

**ATMC Broadband Service**

Offered through Atlantic Seawinds Communications, LLC

**Customer Agreement**

**ATMC Broadband Service**  
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**Customer Agreement**

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**ATMC Broadband Service**  
Offered by Atlantic Seawinds Communications, LLC  
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**1. Acceptance of Terms**

Thank you for choosing ATMC Broadband Service (“Service”). We encourage you to familiarize yourself with the Terms and Conditions of the Service as outlined in this Subscriber Agreement (“Agreement”). This material, including all information provided to you at the time you placed your order for the Service, is the agreement that will apply to your use of the Service.

By enrolling in, using, or paying for the Service you confirm your agreement to these terms and conditions as well as your acceptance of the changes we make to the agreement. If at any time after you have read the Terms and Conditions you do not agree to be bound by them, you should immediately end your use of the Service, and/or cancel your account.

**2. Definitions**

"You/Your" means any customer or other person or entity using the Service or any part of the Service, including, but not limited to, using the ATMC Broadband Service and the information or features offered in or through the ATMC Web Site.

"Customer" means a registered user of ATMC Broadband Service identified when service is ordered.

"ATMC," "we," "our," and "us" means the ATMC affiliate authorized to provide you with these ATMC Services.

"Service" or "Services" means ATMC Broadband Service. ATMC Broadband Service provides you with both high-speed Internet access and Internet Services.

"Software" means any Software — ATMC or third-party owned — that relates to your use of the Service, that enables the Service to function or that we make available to you in connection with the Service.

"Third Parties who contribute to the Service” means ATMC's officers, directors, employees, agents, licensors, suppliers, distributors, and any third-party distributors of the Service, Equipment or Software or third-party information providers to the Service (including any third party sponsoring a Web Site that ATMC, by agreement, establishes as a default home page for a customer or otherwise provides a hyperlink to from the Service).

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**3. Terms of Service**

3.01 Term

ATMC Broadband Service is offered on a month to month term.

3.02 Cancellation of Service

You may cancel the Services at any time by calling our customer service number 1-910-754-4311 or 1-888-367-2862, and notifying the ATMC Customer Service Representative.

3.03 Termination Fees and Credits

If for any reason you cancel your ATMC Broadband Service within the first 30 days of service, ATMC reserves the right to require you to return your Equipment in the original packaging and such Equipment must be in good working condition. Equipment shall be returned within 45 days of canceling your Service. If for any reason you cancel your ATMC Broadband Service within the first 30 days following Service Activation Date, or if we cancel the Services under Section 12 for a violation of the Agreement, we reserve the right to charge you an Early Termination Fee.

3.04 Qualification Check

To be eligible to receive the Services, the personal computer and the telephone line that you intend to use for the Services must meet certain technical requirements ("Qualifications"). We will provide various methods for determining qualifications of your telephone line and computer.

3.05 Fixed-Location Service

You acknowledge that the Service is a fixed-location service. This means that the Service may not be moved to a different residence (even if the telephone number for the Service remains the same), or to a different phone number, without your computer and new telephone line first meeting another Qualification check. If you are moving your residence, please contact us by calling the toll-free customer service number on your bill for the Service so that we can expedite the transfer of the Service to your new residence. If you transfer your Service, you may not be eligible to receive the prices and charges for the Service that you received prior to the transfer.

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**4. Customer Care**

4.01 Account Maintenance

If you are a customer and you have any questions about your account or the use of the Service, want help resolving a problem with your Service, believe someone is using your account improperly, or wish to update the information you gave during the order process, you may contact our customer service department by:

Phone:

Repair 1-910-754-4317

Customer Service 1-910-754-4311 or 1-888-367-2862

Mail:

ATMC

P.O. Box 3198

Shallotte, NC 28459

Online Help:

Visit [www.atmc.net](http://www.atmc.net)

4.02 Cancellation

You may cancel your ATMC Broadband Service by calling us at 1-910-754-4311 or 1-888-367-2862. For more information, see Section 3.03 for termination policies and fees.

4.03 Technical Support.

If you are a customer and have questions about the use of the Service or need help resolving a problem with your Service you may use the following for assistance:

Call us at 1-910-754-4317

For any other matters, visit our ATMC Broadband Help Web pages at [www.atmc.net](http://www.atmc.net). From this site, you can access online support. ATMC reserves the right to contact customers with important information and general notices when necessary. For more information about ATMC's Privacy Policy, please visit [www.atmc.net](http://www.atmc.net).

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**5. ATMC's Online Privacy Policy**

As an ATMC Broadband Service customer, you give us information about yourself that we use to conduct our daily business with you. With ATMC's Online Privacy Policy we want to assure our customers that we keep such customer-identifiable information as confidential as possible. To view ATMC's Online Privacy Policy go to [www.atmc.net](http://www.atmc.net).

**6. Requirements Regarding Eligibility, And Your Email I.D.**

6.01 Eligibility

To become a customer of ATMC Broadband Service you have to be at least eighteen years old. You must register using your own name. If you use a credit card for payment, you must provide a credit card account number which is issued in your name or which you are authorized to use.

