disseminated using our Services that, in our sole discretion, have determined violates this Agreement or is otherwise objectionable.
- c) **Fraudulent Conduct:** Engaging in any fraudulent activity, including, but not limited to: (1) conducting fraudulent business operations and practices; (2) offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, chain letters, and pyramid schemes); and (3) individual or business representation as an authorized third-party affiliation or agent for a business entity without the business' prior consent.
- d) **Falsification/Impersonation:** Using the Device or Services to impersonate any person or entity; falsely state, mask, or otherwise misrepresent yourself or your affiliation with

any person or entity; or create a false identity for the purpose of misleading others. Without limiting the foregoing, you may not use invalid or forged headers, invalid or non-existent domain names, false date or time stamps, false originating e-mail addresses or other identifiers, or other means of deceptive addressing.

- e) **Commercial, Unsolicited, and Spam Communications:** Using the Services to distribute, publish, send, or engage in: (i) commercial, marketing, advertising, or promotional communications or solicitations to any person without the person's consent; (ii) spam, chain mail, bulk messages, automatically generated messages, numerous copies of the same or substantially similar messages, empty messages, or messages that contain no substantive content; and (iii) telemarketing, autodialed, or prerecorded communications. This includes using our mail servers or another site's mail server to relay messages without the express permission of the account holder or the site.
- f) **Violation of Third-Party Policies:** Violating the rules, regulations, or policies that apply to any third-party network, server, computer database, website, or application you access.
- g) **Excessive Utilization of the Services:** Engaging in excessive use of the Services relative to typical usage by other Via Wireless customers on similar service plans, including making or receiving an abnormally high number of calls, sending or receiving an unusually high number of messages, repeatedly placing calls of unusually long duration, or consuming a disproportionate amount of available network resources, including data. Such activities suggest the Services are being used other than for personal, non-commercial use in violation of this Agreement and may impair or degrade use of the Services by other customers.
- h) **Uses Causing Excessive Utilization of Services:** Continuous, unattended, or excessive streaming, downloading, or uploading of videos, music, or other files; using applications that automatically consume disproportionate amounts of network resources, are designed for unattended use, operate as automatic data feeds, constitute automated machine-to-machine connections, or are used in a way that degrades network capacity or functionality; using the Services in connection with server devices or to operate a hosting service; using the Services as the functional equivalent of a private or dedicated access line or an access point for intra-company private branch exchange services; maintaining open lines of communication for extended periods of time (e.g., baby monitoring or other monitoring services); and placing or receiving an abnormally high number of calls or repeatedly placing or receiving calls which result in abnormally long call lengths or high costs, including operating a dispatch service, excessive use of multi-party calling features or separate calls that are not bridged together, and excessive use of single party or multi-party chat line services.
- i) **Traffic Pumping/Access Stimulation:** Using the network for any and all activities that are designed to generate traffic to increase the intercarrier compensation billed to Via Wireless, including to dial telephone numbers associated with free conference calls, free chat lines, or similar services that are used for traffic pumping/access stimulation.
- j) **Unauthorized Information Collection:** Using our Services for unauthorized information collection, including, but not limited to: phishing, spidering, harvesting, or any other unauthorized collection of e-mail addresses, screen names, or other identifiers of



others, using software (including “spyware”) designed to facilitate such activity; or conducting commercial research or commercial data collection, including collecting responses from unsolicited messages.

