



EXHIBIT K-2

**FORM OF AGREEMENT FOR THE SUPPLY
OF REGULATED SERVICES**

FORM OF AGREEMENT

FOR

SUPPLY OF REGULATED SERVICES

BETWEEN

BT

AND

THISTLE BV

Supply of Regulated Services

- 1 BT will ensure that Qualifying MNC Customers (including for the avoidance of doubt the provision of Customer Access Circuits to such customers) will be served consistent with the provisions of the Framework Agreement.
- 2 Under the current UK regulatory regime, BT represents that it must make its Regulated Services available on a non-discriminatory basis at standard published prices, terms and conditions.
- 3 The categories of Regulated Services which BT will supply to Newco on this basis are as follows:

Retail Services	Standard terms and conditions coupled with the BT Price Retail List
Service Provider Products	Standard terms and conditions coupled with the BT Retail Price List or such other Price List as BT may develop
Carrier Services	Standard Interconnect Agreement coupled with the Carrier Price List
Hybrid Services	International Facilities Agreement coupled with the Carrier Price List
- 4 In the supply of products to the initial set of Qualifying MNC Customers transferred from BT to Newco, on or about the Effective Date of this Agreement, Newco will receive prices intended to enable a 25% margin based on the weighted average price, derived from the aggregate demand/revenue set of the affected customers where possible, subject to relevant regulatory and competition law.
- 5 The prices for subsequent customers transferred from BT to Newco and for new customers that contract with Newco, shall be developed and agreed by the parties, with the intent to preserve the 25% effective margin.
- 6 Upon Newco's request, but no more than once every six months, the parties agree to conduct a review of the overall price competitiveness of the Regulated Services provided (excluding non-UK originated traffic), in accordance with the following methodology.

Agreed-Upon Demand Set. The parties will agree upon a comparison demand set for each of the above categories of Regulated Services based on Newco's actual traffic and charges (including all service elements, features, traffic mix and volumes).

Calculation of Comparison Prices. BT will calculate the prices that Newco would pay for the comparison demand sets under other BT arrangements for which Newco could enter into an agreement with BT, based upon its existing services, traffic and commitments, that became effective within the preceding 6 months (the "Comparison Service Arrangements").

Changes Based on the Review. If, based on the agreed demand sets, Newco would have paid less under any of the Comparison Service Arrangements than, BT will transfer the Regulated Services provided to Newco to the best tariff available from BT.

- 7. BT recognises Newco as the exclusive channel for the marketing, promotion and sale of Regulated Services to Qualifying MNC Customers, except as provided in the Framework Agreement.

8 Regulatory Approvals

8.1 Where there is a requirement under the law or regulation of any jurisdiction to obtain (a) any consent, licence or authorisation for the provision of BT Services and/or (b) approval for the use of any telecommunication apparatus by any person providing or making use of the BT Services, then as between the Parties hereto one or other of them shall be obliged to obtain or to procure the obtaining by its contractors or agents of such consent, licence or authorisation in accordance with the following provisions:

8.1.1 in relation to the supply of BT Services to Newco, the obligation shall be that of BT; and

8.1.2 in relation to Newco's supply of Services to the Qualifying MNC Customer, the obligation shall be that of the Newco. BT has responsibility to understand and advise on the regulatory environment in the United Kingdom at normal professional commercial rates. Where possible BT will ensure the Newco can sell through regulatory arrangements effected by NewCo, but where there is a requirement for Newco to have its own license, then Newco shall do so at its own expense, but with assistance from BT or its agents

8.2 Where the obligation to obtain any such consent, licence or authorisation is imposed on either Party or both Parties under any law or regulation in any jurisdiction, then the obligation shall be that of that Party or as the

case may be of both Parties, notwithstanding any contrary provision of Clause 8.1.

9 Confidentiality and Data Protection

- 9.1 BT shall not disclose any Message conveyed by means of the BT Services or the existence of any such Message except in relation to any information requested or required to be disclosed by any court or governmental or regulatory authority entitled by law to require the same.
- 9.2 The Parties shall and shall procure that their respective subsidiaries and associates shall keep confidential all information disclosed under this Agreement and all Newco Customer information, whether that information is:
- 9.2.1 generated or commissioned by BT; or
- 9.2.2 related to the business affairs of any of the Parties or of their Associates and subsidiaries or Newco's Customers.
- 9.3 The restrictions in Clause 9.2 shall not apply to:
- 9.3.1 information which enters the public domain otherwise than by breach of this Agreement;
- 9.3.2 information already in the possession of a Party or any of its Associates and subsidiaries before disclosure to it under this Agreement and which was not acquired directly or indirectly from another Party or one of its Associates and subsidiaries;
- 9.3.3 information lawfully obtained from a third party who is free to disclose such information;
- 9.3.4 information developed or created by a Party or any of its Associates and subsidiaries independently of this Agreement;
- 9.3.5 disclosures of information solely as requested or required to be disclosed by any court or governmental or regulatory authority entitled by law to require the same PROVIDED ALWAYS THAT, prior to such disclosure if practicable, the disclosing Party shall notify in writing the owner of such information (where the identity of such owner can be determined) that such request has been made

PROVIDED THAT the Party seeking to rely on an exemption contained in this Clause 9.3 shall provide such evidence as the other Party may

reasonably require to prove that the information sought to be exempted falls within the relevant category.

- 9.4 The restrictions contained in Clause 9.2 shall last for a period of five years from the relevant disclosure, without prejudice to any continuing restriction which may apply to the relevant information under any other agreement binding on the Parties, and shall survive termination of this Agreement for whatever reason.
- 9.5 BT shall take such steps as are reasonably practicable to maintain the security of communications and Newco's Customer information conveyed by means of the BT Services.



Date: []

- (1) THISTLE B.V.
- (2) AT&T Corp.

SERVICES AGREEMENT

INDEX

CLAUSE

1. Definitions
2. Term
3. Provision of Deliverables
4. Charges and Payment
5. Authorised Representatives
6. Review Meetings
7. Change Control
8. Suspension or Termination of Deliverables
9. Termination
10. Consequences of Termination
11. Dispute Resolution
12. Force Majeure
13. Limitation of Liability
14. Intellectual Property Rights Indemnity
15. Right of Audit
16. Ownership of Supplier's Intellectual Property Rights
17. Service of Notice
18. Waiver
19. Confidentiality
20. Order of Precedence
21. Severability
22. Non-exclusivity and Preferred Supplier Status
23. Law and Jurisdiction
24. Export Control
25. Entire Agreement
26. Assignment and Sub-contracting
27. Amendment
28. Survival

SCHEDULES

1. Provision of accommodation
- 2 Maintenance Services for Network Equipment
- 3 Network Equipment Installation
- 4 Shared asset support services
- 5 Call off Processes
- 6 Change control Process
- 7 Customer Support Services
- 8 Interconnection
- 9 Charges
- 10 Support Systems Access, Platform Support and Application Software Support
- 11 Technical and Development Services
- 12 Escalation
- 13 Secondment
- 14 Procurement
- 15 Training
- 16 Professional services

THIS AGREEMENT BETWEEN:

- (1) THISTLE B.V., a company incorporated in [] whose registered office is at [] ("Newco") and
- (2) AT&T Corp. a New York corporation whose principal place of business is at 295 North Maple Avenue, Basking Ridge, New Jersey, 07920 USA (the "Supplier")

WHEREAS:

- A. Newco has established and will continue to develop, enhance and modify the Global Platform (as hereinafter defined) in order to provide international enhanced and value-added telecommunication services.
- B. Newco requires services from the Supplier in order to assist it in the development, modification and enhancement of the Global Platform and in the provision of international enhanced and value-added telecommunication services.
- C. The Supplier has agreed to provide Newco with such services on the terms and conditions contained in this Agreement, provided however that this Agreement will not govern Customer Access Circuits (save where specifically referred to in this Agreement), regulated services and other services provided under separate agreements between the parties.
- D. The Supplier and Newco shall at all times comply in all material respects with all relevant laws which are or may be applicable to the performance of all duties and responsibilities hereunder.
- E. Subject to the provisions of Clause 26, this Agreement is not intended nor shall operate to inure to the benefit of any third party nor create any rights, remedies, duties or obligations in, for or to any third party.