6.02 E-mail I.D.

During registration, we'll ask you to enter the name or number you want as your e-mail I.D. If the e-mail I.D. you choose is already in use, or if we cannot accept it for any other reason, we'll ask you to enter another, change it, or give one to you. Upon completing the registration process for the Service you will receive an e-mail I.D. password and may also receive a secure word. You are solely responsible for all use of your account and for the security of your identification codes and any security lock code that you use to protect access to your data, your file name(s) and files, network and user access, and any other information you disseminate through use of the Service or through other Internet services. Therefore, you should secure your computer equipment so that only authorized users can gain access to your Service account. You may not transfer or permit people outside your household to use your Service account. You agree to (a) immediately notify ATMC of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session.

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**7. Billing And Payment**

7.01 Commencement of Billing

If you are self-installing the Equipment and Software (defined in Section 8 of this Agreement), ATMC will begin monthly billing for the Services once your order is processed and the Services are provisioned (we refer to this date as the "Service Activation Date"). You are encouraged to complete installation promptly because you will be responsible for full payment for the charges on your ATMC bill even if you have not yet installed the Equipment and Software at the time the bill is rendered. If you request a professional installation to install the Equipment and Software from ATMC, billing commences upon successful completion of the professional installation.

7.02 Agreement to Pay

You agree to pay us for all charges related to your account (including, but not limited to, any Shipping & Handling Fees, Installation Fee, No Show Fee, Activation Fee, Repair and Maintenance Fees, additional dial-up hours of Service beyond the standard hours offered with the Service and all applicable taxes and all charges associated with connecting to the Service through an available access number whether imposed on ATMC or directly on you) in accordance with this Agreement at the prices and charges provided to you when you enrolled, which may change as set forth in Section 7.11 of this Agreement. ATMC shall have the right to terminate or suspend your account for failure to pay your bill in a timely manner. In addition, ATMC shall have the right to use alternate means to collect unpaid charges to your account in the event of non-payment.

7.03 Professional Installation Charge

If you request ATMC to install the Equipment and Software (or load the ATMC Broadband Service to another computer or new residence), you must pay a Professional Installation Charge in the amount specified by ATMC at the time you enroll in the Services, or when you request a transfer of the Services. In the event that no one authorized to permit installation of the Equipment and Software is available at your Premises at the time you scheduled an installation appointment, and notification was not provided to ATMC at least 48 hours in advance, we reserve the right to charge you a No-Show Charge.

7.04 Activation Fee

A Service Activation Fee will be applied to your first billing statement. ATMC reserves the right to waive this fee.

7.05 Shipping & Handling Fee, all taxes and other charges

Such charges may be billed to your ATMC bill and such charges are non-refundable.

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**7. Billing And Payment (Cont'd)**

7.06 Payment Methods

You authorize ATMC to charge any amounts payable by you in connection with your use of the Services automatically by credit card or through electronic funds transfer or on your ATMC Telephone bill (including but not limited to, as applicable, any Termination Fees, Installation Charges, and No-Show Charges).

If you choose to bill your charges for the Services to your credit card, your right to use the Services is subject to any limits established by your credit card issuer. All payments shall be made pursuant to the terms of the pricing and other information relating to the Service, which is available during the ordering process, or on the ATMC Web Site and incorporated by reference in this Agreement, including the provisions of the billing option you selected.

You authorize ATMC to charge any amounts payable by you in connection with your use of the Service automatically to the credit card you provided in the ordering process or such credit card number you provide thereafter, subject to the terms and conditions of the agreement between you and your credit card issuer. It is your responsibility to update the credit card information that you use to pay for the Service. If you bill your use of ATMC Broadband Service to your credit card, your right to use the Service is subject to any limits established by your credit card issuer. If you do not update your credit card information, ATMC may suspend your use of the Service. ATMC may also make other billing options available. If ATMC makes other billing options available, you agree to abide by terms and conditions applicable to those options. For those customers who already receive a combined bill and elect to pay for the Service using a combined bill, payment of all ATMC Broadband Service charges is due 20 days after the date of your bill and must be made in U.S. currency. Time is of the essence for payment.

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**7. Billing And Payment (Cont'd)**

7.07 Charges and Payments for Service or Facilities

(A) Description of Payment and Billing Periods

- (1) Service is provided and billed on a monthly basis. Service continues to be provided and billed on a monthly basis until canceled by the Customer through notice given to the Company.
- (2) The Company shall establish the start date for monthly bill periods and such monthly periods shall continue through the term of the Agreement.
- (3) Proration of Charges  
Adjustments for the quantities of services established or discontinued in any billing period beyond the minimum period set forth for services in other sections of the Agreement will be prorated to the number of days based on a 30 day month.