- k) **Malicious Software:** Distributing, publishing, or posting content that is malicious software (i.e., malware) into the network or through the Services, including, without limitation, viruses, Trojan horses, worms, time bombs, zombies, cancelbots, or any other computer programming routines that may damage, interfere with, secretly intercept or seize any system, program, data, or personal information.
- l) **Hacking:** Without the express prior authorization of the owner of any data, systems, or networks, accessing or using such data, systems, or networks, including attempting to gain unauthorized access to, alter, or destroy any information that relates to any Via Wireless subscriber or other end-user and attempting to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures.
- m) **Interception:** Monitoring data or traffic on any system or network without the express prior authorization of the owner of the system or network.
- n) **Intentional Interference:** Interfering with service to any user, host, or network including, without limitation, denial-of-service attacks, mail bombing, news bombing, other flooding techniques, deliberate attempts to overload a system, and broadcast attacks.
- o) **Device Modifications:** Unlocking, re-flashing, rooting, tampering with, altering, or otherwise modifying your Via Wireless Device or its software without authorization.
- p) **SIM Card Modifications:** If your Device has a SIM card, without authorization, removing the SIM card, placing the SIM card in another Device, or altering, bypassing, copying, deactivating, reverse-engineering, or otherwise circumventing or reproducing the stored encoded information stored or the encryption mechanisms of the SIM card.
- q) **Signal Enhancements:** Installing, deploying, or using any regeneration equipment or similar mechanism (e.g., a repeater or signal booster) to originate, amplify, enhance, retransmit, or regenerate a transmitted radiofrequency signal, unless authorized by Via Wireless.
- r) **Tethering:** Tethering your Device to another device, computer, modem, or other equipment for the purpose of using the data Service, except as required by federal or state law or regulation, or as expressly described to you in writing or the terms of your service plan.
- s) **Miscellaneous:** Reselling or leasing the Services; using the Service for commercial activities; using the Services for pager or voicemail retrieval service; engaging in any other conduct that could or does harm or adversely affect our other subscribers, employees, business, reputation, network, property, Services, operations, or any other person; or assisting, facilitating, or allowing anyone else to do or attempt to do any of the above activities.

This Acceptable Use Policy, including the prohibited uses, applies to all Via Wireless Service Plans, including plans with unlimited talk, text, and data Allotments. If you use unlimited Allotments for anything other than personal, non-commercial use or engaging in any other unauthorized, excessive, or abusive use, including uses prohibited by this Acceptable Use Policy,

we may, at our sole discretion, terminate, suspend, modify, or limit your Services, as discussed in Section 7.

You are responsible for all fraudulent use of your Device and the Services. In the event you discover or reasonably believe your Device or the Services are being used for fraudulent activities, you must immediately notify Via Wireless at 1-877-356-1501. In the event Via Wireless discovers or reasonably believes your Device or the Services are being used for fraudulent activities, Via Wireless may take action to prevent such fraudulent activities from taking place, including the termination, suspension, modification, or limitation of your Services, as discussed in Section 7.

Always use your Device in a safe manner that does not create a risk to your safety or the safety of others around you. While driving, use a hands-free mechanism for your wireless device and do not use your wireless Device to send text messages.

You agree that a violation of this Acceptable Use Policy harms Via Wireless, which cannot be fully redressed by money damages, and that we shall be entitled to immediate injunctive relief in addition to all other remedies available without the requirement to post a bond. If you want to report any violations of this Acceptable Use Policy, please email us at [customerservice@viawirelessllc.com](mailto:customerservice@viawirelessllc.com).

## **7. TERMINATION, SUSPENSION, MODIFICATION, AND LIMITATIONS OF YOUR SERVICES**

Either party may terminate the Services, which will terminate this Agreement, at any time on advance notice to the other party with or without cause. Under FCC rules, Via Wireless must terminate your service, upon notice to you, if we have a reasonable belief that you no longer qualify for ACP, if you fail to timely recertify, or if you fail to use your device for thirty (30) consecutive days, as described in section 1.14. Additionally, Via Wireless may, at any time, with or without prior notice, and at our sole discretion, terminate, suspend, modify, or limit your Services if:

- (a) we know or suspect you or someone using your Device or Services violated or attempted to violate this Agreement, including the Acceptable Use Policy in Section 6, or any other Via Wireless policies or terms and conditions, including the terms and conditions of your Service Plan;
- (b) we know or suspect you used or attempted to use false or fraudulent means to obtain our Services, including ACP services;
- (c) we know or suspect you violated or attempted to violate any applicable laws or regulations, including ACP laws or regulations;
- (d) we know or suspect that you have committed a criminal or harmful act against Via Wireless or any of our employees or agents;
- (e) we know or suspect you are using our Services for fraudulent purposes;
- (f) we know or suspect you have engaged in improper, illegal, or unauthorized use of your Via Wireless Device;

