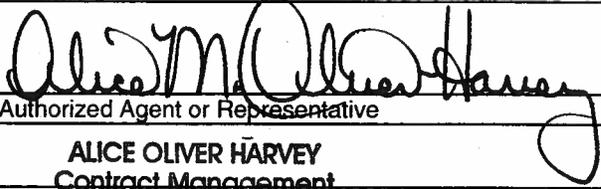
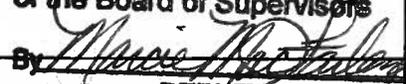


AT&T Addendum No. 1 to Master Agreement

Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services

CUSTOMER Legal Name	AT&T Contact Information
Customer Name ("Customer"): County of El Dorado Street Address: 360 Fair Lane City: Placerville State / Province: CA Country: USA Domestic / International Zip Code: 95667	AT&T AT&T Global Services ("AT&T") One AT&T Plaza Dallas, Texas 75202 Email: mast@att.com
CUSTOMER Contact	AT&T Sales Contact
Name: Tom Straling, Contract Administrator Title: Technology Officer Telephone: 530-621-5415 Fax-626-6842 Email: tom.straling@edcgov.us	Name: Tanya Newbold Street Address: 2700 Watt Ave City: Sacramento, State: CA Zip Code: 95821 Telephone: 916-977-4636 Email: tn2684@att.com Fax: 916-483-9127 Sales/Branch Manager: Mitch Prather
CUSTOMER Signature	AT&T Signature
	
Authorized Agent or Representative Chairman Board of Supervisors	Authorized Agent or Representative
RUSTY DUPRAY	ALICE OLIVER HARVEY
Print Name and Title	Print Name and Title
ATTEST: CINDY KECK, Clerk of the Board of Supervisors	Contract Management
1/29/08	2-7-08
Date	Date
By:  DEPUTY	

This Addendum outlines Individual Case Basis Terms & Conditions For Regulated State Local Exchange Services ("Addendum"), and is part of the Master Agreement between AT&T and Customer referenced above (the "Agreement"). In the event of an inconsistency or conflict between the Agreement, this Addendum and AT&T's tariffs, and *notwithstanding the order of precedence set forth in the Master Agreement*, the governing order of precedence shall be (1) the ICB Pricing Schedule (2) this Addendum, (3) the Agreement, and (4) the applicable tariff, except in Connecticut where the order of precedence shall be 1) the ICB tariffs, 2) the ICB Pricing Schedule, 3) this Addendum; 4) the Agreement.

1. THE SERVICE; DEFINITIONS

1.1 Services

- A. SBC Global Services, Inc. dba AT&T Global Services on behalf of its Affiliate(s) named below which provide local exchange service ("AT&T"), will provide the Services to Customer under this Addendum which are identified in the Pricing Schedules and applicable Tariffs or Catalogs ("Tariffs").
- B. The pricing, service descriptions and other provisions relating to the Services will be as set forth in: (i) this Addendum (including, the attached Pricing Schedules); (ii) the Agreement's Terms and Conditions; and (iii) the appropriate section of the Tariffs.
- C. This Addendum is effective on the date of last execution (so long as consistent with regulatory requirements) and shall remain in effect until all Pricing Schedules provided under this Addendum have expired.

1.2 AT&T Affiliates

Illinois Bell Telephone Company dba AT&T Illinois; Indiana Bell Telephone Company, Incorporated dba AT&T Indiana; Michigan Bell Telephone Company, dba AT&T Michigan; The Ohio Bell Telephone Company dba AT&T Ohio; Wisconsin Bell, Inc. dba AT&T Wisconsin; Southwestern Bell Telephone, L.P. dba in the states of Arkansas, Kansas, Missouri, Oklahoma and Texas as AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas, respectively; Pacific Bell Telephone Company dba AT&T California, Nevada Bell Telephone Company, dba AT&T Nevada; The Woodbury Telephone Company dba AT&T Woodbury; and The Southern New England Telephone Company dba AT&T Connecticut

CONFIDENTIAL INFORMATION

Except with respect to Services provided in Ohio, this agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.