NOW IT IS AGREED AS FOLLOWS:

1. Definitions

1.1 In this Agreement, unless the context otherwise requires, the following words shall have the meanings ascribed to them below:

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

"Agreement" means this Agreement, including all Annexes and Schedules;

"Appendix" means an appendix to this Agreement;

"Annex" means an Annex to a Schedule;

"Change Control" means those procedures referred to in Clause 7 and Schedule 6;

"Charge" means a charge agreed between the parties for a Deliverable provided pursuant to this Agreement;

"Closing" means the coming into effect of the Framework Agreement;

"Commencement Date" means the date of Closing;

"Day" means a calendar day;

"Deliverable" means any Service or Product which the Supplier is obliged to deliver pursuant to this Agreement;

"Framework Agreement" means the agreement of such name between AT&T Corp., VLT Corporation, British Telecommunications plc, BT (Netherlands) Holdings B.V. and Newco;

"Global Communications Services" means the services defined as such in the Framework Agreement;

"Global Platform" means those transmission, switching, signalling, network intelligence and/or service management systems which from time to time are owned, leased, managed or contracted for by Newco excluding any Remote Network, in order to provide the Services;

"Global Point of Presence" means a point on the Global Platform at which Messages pass between the Global Platform and either the Supplier's network or a Remote Network;

"Hardware" means any computers, peripherals, or other physical items of equipment;

"Instruction" means Newco's written request to the Supplier for the provision of any Deliverable (or part thereof) which has been issued in accordance with Clause 3.4;

"Intellectual Property Rights" means patent rights of any kind, registered and unregistered design rights, rights relating to semiconductor chip topography, copyrights of any kind, extraction rights in relation to databases, rights relating to software, rights relating to registered and unregistered trade marks or service marks or logos, applications or rights to apply for any of the foregoing, any similar registrable rights to any of the foregoing anywhere in the world, and rights of confidentiality in information of any kind;

"Message" means anything falling within subparagraphs (a) to (d) in the definition of Telecommunication System in this clause;

"Month" means a calendar month;

"Newco's Representative" means the person (or that person's nominee) authorised by Newco to represent its interests with respect to a Deliverable;

"Party" means a party to this Agreement;

"Product" means any tangible item including Hardware or Software as set out in a Schedule;

"Remote Network" means those Telecommunication Systems owned and/or operated by a third party by means of which Messages are passed between any Global Point of Presence and any Site located outside the Territory;

"Schedule" means a schedule which is annexed to this Agreement;

"Service" means anything in a Schedule to be delivered other than a Product;

"Site" means any premises at which any Deliverable is to be provided unless otherwise defined in a Schedule;

"Software" means computer programs and associated documentation;

"Supplier's Representative" means the person or that person's nominee authorised by the Supplier to represent its interests with respect to a Deliverable;

"Technical Information" means confidential information of a technical nature required by the Supplier, its agents and/or subcontractors for the performance of the Supplier's obligations under this Agreement;

"Telecommunication System" means a system for the conveyance, through the agency of electric, electro-magnetic, electro-chemical or electro-mechanical energy, of:

- a) speech, music and other sounds;
- b) visual images;
- c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- d) signals serving for the actuation or control of machinery or apparatus.

1.2 The expressions "Newco" and "Supplier" shall include their respective successors and permitted assigns.

1.3 Except as expressly provided herein, any reference to any legislative act shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any delegated legislation, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto.

1.4 In this Agreement words importing the singular include the plural and vice versa and words importing gender include any other gender.

1.5 The headings of Clauses are for ease of reference and shall not affect the construction of this Agreement.

1.6 References in this Agreement to Clauses or Schedules are references to clauses of or schedules to this Agreement.

1.7 Any undertaking in this Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

1.8 The expression "person" used in this Agreement shall include (without limitation) any individual, partnership, body corporate or unincorporated association.

2. Term

This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with its terms.

3. Provision of Deliverables

3.1 In consideration of the Charges, the Supplier hereby agrees to provide the Deliverables to Newco in accordance with the Schedule relating to each Deliverable.

3.2 Either the Supplier or Newco may propose Deliverables not already contained in the Schedules. Upon acceptance of the proposed Deliverables (or parts thereof), the terms of provision of each one or more of the proposed Deliverables shall be set out in one or more Schedules to be agreed between the parties. Such new Schedules shall thereupon become part of this Agreement.

3.3 Newco agrees to pay the Supplier the Charges applicable to each Deliverable.

3.4 The Supplier will provide each Deliverable from the date stated in the Instruction and for the period stated in the Instruction unless such Deliverable is terminated in accordance with Clause 8.

3.5 Newco and the Supplier shall use reasonable endeavours to perform their obligations under this Agreement by the agreed time but the Parties acknowledge that, save where expressly agreed, time shall not be of the essence.

3.6 Except as otherwise provided in a Schedule, the Supplier warrants that the Deliverables will be provided with all the reasonable care and skill of a competent telecommunications service-provider. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, SUPPLIER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.7 Each Party shall ensure that the other Party, its employees, agents and subcontractors have such access to any Site as may be reasonably necessary for the performance by the other Party of its obligations under this Agreement and in any event such access as may be specified in the applicable Schedule.

3.8 All employees of the other Party, its agents or subcontractors shall whenever present at a Site:

- (a) comply with all security procedures in force at that Site;
- (b) comply with all occupational health and safety requirements in force at that Site which have been notified to the other Party in advance;
- (c) comply with any other requirements or practices which apply generally to persons working at that Site and which have been notified to the other Party in advance.

3.9 The Party with control over a Site ("Owner") shall ensure that no employee of the other Party, its agents or subcontractors when requesting access to any Site pursuant to Clause 3.7 is refused admittance to such Site or required to leave such Site except for good and substantial cause. In the event of any such refusal or requirement without good cause:

- (a) the other Party shall be excused from any failure to provide a Deliverable in accordance with the applicable service levels to the extent that such failure results from such refusal or requirement; and
- (b) the Owner shall reimburse the other Party in respect of any additional costs and expenses which it may incur as a result of such refusal or requirement.

4. Charges and Payment

4.1 Where a Charge is expressed in a Schedule as an annual sum, the Supplier and Newco may agree that payment of the same be made on either a quarterly or monthly basis, proportionally.

4.2 All invoices in respect of a Deliverable shall be properly made out and addressed to Newco in accordance with the Conditions in the relevant Schedule. In the absence of such a provision in the Conditions, invoices shall be addressed to Newco at the address given at the head of this Agreement.

4.3 Unless otherwise agreed in a Schedule, the Supplier shall submit invoices to Newco covering Deliverables actually rendered. Newco undertakes to pay the Supplier within 30 days of its receipt of an invoice.