- (g) reimbursement of your ACP benefits has been denied for reasons related to your eligibility;
- (h) your payment is returned unpaid, you fail to make all required payments when due, any payment is past due, or we reasonably believe there has been fraudulent payment activity in connection with your Services;
- (i) you provide inaccurate or misleading credit information, your credit has deteriorated, you become insolvent or bankrupt, or we otherwise believe that there is a risk of non-payment;
- (j) your actions expose Via Wireless to sanctions, prosecution, civil action, or other liability;
- (k) your actions cause harm or interfere with the integrity, security, or normal operations of our network or that of our Underlying Carrier;
- (l) your actions interfere with another subscriber's ability to use the Services;
- (m) your actions otherwise present an imminent risk of harm to Via Wireless or its subscribers.
- (n) we discover you are under 18 years old and therefore incapable of contracting for goods and services or ineligible to receive ACP services;
- (o) you threaten, harass, abuse, offend, or use vulgar, derogatory, or inappropriate language toward our employees, agents, or any person whom you contact using our Services or your Device;
- (p) we are ordered to do so by any federal or state government entity with authority to do so;
- (q) a condition immediately dangerous or hazardous to life, physical safety, or property exists;
- (r) we cease to provide Services in your area; or
- (s) for any other operational or governmental reason.

We may terminate or suspend talk, text, and data Services individually or collectively. Upon termination, any unused Allotments will expire, and you will not receive a refund. Additionally, upon termination, Via Wireless may reassign the phone number you were using to another subscriber without notice. Limitations of your Services may include any method discussed in Section 5.5. We may modify your Services by changing your Service Plan or features. We are not liable for any harms that may result from termination, suspension, modification, and limitations of your Services and you will not receive a refund or credit from Via Wireless for any unused or unusable talk, text, and data allotments as a result of such termination, suspension, modifications, and limitations.

You can request that we terminate your Services by contacting Customer Service by calling toll-free at 1-877-356-1501.

## 8. WARRANTIES, LIABILITIES, AND INDEMNIFICATION

### 8.1. Warranty Disclaimer

Via Wireless makes no representations or warranties, express or implied, including without limitation, any implied warranty of merchantability, suitability, non-infringement, or fitness for a particular purpose, or performance to you or any other person or entity in connection with, arising out of, or relating to the Services or Devices, to the fullest extent permitted by law. We do not authorize anyone to make warranties on our behalf. We do not guarantee uninterrupted or error-free Services, wireless coverage, or particular service speeds or quality of service. We also do not guarantee that your communications will be private or secure; it is illegal for unauthorized people to intercept your communications, but such interceptions can occur. You should implement appropriate safeguards to secure your Device and any other equipment you may use with the Services. We do not manufacture any Devices or equipment that are used with our Services and are not responsible for any defects, acts, or omissions of the manufacturers, including any warranty, patent, or licensing obligations. Notwithstanding the foregoing, the manufacturer of your Device may provide you with a warranty.

### 8.2. Limitation of Liabilities

To the fullest extent permitted by law, you agree that Via Wireless and all parents, subsidiaries, affiliates and their past, present, and future officers, directors, employees, agents, representatives, partners, licensors, successors, and assigns shall not be liable, whether or not due to our or their negligence, for any:

- a) act, omission, or error by you or a third party, including third-party service providers or vendors;
- b) charges for any products or services provided by third parties and accessed through or for use with our Services;
- c) claims against you by third parties;
- d) mistake, omission, interruption, outage, error, failure, delay, defect, or limitation in the provision of Services;
- e) deficiencies or problems with a Device or network coverage (e.g., dropped, blocked, interrupted Services, etc.);
- f) damage, injury, or loss caused by or arising out of your use of the Services, including traffic or other accidents and health-related risks or issues, or our suspension or termination of the Services;
- g) damage, injury, or loss caused by any interruption, failure, or delay in accessing or attempting to access emergency services from a Device or using the Services, including 911 services;
- h) interrupted, failed, or inaccurate location services;
- i) quality, appropriateness, accuracy, or suitability of any content, information, or applications you may access while using the Service;

