

1. **Equipment.** EarthLink, LLC (“**EarthLink**”) agrees to sell, and Customer agrees to buy, the telecommunications equipment (“**Equipment**”) and sublicense the associated software (“**Software**” and together with the Equipment, the “**System**”) set forth on the System Sales Order (“**SSO**”). The SSO together with these terms and conditions shall be collectively referred to as the “**Agreement.**” For purposes of this Agreement, “**EarthLink**” means EarthLink, LLC and its related entities that is/are certified to provide the Service(s) in the applicable state(s).
2. **Purchase Price and Payment.** The purchase price for the System shall be paid as follows:
 - (i) **For Systems over \$50,000,** 25% upon signing by Customer, 25% upon receipt of the Equipment from the manufacturer by EarthLink, 25% upon the delivery of the Equipment to the Premises, and 25% on or before the Installation Date.
 - (ii) **For multi-location Systems over \$50,000,** 25% of the total for all locations upon signing by Customer, 25% upon receipt of the Equipment from the manufacturer by EarthLink on a per site basis, 25% upon the delivery of the Equipment to the Premises on a per site basis, and 25% on or before the Installation Date on a per site basis.
 - (iii) **For Systems under \$50,000,** 25% upon signing by Customer and 75% on or before the Installation Date.
 - (iv) **For multi-location Systems under \$50,000,** 25% of the total for all locations upon signing by Customer and 75% on or before the Installation Date at each location.

There shall be added to the purchase price amounts equal to any taxes, however designated, levied or based on such price or on the Agreement or the System, including state and local sales, use or equivalent or amounts in lieu thereof paid or payable by EarthLink in respect to the foregoing, unless Customer provides EarthLink with an appropriate exemption certificate. Such charges will be invoiced upon installation. The “**Installation Date**” of the System shall be the day (Monday through Friday) on which (i) EarthLink or its designee determines that the switching Equipment has been powered up and is activated, functioning and capable of providing basic service; or (ii) the Equipment is delivered or available for delivery and Customer fails to provide the suitable installation environment as required in Section 6, whichever is sooner. In certain instances where the SSO covers multiple Systems or multiple locations, or where the installation may be more complex, EarthLink may require progress payments based on milestones as set forth on the SSO or as otherwise agreed by the Customer.

3. **Security Interest.** EarthLink reserves a purchase money security interest in the System in the amount of the unpaid balance of the purchase price until payment in full of the purchase price. A financing statement under the Uniform Commercial Code may be filed with the appropriate public authorities and Customer agrees to sign any forms presented to it by EarthLink necessary to protect EarthLink’s security interest.
4. **Installation, Transportation Charges and Risk of Loss.** Customer shall pay for installation of the Equipment, plus all transportation, rigging and storage charges. If Customer requests expedited installation, EarthLink will advise of any additional charges and Customer will authorize in writing such expedited treatment. Such charges will be invoiced upon installation. Customer shall bear all risk of loss or damage after the delivery of the Equipment to Customer’s premises (the “**Premises**”) set forth on the SSO. If this order is cancelled by the Customer for any reason other than default by EarthLink, EarthLink shall be entitled to retain all monies paid by Customer and recover the remainder of the purchase price and all other monies due under the Agreement.
5. **Acceptance, Programming and Training.** EarthLink or its designee shall install the System at the Premises in accordance with the manufacturer’s specifications and according to the configuration agreed upon by Customer and EarthLink in the Project Implementation Meeting. Following installation of the System EarthLink will accommodate minor Customer requested programming changes (not to exceed two hours programming time). Any additional Customer request for programming changes and/or additions to the agreed upon configuration will be changed based on standard Time and Material rates, EarthLink shall provide its standard remote Customer training of Customer’s employees in the operation of the Equipment. When the installation has been completed, EarthLink will test the System according to the manufacturer’s diagnostic and readiness test specifications in preparation for cutover. When the System is cutover and has operated in accordance with manufacturer’s specifications for a period of fourteen (14) calendar days, it will be deemed acccepted by Customer unless Customer has provided EarthLink with written notice within that time period setting forth deficiencies in operation. If Customer has provided such notice, EarthLink will correct the listed deficiencies at which time Customer shall promptly certify in writing its acceptance of the System. Upon acceptance any further EarthLink obligations are as provided in Section 7 (Warranty) and the Preferred Maintenance Agreement Additional Terms and Conditions.
6. **Customer Responsibilities.** Customer shall provide: (i) floor plans, access, easements and consents necessary to install or service the System; (ii) necessary space for the System and accessible wiring locations that are safe and non-hazardous, and free of asbestos and other hazardous materials and hazardous substances per applicable federal, state and local laws, rules and regulations; (iii) dedicated electric source, circuits, power and isolated ground; (iv) suitable operating environment (including isolated ground, air conditioning, humidity, heat and security) per manufacturer’s specifications which specifications will be provided to Customer by EarthLink upon request; (v) raceway, conduit, holes and wireways; and (iv) a secure room with locks for temporary System storage. In the event of breach of the foregoing, in