(B) Deposits

- (1) The Company may, in order to safeguard its interests, require a Customer to make a suitable deposit or provide a surety bond or letter of credit in the amount of the required deposit as a guarantee of the payment of charges. The Company shall have the right to require the Customer to make a deposit prior to or at any time after provision of any Service. The Company may increase the amount of the deposit to reflect increases to the Customer's annual bill. The Customer will receive a receipt for the deposit.
- (2) Any deposit as referred to in this Section shall be held by the Company to secure the payment of the Customer's bill. At the Company's option, the deposit may be refunded or credited to the Customer at any time prior to the termination of Service.
- (3) Deposits secured by the Company will be retained as a non-interest bearing security.
- (4) The fact that a deposit is made does not relieve the Customer from making advance payments or from complying with the Company's regulations for the payment of bills in accordance with the terms herein and does not constitute a waiver or modification of the regulations of the Company providing for the discontinuance of Service for nonpayment of any sums due the Company for Service rendered.
- (5) Upon termination of Service, and assuming deposits of the Customer are not applied, the deposit will be credited to the Customer's account and any credit balance will be refunded after all amounts due the Company have been paid.

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**7. Billing And Payment (Cont'd)**

7.07 Charges and Payments for Service or Facilities (Cont'd)

(C) Taxes and Other Charges

In addition to payment for Services and Equipment, Customer must pay all taxes, fees, surcharges and other charges that the Company bills Customer related to Services including, but not limited to the Federal Universal Service Charge ("FUSC"), unless you can show with documentation satisfactory to us that you are exempt. Taxes and surcharges will be in the amounts that federal, state and local authorities require the Company to bill Customer. The company will not provide advance notice of changes to taxes and surcharges, except as required by applicable law. All such taxes and charges shall be separately shown and charged on bills rendered by Company or its billing agent. You also must pay any access charges relating to the use of the Service through your account (even if access is through 800 or 888 numbers), whether imposed on ATMC or directly on you, which will be applied and included in bills issued to you.

(D) Payment and Late Payment Charge

(1) Payment Due Date

Payment will be due as specified on the Customer bill. Commencing after that due date, a late charge of up to the highest interest rate allowable by state law will be applied to all amounts past due.

(2) Failure to Pay

We may suspend, restrict, or cancel the Services and this Agreement under Section 12 of this Agreement if you do not make payments for current or prior bills by the required due date, including payments for late fees or any other required additional charges.

(3) Late Payment Charge

ATMC may add late charges to any past-due amounts as specified in Section 7.07(D)(2). Acceptance of late or partial payments (even if marked "Paid in Full" or with other restrictions) shall not waive any of our rights to collect the full amount of your charges for the Service. Collection procedures and the requirement for a deposit are unaffected by the application of a late payment charge. The late payment charge does not apply to unpaid balances associated with disputed amounts. Undisputed amounts on the same bill are subject to the late payment charge if unpaid and carried forward to the next bill.

(4) Insufficient Funds Charge

If charges cannot be processed through your credit card, or if your bank draft or electronic funds transfer is returned for insufficient funds, we will charge you an additional \$25.00. If the state law where you receive the Service requires a different fee, we will charge you that amount.

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**7. Billing And Payment (Cont'd)**

7.08 Billing Disputes

If Customer believes Customer has been billed by the Company in error, Customer must contact the Company within sixty (60) days of the date of the bill which contains the disputed charge. Refunds or adjustments will not be issued for any charge that is more than sixty (60) days old at the time Customer notifies the Company. Customer may withhold from payment to the Company the disputed portion of any bill pending resolution of the dispute. Customer must pay all non-disputed charges on the bill by the due date indicated on the bill. The Company will notify Customer of the results of its inquiry, and either adjust the billing, issue a credit, or notify Customer that all or a portion of the disputed amount is still owed. Customer will be required to pay such amount within fifteen, (15) days thereafter, and if Customer fails to pay this amount within the time required, Customer's account will be deemed past due and unpaid and Customer's Service subject to termination under Section 7.07(D)(2) above. Any payments Customer withholds pending resolution of the dispute may be subject to a late payment charge at the highest interest rate allowable by law applied to past due amounts. Customer agrees to reimburse the Company for reasonable attorneys' fees and any other costs associated with collecting delinquent or dishonored payments.

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**7. Billing And Payment (Cont'd)**

7.09 Credit Allowance/Service Interruptions

- (A) Credit for failure of Service will be allowed only when failure is caused by or occurs in the Company's facilities or equipment owned, provided and billed for by the Company. A credit allowance is not applicable for any period during which Customer cannot utilize the Service, except for such period where the Service is interrupted by the Company for access to its facilities for the purposes of investigating and clearing troubles and/or maintenance.
- (B) Credit allowances for failure of Service or equipment starts when the Customer notifies the Company of the failure and ceases when the operation has been restored and an attempt has been made to notify the Customer by the Company.
- (C) The Customer shall notify the Company of failures of Service or equipment and make reasonable attempts to ascertain that the failure is not caused by Customer Provided Equipment or Customer provided facilities, any act, or omission of the Customer, or in wiring or equipment connected to the Customer's terminal.
- (D) Only those portions of the Service or equipment operation disabled will be credited.

