

# Terms and Conditions of Use of Service

## Ground Control Subscriber Agreement

Revised January 23, 2012

The service provided to you hereunder (the "Service") is owned and operated by Ground Control Systems, Inc. (hereafter "Ground Control"). The service is provided to you ("you," "your", "Subscriber" or "user") under the terms and conditions of this Subscriber Agreement (the "Agreement"). Ground Control® is a registered service mark of Ground Control. This agreement, including revised versions of this agreement that may be published at [www.groundcontrol.com](http://www.groundcontrol.com), or over the service, (a) constitutes the entire and only agreement between us with respect to the subject matter hereof, (b) is also applicable to all users of your account, and (c) supersedes any and all prior or contemporaneous agreements, communications, representations, statements and understandings, whether oral or written.

**If you are a new customer with a COUNUS VSAT satellite dish installation, you may terminate this agreement prior to your first installation of equipment (or certification, if equipment is not provided by Ground Control), if you (a) notify us in writing that you intend to terminate because you do not agree to the terms and conditions and (b) return all items (at your cost) listed on the sales contract in original packing. If you comply with this policy you will be entitled to a full refund, less a 15% restocking and cancellation fee for Ground Control provided equipment. A copy of this agreement is also published at [groundcontrol.com](http://groundcontrol.com) and may be included in the welcome package.**

**If you are a new customer with a BGAN satellite service, activation of the 12 month service month contract will constitute acceptance of the service term and any associated equipment purchased from Ground Control needed to run the service. You may terminate this agreement PRIOR TO YOUR ACTIVATION OF BGAN service if you (a) notify us in writing that you intend to terminate because you do not agree to the terms and conditions and (b) return all items (at your cost) listed on the sales contract in original packing. If you comply with this policy you will be entitled to a full refund, less a 15% restocking and cancellation fee for Ground Control provided equipment. A copy of this agreement is also published at [groundcontrol.com](http://groundcontrol.com) and included in the welcome package.**

### 1. VSAT SATELLITE DISH SERVICE

**1.1 Description.** The VSAT Satellite Service is available in the continental U.S. and other limited geographical areas with an unobstructed view of the southern sky, and consists of a satellite based one way broadcast or two way broadcast/receive system, and includes only the specific Internet access, digital packet delivery, multimedia or other services listed on your sales contract form. Subject to the timely payment of all fees and the terms and limitations set forth in this agreement and on the sales contract form, Ground Control agrees to provide Subscriber with a non-assignable, non-transferable and non-exclusive account, enabling Subscriber to access and use the service (the "Account" or "Subscriber's Account").

**1.2. Accessibility.** You agree that from time to time the service may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance and upgrade procedures; (iii) repairs which Ground Control and/or its service providers, including without limitation, its satellites operators may undertake; or (iv) any cause beyond the control of Ground Control.

**1.3 Slow Speed Periods.** Accurately predicting daily download and upload speeds is not possible. In addition, the service may intermittently encounter slow speed periods. Causes of slower speeds may include, but are not limited to variables such as: time of day and congestion on the Internet, your network configuration and usage patterns, maintenance and upgrade procedures or repairs undertaken by Ground Control and/or its service providers, including satellite operators.

**1.4 Ground Control-Provided Equipment.** Certain equipment is necessary to access and utilize the service or useful in doing so in a convenient or productive manner. Such equipment, if provided by Ground Control, shall be listed on a sales contract form or equipment purchase agreement and referred to hereafter in this agreement as the "Equipment"