- j) information or communications that are blocked by a spam filter or that we otherwise restrict or block consistent with this Agreement;
- k) damage, harm, or loss that may result from your communications being intercepted;
- l) unauthorized access to your account caused by your actions or that circumvent our reasonable security measures;
- m) unauthorized access to your Device;
- n) changes in operation, equipment, or technology that cause your Device or software to be rendered obsolete or require modification;
- o) damage to or loss of any information or data stored on your Device or any other equipment you use with the Services (including when we service your Device);
- p) loss or disclosure of sensitive information you transmit when using the Services (including any damage, loss, harm, or disclosure that results from malware);
- q) default, delay, damage, or harm due to factors beyond our control (i.e., force majeure events, as described in Section 10.7; or
- r) unauthorized or disputed charges for Via Wireless services that appeared more than 15 days earlier on your online account statement and which you did not properly dispute within 15 days after the charge was posted to your account (no fiduciary or other special relationship exists between you and Via Wireless by virtue of this Agreement or your use of Via Wireless Devices and Services.

To the fullest extent permitted law, Via Wireless shall not be liable for any indirect, special, punitive, incidental, exemplary, or consequential losses or damages you or any third party may suffer by use of or inability to use your Device or the Services, including loss of business or goodwill, loss of revenue or profits, property damage, costs for replacing products and services, or claims of personal injuries. To the fullest extent permitted by law, our liability for monetary damages for any claims you may have against us shall not exceed the total amount of charges paid for the applicable products or services. **The above limitations of liability will apply regardless of the theory of liability, including fraud, misrepresentation, breach of contract, personal injury, negligence, or product liability.**

### **8.3. Indemnification**

To the fullest extent permitted by law, you agree to defend, release, indemnify, and hold harmless Via Wireless and parents, subsidiaries, affiliates and their past, present, and future officers, directors, employees, agents, representatives, partners, licensors, successors, and assigns from and against any and all losses, claims, liabilities, injuries, costs, penalties, damages, settlements, and expenses (including taxes, fees, fines, penalties, interest, expenses, and attorneys' fees) arising out of or relating to, directly or indirectly, your or any other person's use of a Device or the Services, whether based in contract or tort (including strict liability) and regardless of the form of action; your acts or omissions, including your breach or violation of this Agreement, other Via Wireless policies, or any applicable statutes, ordinances, laws or regulations of any federal, state, or local authority; and claims arising in whole or in part from the alleged negligence of Via Wireless. If we reasonably determine that a claim might adversely affect Via Wireless, you will use counsel reasonably satisfactory to us to defend each claim, you

will not consent to the entry of a judgment or settle a claim without our prior written consent, and we may take control of the defense at our expense (and without limiting your indemnification obligations). This obligation shall survive termination of your Services with Via Wireless.

## **9. AGREEMENT TO ARBITRATE AND CLASS ACTION WAIVER**

**PLEASE READ THIS ARBITRATION AGREEMENT (“ARBITRATION AGREEMENT”) CAREFULLY. IT REQUIRES YOU TO ARBITRATE DISPUTES WITH US AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US AND INCLUDES A WAIVER OF CLASS ACTION AND JURY TRIAL.**

Most subscriber concerns can be resolved quickly and to the subscriber’s satisfaction by contacting Via Wireless Customer Support by calling toll-free at 1-877-356-1501. You and we agree to discuss any concerns or disputes and attempt in good faith to reach a mutually beneficial outcome that avoids the expenses of arbitration or, where applicable, litigation (hereinafter, “**Informal Dispute Resolution Process**”). The statute of limitations and any filing fee deadlines shall be tolled while you and we engage in the Informal Dispute Resolution Process required by this Section. In the unlikely event that the Customer Support is unable to resolve a complaint you may have to your satisfaction (or if Via Wireless has not been able to resolve a Dispute it has with you after attempting to do so informally) within thirty days after initiation of this Informal Dispute Resolution Process, **those Disputes will be resolved through binding arbitration or small claims court as described in this Section.**