7.10 Service Interruption Measurement

- (A) In the event of an interruption of Service that exceeds the minimum requirements set forth in this paragraph, the Company shall make a credit allowance at the Customer's request for a pro rata adjustment of all Service charges billed by the Company for Services rendered inoperative by the interruption. The credit allowance will be computed by dividing the duration of the service interruption measured in twenty-four (24) hour days, from the time the interruption is reported to the Company, by a standard thirty (30) day month, and then multiplying the result by the Company's fixed monthly charges for each interrupted Service. If the duration of the service interruption is less than (48) hours, no credit allowance will apply.
- (B) A credit allowance will not be given for interruptions caused by the negligence or willful act of the Customer, or interruptions caused by failure of equipment or service not provided by the Company.

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**7. Billing And Payment (Cont'd)**

7.11 Price Changes

We may change the prices and charges for the Services from time to time. Unless otherwise stated, if we increase the price of your plan, we'll notify you by e-mail or by U.S. mail and allow you to stay with your old plan for at least one more billing cycle. We may decrease prices and charges without providing advance notice.

7.12 Credit Check

You give us permission to obtain your credit information from consumer credit-reporting agencies at any time. If we determine that you may be a credit risk for (1) unsatisfactory credit rating; (2) insufficient credit history; (3) fraudulent or abusive use of any ATMC Services within the last five years; or (4) late payments for current or prior bills, we may refuse to provide the Services or we may require a deposit to establish or maintain Service(s). The deposit will be held as a partial guarantee of payment. It cannot be used by you to pay your bill or delay payment. Deposits will be held in a non-interest bearing instrument. We may require you to increase your deposit at any time to reflect your estimated monthly charges based on actual usage or our reevaluation of your ability to pay. Establishment of a prompt payment record or credit may result in a partial or total refund of the deposit to you or credit to your account. If you default or terminate your registration with the Service, we may, without notice to you, apply any deposit towards payment of charges due. After 90 days following such termination, any remaining deposit or other credit balance will be returned without interest to you at your last known mailing address.

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**8. Equipment And Software**

8.01 Required Equipment and Software

You understand and agree that ATMC Broadband Service requires you to have a personal computer that you own, or otherwise have a right to use in connection with ATMC Broadband Service. Your computer must meet the requirements necessary to operate ATMC Broadband Service based on criteria that ATMC specifies. You may receive from ATMC certain equipment for connectivity to ATMC Broadband Service, including, but not limited to, a modem/router, micro filters, cables, adapters, (collectively, the "Equipment"). We may provide files in a CD-ROM that must be installed on your computer for you to receive the Service. These files, which may include third-party software, are referred to collectively as the "Software." The Equipment and Software required for installation of the Service will be provided to you at the time of ordering or installation.

8.02 Access to Your Premises

If you have elected to have us install your Equipment and the Software for ATMC Broadband Service, you authorize us and our employees, agents, contractors, and representatives to enter your premises ("Premises") in order to install, maintain, inspect, repair, or remove the Equipment and/or Software. All such services will be conducted at a time mutually agreed to by you and us. By scheduling an installation appointment, you represent to us that you have the right to and do authorize us to enter the Premises. If you do not own the Premises, at our request you will provide us with the owner's name and address, evidence that you are authorized to grant access to the Premises on the owner's behalf, or (if needed) written consent from the owner of the Premises. You authorize us to work with your local telephone company to provision the Service to the telephone number indicated on your order. You are responsible for cancellation of any previous high-speed Internet access service using the same facilities as those to be used for the ATMC Broadband Service.

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**8. Equipment and Software (Cont'd)**

**8.03 File Modification/Backup Requirements**

The Qualifications of your computer's operating system, as well as the installation (whether self-installed or ATMC-installed), use, inspection, maintenance, repair, or removal of the Equipment and Software, may result in an inadvertent service outage or reconfiguration of the software on your computer, or temporary interruption of your telephone service. In addition, as part of the installation process, system files on your computer, such as, but not limited to, INI, BAT, SYS, and DLL files, may be modified or deleted. ATMC does not represent or warrant that such modifications or deletions will not disrupt the normal operations of your computer. You acknowledge and agree that you are solely responsible for backing up all existing computer files by copying them to another storage medium prior to the installation of your Equipment and the Software, and prior to any inspection, maintenance, repair, or removal of your Equipment and the Software. **ATMC DOES NOT REPRESENT OR WARRANT THAT INSTALLATION BY YOU OR A THIRD PARTY CHOSEN BY YOU WILL ENABLE YOU TO SUCCESSFULLY ACCESS OR USE THE SERVICES, NOR THAT ANY SUCH INSTALLATION WILL NOT CAUSE DAMAGE OR MODIFICATIONS TO, OR LOSS OF, ANY OF YOUR SOFTWARE, HARDWARE, FILES, DATA, OR PERIPHERALS. ATMC AND OUR EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR SERVICE PROBLEMS (INCLUDING TELEPHONE SERVICE) RESULTING FROM YOUR, OR A THIRD PARTY'S, FAILURE TO PROPERLY INSTALL, ACCESS, OR USE THE EQUIPMENT, SOFTWARE, OR SERVICES.**