addition to all other remedies, EarthLink may immediately suspend work until Customer has promptly corrected such condition(s) at Customer's expense. In the event Customer cannot or does not correct such condition, it will be EarthLink's option as to whether to recommence performance or terminate the Agreement. Any termination by EarthLink because of its opinion that an unsafe environmental condition exists will not be deemed a breach of the Agreement and no liability for such decision will attach. EarthLink will remove all litter generated during the work and will ensure that the installation area is restored to as good a condition as it was prior to installation, provided however that Customer will be responsible for removing old equipment, phones and cabling.

7. **Warranty.** During the warranty period set forth by the applicable System manufacturer commencing on the Installation Date, EarthLink warrants that the Equipment and Software will be free from defects in material and workmanship and substantially conform to the applicable specifications for such Equipment and Software published by the manufacturer at the time of sale. The warranty period for the Equipment and Software may be different. The exclusions provided in Section 13 below shall apply. EarthLink's sole obligation in case of any breach of this representation or warranty shall be to repair or replace, at EarthLink's option, any defective item of Equipment. This warranty only covers the cost of the Equipment and, unless Customer has subscribed to the Preferred Maintenance Agreement, Customer shall be required to pay EarthLink at its normal time and material rates for the labor required. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SYSTEM.
8. **Limitation of Liability.** EarthLink's liability for System malfunction OR Service malfeasance shall be limited to performing one of the remedies under the Warranty section, if applicable. EarthLink and Customer hereby agree that if such limitation is declared invalid by a court of competent jurisdiction, then EarthLink's liability shall be limited solely to a U. S. dollar amount equal to the purchase price of the System or the charges for the Service. THESE REMEDIES SHALL BE EXCLUSIVE AND SHALL BE THE CUSTOMER'S SOLE REMEDIES AGAINST EARTHLINK SYSTEM MALFUNCTION. IN NO EVENT SHALL EARTHLINK BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR SIMILAR DAMAGES, SUCH AS (BUT NOT LIMITED TO) "DOWNTIME", EXCESS COSTS OR LOST BUSINESS REVENUES RESULTING FROM SUCH PARTY'S BREACH OF ANY OF THE PROVISIONS OF THE AGREEMENT, A PRODUCT MALFUNCTION, SERVICE MALFEASANCE OR FROM UNAUTHORIZED OR IMPROPER USE OF THE SYSTEM INCLUDING BUT NOT LIMITED TO TOLL FRAUD OR COMPUTER VIRUSES, EXCLUDING, HOWEVER, ANY OF THE FOREGOING RESULTING SOLELY AND DIRECTLY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF EARTHLINK.
9. **Software License.** Certain manufacturers require the issuance of their own software license, which may be separately issued to Customer and incorporated herein (the "**Manufacturer License**"). If no Manufacturer License is issued to Customer, then to the extent authorized by the manufacturers of the System, EarthLink grants Customer a non-exclusive license for the useful life of the System to use the software (including related documentation) solely to maintain and operate the System, provided Customer: (i) does not allow any aspect of the software to be disclosed to a third party without EarthLink's written consent and makes reasonable efforts to ensure that its employees are aware of this obligation; (ii) uses the System solely for Customer's internal business purposes; (iii) does not copy any part of the software without EarthLink's consent and does not attempt to develop any source code from the software; and (iv) returns to EarthLink or erases or destroys any software on any media being recycled or discarded and so certifies to EarthLink. EarthLink hereby grants a sublicense to Customer (i) to use the affiliated software, but only in conjunction with related Equipment, (ii) to make one (1) copy of the software for archival/back-up purposes, (iii) to transfer the affiliated software rights to a third party who acquires title to the Customer's Equipment, provided such transferee assents in writing to the conditions and limitations of the sublicense and pays any applicable transfer fee. EarthLink, on behalf of the manufacturer, reserves all other rights, title and interest to the software, and Customer shall not acquire any rights, title or interest in the software other than as specifically set forth in this Section. Customer will not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the software, except to the extent that such modification capability is an intended feature of the System. Customer agrees to execute any additional documents relating to software as reasonably required by EarthLink or the manufacturer from time to time, to protect the respective rights, title and licensing interest of EarthLink or third parties to the software. Customer may only transfer the right to use the software to any end user who subsequently acquires the right to use the System, agrees to be bound by the terms of this license and agrees to pay any applicable fees. Software is not returnable.
10. **Indemnification; Infringement.** Each party shall indemnify the other only with respect to any third party claim alleging bodily injury, including death, or damage to tangible property to the extent such injury or damage is caused by the negligence of the indemnifying party, provided that such claim is reported promptly in writing to the indemnifying party. Unless otherwise provided in the Manufacturer License: (a) In the event of a claim or suit against Customer alleging (a) the System infringes any patent issued by or copyright registered in the USA, EarthLink shall defend Customer to the extent the claim or suit concerns such infringement, provided Customer give EarthLink prompt notice of such claim or suit and continuous cooperation in such defense. (b) In any claim or suit against Customer that is defended by EarthLink pursuant to paragraph (a) above, EarthLink shall control the defense, shall pay all litigation costs, including reasonable

