

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 15, 2017

Consent

Regular

Public Hearing

Workshop

Department:

Submitted by: Information Systems Services

Submitted for: Information Systems Services

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: AT&T Managed Internet Service Pricing Schedule as an attachment to the existing AT&T Master Agreement, R-2009-1055 for procurement of high-speed, high-capacity internet services from AT&T at an annual cost of \$78,384.

Summary: The AT&T Managed Internet Service Pricing Schedule will permit the County to add circuits and services that will upgrade AT&T's existing backup internet connection located at the Emergency Operations Center (EOC). This connection serves as a backup for the County's internet service in the event of a catastrophic failure of our primary internet service via Florida Lambda Rail (FLR), or a failure of network transport to our FLR point-of-presence connection. This pricing schedule will be appended to the existing AT&T Master Agreement, #133405UA, approved by the Board of County Commissioners on June 30, 2009, R2009-1055. Countywide (PFK)

Background and Justification: Palm Beach County locates critical internet circuits at the EOC for a variety of purposes such as the transport of voice, data, and other telecommunications. The EOC is a critical component of the County's Emergency Response System and much of its communications with other County and State Emergency Management organizations is conducted via the internet. Due to the increase in communications traffic of all kinds through the EOC, the capacity of the existing facilities is reaching its limits and must be expanded. The backup service will also help manage our FLR services through load sharing when there are unexpected spikes in internet traffic.

This backup internet connection is necessary to maintain the County's ability to restore service in the event of an unplanned outage of FLR services. Approval of this Pricing Schedule will establish the procurement vehicle to obtain these services. The term of this Pricing Schedule is 24 months from the date of approval.

Attachments:

1. AT&T Managed Internet Service Pricing Schedule (3 originals)
2. AT&T Master Agreement, #133405UA, R-2009-1055

Recommended by: Steve Bordelon 7-10-2017
 Department Director Date

Approved by: [Signature] 7/18/17
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	\$78,384	\$78,384	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
External Revenues	0	0	0	0	0
Program Inc (County)	0	0	0	0	0
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	\$78,384	\$78,384	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Additional FTE Positions (Cumulative) 0 0 0 0 0

Is Item Included in the Proposed Budget Yes X No

Budget Acct Number(s): Fund 0001 Dept. 490 Unit 1303 Object 4101

B. Recommended Sources of Funds / Summary of Fiscal Impact

These services are expected to be installed and in service by October 1, 2017.

C. Department Fiscal Review: Robert Paul 7/10/17

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. & Control Comments:

Judith L 7/17/17
 OFMB

Dr. J. Jacobson 7/18/17
 Contract Administration
 7/18/17

B. Legal Sufficiency:

Paul F. 7/18/17
 Assistant County Attorney

C: Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.



**AT&T MANAGED INTERNET SERVICE
PRICING SCHEDULE**

Customer	AT&T
Palm Beach County Street Address: 301 N Olive Ave Frnt City: West Palm Beach State/Province: FL Zip Code: 334014703 Country: United States	AT&T Corp.
Customer Contact (for notices)	AT&T Sales Contact Information and for Contract Notices <input type="checkbox"/> Primary AT&T Contact
Name: Steve Bordelon Title: Director, PBC ISS Street Address: 301 N Olive Ave, Room 801.10 City: West Palm Beach State/Province: FL Zip Code: 33401 Country: United States Telephone: 5613552394 Fax: Email: sbordelon@pbcgov.org Customer Account Number or Master Account Number: 1-EI-8859	Name: LIZMARY WHYTE Street Address: 100 W CYPRESS CREEK RD N/A City: FORT LAUDERDALE State/Province: FL Zip Code: 33309 Country: United States Telephone: 5615683964 Fax: 5615683964 Email: lw8703@us.att.com Sales/Branch Manager: LINDBORG ERIK SCVP Name: LINDBORG ERIK Sales Strata: Retail Sales Region: SE <u>With a copy to:</u> AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com
AT&T Solution Provider or Representative Information (if applicable) <input type="checkbox"/>	
Name1: Company Name: Agent Street Address: City: State: Zip Code: Country: Telephone: Fax: Email: Agent Code	

This Pricing Schedule is part of the Agreement between AT&T and Customer referenced above.