**8.04 ATMC's Installation of the Software and Your Equipment**

Except for our gross negligence or willful misconduct, we shall have no liability whatsoever for any damage, loss, or destruction to all or a portion of your hardware during our installation of your Equipment and the Software. In the event of such gross negligence or willful misconduct by ATMC, ATMC shall pay for the repair or replacement of the damaged, lost, or destroyed portions of your hardware , up to a maximum as per the terms of our current tariff, and our payment will be your sole remedy relating to such activity. **EXCEPT FOR OUR WILLFUL MISCONDUCT, ATMC AND OUR EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO, LOSS, OR DESTRUCTION OF ANY SOFTWARE, FILES, OR DATA, REGARDLESS OF THE CAUSE OF SUCH DAMAGE, LOSS, OR DESTRUCTION.** In addition, the opening of your computer may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. You consent to the opening of the computer for the installation of your Equipment and the Software for the Service. **EXCEPT FOR OUR WILFUL MISCONDUCT, ATMC AND OUR EMPLOYEES, AGENTS, CONTRACTORS, AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.**

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**8. Equipment And Software (Cont'd)**

8.05 System Compatibility

System devices such as a home security system, medical alert, door bell answering service that are set up to automatically dial the local police or fire departments, or other similar automatic reporting systems using telephone lines, may not be compatible with ATMC Broadband Service. You waive any claim against ATMC for interference with or disruption of such systems due to the Services. Professional installation may be required if you have any such devices. If you have five or more devices connected to your phone line that is using your Broadband Service a professional installation may be required.

8.06 Right to Use Software

The use of ATMC Broadband Service requires the installation of the Software. By installing and using the Services, you agree to abide by the terms and conditions of all applicable end-user software licenses.

8.07 No Modification of Software

You may not modify the Software in any way, or change or delete any copyrights, trademarks, service marks, and logos on the Services. In addition, you may not reverse assemble, reverse compile, or reverse engineer the Software.

8.08 Speed of Service

The actual speed of the Services experienced by you may vary and depends on a number of factors, such as the location of your residence, the amount of traffic on the Internet, the ability of your computer to process data, environmental factors, and other factors beyond the control of ATMC. ATMC reserves the right to monitor or change your current plan speed at any time. No minimum level of speed is guaranteed.

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**9. Use of Services**

9.01 Improper Use

You cannot create a network (whether inside or outside of your residence) with ATMC Broadband Service using any type of device, equipment, or multiple computers unless ATMC has granted you permission to do so and you use equipment and standards acceptable to ATMC. ATMC may cancel, restrict, or suspend the Services and this Agreement under Section 12 below for violating these provisions.

9.02 Residential Use Only

You agree that the Services will be used exclusively for personal, residential use when choosing ATMC's Residential Broadband Service and not for use in a commercial, small or home business use. ATMC's Business Broadband service is available for commercial, small or home business users.

9.03 Multiple Users

You acknowledge that you are agreeing to the terms of this Agreement on behalf of anyone who uses the Services through your computer. You have sole responsibility for ensuring that anyone who uses the Services through your computer understands and complies with the terms and conditions of this Agreement. You further acknowledge and agree that you are solely responsible and liable for any violations of the terms of this Agreement, whether by you or by any other user of the Services through your computer.

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**10. Our Rights And The Rights Of Others**

ATMC enables you to contribute to and gain from a wealth of materials - some owned by ATMC, others owned by third parties. In order to preserve everyone's rights, you must: print and download material from the Service for your own, non-commercial purposes only; limit the number of copies you make of Service-related materials; not alter any aspect of the Service; comply with the terms and conditions of third parties who provide you with materials, including Software; and not deliberately or accidentally export the Software to countries that the U.S. prohibits export to. ATMC is continuously working to improve service for all of our customers through careful and efficient management of its network, especially during periods of peak demand. In order to assist us in balancing user loads, we reserve the right to manage maximum session length and with respect to dial-up access terminate sessions that exceed the maximum length even if you are actively using your connection. In the event your dial-up session has been terminated, you may immediately dial back in to reconnect.

Owned by Third Parties

Trademarks, service marks, and logos owned by third parties remain the property of those third parties.

Own

ATMC gives you a revocable, non-exclusive, non-assignable right and license to use the Service in accordance with these terms and conditions.

Number of Copies

Unless you have the express written consent of the copyright owner, you are limited to making one machine-readable copy, one backup copy, and one print copy of any ATMC-provided materials available from the Service.

Alter

For example, you may not modify the Software in any way, or change or delete any copyrights, trademarks, service marks and logos on the Service. In addition, you may not reverse assemble, reverse compile or reverse engineer the Software.

Export the Software

The words "export" and "reexport", mean transferring or releasing the Software to another country or to a national of another country. You certify that you are a U.S. citizen, U.S. resident alien, or Canadian citizen if you've received or installed: Software that carries a label restricting its export outside the U.S. or Canada; or Software including the Microsoft® Internet Explorer browser and a message in the Help/About Internet Explorer box that the Software supports "U.S. security"; or Any other Software that contains language in or on the Software restricting its export outside of the U.S. or Canada.