**1.5 Installations, Service Calls (SOR) and Relocation of Service (ROS).** A standard fee is quoted at time of purchase. Installation cannot proceed until you complete Ground Control's site survey form. Additional fees may be incurred during actual SOR, ROS, or installation, including but not limited to: extra drive time, additional outlets, extra cabling, and non-penetrating roof mounts. Ground Control reserves the right to suspend or terminate service if you fail to pay installation or additional fees when due. Timeframes for installs, SOR, and ROS, if any, are not guaranteed. Ground Control will make a reasonable effort in locating an available technician. Any charges related to relocation of equipment after installation shall also be payable by you. You shall contact Ground Control at least three (3) weeks prior to your desired relocation date to schedule. Relocation may require the installation of new equipment, including a new dish, and re-mapping of your existing equipment. Ground Control may utilize third-party installers for installations/relocations. Neither we nor our third party installation and maintenance providers shall have any liability whatsoever for any losses resulting from installation, repair or other services, including without limitation, damage to your premises, loss of software, data or other information from your computer. This limitation does not apply to damages arising from gross negligence or willful misconduct. All warranties on

Ground Control-provided equipment as set forth herein shall be voided if, following its installation at Subscriber's site, the equipment becomes damaged as a result of abuse, vandalism, tampering, fire, explosion, earthquake, casualty or accident, flood, or by reason of terrorism, war, or acts of God.

**1.5a International Sales and Installations.** Customer is aware that situations outside of the control of Ground Control may delay delivery and/or installations. Such situations may include, but are not limited to, customs, security clearance and threat of war. Service options such as, but not limited to, coverage areas, contention ratios, monthly transfer allowance, acceptable use policies and speeds may change at any time. If services and/or equipment become unavailable, or are altered in performance, after the signed agreement, Customer will allow Ground Control to present an alternative in a reasonable time allowed.

**1.6 Security.** You are responsible for all access to and use of the Service through your Account or password(s) and for all fees, charges and other expenses incurred in accordance with the terms of this Agreement or otherwise. You are solely responsible for the security, confidentiality and integrity of all messages and content received, transmitted through or stored through your account on the service. You acknowledge that areas accessible on or through the service may contain material that is unsuitable for minors.

**1.7 Fair Access Policy.** To ensure equal Internet access for all subscribers, our satellite service provider(s) may maintain a running average fair access policy. Fair access establishes an equitable balance in Internet access across all users accessing Internet services by service plan, regardless of their frequency of use or traffic volume. Fair access may result in you experiencing some temporary throughput limitations. **GROUND CONTROL INTERNET ACCESS IS NOT GUARANTEED.**

**1.8 Resale of Service Prohibited.** The service is provided for use by you only as an end user. You are prohibited from reselling, distributing, or providing the Service, or access to any portion thereof, to any third party, including but not limited to your customers.

**1.9 Multiple Use of Account.** The total number of simultaneous users is restricted to the limit set forth in your pricing terms determined by the level of service selected, and set forth on your sales contract.

**1.10 Technical Support.** Monthly service includes 24 hour/7 days a week technical support by phone. Field technical support calls are subject to an additional charge.

## **2. EQUIPMENT SALE AND LIMITED WARRANTY FOR VSAT SATELLITE DISH SERVICE**

**2.1 Title.** Title to the Equipment (i.e. dish, modems, cables, mounts) identified on the Sales Contract transfers to you upon receipt of shipment, unless indicated as FOB, in which you would bear all risk of loss of the Equipment, F.O.B. point of shipment. Ground Control and/or its suppliers retain all right, title and interest in and to any software, copyright, patent, trade secret, trademark, service mark, or other intellectual property or proprietary material that is part of, embedded in or accompanying the Equipment or Service.

**2.2 Thirty (30) Day Return and Restocking Fee.** At any time during the first thirty (30) days from date of system setup, should you be unable, for forty-eight (48) continuous hours, to use the Service to connect to the Internet, you may return Ground Control provided Equipment subject to a restocking fee in the amount of fifteen percent (15%) of the Equipment purchase price. Installation and shipping cost are not available for refund.