This Pricing Schedule/Agreement signed by AT&T first, is effective upon Customer signature provided that such fully signed Agreement is returned to AT&T not more than forty-five (45) days after AT&T's signature date. Any change made to this document renders the Agreement null and void, except for changes expressly authorized by the terms of this Agreement.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Name: Paulette Burdick	Name: Patrick J. Gleason
Title: Mayor	Title: Sr. Customer Contracts
Date:	Date: June 26 2017

APPROVED AS TO TERMS AND CONDITIONS

BY Steve Bordelon 7-10-17
ISS DIRECTOR

AT&T and Customer Confidential Information

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ASAP!

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Paul F. J. 5
COUNTY ATTORNEY



Sales Contact Information
WHYTE; LIZMARY
+1 5615683964
lw8703@us.att.com

eSign Fax Cover Sheet Contract Id: 8447735

To: AT&T Automated Fax Handling Service

From:

Fax: 877-374-4632 or 877-eSignFax

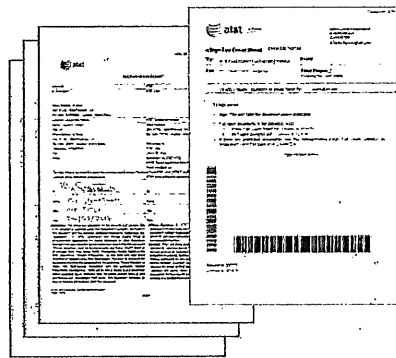
Total Pages: 5
(Excluding Fax Cover Sheet)

Or with Copiers / Scanners w/ email, Send To: esign@att.com

To sign via fax:

1. Sign, Title and Date the document where applicable,
2. Fax back documents in the following order:
 - I. eSign Fax Cover Sheet for Contract Id: 8447735
 - II. All Pages stamped with Contract Id: 8447735
3. If there are additional documents, use the corresponding eSign Fax Cover Sheet(s) as separator(s) and Fax back as in 2.I and 2.II.

(see Picture below)



Request Id: 1459853
Contract Id: 8447735

**AT&T MANAGED INTERNET SERVICE
 PRICING SCHEDULE**

1. SERVICES

Service	Service Publication Location
AT&T Managed Internet Service (MIS)	http://serviceguidenew.att.com/sg_flashPlayerPage/MIS
AT&T Bandwidth Services	http://serviceguidenew.att.com/sg_flashPlayerPage/BWS

2. PRICING SCHEDULE TERM AND EFFECTIVE DATES

Pricing Schedule Term	24 months
Pricing Schedule Term Start Date	Effective Date of this Pricing Schedule
Effective Date of Rates and Discounts	Effective Date of this Pricing Schedule

3. MINIMUM PAYMENT PERIOD

Service Components	Percent of Monthly Charges Due Upon Termination Prior to Completion of Minimum Payment Period	Minimum Payment Period per Service Component
All Service Components	50%	Longer of 12 months or until the end of the Pricing Schedule Term

4. GRANDFATHERING AND WITHDRAWAL

Service and Service Component Withdrawals during Pricing Schedule Term	
Prior Notice Required from AT&T to Withdraw and Terminate a Service	12 months
Prior Notice Required from AT&T to Withdraw and Terminate a Service Component	120 days
Applicable Services/Service Components	List provided in the 'Withdrawal of Service Matrix' section of the General Provisions in the AT&T Business Service Guide: http://serviceguidenew.att.com/sg_flashPlayerPage/GP

AT&T and Customer Confidential Information

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**AT&T MANAGED INTERNET SERVICE
 PRICING SCHEDULE**

5. RATES (US Mainland, and HI only)

**Section I: AT&T Managed Internet Service
 Access Bandwidth -**

Table 1: DNS Services

Option	Undiscounted MRC
Additional Primary DNS (available in increments of up to 15 zones with a maximum of 150 Kilobytes of zone file data)	\$100 per DNS increment
Additional Secondary DNS (available in increments of up to 15 zones with a maximum of 150 Kilobytes of zone file data)	\$100 per DNS increment

Table 2: MIS Tele -- Installation

Discount: 100.0 %

MIS Speed	Undiscounted MIS Installation Fee	Undiscounted MIS w/ Managed Router Installation Fee
56 Kbps	\$1,000	\$1,000
128 Kbps - 1.5 Mbps	\$1,000	\$1,000
NxT-1	\$2,500	\$2,500
Tiered/Full T-3	\$5,000	N/A
Tiered OC-3, OC-12, OC-48	\$10,000	N/A
Ethernet	\$1,500 [#]	\$1,500 ^{**#}
10 Gig Ethernet* and up	\$1,500 [#]	\$1,500

