



## **Terms & Conditions applying to Your purchase of an AT&T Sim Card from [usaprepaidsimcard.com.au](http://usaprepaidsimcard.com.au)**

### **1. Definitions**

In these Terms & Conditions the following words have the following meanings:

“AT&T” means AT&T Inc.

"Call Credits" means any amount paid in relation to your USA Sim Card or Plan to be applied to the cost of calls made or services obtained in connection with your USA Sim Card or Plan including any data allowance on the USA Sim Card or Plan.

“Harmful Code” means any program, routine or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any ‘time bomb’, virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door.

“iPad/Tablet Sim Card” means the AT&T sim card supplied to You for use in an iPad or Tablet.

“Loss” means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and, unless otherwise stated, includes consequential loss.

“Plan” means a plan added to your Phone Sim Card after purchase of the Phone Sim Card from US, or the purchase of additional data or an International Call Pack, or the purchase of additional credit. A plan cannot be added to Your own supplied AT&T sim card that You did not purchase from Us.

“Phone Sim Card” means the AT&T sim card plus plan supplied to You for use in a mobile phone.

“Services” means the services offered by AT&T on the USA Sim Card or Plan.

“USB Modem or Wi-Fi Hotspot Sim Card” means the AT&T sim card supplied to you for use in a USB Modem or Wi-Fi Hotspot.

“We/Us” means 51 Pegasi Limited (Hong Kong Company Number 2626703);

"Website" means usaprepaidsimcard.com.au

"You/Your" means you, the customer purchasing from www.usaprepaidsimcard.com.au and any other third party that uses the purchase.

## **2. Binding Terms & Conditions**

2.1 These Terms and Conditions (**Terms**) form the agreement (**Agreement**) between You and Us. We agree to provide the iPad/Tablet Sim Card, Phone Sim Card or USB Modem or Wi-Fi Hotspot Sim Card (referred to collectively herein as "**the USA Sim Card**") or Plan subject to the Terms.

2.2 These Terms are binding on any use of the USA Sim Card or Plan and apply to You from the time that We provide You with a USA Sim Card or Plan.

2.3 By using the USA Sim Card or Plan, you acknowledge that you have read, understood, and accepted these Terms and you have the authority to act on behalf of any person or entity for whom you are using the USA Sim Card or Plan, and You are deemed to have agreed to these Terms on behalf of any entity for whom You use the USA Sim Card or Plan.

2.4 Your Agreement is personal to You. Unless We give You written consent, You remain responsible for complying with Your Agreement and You may not pass any of Your rights or responsibilities to anyone else, even if You give them your USA Sim Card or Plan.

2.5 We reserve the right to make changes to these Terms at any time, effective upon the posting of modified Terms on our Website. It is Your obligation to ensure that You have read, understood and agreed to the most recent Terms available on our Website.

2.6 These Terms incorporate the Privacy Policy and Website Terms and Conditions, in each case, as amended from time to time, which are available on our Website.

## **3. Services**

3.1 We will provide the USA Sim Card or Plan to You. In doing so We do not act as an agent of AT&T nor are we associated with AT&T in anyway whatsoever. Any and all enquiries relating to your account with AT&T must be directed to AT&T.

3.2 The USA Sim Card remains our property and we may recall it at any time for upgrades, modifications and/or when Your Agreement ends.