**2.3 One (1) Year Parts and Labor Limited Replacement Warranty.** See document entitled Ground Control Limited Replacement Warranty: [www.groundcontrol.com/limited\\_replacement\\_warranty.pdf](http://www.groundcontrol.com/limited_replacement_warranty.pdf)

**2.4 Warranty Limitations.** Except for the limited warranty above, the Ground Control provided Equipment is subject to the disclaimer of warranty set forth in section 9.1, below. This limited warranty shall further be void if, following installation, the Equipment becomes damaged as a result of abuse, vandalism, or tampering.

## **3. BGAN SATELLITE SERVICE**

**3.1 Service Description.** BGAN Service is available globally with an unobstructed view of the southern sky, and consists of a BGAN satellite terminal with related standard services offered through the BGAN network, Subject to the timely payment of all Fees and the terms and limitations set forth in this Agreement and on the Sales Contract form, Ground Control agrees to provide Subscriber with a non-assignable, non-transferable and non-exclusive account, enabling Subscriber to access and use the Service (the "Account" or "Subscriber's Account").

**3.2 BGAN Service Term.** BGAN services from Ground Control are for 12 months. The 12 month service term AUTOMATICALLY RENEWS for another 12 month period unless cancellation is requested in writing on the 11th month of the service term. Upgrading to a higher package will not result in any fees, but the 12 month service term will begin on that date for the new package. Transferring to a lower value package is not allowed and customer must fulfill or pay any remainder of the 12 month contract prior to switching to the lower rate plan.

**3.3 Accessibility.** Subscriber agrees that BGAN service is not available if a clear view of the orbiting geostationary satellite is not attained, or a clear view is obstructed while in-motion by bridges, trees buildings and other potential obstructions. Subscriber understands that being on the fringe of a satellite coverage area means the satellite is low on the horizon and service outages may be more frequent It is agree that from time to time the Service may be inaccessible or inoperable for any

reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance and upgrade procedures, (iii) repairs which Ground Control and/or its service providers, including without limitation, its satellites operators, may undertake; or (iv) any cause beyond the control of Ground Control.

**3.4 BGAN Billing.** Data is billed in increments of 10KB increments with a 50KB minimum. Billing increment for all duration based traffic is 15 seconds. Duration usage is on a “per call” basis or a “per data session” basis. Circuit switched calls are measured based on actual time that the caller is connected. Minimum call duration is 30 seconds for Voice Circuit switched traffic and for ISDN. Separate billing events are produced for both the uplink and downlink volume. A data session starts when the SIM connects to the BGAN network and lasts until it is disconnected. The SIM Card is provided to the Subscriber under license and at all times remains the property of the Service Provider. Additional charges may include service charges for any items and additional services for which the Subscriber has signed up using the Service. It is understood, accepted and agreed to that the customer is responsible for all charges associated with the account. While optional credit limits can be placed, they are NOT A GUARANTEE service will be suspended. Customer acknowledges that any usage over their terminal is their total responsibility and assumes all financial responsibility of any charge.

**3.5 Slow Speed Periods.** Accurately predicting daily download and upload speeds is not possible. In addition, the Service may intermittently encounter slow speed periods. Causes of slower speeds may include, but are not limited to variables such as: time of day and congestion on the Internet, your network configuration and usage patterns, maintenance and upgrade procedures or repairs undertaken by Ground Control and/or its service providers, including satellite operators, .

**3.6 Installation and Relocation of Service.** BGAN in-motion terminal installation does not require a certified satellite technician and Ground Control recommends the use of a local car stereo firm for such installation for vehicles or trucks. While Ground Control can help coordinate the installation, the costs and responsibility of the installation will be between the customer and the installation firm. Ground Control shall have no liability whatsoever for any losses resulting from installation, repair or other installation services rendered, including without limitation, damage to your vehicle, loss of software, data or other information from your computer.

**3.7 Security.** You are responsible for all access to and use of the Service through your Account or password(s) and for all fees, charges and other expenses incurred in accordance with the terms of this Agreement or otherwise. You are solely responsible for the security, confidentiality and integrity of all messages and content received, transmitted through or stored through your Account on the Service. You acknowledge that areas accessible on or through the Service may contain material that is unsuitable for minors.