4.4 All Charges are exclusive of any applicable value added tax, sales tax, or other indirect taxes which shall be charged in accordance with applicable law and payable by Newco except to the extent that Newco provides the Supplier with a valid tax exemption certificate. Income taxes shall not be chargeable to Newco. The Supplier agrees to co-operate fully with Newco in obtaining tax exemptions or refunds or making claims.

4.5 All Charges shall be invoiced and paid in US Dollars.

4.6 In respect of any sum payable under this Agreement, in the event of late payment interest shall be chargeable from the date on which such sum was due and payable until the date of payment. Such interest shall be calculated from day to day at a rate equivalent to two per cent above LIBOR (as defined in the Framework Agreement) and shall accrue both before and after judgement. Interest shall not be chargeable until the Supplier has delivered at least 2 written reminders to Newco.

4.7 The method whereby a Charge shall be calculated and the procedures for the review and variation of a Charge shall be in accordance with the relevant Schedule. In those cases where the manner of calculation and variation of a Charge is not contained in a Schedule, the parties shall negotiate the manner of calculation and variation within a reasonable time after the signing of this Agreement. Charges shall be based on an arm's length relationship between the Parties.

4.8 If there is no other provision in this Agreement to the contrary all Charges shall be reviewed on an annual basis according to prevailing market rates for similar services and revised by the Supplier accordingly.

5. Authorised Representatives

5.1 Newco's Representative and the Supplier's Representative in respect of each of the Deliverables shall be clearly identified in documentation relating to each Deliverable following an Instruction.

5.2 Unless otherwise agreed expressly or by implication, each Party will provide the other with at least 7 days' notice in writing of any change of authorised representative.

5.3 Other key personnel responsible for specific activities in relation to a Deliverable may be referred to in documentation pertaining to that Deliverable.

6. Review Meetings

The Parties shall hold quarterly meetings to consider requirements for Deliverables, quality of Deliverables, the Charges, Newco's satisfaction with services provided by the Supplier, and other matters to be agreed on by the Parties.

7. Change Control

7.1 In the event that either Party requires a change or modification to a Deliverable or procedure to be followed under this Agreement, then the Party requesting the same shall prepare the necessary justification to this effect using the Change Control Process contained in Schedule 6. Upon acceptance in writing of the proposed change (or part thereof) by both Parties, the resulting agreed change or modification shall constitute an amendment to the Agreement and/or to the relevant Schedule and, where appropriate, shall form part of the Deliverable from an agreed date.

7.2 Subject to Clause 7.1, the Supplier reserves its right to change or modify the Deliverables in the normal course of its business. The Supplier shall give Newco advance notice of an impending change or modification to a Deliverable and shall ensure that such change or modification keeps any inconvenience or any interruption to any Deliverable to an absolute minimum. In no event shall any such change adversely affect the performance or functionality of any Deliverable defined in any Schedule.

8. Suspension or Termination of Deliverables

8.1 Subject to Clause 9, the Supplier or Newco may serve not less than 6 months (or such other period as may be specifically provided for in the relevant Schedule) notice of termination on the other to the effect that a Deliverable shall be terminated. Where Newco terminates a Deliverable, the Supplier shall be entitled to recover from Newco the reasonably incurred unavoidable third party costs of the Supplier which the Supplier is unable to mitigate and is able to demonstrate, and which relate to the remaining term of the Deliverable. Where these costs reflect the purchase price of tangible goods not incorporated into the Supplier's network, title to the goods shall pass to Newco.

8.2 If an event of Force Majeure continues and a right of termination arises under Clause 12.4, then either Party may terminate the Deliverable so affected.

8.3 Termination of any Deliverable shall not affect any rights or remedies of the Parties arising or accruing prior to the date of termination of such Deliverable.

9. Termination

9.1 The Supplier or Newco shall have the right by notice in writing to terminate this Agreement:

(a) forthwith if an event of Bankruptcy (as defined in the Framework Agreement) shall have occurred with respect to the other Party;

(b) on 3 years notice by the Supplier upon the termination of the Framework Agreement in accordance with its terms;

(c) forthwith upon the dissolution or termination of Newco or the Supplier; or

(d) on three years notice from the date the Supplier ceases to be a shareholder in Newco.

10. Consequences of Termination

10.1 The termination of this Agreement shall be without prejudice to the rights of the Parties accrued up to the date of such termination.

10.2 Upon termination of any Deliverable under a Schedule, the Supplier will provide all reasonable cooperation with any alternative service provider nominated by Newco for the purpose of effecting a smooth handover at no additional charge, except that Supplier shall be entitled to reasonable compensation for providing such cooperation: (1) where the termination of the Deliverable is as a result of Newco's breach of this Agreement; or (2) if Supplier is reasonably required to devote significant resources to provide such cooperation, such that fairness would warrant that the Supplier receive reasonable and appropriate compensation.

10.3 The termination of this Agreement shall not affect the Supplier's obligation to provide any Deliverable the Instruction for which has been accepted and agreed prior to termination.

11. Dispute Resolution

11.1 In the event of a dispute between the Parties concerning any matter arising from or connected with this Agreement, the Parties shall use their reasonable endeavours to settle the dispute in accordance with the procedures set out in Schedule 12.

12. Force Majeure

12.1 Neither Party shall be liable for any breach of this Agreement due to any cause beyond its reasonable control ("Force Majeure") including without limitation Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory obligation or executive order, industrial disputes (whether or not involving the employees of the Party seeking to rely on the this clause), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom neither Party is responsible including without limitation public telecommunication operators in their capacity as such Provided That a Party shall only be excused from liability under this Clause 12.1 to the extent that it has used all due diligence to remove or avoid the effect of Force Majeure.

12.2 To the extent that the Supplier is unable to provide any Deliverable due to Force Majeure and Newco is under an obligation to purchase such Deliverable from the Supplier then Newco shall be entitled to obtain equivalent services from another source at Newco's expense for the minimum commercially reasonable period.

12.3 The Supplier or Newco will promptly notify the other of the occurrence of any Force Majeure event which has caused or is likely to cause it to fail to perform its obligations under this Agreement and will use reasonable endeavours to overcome or limit the consequences of the event for the other Party.

12.4 If a Force Majeure event continues for a period of 30 days calculated from the date when the Party whose obligations are being prevented from being performed was so prevented, either Party may initiate the Change Control Process proposing how the obligation affected can be achieved by alternative methods. In the event that the Parties are unable to reach agreement on such alternative methods within 60 days of the date of the notice having been given under Clause 12.3 then the affected Party will have the right to terminate the Deliverable.

13. Limitation of Liability

13.1 Newco and the Supplier shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) to the extent that such liability, loss, damage or expense was caused by any negligent or wilful act or omission by the Party from whom indemnity is sought, its agents or employees.

13.2 Subject to Clause 13.3, Newco and the Supplier shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from loss of or damage to real or personal property (including damage to their property) to the extent that such liability, loss, damage or expense was caused by any negligent or wilful act or omission by the Party from whom indemnity is sought, its agents or employees.

13.3 THE AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER FOR ALL CLAIMS MADE DURING ANY CALENDAR YEAR UNDER THIS AGREEMENT FOR DAMAGES NOT OTHERWISE EXCLUDED HEREUNDER SHALL BE LIMITED TO TEN MILLION US DOLLARS IN RESPECT OF ANY OR ALL CLAIMS MADE IN THAT YEAR.

