

Grandfathered

SBC PremierSERVsm DEDICATED INTERNET ACCESS SERVICE Document TERMS AND CONDITIONS

1. Definitions

(a) Service Activation Date: the date Customer has connectivity over the transport network to SBCIS' Internet Access Network. In the case of connectivity via ISDN, Frame Relay or ATM, connectivity shall have occurred when a physical connection has been installed and a Permanent Virtual Circuit (PVC) has been established to permit routing of traffic from Customer's equipment to SBCIS' Internet Access Network. The Service Activation Date shall not be dependent on correct configuration of Customer's computer equipment, applications (e.g., Domain Name Service, Electronic Mail Service), Local Area Network ("LAN") or Wide Area Network ("WAN").

(b) COE: Customer owned equipment.

(c) Federal Universal Service Pass-Through Fee ("FUSPF"): a pass-through of the Federal Universal Service Fees ("FUSF") associated with the telecommunications services underlying the Service, based on current FUSF rates. The FUSPF may be modified from time to time to reflect changes in the FUSF.

2. Term.

The Term of this Agreement and the Service provided hereunder will commence on the Service Activation Date and will continue for the Term specified on the first page of this Agreement. The Term of the Service shall automatically renew on a month-to-month basis on the terms and conditions set forth herein, unless either party delivers to the other party sixty (60) days advance written notice of termination. Upon renewal under this provision, the price to Customer will be as stated in SBCIS' standard price list in effect at the time of renewal for month-to-month Service.

3. Termination.

(a) In the event a ruling, regulation or order issued by a judicial, legislative or regulatory body causes SBCIS to believe that its performance under this Agreement may be in conflict with such rule, regulation or order, Customer shall either agree to modify this Agreement to conform to the requirements of such rule, regulation or order, or SBCIS may terminate this Agreement immediately upon giving written notice to Customer and without any liability to Customer.

(b) Either party may terminate this Agreement immediately upon giving written notice to the other party in the event the other party fails to perform or observe any material obligations hereunder and such failure is not cured within thirty (30) days of the breaching party's receipt of written notice setting forth the breach or ten (10) days of such notice if the default is nonpayment. Except as expressly provided in this Agreement, in the event of a breach of this Agreement by either party, the other party will be entitled to pursue any and all remedies available to it at law or in equity, including court costs and reasonable attorney's fees.

(c) *Termination for Convenience:*

(i) Prior to Service Activation Date: Customer may cancel this Agreement by providing ten (10) days written notice on Customer's company letterhead to SBCIS. SBCIS may cancel this Agreement based on Customer's non-responsiveness or non-readiness to have SBCIS provision/fulfill the requested Service within ninety (90) days after Customer orders the Service. In either event, Customer shall be liable to SBCIS as liquidated damages, not as a penalty, for a cancellation charge equal to two (2) months of the Monthly Charges.

(ii) On or after the Service Activation Date: Customer may terminate this Agreement without cause upon providing thirty (30) days written notice on Customer's company letterhead to SBCIS. In such event, Customer will be liable to SBCIS as liquidated damages, not as a penalty, for any

installation charges waived or unpaid, any other unpaid charges due and owing, plus fifty percent (50%) of the Monthly Charges for the remaining Term of the Service from the date of termination.

- (iii) SBCIS will invoice Customer for the cancellation or early termination charge and Customer will pay it in accordance with the payment provisions set forth in this Agreement.

4. Payment and Delinquency.

(a) Taxes and the FUSPF associated with Customer's use of the Services provided under this Agreement will be added, if applicable, to Monthly Charges specified herein. To claim tax-exempt status, Customer must provide a copy of its tax-exempt certificate to SBCIS.

(b) For all charges, including installation charges and taxes, if applicable, SBCIS will bill Customer with Customer's monthly bill from the SBCIS affiliate providing Customer's local telephone service. For circumstances where Customer is outside SBC local telephone service territory or at SBCIS' sole discretion it is deemed necessary, Customer may receive an invoice directly from SBCIS for all charges. Monthly recurring charges will be billed in advance and usage charges will be billed in arrears. Partial months of Service will be prorated. Payments will be applied first to the oldest charges on the bill, without regard to any notation Customer may make on its check. Monthly Charges shall commence on the date that SBCIS makes Internet connectivity available to Customer. If Customer delays Internet connectivity for more than ten (10) business days after the date that the transport is installed, SBCIS will begin billing Customer for the Service on the eleventh (11th) business day following the installation of the transport. Invoices are due and payable in full upon receipt.

(c) Customer will advise SBCIS of any billing discrepancies or disputes about an invoice within sixty (60) days after receiving the invoice or the amount of the invoice shall be deemed correct, due, and payable. Unless a different amount is specified in a tariff or regulatory commission rule, a late payment fee of one and one-half percent (1 ½ %) per month (not to exceed the maximum lawful amount), will be applied to any payment not received by the due date.

(d) Customer's basic telephone services will not be disconnected for nonpayment of charges for Services provided under this Agreement. However, SBCIS may suspend or discontinue Services provided under this Agreement if charges for these Services are not paid when due.

5. Domain Name Registration.

Customer is responsible for choosing a domain name and submitting an application to SBCIS. SBCIS makes no warranty or representation that the requested domain name will be available for registration. Customer will retain ownership of the registered domain name(s).

6. Customer Owned Equipment.

(a) Unless specified in this Agreement, Customer is solely responsible for provisioning, configuration and maintenance of all COE hardware and software, including without limitation TCP/IP routers, CSU/DSU line interface units, primary domain name servers, electronic mail servers, netnews servers and firewall or proxy servers. SBCIS shall not be responsible for delays in the provision of Service resulting from incompatibility of such COE, or resulting from improper provisioning, configuration or maintenance of such COE. SBCIS may provide configuration files for certain routers, at its sole discretion, and only as a convenience to Customer. The connection of COE and wire will at all times comply with the terms, conditions, limitations and responsibilities normally applicable to the connection of customer premise equipment to the telephone network, including those now or hereafter established in the Federal Communication Commission's Part 68 Rules and Regulations.

(b) SBCIS may make changes in its Services, equipment, operations or procedures, including those related to the Service, where such action is not inconsistent with the proper operation of the Service for this Agreement. If any such change can be reasonably expected to render any of Customer's COE incompatible or otherwise materially affect its use or performance, Customer will be provided written notice at least three (3) months in advance of the change. If Customer determines that the cost of replacing or modifying its equipment or system in order to reestablish compatibility and maintain uninterrupted Service is unreasonable, Customer may terminate this Agreement without penalty or liquidated damages (e.g., cancellation or termination charges).

(c) Customer will provide the proper environment, electrical and telecommunication connections for the Services and Router, if applicable, as specified by SBCIS and/or the Router manufacturer. Customer will be responsible for the installation, operation and maintenance of all COE. No combination of COE will: require change in or alteration of the equipment or Service of SBCIS; cause electrical hazards to SBCIS' personnel or damage to SBCIS' equipment; cause the malfunction of SBCIS' billing equipment; or cause degradation of Service to persons other than the user of the subject terminal equipment or communications system. Upon notice from SBCIS that Customer's COE is causing such hazard, damage, malfunction or degradation of Service, Customer will promptly make such changes as will be necessary to remove such hazard, damage, malfunction or degradation of Service.

7. SBCIS Responsibilities.

- (a) Router Installation and Maintenance. If specified on the first page of this Agreement, SBCIS will:
- (i) Provide, install and maintain a fully configured, staged, and tested router, configured with the IP software suite and LAN interface (the "Router"). Title to the Router shall pass to Customer at installation. SBCIS will terminate the Service in the Router's LAN interface, which will be the Service point of demarcation. Customer is responsible for interfacing its equipment/LAN with the Router. If Customer requests and agrees to pay time and material charges, the Service interface may be extended to another Customer requested location;
 - (ii) Provide project management of the Service and Router installation;
 - (iii) Provide to Customer the Service circuit IDs and an 800 number for trouble reporting after the Service Activation Date;
 - (iv) Retain the Router password and will be solely authorized to make changes to the Router configuration;
 - (v) Maintain and repair the Router for the duration of the Service period in accordance with Section 12 hereof. If, however, Customer chooses to manage the Router password, then Customer will be responsible for the maintenance and repair of the Router. In that instance, SBCIS will no longer have the responsibility to maintain and repair the Router as stated in Sections 7(b) and 12 of this Agreement.
- (b) Except with respect to Service provided over ISDN, SBCIS will monitor the Service 24 hours a day, 7 days a week for Service troubles and failure and will provide Customer with Service information and documentation for trouble reporting.
- (c) SBCIS will allocate the necessary number of IP addresses to Customer based on the mutually agreed upon design and provide specific LAN/WAN assignments for the Router. SBCIS reserves the right to decrease, increase, modify or otherwise restrict the number of IP addresses assigned to Customer, but will not do so without prior discussion with Customer.

8. Customer Responsibilities.

Customer is responsible the following:

- (a) Providing the path for the extension of the Service interface beyond the network interface demarcation;
- (b) Providing access to the network demarcation and Router during installation and for the Term of the Service;
- (c) Providing an on-site project manager/contact at mutually agreed upon times and for the duration of the installation interval who will designate the Service interface requirements, assist in the installation and configuration of the Router, and accept the Service;
- (d) Providing network security for its LAN and access to Customer's LAN. This may include numbering/renumbering Customer's LAN IP devices using the new address to permit access to the Internet;
- (e) IP addressing of any hosts connected to the Router and IP sub-netting behind the Router. SBCIS does not provide professional services regarding sub-netting beyond the LAN interface on the Router;
- (f) If Customer has not purchased security, Customer will be responsible for providing a firewall or other device to protect its internal network.

9. Special Construction

Required if (1) the facilities or equipment are not available to meet an order for Service and SBCIS or its affiliates or vendors must construct facilities; (2) Customer requests Service to be furnished using a type of facility or equipment, or via a route, other than that which SBCIS would ordinarily utilize in providing the requested Service; or (3) Customer requests construction be expedited and such expedited construction results in added cost to SBCIS. Special construction charges will be developed based upon estimated costs and Customer must provide written approval and payment for all special construction costs before SBCIS or its affiliates or vendors will begin any special construction. If Customer fails to provide written approval of and pay for special construction charges, Services ordered under this Agreement will be terminated by SBCIS pursuant to Section 3(c) of this Agreement.

10. Service Moves, Changes & Upgrades.

The Installation Site(s) to receive the Service which are specified on the first page of this Agreement may be moved or changed from one site to another within the LATA, so long as the new site can be served from an SBC wire center, and the Service and associated charges will continue uninterrupted. Non-recurring charges and new recurring charges that would apply for the new location will be negotiated at the time of the move. If Customer elects to upgrade the Service to a higher speed, Customer may do so without liability for the early termination charges specified in this Agreement if Customer signs a new agreement with a term at least equal to the Term of this Agreement. Customer will be responsible for installation charges and the new monthly rate.

11. Transport Services.

Unless purchased with the Service, Customer must obtain local transport services from a transport provider for use with the Service and the terms and conditions applicable to those services are not in any way affected by the terms of this Agreement. Additionally, ANY LONG DISTANCE, MEASURED SERVICE OR TOLL CHARGES INCURRED BY CUSTOMER TO ACCESS THE SERVICE DURING CUSTOMER'S USE OF THE SERVICE SHALL BE CUSTOMER'S SOLE RESPONSIBILITY.

12. Maintenance and Testing.

(a) The parties will cooperate with each other in performing joint tests to the extent reasonably necessary to establish the Service or to detect, isolate and remedy Service related problems. Joint tests will be at no charge to the other party, if such tests are conducted by remote testing systems. If an on-site technician is necessary and the trouble is located on Customer's side of the interface, actual material and labor prices at SBCIS' standard rates will apply. SBCIS will negotiate and coordinate the maintenance of transmission services with Customer's chosen local transport provider.

(b) SBCIS will perform routine maintenance as is customary to reasonably maintain the Service, Transport, and Router, if applicable, as described herein. All such maintenance will be performed at no additional charge to Customer if the fault which gives rise to the maintenance request is determined by SBCIS to reside on the SBCIS side of the point of demarcation between SBCIS and Customer or in the Router. Actual material and labor prices at SBCIS' standard rates will apply to troubles isolated to COE, to Customer's misuse of the Router, or to any condition on Customer's side of the point of demarcation between SBCIS and Customer.

(c) Customer understands and agrees that temporary interruptions may occur as normal and reasonable events in the provision of the Service. All computer systems and networks need routine maintenance from time to time. SBCIS generally schedules and performs such maintenance, on an as needed basis, during the times indicated on SBCIS' website (located at <http://dedicated.sbcis.net>). Not all scheduled network/systems maintenance will affect Customer's Service. However, SBCIS will endeavor to provide Customer five (5) business days advance notice, or if not possible, reasonable advanced notice if SBCIS believes that such routine scheduled maintenance will affect Customer's Service. In the event of a network/systems emergency requiring immediate attention, SBCIS reserves the right to perform emergency maintenance without notice or upon short notice, and shall use all reasonable efforts to minimize the effect of such work on Customer's Service.

(d) Customer acknowledges and agrees that SBCIS has no control over third party networks Customer may access in the use of the Service, and therefore, delays and disruption of other network transmissions are completely beyond the control of SBCIS. SBCIS will not be responsible for Customer's inability to access the Internet due to circumstances not in the direct control of SBCIS, such as individual Internet user's own equipment capabilities and/or limitations, Internet limitations and/or browser software limitations.

13. Service Level Agreement

(a) SBCIS agrees to meet the following service levels:

- (i) **Network Availability:** SBCIS' IP Backbone Network, from which it provides SBC PremierSERV Dedicated Internet Access, will be available **99.97%** of the time, based upon a monthly average between SBCIS-selected MegaPOP endpoints.
- (ii) **Latency:** Average round-trip transmissions will be **50 milliseconds** or less between SBCIS-selected MegaPOP endpoints within SBCIS' IP Network, measured by averaging samples taken during a calendar month between these endpoints.
- (iii) **Packet Loss:** During any calendar month, packet loss will not exceed **0.3%** based upon monthly averages, between SBCIS-selected MegaPOP endpoints within SBCIS' IP network.
- (iv) **KB 40** (Keynote Business 40): The monthly average full-page download time for the Keynote Business 40 websites, from within selected domestic SBCIS MegaPOP locations, **will not exceed 110%** of the US25 Overall metric. The Keynote Business 40 (KB40) Internet Performance Index measures the average download time for the home pages of 40 significant US-based business Web Sites. These measurements are taken by automated agents attached to key points in the Internet backbone in the 25 largest metropolitan areas of the United States.

(b) Service Level Agreement (SLA) will not apply to infractions caused by (i) factors outside of SBCIS' reasonable control, including force majeure events, (ii) scheduled network maintenance, or (iii) actions or inactions of Customer or any third parties not under the sole control of SBCIS.

(c) If SBCIS fails to meet any of the above service levels in a calendar month, Customer will be entitled to a credit to Customer's account equal to one-thirtieth of the recurring monthly charges for the Service.

(d) In order to receive a Service Credit, Customer must request a credit, in writing, and all credit requests must be received by SBCIS by the 30th day of the month after the infraction occurred. Failure to comply with this requirement will forfeit Customer's right to receive a Service Credit. Customer may request Service Credits through SBCIS' SLA website at <http://diasla.sbcis.net>.

(e) To provide a means of verifying performance of the service levels specified in this section of the Agreement, SBCIS uses network health monitoring software to validate the data for any calendar month.

(f) Customer acknowledges that the warranties contained herein measure SBCIS' IP Backbone from selected endpoints and may not represent Customer's actual IP network experience.

14. Use and Limitations.

(a) SBCIS may: (i) reject or refuse to perform any Services that are not in compliance with its applicable specifications and standards, laws and regulations and/or public interest standards as determined by SBCIS; and (ii) from time to time and without notice, make changes in Services that in its sole judgment will best serve SBCIS' customers. SBCIS' partial rejection or refusal of any portion of Services will not release Customer from its obligations with respect to the remaining Services being performed.

(b) Customer agrees to comply with the SBC Acceptable Use Policy (located at <http://dedicated.sbcis.net>), all policies applicable to SBCIS and all policies applicable to any network that is accessed through SBCIS. Violation of any such rules, regulations and policies, or any attempt to break security or to access an account which does not belong to Customer, shall be considered a material breach of contract, and SBCIS may terminate this Agreement without liability or may suspend or terminate Service to Customer, or suspend or terminate any user ID, electronic mail address, Universal Resource Locator or domain name used by Customer. Upon such termination by SBCIS, Customer shall be liable for any applicable charges, including early termination charges as set forth in Section 3 of this Agreement. If Customer's Service is suspended pursuant to this Section, Customer will still be responsible for charges for the Service incurred during the period of suspension.

(c) Nothing contained in this Agreement may be construed to convey to Customer any interest, title, or license in the user ID, electronic mail address or Universal Resource Locator used by Customer in connection with the Service.

(d) Customer acknowledges and agrees that SBCIS has the right to enforce its policies and guidelines pertaining to Customer's use of the Service and may be required to take immediate action to protect the integrity, quality, reputation and/or availability of the Service. For violations of policies and/or guidelines that SBCIS believes, in its sole discretion, do not warrant immediate suspension or termination of Customer's Service, SBCIS shall make a reasonable effort to contact Customer in an attempt to remedy the situation prior to suspension or termination of Service.

15. Warranty.

(a) SBCIS warrants that for the Term of this Agreement, SBCIS will make reasonable efforts to provide continuous, uninterrupted, expedient and error-free Service to Customer. If, under normal and proper use, the Services fail to perform substantially as specified above, and Customer notifies SBCIS during the Term of this Agreement, SBCIS will make reasonable efforts to correct such Service degradations or failures without charge to Customer. SBCIS's liability for damages for interruptions of Service, or for mistakes, omissions, delays, errors and defects in the provision of Services, shall in no event exceed an amount equal to the *pro rata* charges to Customer for the period during which the Services are affected.

(b) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SBCIS HEREBY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING IMPLIED WARRANTIES OF FITNESS,

MERCHANTABILITY AND PERFORMANCE. SBCIS MAKES NO WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES SBCIS MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. SBCIS MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH THE SERVICE, AND CUSTOMER UNDERSTANDS AND AGREES THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT CUSTOMER'S OWN RISK.

16. Indemnity.

(a) The parties will defend, indemnify and hold each other harmless from any and all losses, damages, claims, liabilities and expenses (including attorneys' fees and costs), whether based in contract or tort (include strict liability) to the extent arising out of or resulting from (a) the other party's negligent acts or omissions, or those of persons furnished by it, or (b) the failure to the other party to fully comply with the terms and conditions of this Agreement.

(b) SBCIS shall indemnify, defend and hold harmless Customer from and against any claim or suit brought by a third party alleging the Services infringe such party's U.S. patents, trademarks or copyright, provided Customer: (i) followed SBCIS' reasonable instructions for use of the Services; (ii) did not modify the Services; (iii) notifies SBCIS promptly and in writing of any such claims; and (iv) cooperates with and permits SBCIS to control the defense, settlement or other handling of such claim. SBCIS shall not be responsible for any claims resulting from Customer's combination of the Services with other products or services or COE.

17. Limitation of Liability.

IF SBCIS IS FOUND LIABLE FOR LOSS OR DAMAGE DUE TO A FAILURE ON THE PART OF SBCIS, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SBCIS' LIABILITY WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CONTRACT PRICE FOR THE DISPUTED SERVICES, OR THAT SUM OF MONEY ACTUALLY PAID BY CUSTOMER TOWARD THE DISPUTED SERVICES, WHICHEVER SUM WILL BE LESS, AND THIS LIABILITY WILL BE EXCLUSIVE. IN NO EVENT WILL SBCIS BE LIABLE FOR ANY LOSS OF CUSTOMER'S BUSINESS, REVENUES, PROFITS, OR ANY OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, OR FOR ANY CLAIM AGAINST CUSTOMER BY ANY THIRD PARTY.

18. Miscellaneous.

(a) *Amendment.* No amendment of this Agreement shall be valid unless in writing and duly executed by both parties.

(b) *Governing Law.* This Agreement will be governed by and construed in accordance with the domestic laws of the State indicated on the first page of this Agreement..

(c) *Severability.* If any term of this Agreement is invalid or unenforceable under any applicable statute, regulation, ordinance, order or court decision, such term will be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or decision, and the remaining terms of this Agreement will remain in full force and effect.

(d) *Assignment.* Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party; except that either party, upon providing notice to the other party,

may assign its rights and/or delegate its duties under this Agreement to a corporate affiliate, or assign its rights to receive payment hereunder.

(e) *Waiver*. Failure or delay in enforcing any rights under this Agreement will not constitute a waiver of such rights or effect enforcement of any other rights.

(f) *Survival*. Any term of this Agreement that by its sense and context is intended to survive the expiration or termination of this Agreement shall survive the expiration or termination hereof.

(g) *Timely Actions*. Any legal action brought by Customer against SBCIS with respect to this Agreement must be commenced within two (2) years after the cause of action arises.

(h) *Notice*. Any notice required or permitted under this Agreement shall be in writing and shall be delivered to Customer and/or SBCIS via mail, fax or e-mail to the address set forth on the first page of this Agreement.

(i) *Force Majeure*. Neither SBCIS nor Customer shall be responsible for damages or for delays or failures in performance resulting from acts or occurrences beyond their reasonable control, including without limitation: fire, lightning, explosion, power surge or failure, water, acts of God, war, revolution, civil commotion or acts of civil or military authorities or public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including strikes, slowdowns, picketing or boycotts; inability to secure raw materials, transportation facilities, fuel or energy shortages, or acts or omissions of other common carriers.

(j) *Entire Agreement*. No employee or agent of SBCIS has any authority to make a representation, warranty or promise not contained in this Agreement. This Agreement constitutes the entire Agreement between Customer and SBCIS with respect to the matters contained herein and supersedes all prior oral or written representations and agreements.

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