* Service not available with MPLS PNT

**Pricing available for MIS speeds of 100 Mbps and below and with electrical interfaces only.

Pricing also applies to Service locations in Alaska

Table 3: On-Site Installation

Discount: 50.0 %

MIS Speed	Undiscounted MIS w/ Managed Router Only Installation Fee
56 Kbps	\$999
128 Kbps - 1.5 Mbps	\$999
NxT-1	\$999
Tiered/Full T-3	\$1,000
Tiered OC-3, OC-12, OC-48	\$10,000
Ethernet	\$1,500*
10 Gig Ethernet and up	\$1,500
Nx10Gig Ethernet	\$3,500

* Pricing also applies to Service locations in Alaska

**AT&T MANAGED INTERNET SERVICE
 PRICING SCHEDULE**

Table 4: Flexible Bandwidth Billing Option – MIS 10 Gig Ethernet*

MIS & MIS w/Managed Router Discount: 75.0 % Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.			Incremental Usage Fee Discount: 75.0 % Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.
Tiered Bandwidth Minimum Commitment	Undiscounted MIS MRC	Undiscounted MIS w/ Managed Router MRC	Undiscounted Incremental Usage Fee
MIS Discount for the following:			Incremental Usage Fee Discount for the following:
5 Gbps	\$5,658	\$7,000	\$70.00
1.0 Gbps	\$6,400	\$9,950	\$49.75
MIS Discount for the following:			Incremental Usage Fee Discount for the following:
1.5 Gbps	\$8,727	\$10,909	\$36.36
2.0 Gbps	\$9,091	\$12,276	\$30.69
2.5 Gbps	\$11,244	\$15,215	\$30.43
MIS Discount for the following:			Incremental Usage Fee Discount for the following:
3.0 Gbps	\$13,309	\$17,981	\$29.97
3.5 Gbps	\$14,400	\$19,462	\$27.80
4.0 Gbps	\$16,015	\$21,591	\$26.99
MIS Discount for the following:			Incremental Usage Fee Discount for the following:
4.5 Gbps	\$16,771	\$22,720	\$25.24
5.0 Gbps	\$18,196	\$24,553	\$24.55
5.5 Gbps	\$19,636	\$26,502	\$24.09
6.0 Gbps	\$21,309	\$28,768	\$23.97
MIS Discount for the following:			Incremental Usage Fee Discount for the following:
6.5 Gbps	\$22,589	\$30,499	\$23.46
7.0 Gbps	\$24,218	\$32,727	\$23.38
7.5 Gbps	\$25,760	\$34,793	\$23.20
8.0 Gbps	\$26,953	\$36,387	\$22.74
MIS Discount for the following:			Incremental Usage Fee Discount for the following:
8.5 Gbps	\$28,233	\$38,115	\$22.42
9.0 Gbps	\$28,931	\$39,069	\$21.71
9.5 Gbps	\$29,527	\$39,855	\$20.98
10.0 Gbps	\$30,909	\$41,716	\$20.86

* Service not available with MPLS PNT

#Pricing also applies to Service locations in Alaska (Override discounts are not applicable to Service locations in Alaska)

AT&T and Customer Confidential Information

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**AT&T MANAGED INTERNET SERVICE
 PRICING SCHEDULE**

Table 5: Local Access

Local access prices listed below are for orders placed within 12 months of this Pricing Schedule Effective Date ("Local Access Pricing Term"). All local access orders placed after the expiration of the Local Access Pricing Term will be treated on an individual case basis, and set out in a Pricing Addendum signed by the parties or an AT&T order form signed by Customer and accepted by AT&T, as applicable.

NPA/NX X	Location	Access Bandwidth	Local Access Non-Recurring Charge	Local Access Net Monthly Recurring Charge
561242	50 S MILITARY TRL, WEST PALM BEACH, FL, 334153132, United States	MIS Ethernet Access 10.0 Gbps	\$0.00	\$1983.00

Section II: Additional Service Fees

Moving Fee (during hours)	\$1,000 per location*
Additional Moving Fee (outside standard operating hours – 8:00 a.m. to 5:00 p.m. Monday through Friday)	Additional \$500 per location*

*Subject to availability, pricing also applies to Service locations in Alaska

End of Document

AT&T and Customer Confidential Information

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Palm Beach County

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AT&T MA Reference No.