- 3.3 You acknowledge and agree that You have relied on your own judgment to evaluate the suitability of the USA Sim Card or Plan for the purposes for which you require the USA Sim Card or Plan. In particular, but without limitation, You acknowledge and agree that the terms and conditions that relate to Your use of the USA Sim Card or Plan are those stipulated by AT&T at its website [www.att.com](http://www.att.com). You should carefully review the terms and conditions stipulated by AT&T before You use the USA Sim Card or Plan.
- 3.4 Except for Phone Sim Cards supplied by Us, the iPad/Tablet Sim Card and USB Modem or Wi-Fi Hotspot Sim Card do not come supplied with any included credit or plan. Upon receipt of the iPad/Tablet Sim Card and USB Modem or Wi-Fi Hotspot Sim Card You will be responsible for adding credit or a plan and paying for same using your credit card or Paypal account.
- 3.5 When you purchase a Phone Sim Card from Us you must enter the date of your departure to the USA. The Phone Sim Card will be active from that same date (in USA time zone), and the Phone Sim Card will be valid for a period of 30 days. If Your departure date to the USA changes after You purchase a Phone Sim Card from Us, it is Your responsibility to contact Us in writing with at least 2 days' notice. If You do not contact Us in writing then Your Phone Sim Card will be active from the day immediately prior to your departure to the USA, and the Phone Sim Card be valid for a period of 30 days.
- 3.6 We may change or withdraw some, or part of, the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing third party content providers and the need to remove, replace or modify content.
- 3.7 Call rates and the amount of Call Credits which will be applied to calls made using Your USA Sim Card or Plan frequently change. Call rates and charges which are applicable at any given time will be displayed on our Website and/or AT&T's website and it is Your responsibility to check any rates which are relevant for You and the use of USA Sim Card or Plan.
- 3.8 Some USA Sim Cards or Plans require user activation and if You have a USA Sim Card or Plan which requires user activation such activation is Your responsibility and We will not provide a refund or replacement in the event that You fail to activate Your USA Sim Card or Plan.
- 3.9 Call Credits last for a period of 30 days, commencing on the date that you activate the USA Sim Card or Plan. Call Credits expire at 11:59pm on the 30th day. Following expiry of you Call Credits, Your ability to use Our Services may be terminated and any Call Credits remaining will be forfeited.
- 3.10 It is Your responsibility to ensure your Call Credits balance is maintained at a level which enables you to access the features You require. Certain Services

and/or features will not be available once Your Call Credit balance reaches a certain level or ceases to have credit.

- 3.11 You may top-up Your Call Credit balance using any of the methods outlined on Our Website however We may at any time for any reason terminate a particular payment method, in which case You will be required to use an alternative method.
- 3.12 The USA Sim Card will expire 90 days after the date of your arrival in the USA (as stated by you in your order with Us) or on another date as advised in writing by Us to You. After the expiry of your USA Sim Card, it cannot be re-used, and the USA mobile number allocated to your USA Sim Card will also expire and cannot be retrieved for future use.

#### **4. Warranties**

- 4.1 To the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the USA Sim Card or Plan are excluded.
- 4.2 The USA Sim Card or Plan is provided to You on an “as is” basis without warranty of any kind express or implied. We make no warranty as to the accuracy, completeness, currency or reliability of any content available through the USA Sim Card or Plan. You are responsible for verifying any information before relying on it. Use of the USA Sim Card or Plan is at Your sole risk.
- 4.3 We make no representations or warranties that use of the USA Sim Card or Plan will be continuous, uninterrupted or error-free.
- 4.4 We will always try to make the SIM services available to You. However, the Services are only available within the AT&T network and limited services may be available while roaming. Within AT&T coverage area, there may be places where access to the mobile services are limited or unavailable.

#### **5. Your obligations and commitments**

- 5.1 You will not, in Your use of the USA Sim Card or Plan, breach any law, breach any person’s rights or otherwise cause loss, liability or expense to Us or any other party. Without limitation You will not use and must use all reasonable endeavours to ensure that others using Your USA Sim Card or Plan do not use it:
  - (a) for any purpose that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or illegal;
  - (b) for any (other) unlawful purpose;

- (c) to do any act that may damage the AT&T network or systems or cause the quality of service to AT&T's own retail customers to be impaired;
- (d) to engage in any activities in such a manner that is reasonably likely to expose Us to liability; or
- (e) in a manner that does not comply with the terms of any legislation or license applicable to You.

5.2 You are responsible for all usage charges in respect of the use of the USA Sim Card or Plan whether or not such usage charges were authorized by You and includes all usage charges in excess of the funds on your USA Sim Card or Plan. It is Your responsibility to maintain security to the means of access to the USA Sim Card or Plan and ensure unauthorized use does not occur. You are liable for all usage charges whether or not You have authorized the particular use of the USA Sim Card or Plan by another person and You will continue to be liable for the usage charges if You allow another person to use the USA Sim Card or Plan irrespective of whether You have authorized that person to use the USA Sim Card or Plan. If your USA Sim Card or Plan is lost, stolen or damaged, or You have sold or given away USA Sim Card or Plan, You will remain responsible for all usage of the Services until such time as you ask us to suspend the USA Sim Card or Plan or your Agreement is terminated in accordance with these Terms.