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**11. Acceptable Use**

To maintain an informative and valuable service, ATMC has established the following guidelines regarding the use of the Service. While it is not our intent to control your online communication or monitor its content, we may edit or remove content that we become aware of and determine to be harmful, offensive or otherwise in violation of these terms. Violation of these terms may also result in the termination or suspension of your account. These terms apply to all content provided to or through the Service, including e-mail messages, newsgroup postings, chat, and personal web pages.

11.01 Act Responsibly

- (A) Don't use the Service to interfere with others' use of the Service or of the Internet in general, to conduct illegal or abusive activity, or to submit materials that violate the rights of others. Specifically: don't send messages, data, images and programs that are libelous, defamatory, obscene, pornographic, threatening, abusive, or hateful; don't send materials that contain viruses, worms, or any other destructive elements; and don't interfere with or infringe the copyrights, trademarks, logos, service marks, or confidential information of others.
- (B) You may not use or attempt to use the Service to violate its security or the security of systems accessible through it.
- (C) You're responsible for the use of your service account. Remember that anyone who has unprotected access to your computer will be able to use your Service account freely. Therefore, you should secure your computer equipment so that only authorized users can gain access to your Service account.

11.02 Be Fair

- (A) You understand and acknowledge that the Service is intended for your periodic and legitimately active use. With respect to the consumer-oriented dial-up part of the Service it is not intended, nor is it designed, to provide an "always on" or "always connected" capability. In order to make the dial-up part of the Service available fairly to all our customers, we reserve the right to terminate customers' sessions after an extended period. In addition, if you leave the dial-up part of your Service idle for a period of time we may disconnect you. You may not take action for the purpose of defeating our "idle timeouts" or similar mechanisms. In the event your dial-up session has been terminated for any reason, you may immediately dial back in to reconnect.
- (B) Only one user may be logged into the Service for any single account at any time. In the event that more than one user is logged into a Service account at any time, ATMC may terminate such account immediately and/or charge the account holder the full Standard price applicable to the Service.
- (C) You may not use your Service connection to host a dedicated Internet server site.
- (D) Violation of these fairness principles may result in the termination or suspension of your account.

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**11. Acceptable Use (Cont'd)**

11.03 Be Honest

- (A) You may not resell or otherwise redistribute the Service or profit in any other way by providing access to others.
- (B) Don't allow others outside of your household to use the Service.
- (C) Unless you're participating in an area of the Service that requires or encourages anonymity, use your real name in online communications.
- (D) You must abide by the terms and conditions applicable to your use of specific features of the Service, as well as terms and conditions applicable to other products or services that are available through the Service.

11.04 Communicate, Don't Inundate

- (A) Don't post any single message to more than five online forums or newsgroups ("Spam Newsgroup Postings"), and please make sure your message doesn't deviate from the topic or violate the rules of those forums or newsgroups.
- (B) Don't send: (1) a piece of unsolicited commercial e-mail to any person; or (2) any other unsolicited e-mail to more than 10 people if such e-mail could reasonably be expected to provoke complaints from its recipients (either shall be "Unsolicited E-Mail"). Don't engage in any of the foregoing activities by using the service of another provider, by channeling such activities through ATMC Broadband Service, or as a mail drop for responses or in any way indicating to recipients that ATMC Broadband Service was involved in the transmission of the Unsolicited E-Mail. We reserve the right not to deliver any outbound e-mail, or any posting that violates the above guidelines. A note on relay spam: Sometimes someone who is not a customer of the Service will attempt to relay large numbers of e-mail, in bulk, off of or through one of our servers. We reserve the right to discard that bulk relay e-mail because it is an unauthorized use of our Service. Any e-mail addressed to you in care of the Service that is included may not be delivered to you.
- (C) Submit promotional materials only in areas of the Service designated for that purpose.
- (D) Don't submit charity requests, petitions for signatures, or any chain mail related materials.
- (E) Don't engage in any of the foregoing acts prohibited by this Agreement using another service provider.

11.05 Spam Filtering and E-mail Delivery

ATMC is committed to protecting your inbox from Spam. To do this, we may use a variety of screening and filtering techniques. Occasionally, legitimate e-mail sent from a server that is also generating spam, may be screened out. There are many reasons why e-mail is not delivered in any e-mail system, including addressing errors and software problems, as well as Spam-fighting techniques. ATMC tries to deliver noncommercial e-mail while preventing your mailbox and our system resources from being overwhelmed by unsolicited commercial e-mail. Please remember, though, that delivery of e-mail can never be guaranteed. We have no obligation to ensure that every piece of e-mail sent to you will be delivered. If you believe you have not received an e-mail that was sent to you, please ask the sender to try again or to contact his or her mail system administrator, who may be able to explain or solve the problem.

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**11. Acceptable Use (Cont'd)**

11.06 Content; Your Conduct And Use Of The Service

There is a wide variety and quantity of information available through the Internet using ATMC Broadband Service. While we hope you'll take full advantage of the Internet, please note that we don't have control over most of what's accessible through the Service — in other words, you're responsible for protecting yourself from harmful or inaccurate information. Therefore, by registering for and accessing the Service you understand and agree that all information, data, text, messages, postings, or other materials including links to other sites ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not ATMC, are entirely responsible for all Content that you upload, post, or otherwise transmit via the Service. ATMC does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. You understand and agree that by using the Service, you may be exposed to Content that is offensive, indecent, sexually explicit or objectionable. You understand that the technical processing and transmission of the Service, including your Content, may involve a) transmissions over various networks; and b) changes to conform and adapt to technical requirements of connecting networks or devices; and that under no circumstances will ATMC be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, or otherwise transmitted via the Service.

