



AT&T MA Reference No. 158865UA
 AT&T PS Contract ID MIS14587569

**AT&T DEDICATED INTERNET
 PRICING SCHEDULE**

Customer	AT&T
Palm Beach County	AT&T Corp.
Street Address: 301 N OLIVE AVE FRNT City: WEST PALM BEACH State/Province: FL Zip Code: 334014703 Country: United States	
Customer Contact (for Notices)	AT&T Contact (for Notices)
Name: Michael Butler Title: Director of Network Service Street Address: 301 N OLIVE AVE FRNT City: WEST PALM BEACH State/Province: FL Zip Code: 33401 Country: United States Telephone: 5613554610 Email: mb9443@att.com	Name: Miriam Balboa Street Address: 321 SE 2ND ST City: DELRAY BEACH State/Province: FL Zip Code: 33483 Country: United States Telephone: 7862185211 Email: mb9443@att.com Sales/Branch Manager: LIZMARY WHYTE SCVP Name: ERIK LINDBORG Sales Strata: Retail Sales Region: USA <u>With a copy (for Notices) 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"/>	
Name: 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 and shall become effective when signed by authorized representatives of both parties ("Effective Date").

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Name: Archie Smetell	Name: Kaitlyn Guffey
Title: Chief Information Officer	Title: Contractor CS, as signer for AT&T
Date: 9/21/23	Date: 11 Sep 2023

Approved as to Legal Sufficiency by: David Behar, Esq.
 County Attorney

**AT&T DEDICATED INTERNET
 PRICING SCHEDULE**

This Pricing Schedule shall replace and supersede in its/their entirety the following AT&T Dedicated Internet ("ADI"), Service Order Attachment(s) and/or Pricing Schedule(s) between AT&T and Customer:

MIS1695574

1. SERVICES

Service	Service Publication Location
AT&T Dedicated Internet (ADI)	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

*Price Stabilization does not apply to Services or Service Components that have been designated as grandfathered in the applicable Service Publication as of the Pricing Schedule Effective Date (Previously Grandfathered Service/Service Components). AT&T may change prices, discounts, terms or conditions for Previously Grandfathered Service/Service Components on 30 days' prior notice to Customer.

3. MINIMUM PAYMENT PERIOD

Service Components	Percent of Monthly Service Fees 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

*The Minimum Payment Period does not apply to Previously Grandfathered Service/Service Components.

4. RATES (US Mainland, and HI only)

Section I: AT&T Dedicated Internet Access Bandwidth

Table 1: DNS Services

Option	Monthly Service Fee
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: ADI Tele - Installation

Discount: 100.00%

ADI Speed	Undiscounted ADI	Undiscounted ADI w/ Managed Router
56 Kbps	\$1,000	\$1,000
128 Kbps - 1.5 Mbps	\$1,000	\$1,000
NxT-1	\$2,500	\$2,500

AT&T and Customer Confidential Information

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ADI Speed	Undiscounted ADI	Undiscounted ADI w/ Managed Router
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 ADI 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: 100.00%

ADI Speed	Undiscounted ADI w/ Managed Router Only
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.

Table 4: LAN IP Block Size

IPv4 LAN IP Block Size	Undiscounted MRC	Discount
/28	\$112	0.00%
/27	\$224	0.00%
/26	\$448	0.00%
/25	\$896	0.00%
/24	\$1,792	0.00%
/23	\$3,584	0.00%
/22	\$7,168	0.00%
/21	\$14,336	0.00%
/20	\$28,672	0.00%
/19	\$57,344	0.00%

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 MIS Standard 2014 Rate Plan
 ROME ID: 1-JKWU7BT

PS ADI REPLACEMENT 02/05/2022
 AT&T Solution No. FMO691784581818

**AT&T DEDICATED INTERNET
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Table 5: Flexible Bandwidth Billing Option – ADI 10 Gig Ethernet**

ADI & ADI w/Managed Router Discount: 5.00% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.			Incremental Usage Fee Discount: 5.00% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.
Tiered Bandwidth Minimum Commitment	ADI Undiscounted Monthly Fee	ADI with Managed Router Undiscounted Monthly Fee	Undiscounted Incremental Usage Fee
Discount applied to ADI 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
Discount applied to ADI 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
Discount applied to ADI 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
Discount applied to ADI 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
Discount applied to ADI 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
Discount applied to ADI 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).

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Table 6: Flexible Bandwidth Billing Option – ADI 100 Gig (Ethernet or OTN)*

Discount applied to ADI & ADI w/Managed Router Discount: 0.00% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.			Incremental Usage Fee Discount: 0.00% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.
Tiered Bandwidth Minimum Commitment	Undiscounted ADI MRC	Undiscounted ADI w/ Managed Router MRC	Undiscounted Incremental Usage Fee Per Mbps
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
10 Gbps	\$34,457	\$78,194	\$1.35
ADI Discount for the following: 80.00%			Incremental Usage Fee Discount for the following:
20 Gbps	\$39,766	\$80,539	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
30 Gbps	\$49,237	\$82,956	\$1.35
ADI Discount for the following: 80.00%			Incremental Usage Fee Discount for the following:
40 Gbps	\$62,871	\$84,485	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
50 Gbps	\$73,393	\$98,789	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
60 Gbps	\$78,957	\$105,623	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
70 Gbps	\$84,800	\$112,799	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
80 Gbps	\$90,934	\$120,334	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
90 Gbps	\$97,376	\$128,245	\$1.35
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
100 Gbps	\$104,174	\$136,595	N/A

* 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 DEDICATED INTERNET
 PRICING SCHEDULE**

Table 7: Class of Service Option - Tiered T-1, T-3 and Burstable Service - Monthly Service Fees

Discount: 94.00%

Speed	Class of Service Monthly Fee - List Price* (w/ or w/out Managed Router)
56 Kbps**	\$225
128 Kbps**	\$225
256 Kbps**	\$225
384 Kbps**	\$225
512 Kbps**	\$225
768 Kbps	\$225
1024 Kbps**†	\$225
1.5 Mbps	\$225
2xT-1 (3 Mbps)	\$225
3xT-1 (4.5 Mbps)	\$225
4xT-1 (6 Mbps)	\$225
5xT-1 (7.5 Mbps)	\$225
6xT-1 (9 Mbps)	\$225
7xT-1 (10.5 Mbps)	\$225
8xT-1 (12 Mbps)	\$225
10 Mbps	\$825
15 Mbps	\$1,075
20 Mbps	\$1,325
25 Mbps	\$1,575
30 Mbps	\$1,825
35 Mbps	\$2,100
40 Mbps	\$2,350
45 Mbps	\$2,750
155 Mbps	\$2,750

* Charges waived for Sites with AT&T BVoIP Service.

**no real-time class available.

†) Speed not available with MPLS PNT.

‡ Pricing also applies to Service locations in Alaska.

Table 8: Class Of Service Option - Flexible Bandwidth Billing Option - Monthly Service Fees

Discount: 94.00%

Speed	Undiscounted ADI w/ or w/out Managed Router Monthly Service Fee**
Up to 1.5 Mbps	\$225
2.0 Mbps	\$285
2.01 - 3.0 Mbps	\$360
3.01 - 4.0 Mbps	\$435
4.01 - 5.0 Mbps	\$510
5.01 - 6.0 Mbps	\$575
6.01 - 7.0 Mbps	\$640
7.01 - 8.0 Mbps	\$705
8.01 - 9.0 Mbps	\$765

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Speed	Undiscounted ADI w/ or w/out Managed Router Monthly Service Fee**
9.01 to 10.0 Mbps	\$825
10.01 to 15.0 Mbps	\$1,075
15.01 - 20.0 Mbps	\$1,325
20.01 - 25.0 Mbps	\$1,575
25.01 - 30.0 Mbps	\$1,825
30.01 - 35.0 Mbps	\$2,100
35.01 - 40.0 Mbps	\$2,350
40.01 - 45 Mbps	\$2,750
45.01 - 155 Mbps	\$5,000
200 - 250 Mbps	\$5,400
300 - 350 Mbps	\$5,800
400 - 600 Mbps	\$6,200
622 Mbps	\$7,000
700 - 1000 Mbps	\$7,800
1.5 Gbps**	\$7,900
2.0 Gbps**	\$8,000
2.5 Gbps**	\$8,100
3.0 Gbps**	\$8,200
3.5 Gbps**	\$8,300
4.0 Gbps**	\$8,400
4.5 Gbps**	\$8,500
5.0 Gbps**	\$8,600
5.5 Gbps**	\$8,700
6.0 Gbps**	\$8,800
6.5 Gbps**	\$8,900
7.0 Gbps**	\$9,000
7.5 Gbps**	\$9,100
8.0 Gbps**	\$9,200
8.5 Gbps**	\$9,300
9.0 Gbps**	\$9,400
9.5 Gbps**	\$9,500
10.0 Gbps and up**	\$9,600

*Charges waived for Sites with AT&T BVoIP Service.

** Speed not available with MPLS PNT.

* Pricing also applies to Service locations in Alaska.

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Table 9: Class Of Service Option – Aggregate Billing Option - Monthly Service Fees**

Discount: 94.00%

Speed	Undiscounted ADI w/ or w/out Managed Router Monthly Service Fee**
T3 (up to 45 Mbps)	\$2,750
OC3 (up to 155 Mbps)	\$5,000
OC12 (up to 622 Mbps)	\$7,000
Ethernet (up to 1000 Mbps)	\$7,800
OC48 (up to 2500 Mbps)	\$8,100
10 Gigabit Ethernet (up to 10000 Mbps) and up	\$9,600

*Charges waived for Sites with AT&T BVoIP Service.

**Not available with MPLS PNT.

Table 10: Class Of Service Option - Installation Fees

Discount: 100.00%

Class of Service Undiscounted Installation Fee**	\$1,000
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*Charges waived for Sites with AT&T BVoIP Service.

* Pricing also applies to Service locations in Alaska.

Table 11: Local Access without Diversity

Location	Access Bandwidth	Local Access Non-Recurring Charge	Local Access Net Monthly Recurring Charge
20 S MILITARY TRL, W PALM BEACH, FL, US 33415	MIS Ethernet Access 100 Gbps	\$0.00	\$6,000.00

Note: The above circuit contains Port Protection Plus with Total Service.

Section II: AT&T Business in a BoxSM

Table 1: Service Component Replacement – Next Business Day Shipped (5x8) Monthly Charges

Discount: 100.00%

Service Component / Device	Undiscounted MRC*
Base Unit NextGen	\$50
Base Unit 12 Port	\$70
Base Unit 24 Port	\$30
Base Unit High Bandwidth	\$75
8 Port Analog Module Add-On	\$35

* Pricing also applies to Service locations in Alaska

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Table 2: On-Site Maintenance (24X7X4) Monthly Charges

Discount: 100.00%

Option	Undiscounted MRC*
Base Unit NextGen	\$75
Base Unit 12 Port	\$95
Base Unit 24 Port	\$35
Base Unit High Bandwidth	\$86
8 Port Analog Module Add-On	\$40

* Pricing also applies to Service locations in Alaska

Table 3: Life-Cycle Management Charges - Service Charges

Discount: 100.00%

Per Site / Per Occurrence during Standard Business Hours (Monday-Friday, 8:00 am- 5:00 pm, local time)	Undiscounted Service Charge List Price *
Additional Service	\$260
Delete Service	\$500

* Pricing also applies to Service locations in Alaska.

Table 4: Class of Service Option - when ordered with AT&T BVoIP Services only

Discount: 100.0%

Class of Service Monthly Service Fee	\$225*
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* Pricing also applies to Service locations in Alaska.

Table 5: IP Version Change

Discount: 100.00%

IP Version Change - Per Site, Per Occurrence	\$500*
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* Pricing also applies to Service locations in Alaska.

Section III: 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

This is the last page of the Pricing Document.

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 AT&T Solution No. FMO691784581818

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

MS/MW 7-0
R2023-0958

Meeting Date: July 11, 2023 Consent Regular
 Public Hearing Workshop

Department: Information Systems Services
Submitted by: Information Systems Services
Submitted for: Information Systems Services

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A. approve the Master Agreement with AT&T for the provision of services for a period of 60 months; and
- B. authorize the County Administrator or designee to execute future AT&T Pricing Schedules in order to maintain current rates on existing services, and to extend services with \$0 agreements, as needed.

Summary: The existing AT&T Master Service Agreement (MSA) has been in place since July 1, 2009. The AT&T MSA bundles a broad range of telecommunications services, including voice and data network circuits, long-distance telephone service, and 911 services. The approval of an updated MSA allows for updated terms and conditions as well as the provision of services below maximum tariff rates for 60 months. Delegated authority is being requested for efficiency, to allow for the extension of existing services at current discounted rates without delay, and to extend services where no charges apply. Countywide (DB)

Background and Justification: AT&T has been providing services to the County for over two decades. These agreements continue to provide the County with high-quality voice and data network performance, flexibility in network configuration, and provisioning functionality. The AT&T Agreements provide for a discount on eligible services, which reduces the cost significantly below the maximum tariff rates. In accordance with the County PPM CW-O-051, all delegated schedules and agreements will be submitted as a receive and file agenda item.

Attachments:

- 1. Master Agreement (2 originals)

Recommended by:	<u><i>[Signature]</i></u> Chief Information Officer	<u>07/28/23</u> Date
Approved by:	<u><i>[Signature]</i></u> County Administrator	<u>7/1/23</u> Date



R2023 0958 JUL 11 2023

MASTER AGREEMENT

PCS ID: 20230615-055

Customer Palm Beach County Street Address: 301 North Olive Avenue, 8 th Floor City: West Palm Beach State/Province: FL Zip Code: 33401 Country: USA	AT&T AT&T Corp.
Customer Contact (for notices) Name: Michael Butler Title: Director of Network Services Street Address: 301 North Olive Avenue, 8 th Floor City: West Palm Beach State/Province: FL Zip Code: 33401 Country: USA Telephone: 561-355-4610 Fax: Email: mbutler@pbcgov.org	AT&T Contact (for notices) Street Address: 321 SE 2 nd Street City: Delray Beach State/Province: FL Zip Code: 33483 Country: USA With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.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. This Master Agreement rescinds and replaces the previous master agreement between the parties with an effective date of June 30, 2009 (133405UA), and identified as Palm Beach County agreement R-2009-1055. All outstanding Pricing Schedules, Orders, and other documents relating to and/or referencing R-2009-1055 shall now be governed by the terms of this Master Agreement.

This Pricing Schedule signed by AT&T first, is effective upon Customer signature provided that such fully signed Pricing Schedule is returned to AT&T not more than sixty (60) days after AT&T's signature date. Any change made to this document renders the Pricing Schedule null and void, except for changes expressly authorized by the terms of this Pricing Schedule.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By: Name: Gregg Weiss	By: eSigned - Veronica Danao
Title: Mayor	Title: Contract Specialist, as signatory for AT&T
Date: JUL 11 2023	Date: 16 Jun 2023

mx142v

APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS
By: County Attorney	By: Archie Satchell, CIO, ISS

MASTER AGREEMENT

1. INTRODUCTION

1.1 **Overview of Documents.** This Master Agreement and the following additional documents (collectively, the "Agreement") shall apply to all products and services AT&T provides Customer pursuant to this Agreement ("Services") and shall continue in effect so long as Services are provided under this Agreement

- (a) **Pricing Schedules.** A "Pricing Schedule" means a pricing schedule (including related attachments) or other document that is attached to or is later executed by the parties and references this Master Agreement. A Pricing Schedule includes the Services, the pricing (including discounts and commitments, if applicable) and the pricing schedule term ("Pricing Schedule Term").
- (b) **Tariffs and Guidebooks.** "Tariffs" are documents containing the descriptions, pricing and other terms and conditions for a Service that AT&T or its Affiliates file with regulatory authorities. "Guidebooks" are documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a Service that were but no longer are filed with regulatory authorities. Tariffs and Guidebooks can be found at att.com/servicepublications or other locations AT&T may designate.
- (c) **Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to (i) Services provided over or accessing the Internet and (ii) wireless (i.e., cellular) data and messaging Services. The AUP can be found at att.com/aup or other locations AT&T may designate.
- (d) **Service Guides.** The descriptions, pricing and other terms and conditions for a Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which can be found at att.com/servicepublications or other locations AT&T may designate.

1.2 **Priority of Documents.** The order of priority of the documents, in the event of conflict, that form this Agreement is: this Master Agreement; the applicable Pricing Schedule or Order; the AUP; and Tariffs, Guidebooks and Service Guides; provided that Tariffs will be first in priority in any jurisdiction where applicable law or regulation does not permit contract terms to take precedence over inconsistent Tariff terms.

1.3 **Revisions to Documents.** Subject to Section 8.2(b) (Materially Adverse Impact), AT&T may revise Service Publications at any time.

1.4 **Execution by Affiliates.** An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule in its own name, and such Affiliate contract will be a separate but associated contract incorporating the terms of this Agreement. Customer and AT&T will cause their respective Affiliates to comply with any such separate and associated contract.

1.5 **Term of Agreement:** This Agreement shall be effective on the day of execution by the Palm Beach County Board of County Commissioners ("Effective Date"). Unless terminated early as provided herein, the term of this Agreement is for five (5) years from the Effective Date.

2. AT&T DELIVERABLES

2.1 **Services.** AT&T will either provide or arrange to have an AT&T Affiliate provide Services to Customer and its Users, subject to the 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. If an applicable Service Publication expressly permits placement of an order for a Service under this Master Agreement without the execution of a Pricing Schedule, Customer may place such an order using AT&T's standard ordering processes (an "Order"), and upon acceptance by AT&T, the Order shall otherwise be deemed a Pricing Schedule under this Master Agreement for the Service ordered.

2.2 **AT&T Equipment.** Services may be provided using 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 adequate space and electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

2.3 **Purchased Equipment.** Except as specified in a Service Publication, title to and risk of loss of Purchased Equipment shall pass to Customer on delivery to the transport carrier for shipment to Customer's designated location.

2.4 **License and Other Terms.** Software, Purchased Equipment and Third-Party Services may be provided subject to the terms of a separate license or other agreement between Customer and either the licensor, the third-party service provider or the manufacturer. Customer's execution of the Pricing Schedule for or placement of an Order for Software, Purchased Equipment or Third-Party Services is Customer's agreement to comply with such separate agreement. Unless a Service Publication specifies otherwise, AT&T's sole responsibility with respect to Third Party Services is to place Customer's orders for Third-Party Services, except that AT&T may invoice and collect payment from Customer for the Third-Party Services.

3. CUSTOMER'S COOPERATION

3.1 **Access Right.** Customer will in a timely manner allow AT&T access as reasonably required for the Services to property and equipment that Customer controls and will obtain at Customer's expense timely access for AT&T as reasonably required for the Services to property controlled by third parties such as Customer's landlord. AT&T will coordinate with and, except in an emergency, obtain Customer's consent to enter upon Customer's property and premises, which consent shall not be unreasonably withheld. Access rights

MASTER AGREEMENT

mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building 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 for the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its 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 safe working environment, free of Hazardous Materials and reasonably suitable for the Services. "Hazardous Materials" mean any 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, to protection of air, water or soil or to health and safety. AT&T shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

3.3 **Users.** "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement and is responsible for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

3.4 **Resale of Services.** Customer may not resale the Services or rebrand the Services for resale to third parties without AT&T's prior written consent.

4. PRICING AND BILLING

4.1 **Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term.** The prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term and will apply in lieu of the corresponding prices set forth in the applicable Service Publication. No promotion, credit, discount or waiver set forth in a Service Publication will apply. Unless the Pricing Schedule states otherwise, at the end of the Pricing Schedule Term, Customer may continue Service (subject to any applicable notice or other requirements in a Service Publication for Customer to terminate a Service Component) under a month-to-month service arrangement at the prices, terms and conditions in effect on the last day of the Pricing Schedule Term. AT&T may change such prices, terms or conditions on 30 days' prior notice to Customer.

4.2 **Additional Charges and Taxes.** Prices set forth in a Pricing Schedule are exclusive of and Customer will pay all taxes (excluding those on AT&T's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping 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 of ownership, installation, license, use or provision of the Services, except to the extent Customer provides a valid exemption certificate prior to the delivery of Services. To the extent required by law, Customer may withhold or deduct any applicable taxes from payments due to AT&T, provided that Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and 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 Service Publication specifies otherwise, Customer's obligation to pay for a Service Component begins upon availability of the Service Component to Customer. Customer will pay AT&T without deduction, setoff or delay for any reason (except for withholding taxes as provided in Section 4.2 - Additional Charges and Taxes or in Section 4.5 - Delayed Billing; Disputed Charges). At Customer's request, but subject to AT&T's consent (which may not be unreasonably withheld or withdrawn), Customer's Affiliates may be invoiced 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 this Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or its Affiliates are not creditworthy, and AT&T may apply such deposit to any charges owed.

4.4 **Payments.** Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. AT&T may charge late payment fees at the lowest of (a) 1.5% per month (18% per annum), (b) for Services contained in a Tariff or Guidebook at the rate specified therein, or (c) the maximum rate allowed by law for overdue payments.

4.5 **Delayed Billing; Disputed Charges.** Customer will not be required to pay charges for Services initially invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the invoice in which the disputed charge initially appears, or Customer waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until AT&T completes its investigation of the dispute, but Customer may incur late payment fees in accordance with Section 4.4 (Payments). Following AT&T's notice of the results of its investigation to Customer, payment of all properly due charges and properly accrued late payment fees must be made within ten (10) business days. AT&T will reverse any late payment fees that were invoiced in error.

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4.6 **Credit Terms.** AT&T retains a lien and purchase money security interest in each item of Purchased Equipment and Vendor Software until Customer pays all sums due. AT&T is authorized to sign and file a financing statement to perfect such security interest.

4.7 **MARC.** Minimum Annual Revenue Commitment ("MARC") means an annual revenue commitment set forth in a Pricing Schedule that Customer agrees to satisfy during each 12-consecutive-month period of the Pricing Schedule Term. If Customer fails to satisfy the MARC for any such 12-month period, Customer will pay a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during such 12-month period, and AT&T may withhold contractual credits until Customer pays the shortfall charge.

4.8 **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 a reduction of AT&T's prices, or a force majeure event, any of which significantly impairs Customer's ability to meet a 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, credits or discounts available at the reduced MARC level). If the parties reach agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.8 will not apply to a change resulting from Customer's decision to use service providers other than AT&T. Customer will provide AT&T notice 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 agree in writing 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 on Customer's attainment thereof.

5. **CONFIDENTIAL INFORMATION**

5.1 **Confidential Information.** Confidential Information means: (a) information the parties or their Affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement (including pricing or other proposals), 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.

5.2 **Obligations.** A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, for which the period is indefinite): (a) 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 authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Agreement (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and enhance the network and Services).

5.3 **Exceptions.** The restrictions in this Section 5 will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (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.** Each party is responsible for complying with the privacy laws applicable to its business. AT&T shall require its personnel, agents and contractors around the world who process Customer Personal Data to protect Customer Personal Data in accordance with the data protection laws and regulations applicable to AT&T's business. If Customer does not want AT&T to comprehend Customer data to which it may have access in performing Services, Customer must encrypt such data so that it will be unintelligible. Customer is responsible for obtaining consent from and giving notice to its Users, employees and agents regarding Customer's and AT&T's collection and use of the User, employee or agent information in connection with a Service. Customer will only make accessible or provide Customer Personal Data to AT&T when it has the legal authority to do so. Unless otherwise directed 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 customer proprietary network information to any employee or agent of Customer without a need for further authentication or authorization.

6. **LIMITATIONS OF LIABILITY AND DISCLAIMERS**

6.1 **Limitation of Liability.**

- (a) EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES ON ACCOUNT OF ANY CLAIM ARISING OUT OF AND NOT DISCLAIMED UNDER THIS AGREEMENT SHALL BE:
 - (i) FOR BODILY INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY A PARTY'S NEGLIGENCE, PROVEN DIRECT DAMAGES;
 - (ii) FOR BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity) OR SECTION 10.2 (Trademarks), PROVEN DIRECT DAMAGES;

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- (iii) FOR ANY THIRD-PARTY CLAIMS, THE REMEDIES AVAILABLE UNDER SECTION 7 (Third Party Claims);
 - (iv) FOR CLAIMS ARISING FROM THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVEN DAMAGES; OR
 - (v) FOR CLAIMS OTHER THAN THOSE SET FORTH IN SECTION 6.1(a)(i)-(iv), PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR AGGREGATE BASIS DURING ANY TWELVE (12) MONTH PERIOD, AN AMOUNT EQUAL TO \$500,000.
- (b) EXCEPT AS SET FORTH IN SECTION 7 (Third Party Claims) OR IN THE CASE OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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 FOR INCREASED COST OF OPERATIONS.
- (c) THE LIMITATIONS IN THIS SECTION 6 SHALL NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

6.2 Disclaimer of Liability. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

6.3 Purchased Equipment and Vendor Software Warranty. AT&T shall pass through to Customer any warranties for Purchased Equipment and Vendor Software available from the manufacturer or licensor. The manufacturer or licensor, and not AT&T, is responsible for any such warranty terms and commitments. ALL SOFTWARE AND PURCHASED EQUIPMENT IS OTHERWISE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.

6.4 Disclaimer of Warranties. AT&T MAKES NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO 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 INFORMATION.

6.5 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, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages 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 and either to settle any third-party claim against Customer, its Affiliates and its and their respective employees and directors or to pay all damages that a court finally awards against such parties for a claim alleging that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright or trade secret, but not 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 Affiliate or a third party, or combinations of the Service with any non-AT&T services or products by Customer or others; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of a Service in violation of this Agreement.

7.2 Customer's Obligations. Customer agrees at its expense to defend and either to settle any third-party claim against AT&T, its Affiliates and its and their respective employees, directors, subcontractors and suppliers or to pay all damages that a court finally awards against such parties for a claim that: (a) arises out of Customer's, its Affiliate's 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 Affiliate or a User of a Software license agreement.

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 Service so that it is non-infringing.

7.4 Notice and Cooperation. The party seeking defense or settlement of a third-party claim under this Section 7 will provide notice to 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

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effect except to the extent the other party is prejudiced by the delay. 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. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 7.

7.5 AT&T's obligations under Section 7.1 shall not extend to actual or alleged infringement or misappropriation of intellectual property based on Purchased Equipment, Software, or Third-Party Services.

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. Additionally, this Agreement may be terminated, in whole or in part, by Customer with cause upon five (5) business days' written notice, or without cause upon ten (10) business days' written notice. Upon such termination notice, AT&T shall, except as otherwise directed in writing by Customer, (a) stop work on the date and to the extent specified, (b) terminate and settle all orders relating to the terminated work; (c) transfer all work in process, completed work, and other materials related to the terminated work to the Customer; and (d) continue and complete all parts of the work that have not been terminated.

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

- (a) **Material Breach.** If either party fails to perform or observe any material warranty, representation, term or condition of this Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the aggrieved party may terminate (and AT&T may suspend and later terminate) the affected Service Components and, if the breach materially and adversely affects the entire Agreement, terminate (and AT&T may suspend and later terminate) the entire Agreement.
- (b) **Materially Adverse Impact.** If AT&T revises a Service Publication, the revision has a materially adverse impact on Customer and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after receipt of notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.
- (c) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from AT&T, AT&T may suspend the affected Service Components. AT&T reserves the right, however, to suspend or terminate immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if AT&T were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of AT&T's network or networks with which AT&T is interconnected or may interfere with another customer's use of AT&T services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to AT&T, AT&T's customers or its or their respective employees.
- (d) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service or Service Component and, if the activity materially and adversely affects the entire Agreement, terminate or suspend the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer, in the course of breaching the Agreement: (i) commits a fraud upon AT&T; (ii) uses 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.
- (e) **Infringing Services.** If the options described in Section 7.3 (Infringing Services) are not reasonably available, AT&T may at its option terminate the affected Services or Service Components 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, AT&T may terminate the affected Services or Service Components or may suspend performance until Customer removes and remediates the Hazardous Materials at Customer's expense in accordance with applicable law.

8.3 **Effect of Termination.**

- (a) Termination or suspension by either party of a Service or Service Component does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service or Service Component.
- (b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination.

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MASTER AGREEMENT**8.4 Termination Charges.**

- (a) If Customer terminates this Agreement or an affected Service or Service Component for cause in accordance with the Agreement or if AT&T terminates a Service or Service Component other than for cause, Customer will not be liable for the termination charges set forth in this Section 8.4.
- (b) If Customer or AT&T terminates a Service or Service Component prior to Cutover other than as set forth in Section 8.4(a), Customer (i) will pay any pre-Cutover termination or cancellation charges set out in a Pricing Schedule or Service Publication, or (ii) in the absence of such specified charges, 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.
- (c) If Customer or AT&T terminates a Service or Service Component after Cutover other than as set forth in Section 8.4(a), Customer will pay applicable termination charges as follows: (i) 50% (unless a different amount is specified in the Pricing Schedule) of any unpaid recurring charges for the terminated Service or Service Component attributable to the unexpired portion of an applicable Minimum Payment Period; (ii) if termination occurs before the end of an applicable Minimum Retention Period, any associated credits or waived or unpaid non-recurring charges; and (iii) any charges incurred by AT&T from a third party (i.e., not an AT&T Affiliate) due to the termination. The charges set forth in Sections 8.4(c)(i) and (ii) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if the Minimum Payment Period or Minimum Retention Period, as applicable, (the "Minimum Period") and associated charge for the replacement Service Component are equal to or greater than the corresponding Minimum Period and associated charge for the terminated Service Component, respectively, and if the upgrade is not restricted in the applicable Service Publication.
- (d) In addition, if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC for the balance of the Pricing Schedule Term.

9. IMPORT/EXPORT CONTROL

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

10. MISCELLANEOUS PROVISIONS

10.1 Publicity. Neither party may issue any public statements or announcements relating to the terms of this Agreement or to 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 Independent Contractor. Each party is an independent contractor. Neither party controls the other, and neither party nor its Affiliates, employees, agents or contractors are Affiliates, employees, agents or contractors of the other party.

10.4 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.

10.5 Amendments and Waivers. 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.

10.6 Assignment and Subcontracting.

- (a) 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 a Customer Affiliate. AT&T may, without Customer's consent, assign in whole or relevant part its rights and obligations under this Agreement to an AT&T Affiliate. In no other case may this Agreement be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). In the case of any assignment, the assigning party shall remain financially responsible for the performance of the assigned obligations.
- (b) AT&T may subcontract to an Affiliate or a third party work to be performed under this Agreement but will remain financially responsible for the performance of such obligations.
- (c) In countries where AT&T does not have an Affiliate to provide a Service, AT&T may assign its rights and obligations related to such 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.

10.7 Severability. If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.11 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties

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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.

- 10.8 **Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.
- 10.9 **Legal Action.** Any legal action arising in connection with this Agreement must be filed within two (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.
- 10.10 **Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.
- 10.11 **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. Any legal action necessary to enforce this Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. The United Nations Convention on Contracts for International Sale of Goods will not apply.
- 10.12 **Compliance with Laws.** Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.
- 10.13 **No Third Party Beneficiaries.** This Agreement is for the benefit of Customer and AT&T and does not provide any third party (including citizens of the Customer and/or any Users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.
- 10.14 **Survival.** The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including the obligations set forth in Section 5 (Confidential Information), Section 6 (Limitations of Liability and Disclaimers) and Section 7 (Third Party Claims), will survive such termination or expiration.
- 10.15 **Agreement Language.** The language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.
- 10.16 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter. Except as provided in Section 2.4 (License and Other Terms), this Agreement supersedes all other agreements, proposals, representations, statements and 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.
- 10.17 **Vendor Registration Account.** In order to do business with Customer, AT&T is required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AllSelfService>. If AT&T intends to use subcontractors, AT&T must also ensure that all subcontractors are registered in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. Customer will not finalize a contract award until the Customer has verified that AT&T is registered in VSS.
- 10.18 **Availability of Funds.** Customer's performance and obligation to pay under this Agreement or any Pricing Schedules or Orders for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.
- 10.19 **Truth in Negotiation Certificate.** Signature of this Agreement by AT&T shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Agreement or any Pricing Schedules or Orders are accurate, complete and current as of the date of the document and no higher than those charged AT&T's most favored customer for the same or substantially similar service. The said rates and costs shall be adjusted to exclude any significant sums should the Customer determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The Customer shall exercise its rights under this Article 4 within three (3) years following final payment.
- 10.20 **Insurance.** AT&T shall maintain at its sole expense, in force and effect at all times during the term of this Agreement, insurance coverage and limits (including endorsements) as described herein. Failure to maintain at least the required insurance shall be considered default of the Agreement. The requirements contained herein, as well as Customer's review or acceptance of insurance maintained by AT&T, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by AT&T under the Agreement. AT&T agrees to notify the Customer at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where the policy allows, coverage shall apply on a primary and non-contributory basis.

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- (a) **Commercial General Liability:** AT&T shall maintain Commercial General Liability at a limit of liability not less than \$500,000 combined single limit for bodily injury and property damage each occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
Additional Insured Endorsement: The Commercial General Liability policy shall be endorsed to include: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents" as an Additional Insured. A copy of the endorsement shall be provided to Customer upon request.
- (b) **Workers' Compensation Insurance & Employer's Liability:** AT&T shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440 of the Florida Statutes.
- (c) **Professional Liability:** AT&T shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 each occurrence, and \$2,000,000 per aggregate. When a self-insured retention (SIR) or deductible exceeds \$10,000, Customer reserves the right, but not the obligation, to review and request a copy of AT&T's most recent annual report or audited financial statement. For policies written on a "claims-made" basis, AT&T warrants the Retroactive Date equals or precedes the Effective Date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the term of this Agreement, AT&T shall purchase a SERP with a minimum reporting period not less than three (3) years after the expiration of the contract term. The requirement to purchase a SERP shall not relieve AT&T of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims-made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage.
- (d) **Waiver of Subrogation:** Except where prohibited by law, AT&T hereby waives any and all rights of Subrogation against the Customer, its officers, employees and agents for each required policy except Professional Liability. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then AT&T shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should AT&T enter into such an agreement on a pre-loss basis.
- (e) **Certificates of Insurance:** On execution of this Agreement, within forty-eight (48) hours of a request by Customer, and upon expiration of any of the required coverage throughout the term of this Agreement, AT&T shall deliver to the Customer a signed Certificate(s) of Insurance evidencing that all types and minimum limits of insurance coverage required by this Agreement have been obtained and are in force and effect. Certificates shall be issued to: Palm Beach County Board of County Commissioners, c/o Information System Services, 301 N. Olive Avenue, West Palm Beach, Florida 33401
- (f) **Right to Revise or Reject:** Customer, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements.
- 10.21 **Federal and State Tax.** The Customer is exempt from payment of Florida State Sales and Use Taxes. The Customer will sign an exemption certificate submitted by AT&T. AT&T shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Customer, nor is AT&T authorized to use the Customer's Tax Exemption Number in securing such materials. AT&T shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.
- 10.22 **Arrears:** AT&T shall not pledge the Customer's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. AT&T further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 10.23 **Access and Audits:** AT&T shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of this Agreement. Customer shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at AT&T's place of business located in Palm Beach County.
- 10.24 **Inspector General:** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of AT&T, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- 10.25 **Nondiscrimination:** Customer is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, AT&T warrants and represents

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that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

As a condition of entering into this Agreement, AT&T represents and warrants that it will comply with the Customer's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, AT&T shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall AT&T retaliate against any person for reporting instances of such discrimination. AT&T shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the Customer's relevant marketplace in Palm Beach County. AT&T understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in Customer contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. AT&T shall include this language in its subcontracts.

10.26 Public Entity Crimes: As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, AT&T certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

10.27 Criminal History Records Check: AT&T, AT&T's employees, subcontractors of AT&T and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. AT&T is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, AT&T acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the Customer. This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. Customer staff representing the Customer department will contact AT&T and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. AT&T shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the Customer. If AT&T or its subcontractor(s) terminates an employee who has been issued a badge, AT&T must notify the Customer within two (2) hours. At the time of termination, AT&T shall retrieve the badge and shall return it to the Customer in a timely manner. The Customer reserves the right to suspend AT&T if AT&T 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the Customer regarding a terminated AT&T employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

10.28 Regulations; Licensing Requirements: AT&T shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. AT&T is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

10.29 Scrutinized Companies: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, AT&T certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if AT&T is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the Customer.

When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, AT&T certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

To the extent AT&T is engaged in business operations in Cuba or Syria, pursuant to F.S. 287.135(4)(b)(1), Customer hereby makes a finding that Customer would be unable to obtain the goods or services for which this Agreement is offered, absent granting an exception to AT&T to enter into this Agreement despite such business operations.

If the Customer determines, using credible information available to the public, that a false certification has been submitted by AT&T, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

10.30 E-verify - Employment Eligibility: AT&T warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of AT&T's

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subconsultants performing the duties and obligations of this Agreement are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

AT&T shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. AT&T shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

Customer shall terminate this Agreement if it has a good faith belief that AT&T has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If Customer has a good faith belief that AT&T's subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, Customer shall notify AT&T to terminate its contract with the subcontractor and AT&T shall immediately terminate its contract with the subcontractor. If Customer terminates this Agreement pursuant to the above, AT&T shall be barred from being awarded a future contract by Customer for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, AT&T shall also be liable for any additional costs incurred by Customer as a result of the termination.

10.31 Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if AT&T: (i) provides a service; and (ii) acts on behalf of the Customer as provided under Section 119.011(2) F.S., AT&T shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. AT&T is specifically required to:

- A. Keep and maintain public records required by the Customer to perform services as provided under this Agreement.
- B. Upon request from the Customer's Custodian of Public Records, provide the Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. AT&T further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if AT&T does not transfer the records to the public agency.
- D. Upon completion of the Agreement, AT&T shall transfer, at no cost to the Customer, all public records in possession of AT&T unless notified by Customer's representative/liaison, on behalf of the Customer's Custodian of Public Records, to keep and maintain public records required by the Customer to perform the service. If AT&T transfers all public records to the Customer upon completion of the Agreement, AT&T shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If AT&T keeps and maintains public records upon completion of the Agreement, AT&T shall meet all applicable requirements for retaining public records. All records stored electronically by AT&T must be provided to Customer, upon request of the Customer's Custodian of Public Records, in a format that is compatible with the information technology systems of Customer, at no cost to Customer.

Failure of AT&T to comply with the requirements of this article shall be a material breach of this Agreement. Customer shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. AT&T acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF AT&T HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AT&T'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

11. DEFINITIONS

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

"API" means an application program interface used to make a resources request from a remote implementer program. An API may include coding, specifications for routines, data structures, object classes, and protocols used to communicate between programs.

"AT&T Software" means software including APIs, and all associated written and electronic documentation and data owned by AT&T and licensed by AT&T to Customer. AT&T Software does not include software that is not furnished to Customer.

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"Customer Personal Data" means information that identifies an individual, that Customer directly or indirectly makes accessible to AT&T and that AT&T collects, holds or uses in the course of providing the Services.

"Cutover" means the date Customer's obligation to pay for Services begins.

"Effective Date" of a Pricing Schedule means 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 the recurring and usage charges (including amounts calculated from unpaid charges that are owed under Section 8.4(c)(j)), 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, P ICC, payphone service provider compensation, E911 and deaf relay charges).

"Minimum Payment Period" means the Minimum Payment Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to pay recurring charges for the Service Component.

"Minimum Retention Period" means the Minimum Retention Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to maintain service to avoid the payment (or repayment) of certain credits, waived charges or amortized charges.

"Purchased Equipment" means equipment or other tangible products Customer purchases under this Agreement, including any replacements of Purchased Equipment provided to Customer. Purchased Equipment also includes any internal code required to operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to Customer on which Software is stored.

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

"Service Publications" means Tariffs, Guidebooks, Service Guides and the AUP.

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

"Software" means AT&T Software and Vendor Software.

"Third-Party Service" means a service provided directly to Customer by a third party under a separate agreement between Customer and the third party.

"Vendor Software" means software, including APIs, and all associated written and electronic documentation and data AT&T furnishes to Customer, other than AT&T Software.