**3.8 Technical Support.** BGAN support is available by email or phone and will be answered normally within 24 hours of the time of the request.

#### **4. BGAN EQUIPMENT SALE AND LIMITED WARRANTY**

**4.1 Title to the Equipment** (i.e. BGAN terminals, cables, mounts) identified on the Sales Contract transfers to you upon Receipt of shipment, unless indicated as FOB, in which you would bear all risk of loss of the Equipment, F.O.B. point of shipment Ground Control and/or its suppliers retain all right, title and interest in and to any software, copyright, patent, trade secret, trademark, service mark, or other intellectual property or proprietary material that is part of, embedded in or accompanying the Equipment or Service.

**4.2 Warranty.** One (1) Year Parts and Labor Limited Replacement Warranty. At any time during the first one (1) year from date of system setup, should any Equipment purchased from Ground Control become defective, Ground Control shall replace such equipment at no additional charge. Equipment shall be considered “defective” if you are unable to connect to the Internet due to a malfunction in such Equipment on a regular or ongoing basis. Equipment shall be returned to Ground Control as directed at time of replacement within fifteen (15) days from date of replacement. Equipment not returned within fifteen (15) days from date of replacement will result in charges to your account for the full value of equipment replaced. All replacement parts to be shipped out “Ground” or “Freight” at Ground Control’s expense. Any expedited shipping of replacement parts to be at the buyer’s expense.

**4.3 Warranty Limitations.** Except for the limited warranty above, the Ground Control provided Equipment is subject to the disclaimer of warranty set forth in section 11.1, below. This limited warranty shall further be void if, following installation, the Equipment becomes damaged as a result of abuse, vandalism, or tampering.

#### **5. AMENDMENTS TO AGREEMENT; MODIFICATIONS TO SERVICE**

**5.1 Amendments to the Agreement.** Upon notice published at groundcontrol.com, or by notice published over the Service, or by email to you, Ground Control shall have the right, at anytime to modify the terms and conditions of this Agreement, including, without limitation, pricing and billing terms. In the event you do not agree to such changes or additions, you must cancel your contract and stop using the Service prior to the effective date of such modifications. Your continued use of the Service following the effective date of such modifications shall be deemed to constitute your acceptance of such modifications.

**5.2 Purchase Orders and Other Forms.** Any provision or condition in any purchase order, voucher, or other memorandum from you which is in any way inconsistent with, or adds to, the provisions of this Agreement is null and void, notwithstanding any acknowledgement thereof by Ground Control.

**5.3 Modification of the Service.** Ground Control may discontinue, add to or revise any or all aspects of the Service in its sole discretion and without notice. Ground Control specifically reserves the right at its sole discretion to modify, supplement, delete, discontinue or remove any software, file, publications, information, communication or other content appearing on or transmitted through the Service. If a material modification to the Service is made, you may terminate this Agreement in accordance with the terms set forth herein. Your continued use of the Service following the effective date of any changes constitutes acceptance of such changes.

## **6. SERVICE TERMINATION**

**6.1 Term.** This Agreement is effective upon Subscriber's signing the Sales Contract form or in the absence of, by accepting delivery of Equipment and/or using the Service. The Service term for VSAT Satellite service shall commence upon installation of Equipment, or equipment certification, if equipment is not provided by Ground Control. The Service Term for BGAN service shall commence upon the activation of the SIM card and will continue for 12 months and will renew for another 12 months if cancellation of the account is not requested in that time. Customer must request in writing to Ground Control cancellation of the BGAN service in the 11th service month of the service plan they purchasing to terminate the service. All iDirect Bandwidth Contracts, unless Month to Month is specified, are for a duration of 12 months. If 30-Day noticed is not given 30 days prior to end of the initial or renewal term, the contract shall automatically renew for successive 12 month term at Ground Control's then current fees. Galileo Bandwidth contracts are for a term of 12 months, unless otherwise specified in the bandwidth contract, and will be monthly after initial 12 month contract is completed. Customer must give 30-Day notice to cancel.

**6.2 Termination by Subscriber upon Material Amendment or Modification.** In the event Ground Control modifies this Agreement, the Service or related pricing and billing terms in a material way, you may terminate this Agreement by notifying us in writing, within thirty (30) days, of your decision to terminate based thereon. You shall continue to be liable for all fees and charges until the Agreement has been properly terminated after a material amendment or modification, or Ground Control has acknowledged such termination in writing. Continued use of the Service beyond the thirty (30) day period shall constitute your agreement to such material amendment or modification.

**6.3 Termination or Suspension by Ground Control.** Ground Control reserves the right, in its sole discretion and with or without notice, at any time and for any reason, to immediately: (a) suspend your access to or use of all or any portion of the Service; and (b) terminate this Agreement. If such suspension or termination is not due to a breach of this Agreement by you, Ground Control shall refund any unused fees prepaid by you.

**6.4 Continuation of Obligations.** Notwithstanding any termination of this Agreement, nor any suspension or termination of access to or use of the Service, or any portion thereof, you shall remain responsible for any obligations accrued to the date of such action, including payment of any fees or charges due as of the date of such action(s), or as a result of or in connection with such action(s). Your payment and other obligations under this Agreement are not suspended or affected by a suspension of access to or use of the Service, in whole or in part, due to a material breach of this Agreement by you. After you initial term, you may cancel your service by submitting the cancellation form in writing by mail to: Ground Control, P.O. 4459, San Luis Obispo, CA 93403; faxing it to 805-542-0688 or by emailing it to [billing@groundcontrol.com](mailto:billing@groundcontrol.com). Please note that Ground Control does not pro-rate or refund any portion of you monthly service payments.

**6.5 Early Cancellation.** VSAT Satellite Dish Subscriber agrees to the term of the twelve (12) months Agreement. BGAN Satellite Subscriber agrees to the term of the twelve (12) months with automatic renewal annually. Subscriber is liable for the entire value of the contract term, even if the Service is cancelled before the completion of the 12 or 24 month contract.

**6.6 International Sales Deposit.** All international sales (any sale for systems installed outside the United States or purchased by entities residing outside the United States) will be required to pay a minimum of twelve (12) months Service at the time of initial sale.

## **7. SUBSCRIBER'S REPRESENTATIONS**

**7.1 Subscriber's Representation and Warranties.** You represent and warrant to Ground Control that: (a) you and each permitted user under the Account is over the age of eighteen (18), (b) you have the power and authority to enter into and perform your obligations under this Agreement; (c) you will comply with all terms and conditions of this Agreement, (d) you will be responsible for installing, establishing and setting up, and for verifying and maintaining, the Account, options, settings and other parameters under which the Service is used, including (without limitation) all related passwords and user identification information, and (e) all information provided by you to Ground Control is truthful, accurate and complete, and you will notify Ground Control promptly of any changes in such information.

## **8. FEES AND TAXES**

**8.1 Service Fees and Other Charges.** You shall pay, in accordance with the billing option on your Sales Contract, and our invoices to you, any fees and other charges (“Fees”) at the rates in effect for the billing period in which those amounts are charged or incurred. If a credit card is provided for payment, you authorize automatic credit or charge card billing by us in accordance with the terms of this agreement and the Sales Contract Form. Ground Control reserves the right to change its Fees and billing methods at any time effective thirty (30) days after notice to you. If any such change is unacceptable to you, you may terminate your Service in accordance with the terms set forth in this Agreement. Continued use of the Service following the effective date of any change shall be deemed acceptance of such change.

**8.2 Taxes.** You shall be solely responsible for and shall pay all taxes, duties or levies of any kind (exclusive of taxes on Ground Control’s net income), including interest and penalties thereon, relating to the Service, use of the Service by users of your account, and your acquisition/license of the Equipment and/or software, whether or not stated on any invoice to you.

**8.3 Reactivation.** Ground Control may charge its then current reactivation fee and/or require prepayment of monthly fees before reactivating the Service, if inactivated for any reason. Credit amounts shall not earn or accrue interest.

## **9. PERMITTED USE AND RESTRICTIONS ON USE**

**9.1 License Grant.** Subject to the terms of this Agreement, Ground Control grants you a non-assignable, non-transferable, non-exclusive, limited license to use the software through which you access the Service or use the Equipment (the “Software provided by Ground Control”).

**9.2 License Limitations.** Unauthorized copying of the Software, including software that has been modified, merged or included with the Software, or the written materials associated therewith, is expressly forbidden. You may not sublicense, assign or transfer this license or the Software except as permitted in writing by Ground Control. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this license is void. You shall not copy or duplicate or permit anyone else to copy or duplicate, any part of the Software provided by Ground Control or its suppliers hereunder, or create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under this Agreement.

## **10. SPECIFIC RESTRICTIONS/ACCEPTABLE USE POLICY**

**10.1 Prohibited Conduct.** You agree to abide by all applicable local, state, national and international laws and regulations in connection with the Service, your use of the Service and this Agreement. You are solely responsible for any and all acts and omissions that occur under your Account(s) or password. You agree that neither you nor your permitted users shall engage in unacceptable use of the Service, which includes, without limitation, use of the Service to: (a) post or transmit duplicative or similar unsolicited messages, chain letters, pyramid schemes, or unsolicited e-mail (commercial or otherwise), (b) access another site’s mail server to relay mail without the express permission of the site; (c) post or transmit material that is abusive, obscene, harmful, hateful, indecent, pornographic, libelous, defamatory, harassing, grossly offensive, vulgar, threatening, malicious or racially, ethnically or otherwise objectionable; (d) post or transmit files, graphics, software or other material that actually or potentially infringes the copyright, trademark, patent, trade secret, publicity, privacy or other intellectual property rights of any person, including Ground Control; (e) create a false identity, otherwise attempt to mislead any person as to the identity or origin of any communication, or forge any TCP-IP packet header or any part of the header information in an email or newsgroup posting; (f) export, re-export or permit downloading of any software or information in violation of any export or import law; (g) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Service, (h) interfere, disrupt or attempt to gain unauthorized access to data, systems or networks, including attempts to probe, scan or test system or network vulnerability, or breach security or authentication measures thereof, or monitor data or traffic thereon, without express authorization of the owner of the system or network; (i) interfere with service to any user, host or network, including without limitation mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks, (j) post or transmit computer or network viruses, Trojan horses, worms, time bombs, cancel bots, or any other contaminating, destructive, harmful, deleterious or malicious features, code or program; (k) post or transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation; (l) falsely state or otherwise misrepresent affiliation with a person or entity, (m) post or transmit any unsolicited advertising, promotional materials, or other forms of solicitation to other Subscribers, individuals or entities, (n) use the Service or any of its elements or related facilities or capabilities to conduct any business or activity, or solicit the performance of any activity, which would violate any legal obligation, or (o) engage in any other activity deemed by Ground Control to be in conflict with the spirit or intent of this Agreement. The foregoing acts may result in criminal action or civil liability. Investigation by Ground Control of suspected violations may involve law enforcement agencies if the violation is deemed criminal. **INDIRECT OR ATTEMPTED VIOLATIONS OF THIS POLICY AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A GROUND CONTROL SUBSCRIBER, OR SUBSCRIBER’S END USER, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH SUBSCRIBER OR END USER. GROUND CONTROL HAS NO OBLIGATION TO MONITOR THE SUBSCRIBER’S USE OF THE SERVICE.** Ground Control, however, reserves the right at all times to monitor some, all or

none of the activities of Subscribers for adherence to this Agreement. Ground Control may, at its sole discretion, immediately terminate Subscriber's access to the Service should Subscriber's conduct fail to conform to the terms and conditions of this Agreement.