11.07 Monitoring and Removal of Content

ATMC does not pre-screen Content, but ATMC and its designees shall have the right (but not the obligation) to monitor any and all traffic routed through the Service, and in their sole discretion to refuse, block, move or remove any Content that is available via the Service. Without limiting the foregoing, we shall have the right to remove any Content that violates this Agreement or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by us or submitted to us.

11.08 Investigation of Unlawful Conduct

ATMC cooperates fully with federal and state enforcement officials investigating unlawful behavior on ATMC Broadband Service's system, and customers are required to do the same. You acknowledge and agree that ATMC may preserve Content and may disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (1) comply with legal process; (2) enforce this Agreement; (3) respond to claims that any Content violates the rights of third-parties; or (4) protect the rights, property or personal safety of ATMC, its users, and the public.

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**12. Suspension Or Cancellation Of The Services**

Your Cancellation of the Services

You may cancel the Services at any time in accordance with Section 3 of this Agreement.

ATMC Cancellation for Violation of the Agreement

We may immediately suspend, restrict, or cancel the Services and this Agreement, should you violate any of the terms of this Agreement. If the Services are suspended, restricted, or cancelled under this Section 12, any fees and charges will accrue through the date that ATMC fully processes the suspension, restriction, or cancellation.

Other ATMC Cancellation of the Agreement

In addition to our cancellation rights under Section 12, we may cancel the Services and this Agreement for any other reason by providing you with written notice (by e-mail or by U.S. mail) of such cancellation no less than 30 days prior to date of cancellation. In the event ATMC cancels the Services under this Section 12, any fees and charges will accrue through the date that ATMC fully processes the cancellation, but we will refund all prepaid fees and charges for the canceled Services.

Outstanding Charges

You must pay all outstanding charges for the suspended, canceled, or restricted Services, including the Early Termination Fee, as applicable, and payment of any bills that remain due after the date of suspension, restriction, or cancellation under this Section 12. Subject to Section **Error! Reference source not found.** of this Agreement, you must reimburse us for any reasonable costs we incur, including attorneys' fees, to collect charges owed to us.

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**13. Termination or Denial of Service by the Company**

The Company may, immediately and without notice to the Customer, and without liability of any nature, temporarily deny, terminate, or suspend Service to any Customer:

- (A) In the event such Customer or its agent or, in the case of Wholesale Services the Customer's End User Customer: (a) willfully damages the Company equipment, interferes with use of the Company's Service by other Customers of the Company; (b) unreasonably places capacity demands upon the Company's facilities or Service; or (c) violates any statute or provision of law, or any rule or regulation of any state or federal regulatory agency relating to communications; or (d) otherwise fails to comply with the provisions of these Rates, Terms and Conditions or applicable law; or
- (B) In the event a Customer becomes insolvent, is the subject of any formal legal proceeding commenced in a court involving a voluntary or involuntary petition or proceeding in bankruptcy, seeks protection or relief from creditors in a formal legal proceeding after a filing for such relief, or executes an assignment for the benefit of creditors; or
- (C) In the event that the Company determines that any Service is being used fraudulently or illegally, whether by a Customer or its agent.

**14. Indemnification**

YOU AGREE THAT WE SHOULD NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE, OR ANYONE ELSE'S USE, OF THE SERVICES. FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES, UNLESS SUCH CLAIMS ARE BASED ON OUR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS PROVISION WILL CONTINUE TO APPLY AFTER THE AGREEMENT ENDS.

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**15. Limitations Of Liability**

Nothing in this agreement limits our liability, if any, for our willful misconduct. You assume total responsibility and risk for your use of the service and of your account — atmc and third parties who contribute to the service are not responsible for any loss, damage or cost (including consequential damages) you, or anyone else using your account, might incur due to your use or inability to use the service. If you live in a state whose laws prevent you from taking full responsibility and risk for your use of the service, our liability is limited to the greatest extent allowed by law. If our or any third parties who contribute to the service's negligence causes damage to a person or property (with the exception of claims regarding your hardware, equipment and software which are subject to section 8. Of this agreement), we will be liable for no more than the amount of direct damages to the person or property. If our or any third parties who contribute to the service's negligence causes damage of any sort, we and any third parties who contribute to the service will be liable for no more than the amount of our charges for the services during the affected period. For all claims that are not the result of atmc's or any third parties who contribute to the service's willful or intentional misconduct, we and any third parties who contribute to the service will not be liable for punitive, reliance, or special damages, or for indirect or consequential damages, including but not limited to, lost profits or revenue or increased costs of operation. These limitations apply even if the damages were foreseeable or we or any third parties who contribute to the service were told they were possible, and they apply to any negligence claim that does not involve willful or intentional misconduct, no matter how that claim is styled or on what legal grounds (such as contract, tort, statute, fraud, misrepresentation) it is based. We or any third parties who contribute to the service will not be liable for any damages — and we will be liable only for the amount of our charges for the services during the affected period — if services are interrupted, or there is a problem with the interconnection of our services with the services or equipment of some other party. This section will continue to apply after the agreement ends.