5.3 To the extent permitted by law, You irrevocably and unconditionally indemnify Us, AT&T, any other third party and each of their respective Related Corporations (each, an "**Entity**"), in full against any and all Loss incurred by or awarded against an Entity as a result of, or in connection with:

- (a) any breach of Your Agreement by You;
- (b) any fraud by You or any third person associated with You who uses or purports to use the USA Sim Card or Plan;
- (c) any claim by You or any third party against Us in connection with Your use of the USA Sim Card or Plan or by any third party that uses Your USA Sim Card or Plan;
- (d) any infringement or non-compliance by You or any third party that uses Your USA Sim Card or Plan, of any law, regulation, direction, order, code or guideline concerning privacy, including (without limitation) any law, regulation, direction, order, code or guideline applying to the recording of telephone calls; or
- (e) any transmission by You or any third party that uses Your USA Sim Card or Plan of any Harmful Code through any electronic device or network.

Your indemnity to Us is a continuing, separate and independent obligation and is absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any way Your liability.

- 5.4 Before purchasing and/or using Your USA Sim Card or Plan You must ensure that Your mobile telephone, Tablet, USB Modem or Wi-Fi Hotspot is unlocked and is network compatible for the countries in which You wish to use the USA Sim Card or Plan. We will not provide a refund or replacement sim card if the USA Sim Card or Plan You are supplied with does not work because the mobile telephone, Tablet, USB Modem or Wi-Fi Hotspot You are using it with is locked or incompatible.
- 5.5 You may only use a USA Sim Card or Plan with handsets or other devices that have been approved by AT&T and shall comply with all relevant legislation or regulations relating to such use. If You use a USA Sim Card or Plan with any device and / or accessory that has not been approved by AT&T, You may not be able to utilise all or any of the Services and You shall accept the limitations of such device and / or accessory in accessing any of the Services, for which We shall not be held responsible in any respect. Furthermore, You must ensure that such use will not cause any damage or disruption to the AT&T network and / or in any way affect the use the Services by Our other customers.
- 5.6 You are solely responsible for ensuring that Your mobile telephone, Tablet, USB Modem or Wi-Fi Hotspot is network unlocked. If Your mobile telephone, Tablet, USB Modem or Wi-Fi Hotspot is network locked You will not be able to use the USA Sim Card or Plan. We will not be liable to You for any costs incurred by You to unlock your mobile telephone, Tablet, USB Modem or Wi-Fi Hotspot to use the USA Sim Card or Plan. You should carefully read the information about unlocking Your mobile telephone, Tablet, USB Modem or Wi-Fi Hotspot which is located at the following website:  
<http://usasimcard.freshdesk.com/solution/categories/148258>
- 5.7 If you purchase a Plan for your Phone Sim Card from [www.usaprepaidsimcard.com.au](http://www.usaprepaidsimcard.com.au) You acknowledge and agree that Plan purchases are final, non-reversible and non-refundable. Call Credits are non-refundable, non-transferable and not redeemable for cash. You are advised that we will also not refund nor transfer any remaining credit in your Prepaid Account even in the event of a loss or damaged USA Sim Card.
- 5.8 You are solely responsible for ensuring that the mobile phone telephone number You enter when purchasing a Plan is correct. We will not be responsible in the event that You enter the wrong mobile phone telephone number, and under no circumstances will We refund to you the Plan amount if You enter the incorrect mobile phone telephone number.
- 5.9 You agree that risk in the USA Sim Card or Plan provided by Us passes to You upon delivery.
- 5.10 If so required by the regulatory authorities, We may require You to provide us with your personal information and you hereby undertake to provide Your

correct name, address, age and all such other factual information either before we connect You or before allowing You to access the Services. In respect of the foregoing, You warrant that all information provided is true and correct in all respect.

## **6. Events Beyond Control**

- 6.1 We will not be liable or deemed to be in default of any of Our obligations under the Agreement with You for any default, failure or delay resulting directly or indirectly from any circumstance beyond Our control including but not limited to acts of terrorism, act of God, defects in vehicles, war, strikes, theft, delay, cancellation, civil disorder, disaster, Government regulations or changes in itinerary or schedule.

## **7. Limitation of Liability**

- 7.1 Except for clause 8, all terms, conditions, warranties, undertakings, inducements and presentations, whether express or implied, statutory or otherwise, relating to the USA Sim Card or Plan are excluded.