AT&T Addendum No. 1 to Master Agreement**Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services****1.3 Definitions**

"Cutover" is when the Service is first provisioned or otherwise available for Customer's use at any single Site at the rates provided in this Pricing Schedule.

"Effective Date" of a Pricing Schedule is the date on which the last party signs this Addendum or, for a subsequently added Pricing Schedule, the date on which the last party signs the Pricing Schedule. If the rules of a regulatory authority having jurisdiction respecting a Service would require a later date, or an applicable tariff filing would require a later date, then the Effective Date of the applicable Pricing Schedule shall be in accordance with such rules.

"Pricing Schedule" means an ICB pricing schedule to this Addendum, either appended hereto or subsequently signed by the parties and referencing this Addendum.

"Pricing Schedule Term" is the period of time stated in the applicable Pricing Schedule.

"Service" means collectively all of the Service Components Customer orders under a Pricing Schedule.

"Service Component" means the individual components of a Service that Customer orders under a Pricing Schedule.

2. TERMINATION

The following termination provisions are only applicable to Services provided pursuant to an ICB Pricing Schedule.

2.1 If a Service or a Service Component is terminated, Customer must pay all charges incurred as of the effective date of termination.

2.2 If Customer terminates a Service or a Service Component for material breach by AT&T, Customer shall not be liable for any Termination Charges.

2.3 Termination for Convenience. If Customer terminates a Service with a specified term or term commitment ("Term"), in whole or in part, for convenience or AT&T terminates for Customer's default, on or after Cutover but before the scheduled completion of the Term, Customer shall pay the termination liability (i) specified in the Pricing Schedule; or (ii) if no termination liability is specified, an amount equal to (a) all unpaid non-recurring charges (excluding non-recurring charges that were waived or incorporated into the monthly recurring rates), (b) fifty percent (50%) of the recurring monthly charges rate for the terminated Service as set forth in the Pricing Schedule, multiplied by the number of months remaining in the term of the Pricing Schedule at the point of termination, and (c) any special construction liabilities.

3. PRICING**3.1 Pricing Schedule**

For custom priced Services, unless otherwise stated in a Pricing Schedule and except in Connecticut (where custom prices are not only set forth in the Pricing Schedule but also contained in ICB Tariffs), the rates and charges stated in the Pricing Schedule are stabilized until the end of the Pricing Schedule Term, and apply in lieu of the corresponding rates and charges set forth in the Tariffs. For Services provided per Tariff pricing, during the Term, rates will not increase above Monthly Rates set forth in the Pricing Schedule and rate decreases will automatically be applied to the Monthly Rates. Pricing for any Services that are not listed in a Pricing Schedule will be as described in the Tariffs.

3.2 Discounts

Any discounted rates set forth or referenced in a Pricing Schedule are the only discounted rates applicable to the Services and will be applied to the Services in the manner and to the extent specified in the Tariffs.

3.3 Promotions/Credits/Waivers

Customer is eligible only for promotions, credits or waivers identified in the applicable Pricing Schedule. Unless otherwise stated in this Addendum or the applicable Pricing Schedule, any additional promotions, credits or waivers set out in the Tariffs will not apply.

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**AT&T Addendum No. 1 to Master Agreement
Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services**

3.4 Charges

For Services provided under a custom pricing plan, Customer shall pay the Non-recurring Charge and/or Monthly Rate as listed in the applicable Pricing Schedule, which shall commence upon Cutover.

4. TARIFF AND REGULATORY REGULATIONS

Each Pricing Schedule is subject to the jurisdiction of a regulatory commission and will be subject to changes or modifications as the controlling commission may direct from time to time in the exercise of its jurisdiction. Therefore, for this purpose, each Pricing Schedule will be deemed to be a separate agreement with respect to the Services offered in a particular jurisdiction.

AT&T will, subject to the availability and operational limitations of the necessary systems, facilities, and equipment, provide the Services pursuant to the terms and conditions in the Tariffs. This Addendum and each Pricing Schedule may be filed with the appropriate state commission. If approval is required and not obtained, then this Addendum and/or the applicable Pricing Schedule will immediately terminate, and Customer shall receive a refund of any non-recurring charge paid and pre-paid amounts for Services not received.