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**16. Limited Warranty**

The equipment, software, and services are provided by ATMC or any third parties who contribute to the service on an "as is, as available" basis without warranty of any kind. ATMC and any third parties who contribute to the service do not warrant uninterrupted or error-free use or operation of the equipment or services, or that defects will be corrected. Customer's sole remedy for a complete service interruption, including no access via dial-up, shall be limited to a pro-rata credit of the monthly charge for ATMC broadband service for the time period in which the services are interrupted, not to exceed a maximum services interruption time period of two consecutive months. To qualify for a credit, you must contact us by calling customer service 1-910-754-4311 or 1-888-367-2682 within 24 hours of determining that the services are interrupted. A credit will not be issued for any period that ATMC or our agents are not permitted to test or repair the equipment, software, or services, or are not provided access to the premises to conduct such testing or repair. A credit will not be issued if the interruption is due to a problem beyond ATMC's or any third parties who contribute to the service's reasonable control, or due to the failure of power, equipment, software, or services not provided by ATMC, such as a virus on your computer. ATMC and any third parties who contribute to the service do not warrant that any data or files sent by or to you will be transmitted in uncorrupted form, error free, or within a reasonable period of time. Except as this agreement expressly states, we make no express warranty regarding the equipment, software, and services, and disclaim any implied warranty, either in fact or by operation of law, statute, or otherwise, including any warranties of title, noninfringement, merchantability, fitness for a particular purpose, or compliance with particular standards. ATMC and third parties who contribute to the service make no representations, or endorsements regarding the service, the software, the equipment or any third party material available through the service. We do not authorize anyone, including, but not limited to, ATMC employees, agents, contractors, or representatives, to make a warranty of any kind on our behalf, and you should not rely on any such statement. You agree to defend, indemnify, and hold harmless ATMC and third parties who contribute to the service from any loss, damage, or cost (including attorneys' fees) resulting from your violation of this agreement or any activity related to your account. Certain equipment or software may be subject to third-party warranties, which we may pass on to you at no additional charge. At our sole discretion, we may replace defective equipment and materials on behalf of the third-party manufacturer, provided that you follow all applicable equipment return procedures that we provide to you.

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**17. Miscellaneous**

17.01 No Third-Party Rights

This Agreement does not provide any third party with a remedy, claim, or right of reimbursement.

17.02 Acts Beyond Our Control

Neither you nor we will be responsible to the other for any delay, failure in performance, loss, or damage due to fire, explosion, power blackout, earthquake, volcanic action, flood, the weather elements, strike, embargo, labor disputes, civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond our reasonable control, except that you must pay for any Services used.

17.03 Assignment

We can assign all or part of our rights or duties under this Agreement without notifying you. If we do that, we have no further obligations to you. You may not assign this Agreement or the Services without our prior written consent.

17.04 Notices

Notices from you to ATMC must be provided by calling the customer service number 1-910-754-4311 or 1-888-367-2862 for the Service. Notice from you to ATMC via e-mail is effective as of the date that you send the e-mail. Notice from you to ATMC made by calling ATMC is effective as of the date that our records show that we received your call. ATMC's notice to you under this Agreement will be provided by e-mail to the e-mail address provided by you, by postings on our Web site at [www.atmc.net](http://www.atmc.net) or by U.S. mail. Notice from ATMC to you via e-mail is effective as of the date that we send you the e-mail.

17.05 Separability

If any part of this Agreement is found invalid, the rest of the Agreement will remain valid and enforceable.

17.06 Governing Law

This Agreement will be governed by the law of the State of North Carolina, without regard to its choice of law rules.

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**17. Miscellaneous (Cont'd)**

17.07 Entire Agreement

This Agreement constitutes the entire agreement between us and supersedes all prior agreements, understandings, statements or proposals, and representations, whether written or oral. This Agreement can be amended only as provided in Section 7.11. No written or oral statement, advertisement, or service description not expressly contained in the Agreement will be allowed to contradict, explain, or supplement it. Neither you nor ATMC is relying on any representations or statements by the other party or any other person that are not included in this Agreement.

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**18. Changes To This Agreement**

This Agreement may only be changed in the manner provided for in this Section 7.11. We may change this Agreement from time to time. With respect to price changes, we will provide notice as described in Section 7.11. With respect to other changes to the Agreement, we will notify you in advance of the changes by e-mail or U.S. mail. We will also post changes on our web-site [www.atmc.net](http://www.atmc.net).

IF YOU CONTINUE TO BE ENROLLED IN, USE, OR PAY FOR THE SERVICES AFTER ANY CHANGES IN THE PRICES, CHARGES, TERMS, OR CONDITIONS, YOU AGREE TO THOSE CHANGES.