13340SUA

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MASTER AGREEMENT

Customer Palm Beach County Street Address: 301 S Olive Ave City: West Palm Beach State/Province: FL Zip Code: 33401 Country: USA	AT&T AT&T Corp. or enter the International Affiliate Name <input type="checkbox"/> One AT&T Way, Bedminster, NJ 07921 <input type="checkbox"/> 2000 Camino Ramon, San Ramon, CA 94583 <input type="checkbox"/> 225 W. Randolph Street, Chicago, IL 60608 <input type="checkbox"/> One AT&T Plaza, Dallas, TX 75202 <input type="checkbox"/> 310 Orange Street, New Haven, CT 06510 <input checked="" type="checkbox"/> 2180 Lake Blvd., 7th Floor, Atlanta, GA 30310 <input type="checkbox"/> International Affiliate Address
Customer Contact (for notices) Name: Steve Bordofoj Title: Director, ISB Street Address: 301 S Olive Ave City: West Palm Beach State/Province: FL Zip Code: 33401 Country: USA Telephone: 561-355-2394 Email: sbordofoj@co.palm-beach.fl.us	AT&T Contact (for notices) Street Address: City: State/Province: Zip Code: Country: With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0762 ATTN: Master Agreement Support Team Email: mast@aol.com

This Master Agreement ("Master Agreement") between the customer named above ("Customer") and the AT&T entity named above ("AT&T"), is effective when signed by both Customer and AT&T, and dated _____ and continues in effect as long as Services are provided under this Master Agreement.

This Master Agreement will apply to all services and equipment Customer buys from AT&T, now and in the future. Past are provided under Pricing Schedules attached to or referencing this Master Agreement ("Services"). Other Services may be provided by signing additional Pricing Schedules at any time. AT&T standard service offerings are described in Tariffs, Guidebooks, Catalogs, Service Guides and other documents identified in the Master Agreement.

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ATTEST.
SHARON R. BOCK, Clerk & Comptroller BEA

By: [Signature]
Deputy Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature]
Assistant County Attorney

R2009-1055 JUN 30 2009
PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida

BOARD OF COUNTY COMMISSIONERS

By: [Signature]
John F. Koosis, Chairman

APPROVED AS TO TERMS AND CONDITIONS

[Signature]
Director, Information Systems Services

CONTRACTOR:

By: AT&T (Corporate Name)

a Delaware corporation
(insert state of corporation)

By: [Signature]
(signatory)

Jerald Armstrong on behalf of S. Mardian
(print signatory's name)

(print title)

05-28 2009
(date of execution)

(witness signature)

(witness name printed)

(witness signature)

(witness name printed)