**10.2 Galileo™ Service Acceptable Use.** Galileo service is designed for end user internet access, including email and web browsing, and, in addition to the Prohibited Conduct listed above, is not to be used for network infrastructure applications or media intensive content. Ground Control reserves the right to limit or deny users of its Galileo Service from accessing certain applications including, but not limited to (a) web hosting, (b) streaming services, (c) backbone connectivity, (d) Internet POP connectivity, (e) peer to peer file sharing (serving) and (f) constant bit rate services.

**10.3 Notice and Complaints.** Notification or complaints regarding any Prohibited Conduct should be sent to support@groundcontrol.com, or contact Ground Control at 805-783-4600.

## **11 DISCLAIMER OF WARRANTIES AND EXCLUSION OF LIABILITY**

**11.1 Disclaimer of Warranties.** You expressly agree that use of the service, equipment and software is at your sole risk. Neither Ground Control nor any of its contractors, satellite or other information, communication or content Providers, licensors, subsidiaries, affiliates, shareholders, directors, officers, employees or agents (collectively Referred to hereafter as the 'disclaiming parties') warrant that the service will be uninterrupted or error free, or that Your network or applications will be compatible with the service; nor do Ground Control or the disclaiming parties make any warranty as to the results to be obtained from use of the service, including any minimum upload or download speeds. The service, equipment and software is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or otherwise, except for (a) the limited warranty that applies to the equipment and (b) those implied warranties, if any, which are incapable of exclusion, restriction or modification under the laws applicable to this agreement. No oral or written information or advice given by Ground Control or any of the disclaiming parties shall create any warranty in or to the service, equipment, software or content, and you may not rely on any such information. You acknowledge that the content available on the service is originated by independent publishers and/or providers and Ground Control and the disclaiming parties (a) cannot and do not warrant the accuracy of such and (b) shall not be liable in any manner whatsoever for the nature of such content or any errors, omissions or inaccuracies relating thereto.

**11.2 Your Sole and Exclusive Remedy.** Your sole and exclusive remedy in the event of any material breach of this agreement by Ground Control, or for any other matter arising from or relating to this agreement, the services, equipment, software or the internet generally, shall be to discontinue use of the service and terminate this agreement in accordance with these terms.

**11.3 LIMITATION OF LIABILITY.** Under no circumstances shall Ground Control or any of the disclaiming parties be liable to you or any other person for any indirect, incidental, consequential, special or punitive damages (including, but not limited to, lost revenue, lost profits, replacement goods, cost of replacement goods, loss of technology, rights or services, loss of information, or interruption or loss of use of service or equipment) for any matter arising from or relating to this agreement, the services, equipment, software or the internet generally, including, without limitation, (a) subscriber's use or inability to use the service, (b) any changes to or inaccessibility of the service, (c) delay, failure, unauthorized access to or alteration of any transmission or data, (d) any material or data sent or received or not sent or received, (e) any transaction or agreement entered into through the service, or (f) any data or material from a third person accessed on or through the service, whether such liability is asserted on the basis of contract, tort or otherwise, and even if Ground Control is advised of the possibility of such damages, or even if your sole and exclusive remedy is held invalid or void for failing of its essential purpose or otherwise. In no event shall the liability of Ground Control and its disclaiming parties for direct damages, should your sole and exclusive remedy be held invalid or void for failing of its essential purpose or otherwise, exceed the total fees actually paid by you to Ground Control hereunder. Some states may prohibit the exclusion or limitation of incidental or consequential damages, thus the limitation of liability may not apply to you in full.

**11.4 Force Majeure.** Ground Control shall not be liable for and will not be responsible to you for any delay or failure to perform under this Agreement if such delay or failure is due, in whole or in part, to any cause, reason, action or inaction beyond the reasonable control of Ground Control.