Most subscriber concerns can be resolved quickly and to the subscriber’s satisfaction by contacting Via Wireless Customer Support by calling toll-free at 1-877-356-1501. In the unlikely event that the Customer Support is unable to resolve a complaint you may have to your satisfaction (or if Via Wireless has not been able to resolve a Dispute it has with you after attempting to do so informally), **those Disputes will be resolved through binding arbitration or small claims court as described in this section.**

### **9.1. Arbitration agreement**

**WE (YOU AND VIA WIRELESS) EACH AGREE THAT ANY AND ALL CLAIMS OR DISPUTES ARISING OUT OF OR IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, THE RELATIONSHIP BETWEEN US, OR OUR SERVICES, DEVICES OR PRODUCTS WILL BE RESOLVED BY BINDING ARBITRATION OR IN SMALL CLAIMS COURT (DESCRIBED IN SECTION 9.4), INCLUDING BUT NOT LIMITED TO, ANY BILLING DISPUTES AND ANY THRESHOLD QUESTIONS OF THE ARBITRABILITY OF SUCH DISPUTE OR CLAIM EXCEPT THAT YOU OR WE MAY SEEK INJUNCTIVE OR EQUITABLE RELIEF IN A COURT OF PROPER JURISDICTION IF THE CLAIM RELATES TO INTELLECTUAL PROPERTY INFRINGEMENT OR OTHER MISUSE OF INTELLECTUAL PROPERTY RIGHTS.**

If the arbitration provision applies or you choose arbitration to resolve your disputes, then either you or Via Wireless may start arbitration proceedings. You must send a letter requesting arbitration and describing your claim to Via Wireless' registered agent (see Section 9.6) to begin arbitration. The American Arbitration Association (AAA) will arbitrate all disputes. For claims of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for claims over \$75,000, the AAA's Commercial Arbitration Rules will apply. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Upon filing of the arbitration demand, if the arbitrator finds that you cannot afford to pay AAA filing, administrative, hearing, and/or other fees and cannot obtain a waiver from AAA, we will pay them for you if you complied with the Informal Dispute Resolution Process set forth above. In addition, we will reimburse all such AAA filing, administrative, hearing, and/or other fees for claims totaling less than \$75,000 unless the arbitrator determines the claims are frivolous or you did not comply with the Informal Dispute Resolution process set forth above, except that if you have initiated the arbitration claim, you will still be required to pay the lesser of \$250 or the maximum amount permitted under the AAA Rules for arbitration claims initiated by you. You are still responsible for all additional costs that you incur in the arbitration, including without limitation, fees for attorneys or expert witnesses. For claims that total more than \$75,000, the payment of filing, administration and arbitrator fees will be governed by the AAA Commercial Arbitration Rules.

The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement and (b) resolve any dispute related to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and us. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and these Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. In addition, for claims under \$75,000 as to which you followed the Informal Dispute Resolution Process before initiating arbitration, if the arbitrator finds that you are the prevailing party in the arbitration, you will be entitled to a recovery of reasonable attorneys' fees and costs. Except for claims determined to be frivolous, Via Wireless agrees not to seek an award of attorneys' fees in arbitration even if an award is otherwise available under applicable law. The award of the arbitrator is final and binding upon you and us.

