

# GRANDFATHERED

## SBC PremierSERV<sup>SM</sup> DEDICATED INTERNET ACCESS SERVICE

### TERMS AND CONDITIONS for Stand-alone agreements

#### I. DEFINITIONS

- (a) "COE" shall mean customer owned or provided equipment.
- (b) "Federal Universal Service Pass-Through Fee ("FUSPF)" shall mean 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.
- (c) "SBC" shall mean either SBC Internet Services, Inc. or SBC Long Distance, LLC, as identified and set forth on the first page of this Agreement.
- (d) "Service" shall mean the service(s) as identified and set forth on the first page of this Agreement.
- (e) "Service Activation Date" or "Cutover Date" shall mean the date Customer has connectivity over the transport network to SBC's 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 SBC's 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").
- (f) "Site(s)" means Customer locations where SBC is to perform Services.

#### II. 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 thirty (30) days advance written notice of termination. Upon renewal under this provision, the price to Customer will be as stated in SBC's standard price list in effect at the time of renewal for month-to-month Service.

#### III. TERMINATION

- (a) In the event a ruling, regulation or order issued by a judicial, legislative or regulatory body causes SBC 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 SBC may terminate this Agreement immediately upon giving written notice to Customer and without any liability to Customer.
- (b) This Agreement may be terminated immediately by either Party or SBC may suspend performance of this Agreement, upon written notice to the other Party if the other Party (i) is in material breach of this Agreement (including but not limited to failure to make timely undisputed payments) and such failure or breach is not remedied within thirty (30) days after the terminating Party provides written notice to the breaching Party specifically describing such breach; (ii) ceases to carry on business as a going concern, becomes the object of voluntary or involuntary bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; (iii) engages in fraud, criminal conduct, or willful misconduct; or (iv) breaches the confidentiality obligations under this Agreement. 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:*

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(i) Prior to the date upon which SBC installs transport to provide Service, (i) Customer may cancel this Agreement by providing ten (10) days prior written notice to SBC and (ii) SBC may cancel this Agreement based on Customer's non-responsiveness or non-readiness to have SBC provision/fulfill the requested Service within ninety (90) days after Customer orders the Service. In either event, Customer shall pay SBC as liquidated damages, not as a penalty, a cancellation charge equal to two (2) months of the Service charges.

(ii) After the date upon which SBC installs transport to provide Service, in the event Customer terminates this Addendum without cause by providing thirty (30) days prior written notice to SBC or in the event SBC terminates this Addendum based on Customer's non-responsiveness or non-readiness as set forth above, Customer will be liable to SBC 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.

## **IV. PAYMENT AND DELINQUENCY**

(a) Taxes and then current FUSPF associated with Customer's use of the Services will be added, if applicable, to monthly charges specified herein.

(b) For all charges, including installation charges and taxes, if applicable, SBC will bill Customer through Customer's monthly bill from the SBC affiliate providing Customer's local telephone service. For circumstances where Customer is outside SBC affiliate local telephone service territory or where deemed necessary, at SBC's sole discretion, Customer may receive an invoice directly from SBC 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 SBC 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, SBC will begin billing Customer for the Service on the eleventh (11<sup>th</sup>) business day following the installation of the transport.

(c) Payment shall be due within thirty (30) days after the date of the invoice. Customer shall advise SBC of any billing discrepancies or disputes about an invoice within thirty (30) days after receiving the invoice or the invoice shall be deemed correct. In addition to recovering attorneys' fees and costs of collection, SBC may assess a late payment fee equal to the less of 1.5% per month or the maximum amount allowed by law. Payment provisions are subject to SBC's credit review and SBC may require a security deposit to ensure prompt payment.

(d) SBC may suspend or discontinue Services provided under this Agreement, without notice, if charges for these Services are not paid when due.

## **V. DOMAIN NAME REGISTRATION**

Customer is responsible for choosing a domain name and submitting an application to SBC. SBC 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).

## **VI. CUSTOMER OWNED EQUIPMENT**

(a) Unless specified in this Agreement, Customer is solely responsible for provisioning, installing, 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. SBC 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. SBC 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) SBC 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 provided under this Agreement. If any such

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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 SBC and/or the router manufacturer. No combination of COE will: require change in or alteration of the equipment or Service of SBC; cause electrical hazards to SBC's personnel or damage to SBC's equipment; cause the malfunction of SBC's billing equipment; or cause degradation of Service to persons other than the user of the subject terminal equipment or communications system. Upon notice from SBC 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.