- 7.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE WILL HAVE NO LIABILITY TO YOU:

(A) WHERE SUCH PURPORTED LIABILITY IN ANY WAY ARISES OUT OF OR RELATES TO YOUR CONDUCT, OR ANY THIRD PARTY WHO USES YOUR SIM CARD;

(B) FOR ANY LOSS OF PROFIT, LOSS OF ACTUAL OR POTENTIAL BUSINESS OPPORTUNITIES, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR ECONOMIC LOSS OF ANY KIND, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE AGREEMENT.

FURTHERMORE, IN NO EVENT SHALL OUR LIABILITY UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) FOR ANY ACT OR OMISSION ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING ACTS AND OMISSIONS OF AT&T EXCEED THE SUM OF THE TOTAL PRICE PAID BY YOU TO US FOR THE USA SIM CARD OR PLAN.

YOU AGREE THAT THIS CLAUSE 7.2 REPRESENTS A REASONABLE ALLOCATION OF RISK.

7.3 The exemptions, limitations, terms and conditions set out in these terms or conditions shall apply whether or not any damage is caused by negligence or actions constituting a fundamental breach of contract.

7.4 You acknowledge that any liability of AT&T to You in relation to the USA Sim Card or Plan is governed by the Terms and Condition on which AT&T from time to time supplies services to its own retail customers.

## **8. Australian Consumer Law**

8.1 Certain legislation including the Australian Consumer Law (**ACL**) in the Consumer and Competition Act 2010 (Cth), and similar consumer protection laws and regulations may confer You with rights, warranties, guarantees and remedies relating to the provision of services by Us to You which cannot be excluded, restricted or modified (**Statutory Rights**).

8.2 If a supply under these terms and conditions is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing in these Terms removes Your Statutory Rights as a consumer under the ACL. You agree that Our liability for Services provided to consumers is governed solely by the ACL and these Terms. To the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on Us are excluded under these Term.

8.3 Except for your Statutory Rights, all material and work is provided to You without warranties of any kind, either express or implied; and We expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

8.4 If You are a consumer as defined in the ACL, the following applies to You: We guarantee that the services We supply to You are rendered with due care and skill; fit for the purpose that We advertise, or that You have told Us You are acquiring the services for or for a result which You have told Us You wish the services achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent We are unable to exclude liability; Our total liability shall be limited to:

- (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.



## **9. Suspension and Termination**

- 9.1 We may, at Our discretion, suspend or terminate Your Services without notice if:
- (a) You have not complied with any of the terms of your Agreement;
  - (b) the remaining credit on Your USA Sim Card or Plan falls below such limit as We may, in Our reasonable discretion, determine from time to time;
  - (c) We reasonably believe You have provided Us with false or misleading details about Yourself;
  - (d) We believe that Your USA Sim Card or Plan has been lost or stolen;
  - (e) We are aware or reasonably suspect that the handset which you are using in conjunction with the USA Sim Card or Plan is lost or stolen equipment;
  - (f) We receive a serious complaint against You which we believe to be genuine;
  - (g) We are required to suspend Your Services by the emergency services or other government authorities;
  - (h) We consider it necessary to safeguard the standard of Services or the integrity of AT&T network; or
  - (i) in Our reasonable opinion, there is or has been unauthorised, unlawful, fraudulent or unreasonable use or usage of Services or the use of Services or any relevant equipment by You is causing or may potentially cause damage or interference to the AT&T network and/or such equipment.
- 9.2 Upon termination of this Agreement We will close Your USA Sim Card or Plan and disconnect the Services and You will not be able to use the Services. Upon disconnection of the Services, any remaining credit on Your USA Sim Card or Plan will be forfeited.
- 9.3 Termination of Your Agreement will not affect any existing right or liability that You or Us may have prior to such termination.

## **10. Miscellaneous**

- 10.1 Your contract with Us is governed by and constructed in accordance with the laws of Hong Kong and You agree to submit to the jurisdiction of the courts of Hong Kong.
- 10.2 If any part of Your contract with Us is found to be invalid or of no force or effect, the contract shall be constructed as though such part had not been inserted and the remainder of the contract shall retain its full force and effect.
- 10.3 We will consider You have received information from us if it is included on our Website or if it is directly communicated to you by such means which we

consider to be most appropriate for its purpose. Such means will primarily be by phone, text or multimedia messages to the mobile number associated with your USA Sim Card or Plan.