## **9.2. CLASS ACTION WAIVER**

**WE (YOU AND VIA WIRELESS) EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN**

**A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If a court or arbitrator determines in an action between you and us that this Class Action Waiver is unenforceable, then the arbitration agreement will be void as to you.**

### **9.3. Waiver**

#### **9.3.1. CLASS ACTION WAIVER**

**WE (YOU AND VIA WIRELESS) EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If a court or arbitrator determines in an action between you and us that this Class Action Waiver is unenforceable, then the Arbitration Agreement will be void as to you.**

**Accordingly, under the arbitration procedures outlined in this section, an arbitrator shall not combine or consolidate more than one party's claims without the written consent of all affected parties to an arbitration proceeding. Without limiting the generality of the foregoing, you and we agree that no dispute shall proceed by way of class arbitration without the written consent of all affected parties. If a decision is issued stating that applicable law precludes enforcement of any part of this subsection's limitations as to a given claim for relief, then that claim must be severed from the arbitration and brought in accordance with the Governing Law, Venue and Jurisdiction, and Court Proceedings described in Section Error! Reference source not found..**

#### **9.3.1. JUDGE OR JURY TRIAL WAIVER**

**YOU AND WE HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and we are instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 9. An arbitrator can award, on an individual basis, the same damages and relief as a court and must follow these Terms as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.**

### **9.4. Small Claims**

You and Via Wireless retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Any court having jurisdiction may enter judgment on the arbitrator's award.



Notwithstanding the foregoing, you maintain your right to file a complaint with the FCC, your state's Public Service Commission, or any other federal or state government that may, if permitted by law, seek relief against us on your behalf.

#### **9.5. Governing Law, Venue and Jurisdiction, and Court Proceedings**

You may choose to have the arbitration conducted by telephone or videoconference, based on written submissions, in person in your hometown area (if you live in the United States), or at another mutually agreed upon location that is reasonably convenient to you. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

Except to the extent preempted by or inconsistent with applicable federal law and as otherwise described herein, this agreement is governed by the laws of State of Texas, without regard to choice of law principles, conflicts of laws rules, or your actual state of residence. For any claim that proceeds in court rather than in arbitration, we each waive our right to a jury trial and any claims for punitive or exemplary damages. Unless otherwise specified herein, any Disputes of a legal nature, whether a claim, complaint, arbitration demand, or otherwise that is not subject to the mandatory arbitration provision, shall be subject to the exclusive jurisdiction of the federal or state courts located within the State of Texas.

#### **9.6. Registered Agent Information**

Via Wireless' Registered Agent Contact Information:

Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company  
211 E. 7th Street, Suite 620  
Austin, TX 78701-3218

#### **9.7. Miscellaneous**

##### **9.7.1. Severability**

If any part of this Arbitration Agreement, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Provision shall be unenforceable.

##### **9.7.2. Survivability**

This Arbitration Agreement will survive any termination, payoff or transfer of this contract.

### **9.7.3. Modifications to this Arbitration Agreement**

Notwithstanding any provision in these Terms to the contrary, if we make any future material change to this Arbitration Agreement, you may reject that change within thirty (30) days of such change becoming effective by writing to us at the following address: 12140 Wickchester Ln. Ste 100, Houston, TX 77079

## **10. MISCELLANEOUS**

### **10.1. Application of Tariffs**

Via Wireless may elect or be required to file tariffs with the appropriate regulatory body in certain states setting forth the terms and rates for our delivery of certain Services. In the event we have filed a tariff with respect to any of the Services we provide you, the terms and rates set forth in the tariff (or any successor document in the event of de-tariffing) shall govern our delivery and your use of the Services subject to the tariff. Any such tariffs are hereby incorporated by reference and shall take precedence over any conflicting provision in this Agreement.

### **10.2. Consent to Receive Communications**

Via Wireless may occasionally need to communicate with you about your Services. We may do so without your consent in certain instances, for example in emergency situations or for service-related communications where you are not charged for the message. In addition, you have a right, and we have a duty, under federal law, to protect the confidentiality of CPNI. You hereby provide consent for us or our authorized agents or representatives to use your CPNI to market communications-related services to you. You may restrict our right to use CPNI for marketing purposes at any time. Denial of approval will not affect the provision of the services we provide to you. Any approval, or denial of approval for the use of CPNI outside of the service to which you already subscribe is valid until you affirmatively revoke or limit such approval or denial.