13.4 WHERE IN RELATION TO ANY SERVICE THE APPLICABLE SERVICE DESCRIPTION PROVIDES FOR A SYSTEM OF REBATES OR CREDITS AGAINST CHARGES IN RESPECT OF FAILURE TO PROVIDE SUCH SERVICE IN ACCORDANCE WITH THE APPLICABLE SERVICE LEVELS, SUCH REBATES OR CREDITS SHALL BE THE EXCLUSIVE FINANCIAL REMEDY OF THISTLE BV IN RESPECT OF SUCH FAILURE. FOR THE AVOIDANCE OF DOUBT SUCH REBATES OR CREDITS SHALL BE DEEMED TO BE A LIABILITY OF THE SUPPLIER FOR THE PURPOSES OF THIS AGREEMENT.

13.5 Except with respect to such loss or damage as is referred to in Clauses 13.1 and 13.2, Newco shall ensure that to the extent permitted by applicable law its contracts with Customers exclude all liability of the Supplier to the Customer and preclude the Customer from making any claim against the Supplier, and in the event that any such claim is made by a Customer howsoever arising from or related to the provision of Services under this Agreement Newco shall indemnify the Supplier in respect of such claim.

13.6 IN ANY EVENT, IN NO CIRCUMSTANCES INCLUDING THE NEGLIGENT ACT OR OMISSION OF ITSELF, ITS SERVANTS OR AGENTS SHALL EITHER PARTY BE LIABLE TO THE OTHER IN CONTRACT, TORT OR OTHERWISE FOR ANY LOSS OF REVENUE, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS OR PROFITS OR ANY LOSS OR DESTRUCTION OF DATA OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS WHATSOEVER.

13.7 The provisions of this Clause 13 shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.

14. Intellectual Property Rights Indemnity

14.1 The Supplier will indemnify and hold harmless Newco against any damages (including reasonable costs and attorneys' fees) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession, receipt or use of any Deliverables by Newco infringes any Intellectual Property Right of said third party ("Intellectual Property Infringement") provided that Newco:-

(a) gives notice promptly to the Supplier of any Intellectual Property Infringements (or any allegations thereof) upon becoming aware of the same;

(b) gives the Supplier the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement (or any allegation thereof) and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of the Supplier in writing; and

(c) acts in accordance with the reasonable instructions of the Supplier and gives to the Supplier such assistance as it shall reasonably require in respect of the conduct of the said defence including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents.

14.2 The Supplier shall reimburse Newco its reasonable costs incurred in complying with the provisions of Clause 14.1.

14.3 The Supplier shall have no liability to Newco in respect of an Intellectual Property Infringement if the same results from any breach of Newco's obligations under this Agreement.

14.4 In the event of an Intellectual Property Infringement, the Supplier shall be entitled at its own expense and option either to:-

(a) procure the right for Newco to continue using the Deliverables; or

(b) make such alterations, modifications or adjustments to the Deliverables that they become non-infringing without incurring a material diminution in performance or function; or

(c) replace the Deliverables with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

14.5 If the Supplier in its reasonable judgement is not able to exercise any of the options set out at Clauses 14.4(a), 14.4(b) or 14.4(c) above within 90 days of the date it received notice of the Intellectual Property Infringement, then, Newco, without prejudice to any other rights or remedies it may have hereunder or at law, shall be entitled to terminate the Deliverable affected by 7 days' notice upon the Supplier.

14.6 The Supplier shall have no liability to Newco in respect of an Intellectual Property Infringement if the same results from work carried out by the Supplier, its agents or employees in accordance with directions or specifications given by Newco or its Customer.

14.7 Newco shall indemnify the Supplier in respect of any such Intellectual Property Infringement in the same terms as Clauses 14.1-14.6 mutatis mutandis.

14.8 The provisions of this clause 14 shall not apply in respect of Project Deliverables as defined in the IPR Agreement referred to in the Framework Agreement. The IPR indemnity for Project deliverables shall be either negotiated on a case by case basis or subject to the default provisions set out in the IPR Agreement.

15. Right of Audit

15.1 Not more than once a year, Newco may require the Supplier to obtain at Newco's expense a certificate from a reputable firm of independent chartered accountants showing that any invoice(s) submitted by the Supplier to Newco in respect of any Deliverable properly relates to such Deliverable and that any Charge referred to in such invoice(s) has been correctly calculated.

15.2 For the purposes of Clause 15.1, the invoice if mathematically accurate shall be deemed to have been correctly calculated if the Deliverable, the subject of the invoice, has been supplied according to the Charges.

15.3 If any such audit shall reveal that any invoice(s) submitted by the Supplier contains any errors or omissions, then the Supplier shall forthwith make good such errors or omissions refund to Newco any overpayment previously made together with interest at the rate referred to in Clause 4.6 , invoice Newco any undercharge made and bear a fair and equitable proportion of any expenses incurred in having the audit carried out by the said firm of independent chartered accountants.

16. Ownership of Supplier's Intellectual Property Rights

16.1 Save in respect of Project Deliverables as defined in the IPR Agreement referred to in the Framework Agreement, and unless otherwise provided for in the Schedules, title and all Intellectual Property Rights in or relating to any Deliverable (or part thereof) made available by the Supplier to Newco shall be and shall remain vested in and shall remain the absolute property of the Supplier or its licensors.

16.2 Save in respect of the Project Deliverables as defined in the IPR Agreement referred to in the Framework Agreement, the Supplier hereby grants to Newco for the period the Supplier provides services under this Agreement:

(a) In respect of Intellectual Property Rights of the Supplier in the Deliverable, the royalty free right (with the right freely to grant sub-licences) in any Deliverable to use such Deliverable for the purpose of providing Global Communications Services.

(b) In respect of Intellectual Property Rights of third parties, the royalty free right in any Deliverable to use such Deliverable for the purpose of providing Global Communications Services to such extent as the Supplier is able to grant such rights under the rights granted to the Supplier by the relevant third party.

16.3 Each Party acknowledges that any trade marks, trade names, service marks or service names applied by the other Party to the Deliverables are the property of such other Party or its licensors and that the first mentioned Party shall acquire no interest in the same by the use of the Deliverables or otherwise under this Agreement. Except as otherwise agreed, neither Party shall be entitled to use in the course of trade in relation to any goods or services of the other Party any registered or unregistered trade mark, service mark, logotype or abbreviation of the name of such other Party (or of any part thereof) so

that any person might reasonably import a connection between those goods or services and such other Party (or any part thereof).

16.4 Without prejudice to Clause 16.3, each Party shall comply with all reasonable instructions which the other Party may give from time to time with regard to the use of any indication of property and rights of that other Party.

17. Service of Notice

17.1 Any and all notices pursuant to this Agreement shall be in writing and signed by (or by some person duly authorised by) the Party giving it and may be served by leaving it at, or sending it by facsimile (confirmed by registered post or air mail) or by hand to the address of the relevant recipient Party or Parties set out in Clause 17.2 (or as otherwise notified from time to time hereunder). Any notice so served by facsimile or by hand shall be deemed to have been received on the next working day after the message has been transmitted or received.

17.2 The addresses of the Parties for the purpose of Clause 17.1 are as follows:

NEWCO:

For the attention of the General Legal Counsel of Newco
[address]

With a copy to:

[]

SUPPLIER

For the attention of Mr Michael Keith,
AT&T Corp.,
55 Corporate Drive,
Bridgewater,
New Jersey,
08807
USA

Fax: 908 658 2497

With a copy to:
Mr Daniel Stark,
Chief Counsel Business Market Services,
295 North Maple Avenue,
Basking Ridge,
New Jersey,
07920
USA

Fax: 908 221 8287

18. Waiver

Failure or neglect by either Party hereto to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of either Party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice either Party's rights to take subsequent action.

19. Confidentiality

19.1 The Parties shall keep confidential all confidential information which is obtained by them under this Agreement, whether or not that information is related to the business affairs of either of the Parties.

19.2 The restrictions in Clause 19.1 shall not apply to:

(a) information which enters the public domain otherwise than by breach of this Agreement;

(b) information already in the possession of a Party before disclosure to it under this Agreement and which was not acquired directly or indirectly from another Party;

(c) information lawfully obtained from a third party who is free to disclose such information;

(d) information developed or created by a Party independently of this Agreement;

(e) information requested by any governmental or regulatory authority entitled by law to require the same PROVIDED ALWAYS THAT, prior to such disclosure if practicable, the disclosing Party shall notify in writing the owner of such information (where the identity of such owner can be determined) that such request has been made;

(f) Technical Information which the Supplier must communicate to its sub-contractors in order for them to carry out particular sub-contracted work PROVIDED ALWAYS THAT the Supplier procures that the sub-contractors will keep such information confidential and only use it for the purpose of carrying out the particular sub-contracted work;

PROVIDED THAT the Party seeking to rely on an exemption contained in this Clause 19.2 shall provide such evidence as the other Parties may reasonably require to prove that the information sought to be exempted falls within the relevant category.

19.3 The restrictions contained in Clause 19.1 shall last for a period of five years from the relevant disclosure and shall survive termination of this Agreement for whatever reason.

20. Order of Precedence

In the event of inconsistency between the terms and conditions of this Agreement and the Framework Agreement, the provisions of Section 3.1 of the Framework Agreement shall apply.

21. Severability

21.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

21.2 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute one the agent of another in any manner or for any purpose whatsoever.

22. Non-Exclusivity and Preferred Supplier Status

For the avoidance of doubt, except as specifically stated in the Customer Support Services Schedule, nothing in this Agreement shall be deemed to create any obligation on Newco to source its requirements for Deliverables exclusively from the Supplier. Newco reserves the right to source the supply of services in its best interests.

However, Newco shall treat the Supplier as its "preferred supplier" as defined in the Framework Agreement.

23. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except with respect to its conflict of law provisions.

24. Export Control

24.1 Newco may receive from the Supplier or be responsible for, products and services including but not limited to technical information, technical training, and/or software of US origin under this Agreement ("the Supplies").

24.2 Newco shall not disclose or re-export, directly or indirectly, such Supplies received from the Supplier, or any direct product thereof, to any country without the prior approval of the United States Government and obtaining the appropriate US export documentation.

24.3 It is Newco's responsibility to ensure that any re-export of the Supplies is licensed in accordance with the export control laws and regulations of the country in which the Supplies are to be sited.

24.4 To the extent required, the provision of Deliverables by the Supplier is subject to the express approval of the government of any country whose laws control the export or re-export of the Supplies.

25. Entire Agreement

This Agreement supersedes all oral and written representations and agreements between the Parties relating to the subject matter hereof prior to the date hereof, and this Agreement represents the entire understanding between the Parties in relation to the subject matter hereof.

26. Assignment and Sub-contracting

26.1 Neither Party shall assign to, transfer, part with, dispose of, or share the whole or any part of this Agreement with any third party.

26.2 Notwithstanding Clause 26.1, either Party may sub-contract in the ordinary course of business.

26.3 Notwithstanding Clauses 26.1 and 26.2, either Party may assign or sub-contract this Agreement to a wholly owned Affiliate. A Party may assign or subcontract this Agreement to any other Affiliate with the consent in writing of the other Party, which consent shall not unreasonably be withheld.

27. Amendment

This Agreement shall not be amended, modified, varied or supplemented except in writing signed by authorised representatives for and on behalf of the Parties.

28. Survival

The Clauses to this Agreement which by their nature are intended to survive shall survive, following expiry or termination of this Agreement, including but without prejudice to the generality of the foregoing Clauses 1, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 28.

SIGNED for and on behalf
of Newco

By: _____

Name: _____

Title: _____

Date: _____

SIGNED for and on behalf
of AT&T Corp.

By: _____

Name: _____

Title: _____

Date: _____



ALL STATES LEGAL 888-222-8210 F012 REC 1 0

EXHIBIT K-4

FORM OF AT&T MASTER CARRIER AGREEMENT



AT&T Master Carrier Agreement

CUSTOMER Name (Full Legal Name): Newco US, an entity organized under the laws of _____ (*CUSTOMER*)			AT&T Corp., a New York corporation (*AT&T*)			AT&T Sales Representative:
CUSTOMER Name (and Title) for Notice:			AT&T Name (and Title) for Notice:			AT&T Contact Telephone Number:
CUSTOMER Address:			AT&T Address:			Initial Deposit Amount Required: None
	State	Zip Code	City	State	Zip Code	
CUSTOMER Fax number for Notice:			AT&T Fax number for Notice:			

This Master Carrier Agreement shall be legally binding when signed by both parties and shall continue in effect until the end of the longest term specified in the Attachment(s), or until otherwise terminated as provided in accordance with the Agreement. The rates and commitments provided in the Attachments shall be effective as provided in each Attachment.

This Master Carrier Agreement consists of this Cover Sheet, the attached Terms and Conditions, and the Attachment(s) listed below (these documents together are collectively referred to as the "Agreement"). In the event of any inconsistency between these documents, precedence will be given to the documents in the following order: (1) Attachment(s); (2) Terms and Conditions; (3) Cover Sheet.

<u>Title</u>	<u>Doc. ID</u>	<u>Date/time stamp</u>
Master Carrier Agreement - Terms and Conditions	NewCo_MCA.doc	mm/dd/yy (hh:mm xm)

CUSTOMER'S SIGNATURE BELOW ACKNOWLEDGES THAT CUSTOMER HAS READ, UNDERSTANDS AND AGREES TO EACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT THE INDIVIDUAL SIGNING THIS AGREEMENT IS DULY AUTHORIZED TO DO SO.

CUSTOMER

AT&T Corp.

By: _____
(Authorized Customer Signature)

By: _____
(Authorized AT&T Signature)

(Typed or Printed Name and Title)

(Typed or Printed Name and Title)

Date: _____

Date: _____

1 Provision of Services

AT&T will provide to CUSTOMER the jurisdictionally interstate AT&T services (including service terminating internationally) described in the Attachment(s) to be added to this Agreement as provided in Section 12.4 (the "Services"). Jurisdictionally intrastate services may be provided pursuant to applicable state tariffs, or as otherwise permitted by applicable state law. Except as otherwise agreed, AT&T is not responsible for the quality of transmission or signaling on CUSTOMER's side of the network interface between AT&T and CUSTOMER. Service is furnished subject to the availability of the service components required, and subject to operational and systems constraints. [This Agreement applies to all U.S. Component Services provided by AT&T to CUSTOMER. This Agreement does not apply to the provision of service by AT&T to CUSTOMER for resale to End Users.]

2 Term

The Term of this Attachment is as described in the Attachment(s) to be added to this Agreement as provided in Section 12.4.

3. Preferred Supplier, Pricing, MRCs

3.1 AT&T will be CUSTOMER's "preferred supplier" as that term is defined in the Framework Agreement for U.S. Component Services.