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1. INTRODUCTION

- 1.1 **Overview of Documents.** The terms and conditions governing the Services that AT&T provides to Customer are set forth in the Master Agreement, the following additional documents, and any other documents executed by the parties and referenced in the Master Agreement (which documents together with the Master Agreement are called "this Agreement"):
 - (a) **Pricing Schedule.** A Pricing Schedule (including related attachments) identifies the Services AT&T may provide to Customer, the prices (including discounts, if applicable) for each Service, and the term during which such prices are in effect ("Pricing Schedule Term").
 - (b) **Tariffs, Guidebooks and Catalogs.** "Tariff" are documents containing the standard definitions, pricing, and other terms and conditions for a Service that AT&T files with regulatory commissions, "Guidebooks" or "Catalogs" are documents containing the standard definitions, pricing, and other terms and conditions for a Service that we file no longer are filed with regulatory commissions, Tariffs, Guidebooks and Catalogs may be found at <http://www.att.com/regulatory>, <http://www.att.com/guidebooks>, <http://www.att.com/catalogs>, or other locations AT&T may designate. Tariffs, Guidebooks and Catalogs applicable must be identified by a document of the name.
 - (c) **Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to Services provided over or accessing the Internet. The AUP may be found at <http://www.att.com/aup> or other locations AT&T may designate.
 - (d) **Service Guides.** The description, pricing, and other terms and conditions for the Service not covered by a Tariff, Guidebook or Catalog may be contained in a Service Guide, which may be found at <http://www.att.com/serviceguides> or other locations AT&T may designate.
 - (e) **Statement of Work.** A mutually agreed document setting forth the performance required for a given project.
- 1.2 **Priority of Documents.** The order of priority (descending) of the documents that form the Agreement is: Statement of Work, Equipment Order List or other attachment to the Pricing Schedule, Pricing Schedule, Tariffs, Guidebooks and Catalogs, the Master Agreement, the AUP, and Service Guide.
- 1.3 **Prevalence to Documents.** Subject to Section 2.2(a) (Mutually Agreed Changes), AT&T may revise Tariffs, Guidebooks, Catalogs, Service Guides or the AUP (collectively "Service Publications") at any time.
- 1.4 **Execution by Affiliate.** An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule returning the Agreement in its own name and such Affiliate contract will be a separate, but allocated, contract incorporating the terms of this Master Agreement with respect to that Pricing Schedule. Customer and AT&T will continue to have their respective Affiliates comply with this Agreement, regardless of whether an Affiliate has signed a Pricing Schedule.
- 1.5 **Capitalized Terms.** Capitalized terms not otherwise defined in this Agreement are defined in Section 11 (Definitions).
2. **AT&T DELIVERABLES.**
 - 2.1 **Services.** AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with the Agreement, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.
 - 2.2 **AT&T Equipment.** Services may include use of certain equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from theft and encumbrance. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.
 - 2.3 **Software.** Any software used with the Services will be identified by the written terms and conditions applicable to such software. This to include the name of the AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over the Agreement as to such software.

3. CUSTOMER'S COOPERATION

- 3.1 **Access Right.** Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access right includes the right to document, install, repair, maintain, replace and remove access lines and network facilities, as well as to use, modify equipment space within a building, as necessary for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities, and equipment as AT&T reasonably requires, to provide the Services, subject to Customer's reasonable security policies. Customer will furnish any consents, notices, wireways, wiring, plans, equipment, space, power/cooling, and other items reasonably required to perform installation of the

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Services, and obtain any necessary licenses, permits and consents (including payments and right-of-way). Customer will have the sole responsibility for AT&T to perform the work according to a mutually agreed schedule.

3.2 **Safe Working Environment:** Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of hazardous materials, hazardous materials, noise, fire, substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of hazardous materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any hazardous materials.

3.3 **User:** "User" means anyone employed by or affiliated with the customer who uses or accesses any Service provided by Customer. Customer will advise Users to comply with the Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

3.4 **Internet Service:** If a Service is provided over or across the Internet, Customer, Customer's Affiliates, and Users must comply with the AUP.

3.5 **Terms of Service:** Customer may not resale the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.

7. PENDING AND BILLING

4.1 **Pricing and Pricing Schedule Term Extension:** Unless a Pricing Schedule states otherwise, the prices listed in a Pricing Schedule are applicable until the end of the Pricing Schedule Term. No discount, promotion, credit, or waiver set forth in a Service Publication will apply, unless specifically referenced in a Pricing Schedule. Except to the extent prohibited by applicable law or regulation, or unless a Pricing Schedule states otherwise, upon expiration of a Pricing Schedule Term, the applicable law or regulation, or unless a Pricing Schedule states otherwise, shall automatically extend for successive terms equal to the original Pricing Schedule Term (an "Extension Term"), unless notice is given not to extend a Pricing Schedule by either party not earlier than 150 days (or later than 60 days before the scheduled expiration of the applicable term, unless more notice is required by applicable law or regulation). The price listed in the Pricing Schedule in effect immediately prior to the beginning of the Extension Term shall continue in effect throughout the Extension Term, and any BARRC commitment in effect immediately prior to the Extension Term shall continue in effect throughout the Extension Term. Customer shall not be entitled to any one-time or up-front discount, promotion, credit, or waiver set forth in an original Pricing Schedule during an Extension Term. AT&T may modify prices that will be charged during an upcoming Extension Term by giving Customer notice not later than 150 days before the scheduled expiration of the then-current term; otherwise, prices will not change during any Extension Term unless allowed otherwise in this Agreement. If Customer gives notice not to extend a Pricing Schedule as prohibited herein, Customer will have the option to either (a) continue using the Service, or (b) terminate using the Service on a month-to-month basis until terminated by either party on 30 days' notice. During the month-to-month extension period, the prices in the Pricing Schedule will automatically be increased to the then-current monthly extension rates (if any) specified in the applicable Service Publication or Pricing Schedule. During the month-to-month extension period, AT&T may modify rates, terms and conditions on 30 days' notice to Customer.