5. SERVICES AND JURISDICTION CERTIFICATION

Customer acknowledges and certifies that the interstate traffic (including Internet traffic) constitutes **ten percent (10%) or less** of the total traffic on any non-switched circuit(s) purchased under any ICB Pricing Schedule associated with this Addendum. In California, Nevada, Illinois, Indiana, Michigan, Ohio and Wisconsin this clause is not applicable when AT&T DS1 or DS3 Service is used solely for the transport portion of AT&T local access ISDN Primary Rate Interface (PRI) service or AT&T Digital Transport Service-Enhanced channel(s).

6. INSTALLATION AND CUTOVER

Cutover of Service hereunder requires the installation of certain equipment and facilities on AT&T's side of the demarcation point. Customer shall be responsible for providing adequate space and power, as determined by AT&T, for equipment requirements at the designated locations. If Cutover is delayed due to changes, acts, or omissions of Customer, or Customer's contractor, or due to any force majeure event as defined in the "Force Majeure" provision of the Agreement, AT&T shall have the right to extend Cutover for a reasonable period of time equal to at least the period of such delay and consequences.

If Customer cancels this Addendum or a Pricing Schedule before the Service is Cutover for reasons not excused herein, Customer shall reimburse AT&T for all expenses incurred in processing the order and in installing the required equipment and facilities completed up to the date of cancellation as specified in the Tariffs.

All equipment, facilities and lines furnished by AT&T are the sole property of AT&T and are provided upon condition that they will be installed, relocated, removed, changed and maintained exclusively by AT&T as it deems appropriate in its sole discretion.

7. SERVICE AND MAINTENANCE OBLIGATIONS

AT&T represents to Customer that, for the Pricing Schedule Term, the applicable Services shall operate substantially and materially in accordance with the specifications in the Tariffs. If, under normal and proper use, the Service fails to perform substantially as specified above, and Customer notifies AT&T within the Term, AT&T shall correct such Service degradations or failures without charge to Customer, in accordance with the terms of this Addendum. Customer may report service and feature problems seven (7) days per week and twenty-four (24) hours per day. AT&T's repair obligation does not include damage, defects, malfunctions, service degradations or failures caused by Customer's or third party's abuse, intentional misuse, unauthorized use or negligent acts or omissions. In addition, the foregoing repair obligation applies only if Customer provides AT&T with access on its side of the demarcation point to enable AT&T to perform maintenance or repair work.

In the event of a Service interruption, a credit allowance will be made for the affected portion of the Service to the extent specified by the Tariffs. No other liability shall attach to AT&T as a result of such interruption to Service.

Equipment and facilities furnished by AT&T on Customer's premises, or furnished on any other property, shall be returned to AT&T in good condition, reasonable wear and tear thereof excepted. In case of damage, loss or destruction of any of AT&T's equipment or facilities, and not due to the negligence of AT&T or to fire, storm or other like casualty, Customer shall pay to AT&T the lesser of the value of the equipment, facility or line damaged, lost or destroyed, or the cost of restoring it to its original condition, as the case may be, less ordinary wear and tear.

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AT&T Addendum No. 1 to Master Agreement

Individual Case Basis Terms & Conditions For Regulated State Local Exchange Carrier Telco Services

8. Terms and Conditions only applicable to Pricing Schedules with custom priced Services in California. If Customer is not purchasing Services in California under an ICB Pricing Schedule under this Addendum, then this section does not apply to Customer.

8.1 Confidentiality. Customer requests that its identity be kept confidential and not be publicly disclosed in connection with any required regulatory filings by AT&T or the California Public Utilities Commission (CPUC), unless required by law.

8.2 *Unless otherwise stated in the Pricing Schedule, the prices set forth in the Pricing Schedules do not include applicable Federal Access End User Common Line Charges, local number portability charges, CPUC or FCC mandated surcharges or applicable taxes, toll usage, directory listings or other miscellaneous Tariff charges. Applicable Federal Access End User Common Line Charges, local number portability charges, tariff prices, surcharges and taxes will be billed on a monthly basis. AT&T California's Tariff Schedule Cal. P.U.C. No. A2.1.33, surcharges/surcredits, are not applicable to the prices set forth in the Pricing Schedules.*

8.3 Except if specified in a Pricing Schedule, the Services set forth in the Pricing Schedules do not include intrabuilding network cable, Simple Inside Wire, repair services for such cable and wire, wiring associated with Customer-provided terminal equipment, Off-premises station mileage, or usage associated with Foreign Exchange Service, Data Lines, or Tie Lines.

