

# FirstNet Messaging

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1. **THE APPLICATION.** The Application allows You to use FirstNet Messaging.

#### 1.1 Description of FirstNet Messaging

1.1.2 **FirstNet Messaging** is an end-to-end group notification and messaging solution that works seamlessly with most computer-aided dispatch (CAD) applications to enable enhanced wireless notification and response features. FirstNet Messaging includes four (4) messaging protocols (WCTP, SNPP, SMTP and TAP) to send messages, a web interface and downloadable IP handset client.

1.1.2.1 **Copying and Storage.** All Messages You send or receive via FirstNet Messaging will be stored and copied to the FirstNet Messaging server ("the Cloud"). Please realize that uninstalling the Application from Your Device will not stop the copying and storage of Messages in the Cloud nor will uninstalling the Application delete Messages that have been copied to and stored in the Cloud. If You wish to stop the copying of Messages to the Cloud and to delete stored Messages from the Cloud, You must remove Your FirstNet Messaging Service (the "Service"). For instructions on how to remove the Service visit <https://messaging.firstnet.com/#faq> or call FirstNet Customer Care at (800)-574-7000.

1.1.2.2 **Turning Off the Data Function of Your Device.** You acknowledge that if You turn off Your Device's data function, the Application will not display picture and video messages, nor will the Application sync with FirstNet Messaging on the web. When Your Device is connected to a Wi-Fi network, the Application will display picture and video messages, and sync to FirstNet Messaging on the web.

1.1.2.3 **Contact Information and Content.** "Contact Information" is the personal contact information You include in Address Book. "Content" is information generated or encountered through use of Address Book, such as photographs, images, sounds, videos, messages, and other like materials. You agree to use Contact Information and Content solely for Your own personal use or the internal business purposes of your organization.

1.2 **AT&T NOT RESPONSIBLE FOR YOUR MESSAGES, CONTACT INFORMATION AND CONTENT.** AT&T is not responsible or liable in any way for Messages, Contact Information or Content transmitted or received by You. AT&T does not and has no obligation to screen, edit, or control Messages, Contact Information or Content You transmit or receive. AT&T does not guarantee the accuracy, integrity or quality of

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You grant AT&T the right to store Messages, Contact Information and Content on storage systems operated by AT&T. You acknowledge and agree that even though You delete Messages, Your Messages, may be retained on AT&T's and its suppliers', licensors' and collaborators' systems and may be produced if required by law, court order, subpoena, or other lawful process. You acknowledge, consent and agree that AT&T may access, preserve and disclose Messages, if required to do so by law or if AT&T believes in good faith that such access, preservation, or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce these terms; (iii) respond to claims that any Message violates the rights of third parties; (iv) respond to Your requests for customer service; or (v) protect the rights, property or personal safety of AT&T, its users and the public.

AT&T reserves the right to delete Messages, Contact Information and Content and to establish usage limits, including without limitation as to the number of Messages, Contact Information and Content that can be stored; how long such Messages, Contact Information and Content will be stored; the number of Messages that can be sent; the number of message recipients, the maximum size of available server space for Your Messages, Contact Information and/or Content; whether or not there is a charge for storing such information in connection with the Application. AT&T reserves the right to modify these and other practices without any notice to You. AT&T is not obligated to store Messages, Contact Information, Content, and/or other information maintained or transmitted through the Application. You agree that AT&T, its licensors, and suppliers have no responsibility or liability whatsoever for the deletion, loss, removal, or failure to store any Messages, Contact Information, Content, or other information maintained or transmitted through the Application.

If a company or other entity is the responsible party for Your Application account(s), for example where a company or entity or other family member is responsible for paying for Your wireless charges or is otherwise liable for Your wireless charges, You authorize us to share Your account information, and all Messages, Contact Information and Content within the Application with the responsible party or its authorized agents.

**1.4 CONSENT TO USE LOCATION INFORMATION.** Depending on Your privacy settings, this Application may access and use Your personally identifiable location information ("Your Location Information") in order to provide certain search functionality. You can manage the use of location data through Your Device, generally in settings menu for the Device. Please refer to Your applicable Device user manual for specific instructions.

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**1.9 Fees and Charges.** Charging for FirstNet Messaging is dependent on the FirstNet Messaging plan purchased. Unless messaging is included in the purchased FirstNet bundle, You will be charged per the wireless service agreement applicable to Your Device for any Message that You send or receive via standard SMS. Messages sent via the FirstNet Messaging gateway as WCTP, SNPP, SMTP or TAP messages will be charged per the FirstNet Messaging plan purchased. Billable messages include all messages sent through the gateway including, but not limited to, messages containing text, pictures, audio or video("Messages"). Messages will be charged when sent or received, whether read or unread, solicited or unsolicited. AT&T does not guarantee delivery of said Messages. The Application will temporarily interrupt any active Wi-Fi connection if necessary to verify Your account credentials via the cellular network. During the verification process, any data that You send or receive in connection with either the Application (including for verification) or any other applications will be sent or received over the cellular data network and will count against Your data plan (instead of Your messaging plan). Data and messaging rates may apply when You use the Application.