## **VII. SBC RESPONSIBILITIES**

(a) Router installation and maintenance. If specified on the first page of this Agreement, SBC 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 upon SBC's completion of the installation of the Router. SBC 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. If Customer chooses to terminate its maintenance agreement with SBC, Customer will become responsible for all router configurations and configuration requests, and request for support beyond basic access to the internet, will be performed by DataComm Customer Care solely on a Time and Materials ("T&M") basis.
- (ii) Provide support for basic connectivity to the internet, as well as up to 10 extended IP access list lines, DHCP on a router, Port Address Translation (PAT), and static (public to private) NAT. These configuration requirements are to be provided by Customer prior to installation, and performed at provisioning, or on exception basis, during maintenance. All other configuration requests by Customers will be performed on a Times and Materials (T&M) basis.
- (iii) Provide project management of the Service and Router installation;
- (iv) Provide to Customer the Service circuit IDs and an 800 number for trouble reporting after the Service Activation date.
- (v) Retain the Router password and will be solely authorized to make changes to the Router configuration;
- (vi) 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, SBC will no longer have the responsibility to maintain and repair the Router as stated herein.

(b) Except with respect to Service provided over SBC's Integrated Services Digital Network ("ISDN"), SBC 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) SBC 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. SBC 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.

## **VIII. CUSTOMER RESPONSIBILITIES**

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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. SBC does not provide professional services regarding sub-netting beyond the LAN interface on the Router;
- (f) Providing a firewall or other device to protect its internal network if Customer has not elected to obtain security services from SBC; and
- (g) Providing SBC with access to all wiring closets, equipment rooms and/or demarcation locations during installation and maintenance procedures.

## **IX. SPECIAL CONSTRUCTION**

Special construction will be required if (1) the facilities or equipment are not available to meet an order for Service and SBC 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 SBC would ordinarily utilize in providing the requested Service; or (3) Customer requests construction be expedited and such expedited construction results in added cost to SBC. Special construction charges will be developed based upon estimated costs and Customer must provide written approval and payment for all special construction costs before SBC 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 SBC.

## **X. SERVICE MOVES, CHANGES & UPGRADES**

The 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.

## **XI. TRANSPORT SERVICES**

Unless purchased with the Service, Customer must obtain local transport services ("Transport") 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.

## **XII. 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

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tests are conducted by remote testing systems. If an SBC on-site technician is necessary and the trouble is located on Customer's side of the interface, actual material and labor prices at SBC's standard rates will apply. SBC will negotiate and coordinate the maintenance of transmission services with Customer's chosen local transport provider.

(b) SBC 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 SBC to reside on the SBC side of the point of demarcation between SBC and Customer or in the Router. Actual material and labor prices at SBC's 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 SBC 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. SBC generally schedules and performs such maintenance, on an as needed basis, during the times indicated on SBC's website (located at <http://dedicated.sbcis.sbc.com/NDWS/>). Not all scheduled network/systems maintenance will affect Customer's Service. However, SBC will endeavor to provide Customer five (5) business days advance notice, or if not possible, reasonable advance notice if SBC believes that such routine scheduled maintenance will affect Customer's Service. In the event of a network/systems emergency requiring immediate attention, SBC 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 SBC 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 SBC. SBC will not be responsible for Customer's inability to access the Internet due to circumstances not in the direct control of SBC, such as individual Internet user's own equipment capabilities and/or limitations, Internet limitations and/or browser software limitations.

### **XIII. SERVICE LEVEL AGREEMENT** (Visit <http://dedicated.sbcis.sbc.com/NDWS/sla/> for SLA Details and Methodology)

(a) *Network Service Levels*: SBC agrees to meet the following network service levels:

(i) *Network Availability*: SBC's IP Backbone Network, from which it provides SBC PremierSERV Dedicated Internet Access, will be available 99.99% of the time, based upon a monthly average between SBC-selected MegaPOP and MiniPOP endpoints.

(ii) *Network Latency*: Average round-trip transmissions will be 40 milliseconds or less between SBC-selected MegaPOP endpoints within SBC's IP Network, measured by averaging samples taken during a calendar month between these endpoints.

(iii) *Network Packet Loss*: During any calendar month, packet loss will not exceed 0.1% based upon monthly averages, between SBC-selected MegaPOP and MiniPOP endpoints within SBC's IP network.

(iv) *Off-net Performance ("SBC KB40")*: The monthly average full-page download time for the Keynote Business 40 websites, from within selected domestic SBC 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) *Network Service Credits*: If SBC fails to meet any of the above monthly aggregate network service levels in a calendar month, Customer shall be entitled to one (1) day's credit pro-rated from Customer's recurring monthly charges for the Service for each monthly aggregate service level failed ("Network Service Credit"). In order to receive this Network Service Credit, Customer must request a credit by visiting SBC's SLA website at <http://dedicated.sbcis.sbc.com/NDWS/sla/credit.jsp>. All

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Network Service Credit requests must be received by SBC by the last day of the month after the monthly aggregate infraction occurred. Failure to comply with this requirement will forfeit Customer's right to receive a Network Service Credit.

(c) *Customer Service Level:* SBC agrees to meet the following Internet availability service level:

(i) *Internet Service Availability:* SBC's Dedicated Internet Access Service will be available to Customer 99.95% of the time in a calendar month. "Service Unavailability" exists when Customer's Internet connection is unable to transmit and receive IP Packets to/from On-Net Hosts and SBC records such failure in the SBC trouble ticketing system ("Impaired DIA Service"). Service Unavailability is measured from the time SBC has actual knowledge of a service outage and a trouble ticket is opened, either in response to notification by the Customer or in response to alarms from internal network management systems, to the time Customer's Impaired DIA Service is again able to transmit and receive IP Packets from SBC On-Net Hosts.

(d) *Internet Service Credits:* If SBC fails to meet the above Internet service availability, then for each cumulative hour of Service Unavailability, exceeding the initial twenty (20) minutes of unavailability per month, Customer shall be entitled to one (1) day's credit pro-rated from Customer's recurring monthly charges for the DIA Port fees, not to exceed a total of fifteen (15) day's pro-rated recurring monthly service charges for the Service ("Internet Service Credit"). (E.g., Service Unavailability of greater than twenty (20) minutes but less than or equal to an hour shall entitle Customer to one (1) day's credit prorated; Service Unavailability of greater than one (1) hour but less than or equal to two (2) hours shall entitle Customer to two (2) day's credit prorated; etc.). In order to receive an Internet Service Credit, Customer must timely contact SBC's Dedicated Enhanced Service Center ("DESC") to open a trouble ticket and also request an Internet Service Credit. If the DESC determines that the reported Service Unavailability was SBC's responsibility, an Internet Service Credit shall be provided in accordance with this subsection. Failure to comply with this requirement will forfeit Customer's right to receive an Internet Service Credit.

(e) This Service Level Agreement ("SLA") will not apply to infractions caused by (i) factors outside of SBC's reasonable control, including force majeure events, (ii) scheduled network maintenance, (iii) actions or inactions of Customer or any third parties not under the sole control of SBC, (iv) problems caused by COE, (v) problems isolated to the Local Access Transport and packet switching facilities connecting the SBC POP to Customer's premise; or (vi) transmission errors across the portion of the Internet which is off-net to SBC.

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

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

## **XIV. USE AND LIMITATIONS**

(a) SBC 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 SBC; and (ii) from time to time and without notice, make changes in Services that in its sole judgment will best serve SBC's customers. SBC's 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 (AUP), all policies applicable to SBC and all policies applicable to any network that is accessed through SBC. 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 SBC 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 SBC, 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 remain responsible for charges for the Service incurred during the period of suspension. The AUP can be viewed at: [http://dedicated.sbcis.sbc.com/NDWS/sbc\\_policy/aup.jsp](http://dedicated.sbcis.sbc.com/NDWS/sbc_policy/aup.jsp).

(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.

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(d) Customer acknowledges and agrees that SBC 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.

## **XV. WARRANTY**

(a) SBC warrants that for the Term of this Agreement, SBC 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 SBC during such Term, SBC will make commercially reasonable efforts to correct such Service degradations or failures without charge to Customer. SBC'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, SBC HEREBY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY AND PERFORMANCE. SBC 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 SBC MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. SBC 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.

## **XVI. INDEMNITY**

Customer will indemnify and defend SBC, its directors, officers, employees, agents and their successors ("Agents") from and against any and all third party claims and related loss, liability, damage and expense, including attorneys' fees, (collectively "Damages") arising from improper use of Services or information or any content or data transmitted over any SBC network or facilities. SBC will indemnify and defend Customer and its Agents from and against any Damages finally awarded or paid in settlement based on a claim that any Service, or SBC-provided equipment and software (collectively, "Materials"), infringe a U.S. patent or copyright. If a final injunction or judgment is awarded against Customer prohibiting use of Service/Materials by reason of infringement of a U.S. patent or copyright, SBC will at its option and expense either (a) procure the right for Customer to continue using the Service/Materials; (b) obtain and deliver equivalent non-infringing Service/Materials; or (c) terminate the infringing Service/Materials and refund to Customer amounts paid for infringing Service/Materials, less a reasonable charge for use. An indemnified Party shall provide the indemnifying Party with notice for any claim of indemnity and the indemnifying Party shall have complete authority to assume the sole defense and settlement of such claim. The indemnified Party may participate in the settlement or defense at its own expense and shall reasonably cooperate to facilitate the defense and settlement of such claims.

## **XVII. LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES RELATED TO LOST PROFITS, TOLL FRAUD, LOSS OF USE, AND LOSS OF DATA, OR FAILURE TO REALIZE SAVINGS OR BENEFITS) ARISING UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. THE TOTAL AGGREGATE LIABILITY OF SBC, ITS SUPPLIERS, LICENSORS, AFFILIATES, DIRECTORS, OFFICERS, AND/OR EMPLOYEES UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER TO SBC FOR SERVICE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CIRCUMSTANCES GIVING RISE TO THE FIRST CLAIM FOR DAMAGES UNDER THIS AGREEMENT.

## **XVIII. CONFIDENTIAL INFORMATION**

During the Term of this Agreement, each Party may obtain Confidential Information (including ideas, know-how, trade secrets, computer programs, technical information, and other confidential information which is disclosed by a disclosing Party to a receiving Party under this Agreement) from the other Party. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation

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in writing within 15 days after disclosure. Neither Party may during the Term and for three (3) years thereafter disclose any of the other Party's Confidential Information to any third party. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, or (iv) disclosed by the disclosing Party to a third party without an obligation of confidentiality. Upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information. The terms of this Agreement shall be deemed Confidential Information by the Parties.

## **XIX. CUSTOMER INFORMATION AND WORKING ENVIRONMENT**

SBC may rely on any information provided by Customer and assumes no liability for any damages or costs that result from errors or omissions in such information. Customer shall provide SBC with timely access to Customer information, facilities or equipment as SBC reasonably requires to provide the Services and keep SBC informed on developments in Customer business or operations that may impact Service. To the extent that SBC provides Services on Customer's premises, Customer shall maintain the premises in a suitable and safe working environment, free of hazardous substances (including pollutants, contaminants, or toxic substances) ("Hazardous Materials"). SBC does not handle, remove or dispose of, nor does SBC accept any liability for, any Hazardous Materials on Customer's premises and Customer shall pay SBC for any additional costs incurred as result of the presence of Hazardous Materials. SBC may terminate this Agreement or suspend performance until Customer removes any such Hazardous Materials and otherwise complies with the terms herein.

## **XX. MISCELLANEOUS**

(a) *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. The Parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

(b) *Relationship of Parties.* SBC, its employees, agents, and representatives are not employees, servants, partners, or joint venturers of or with Customer. SBC is an independent contractor and will at all times direct, control, and supervise all of its employees.

(c) *Assignment.* Neither this Agreement nor any portion or interest in this Agreement may be assigned, sublet, or in any manner transferred by a Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, SBC may assign all or any part of this Agreement to an SBC Affiliate or use subcontractors to perform Services.

(d) *Severability and Waiver.* If any provision of this Agreement is determined to be invalid or unenforceable, this Agreement will be construed as if it did not contain such provision. The failure of a Party to insist upon strict performance of any provision of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.

(e) *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.

(f) *Timely Actions.* Any legal action under this Agreement must commence within two (2) years after the cause of action arises.

(g) *Publicity.* During the Term of this Agreement, SBC may refer to Customer, orally and in writing, as a customer of SBC and may publish a press release announcing in general terms that SBC and Customer have entered into this Agreement and SBC may in general terms describe the activities contemplated hereunder. Any other reference to one Party by the other Party requires written consent of the first Party.

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

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(i) *Force Majeure*. Except in the case of payment of amounts due, neither Party will be liable to the other Party for any failure of performance due to any cause beyond that Party's reasonable control, including acts of God, fire, explosion, vandalism, terrorism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action, or request by any government, civil, or military authority, national emergencies, insurrections, riots, wars, labor difficulties, supplier failures, shortages, breaches, or delays, or preemption of existing Service to restore Service in compliance with the regulatory rules and regulations, or, in the case of SBC, delays caused by Customer or Customer's service or equipment vendors.

(j) *Entire Agreement*. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations, and understandings relating to the subject matter hereof. No modifications or subsequent agreements concerning the subject matter of this Agreement will be effective unless made in writing and signed by the Parties. SBC shall not be bound by any electronic or pre-printed terms additional to, or different from, those in this Agreement that may appear in Customer's form documents, orders, acknowledgments or other communications.

**END OF DOCUMENT**

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