8.4 Customer acknowledges and warrants that it lacks requisite regulatory authority such as Certificates of Public Convenience and Necessity ("CPCN") or other like authorization to resell services, and Customer is prohibited from reselling the Service provided pursuant to this Schedule to any other customers. However, Customer may make the Services provided hereunder available to its own subsidiaries or to legally affiliated entities. If Customer obtains regulatory authority to resell services and attempts to resell the Services provided hereunder, AT&T may, on ten days written notice, terminate any Schedule or portion of a Schedule for regulated local exchange telco Services in California.

9. Terms and Conditions only applicable to Pricing Schedules with custom priced Services in Ohio. If Customer is not purchasing Services in Ohio under an ICB Pricing Schedule under this Addendum, then this section does not apply to Customer.

To the extent this Addendum relates to regulated Services provided in Ohio:

9.1 Inclusion of termination liability in this Addendum or any Pricing Schedule does not constitute a determination by the Public Utilities Commission of Ohio (PUCO) that the termination liability is approved or sanctioned. The Customer is free to pursue its legal remedies should a dispute arise.

9.2 Approval of limitation of liability language by the Public Utilities Commission of Ohio (PUCO) does not constitute a determination by the Commission that the limitation of liability imposed by the company should be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequential damage claims, it is also the court's responsibility to determine the validity of the exculpatory clause.

9.3 In Ohio, Customer is not precluded from disclosing the terms and conditions of the Master Agreement or this Addendum or any Ohio Pricing Schedule to another entity.

10. ENTIRE AGREEMENT

This Addendum (including Pricing Schedules and attachments), the Agreement, and the Tariff(s) are the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, proposals or understandings, whether written or oral. This Addendum may not be modified except by a writing signed by both parties.

End of Document

CONFIDENTIAL INFORMATION

Except with respect to Services provided in Ohio, this agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.

Master Agreement

This Master Agreement (the "Agreement") is between SBC Global Services, Inc. dba AT&T Global Services, a Delaware corporation with offices at One AT&T Plaza, Dallas, Texas 75202, on behalf of itself and those Affiliates identified in those Addenda, Attachments, Orders, and/or SOWs that may be entered into from time to time and incorporated by reference into this Agreement (individually and collectively, "AT&T") and County of El Dorado ("Customer"), a California Government Agency, with offices at 360 Fair Ln, Placerville, CA 95667, is effective on the date of last execution ("Effective Date"). AT&T and Customer are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

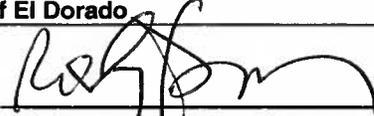
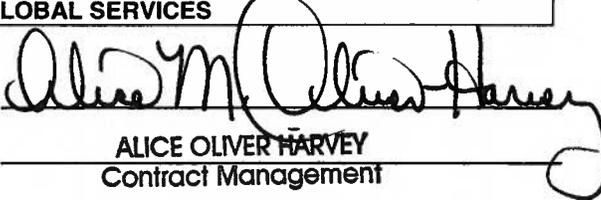
References to "Agreement" refer to this Agreement, any applicable tariff or guidebook, and the documents listed in the Addendum and Attachment List, including any Statement of Work ("SOW"). New or revised Addenda, Attachments, Orders, and/or Statements of Work must be signed by Customer and AT&T Affiliate. The following order of precedence applies to the documents comprising an Agreement: (1) any applicable guidebook and tariff(s), (2) Addenda (and related SOWs and Attachments), (3) this Agreement, and (4) Orders.

Notices from a Party concerning this Agreement must be written and delivered to the other Party at the address(es) below (i) in person, (ii) by certified mail, return receipt requested, (iii) by traceable overnight delivery, or (iv) by facsimile, electronically confirmed and followed immediately by U.S. Mail. Notice will be effective upon delivery.