**1.9.1 International Charges.** Additional charges apply when sending Messages to or from countries outside the U.S., and from U.S. territories other than Puerto Rico and the U.S. Virgin Islands over the wireless network. When roaming internationally, delivery of Messages to the Application on Your Device(s) will incur international roaming data charges if data is turned "on" and You are not connected to a Wi-Fi network. In addition, if You are not connected to a Wi-Fi network and the data function on Your Device(s) is turned "on", the Application on Your Device(s) will perform certain administrative transactions, which will also incur international data roaming charges.

**1.9.2 Price Changes.** AT&T reserves the right to change its prices or to institute additional charges. We will inform You in advance of any price increase or the institution of any additional charge for the Application. If You do not agree to these price changes or the institution of the charge, Your sole remedy is to cancel and stop using the Application, and to remove the Service by following the instructions at <https://messaging.firstnet.com/#faq> or call AT&T Advanced Solutions Customer Care at 866.563.4703 before the change takes place. If You continue to use the Application after the price change or price institution has taken effect, You will be deemed to have agreed to the price increase or price institution. You agree to pay all charges when due.

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**8. LIMITATION OF LIABILITY.** EXCEPT TO THE EXTENT PROHIBITED BY LAW, UNDER NO CIRCUMSTANCES SHALL AT&T, ITS COLLABORATORS, SUPPLIERS OR LICENSORS, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, BE LIABLE FOR ACCIDENTS, PROPERTY DAMAGE, PERSONAL INJURY, DEATH, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE OR DISTRIBUTION OF, THE PERFORMANCE OR NON-PERFORMANCE, OR YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE APPLICATION AND ANY THIRD PARTY CONTENT AND SERVICES, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AT&T'S AGGREGATE LIABILITY TO YOU (WHETHER UNDER CONTRACT, TORT, STATUTE OR

OTHERWISE) SHALL NOT EXCEED THE GREATER OF (i) THE INITIAL PURCHASE PRICE PAID BY YOU FOR THE APPLICATION, (ii) THE AGGREGATE AMOUNT YOU PAID TO AT&T FOR THE APPLICATION DURING THE ONE MONTH PRECEDING THE DATE THAT THE CLAIM ARISES, OR (iii) TWO DOLLARS (\$2.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THIS SECTION 8 SHALL SURVIVE TERMINATION OF THIS LICENSE.

**9. INDEMNIFICATION.** You shall indemnify, defend and hold harmless AT&T and its collaborators, suppliers and licensors, and their respective officers, directors, agents and employees (the "Indemnified Parties") from and against any claim, proceeding, loss, damage, fine, penalty, interest and expense (including, without limitation, fees for attorneys and other professional advisors) arising out of or in connection with the following: (i) Your access to or use of the Application or Third Party Content and Services, including without limitation any messages, information and content that You transmit, receive, store, display or access through or using the Application; (ii) Your breach of this License; (iii) Your violation of law; (iv) Your negligence or willful misconduct; or (v) Your violation of the rights of a third party. You will promptly notify AT&T in writing of any third-party claim arising out of or in connection with Your access to or use of the Application. These obligations survive termination of this License.

## **10. DISPUTE RESOLUTION BY BINDING ARBITRATION**

PLEASE READ THIS CAREFULLY, IT AFFECTS YOUR RIGHTS.

IF YOU ARE A FIRSTNET SERVICE OR AT&T WIRELESS SERVICE SUBSCRIBER, THIS LICENSE IS SUBJECT TO THE ARBITRATION PROVISIONS OF YOUR APPLICABLE AGENCY OR WIRELESS SERVICE AGREEMENT, AS AMENDED FROM TIME TO TIME. IF YOU ARE NOT AN AT&T WIRELESS OR FIRSTNET SERVICE SUBSCRIBER, THIS LICENSE IS SUBJECT TO THE ARBITRATION PROVISIONS WHICH ARE INCLUDED IN THIS SECTION 10.

Summary:

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at 800-331-0500. In the unlikely event that AT&T's customer service department is unable to resolve a complaint You may have to Your satisfaction (or if AT&T has not been able to resolve a dispute it has with You after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Arbitration is more informal than a lawsuit in court. Arbitration uses a

neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Any arbitration under this License will take place on an individual basis; class arbitrations and class actions are not permitted. For any non-frivolous claim that does not exceed \$75,000, AT&T will pay all costs of the arbitration. Moreover, in arbitration You are entitled to recover attorneys' fees from AT&T to at least the same extent as You would be in court.

In addition, under certain circumstances (as explained below), AT&T will pay You more than the amount of the arbitrator's award and will pay Your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards You an amount that is greater than what AT&T has offered You to settle the dispute.

#### **10.1 Arbitration Agreement.**

10.1.1 AT&T and You agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this License or any prior agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which You are not a member of a certified class; and
- claims that may arise after the termination of this License.

For purposes of this Section 10.1 only, references to "AT&T," "You," "Your" and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of this Application, or of services or devices under this License or prior agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude You from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on Your behalf. You agree that, by entering into this License, You and AT&T are each waiving the right to a trial by jury or to participate in a class action. This License evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this License.