3.2 CUSTOMER shall not provide to any Third Party Supplier for the purpose of facilitating or promoting any alternative bid or proposal (i) any confidential information concerning the terms, conditions and standards of services offered by AT&T or (ii) any preferential commitments, support, incentives or other preferential treatment or inducements with respect to the supply or purchase of services within the United States.

3.3 For purposes of calculating CUSTOMER's discount for Component Services under this Agreement, CUSTOMER's total purchases from AT&T under this or other Agreements shall be taken into account.

3.4 CUSTOMER's MRC shall be established solely in respect to Component Services purchased under this Agreement.

4 Billing

4.1 AT&T shall provide invoices for all services purchased under this Agreement at the addresses, in the form and media, and with the level of detail agreed upon by the parties. AT&T may modify the form, but not the media or content, of the invoices on 90 days prior written notice to

CUSTOMER. AT&T may accommodate CUSTOMER's reasonable requests for changes to the form or content of such invoices.

- 4.2 Not more than once during each year of the Term, CUSTOMER may require AT&T to obtain at CUSTOMER's expense a certificate from a reputable firm of Certified Public Accountants showing that any invoice(s) submitted by AT&T to CUSTOMER in respect of the Services properly relates to such Service and that any charge referred to in such invoice(s) has been correctly calculated. The invoice, if mathematically accurate shall be deemed to have been correctly calculated if the Services, the subject of the invoice, has been supplied according to the Charges. If any such audit shall reveal that any invoice(s) submitted by AT&T contains any errors or omissions, then AT&T shall forthwith make good such errors or omissions, refund to CUSTOMER any overpayment previously made together with interest at the rate referred to in Section 6, invoice CUSTOMER any undercharge previously made together with interest at the same rate, and bear a fair and equitable proportion of any expenses incurred in having the audit carried out by the said firm of Certified Public Accountants.

5 Payment

CUSTOMER is liable for all amounts due to AT&T under this Agreement. Payment will be considered timely if made to AT&T within thirty days after the bill date. Any charges not paid to AT&T within such period will be considered past due; provided that AT&T shall not take any action for default under Section 6 as a result of such non-payment if payment is made within forty-five days after the bill date.

6 Non-Payment

At AT&T's option, interest charges may be added to any amounts not paid within 45 days after the bill date at the interest rate provided for late payment in AT&T's Tariffs, as amended from time to time (or, with respect to untariffed services, in AT&T's Tariff under which the most similar service is provided). Restrictive endorsements or other statements on checks accepted by AT&T will not apply.

7 Billing Disputes

If CUSTOMER wishes to dispute a charge on a bill, CUSTOMER must identify the amount of the disputed charge and provide a full written explanation of the basis for the dispute within 90 days after the bill date. A pending billing dispute does not relieve CUSTOMER of the obligation to pay the disputed charge, unless an AT&T account inquiry and collections

representative provides express written consent to suspend the payment obligation while a specifically identified dispute remains under investigation by AT&T. If CUSTOMER has paid a disputed charge and the dispute is resolved in CUSTOMER's favor, AT&T shall, upon CUSTOMER's written request, provide a credit reflecting interest on the amount of overpayment at the same interest rate applicable to past due charges for the period beginning 60 days after the latter of AT&T's receipt of payment of the disputed charge or AT&T's receipt of the full written explanation of the basis for the dispute and concluding on date the dispute is resolved in CUSTOMER's favor.

8 Obligations Regarding Taxes

- 8.1 CUSTOMER shall pay any applicable local, state, federal and foreign taxes levied upon the sale, installation, use or provision of the Services, except to the extent CUSTOMER provides a valid tax exemption certificate to AT&T prior to the delivery of Services. Gross Receipts Taxes will be charged to CUSTOMER as provided in AT&T Tariff F.C.C. No. 1, Section 2.5.14, as amended from time to time, unless a valid tax exempt certificate for such Gross Receipts Taxes is provided under applicable law.
- 8.2 AT&T shall be responsible for all taxes measured or based upon AT&T's net income, net worth, capital stock, number of employees, payroll or ad valorem property taxes. The expense for such taxes shall not be passed through to CUSTOMER in the form of a tax or surcharge on services provided under this Agreement.
- 8.3 AT&T agrees to cooperate reasonably with customer in obtaining tax exemptions, refunds or reclaims.
- 8.4 The Parties agree to fully cooperate with each other to minimize such tax liability to the extent legally permissible. AT&T invoice's shall separately state the amount of any taxes AT&T is collecting from CUSTOMER as taxes.

9 CUSTOMER Status

CUSTOMER certifies it is a "common carrier" as defined in the Communications Act of 1934 (as amended).

10 Responsibilities of CUSTOMER

Except as otherwise agreed, CUSTOMER is responsible for interfacing and communicating with its End Users, for placing any orders, and for

assuring that it and its Intermediate Resellers (if any) comply with the provisions of this Agreement and with all applicable laws and regulatory requirements with respect to the resale of Services provided under this Agreement. CUSTOMER is responsible for arranging premises access at any reasonable time so that AT&T personnel may install, repair, maintain, inspect or remove service components.

11 Ordering

- 11.1 AT&T shall provide CUSTOMER with a single point of contact to facilitate the processing of orders placed under this Agreement (different services may have different points of contact). The AT&T point of contact shall accept orders only from the designated CUSTOMER representative(s).
- 11.2 With regard to circuits purchased under this Agreement, CUSTOMER shall not be responsible for any fees due to cancellation of a circuit order by CUSTOMER prior to installation of said circuit beyond the amount of any third-party expenses incurred by AT&T.
- 11.3 Within one business day after receipt of an order, AT&T shall send to CUSTOMER written confirmation acknowledging receipt of the order.
- 11.4 The parties will mutually develop an administration plan, which will include, among other things, target dates for establishment of Scheduled Installation Dates for circuits ordered under this Agreement.

12 Contract Reviews

- 12.1 The parties will engage in semi-annual Stewardship Reviews, in which each party will review with the other the technical performance of the Service, rates, performance against commitment levels, billing performance, payment history, growth forecasts, new opportunities, and other topics of interest.
- 12.2 If AT&T changes one or more of its tariffs in a way that materially and adversely affects CUSTOMER with respect to the Services provided under this Agreement, AT&T and CUSTOMER will cooperate in determining whether any modifications to this Agreement are appropriate. Such mutually agreeable modifications may include, without limitation, changes to the revenue commitment, term commitment, rates, and/or other provisions.
- 12.3 Upon Customer request, but no more than once every six months, the parties agree to conduct a review of the overall price competitiveness of

the Services provided under this Agreement (excluding non-US originated traffic), in accordance with the following methodology.

12.3.1 **Agreed-Upon Demand Set.** The parties will agree upon a comparison demand set based on Customer's actual traffic and charges under this Agreement (including all service elements, features, traffic mix and volumes).

12.3.2 **Calculation of Comparison Prices.** AT&T will calculate the prices that Customer would pay for the comparison demand set under other AT&T service arrangements for which Customer could qualify as a subscriber, based upon its existing services, traffic and commitments, that became effective within the preceding 6 months (the "Comparison Service Arrangements").

12.3.3 **Changes Based on the Review.** If, based on the agreed demand set in its entirety, Customer would pay less annually under any of the Comparison Service Arrangements than Customer would pay under this Agreement, AT&T will promptly prepare revisions to this Agreement that are intended to provide at least equivalent price benefits, on the whole, to those offered by the pricing of the Comparison Service Arrangement.