attorney's fees incurred by EarthLink in such defense, and shall indemnify Customer for all damages awarded by a court or settlement payments approved by EarthLink. (c) If, in any claim or suit against Customer that is defended by EarthLink pursuant to paragraph (a) above, as a result of a court order not subject to further appeal or a settlement approved by EarthLink, Customer is enjoined from using the System, EarthLink, at its option, may (i) procure for Customer the right to continue using the System, (ii) replace or modify the System to avoid infringement, or (iii) repossess the System in exchange for a refund of the depreciated value of the System. EarthLink's option selected under this clause shall be Customer's sole remedy for any prospective effects of any court order or settlement. (d) EarthLink's total cumulative liability under clauses (b) and (c) above shall be limited to the purchase price paid by Customer for the System together with payment of all litigation costs, including court awarded damages and settlement payments, as provided for in paragraph (b) above. (e) Notwithstanding any other provision of this Section, EarthLink shall not be obligated to defend and shall not be liable for costs or damages awarded in any claim or suit for infringement in which (i) the System was made pursuant to specifications supplied by the Customer, or (ii) the alleged infringement is based on use by the Customer, without the manufacturer's permission, of the System in combination with another item, where the alleged infringement arises from the combination or from practice of a method made possible by the combination, or (iii) the alleged infringement is based on the System as modified by Customer and/or any third party without EarthLink's written permission. (f) Customer's sole and exclusive remedy against EarthLink with regard to such a patent infringement claim shall be as set forth above.