10.1.2 A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: Office for Dispute Resolution, AT&T, 1025 Lenox Park Blvd., Atlanta, GA 30319 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If AT&T and You do not reach an agreement to resolve the claim within 30 days after the Notice is received, You or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or You shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which You or AT&T is entitled. You may download or copy a form Notice and a form to initiate arbitration at [att.com/arbitration-forms](http://att.com/arbitration-forms).

10.1.3 After AT&T receives notice at the Notice Address that You have commenced arbitration, it will promptly reimburse You for Your payment of the filing fee, unless Your claim is for greater than \$75,000. (The filing fee currently is \$200 for all claims but is subject to change by the arbitration provider. If You are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this License, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at <http://att.com/arbitration-information>.) The arbitrator is bound by the terms of this License. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless AT&T and You agree otherwise, any arbitration hearings will take place in the county (or parish) of Your billing address. If Your claim is for \$10,000 or less, we agree that You may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If Your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of Your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, You agree to reimburse AT&T for all monies



previously disbursed by it that are otherwise Your obligation to pay under the AAA Rules. In addition, if You initiate an arbitration in which You seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

10.1.4 If, after finding in Your favor in any respect on the merits of Your claim, the arbitrator issues You an award that is greater than the value of AT&T's last written settlement offer made before an arbitrator was selected, then AT&T will:

- pay You the amount of the award or \$10,000 ("the alternative payment"), whichever is greater; and
- pay Your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that Your attorney reasonably accrues for investigating, preparing, and pursuing Your claim in arbitration ("the attorney premium").

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, You and Your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards You any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

10.1.5 The right to attorneys' fees and expenses discussed in paragraph 10.1.4 supplements any right to attorneys' fees and expenses You may have under applicable law. Thus, if You would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding You that amount. However, You may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

10.1.6 The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both You and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific proviso is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

10.1.7 Notwithstanding any provision in this License to the contrary, we agree that if AT&T makes any future change to this arbitration provision (other than a change to the Notice Address) while this License is in effect, You may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, You are agreeing that You will arbitrate any dispute between us in accordance with this provision.

11. **MISCELLANEOUS.** The following provisions survive termination of this License:

11.1 **Governing Law, Limitation on Actions.** This License shall be deemed to take place in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflicts of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. To the maximum extent permitted by applicable law, You and AT&T agree that any cause of action arising out of or relating to the Application or Your use of the Application must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred. This Section 11.1 is not intended to and does not alter any provisions of Your applicable wireless service agreement.

11.2 **Contact Information.** In the event that You have a question, complaint or claim regarding Your use of the Application, please call AT&T Customer Service by dialing 611 from Your Device if you are an AT&T Wireless service subscriber or 1-800-331-0500.

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

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

11.5 **Jurisdictional Issues, Export Control.** You may not use or otherwise export or re-export the Application except as authorized by United States law and the laws of the jurisdiction(s) in which the Application was obtained. You represent and warrant that You are not (a) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist

supporting" country, or (b) listed on any U.S. Government list of prohibited or restricted parties including the Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. You also agree that You will not use the Application for any purposes prohibited by United States law or other applicable laws.

**11.6 U.S. Government Restricted Rights.** The Application was developed at private expense and is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS and in similar clauses in the NASA FAR Supplement, and their successors, and all other Federal laws and regulations that protect Licensor rights in privately developed commercial software.

**11.7 Performance or Benchmark Testing.** You may not disclose the results of any benchmark test using the Application to any third party without AT&T's prior written approval.

**11.8 Modification or Amendment.** AT&T may modify or amend the terms of this License at any time, with or without notice to You, by posting a copy of the modified or amended License available through the Application. You will be deemed to have agreed to any such modification or amendment by Your decision to continue using the Application following the date in which the modified or amended License is made available through the Application.

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

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

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

11.12 **Copyright Complaints.** AT&T respects the intellectual property rights of others. If You believe that Your work has been copied and has been posted, stored or transmitted by or through the Application in a way that constitutes copyright infringement, please submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing AT&T's Copyright Agent the following written information:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that You claim has been infringed upon;
- A specific description of where the material that You claim is infringing is located on the Sites;
- Your address, telephone number, and e-mail address;
- A statement by You that You have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- A statement by You, made under penalty of perjury, that the above information in Your notice is accurate and that You are the copyright owner or authorized to act on the copyright owner's behalf.

AT&T's Copyright Agent for notice of claims of copyright infringement on the Sites can be reached as follows:

Manager of Security & Copyright Infringement 1800 Perimeter Park Drive, Suite 100  
Morrisville, NC 27560 Phone: (919) 319-5737 Fax: (919) 319-8154 E-mail:  
copyright@att.com

For more information about AT&T's copyright protection practices under the DMCA and for information on how to contact AT&T's DMCA agent, please refer to <http://www.att.net/general-info/claims.html>.

11.13 **Entire Agreement.** This License including the documents incorporated herein by reference constitute the entire agreement with respect to the use of the Application licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter.