

## MASTER AGREEMENT

Seller is a leading provider of products and services for converged communication networks;

Purchaser wishes to purchase certain products and/or services from Seller;

Seller and Purchaser desire to specify the terms and conditions that will apply to those transactions:

Now therefore, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

**21. AGREEMENT SCOPE.** Products and services provided under this Agreement shall be furnished by Seller on an as-ordered basis. Specific requirements and relevant terms for orders of products and services may be set forth in an individual order (“Order”) or sales order (“Sales Agreement”) or other documents mutually agreed to between Seller and Buyer, (may also be referred to individually or collectively a “Contract”). Each executed Contract shall be subject to the terms of this Agreement and deemed to be appended to this Agreement.

**22. ACCEPTANCE.** Purchaser shall be deemed to have accepted the products and services sold hereunder if Purchaser has not given to Seller a written notice of rejection, describing the basis for rejection, within 10 business days after delivery.

**23. CANCELLATION.** Unless otherwise stated in an executed Contract, Purchaser may cancel accepted orders on products and/or services only with a 30% restocking fee due upon cancellation. Cancellation must be made in writing by Purchaser and received by Seller before shipment of products and commencement of services, except for software, which cancellation must be given to and received by Seller at least thirty (30) days prior to shipment of such software.

### **24. CONFIDENTIALITY**

**24.1 CONFIDENTIAL INFORMATION.** “Confidential Information” means any and all technical and non-technical information of the disclosing party, that is either indicated to be proprietary or confidential information of the disclosing party or which by its nature the receiving party would reasonably deem such information to be confidential or proprietary, regardless of marking, including but not limited to work product, work in process, software code, documentation, products, product plans, designs, costs, prices, discounts, services, business opportunities, business plans, customers, suppliers, the terms of the Agreement, and other material or information related thereto. Information communicated verbally shall be treated as Confidential Information if designated by the disclosing party as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure. Confidential information does not include materials or information that: (i) is generally known by third parties as a result of no act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information and without restriction on disclosure; (iii) was already known by the receiving party prior to receiving it from the disclosing party and was not received from a third party in breach of that third party’s obligations of confidentiality; (iv) was independently developed by the receiving party without use of Confidential Information of the disclosing party; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, and provided that the receiving party promptly notifies the disclosing party of the pending disclosure in writing so that the disclosing party may attempt to obtain a protective order. In the event of a potential disclosure in the case of subsection (v) above, the receiving party will provide reasonable assistance to the disclosing party where the disclosing party attempts to obtain a protective order. This Section 4.1 will survive the termination of the Agreement.

**24.2 CONFIDENTIAL INFORMATION PROTECTION.** Each party will protect the secrecy of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Neither party will use or disclose the other party’s Confidential Information, except as

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permitted in this Agreement and only for the purpose of performing obligations under the Agreement. The confidentiality obligations of each party under the Agreement will survive any expiration or termination of the Agreement or of any order for three (3) years after the termination or expiration of this Agreement. Upon termination of the Agreement, each party will cease all use of the other party's Confidential Information (except for software and related documentation in accordance with the applicable license granted under the Agreement) and will promptly return, or at the other party's request, destroy all Confidential Information, including all copies, notes or extracts, (whether in hard-copy form or on intangible media, such as electronic mail or computer files) in the receiving party's possession.

**25. EXCLUSIVE REMEDY/LIMITATION OF LIABILITY.** Notwithstanding any other provision herein, Seller's liability for breach of this Agreement, or breach of any warranty, express or implied, found to have been made in connection with this Agreement, shall be to repair or replace, at its option, any defective hardware or software, sold hereunder. Seller shall have no liability whatsoever to Purchaser if computer software or computer hardware sold hereunder is subsequently upgraded, or is otherwise used with software or hardware that was not used with the software and/or hardware sold hereunder at the time of installation, or if any such software or hardware has been serviced by anyone other than Seller. In no event or circumstances shall either party be liable to the other party for any indirect, special, incidental or consequential damages, including without limitation, loss of revenues or profits, business interruption costs, loss of data for any reason or software restoration, or damages relating to Purchaser's procurement of substitute products or services, whether in an action in contract, tort (including strict liability), breach of warranty, or otherwise, arising out of or in connection with the products or the provision of services under this Agreement, even if each such party has been advised of the possibility of such damages. In no event will either party's total cumulative liability in connection with this Agreement from all causes of action of any kind, exceed the any amount paid by Buyer hereunder in the six (6) months preceding the claim.

**26. DELIVERY.** Purchaser acknowledges that delivery dates or timelines provided by Seller are best estimates only and not a guarantee, although every reasonable effort shall be made by Seller to meet Purchaser's delivery expectations.

**27. DISCONTINUED EQUIPMENT.** Seller may discontinue providing services with respect to products for which it can no longer readily obtain repair parts or technical assistance from the manufacturer of such product(s).

**28. FORCE MAJEURE.** Seller's performance hereunder shall be excused if such nonperformance or delay of performance is due to causes beyond the reasonable control of Seller, including but not limited to acts of God, acts of the public enemy, any acts of any government, fires, war, riots, terrorism, floods, epidemics, quarantine restrictions, insurrection, strikes, labor shortage, materials shortage or freight embargoes. Any delay in performance due to a force majeure occurrence shall extend the period for performance for the duration of the delay.

**29. INVOICING AND PAYMENT.** For orders containing only products, payment is due 100% upon product order or, upon credit approval of the Purchaser, within thirty (30) days from date of Seller's invoice, unless otherwise agreed in writing by Seller. For purchases pursuant to a Sales Agreement, Purchaser agrees to pay Seller 50% of the hardware and/or software value at signing of the Contract, 50% upon delivery of the hardware and/or software, 100% of the recurring services upon contract creation and 100% of professional services upon acceptance of the services (if any such services are included) pursuant to such Contract, plus any applicable taxes, and shipping and handling charges unless otherwise agreed to in writing by an authorized representative of Seller management. Seller will invoice Purchaser all fees as provided in the applicable purchase order. Purchaser will pay all bank charges, taxes, duties, levies and other costs and commissions associated with any bank wire transfer or other means of payment.

**29.1 LATE CHARGES.** Any overdue and unpaid, and non-disputed portion of the fees will bear interest, compounded at one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is less. Seller may suspend licenses and performance of orders for which payment is overdue until the overdue amounts are paid in full. Purchaser will reimburse Seller for reasonable attorneys' fees and any other costs associated with collecting

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delinquent payments. Purchaser will have one hundred and twenty days (120) from the date of Seller's invoice to dispute any late charges before they will be considered valid.

**29.2 TAXES.** Purchaser will pay or reimburse Seller for all applicable sales, services and other taxes (excluding taxes on Seller's net income) levied upon the sale and/or license of Products and performance of services under the Agreement unless Purchaser is exempt and provide Seller with a valid tax exemption certificate prior to Seller's invoice date.

**30. MANUFACTURER/THIRD PARTY WARRANTY.** The services and/or products (i.e. hardware or software,) sold or licensed (in the case of software) to Purchaser may be subject to a manufacturer or other third party warranty ("Third Party Warranty"), The terms and conditions of the Third Party Warranty may be available to Purchaser at <http://lantanacom.com/Eula> or its successor site or by specific request to Seller. Purchaser acknowledges that Seller is not a party to any such warranty. Any rights or remedies that Purchaser may have pursuant to said warranty are against the manufacturer or other third party directly, and are not assertable against the Seller. SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD OR LICENSED HEREUNDER. PURCHASER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY OR REPRESENTATION BY THE SELLER WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD HEREUNDER, EXCEPT AS ARE EXPRESSLY CONTAINED HEREIN. ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT, HOWSOEVER ARISING ARE HEREBY DISCLAIMED.

**31. NON-SOLICITATION OF PERSONNEL.** Purchaser acknowledges that employees of Seller are valuable assets of Seller and that the loss of an employee would cause significant damage or irreparable harm to Seller and cause Seller to entail substantial costs for replacement. At the same time, the parties understand that such costs and damages would be difficult, if not impossible, to determine precisely. Therefore, the parties expressly agree that during the term of this Agreement and at any time during a one (1) year period following the termination of this Agreement by either party for whatever reason, Purchaser shall not directly or indirectly, (i) encourage any employee of Seller, who became known to Purchaser by virtue of such employee's providing services to Purchaser under this Agreement ("Seller Personnel"), to terminate his or her employment with Seller or to diminish his/her services with Seller or (ii) recruit or solicit for hire or hire any Seller Personnel for employment with Purchaser. In the event Purchaser breaches or violates any terms of this paragraph, Purchaser agrees to pay, as liquidated damages and not by way of penalty, a sum of seventy-five percent (75%) of such Seller Personnel's total annual salary at the time such encouragement, recruitment or solicitation for recruitment or hire occurred. Payment of such damages shall not exclude Seller from seeking any and all other remedies available in law, in equity or otherwise, including an action for injunctive relief against the threatened breach of this provision or the continuation of any such breach by the Purchaser.

**32. PROFESSIONAL SERVICES.** Seller may provide professional services as requested by the Purchaser. General scope of Seller professional services is further outlined in Appendix A (General Statement of Work) to this Agreement. The specific professional service requirements, specifications and/or scope of work, including any labor or travel charges, shall be set forth in a specific Technical Scope of Work or Bill of Materials, whichever is applicable.

**32.1 SERVICE CLAIMS.** If services provided are in connection with a problem that is covered by a Third Party Warranty, then such services shall not be billed out at Seller's then-prevailing hourly rate, to the extent of the Third Party Warranty coverage. Please refer to your manufacturer or third party provided documentation for scope of such warranty coverage. Any labor or travel provided that is not covered under the Third Party Warranty or where services provided are not covered under a Third Party Warranty then such services and all labor and travel will be billed out at Seller's then-prevailing hourly rate.

**33. PURCHASER RESPONSIBILITY.** Purchaser shall use its best efforts to cooperate with Seller in connection with Seller's performance or carrying out its duties hereunder, and shall refrain from any act or omission that could frustrate Seller's performance. In that regard, but not by way of limitation, Purchaser shall designate one employee for each location at which services are expected to be

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rendered under this Agreement, with full authority to act for Purchaser in the event that Purchaser's input is required in order to affect any aspect of the services provided hereunder.

**34. PURCHASER WARRANTY**

**34.1 PROPER LICENSING.** Purchaser represents and warrants to Seller that Purchaser has properly licensed all software being used by its organization and shall hold Seller harmless from any claims or suits premised upon breach of any third party's proprietary rights with respect to such software.

**34.2 PROPER BACKUP (Where Applicable).** Purchaser represents and warrants to Seller that Purchaser's system has been properly backed up prior to the commencement of any services provided by Seller. Purchaser acknowledges that the Seller shall not be liable whatsoever, under any circumstances or for any reasons, for any damages suffered by Purchaser in connection with or as a result of improper backup or data which has not been backed up.

**35. SHIPPING.** Product shall be shipped FOB Seller's place of business, by common or contract carrier, or in the case of drop shipment, FOB manufacturer's or distributor's place of business, by common or contract carrier. Freight charges shall be Purchaser's responsibility. "Delivery," as used in this Agreement shall be deemed completed upon delivery of the products to the common or contract carrier.

**36. SOFTWARE.** For any software product or product containing software sold or licensed to Purchaser and any related documentation provided to Purchaser under this Agreement, Purchaser agrees to comply with the applicable manufacturer End User License Agreement, located at <http://lantanacom.com/Eula> or its success site. For all Avaya specific software Purchaser agrees to comply with all Avaya software End-User License Agreements ("EULA") or other licenses as detailed at <https://support.avaya.com/LicenseInfo> or its successor site. Purchaser acknowledges that Seller is not a party to any such End User License Agreement. Any rights or remedies that Purchaser may have pursuant to said license agreement are against the licensor of the software directly and are not assertable against the Seller. Purchaser acknowledges the software product is licensed and not sold to Purchaser under this Agreement and that Purchaser owns only the media or the hardware on which the software is stored or resides.

**37. MANUFACTURER SOFTWARE SUPPORT.** Manufacturer software support is provided to Purchaser as defined per transaction on the Bill of Equipment. The terms and conditions of the specific manufacturer software support is available upon request and typically in the form of a Service Agreement Supplement (SAS) document.

**38. SUSPENSION OF PRODUCTS AND/OR SERVICES.** Seller may, at its option, suspend providing products and/or services hereunder in the event that the Purchaser is delinquent on payment of any outstanding invoices.

**39. TERMINATION.** Each party shall have the right to (a) terminate this Agreement for convenience and without cause upon thirty (30) days' prior written notice to the other party, provided that any orders accepted shall not be affected by such termination or (b) terminate this Agreement default or indefinitely suspend an accepted order in the event of (i) of material breach of this Agreement by the other party which is not remedied within thirty (30) days after written notice of such breach or (ii) the other party ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within thirty (30) days, or assigns its assets for the benefit of creditors.

**40. GENERAL**

**40.1 ASSIGNABILITY.** Seller may delegate all or any part of, its duties hereunder to a subcontractor.

**40.2 ATTORNEY FEES.** In the event that of any disputes or litigation between the parties arising from this Agreement or in any way related to the transaction(s) pursuant to this Agreement, the prevailing party shall be entitled to recover from the other party, its actual reasonable attorney fees incurred in connection therewith, in addition to any other relief awarded.

**40.3 BINDING EFFECT.** This Agreement shall bind and inure to the benefit of the parties, and their respective heirs, successors, personal representatives, beneficiaries and assigns.

**40.4 CHOICE OF LAW; JURISDICTION.** The laws of the State of Texas (excluding any laws that direct the application of another jurisdiction's law) govern all matters arising out of or relating to

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this Agreement and all of the transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or any order placed under it. The parties agree that all disputes arising hereunder shall be adjudicated in the courts in Dallas, Texas, and Purchaser hereby agrees to submit to the personal jurisdiction of such courts.

- 40.5 INDEMNIFICATION.** Purchaser will hold harmless and indemnify Seller, its employees, agents, shareholders, officers, directors, successors and assigns from any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorney's fees and settlement fees) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party ("Claim"), including but not limited to, Avaya, arising out of or relating to a breach of the End User License Agreement.
- 40.6 ENTIRE AGREEMENT.** This Agreement (including any appendices, exhibits, schedules, Sales Agreements, Orders or statement of works to this Agreement) constitutes the entire agreement between the parties relating to the sale of the products or services, and supersede all prior oral or written proposals, understandings, representations, warranties, covenants, and communications between the parties, and may not be explained or governed by any prior course of dealings between Seller and Purchaser or by trade custom or usage. No modification, addition, or amendment shall be binding unless in writing and signed by both parties.
- 40.7 ORDER OF PRECEDENCE.** The terms of this Agreement govern all purchases for products and services that Seller may sell to Purchaser while this Agreement remains in effect. When special terms and conditions are included in a specific Contract, such special terms and conditions take precedence over any inconsistent term of this Agreement, but only with reference to the transaction governed by said Contract and shall have no other force or effect. The parties acknowledge that preprinted provisions on any Purchaser purchase order, acknowledgment or invoice shall be deemed deleted and of no effect whatsoever.
- 40.8 INTERPRETATION AND CONSTRUCTION.** In this Agreement, unless the context expressly requires otherwise: (i) a reference to the singular includes the plural and vice versa; (ii) the headings are inserted for convenience only and will not affect the interpretation of this Agreement; (iii) whenever the words "include", "includes", "including" or "in particular" (or similar derivatives) are used, they are deemed to be followed by the words "without limitation"; (iv) no inference shall be drawn from the fact that one party drafted the contract and the rule of ambiguities shall not apply to the interpretation of this agreement.
- 40.9 INTELLECTUAL PROPERTY.** Seller does not grant any intellectual property rights to Purchaser or its end-user. All such intellectual property ownership rights remain with, and are retained by, Seller and/or the applicable licensor.
- 40.10 SEVERABILITY.** Any provision or portion of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of the provision and the remainder of the Agreement shall remain in full force and effect to the extent permitted by law.
- 40.11 SURVIVABILITY** - Obligations and rights under this Agreement or the specific Contract, that is expressed or by their nature and context would reasonably continue beyond the termination, cancellation or expiration of this Agreement or the specific Contract (including those in the Sections entitled Non Solicitation of Personnel, Confidentiality Information, General) shall survive the termination.
- 40.12 WAIVER** - The waiver by either party of a breach of any provision hereunder shall not operate or be construed as a waiver of any subsequent breach of that or any other provision.
- 41.** This Agreement has the following exhibits which are hereby incorporated into this Agreement by this reference:

#### APPENDIX A – GENERAL STATEMENT OF WORK

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APPENDIX B – SERVICE AGREEMENT TERMS AND CONDITIONS

APPENDIX C – CARRIER SERVICES – AT&T

APPENDIX D – CARRIER SERVICES – WINDSTREAM

APPENDIX E – CLOUD SOLUTIONS

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## Appendix A

### General Statement of Work For Installation, System Consulting, Programming & Training

This General Statement of Work set forth the general terms and conditions for certain services (i.e. installation, consulting, programming and training) that are available for purchase by Purchaser from Seller, with specific requirements to be further defined or specified in an individual Order or a Sales Agreement, which shall be subject to the Agreement.

All terms used and not otherwise defined shall have the meaning given such terms in the Agreement.

#### 1. GENERAL REQUIREMENTS

**1.1. POINT OF CONTACT:** Purchaser will designate an authorized single point of contact to receive and approve all applicable documents ("Contact") from Seller.

**1.2. SELLER:** Seller will provide a project manager as a single point of contact for Purchaser. The project manager's responsibilities shall include: (i) Planning, coordinating, executing and documenting all installation requirements and activities; (ii) Conducting project meetings; (iii) Receiving and processing all project change order(s), if applicable. (iv) Providing timely project status to the designated Purchaser contact.

**2. SITE PREPARATION.** It is Purchaser's responsibility to provide adequate floor plans or blueprints or other documents as necessary to Seller in order for Seller to properly perform the services hereunder. All floor plans provided should be clearly marked with the required information, generally including: room numbers, end-user names, extension numbers, and wiring/station jack numbers and set type and adjuncts. It is also Purchaser's responsibility to prepare its site, at its expense, for the new equipment in accordance with the instruction provided by Seller. This includes site preparation for complete hardware installation of all applicable equipment and wiring. It is Purchaser's responsibility for ordering any and all required services from the local exchange carrier or data network provider. Seller does not take responsibility for ordering or contracting for any such service unless otherwise expressly agreed to by Seller in Seller's proposal to Purchaser or for ensuring that Purchaser's current and new service is installed and in good working order prior to the commencement of any work to be performed by Seller. In addition, all information regarding telephone lines and/or such third party services must be forwarded by Purchaser to Seller project manager. In order for Seller to provide efficient support and to be able to alarm in to remote maintenance and testing center, if applicable, Purchaser must provide an analog dedicated line to the modem on the equipment or another approved means of communication. Questions or discussion on this item should be directed to the Seller Project Manager assigned to your implementation.

**3. DATA COLLECTION.** Seller will assist the Purchaser with the responsibility of data collection required for programming the new system.

**3.1. Responsibilities and Activities Associated with Data Collection:** Purchaser shall provide a single point of contact (Project Coordinator) to the Seller's provisioning team to act as the primary contact person for the Seller's Project Manager. The Purchaser's Project Coordinator should also possess the authority to make decisions on their behalf concerning the installation and implementation of the new system. Depending on the size and/or complexity of the project, it may be desirable for the Purchaser to provide Departmental Coordinators to assist the Project Manager. On average, each Departmental Coordinator should be responsible for about 20-30 users to ensure that the correct equipment is assigned for each end-user, as well as special features that help best meet the needs of each person. This data collection must be completed 10 business days prior to install date. Revisions to the data collected will not be accepted 5 business days prior to date of install.

**3.2. Purchaser Participation.** If purchaser chooses not to participate in the Station Review and Data Collection process and requests that the Seller's implementation team take full responsibility for that task or the Seller's provisioning team deems that the data collected by the

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Purchaser is grossly inadequate or inaccurate, a non-standard charge will apply and billed at a rate of \$10.00 per end point to complete the work for proper Data Collection.

4. **SOFTWARE CUSTOMIZATION.** (putting the features to work for the Purchaser) After Purchaser and the Seller's provisioning team have performed the Data Collection task, the software translations can be completed. Upon mutual agreement that the Purchaser's collected information is complete and all requested and purchased features and functionality is included, the Purchaser's information is loaded into the system software one time. If Purchaser initiates additional changes at any point after agreeing that the information provided is complete, additional charges may be levied. The Seller will have the right to charge for the time and costs incurred by the Seller's provisioning team at Seller's then normal hourly rate.
5. **NETWORK ASSESSMENT.** If the solution is an IP-enabled system, a basic network readiness assessment, provided by the Seller for a fee, is required. The basic network readiness assessment cannot record and report every error that may be occurring on Purchaser's network. Additional troubleshooting and/or further analysis may identify other issues. Seller can provide these services at an additional charge. Purchaser will be responsible to ensure that any network problems are referred to Purchaser's network service provider and resolved before Seller's implementation date. If Purchaser chooses to obtain a network assessment from another party, a VVoIP Network Readiness Assessment for Third Party Template must be completed for each project, approved, and provided to Seller prior to implementation.
6. **RFA OR PLDS INSTALLATION.** Seller may provide installation of a system license file through the use of Avaya's RFA or PLDS systems. The scope of this installation is limited to the procurement and activation of the license on Purchaser's associated system(s) and final registration of licenses to appropriate manufacturer. This does not include configuration or programming changes to any system. If configuration or programming changes are needed by Purchaser, then Seller will present a change order, as defined in Section 12 of Appendix A.
7. **INSTALLATION SCHEDULE.** Schedule for installation of equipment will be set by Seller Project Manager in consultation with Purchaser. Every effort will be made to accommodate specific dates requested by Purchaser. Agreed upon installation date will be considered firm 14 days prior to that date ("Firm Date"). Purchaser's system will be unavailable during cutover and testing. Cutover and testing will be completed in a single phase, unless otherwise noted in the Technical Scope of Work. If a multi-phase implementation is requested by the Purchaser, after the Sales Agreement is approved, additional charges will apply for each resource involved in the cutover. The Project Manager will submit a change order with additional charges to the Purchaser when applicable. All invoicing and payment will be set forth in the Sales Agreement.
8. **DELAYS AND RESCHEDULING.** Any delays in installation schedule after firm date, caused by Purchaser, may result in additional charges at Seller's then regular or overtime hourly rate. Significant delays may result in project being rescheduled at discretion of Seller Project Manager.
9. **TRAINING**
  - 9.1. **Training Room Setup (If applicable).** Training room set-up, including the installation of any necessary extra wire, is the responsibility of the Purchaser; if the Purchaser fails to make the training room ready according to the Seller's direction, the Seller may charge the Purchaser for any expenses incurred to prepare the room including any installation and de-installation of end points, if applicable.. Training translations should be from real end points; any custom training translations, requested by the Purchaser, are subject to additional fees. The Seller Project Manager will determine any and all additional charges associated with training room set-up and an appropriate change order will be submitted.
  - 9.2. **End User Training (If applicable).** End User Training may vary with systems based on the number of end points and complexity of configuration. Generally, end-user training will be provided in groups of 10-15 users for 45 minutes per group. Console training will be provided as applicable. The Seller Project Manager will create a customized training program that will meet your company's needs.
  - 9.3. **Basic System Administration Training (If applicable).** Basic System Administrator Training will be provided for one to two hours, unless otherwise noted.

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- 10. HELP DESK (if applicable).** On the first day of service, Seller will manage a Help Desk which will be staffed by the Purchaser's project coordinator (or representative) and at least one Seller representative. Seller will manage the Help Desk for up to four (4) hours then turn over the operation to the Purchaser. If the Purchaser requires Help Desk coverage beyond the four (4) hours, additional charges will apply at Seller's then hourly rate per representative. Depending on the size and complexity of the new system being installed, the Seller Project Manager may, at his/her discretion, provide additional hours/days of Seller staffed Help Desk at an additional charge to the Purchaser. The Help Desk will receive reports of trouble from Purchaser's department coordinators. A trouble ticket will be filled out and given to the appropriate Seller personnel. Requests for changes from users will be referred to the Purchaser's Project Coordinator for resolution.
- 11. POST-CUTOVER SUPPORT.** Seller will provide free remote administrative support during Seller normal business hours for one (1) business day after implementation of each project. During the period of free remote administrative support, Seller will provide initial response within two (2) hours. Purchaser shall be required to pay for charges incurred by Seller to dispatch a technician to the Purchaser's site or if work is requested outside of Seller's business hours. For all other times after the first day of free remote support, the Purchaser must contact Seller's Service department for further support or dispatch of technician, at 817-606-3323 or email [service@lantanacom.com](mailto:service@lantanacom.com), which will be billable at Seller's then hourly rate.
- 12. CHANGE ORDER.** Seller will provide all equipment and services detailed in a Bill of Equipment and Technical Scope of Work for each project. Any work not included in the Bill of Material and Technical Scope of Work must be negotiated before implemented. Both Purchaser and Seller must agree upon any changes made to the Technical Scope of Work in writing and these agreed to changes must be signed by both parties. Seller will not act on a change order unless authorized by Purchaser's Contact and the Seller's Project Manager.
- 13. CANCELLATIONS AND POSTPONEMENTS.** Purchaser's Contact and Seller's Project Manager will set an installation schedule ("Timeline") during the initial project kickoff for each Sales Agreement and Technical Scope of Work. Any postponement or cancellation of the Timeline by Purchaser's Contact within ten (10) business days of the agreed to start date will result in a postponement or cancellation charge representing the lesser of \$ 5,000.00 or 50% of the installation pricing and any actual associated travel expenses.
- 14. PROJECT CLOSURE.** When all work for a project is believed to be completed, Seller's Project Manager will submit to the Purchaser's Contact a project closure form. Purchaser's Contact will have five (5) business days to review, approve or dispute, in writing, the project closure. If no written notice of dispute or rejection from the Purchaser's Contact is received by Seller, the implementation shall be deemed accepted and completed in accordance with the Purchaser's specifications, at which time Purchaser shall be invoiced by Seller in accordance with the terms and conditions set forth in the Sales Agreement.

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## Appendix B

### Service Agreement Terms and Conditions

The additional service terms and conditions set forth for certain Services (i.e. Enterprise Assist, hardware maintenance, and block of hours) that are available for purchase by Purchaser from Seller, with specific requirements to be further defined or specified in an individual Order, Service Agreement, or a Sales Agreement, which shall be subject to the Agreement.

1. **CONTRACT PERIOD.** All Services will be for an initial term as specified on the specific Service Agreement. All Service Agreements, except Technician on Demand, will be renewed automatically for successive one (1) year terms applying the then most similar current generally available support plan offering for the applicable supported products and then current rates, unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of the applicable initial or renewal term.
2. **SERVICE AGREEMENT.** Seller provides various services dependent upon the product and option selected by Purchaser and indicated on the appropriate Service Agreement. Seller's current service options are available upon request. Repair parts or replacement equipment may be new, remanufactured or refurbished at the discretion of Seller. The removed equipment or parts will become the property of Seller. You may report problems 24 hours a day, 7 days a week by telephone to Seller's service number. If you request services to be performed other than under the selected service option on the appropriate Service Agreement, Seller may agree to provide such services at Seller's then current charges.
3. **SERVICE EXCLUSIONS.** The Agreement does not cover repair for damages or malfunctions caused by: (i) actions of non-Seller installed equipment or software; (ii) Purchaser's failure to follow product specific written Manufacturer installation, operation or maintenance instructions including Purchaser's failure to permit Seller timely remote access to your product; (iii) failure of products not serviced by Seller; (iv) abuse, misuse or negligent acts of non-Seller personnel; or (v) force majeure conditions as stated in the Agreement. In addition, Seller is not obligated to service if there is modification of the product(s). Purchaser agrees to notify Seller prior to moving a product. Additional charges may apply if Seller incurs additional costs in providing service as a result of a move of a product.
4. **LICENSE FOR SPACE AND EQUIPMENT.** As defined in the Sales Agreement, Seller grants Purchaser a license to occupy space ("Space") as Seller designates to locate certain of Purchaser's equipment and to interface with such cables, computers, or other equipment as Seller designates, at Seller's Co-location facilities pursuant to the particular Service Agreement. This Agreement and a Service Agreement convey only a license to occupy the Space.
5. **DEFAULT AND REMEDIES**
  - 5.1 **DEFAULT OF SERVICE AGREEMENT.** Purchaser will be in default ("Default") of the Agreement if they fail to pay any charges when due or fail to perform or observe any material term or condition of this Agreement, if such failure shall continue unremedied for thirty (30) days after receipt of written notice thereof from Seller.
  - 5.2 **REMEDIES.** In addition to any other remedies available to Seller at law, equity or otherwise, if Purchaser is in Default under any Service Agreement or this Agreement and fails to correct such Default within seven (7) days of such Default first occurring, Seller may suspend all support services under all Service Agreements, disconnect and/or repossess any Services under all Service Agreements, and restrict Purchaser's access to the Space (if applicable) until such time as Purchaser cures such Default. In addition to any other remedies available to Seller at law, equity or otherwise, if Purchaser is in Default under any Service Agreement or this Agreement and fails to correct such Default within thirty (30) days of such Default first occurring, such event will constitute a material breach of this Agreement, and Seller may terminate this Agreement, subject to the appropriate portion of Section 6 in Appendix B of the Agreement, and all Service

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Agreements upon written notice to Purchaser. Additionally, Purchaser will also have the right to sell or retain possession of and use (or, at Seller's option, remove and store at Purchaser's expense) all or any portion of the equipment under all Service Agreements without any cost, obligation or liability of Seller up to the amount specified in Section 6 Appendix B of the Agreement.

**6. SERVICE AGREEMENT CANCELLATION/TERMINATION.**

**6.1 CANCELLATION OF HARDWARE MAINTENANCE SERVICE AGREEMENT.** Either before or after commencement of the Service Agreement, Purchaser may terminate Service Agreement coverage upon thirty (30) days written notice and: (i) payment of termination charge equal to fifty percent (50%) of the monthly charges for twelve (12) months or fifty percent (50%) of the charges for the period remaining, whichever is less; or (ii) for prepaid agreements, Seller will refund or credit the pro rate price of the remaining term less a termination charge of fifty percent (50%) of the price for a twelve (12) month period or fifty percent (50%) of the price of the remaining term, whichever is less.

**6.2 CANCELLATION OF ENTERPRISE ASSIST CORE OR USER AGREEMENT.** Purchaser may terminate Enterprise Assist service coverage upon thirty (30) days written notice and : (i) payment of termination charge equal to eighty percent (80%) of the monthly charges for twelve (12) months or eighty percent (80%) of the charges for the period remaining, whichever is less; or (ii) for prepaid agreements, Seller will refund or credit the pro rate price of the remaining term less a termination charge of eighty percent (80%) of the price for a twelve (12) month period or eighty percent (80%) of the price of the remaining term, whichever is less.

**6.3 CANCELLATION OF PREPAID TECHNICIAN ON DEMAND.** Purchaser may terminate the Technician on Demand Agreement upon thirty (30) days written notice. Seller will refund amount equal to the original contract value minus all used hours multiplied by the then Seller hourly rate and all trip charges multiplied by the then Seller trip charge. Seller will refund or credit the pro rate price.

PURCHASER ACKNOWLEDGES THAT THE TERMINATION CHARGE SET FORTH IN THE SECTION TITLED "SERVICE AGREEMENT CANCELLATION/TERMINATION" IS A REASONABLE ESTIMATE OF DAMAGES TO BE SUFFERED BY SELLER AS THE RESULT OF THE TERMINATION OF THE SERVICE AGREEMENT, WHICH AMOUNTS ARE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THAT SUCH TERMINATION CHARGE IS NOT INTENDED AS A PENALTY BUT AS LIQUIDATED DAMAGES.

**7. DAMAGES.** Neither Party will be liable to the other for any indirect, incidental, special, consequential, exemplary or punitive damages (including without limitation, damages for lost profits, lost revenues or the cost of purchasing replacement services) arising out of the performance or failure to perform under this Agreement or any Service Agreement with the exception of damages resulting from Purchaser's failure to timely vacate the Space in accordance with Section 8 Appendix B of the Agreement. Notwithstanding the foregoing, nothing in this Agreement or any Service Agreement will be construed as limiting the liability of either party for personal injury or death resulting from the negligence or willful misconduct of a party or its employees, agents, representatives or contractors.

**8. EFFECT OF EXPIRATION OR TERMINATION.** Upon the effective date of expiration or termination of this Agreement and all Service Agreements the following provision will apply:

**8.1** Seller will immediately cease providing services under all Service Agreements.

**8.2** All amounts due and owing by Purchaser to Seller under this Agreement and the Service Agreements, including section 6 Appendix B of this Agreement, will be immediately paid in full by Purchaser.

**8.3** To the extent the equipment under any Service Agreement has not been sold or possessed by Seller pursuant to Section 5 Appendix B of this Agreement, Purchaser will remove from the Space all of the equipment and any other Purchaser property within ten (10) days of the termination date (but only after all payments due to Seller have been made). If Purchaser does not remove such property (or cannot remove such property because of payments being

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outstanding to Seller) within such ten (10) day period, then Seller may move any and all such property to storage and charge Purchaser for the cost of such removal and storage, without any cost, obligation or liability of Seller to Purchaser. If Purchaser does not pay all amounts due to Seller and remove such property from the Space or storage within thirty (30) days of the termination date, Seller may liquidate and sell the property, including any equipment, in any reasonable manner and apply any proceeds against amounts due to Seller by Purchaser without any payment, obligation or liability to Purchaser.

**8.4** Neither party will have any further obligation or liability under the Service Agreement and this Agreement other than as specifically set forth in the Service Agreement and this Agreement. Nothing in this subsection will relieve either party of any obligation that arose prior to the expiration or termination date of this Agreement, or of those obligation that impose a continuing obligation on a party including, without limitation, the indemnification and confidentiality provisions of this Agreement. All representations, warranties, and covenants of each party will survive the termination of this Agreement and the Service Agreement.

**9. Pricing Assumptions.**

**9.1 True-Up.** Number of users or ports may be recalculated per quarter to actual number of users or ports and billing will be adjusted accordingly.

**9.2 New Equipment/Sites.** All new equipment and sites may change monthly billing at time of purchase and may incur an upfront purchase charge.

**10. Purchaser Responsibilities.**

**10.1 Connectivity/Access.** Purchaser must provide Seller with remote access to all covered systems and onsite access to all covered systems as needed or requested by Seller. Remote access is typically provided via dial-up modem or Avaya Secure Access Link (SAL). For all onsite work, Purchaser must provide Seller with appropriate timely access.

**10.2 Seller's Co-Location Facility.** If Agreement consists of housing equipment in Seller's co-location facility, it is the responsibility of Purchaser to provide network connectivity to Purchaser's other sites. Any management of the above mentioned network connectivity and connectivity to Purchaser's other sites is the sole responsibility of Purchaser. Seller is not liable for connectivity to Purchaser's network or to the Purchaser's network Service Provider.

**10.3 Telephony Service.** Unless otherwise specifically specified, it is the full responsibility of Purchaser to provide and maintain all services associated with the Public Switched Telephone Network (PSTN) and data network connectivity. This responsibility includes but is not limited to 911 emergency calling, local, and long distance.

**10.4 System Control.** Unless otherwise specified in the Sales Agreement, Purchaser will provide a server with the appropriate provided specs for the System Control application.

## Appendix C

### AT&T Carrier Services

#### 1. INTRODUCTION

1.1 **Overview of Documents.** This Appendix and the following additional documents (collectively, the "Carrier Agreement") shall apply to all services and equipment Seller provides Purchaser pursuant to this Carrier 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 Carrier Agreement. A Pricing Schedule identifies the applicable Services, the pricing (including discounts and commitments, if applicable) for such Services and the term during which such Services are purchased ("**Pricing Schedule Term**").
- (b) **Tariffs.** "**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. Tariffs can be found at [att.com/servicepublications](http://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](http://att.com/aup) or other locations AT&T may designate.
- (d) **Service Guides.** "**Service Guides**" are documents containing the descriptions, pricing and other terms and conditions for a Service not covered by a Pricing Schedule or Tariff. Service Guides can be found at <http://www.lantanacom.com/eula>.

1.2 **Priority of Documents.** The order of priority of the documents that form this Carrier Agreement is: Pricing Schedules; this Carrier Agreement; the AUP; Service Guides; and Tariffs; 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.

#### 2. AT&T DELIVERABLES

2.1 **Services.** Seller will provide Services to Purchaser, subject to the availability and operational limitations of systems, facilities and equipment.

2.2 **AT&T Equipment.** Services may be provided using equipment owned by AT&T that is located at a Purchaser Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Seller will require the Purchaser to provide electric power for the AT&T Equipment and to keep the AT&T Equipment physically secure and free from liens and encumbrances. Purchaser shall bear the risk of loss or damage to AT&T Equipment at Purchaser Sites (other than ordinary wear and tear) except to the extent caused by AT&T or Seller.

2.3 **Software and Purchased Equipment.** Any software or Purchased Equipment that AT&T furnishes to Seller for use by Purchaser will be governed by the written terms and conditions applicable to such software and Purchased Equipment. Title to such software remains with AT&T or its supplier. Purchaser must comply with all such terms and conditions, and they take precedence over this Carrier Agreement as to such software. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, AT&T HAS NO DEFENSE, SETTLEMENT, INDEMNIFICATION OR OTHER OBLIGATION OR LIABILITY ARISING FROM THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BASED ON PURCHASED EQUIPMENT OR SOFTWARE NOT MANUFACTURED OR CREATED BY AT&T

#### 3. PURCHASER RESPONSIBILITIES

3.1 **Access Right.** Seller will require Purchaser to provide AT&T with timely access to property and equipment they control at their Site(s) as reasonably required for the Services at no cost to AT&T. Purchaser will also obtain, at their expense, timely access for AT&T as reasonably required for the Services to property

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controlled by third parties, such as a landlord. AT&T will coordinate with and, except in an emergency, rely on Purchaser to grant or obtain consent to enter upon Purchaser's property and premises, as applicable, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, inspect, replace and remove Service Components and the right to use ancillary equipment space within a building to connect a Purchaser's Site to AT&T's network. Purchaser must provide AT&T timely information about and access to Purchaser's facilities and equipment as AT&T reasonably requires to provide the Services, subject to reasonable security policies. Purchaser has the responsibility to furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and to obtain any necessary licenses, permits and consents (including easements and rights-of-way). Sites must be ready for AT&T to perform its work according to agreed upon schedules.

**3.2 Safe Working Environment.** Sites at which AT&T installs, maintains or provides Services must provide a safe working environment, free of Hazardous Materials and be 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.** Purchaser will cause other Users to comply with this Carrier Agreement and is responsible to Seller and AT&T for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

#### **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 or rate card will take precedence over the corresponding prices set forth in any otherwise applicable Service Publication. The Pricing Schedules shall be in effect until the earlier of (a) the expiration of the applicable Pricing Schedule Term, or (b) until changed by Seller as set forth herein. Seller may change the prices, terms and conditions of rate cards from time to time and such changes shall become effective on the day that is 30 days after such changes were first made available to Purchaser. Such changes shall apply to all purchases after such date. Except as set forth in a Pricing Schedule, no promotion, credit, discount or waiver set forth in any other Service Publication will apply. At the end of the Pricing Schedule Term, Purchaser may continue Service (subject to any applicable notice or other requirements in a Service Publication for Solution Provider 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; provided, however, that Seller may change such prices, terms or conditions on 30 days' prior notice to Purchaser.

**4.2 Additional Charges and Taxes.** Prices set forth in a Pricing Schedule are exclusive of and Purchaser will pay all taxes (excluding those on Seller's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from Purchaser'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 Purchaser provides a valid exemption certificate prior to the delivery of Services. To the extent required by law, Purchaser may withhold or deduct any applicable taxes from payments due to Seller, provided that Purchaser will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish Seller with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that Seller may claim any applicable credit.

**4.3 Billing.** Seller shall have the right to do all billing electronically. Unless a Service Publication specifies otherwise, Purchaser's obligation to pay for a Service Component begins upon availability of the Service Component to Purchaser. Purchaser will pay Seller without deduction, setoff or delay for any reason (except for withholding taxes as provided in Section 4.2 – Additional Charges and Taxes or Disputed Charges as provided in Section 4.5 – Delayed Billing; Disputed Charges). At Purchaser's request, but subject to Seller's consent (which may not be unreasonably withheld or withdrawn), Purchaser's Affiliates may be invoiced separately, and Seller will accept payment from such Affiliates. Purchaser will be

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responsible for payment if Purchaser's Affiliates do not pay charges in accordance with this Carrier Agreement.

**4.4 Payments.** Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Purchaser will reimburse Seller 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 at the rate specified therein, or (c) the maximum rate allowed by law for overdue payments.

**4.5 Delayed Billing; Disputed Charges, Seller Right of Offset.** Purchaser will not be required to pay charges for Services initially invoiced more than four (4) months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Purchaser disputes a charge, Purchaser will provide notice to Seller specifically identifying the charge and the reason it is disputed within four (4) months after the date of the affected invoice in which the disputed charge initially appears, or Purchaser waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until Seller completes its investigation of the dispute, but Purchaser may incur related late payment fees in accordance with Section 4.4 (Payments).

**4.6 Credit Terms/Escrow/Creditor Arrangements/Deposits.** If Seller determines, in its reasonable judgment, that Purchaser is not creditworthy, Purchaser agrees to establish a reasonable deposit arrangement pursuant to which Seller may apply deposit amounts to any overdue charges owed.

## **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 Carrier Agreement or in anticipation of providing Services under this Carrier 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 Carrier Agreement.

**5.2 Obligations.** For a period of 3 years following a party's receipt of Confidential Information from the other party (except in the case of software, for which the period is indefinite), the receiving party shall: (a) not disclose such Confidential Information, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors 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) use such Confidential Information only for purposes of using the Services, evaluating proposals for new services or performing this Carrier Agreement (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and repair the Services); and (c) use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the unauthorized use or disclosure of such Confidential Information.

**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 Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Purchaser does not want AT&T or Seller to comprehend Purchaser data or User data to which it may have access in performing Services, Purchaser must encrypt such data) so that it will be unintelligible. Purchaser is responsible for obtaining consent from and giving notice to its Users and Customers, and its and their employees and agents regarding AT&T and Seller's processing of the User, employee or agent information in connection with providing Service. Unless otherwise directed by Purchaser in writing, if Seller designates a dedicated account representative as Purchaser's primary contact with Seller, Purchaser

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authorizes that Seller representative to discuss and disclose Purchaser's customer proprietary network information to any employee or agent of Purchaser 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;
  - (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 THE TOTAL NET CHARGES INCURRED BY SOLUTION PROVIDER FOR THE AFFECTED SERVICE IN THE RELEVANT COUNTRY DURING THE THREE (3) MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE.
- (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 6.1 SHALL NOT LIMIT PURCHASER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS CARRIER AGREEMENT.

**6.2 Disclaimer of Liability.** SELLER 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 PURCHASER 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 PURCHASER'S OR ITS END USER CUSTOMERS' (OR THEIR AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

**6.3 Disclaimer of Warranties.** SELLER 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, SELLER 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

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BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT SELLER'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO PURCHASER'S DATA AND INFORMATION.

6.4 **Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Carrier 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 Seller, 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 Seller under this Carrier Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Seller's, its Affiliate's or Purchaser's content; (b) modifications to the Service by Seller or Purchaser, it's or their Affiliates or a third party, or combinations of the Service with any non-AT&T services or products by Seller or Purchaser Users or others; (c) AT&T's adherence to Seller or Purchaser or its or their Users or Affiliates' written requirements; (d) use of a Service in violation of this Carrier Agreement, or (e) is related to, arises out of, or is covered by the Purchased Equipment or software not manufactured or created by AT&T infringement disclaimer in Section 2.3.

7.2 **Purchaser's Obligations.** Purchaser agrees at its expense to defend and either to settle any third-party claim against Seller, 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 Purchaser's, it's or their Affiliates' or a Users' access to or use or resale of the Services and the claim is not the responsibility of Seller 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; (c) arises out of any failure, breakdown, interruption or deterioration of service (other than Services) provided by Purchaser; (d) arises out of Purchaser's (or its Affiliate's) marketing efforts; or (e) alleges a breach by Purchaser, it's or their Affiliate(s) or any User of a software license agreement governing software furnished in connection with the Services.

7.3 **Infringing Services.** Whenever Seller is liable under Section 7.1, Seller may at its option either procure the right for Purchaser 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 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.

## 8. SUSPENSION AND TERMINATION

8.1 **Termination of Carrier Agreement.** This Carrier 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.

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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 Carrier Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the aggrieved party may terminate the affected Service or Service Components and, if the breach materially and adversely affects the entire Carrier Agreement, terminate the entire Carrier Agreement. If Purchaser is in breach, Seller may elect to suspend (and later terminate) the affected Service Components and, if the breach materially and adversely affects the entire Carrier Agreement, suspend (and later terminate) the entire Carrier Agreement. If Purchaser fails to comply with Section 10.2 (Trademarks) of this Carrier Agreement, and such failure continues unremedied for 30 days after receipt of notice Seller may elect, following the 30 period, to suspend (and later terminate) the affected Service Components or the entire Carrier Agreement, except that such notice and opportunity to cure will not apply if Seller has provided a notice of non-compliance more than twice in the preceding twelve month period.
- (b) **Internet Services.** If Purchaser fails to rectify its own, or effect the rectification by a User of a violation of the AUP within 5 days after receiving notice from Seller, Seller may suspend the affected Service Components. Seller reserves the right, however, to suspend or terminate the affected Service Components immediately when: (i) Seller's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) Seller is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) Seller reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if Seller 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 Seller or AT&T, Seller's or AT&T's customers or its or their respective employees.
- (c) **Fraud or Abuse.** Seller may terminate or suspend an affected Service or Service Component either with respect to an individual User of Purchaser or with respect to Purchaser taken as a whole, and, if the activity materially and adversely affects the entire Carrier Agreement, terminate or suspend the entire Carrier Agreement, immediately by providing Purchaser with such advance notice as is reasonably practicable under the circumstances if Purchaser or a User: (i) commits a fraud upon AT&T or Seller; (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 Seller's Service; or (v) interferes with another customer's use of AT&T's network or services or Seller's services.
- (d) **Infringing Services.** If the options described in Section 7.3 (Infringing Services) are not reasonably available, Seller may at its option terminate the affected Services or Service Components without liability other than as stated in Section 7.1(Seller's Obligations).
- (e) **Hazardous Materials.** If AT&T or Seller encounters any Hazardous Materials at a Site, Seller may terminate the affected Services or Service Components or may suspend performance until Purchaser removes and remediates the Hazardous Materials at Purchaser'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 Carrier Agreement and will not affect the rights and obligations of the parties regarding any other Service or Service Component. In the event of a termination of this Carrier Agreement by AT&T or Seller for cause, AT&T or Seller shall also have the rights set forth on Attachment I to ensure continuity of Services to End User Customers.
- (b) If a Service or Service Component is terminated, Purchaser will pay all amounts incurred prior to the effective date of termination.

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- (c) In the event of a termination, the terms and conditions of this Carrier Agreement will survive solely with respect to any Pricing Schedule executed by the parties prior to such termination for the remaining term of such Pricing Schedule.

#### 8.4 Termination Charges.

- (a) If Purchaser or Seller terminates a Service or Service Component prior to Cutover, Purchaser (i) will pay any termination or cancellation charges set out in a Pricing Schedule or Service Publication, or (ii) in the absence of such specified charges, will reimburse Seller for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.
- (b) If Purchaser or Seller terminates a Service or Service Component after Cutover, Purchaser will pay applicable termination charges as follows: (i) 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 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 Seller from a third party due to the termination.

### 9. IMPORT/EXPORT CONTROL

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Carrier Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations. Purchaser is responsible for each of its Users use, distribution, transfer or transmission of any equipment, services, software or technical information provided under this Carrier Agreement (even if incorporated into other products), and in connection therewith will require a similar covenant and agreement in all contracts with its Users that they and their Users will not distribute, transfer or transmit any equipment, services, software or technical information provided under this Carrier 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 pricing or provision of Services hereunder 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 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 under this Carrier Agreement.

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 of any provision of this Carrier Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Carrier Agreement must be in a writing signed by the party making the waiver and will not operate as a waiver of any other breach of this Carrier Agreement.

#### 10.6 Assignment and Subcontracting.

- (a) Seller may subcontract to an Affiliate or a third party work to be performed under this Carrier Agreement but will remain financially responsible for the performance of such obligations.

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10.7 **Severability.** If any portion of this Carrier 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 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 Carrier 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 Carrier 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 Carrier 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 Carrier Agreement will be governed by the law of the State of Texas, 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.

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 Carrier Agreement is for the benefit of Purchaser and Seller and does not provide any third party (including 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 Purchaser and Seller that by their nature would continue beyond the termination or expiration of this Carrier 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 **Carrier Agreement Language.** The language of this Carrier Agreement is English. If there is a conflict between this Carrier Agreement and any translation, the English version will take precedence.

10.16 **Entire Carrier Agreement.** This Carrier Agreement constitutes the entire agreement between the parties with respect to its subject matter. Except as provided in Section 2.3 (Software), this Carrier Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Carrier Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Carrier 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 Carrier Agreement.

## 11. SERVICE CONTINUITY FOR END USER CUSTOMERS

8.1 **Service Continuation.** In the event that Seller ceases to serve Purchaser, AT&T at its election and in its sole and absolute discretion may provide or otherwise make all necessary arrangements to secure the continuation of Services to such Purchaser in order to avoid any potential disruption of Services to Purchaser.

8.2 **Third Party.** AT&T may provide such Services directly itself or through the designation of a third party to provide such Services to the Purchaser.

8.3 **Communication.** AT&T and any third party service provider designated by AT&T may contact Purchaser at any time in order to effectuate the terms of this section.

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## 12. DEFINITIONS

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

“**Cutover**” means the date Purchaser’s obligation to pay for Services begins.

“**Damages**” means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

“**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

“**Minimum Payment Period**” means the Minimum Payment Period identified for a Service Component in a Pricing Schedule or Service Publication during which Purchaser 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 Purchaser 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 Purchaser purchases under this Carrier Agreement, including any replacements of Purchased Equipment provided to Purchaser. 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 Purchaser on which Software is stored.

“**Service Component**” means an individual component of a Service provided under this Carrier Agreement.

“**Service Publications**” means Pricing Schedules, Tariffs, Service Guides and the AUP.

“**Site**” means a Purchaser’s physical location, including a collocation space on AT&T’s, Seller’s or its Affiliate’s or subcontractor’s property, where AT&T or Seller installs or provides a Service at the request of Purchaser or its Affiliate.

“**User**” means anyone who uses or accesses any Service provided to Purchaser.

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## Appendix D

### Windstream Carrier Services

Together with any proposal/order, service schedule(s), and any document incorporated by reference herein, these terms ("Agreement") apply to all telecommunications and related services ("Services") provided to Purchaser by the Windstream affiliate billing Purchaser ("WIN").

1. **Term and Renewal.** This Agreement is effective on the date identified on the proposal ("Effective Date") and will continue for the term set forth in the proposal from the last date that Services are installed (the "Term"). Upon expiration of the Term, this Agreement will automatically renew for successive one-year terms (each, a "Renewal Term"). If this Agreement is a renewal, it may take one to two billing periods for the rates herein to become effective.
2. **Charges for Services.** Charges are set forth on a proposal or assessed as Services are used by Purchaser (i.e., features, installation/repair, long distance (rounded up to next cent), etc.). Purchaser is responsible for all permissible taxes, surcharges, fees, and assessments that apply to Services, including how those may change in the future, and regardless of whether such charges are identified in the Agreement. Custom shall pay all charges if WIN or a third party provider is required to extend the demarcation point, delay installation due to Purchaser, or undertake special construction. WIN RESERVES THE RIGHT TO INCREASE OR DECREASE MONTHLY RECURRING CHARGES ("MRCS") ON AT LEAST THIRTY 30 DAYS' NOTICE AND OTHER RATES AT ANY TIME.
3. **Installation.** Purchaser must provide an environment that is suitable for the Services, including equipment that is compatible with WIN to install Services/perform maintenance and WIN will not enter into any agreements with Purchaser's landlord or other third parties to obtain same. Purchaser is solely responsible for disconnecting Services with its current service provider to avoid duplicated charges after Service installation. For fixed wireless Services, Purchaser has the additional material obligations to: (a) obtain "roof rights" and make available all evidence of same to WIN; (b) provide space for WIN equipment at the Service locations, no further than three hundred (300) feet from Purchaser's router or switch interface; and, (c) provide internal building conduit to allow WIN the ability to rod/rope to the point of demarcation. WIN shall not be liable for any reasonable alterations or necessary work to the Service locations that are required for installation and removal of WIN equipment.
4. **Billing and Payment; Disputes.** Installation occurs and billing at a location begins on the earlier of (i) the date WIN makes Services available to Purchaser for its use (which may be the date administrative access to certain software-based Services is granted to Purchaser); or (ii) the date that Service would have been available for use by Purchaser if Purchaser had fulfilled its obligations required to provision and install the Service. Bills are issued monthly and are late if not paid by the due date reflected on the invoice. Purchaser is responsible for paying all costs and fees win INCURS AS A RESULT OF COLLECTING Purchaser's unpaid and resolved disputed charges. WIN may choose to bill in full monthly increments with no proration for partial service periods when Service either starts or ends in the middle of a billing cycle. WIN may accept payments marked "payment in full" or being in settlement of any dispute without waiving any rights it has to collect in full. If full payment is not received for undisputed charges in immediately available funds, WIN will add collection and late fees. In certain service areas, paper bills are available only upon request and for a monthly charge. To dispute charges, Purchaser must do so in good faith and deliver to WIN in writing the specific basis for such dispute within sixty (60) days after the date on the invoice or the dispute shall be deemed waived.
5. **Credit and Deposits.** Purchaser authorizes WIN to ask credit-reporting agencies for Purchaser's credit information. WIN may either refuse to serve Purchaser based on such credit information or require Purchaser to submit an initial security deposit and/or advance payment or if Purchaser Increases Services, is late on payment, or its credit rating changes. Any deposit will be refunded if not applied by WIN to any unpaid amount.

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6. **Moves.** If Purchaser moves, it must provide at least ninety (90) days' advance written notice and pay applicable installation charges and increased monthly service charges for the new location. If WIN cannot serve the new location, cannot install Service at the new location due to Purchaser's failure to provide enough notice, or customer terminates due to the move, cancellation charges or liquidated damages pursuant to Sec. 11 shall apply.
7. **WIN-Provided and Owned Equipment; Purchaser Equipment Compatibility.** Any equipment owned and installed by WIN on Purchaser's premises remains the property of WIN. Equipment shall remain in good condition and be reasonably protected by Purchaser from theft and damage, less normal wear and tear. WIN shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Purchaser or its employees or agents, in which case Purchaser shall reimburse WIN for the cost of any necessary repairs. WIN reserves the right to refuse to perform any installation or repair work and may, when necessary, charge Purchaser for interior or exterior cable or wiring to complete the installation or repairs at WIN's then current hourly rates. Purchaser shall provide WIN reasonable access to the equipment for purposes or repair, maintenance, removal or otherwise. If WIN does not have access to Purchaser's premises within thirty (30) days after Purchaser terminates this Agreement, or if WIN requests Purchaser return the equipment and Purchaser does not return the equipment to WIN within thirty (30) days of termination or it is returned damaged (during shipping or otherwise), Purchaser shall reimburse WIN for the fair market value of the equipment as well as any attorney's fees and costs to collect. Purchaser's equipment, software, cables or hardware attached to WIN equipment or Win's network is solely the responsibility of Purchaser and must be compatible with and not cause any interference on WIN's network.
8. **WIN-Provided Software.** Software and its documentation provided as part of Services and Equipment or otherwise provided by WIN to Purchaser shall be used by Purchaser solely as part of the Services and for no other purpose. Purchaser may be required to provide WIN with evidence that its use of the Software is in compliance with this Agreement and/or third-party software licensor's terms. Purchaser agrees it will not: (i) use or make any copies of the software; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, or distribute the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software.
9. **Use of Services.** Purchaser and/or anyone acting through it may not resell Services or use Services for: (a) traffic aggregation; (b) its own end users and/or customers as a telecommunications or any other kind of provider; (c) sending WIN calls that originate from a location other than the local calling area associated with the Purchaser's service location; or (d) sending WIN large volumes of calls from or to areas that are high-cost (areas with access costs greater than regional Bell operating company access costs) or to a toll-free number. Additionally, no more than ten percent (10%) of Purchaser's calls may be six (6) seconds or less and/or no more than forty percent (40%) of call attempts may be uncompleted per trunk group and/or DS0/DS0 equivalent. For violations of this Section, WIN may: (w) immediately terminate Services; (x) charge Purchaser long-distance charges and an additional price per minute; y) charge Purchaser any additional amounts necessary to recoup WIN's administrative costs and charges from other carriers; and/or, z) require Purchaser to pay for the excessive use immediately and make a deposit.
10. **Termination.** Either party may terminate this Agreement by providing at least thirty (30) days' notice prior to the end of the initial Term or a Renewal Term, or if the other party is in breach of any material provision of the Agreement and fails to cure within thirty (30) days after written notice (or after ten (10) days' notice for nonpayment). Purchaser's right to terminate for breach applies to the affected location and/or Services only. WIN may limit, interrupt, suspend or terminate Services IMMEDIATELY if Purchaser or others acting through Purchaser: (a) use the Services in violation of Section 9: (b) use the Services in a manner that affects WIN's network or other customers, (c) use the Services fraudulently or unlawfully; (d) use the Services in a manner that may cause or is causing an imminent and significant operational, financial, or security risk; or, (e) impersonates another person, uses obscene or profane language or is abusive to or harassing WIN representatives and fails to stop such behavior after receiving a written or verbal warning. After termination due to breach, WIN may

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restore Service if Purchaser corrects any breach and pays all outstanding amounts owed, including restoration charges. In addition to these termination rights, if WIN determines that providing Services is not economically or technically feasible or because underlying facilities leased from third parties are no longer available to WIN due to legal/regulatory changes, WIN has the right to terminate Agreement either prior to installation or on 60 days' notice after installation.

**11. Effect of Termination.**

a. Pre-Installation- If Purchaser terminates this Agreement due to any reason other than WIN's material breach or if WIN terminates this Agreement due to Purchaser's material breach after the Effective Date but prior to the installation of Service(s), Purchaser will pay WIN a Pre-Installation Cancellation

Charge (□Cancellation Charge) equal to three (3) months of MRCs except that if WIN's costs to other providers are greater than this amount, Purchaser shall also reimburse WIN for such additional costs. Purchaser agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by WIN to prepare for installation. The Cancellation Charge set forth in this Section is in lieu of the charges set forth in 11(b).

b. Post-Installation- IF CUSTOMER TERMINATES THIS AGREEMENT OR PART OR ALL SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR WIN'S MATERIAL BREACH OR IF WIN TERMINATES THIS AGREEMENT DUE TO CUSTOMER'S MATERIAL BREACH, CUSTOMER SHALL PAY TO WIN AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE MRCS APPLICABLE TO THE SERVICES THAT WERE TERMINATED MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM EXCEPT THAT IF WIN'S COSTS TO OTHER PROVIDERS ARE GREATER THAN THIS AMOUNT, CUSTOMER SHALL ALSO REIMBURSE WIN FOR SUCH ADDITIONAL COSTS. IF THE CUSTOMER PARTIALLY CANCELS AND HAS A MINIMUM MONTHLY FEE (MMF), THEN THE CUSTOMER SHALL CONTINUE TO BE BILLED THE MMF (LIQUIDATED DAMAGES). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY WIN.

**12. Limitation of Liability; Indemnity.** FOR PURPOSES OF SECTIONS 12 AND 13, "WIN" INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF WIN RESELLS SERVICES. EXCEPT FOR WILLFUL MISCONDUCT, WIN'S LIABILITY FOR SERVICES AND INSTALLATION WILL NOT EXCEED ANY CREDITS OFFERED BY WIN FOR OUTAGES PURSUANT TO WIN'S THEN-EFFECTIVE CREDIT POLICY. IN NO EVENT WILL WIN BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE, OR ATTORNEY'S FEES. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED DUE TO THEFT OR FRAUD OVER THE SERVICES WHILE IN CUSTOMER'S CONTROL, REGARDLESS OF WHETHER/WHEN WIN NOTIFIES CUSTOMER OF INCREASED USAGE. PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT WIN'S LIABILITY AS PROVIDED HEREIN. CUSTOMER INDEMNITY: CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD WIN HARMLESS IF CUSTOMER'S USE OF THE SERVICES CAUSES A THIRD PARTY TO MAKE A CLAIM AGAINST WIN.

**13. Disclaimer of Warranties.** EXCEPT AS OTHERWISE PROVIDED HEREIN, SERVICES, EQUIPMENT, AND THE DESIGNATED CUSTOMER AREA ON WIN'S PREMISES, IF APPLICABLE, ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE INCLUDING,

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BUT NOT LIMITED TO, BROADBAND SPEEDS, UNINTERRUPTED OR ERROR-FREE SERVICE, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS. EXCEPT AS EXPRESSLY PROVIDED IN WIN'S PRIVACY POLICY AND BY LAW, WIN HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION OR DATA. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY WIN'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.

14. **Force Majeure.** WIN shall have no liability, including service credits, for any delay or failure to perform caused by any event beyond its reasonable control or during any maintenance periods necessary on WIN's network or equipment, including but not limited to delays or failures caused by third parties' or Purchaser's actions or failure to act or permit WIN access.
15. **Documents Incorporated by Reference;** Entire Agreement; Counterparts; Execution. THIS AGREEMENT IS SUBJECT TO AND INCORPORATES THE FOLLOWING BY REFERENCE, AS THEY MAY CHANGE FROM TIME TO TIME: (I) THE TERMS AND CONDITIONS OF THE TARIFFS FILED WITH THE STATE PUBLIC SERVICE COMMISSION; (II) THE FCC OR STATE SERVICE PUBLICATIONS POSTED AT <http://www.windstream.com/Legal-Notices/>; (III) FOR INTERNET, THE "ACCEPTABLE USE POLICY" POSTED AT <http://www2.WIN.net/customersupport/usersguide/accept/accept.html> AND THE "PRIVACY POLICY" POSTED AT <http://www.WIN.com/privacy.aspx>; (IV) FOR CERTAIN VALUE-ADDED SERVICES (I.E., ONLINE BACK UP SERVICES, TECH HELP, ETC), THE CLICK-THROUGH AGREEMENTS RELATED TO THOSE SERVICES REQUIRED PRIOR TO ACCESSING THEM; AND (V) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE. This Agreement constitutes the parties' ENTIRE AGREEMENT. In the event of any conflict between the terms of this document and any of the documents incorporated by reference, the terms of this document control followed (in order) by any click-through agreements for applicable Services, the Tariffs and the FCC or state Service Publications, and then the Acceptable Use and Privacy policies.
16. **Miscellaneous. (a) Signatures and Amendments:** This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. WIN also may execute this Agreement via a verifiable electronic signature. This Agreement may be amended only in a writing signed by an authorized representative of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Purchaser by any WIN employee or agent; (b) **Notices and Electronic Communications:** Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered or mailed to Purchaser at the address populated on Purchaser's proposal or to WIN at WIN, Attn: Correspondence Division, 301 N. Main St., Greenville, SC 29601, [windstream.business.support@windstream.com](mailto:windstream.business.support@windstream.com) or at such other address provided to the other party. Purchaser disconnection requests must be initiated by accessing the online portal at [www.windstreamonline.com](http://www.windstreamonline.com), or by calling 1-800-600-5050. Purchaser agrees that WIN may send electronic messages to Purchaser concerning WIN Services; (c) **Compliance with Laws;** Applicable Law: Each party shall comply with all laws and regulations applicable to this Agreement. This agreement is subject to applicable federal law and the laws of the state in which the Services are provided, if provided in multiple states, then Delaware law, both of which shall be without regard to that state's conflict of laws principles; (d) **Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT;** (e) **Statute of Limitations:** Other than billing disputes subject to shorter time periods in Sec. 4, no claim may be asserted by either party more than two (2) years after the occurrence that is the basis of the claim; (f) **Assignment:** On written notice, either party may assign this Agreement (for WIN, such assignment may be in whole or in part), to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Purchaser must complete all paperwork necessary to effectuate such assignment may be in whole or in part), to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Purchaser must complete all paperwork necessary to effectuate such assignment or any change in ownership.; (g)

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**Third Party Beneficiaries:** No third party shall be deemed a beneficiary of this Agreement; (h) **Waiver:** Either parties failure to enforce any right or remedy available under this Agreement is not a waiver; (i) **Severability:** If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (j) **Survival:** Sections 12 and 13 survive after this Agreement ends; (k) **Handwritten Changes:** Handwritten changes are not binding on either party; (l) **Use of Products in U.S,** Purchaser acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Purchaser shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At WIN's request, Purchaser shall sign written assurances and other export-related documents as may be required for WIN to comply with U.S. export regulations; (m) **Publicity and Confidentiality:** Purchaser agrees that WIN may publicly disclose that WIN is providing Services to Purchaser and may include Purchaser's name in promotional materials and press releases. Except when this Agreement is required to be filed with a governmental authority, this Agreement is confidential and shall not be disclosed publicly to any third party except the such dealer (s) or agent(s) of WIN.

**FOR MANAGED CPE FIREWALL Services only: Authorization to Perform Testing** Purchaser grants WIN the authority to access Purchaser's networks and computer systems solely for the purpose of providing the Managed CPE Firewall Service ("Firewall") Purchaser agrees to notify WIN and obtain any third party service provider's ("Host") consent to provide the Firewall on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein and to facilitate any necessary communications and exchanges of information between WIN and Host in connection with the Firewall. Purchaser agrees to indemnify, defend and hold WIN and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Purchaser's failure to comply with this Section and from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Purchaser provides. Purchaser acknowledges that the Firewall entails certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Firewall; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Purchaser computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.

**For Managed Network Security Cloud Firewall only:** WIN agrees that it will maintain all applicable PCI-DSS requirements to the extent WIN handles, has access to, or otherwise stores, processes, or transmits Purchaser's cardholder data or sensitive authentication data, or manages Purchaser's cardholder data environment on behalf of Purchaser.

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## Appendix E

### Cloud Solutions

In addition to the foregoing terms, the following additional terms and conditions apply specifically to the Lantana Cloud Solutions featuring Avaya IP Office product offering (“Cloud Products”):

1. **TERM AND RENEWAL.** Services will be for an initial term as specified on the specific Service Agreement. All Agreements will be renewed automatically under one of the following: (i) Agreements for an initial term of one (1) year or longer will renew for successive one (1) year terms applying the then most similar current generally available support plan offering for the applicable supported products and then current rates, (ii) Agreements for an initial term of less than one (1) year will renew for successive one (1) month terms applying the then most similar current generally available support plan offering for the applicable supported products and then current rates, unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of the applicable initial or renewal term.
2. **AVAYA SOFTWARE.** Purchaser agrees to comply with all applicable Avaya software End-User License Agreements (“EULA”) or other licenses as detailed at <http://support.avaya.com/LicenseInfo> or its successor site. Purchaser shall immediately notify Seller or Avaya of any breach of the Avaya EULA immediately upon becoming aware of such breach and Purchaser agrees and understands such a violation would lead to an immediate termination of Purchaser’s access to the Cloud Products and right to use the software. Purchaser agrees, warrants and represents that at end of its term, it shall return and/or destroy any software installed or downloaded at its site or on any of its devices or otherwise made available or accessible by Purchaser, and Purchaser will certify compliance with the foregoing requirements. Upon Seller’s or Avaya’s request, Purchaser shall promptly provide such certification.
3. **INDEMNIFICATION.** Purchaser will hold harmless and indemnify Seller, its employees, agents, shareholders, officers, directors, successors and assigns from any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorney’s fees and settlement fees) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party (“Claim”), including but not limited to, Avaya, arising out of or relating to a breach of any one or more of the following: (i) a breach of the EULA or other Cloud Product licenses, (ii) use of the Cloud Products or any content information on the Cloud Products, (iii) the alleged or actual infringement or misappropriation of any intellectual property right or other proprietary right by Purchaser, its agents, representatives or end users, (iv) Purchaser’s relationship with the manufacturer of any software installed or stored on the Cloud Products, (v) Purchaser’s failure to use reasonable security precautions, or (vi) Purchaser’s failure to comply with any provision of this agreement. Seller shall promptly inform Purchaser of any Claim (threatened or actual), filed against Seller and Seller shall have the sole right, but not the obligation, to conduct and control the defense of any such suit or proceeding for which Purchaser shall provide the aforementioned indemnification. If Purchaser should fail to defend or settle a suit, proceeding, or indemnification claim filed against Seller at any time after demand by Seller, then Seller shall have the right to do so without prejudice to any claims that Seller may have against Purchaser for indemnification pursuant to this agreement or otherwise. This section shall survive termination of this Agreement
4. **COMPLIANCE WITH LAWS AND REGULATIONS.** PURCHASER SHALL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS IN THE TERRITORY, INCLUDING, WITHOUT LIMITATION, COMPLIANCE WITH ANY LAWS, REGULATIONS, TAXES, FEES OR OTHER REQUIREMENTS RELATED TO THE USE, MARKETING AND PROVISION OF CLOUD PRODUCTS AND OTHER REGULATED SERVICES AND THE PROVISIONING, HOSTING, USING, INSTALLING, DE-INSTALLING, ACTIVATING, DEACTIVATING AND DE-COMMISSIONING OF THE HOSTED IP OFFICE INFRASTRUCTURE (OR ANY PORTION THEREOF) AT PURCHASER’S OR END-USERS’ PREMISES AND ANY REGULATIONS PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE U.S., AND ANY STATE PUBLIC UTILITY COMMISSION IN THE INDIVIDUAL U.S. STATES, AS WELL AS SIMILAR, CORRESPONDING GOVERNMENTAL AGENCIES IN OTHER COUNTRIES AND

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LOCALITIES. WITHOUT LIMITING THE FOREGOING, PURCHASER SHALL, AND SHALL CAUSE ITS END-USERS TO (I) COMPLY WITH ALL APPLICABLE DATA PRIVACY AND CALL RECORDING LAWS AND REGULATIONS AND (II) PROVIDE ANY APPLICABLE NOTICES TO AND OBTAINING ANY APPLICABLE CONSENTS FROM END-USERS.

5. **AVAYA SOFTWARE WARRANTY.** NO WARRANTY TERMS INCLUDED IN THE EULA APPLY TO ANY SOFTWARE OR SUPPORT SERVICES PROVIDED BY SELLER OR AVAYA UNDER THIS AGREEMENT. TO THE EXTENT THERE IS ANY DISCRPANCY BETWEEN THE EULA AND THIS AGREEMENT, THIS AGREEMENT CONTROLS.
6. **AUDIT RIGHTS.** Avaya and/or Seller, or an independent auditor acting on their behalf, may audit Purchaser in connection with billing under this Agreement and/or in order to determine compliance with this Agreement. Purchaser agrees to allow reasonable on-site access during normal business hours and remote access to any information or data and each system configuration containing software, on-site and/or remotely, for any actions reasonably required to conduct such audits.
7. **WARRANTY EXCLUSIONS AND DISCLAIMERS.** Any warranties that may be offered to Purchaser, at Avaya's sole discretion, do not extend to any damages, malfunctions, or non-conformities caused by: (i) use of any software in violation of the applicable EULA; (ii) use of non-Avaya furnished equipment, software, or facilities; (iii) Purchaser's failure to follow applicable installation, operation or maintenance instructions; (iv) failure to permit Seller and/or Avaya or its subcontractors timely access, remote or otherwise, to the software; (v) failure by Purchaser to implement all updates to software; or (vi) software that has been serviced or modified by a party other than Seller and/or Avaya or a third party specifically authorized by Seller and/or Avaya to provide the service or modification to the software. Seller is not responsible for any software, equipment, hardware or services that Purchaser may have separately purchased apart from this Agreement or is re-using. Purchaser is responsible to make sure any such software, equipment or hardware is in good working order and is compatible with the Cloud Products. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, SELLER MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SOFTWARE OR CLOUD PRODUCT SELLER DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF SOFTWARE OR CLOUD PRODUCTS OR THAT SOFTWARE OR CLOUD PRODUCTS WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN THIS AGREEMENT WILL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES PURCHASER MAY HAVE AGAINST SELLER WITH RESPECT TO THE NON-CONFORMANCE OF SOFTWARE AND/OR CLOUD PRODUCT SERVICES WITH THE WARRANTIES SET FORTH HEREIN.
8. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS APPENDIX AND ANY AND ALL PAYMENT OBLIGATIONS, IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS ADDENDUM WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF FEES PAID OR PAYABLE UNDER THIS AGREEMENT BY PURCHASER TO SELLER FOR THE CLOUD PRODUCT GIVING RISE TO THE CLAIM. THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, OR CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS AGREEMENT. THIS LIMITATION OF LIABILITY SECTION WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

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9. **TERMINATION.** Breach of this Agreement by Purchaser will result in immediate termination of Purchaser's ability to purchase and receive Cloud Products. In case of termination of this Agreement for any reason, Seller shall de-activate Purchaser's software licenses and instances allocated to Purchaser. Seller or Avaya may terminate this Agreement without cause by written notice to Purchaser: (i) effective immediately upon receipt, if Purchaser materially breaches the Agreement; and (ii) at any time for convenience upon 60 days advance written notice with the effective date of termination at the end of the calendar month. Seller or Avaya may, at any time, terminate an order for convenience upon 30 days advance written notice to Purchaser with the effective date of termination at the end of the calendar month.
10. **EFFECTS OF TERMINATION.** Termination or expiry of this Agreement will be deemed to terminate all orders, including any orders issued by Purchaser to initiate support services coverage, and all software licenses purchased pursuant to this Agreement. Termination or expiry of an order will be deemed to terminate all licenses granted under that order. Upon termination or expiration of a license for any reason, Purchaser will immediately permanently destroy all copies of software and any related materials in Purchaser's possession or control and upon Seller's request, certify such destruction in writing. Upon termination or expiry of this Agreement and within sixty (60) days from such date, Seller will permanently remove and destroy any Purchaser specific licenses, instances, and information associated to Cloud Products. Rights of termination under this Agreement will be without prejudice to any accrued rights or liabilities of either party to the other arising out of this Agreement. Provisions concerning indemnification, limitation of liability, termination, payment (to the extent there are any outstanding payments or fees owed to Seller) and any other terms which, by their nature, are intended to survive termination or expiration of this Agreement or any order will survive any termination or expiration of this Agreement and any Order.
11. **CLOUD SOLUTIONS CANCELLATION/TERMINATION CHARGES.** Either before or after commencement of the Cloud Solutions Agreement, Purchaser may terminate coverage upon thirty (30) days written notice with the effective date at the end of a calendar month and: (i) payment of termination charge equal to eighty percent (80%) of the monthly charges for the period remaining (ii) for prepaid agreements, Seller will refund or credit the pro rate price of the remaining term less a termination charge of eighty percent (80%) of the price the remaining term.
12. **NETWORK CONNECTIVITY AND SECURITY.** Purchaser is responsible for ensuring its network and connectivity to any Cloud Products meet the minimum necessary criteria needed in the hosting model. Seller will not be liable for any network or connectivity issues resulting from failure of Purchaser to comply with this section. Purchaser is solely responsible for the security of the Cloud Products. Purchaser agrees to implement security measures, commercially reasonable for use of the Cloud Products, including but not limited to, encryption technologies, password and user ID requirements, and procedures regarding the application of security patches and updates. Seller shall not be liable for any unauthorized access. Purchaser shall pay all fees for Cloud Products accessed through Purchaser's account, including all fees resulting from unauthorized use.
13. **OVERAGE CHARGES.** Cloud Product pricing includes sufficient bandwidth for normal usage of Cloud Products. In the case of excessive network bandwidth usage by Purchaser, Seller reserves the right to charge Purchaser overage charges in an amount determined by Seller.
14. **CLOUD PRODUCTS SLA.** Service Level Agreement (this "SLA") governs the use of the Cloud Products services under the terms of the Master Agreement (the "Agreement") and the relevant Contract(s) between Seller and Purchaser and is incorporated into the Agreement by reference. This SLA applies separately to each of Purchaser accounts and only if Purchaser receives the relevant services. Seller may update, amend, modify or supplement this SLA from time to time. Capitalized terms used herein but not otherwise defined will have their respective meanings set forth in the Agreement. In the event of any conflict between this SLA and the Agreement, the Agreement will govern.
15. **DEFINITIONS**
- 15.1. "LC Voice" means Purchaser Cloud PBX service including all real-time and other voice services, fax, conferencing services and SIP trunking.
- 15.2. "LC Voice Fees" means the fees associated with the services for the monthly billing period.
- 15.3. "Data Center Network" means the portion of the Seller cloud network extending from the network egress point of Purchaser LC Voice service to the outbound port of the data center border router.

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**15.4.** “Scheduled Maintenance” means maintenance that is announced at least ten (10) business days in advance, and that does not exceed sixty (60) minutes in any calendar month.

**15.5.** “Service Availability” means Network Availability and LC Voice Availability. Seller will use commercially reasonable efforts to provide 99.9% Network Availability and 99.9% LC Voice Availability on a calendar-month basis.

**15.6.** “Network Availability” means the monthly uptime percentage excluding scheduled maintenance that Seller guarantees during any monthly billing cycle.

**15.7.** “LC Voice Availability” means the functioning of all LC Voice Services including telephony and conferencing services that have a direct impact on new call attempts and call completions that Seller guarantees during any monthly billing cycle. Secondary capabilities, such as voicemail availability, are not included in LC Voice Availability.

- 16. SCHEDULED MAINTENANCE.** In order to maintain performance and security of the services, Seller performs Scheduled Maintenance within its published maintenance windows. This may require specific services to be suspended during the maintenance period. Loss of Service Availability due to Scheduled Maintenance will not be included in the calculation of Service Availability. Seller will use commercially reasonable efforts to notify Purchaser in advance of any Scheduled Maintenance that may adversely affect Purchaser use of the services
- 17. EMERGENCY MAINTENANCE.** Seller may need to perform emergency maintenance, including security patch installation or hardware replacement. Seller will not be able to provide Purchaser with advanced notice in case of emergency maintenance. Loss of Service Availability due to emergency maintenance will be excluded from calculations for Service Availability.
- 18. 911 LIMITATIONS.** Seller does not validate addresses entered by end users for the location of the devices they use, whether these are physical devices, softphones, or mobile apps. Accuracy of location information for use in emergency response via E911 or any other means is the sole responsibility of the end user.
- 19. RESPONSE INTERVALS.** Seller will provide normal business hour service response based on four business impact levels defined in the table below as Critical, High, Medium, and Low. These responses are measured from time Purchaser opens a service ticket with Seller either through email (support@lantanacom.com), customer portal, or telephone (817-606-3323). All service requests above Medium should be opened via telephone for immediate response. All responses will begin with remote diagnostics

Severity Level	Level Definition	Response Interval	Resolution Interval
Critical	25% or More of Business Impacted	2 Business Hour	No Guarantee but best effort
High	Department or Executive User Impacted	4 Business Hours	No Guarantee but best effort
Medium	Single User Impacted	8 Business Hours	No Guarantee but best effort
Low	Features affecting a Single User	16 Business Hours	No Guarantee but best effort

- 20. SERVICE.** Seller will use commercially reasonable efforts to provide the services as defined by the plan or plans purchased or subscribed to under Purchaser account.

**20.1. AVAILABILITY CALCULATIONS.** To calculate Service Availability, Seller uses a 1 of 3 combination of methods, including analyzing logs from both Sellers’ event monitoring system and the actual affected infrastructure components. Seller will match these findings with client reports to determine the actual timeframe. Any loss of Service Availability less than five (5) minutes in duration will not be included in the calculation of Service Availability.

**20.2. AVAILABILITY EXCLUSIONS.** Loss of Service Availability caused by (i) issues beyond Sellers’ reasonable control, including, without limitation, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet availability, Purchaser portion of the

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network, IP transit provider issues, SYN attacks or any other Force Majeure Event; or (ii) any loss of Services related to periods of time where customer premises equipment is being replaced or repaired; or (iii) any issues related to the Services due to number porting, whether inbound or outbound; or (iv) Loss of Service Availability lasting less than 24 hours, (v) other issues addressed in this SLA, will be excluded from Service Availability calculations.

**20.3. AVAILABILITY CREDIT.** If Service Availability under Purchaser account for any monthly billing cycle falls below the level set forth in the above Section, Seller may issue a credit (“Service Availability Credit”). The credits will be verified for validity and will be subject to other conditions herein. The Service Availability Credit will be calculated at rates specified within the schedule included in the “Service Availability Credit” section of the Cloud Services Schedule.

**20.4. AVAILABILITY CREDIT REQUEST AND PAYMENT PROCEDURES.** To request a Service Availability Credit, (a) Purchaser account must be in good standing with Seller, (b) Purchaser must open a technical support ticket reporting an apparent service interruption within seventy-two (72) hours of the event, and (c) Purchaser must send an email or written Service Availability Credit request to the Seller billing department no later than the month immediately following the month for which Purchaser is requesting a Service Availability Credit. Service Availability Credit requests must include Purchaser account name and Purchaser primary site address and the dates and specific times for which Purchaser is requesting Service Availability Credits. Seller will compare information provided by Purchaser to the data referenced in the appropriate Section above. A Service Availability Credit may be issued only if Seller confirms from such data that a Service Availability Credit is available. Seller will calculate the Service Availability Credit based on the type of particular LC Voice product for which Service Availability was below the prescribed level, the LC Voice Fees for the particular Service and the percentage of overall individual Service affected.

**20.5. LIMITS ON SERVICE AVAILABILITY CREDIT AND SOLE EXCLUSIVE REMEDIES.** Subject to Purchaser valid submission of a Service Availability Credit request and the other conditions herein, if Service Availability under Purchaser account for any calendar month is below 99.9%, Seller may issue a credit in accordance with the below table. The total Service Availability Credit due to Purchaser for any LC Voice services affected may not exceed fifty percent (50%) of the monthly LC Voice Fees charged for use of the LC Voice service during the month for which the Service Availability Credit is to be issued. Only one (1) Service Availability Credit is available in any given calendar month. Credits are applicable only toward use of the Service and are not convertible into cash or any type of refund. Notwithstanding anything set forth in the Agreement or this SLA, the Service Availability Credit described in this Section will be Purchaser sole and exclusive remedy in connection with any loss of Service Availability as described in such section or breach by Seller of the Agreement or this SLA.

Service Availability	Amount of the credit as a percentage of monthly fee for affected Service
99.0% to 99.9%	3% of monthly fee credited
98.0% to 98.99%	5% of monthly fee credited
95.0% to 97.99%	10% of monthly fee credited
90.0% to 94.9%	25% of monthly fee credited
89.9% or below	2.5% credited for every 1% of lost availability up to the maximum total penalty limit.

**21. ENTIRE APPENDIX.** This Appendix constitutes the entire understanding of the parties with respect to Cloud Products and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to Cloud Products and will not be contradicted or supplemented by any prior course of dealing between the parties.

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