12.4 The parties intend to negotiate one or more Service Terms and Pricing Attachments to this Agreement to set forth the rates and certain terms and conditions under which AT&T will provide the Services to CUSTOMER. AT&T will provide the Services on arm's-length commercial terms at market rates.

13 Circuit Fault Handling and Reporting

All failures or breaks in service shall be reported and managed by means of a trouble handling system. AT&T shall provide for 24-hours/365 day toll-free (from within the U.S.) or on-line fault reporting for use by CUSTOMER and 24hour/365 day technical capability and support to resolve CUSTOMER faults and restore service.

14 Abuse of Service

The abuse of Service is prohibited. Using Service or permitting Service to be used in the following ways constitutes abuse:

14.1 interfering unreasonably with the use of AT&T service by others or the operation of the AT&T network;

- 14.2 subjecting AT&T personnel or non-AT&T personnel to hazardous conditions;
- 14.3 attempting to avoid the payment, in whole or in part, of any charges by any means or device.

In any instance in which AT&T believes in good faith that there is abuse of Service as set forth above, AT&T may immediately restrict, suspend or discontinue providing Service, without liability on the part of AT&T, and then notify CUSTOMER of the action that AT&T has taken and the reason for such action. To the extent doing so does not interfere with its ability to prevent abuse of Service (to be determined in AT&T's reasonable judgment), AT&T will, where reasonably possible, limit any restriction, suspension or discontinuance under this Section to the locations, phone numbers, or Services with respect to which the abuse is taking place.

15 Default

- 15.1 If a party breaches any material term of this Agreement and the breach continues unremedied for 60 days after written notice of default, the other party may terminate for cause any Attachment materially affected by the breach. If CUSTOMER is in breach of its payment obligations, and fails to make payment in full within 15 days after receipt of written notice of default, AT&T may, at its option, terminate the Agreement, terminate affected Attachments, suspend Service under the affected Attachments, and/or require a deposit, advanced payment, or other satisfactory assurances in connection with any or all Attachments as a condition of continuing to provide Services; except that AT&T will not take any such action as a result of CUSTOMER's non-payment of a charge subject to a timely billing dispute, unless AT&T has reviewed the dispute, determined that the charge is correct and notified CUSTOMER in writing of the determination. Notwithstanding the foregoing, (a) if the event giving rise to the right to terminate this Agreement does not constitute an Event of Default under the Framework Agreement, AT&T will follow the dispute resolution procedures (including executive escalation and arbitration) specified in the Framework Agreement before it terminates this Agreement, and (b) if the event giving rise to the right to terminate affected Attachments or suspend service under affected Attachments does not constitute an Event of Default under the Framework Agreement, AT&T will follow the executive escalation procedures for dispute resolution (but not the arbitration procedures) specified in the Framework Agreement before it terminates an affected Attachment or suspends service.
- 15.2 An Attachment may be terminated by either party immediately upon written notice if the other party has become insolvent or involved in a

liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

15.3 CUSTOMER shall be liable to AT&T for Termination Charges, as specified in a terminated Attachment, in the event that AT&T terminates an Attachment as a result of a breach by CUSTOMER.

15.4 Termination by either party of an Attachment does not waive any other rights or remedies it may have under this Agreement.

15.5 In the event of termination for whatever reason:

15.5.1 outstanding unpaid invoices rendered by AT&T in respect of the Services shall become immediately payable by CUSTOMER and invoices in respect of Services ordered prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice;

15.5.2 except as otherwise provided herein and subject to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

16 No Warranties

AT&T MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AT&T DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. AT&T DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS.

17 Limitation of Liability

17.1 THE AGGREGATE LIABILITY OF THE PARTY FROM WHOM ANY INDEMNITY IS SOUGHT UNDER SECTION 19 SHALL BE LIMITED TO TEN MILLION US DOLLARS IN RESPECT OF ANY OR ALL CLAIMS MADE IN ANY YEAR.

17.2 WHERE IN RELATION TO ANY SERVICE THE APPLICABLE SERVICE DESCRIPTION PROVIDES FOR A SYSTEM OF REBATES OR CREDITS AGAINST CHARGES IN RESPECT OF FAILURE TO PROVIDE SUCH SERVICE IN ACCORDANCE WITH THE APPLICABLE SERVICE LEVELS, SUCH REBATES OR CREDITS SHALL BE THE

EXCLUSIVE FINANCIAL REMEDY OF CUSTOMER IN RESPECT OF SUCH FAILURE. FOR THE AVOIDANCE OF DOUBT SUCH REBATES OR CREDITS SHALL BE DEEMED TO BE A LIABILITY OF AT&T FOR THE PURPOSES OF THIS AGREEMENT.

- 17.3 Except with respect to such loss or damage as is referred to in Section 17.1, CUSTOMER shall ensure that to the extent permitted by applicable law its contracts with its customers exclude all liability of AT&T to the Customer and preclude such customers from making any claim against AT&T, and in the event that any such claim is made by such a customer howsoever arising from or related to the provision of Services under this Agreement, CUSTOMER shall indemnify AT&T in respect of such claim.
- 17.4 IN ANY EVENT, IN NO CIRCUMSTANCES INCLUDING THE NEGLIGENT ACT OR OMISSION OF ITSELF, ITS SERVANTS OR AGENTS SHALL EITHER PARTY BE LIABLE TO THE OTHER IN CONTRACT, TORT OR OTHERWISE FOR ANY LOSS OF REVENUE, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS OR PROFITS OR ANY LOSS OR DESTRUCTION OF DATA OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS WHATSOEVER.
- 17.5 The provisions of this Section 17 shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.

18 Force Majeure

- 18.1 Neither Party shall be liable for any breach of this Agreement due to any cause beyond its reasonable control ("Force Majeure") including without limitation Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either Party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom neither Party is responsible including without limitation public telecommunication operators in their capacity as such Provided That a Party shall only be excused from liability under this Section to the extent that it has used all due diligence to remove or avoid the effect of Force Majeure.
- 18.2 AT&T or CUSTOMER shall promptly notify the other of the occurrence of any Force Majeure event which has caused or is likely to cause it to fail to perform its obligations under this Agreement.

19 Indemnification

Subject to Section 17, CUSTOMER and AT&T shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from loss of or damage to real or personal property (including damage to their property to the extent that such liability, loss, damage or expense was caused by any negligent or willful act or omission by the Party from whom indemnity is sought, its agents or employees.

20 Use of Marks

20.1 Nothing in this Agreement creates in a party any rights in the other party's trade names, trademarks, service marks or any other intellectual property.

20.2 Either party may use the other party's trade names, trademarks, or service marks only to the extent (a) such use is not prohibited by this Agreement and is otherwise permitted by law (including but not limited to the Lanham Act) or (b) such use is permitted under a separate written agreement.

20.3 In no event shall either party use or display, in advertising or otherwise, any of the other party's logos, trade dress, trade devices or other indicia of origin, or any confusingly similar logos, trade dress, trade devices or indicia of origin, except as may be agreed under a separate written agreement.

20.4 Except as may be agreed under a separate written agreement, CUSTOMER will not conduct business under any AT&T corporate or trade name, trademark, service mark, logo, trade dress, trade device, indicia of origin or other symbol that serves to identify and distinguish AT&T from its competitors, or under any confusingly similar corporate or trade name, trademark, service mark, logo, trade dress, trade device, indicia of origin or other symbol.