4.2 **Additional charges and Taxes:** Prices set forth in a Pricing Schedule are exclusive of, and Customer will pay, all current and future taxes (excluding those on AT&T's net income), surcharges, recovery fees, credit clearance, disk, rental and handling charges, and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the sale, transfer or ownership, installation, repair, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services. To the extent Customer is required by law to withhold or deduct any applicable taxes from payments due to AT&T, Customer will use reasonable commercial efforts to maintain any such taxes to the extent allowed by law or treaty, and Customer will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

4.3 **Billing:** Unless a Pricing Schedule specifies otherwise, Customer's obligation to pay for all Services will begin upon installation and activation of the Services to Customer. AT&T will invoice Customer for the Services on a monthly basis, or otherwise as specified in the Pricing Schedule. Customer will pay AT&T without deduction, except for withholding taxes as provided in Section 4.5. Additional Charges and Taxes, such (except as provided in Section 4.5 - Delayed Billing, Displayed Charges), or delay for any reason. At Customer's request, but subject to AT&T's consent (which may be withheld if there will be operational implications or tax consequences), Customer's Affiliates may be billed separately and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with the Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or Customer's Affiliates are not creditworthy.

4.4 **Payments:** Payments shall be made in accordance with the Local Government Prompt Pay Act, Florida Statute 218.70, et seq.

4.5 **Delayed Billing:** Displayed Charges. Customer will not be required to pay charges for Services invoked more than 6 months after close of the billing month in which the charges were incurred, except for automated or live operator assisted calls.
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of any type. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charges and the reason it is disputed within 3 months after the date of the affected invoice or Customer waives the right to dispute the charge (except to the extent applicable law or regulation otherwise requires). Disputed charges may be withheld, but if not paid when due, Customer will incur late payment fees in accordance with Section 4.4 (Payments), however, to the extent AT&T determines the charges Customer disputed and withheld were invoiced in error, late payment fees for such charges will be reversed.

4.6 MARC. Minimum Annual Revenue Commitment ("MARC") means an annual revenue commitment of MARC-Eligible Charges set forth in a Pricing Schedule that Customer agrees to satisfy during each 12 consecutive month period of the Pricing Schedule Term. At the end of each such 12 month period, if Customer has failed to satisfy the MARC for the preceding 12 month period, Customer will be invoiced a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during the 12 month period, and payment will be due in accordance with Section 4.4 (Payments).

4.7 Adjustments to MARC.

(a) In the event of a business downturn beyond Customer's control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer's business, or network optimization using other Services, or reduction of AT&T's prices, or force majeure events, any of which significantly impairs Customer's ability to meet Customer's MARC, AT&T will offer to adjust the affected MARC to reflect Customer's reduced usage of Services (with a corresponding adjustment to the prices or discounts available at the reduced MARC level). If the parties reach mutual agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.7 will not apply to a change resulting from Customer's decision to use service providers other than AT&T. Customer will provide AT&T written notice and evidence of the conditions Customer believes will require the application of this provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges Customer incurs prior to amendment of the affected Pricing Schedule.

(b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and AT&T may mutually agree to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer's MARC or other volume or growth discounts, and Customer's attainment thereof.

5. CONFIDENTIAL INFORMATION

5.1 Confidential Information. Confidential information means: (a) information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals. AT&T acknowledges that Palm Beach County's ability to comply with the provisions of this paragraph is regulated and constrained by the requirements of Florida's Public Records Act, Florida Statute Chapter 119.

5.2 Obligations. Each party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of AT&T, the ability to monitor Customer's transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5), or to the extent compelled to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process).