## **12. INDEMNITY**

**12.1 Indemnity.** You agree to indemnify, hold harmless and defend Ground Control and the Disclaiming Parties from and against all claims, liability, damages, costs and expenses, including but not limited to reasonable attorneys fees, asserted by any person or entity, arising out of or related to any and all use of your Account, and any breach by you, or by anyone using your Account, of any provision in this Agreement. Ground Control reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you hereunder, and in such event, you shall have no further obligation to defend or pay the attorneys fees for defending such matter, but shall otherwise remain responsible for indemnification.

### **13. USE OF SUBSCRIBER INFORMATION**

**13.1 Use of Subscriber Information.** Ground Control may, without obligation, liability or notice, except to the extent prohibited by applicable law, distribute, loan, sell or otherwise share with other persons or entities, users lists and aggregate information which constitutes or is descriptive of demographic information, habits, usage patterns, preferences or other descriptive or related data, which do not rely on providing to recipients the identity of any particular user of the Service. Ground Control may also provide Subscriber and user information and records, including personally identifiable information, to (a) our satellite providers, installers and other third parties who reasonably require such to facilitate our providing the Service to you and meeting our obligations hereunder and (b) courts, law enforcement agencies, or others involved in prosecuting claims or investigations for conduct or conditions alleged or believed to be illegal or to violate or threaten the rights of any person or entity.

### **14. THIRD PARTY BENEFICIARIES**

**14.1 Third Party Beneficiaries.** Each of the Disclaiming Parties shall have the right to assert and enforce the provisions of this Agreement related to DISCLAIMER OF WARRANTIES, EXCLUSION AND LIMITATION OF LIABILITY and INDEMNITY, directly on its own behalf.

### **15. LIABILITY FOR UNAUTHORIZED USE**

**15.1 Subscribers' Liability for Unauthorized Use.** You shall notify Ground Control immediately after you sell, give away or otherwise transfer your Ground Control equipment, or such equipment is stolen or otherwise removed from your premises. You will be liable for any charges or fees incurred by the use of Subscriber's Ground Control equipment by anyone else up to the time that Ground Control receives Subscriber's notice, unless otherwise provided by state law. Subscriber may not assign or transfer the Service without our written consent.

### **16. GENERAL**

**16.1 Notices.** Where notification by Ground Control is contemplated by this Agreement, notice may be made by any reasonable means, including but not limited to email, publication over the Service or publication at groundcontrol.com, and you agree that any one of these methods is sufficient notice by itself for all purposes. If email notice is provided, not receiving notice due to an invalid e-mail address will neither release you of your obligations under this agreement, nor be deemed a valid excuse for any reason.

**16.2 Miscellaneous.** In no event shall Ground Control suffer any liability or forfeit any right or discretion based on its enforcement, non-enforcement or consistency of enforcement of these terms. If any term of this Agreement is found invalid, illegal or unenforceable, offending aspects thereof shall be eliminated while giving the greatest possible effect to the intentions of such term and all other terms of the Agreement.

**16.3 Assignment of Account.** Ground Control may sell, assign or transfer your account relationship and/or this Agreement to a third party without notice to you.

**16.4 Choice of Law/Time for Legal Action.** This Agreement is made in the State of California in the County of San Luis Obispo and governed in all respects by California law, excluding its conflicts of law provisions. Any cause of action brought by you, or by users of your Account, with respect to the Service, Equipment, Software or this Agreement must be instituted within one year after the claim or cause of action has arisen or be barred.

**16.5 Construction and Delegation.** Except for the purchase of Equipment, if any, this is a contract for services and not a contract for the sale of goods. Neither the course of conduct between the parties nor trade practices shall modify the provisions of this Agreement. Any provisions of this Agreement, which by their nature should continue, shall survive termination of this Agreement.

SUBSCRIBER AGREES THAT THESE ARE THE TERMS & CONDITIONS APPLICABLE TO SERVICE AND OTHER MATTERS COVERED HEREIN.