20.5 Except as may be agreed under a separate written agreement, CUSTOMER shall not indicate or imply that any portion of the service is provided by AT&T or is carried over the AT&T network, except CUSTOMER may indicate, in response to an unsolicited inquiry for such information from a customer or prospective customer, that AT&T is one of the long distance transport providers used by CUSTOMER, provided that CUSTOMER also

20.5.1 advises the customer or potential customer that a portion of its service will be provided using CUSTOMER's own switching or transmission facilities,

20.5.2 provides the names of all the other long distance transport providers used by CUSTOMER,

20.5.3 advises the customer or prospective customer that it will not be a customer of AT&T for any services obtained from CUSTOMER, and

20.5.4 does not emphasize AT&T's name more than its own name or more than the name of any other such long distance transport provider.

21 Relationship of the Parties

CUSTOMER, an Affiliate of AT&T, acts as an independent contractor with respect to third parties, and as such is fully responsible for its acts and defaults (including those of its employees or agents). CUSTOMER is also solely responsible for the provision of services to its customers.

22 Acknowledgment of Right to Compete

Each party acknowledges that nothing in this Agreement diminishes or restricts in any way the rights of the parties to engage in competition with each other. Each party acknowledges that it remains at all times solely responsible for the success and profits of its own business.

23 Use of Marketing Information

Either party may use for its own marketing purposes any and all information that it lawfully obtains from sources other than the other party, including but not limited to information that either party may have as a result of the sale by that party of telecommunications services or equipment to End Users.

24 Confidential Information Defined

"Confidential Information" consists of the following: all information disclosed by one party or its agent or representative (the "Disclosing Party") to the other party or its agent or representative (the "Receiving Party") in connection with this Agreement regarding the telecommunications needs of CUSTOMER and/or the telecommunications offerings of AT&T, to the extent that (a) for information disclosed in written, graphic or other tangible form, it is designated by appropriate markings to be confidential or proprietary or (b) for information disclosed orally, it is both identified as proprietary or confidential at the time of disclosure and summarized in a writing so marked within 15 business days following the oral disclosure. Notwithstanding the foregoing, all

written or oral pricing, contract, and tariff proposals exchanged between the parties shall be Confidential Information, whether or not so designated. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. This Agreement is Confidential Information as to which each party is both a Disclosing Party and a Receiving Party. Information made known to the public by the Disclosing Party or a third party, or previously known to the Receiving Party free of any obligation to keep it confidential, or independently developed by the Receiving Party, shall not be Confidential Information.

25 Confidentiality Obligations

A Receiving Party shall hold all Confidential Information in confidence from the time of disclosure until at least 2 years following the termination of this Agreement. During that period, the Receiving Party: (a) shall use such Confidential Information only for the purposes of performing this Agreement and using the Services; (b) shall reproduce such Confidential Information only to the extent necessary for such purposes; (c) shall restrict disclosure of such Confidential Information to employees that have a need to know for such purposes; (d) shall advise those employees of the obligations of this Agreement; (e) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in this Agreement; and (f) shall use at least the same degree of care as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information.

26 Publicity

No public statements or announcements relating to this Agreement shall be issued by either party without the prior written consent of the other party.

27 Alternative Dispute Resolution

The parties will attempt to settle any claim for non-payment of charges or recovery of overpayment of charges for the Services provided under this Agreement (hereinafter a "Billing Dispute"), through good faith negotiations. The parties may agree to submit a Billing Dispute to non-binding mediation.

28 **Notices**

All notices under this Agreement shall be in writing and shall be made: (a) by personal delivery; (b) by certified or registered mail, postage prepaid return receipt requested, (c) by overnight delivery, or (d) by facsimile transmission. Notice shall be sent to the individuals identified on the Cover Sheet (at the address and/or fax number designated for notice), or to such other individual, address or fax number as a party may designate by notice to the other party.

29 **Equipment**

AT&T shall retain title to all of its equipment and facilities used to provide service under this Agreement. CUSTOMER is liable to AT&T for the replacement cost of any AT&T-provided equipment installed at CUSTOMER's premises in the event of loss of said equipment for any reason, including but not limited to theft.

30 **Export Regulations**

The parties acknowledge that any products, software, and technical information (including, but not limited to, services and training) provided under this Agreement are subject to U.S. export laws and regulations and any use of or transfer of such products, software and technical information must be authorized under those regulations. CUSTOMER agrees that it will not use distribute, transfer or transmit the products, software or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by AT&T, CUSTOMER also agrees to sign written assurances and other export-related documents as may be required for AT&T to comply with U.S. export regulations.

31 **Quality Monitoring**

CUSTOMER authorizes AT&T to monitor and record calls to AT&T concerning the Services for training and quality control purposes.

32 **Assignment**

This Agreement may not be assigned by either party except that either party may assign its rights or delegate its duties under this Agreement to an Affiliate of that party.

33 No Third Party Beneficiaries

This Agreement does not expressly or implicitly provide any third party (including End Users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

34 Non-Waiver

The failure of a party to enforce any right under this Agreement at any particular point in time shall not constitute a continuing waiver of any such right with respect to the remaining term of this Agreement, or the waiver of any other right under this Agreement.

35 Severability

If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the parties shall immediately begin negotiations to replace any invalid or unenforceable portions that are essential parts of this Agreement.

36 Survival of Terms

The rights and obligations of either party that by their nature would continue beyond the termination or expiration of this Agreement shall survive termination or expiration of this Agreement. For example, the provisions of this Attachment regarding Confidentiality shall remain in effect for 2 years following termination of this Agreement and the provisions of this Agreement regarding arbitration, indemnification, and/or limitation of liability shall survive termination of this Agreement as to any cause of action arising under the Agreement.

37 Choice of Law

The domestic law of the State of New York, except its conflict-of-laws rules, shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

38 Amendment

No amendment, supplement, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of both parties.

39 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the Services. This Agreement supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. Any prior representations, promises, inducements or statements of intent regarding the Services that are not embodied in this Agreement are of no effect.

40 Definitions

The following definitions apply in addition to the definitions set forth elsewhere in this Agreement:

- 40.1 **"Affiliate"** has the same meaning as provided in the Framework Agreement.
- 40.2 **"Closing"** has the same meaning as provided in the Framework Agreement.
- 40.3 **"Framework Agreement"** means the Framework Agreement entered between AT&T, VLT Corporation, British Telecommunications plc, BT (Netherlands) Holdings B.V. and Thistle B.V. simultaneously herewith.
- 40.4 **"End User"** means the entity that actually uses the service resold by CUSTOMER.
- 40.5 **"Intermediate Reseller"** means any reseller or other intermediary (other than CUSTOMER or its agents or employees) in the sales chain between CUSTOMER and an End User.
- 40.6 **"Tariff"** means the AT&T Tariffs identified in the Attachments, and the successor documents of general applicability that replace such tariffs in the event of detariffing.
- 40.7 **"Third-Party Supplier"** has the same meaning as provided in the Framework Agreement.
- 40.8 **"U.S. Component Services"** means Communications Services (as defined in the Framework Agreement) provided in the United States that are used by CUSTOMER as components of an end-to-end service provided to End Users. U.S. Component Services include (but are not limited to) (a) private line circuits (including half channels) (i) between a CUSTOMER Point of Presence ("POP") and another carrier's POP, (ii) between CUSTOMER POPs, and (iii) between a CUSTOMER POP and an End

User location, and (b) voice services between a CUSTOMER POP and a calling or called party.

If not otherwise defined, capitalized terms shall be defined as provided in AT&T's Tariffs.