Further, you provide consent for Via Wireless or our authorized agents or representatives to contact you using live, automated, or prerecorded messages (including artificial voice technologies) to any landline, wireless, or facsimile telephone number, including via text messages to your phone. We may contact you for service-related, informational or marketing purposes via these methods. You also provide consent to contact you, regardless of whether your number is listed on the Do-Not-Call Registry or a state equivalent registry. Consent to such contacts is not a condition of service and may be revoked at any time.

Finally, you provide consent for us to contact you for any reason, including for marketing purposes via the email address we assign you or you provide in connection with your service.

You agree that we also have the consent to contact any authorized user on your account for Service or payment-related reasons via any of the methods described above. Some of these communications may result in charges to you. Your consent to be contacted via any of the methods described above may be revoked at any time by any reasonable means. Please review our Privacy Policy, at [www.viawirelessllc.com](http://www.viawirelessllc.com), for additional information about how you may revoke consent to receive communications.

### **10.3. Modifications to this Agreement**

We may, at any time, modify any part of this Agreement; any other terms, conditions, and policies; our rates, fees, and charges; our Service Plans, features, and products; and our coverage areas, Underlying Carrier, and provisioning technology. We will provide you with advanced notice of any modifications that have a material adverse impact on you or your use of the Services (other than changes to governmental fees, proportional charges for governmental mandates, and administrative charges). We may provide you with notice of any other modifications, as described in Section 10.4 (Notices) or as otherwise required by any applicable law, regulation, or order. If any regulatory body or a court of competent jurisdiction, issues a law, regulation, rule, or order that has the effect of materially increasing the cost to provide the Services or canceling, changing, or superseding any material term or provision of this Agreement (collectively "Regulatory Requirement"), then this Agreement shall be deemed modified in such a way as is consistent with the form, intent, and purpose of the Regulatory Requirement and otherwise as is necessary to comply with the Regulatory Requirement. Material adverse modifications become effective thirty (30) days after we deliver notice to you or as otherwise specified in the notice. All other modifications become effective when posted on the Via Wireless website, [www.viawirelessllc.com](http://www.viawirelessllc.com) or as specified in any notice. If you continue to access, use, or purchase Via Wireless Services on or after the effective date of such modifications, you accept those modifications. Neither the course of conduct between you and Via Wireless nor common trade practice will act to modify any provision of this agreement.

### **10.4. Notices**

We or our authorized agents may use any of the following methods to provide you with notices: correspondence to any physical address or e-mail addresses you have provided us; live or prerecorded calls, voice messages, or text messages delivered to your Device or any other phone number you have provided us; prerecorded messages when you attempt to place a call; in-app messages or push notifications; posting on our website; or by any other means Via Wireless deems practicable. You are responsible for updating your contact information with us when it changes. Notices are treated as delivered when you accept a call; when delivered to a voicemail service associated with your service or an alternate telephone number you have provided to us, text messaging service, email address you have provided to us, or Device; when posted on our website or in an application; and three (3) days after mailed to your last known billing address. Except as otherwise provided in this agreement, you must provide us notice by calling or sending correspondence to us using the contact information provided in Section 11.

### **10.5. No Third-Party Beneficiaries**

This Agreement is solely for the benefit of you, Via Wireless, and our parents, affiliates, subsidiaries, agents, and predecessors and successors in interest. No provision of this Agreement shall be deemed to confer on any third parties any remedy, claim, liability, reimbursement, cause of action, or other right or benefit.

### **10.6. Assignment**

You may not transfer or assign this Agreement or any of your rights or obligations under it, by operation of law or otherwise, without our prior written consent. We may transfer or assign all or part of this Agreement, or your debts to us, without notice. Upon our transfer or assignment of this Agreement, Via Wireless shall be released from all liability with respect to this Agreement.