5.3 Exceptions. The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

5.4 Privacy Laws. Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Unless directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's business proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

6. DISCLAIMERS AND LIMITATIONS OF LIABILITY

6.1 Disclaimer of Warranties. Except as specified in a Statement of Work AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY

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ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE CORRECTLY ROUTED OR COMPLETED (INCLUDING CALLS TO 911), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

6.2 Limitation of Liability.

- (a) AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE. OR IF NO CREDITS ARE SPECIFIED, THE LIQUIDATED DAMAGE AMOUNT SHOWN ON THE APPLICABLE STATEMENT OF WORK OR AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T.
- (b) SECTION 6.2(a) WILL NOT APPLY TO:
- (i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE;
 - (ii) BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity), OR SECTION 10.2 (Trademarks);
 - (iii) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 7 (Third Party Claims), OR
 - (iv) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (c) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

6.3 **Disclaimer of Liability** AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH applications, equipment, services, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT or the applicable statement of work) FAILURE TO CORRECTLY ROUTE OR COMPLETE CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

6.4 **Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability, or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. THIRD PARTY CLAIMS

7.1 **AT&T's Obligations.** AT&T agrees at its expense to defend or settle any third-party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim alleges that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Agreement. AT&T agrees at its expense to defend or settle any third party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages relating to bodily injury, including death, or to loss of or damage to tangible property (without limitation or reference to Article 6, above) that a court may finally award against such parties to the extent the claim arises from the negligent or intentionally wrongful acts, errors, or omissions of AT&T.

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7.2 **Customer's Obligations.** Customer agrees at its expense to defend or settle any third-party claim against AT&T, AT&T's Affiliates, and its and their respective employees, directors, subcontractors, and suppliers, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim: (a) arises out of Customer's, its Affiliates', or a User's access to, or use of, the Services and the claim is not the responsibility of AT&T under Section 7.1; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions in Section 7.1; or (c) alleges a breach by Customer, its Affiliates, or Users of a software license agreement governing software provided in connection with the Services.

7.3 **Infringing Services.** Whenever AT&T is liable under Section 7.1, AT&T may, at its option either procure the right for Customer to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing.

7.4 **Notice and Cooperation.** The party seeking defense or settlement of a third-party claim under this Section 7 will notify the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced thereby. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense, but the defending party will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by the defending party under this Section 7.

8. SUSPENSION AND TERMINATION

8.1 **Termination of Agreement.** This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding, or makes an assignment for the benefit of its creditors.

8.2 **Termination or Suspension of Services.** The following additional termination provisions apply:

(a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service, and if the activity implicates the entire Agreement, terminate the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer: (i) commits a fraud upon AT&T; (ii) utilizes the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services.

(b) **Material Breach.** If either party fails to perform or observe any material term or condition of this Agreement, including non-payment of charges (subject to Section 4.5 -- Delayed Billing; Disputed Charges), and such failure continues unremedied for 90 days after receipt of notice, the non-breaching party may terminate the affected Service, and if the breach implicates the entire Agreement, terminate the entire Agreement. If Customer is in breach, AT&T may elect to suspend (and later terminate) the affected Service, and if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.

(c) **Materially Adverse Change.** If AT&T revises a Service Publication and the revision has a materially adverse impact on Customer, and AT&T does not effect revisions that remedy such materially adverse impact within 90 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Component on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to Customer if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change affects a charge imposed under Section 4.2 (Additional Charges and Taxes).

(d) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from AT&T, AT&T may suspend (and later terminate) or terminate the Service. If Services are provided over or access the Internet, AT&T may act immediately and without notice to suspend or terminate Service in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.

(e) **Infringing Services.** If neither of the options described in Section 7.3 (Infringing Services) are reasonably available, AT&T may terminate the affected Service without liability other than as stated in Section 7.1 (AT&T's Obligations).

(f) **Hazardous Materials.** If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remedies Hazardous Materials at Customer's expense in accordance with applicable law.

8.3. Withdrawal of Services. Notwithstanding that a Pricing Schedule may commit AT&T to provide a Service to Customer for a Pricing Schedule Term, and unless applicable law or regulation mandates otherwise, AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers.

8.4 Effect of Termination.

(a) Termination by either party of a Service does not waive any other rights or remedies a party may have under this Agreement. Termination or suspension of a Service will not affect the rights and obligations of the parties regarding any other Service.

(b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins as provided in Section 4.3 (Billing), Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

8.5 Termination Charges.

(a) If Customer terminates this Agreement or an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), 8.2(b) (Material Breach) or 8.2(c) (Materially Adverse Change), AT&T terminates a Service pursuant to Section 8.2(e) (Infringing Services), or AT&T withdraws a Service pursuant to Section 8.3 (Withdrawal of Services), Customer will not be liable for the termination charges set forth in Section 8.5(b).

(b) If Customer terminates a Service or Service Component other than as set forth in Section 8.5(a), or AT&T terminates an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), or 8.2(a) (Fraud or Abuse), 8.2(b) (Material Breach), 8.2(d) (Infringing Services) or 8.2(f) (Hazardous Materials), Customer will pay applicable termination charges as follows: (i) if termination occurs before the end of the Minimum Payment Period, Customer will pay 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the Minimum Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule, plus any charges incurred by AT&T from a third party (e.g., not an AT&T Affiliate) due to the termination, all of which will, if applicable, be applied to Customer's MARC-Eligible Charges; and (ii) if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC, after applying amounts received pursuant to (i), for the balance of the Pricing Schedule Term.

(c) The charges set forth in Section 8.5(b)(i) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same rate; but only if (i) the Minimum Payment Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component and (ii) the upgrade is not restricted in the applicable Service Publication.

8.6 Appropriations; Funding.

By executing a Pricing Schedule, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the Pricing Schedule Term. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under a Pricing Schedule, Customer may terminate the Pricing Schedule without liability for the termination charges set forth in Section 8.5(b) upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with AT&T to develop revised terms, an alternative payment schedule or a new Pricing Schedule to accommodate Customer's budget. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate a Pricing Schedule under this Section. Termination of a Pricing Schedule for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates a Pricing Schedule under this Section, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Pricing Schedule Term.

9. IMPORT/EXPORT CONTROL

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Agreement may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software transmitted between countries using the Services.

10. MISCELLANEOUS PROVISIONS

10.1 Publicity. Neither party may issue any public statements or announcements relating to the terms of this Agreement or the provision of Services without the prior written consent of the other party.

10.2 Trademarks. Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

10.3 Force Majeure. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

10.4 Amendments and Waiver. Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

10.5 Assignment and Subcontracting.

(a) This Agreement may not be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). Customer may, without AT&T's consent, but upon notice to AT&T, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, but Customer will remain financially responsible for the performance of such obligations. AT&T may, without Customer's consent, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, or subcontract to an Affiliate or a third party work to be performed under this Agreement, but AT&T will in each such case remain financially responsible for the performance of such obligations.

(b) In countries where AT&T does not have an Affiliate to provide Service, AT&T may assign its rights and obligations related to a Service to a local service provider, but AT&T will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

(c) Any assignment other than as permitted by this Section 10.5 is void.

10.6 Severability. If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.10 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

10.7 Injunctive Relief. Nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

10.8 Legal Action. Any legal action arising in connection with this Agreement must be filed within 2 years after the cause of action accrues or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.9 Notices. All notices required under this Agreement will be delivered in writing to the recipient's contact designated on the cover page of this Master Agreement, or to such other contact as designated in writing from time to time. Notices shall be by internationally recognized overnight courier, certified or registered mail, email, or facsimile and will be effective upon receipt or when delivery is refused, whichever occurs sooner.

10.10 Governing Law. This Agreement will be governed by the law of the State of Florida, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply. Any legal proceeding shall be in a state or federal court of competent jurisdiction located in or having jurisdiction for Palm Beach County, Florida.

10.11 Compliance with Laws. Each party will comply with all applicable laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction.

10.12 No Third Party Beneficiaries. This Agreement is for the benefit of Customer and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

10.13 Survival. The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations set forth in Section 5 (Confidential Information); Section 6 (Disclaimers and Limitations of Liability) and Section 7 (Third Party Claims); will survive termination or expiration.

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10.14 **Agreement Language.** The authentic language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

10.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement. Except as provided in Section 2.3 (Software), this Agreement supersedes all other agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

11. DEFINITIONS

The following terms have the meanings set forth below:

"Affiliate" of a party means any entity that controls, is controlled by, or is under common control with, such party.

"Damages" means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

"Effective Date" means, for any Pricing Schedule, the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

"MARC-Eligible Charges" means, unless the applicable Pricing Schedule indicates otherwise, the recurring and usage charges, after deducting applicable discounts and credits (other than outage or SLA credits) that AT&T charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer's purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICO, payphone service provider compensation, E911 and dual relay charges).

"Minimum Payment Period" means, in respect to any Service, the minimum period for which Customer is required to pay recurring charges for the Service, as specified in the Pricing Schedule or Service Publication for that Service.

"Service Component" means an individual component of a Service provided under this Agreement.

"Site" means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides a Service.