11. **Default by Customer.** Should Customer (a) default in the payment of any sum of money hereunder, or (b) default in the performance of any other of its obligations under the Agreement, then in any such event, EarthLink, at its option, may, upon written notice thereof, (1) terminate the Agreement, (2) whether or not the Agreement is terminated, take immediate possession of any and all of the items of Equipment which have not been fully paid for, wherever situated, and for such purpose enter upon any premises without liability for so doing and (3) sell, dispose of, hold, use or lease any items of Equipment which have not been fully paid for as EarthLink in its sole discretion may decide. Customer agrees to reimburse EarthLink for any and all expenses EarthLink may incur, including reasonable attorney's fees, in taking any of the foregoing actions. The remedies contained in this paragraph are cumulative and in addition to all other rights and remedies available to EarthLink under the Agreement, by operation of law or otherwise.
12. **Force Majeure.** EarthLink's performance shall be adjusted or suspended by EarthLink to the extent performance is beyond EarthLink's reasonable control for reasons including, without limitation, the following: strikes, work stoppages, fire, water, governmental action, acts of God (including, without limitation, earthquakes, rains, floods or lightning), or public enemy, delays of suppliers, subcontractors, power company, local exchange company, or other carrier.
13. **Warranty and Maintenance Exclusions.** Only components of the Equipment and software purchased from EarthLink are covered by the warranty. If Customer or another maintenance provider performs any maintenance activity on the System, the warranty is void and EarthLink is relieved of any further maintenance obligation, including pursuant to the PMA. Except as provided in Section 4 of the Preferred Maintenance Agreement Additional Terms and Conditions for Customers selecting the Preferred Maintenance Agreement, the warranty and maintenance service provided under the Agreement excludes repairs or replacements caused by: (i) damage to the System due to fire, explosion, failure of electrical power, air conditioning or humidity control, power irregularities, power surges, Acts of God (including, without limitation, earthquakes, rains, floods, water damage or lightning), or any other cause not attributable to EarthLink; (ii) Customer's failure to follow applicable operation or environmental requirements described in any of the manufacturer's manuals, EarthLink's manuals, and other materials provided to Customer, including without limitation manufacturer's product bulletins; (iii) Customer's additions, alterations, modifications, enhancements, repairs to disassembly of, or other maintenance of the System (whether by Customer itself or using a third party, even if such third party is a phone system vendor) without EarthLink's written consent; (iv) mishandling, abuse, misuse or damage to the System by Customer or a third party; (v) relocation of the System without EarthLink's written consent (other than telephone instruments relocated in accordance with the manufacturer's specifications); or (vi) failures or changes required resulting from the local exchange company, interexchange carrier, the power company or other transmission providers. EarthLink may, at its option, terminate its maintenance obligations or perform repairs necessitated by any excluded cause at Customer's request at EarthLink's then prevailing rates.
14. **Arbitration.** (a) Except as may otherwise be provided herein, any dispute, controversy or claim arising out of, connected with or relating to the Agreement, its performance or the breach thereof which cannot be settled by mutual agreement of the Parties shall be resolved by final and binding arbitration by a panel of one (1) arbitrator in accordance with and subject to R-11 (Appointment from National Roster) or, if proceeding under the Expedited Procedures, E-4 (Appointment and Qualifications of Arbitrator), of the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect with such arbitration to be conducted in Atlanta, Georgia, or such other place as the parties agree or as the AAA may so designate. The AAA's Rules can be found at www.adr.org. The Parties may, only by mutual written agreement, use an arbitrator not presented on the roster submitted by the AAA. Discovery as permitted by the Federal Rules of Civil Procedure then in effect will be allowed to the extent consistent with the purpose of the arbitration and as allowed by the arbitrators. The Federal Rules of Evidence will apply to any arbitration hearing. Judgment upon the award rendered in any arbitration may be entered in any court having jurisdiction thereof, or

application may be made to such court for a judicial acceptance of the award and enforcement, as the law of the state having jurisdiction may require or allow. The fact that arbitration is or may be allowed will not impair the exercise of any termination rights under the Agreement. Unless cost-shifting is otherwise permitted by this Agreement or by law: (i) each Party shall bear their own costs and expenses; and (ii) all administrative expenses (including the arbitrator's fees) will be split equally by the parties. (b) The Federal Arbitration Act, 9 U.S.C. 1, *et seq.* ("FAA") governs the interpretation and enforcement of this agreement to arbitrate. The FAA's provisions, not state law, govern all questions of whether a dispute is subject to arbitration. This agreement to arbitrate is intended to be broadly interpreted. Except as provided in paragraph 14(c) below, it includes, but is not limited to disputes and claims arising out of or relating to any aspect of the relationship between EarthLink and Customer, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory. (c) The Parties agree that this arbitration provision has been included to rapidly and inexpensively resolve any disputes between them with respect to the Agreement, and that this provision shall be grounds for dismissal of any court action commenced by either Party with respect to the Agreement, other than (i) actions to compel a Party to comply with these dispute resolution procedures; (ii) actions specified in this provision; (iii) post-arbitration actions seeking to enforce an arbitration award; (iv) a dispute, controversy or claim relating to a breach or alleged breach on the part of either Party regarding confidential information; (v) a suit, action or proceeding to compel a Party to comply with its obligations to indemnify the other Party pursuant to the Agreement; or (vi) a suit, action or proceeding arising out of or related to any Party's intellectual property rights. The Parties shall keep confidential, and shall not disclose to any person, except as may be required by law, the existence of any controversy hereunder, the referral of any such controversy to arbitration or the status or resolution thereof. The procedures specified in this provision shall be the sole and exclusive procedures for the resolution of an arbitrable dispute; provided, however, that a Party, without prejudice to these procedures, may file a complaint or seek a temporary restraining order, preliminary injunction, or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Customer indemnifies EarthLink for any costs associated with Customer's violation of this Arbitration provision. Nothing in this Agreement shall limit a Party from seeking provisional remedies in aid of arbitration, such as a temporary restraining order or preliminary injunction sought to preserve the status quo pending an arbitration hereunder. This arbitration agreement does not preclude Customer from bringing issues to the attention of federal, state, or local agencies (including the local public utility commission). Such agencies can, if the law allows, seek relief against the EarthLink on Customer's behalf. In addition, and notwithstanding the other provisions of this arbitration agreement, either Customer or EarthLink may bring an individual action in small claims court. (d) CUSTOMER AGREES THAT BY ENTERING INTO THIS AGREEMENT, CUSTOMER AND EARTHLINK EACH WAIVE THE RIGHT TO A TRIAL BY JURY AND TO PARTICIPATE IN A CLASS ACTION. THIS AGREEMENT DOES NOT ALLOW FOR CLASS ARBITRATION EVEN IF THE AAA PROCEDURES OR RULES WOULD. CUSTOMER AND EARTHLINK AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY ONLY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS OR REPRESENTATIVE PROCEEDING. Further, and unless Customer and EarthLink agree otherwise in writing, the arbitrator may not consolidate more than one individual party's claims with any other party's claims, and may not otherwise preside over any form of a representative or collective proceeding. The arbitrator shall not have the authority to determine the enforceability of this provision. The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.

15. **General.** (a) If Customer issues a purchase order for its own internal purposes, Customer agrees that only the terms and conditions of the Agreement apply and that any term contained in any purchase order submitted to EarthLink by Customer which is in conflict with or in addition to this Agreement shall be void. (b) EarthLink reserves the right to subcontract any and all of the work to be performed by it under the Agreement. (c) The Agreement is not assignable by Customer without the prior written consent of EarthLink. Any attempt to assign any of the rights, duties or obligations under the Agreement without such consent will, at EarthLink's option, be deemed void or a material default or accepted in EarthLink's sole discretion. The Agreement may be assigned by EarthLink, in whole or in part, and Customer agrees to execute all documents and consent necessary, required, or desirable for, or by, such assignment. (d) The waiver by either party of any default will not operate as a waiver of any subsequent default. (e) Customer will pay all of EarthLink's costs or expenses, including reasonable attorney's and collection fees, incurred in enforcing the Agreement. (f) Customer authorizes EarthLink to conduct an investigation of Customer's credit history for the purpose of determining Customer's creditworthiness for payment for the System and PMA. EarthLink's obligation is contingent upon a credit report satisfactory to EarthLink. (g) The Agreement supersedes all prior or contemporaneous proposals, communications and negotiations, both oral and written and constitutes the entire agreement between EarthLink and Customer with respect to the purchase of the System. Any representations, warranties or statements made by an employee, salesperson or agent of EarthLink and not expressed in the Agreement are not binding upon EarthLink. (h) If any provisions of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby. (i) The Agreement shall not be modified in any way except by a writing and executed by an authorized representative of the party against whom enforcement is sought. (j) No action, regardless of form, arising out of the Agreement may be brought by either party more than one

year after the cause of action has accrued. (k) The Agreement is deemed made and GOVERNED BY THE LAW OF THE STATE OF GEORGIA except for its rules regarding the conflict of laws. (l) In the event of any conflict between the terms and conditions of the Agreement, EarthLink's form attachments, and any other attachment including Customer's request for proposal or similar document, the Agreement shall control over the form attachments, which in turn shall control over any other attachment. (m) The Agreement allocates the risks of the System's operation between EarthLink and the Customer, an allocation which is recognized by both parties and is reflected in the Cash Price and Service Fees set forth. Customer acknowledges that it has read the Agreement, has received and reviewed any and all documents referenced in it, understands it, and is bound by its terms. (n) All notices shall be in writing and shall be delivered or sent by registered or certified mail, return receipt requested, to the address indicated on the face of the SSO or to such other addresses as the parties shall specify by notice given pursuant hereto. (o) The individual executing the SSO on behalf of Customer does hereby represent and warrant that he or she is duly authorized by all necessary action to execute the Agreement on behalf of Customer. The Agreement may only be executed by a EarthLink Branch Manager or other authorized EarthLink management person. (p) All notices to EarthLink shall be in writing and shall, except as provided below, be delivered or sent by registered mail, return receipt requested to Customer Care Center, P.O. Box 1301, Arab AL 35016 or to such other address as EarthLink shall specify by notice given pursuant hereto; PROVIDED THAT ALL COMMUNICATIONS CONCERNING DISPUTED DEBTS, INCLUDING INSTRUMENTS TENDERED AS FULL SATISFACTION OF SUCH DEBTS, MUST BE DELIVERED OR SENT BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO 7037 Old Madison Pike, Huntsville, AL 35806, ATT: Assistant General Counsel. (q) Customer agrees that neither it nor any of its affiliates will solicit any of the EarthLink employees providing services pursuant to the Agreement with offers of employment during the term of the Agreement.