### **10.7. Force Majeure**

Neither party shall be liable for any default or delay in the performance of its obligations hereunder (excluding any payment obligations) if and to the extent that such default or delay arises out of causes beyond their reasonable control, including, without limitation, acts of God, including weather-related phenomenon, earthquakes, and floods; fires; acts of war or terrorism; civil disorders, including riots, rebellions, and insurrections; labor disputes, including strikes, lockouts, and work stoppages; medical emergencies, including pandemics and quarantine restrictions; network problems, including cable cuts, power outages, network failures, and computers viruses; and any other catastrophes, national emergencies, or government orders or acts. The time for any performance required hereunder shall be extended by the delay incurred as a result of such force majeure event, and if either party is unable to perform as a result of such event, it shall act with diligence to correct or mitigate such event.

### **10.8. Enforcement and Waiver**

Via Wireless has the right, but not the obligation to, monitor, investigate, restrict, enforce, bring civil litigation, press charges, or engage in any other self-help regarding any actual, attempted, or suspected violation of this Agreement. Via Wireless will determine, in its sole discretion, whether you violated or attempted to violate any of the provisions of this Agreement, including the Acceptable Use Policy. If we determine or suspect that you violated or attempted to violate this Agreement, we may terminate, suspend, modify, or limit your Services, as described in Section 7. Additionally, we may report actual or suspected criminal offences to appropriate law enforcement authorities. Via Wireless will cooperate with law enforcement investigations where criminal activity is suspected, and you agree to cooperate with any such investigations. Any waiver of or failure to enforce any provision or prohibition in

this Agreement in one instance shall not be construed as a waiver of any provision or right in another instance.

#### **10.9. Survivability**

Any rights, obligations, commitments, or provisions in this Agreement that, by their nature or context, are intended to or would logically continue to apply following termination of Services or of this Agreement survive termination of the Services and this Agreement, including, but not limited to, those relating to complaints, payment obligations, restrictions on the use of Devices, 911 and emergency communications, limitation of liability, and dispute resolution (including no class action and no jury trial).

#### **10.10. Severability**

If any part or provision of this Agreement, including any part of its arbitration clause or Acceptable Use Policy, is deemed unlawful, void, or for any reason unenforceable by a court or agency of competent jurisdiction, that part shall be interpreted consistent with applicable laws as nearly as possible to reflect the original intentions of the parties or shall be severed from this Agreement in that jurisdiction if required and the remaining provisions of the Agreement shall remain in full force and effect.

#### **10.11. Headings**

Section headings are for descriptive, non-interpretive purposes only.

#### **10.12. Language**

The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.

#### **10.13. Integration**

This Agreement and any other policies, documents, or agreements incorporated by reference herein or therein represent the complete agreement between you and Via Wireless. It supersedes any and all prior or other agreements, arrangements, representations, contracts, warranties, advertising, statements, offers, guarantees, assurances, and understandings relating to the subject matter of this Agreement, whether written or oral, including any other documents or statements by any sales representative, service representative, or other agent.

#### **10.14. Order of Precedence**

Unless expressly provided otherwise, in the event of conflict among the documents comprising this Agreement, the order of priority shall be: (i) any publicly filed tariff governing the Services (or a successor document in the event of detariffing); (ii) any other agreements incorporated by

reference; and (iii) this Agreement. For Via Wireless ACP subscribers, if there is a direct conflict between any general provision and provisions relating to ACP services, including those specified in Section 1 (Affordable Connectivity Program), the provisions relating to ACP services will prevail over any other provisions, but only with respect to the direct conflict of such provisions.

## **11. CUSTOMER SERVICE CONTACT INFORMATION**

If you have any questions, concerns, comments, or complaints regarding your Services, your bill, or this Agreement, please contact Via Wireless Customer Service using the following information:

Email: [customerservice@viawirelessllc.com](mailto:customerservice@viawirelessllc.com).

Phone: 1-877-356-1501 during normal business hours: Monday to Friday 8am to 5pm CST.

If Via Wireless is unable to resolve your issue, you may file an informal consumer complaint with the FCC at 888-CALL-FCC (888-225-5322), or at <https://consumercomplaints.fcc.gov/hc/en-us>.