To Customer: County of El Dorado
360 Fair Ln
Placerville, CA 95667
Fax: 530-626-6842
Attention : Tom Straling, Contract Administrator

To AT&T: Tanya Newbold – Contract Notice
2700 Watt Ave
Sacramento, CA 95821
Fax: 916-483-9127
Attention: AT&T Account Team for County of El Dorado

SO AGREED by the Parties' respective authorized signatories:

County of El Dorado	AT&T GLOBAL SERVICES
By: 	By: 
Name: RUSTY DUPRAY	Name: ALICE OLIVER HARVEY
Title: Chairman, Board of Supervisors	Title: Contract Management
Date: <u>1/29/08</u>	Date: <u>2-7-08</u>

**ATTEST: CINDY KECK, Clerk
of the Board of Supervisors**
By: 
DEPUTY

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1. DEFINITIONS

- 1.1 "Affiliate" means an entity that controls, is controlled by, or is under common control with a Party.
- 1.2 "Confidential Information" means ideas, know-how, trade secrets, computer programs, technical information, and other confidential information which is disclosed by a disclosing Party to a receiving Party under this Agreement and identified in writing as confidential by the disclosing party. Information that is required to be disclosed pursuant to a valid request under the California Public Records Act or other applicable law may be "Confidential Information" but shall be handled as outlined in Section 3.5 below entitled "Use of Confidential Information."
- 1.3 "Cutover" occurs (except as otherwise described herein or in an Addendum/Attachment/SOW) (a) for a Service when the Service is first provisioned or otherwise available for Customer's use at any single Site; and/or (b) for Equipment when the Equipment is delivered to the carrier for shipment, or if installation by AT&T is provided as part of the Services, then upon AT&T's installation of the Equipment.
- 1.4 "Equipment" means equipment that AT&T sells or leases to Customer under this Agreement.
- 1.5 "Software" means computer programs and related object code licensed by AT&T to Customer, including any software licensed with or separately from Equipment.
- 1.6 "Normal Business Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding AT&T recognized holidays.
- 1.7 "Order" means any purchase order for Equipment or Services that references this Agreement (or an Addendum).
- 1.8 "Service(s)" means any or all services provided by AT&T, as further described in this Agreement or an Addendum.
- 1.9 "Site(s)" means Customer locations where AT&T is to perform Services.

2. SERVICE-SPECIFIC TERMS AND CONDITIONS

- 2.1 Limitation on Service; Applicability of Tariffs. Service is offered subject to the availability and operational limitations of the necessary systems, facilities, and equipment. Except as otherwise specified in an Addendum, regulated Services (e.g., local or long distance telephone service) are subject to applicable tariffs and/or guidebooks (generally available at www.att.com or from an AT&T sales representative). Customer and any Customer end-user use of Service shall at all times comply with applicable laws, regulations and any AT&T written or electronic instructions for use.
- 2.2 Payment and Billing. Customer will pay AT&T (i) the monthly fees and nonrecurring charges set forth in the applicable Addendum (or, in the case of regulated services, at the charges set forth in the applicable tariff and/or guidebook), and (ii) applicable taxes, surcharges, and recovery fees (including universal service fees), and customs and duties. Except as otherwise provided in the applicable Addendum, (i) billing commences on Cutover; (ii) payment is due within 30 days after the date of invoice; and (iii) payment is subject to AT&T's credit requirements and AT&T may require a security deposit to ensure prompt payment. Customer will advise AT&T of any billing dispute within 30 days after receipt of invoice or the invoice shall be deemed correct. In addition to recovering attorneys' fees and costs of collection, AT&T may assess a late payment fee equal to (i) the lesser of 1.5% per month or the maximum amount allowed by law for Equipment or non-regulated Services, and (ii) as prescribed by the applicable tariff or guidebook for regulated Services. If Customer pays electronically, Customer agrees to pay using Automated Clearing House (ACH) which shall include remittance information.

3. GENERAL TERMS AND CONDITIONS

- 3.1 Term and Termination. This Agreement will start on the Effective Date and remain in effect until terminated by either Party as provided herein (the "Term"). Each Addendum is coterminous with this Agreement, unless the Addendum specifies a different term. Upon expiration of the term specified, each Addendum shall remain in effect on a month-to-month basis at AT&T's then current monthly pricing. Customer, and AT&T (in the case of Services that are no longer under a term commitment), may terminate this Agreement or an Addendum without cause and for convenience upon 30 days' prior written notice. If Customer terminates an Addendum with a specified term or term commitment, Customer shall pay the termination liability (i) specified in the Addendum; or (ii) if no termination liability is specified, an amount equal to (a) 50% of the remaining monthly recurring charges due under the Addendum; and (b) any charges imposed on AT&T by any third party as a result of Customer's early termination. Customer may cancel an Order for Equipment prior to Cutover, subject to payment of any non-recoverable restocking fees or costs incurred by AT&T. Customer may not cancel an Order for Equipment after Cutover.
- 3.2 Termination for Breach. This Agreement (or applicable Addendum) may be terminated immediately by either Party or AT&T may suspend performance hereunder or thereunder, upon written notice to the other Party if the other Party (i) is in material breach (including but not limited to failure to make timely undisputed payments) and such failure or breach is not remedied within 30 days after the terminating Party provides written notice to the breaching Party specifically

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describing such breach; (ii) ceases to carry on business as a going concern, becomes the object of voluntary or involuntary bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; (iii) engages in fraud, criminal conduct, or willful misconduct; or (iv) breaches the confidentiality obligations under this Agreement.

- 3.3 **Force Majeure.** Except in the case of payment of amounts due, neither Party will be liable to the other Party for any failure of performance due to any cause beyond that Party's reasonable control, including acts of God, fire, explosion, vandalism, terrorism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action, or request by any government, civil, or military authority, national emergencies, insurrections, riots, wars, labor difficulties, supplier failures, shortages, breaches, or delays, or preemption of existing Service to restore Service in compliance with the regulatory rules and regulations, or, in the case of AT&T, delays caused by Customer or Customer's service or equipment vendors.
- 3.4 **Assignment.** Neither this Agreement (including any Addendum) nor any interest therein may be assigned, sublet, or in any manner transferred by Customer without the prior written consent of AT&T. Any attempted assignment or transfer in contravention of the preceding sentence will be void. AT&T may assign or subcontract any portion of the Services to be performed without Customer's prior written approval.
- 3.5 **Use of Confidential Information.** During the Term, each Party may obtain Confidential Information from the other Party. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within 15 days after disclosure. Neither Party may during the Term and for 3 years thereafter disclose any of the other Party's Confidential Information to any third party except as required by law, particularly the requirements of the California Public Records Act. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, or (iv) disclosed by the disclosing Party to a third party without an obligation of confidentiality. Upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information.
- 3.6 **Customer Information; Access and Safe Working Environment.** AT&T may rely on any information provided by Customer and assumes no liability for any damages or costs that result from errors or omissions in such information. Customer shall provide AT&T with timely access to Customer information, facilities or equipment as AT&T reasonably requires to provide the Services and keep AT&T informed on developments in Customer's business or operations that may impact Service. AT&T may share Customer information and Confidential Information (including billing and usage information for Services purchased) with AT&T Affiliates and inform Customer of other AT&T product/service offerings. Customer shall maintain the Site in a suitable and safe working environment, free of Hazardous Materials. Customer represents and warrants that the area of the Site where AT&T performs Services is free of Hazardous Materials. AT&T does not handle, remove or dispose of, nor does AT&T accept any liability for, any Hazardous Materials at the Site. Customer shall pay AT&T for any damages, costs, fines or penalties AT&T incurs as result of the presence or release of such Hazardous Materials. If AT&T encounters any such Hazardous Materials, AT&T may terminate this Agreement or suspend performance until Customer removes and cleans up at its expense Hazardous Materials in accordance with this Agreement and applicable law. For purposes hereof, "Hazardous Materials" means any substance whose use, transport, storage, handling, disposal, or release is regulated to any law related to pollution, protection of air, water, or soil, or health and safety.
- 3.7 **Publicity.** During the Term, AT&T may refer to Customer, orally and in writing, as a customer of AT&T and may publish a press release announcing in general terms that AT&T and Customer have entered into this Agreement and AT&T may in general terms describe the activities contemplated hereunder. Any other reference to one Party by the other Party requires written consent of the first Party.
- 3.8 **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES RELATED TO LOST PROFITS, TOLL FRAUD, LOSS OF USE, AND LOSS OF DATA, OR FAILURE TO REALIZE SAVINGS OR BENEFITS) ARISING UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. EXCEPT AS OTHERWISE PROVIDED IN ANY APPLICABLE TARIFF OR GUIDEBOOK, THE TOTAL AGGREGATE LIABILITY OF AT&T, ITS SUPPLIERS, LICENSORS, AFFILIATES, DIRECTORS, OFFICERS, AND/OR EMPLOYEES UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO

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EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER DURING THE 3-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CIRCUMSTANCES GIVING RISE TO THE FIRST CLAIM FOR DAMAGES UNDER THIS AGREEMENT.

- 3.9 **Warranties; Disclaimer of Other Warranties.** With respect to maintenance or professional Services, AT&T warrants that the Services will be performed in a professional and workmanlike manner. AT&T further warrants that it has good title to the Equipment and that the Equipment will perform in accordance with the manufacturer's published specifications during the warranty period set forth by such manufacturer and AT&T will use commercially reasonable efforts to subrogate any AT&T claims or rights against the Equipment manufacturer to Customer. AT&T makes no warranties and assumes no liability for any defects or nonconformities caused by non-AT&T approved modifications or alterations; misuse, accident or neglect; or Customer failure to comply with AT&T or AT&T vendor specifications or requirements for use. These warranties do not cover and AT&T has no responsibility for (a) installation, maintenance or operation of non-AT&T provided equipment or software or impairment caused by such equipment/software; (b) compatibility of such equipment/software with AT&T-provided Equipment or Software; or (c) modifications, alternations or repairs to Equipment or Software by persons other than AT&T or its authorized agents. EXCEPT FOR THE FOREGOING, OR AS EXPRESSLY SET FORTH IN AN ADDENDUM, AT&T MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES RELATED TO THE MATERIALS, SERVICE, EQUIPMENT OR SOFTWARE, ALL OF WHICH ARE PROVIDED "AS IS" TO THE FULL EXTENT PERMITTED BY LAW.
- 3.10 **Indemnities.** Customer will indemnify and defend AT&T, its directors, officers, employees, agents and their successors ("Agents") from and against any and all third party claims and related loss, liability, damage and expense, including attorneys' fees, (collectively "Damages") arising from Customer's improper use of Services or information or any content or data transmitted by Customer over any AT&T network or facilities. AT&T will indemnify and defend Customer and its Agents from and against any Damages finally awarded or paid in settlement based on a claim that any Service, or AT&T-provided Equipment and Software (collectively, "Materials"), infringe a U.S. patent or copyright. If a final injunction or judgment is awarded against Customer prohibiting use of Service/Materials by reason of infringement of a U.S. patent or copyright, AT&T will at its option and expense either (a) procure the right for Customer to continue using the Service/Materials; (b) obtain and deliver equivalent non-infringing Service/Materials; or (c) terminate the infringing Service/Materials and refund to Customer amounts paid for infringing Service/Materials less a reasonable charge for use. An indemnified Party shall provide the indemnifying Party with notice for any claim of indemnity and the indemnifying Party shall have complete authority to assume the sole defense and settlement of such claim. The indemnified Party may participate in the settlement or defense at its own expense and shall reasonably cooperate to facilitate the defense and settlement of such claims.
- 3.11 **Equipment.** To the extent that Customer purchases Equipment under an Addendum/Attachment/SOW, the following additional terms apply: AT&T will deliver the Equipment FOB shipping point, freight prepaid and charged. Title to the Equipment and all risk of loss to the Equipment shall pass to Customer at Cutover. Upon Cutover, AT&T hereby grants to Customer a personal, nontransferable, non-exclusive license to use the Software on or with the corresponding Equipment and AT&T (or its licensors) shall retain and continue to own all right, title and interest in any Software and all copies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and all other items reasonably required to perform installation and other Services related to the Equipment and obtain any necessary licenses, permits and consents to do so. Customer has 30 days after Cutover to test the Equipment and provide AT&T with written notice if the Equipment is defective and does not conform to manufacturer's specifications. AT&T will repair or replace (at its option and expense) any such non-conformity and if the Equipment fails to conform after a reasonable number of attempts to do so, AT&T will (at its option and expense) provide replacement Equipment or refund payments for non-conforming Equipment. AT&T is not responsible for and shall have no liability for, or any impairment caused by (a) any non-conformity caused by improper use or environmental or electrical conditions or attachment of non-AT&T or manufacturer materials or devices; or (b) installation, operation or maintenance of non-AT&T hardware/software. Customer is responsible for ensuring that such non-AT&T hardware/software is compatible with the Services, Equipment or Software. If Customer does not deliver a written certificate of acceptance or written notice of non-conformity within 30 days after Cutover, the Equipment shall be deemed accepted.
- 3.12 **Miscellaneous.** This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations, and understandings relating to the subject matter hereof. No modifications or subsequent agreements concerning the subject matter of this Agreement will be effective unless made in writing and signed by the Parties. The parties agree that this transaction may be conducted by electronic means. AT&T shall not be bound by any electronic or pre-printed terms additional to, or different from, those in this Agreement that may appear in Customer's form documents, orders, acknowledgments or other communications. Customer shall not resell any Services without AT&T's written consent. Any legal action arising under this Agreement must commence within 2 years after the cause of action arises. AT&T, its employees, agents, and representatives are not employees, servants, partners, or joint venturers of or with Customer. AT&T is an independent contractor and will at all times direct, control, and

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supervise all of its employees. This Agreement will be governed by the laws of California, without regard to its conflicts of law rules. The Parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is determined to be invalid or unenforceable, this Agreement will be construed as if it did not contain such provision. The failure of a Party to insist upon strict performance of any provision of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.

4. DISPUTES

- 4.1 Except as described in Section 4.3, all disputes, controversies or claims, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, arising out of or relating to this Agreement and the Services provided under this Agreement (collectively, "Disputes"), not resolved amicably between the parties shall be settled by final and binding arbitration conducted in New York or other mutually agreed location by one neutral arbitrator, in accordance with this Agreement and the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Prior to initiating any such arbitration, the parties shall make good faith efforts to resolve the Dispute internally and by escalation of the Dispute to higher levels of management, if necessary. The arbitrability of Disputes shall also be determined by the arbitrator. Each party shall bear its own expenses and the parties shall equally share the filing and other administrative fees of the AAA and the expenses of the arbitrator, except that the arbitrator shall be entitled to award a different allocation of costs and fees where the arbitrator determines that a filed claim is frivolous. The arbitration proceeding shall be conducted in the English language. Any award of the arbitrator shall be in writing and shall state the reasons for the award. Judgment upon an award may be entered in any Court having competent jurisdiction. The arbitrator shall not have the power to award any damages in excess of the liability limitations set forth in this Agreement. The arbitrator shall not have the power to order pre-hearing discovery of documents or the taking of depositions, but may compel attendance of witnesses and the production of documents at the hearing. The Federal Arbitration Act, 9 U.S.C. Sections 1 to 14, shall govern the interpretation and enforcement of this Section 4.1.
- 4.2 The parties, their representatives and participants and the arbitrator shall hold the existence, content and result of the arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement or to obtain or enforce a judgment on an arbitration decision and award.
- 4.3 Disputes relating to: (i) the lawfulness of rates, terms, conditions or practices concerning Services that are subject to the Communications Act of 1934, as amended, or the rules and regulations of the FCC, a state public utility commission or other administrative agency; or (ii) billing or payment of charges under this Agreement; or (iii) Software, technology or other intellectual property; shall be exempt from the binding arbitration requirement described in Section 4.1. As to Disputes described in this Section 4.3, the claimant reserves the right to seek relief from an administrative agency or a Court of competent jurisdiction, as appropriate.

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