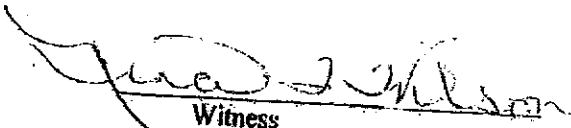
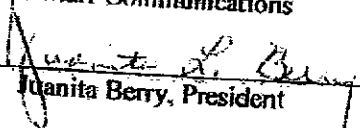


In addition to the amount then due a late of fee of 10.0% of the amount due shall be paid by Maker to Holder on all amounts which are paid more than ten (10) days after the date on which the amount was due.

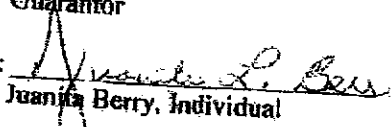
The Maker of this Promissory Note, at any time, without penalty, or any number of times, may make payments thereon in the sum of \$1.00, or multiples thereof so as to reduce the principal in whole or in part.

This Promissory Note is personally guaranteed by Juanita Berry, individual.

  
Witness

J Starr Communications  
By:   
Juanita Berry, President

  
Witness

Guarantor  
By:   
Juanita Berry, Individual

## PROMISSORY NOTE

\$400,000.00

January 29, 2010

FOR VALUE RECEIVED, the undersigned, promises to pay to the order of WestWorld Telecom Corporation the principal sum of FOUR HUNDRED THOUSAND & NO/100—(\$400,000.00)—DOLLARS, said principal sum to be payable on demand at such place as holder may from time to time direct.

**REVOLVING FEATURE:** This Promissory Note possesses a revolving feature. Upon satisfaction of the conditions set forth in the Promissory Note, Borrower shall be entitled to borrow up to the full principal amount of the Promissory Note and to repay and reborrow from time to time during the term of the Promissory Note.

**INTEREST RATE:** This Promissory Note is non-interest bearing. Any imputed interest will be included in consideration of purchases of telecommunications equipment by Lender from the Borrower.

**COLLATERAL:** To secure the payment and performance of obligations incurred under this Promissory Note, Borrower grants Lender a security interest in all of the Borrower's rights, title and interest in Borrower's accounts receivable, inventories, equipment contracted or authorized by a telecommunications service provider to be de-installed by Borrower in the future and all other assets of the Borrower.

The Maker and Endorser waive demand, protest and notice of maturity, non-payment or protest and all requirements necessary to hold them liable as the Maker and Endorser.

It is further agreed the Maker and Endorser, jointly and severally, shall and will pay all costs of collection including a reasonable attorney's fee, in the event of failure to pay the principal of this Promissory Note or any interest thereon or any installment thereof when due.

It is further agreed by the Maker and Endorser, jointly and severally; that in the event of failure to pay when due and payable as aforesaid and shall such default continue for a period of five (5) days, then and in such event the Lender or Holder hereof shall have the right and option to consider and declare the whole amount of the unpaid principal hereof and unpaid to be forthwith due and immediately payable and in the event of non-payment thereof to proceed immediately and enforce payment by legal process.

In addition to the amount then due a late of fee of 10.0% of the amount due shall be paid by Maker to Holder on all amounts which are paid more than ten (10) days after the date on which the amount was due.

In addition to the amount then due a late of fee of 10.0% of the amount due shall be paid by Maker to Holder on all amounts which are paid more than ten (10) days after the date on which the amount was due.

The Maker of this Promissory Note, at any time, without penalty, or any number of times, may make payments thereon in the sum of \$1.00, or multiples thereof so as to reduce the principal in whole or in part.

This Promissory Note is personally guaranteed by Juanita Berry, individual.

*[Signature]*  
Witness

J Starr Communications  
By: *[Signature]*  
Juanita Berry, President

*[Signature]*  
Witness

Guarantor  
By: *[Signature]*  
Juanita Berry, Individual

SEP 22 2015

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH, CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Peter G. Sheridan
	:	
v.	:	Crim. No. 13-769
	:	
JUANITA L. BERRY	:	18 U.S.C. §§ 1343 and 2;
	:	26 U.S.C. § 7201

**SECOND SUPERSEDING INDICTMENT**

The Grand Jury in and for the District of New Jersey, sitting at Newark,  
charges:

At all times relevant to this Second Superseding Indictment:

**Counts One through Four**  
**(Wire Fraud)**

**Background**

1. "Company A" was a closely held corporation with headquarters in Carmel, Indiana. Its business included telecommunications equipment distribution and assembly and customer site installation. Company A maintained several facilities located throughout the United States.
2. For purposes of conducting its telecommunications business in the Northeast region, Company A initially operated a warehouse and office in Levittown, Pennsylvania (the "Levittown Facility"). In or about November 2009, Company A moved its operations to a warehouse and office in Dayton, New Jersey (the "Dayton Facility").

3. Defendant JUANITA L. BERRY worked for Company A pursuant to an agreement with J. Starr Communications, Inc. ("J. Starr"), a company that she owned and operated. According to the terms of the agreement, defendant BERRY was to provide consulting services to Company A. In or about 2006, defendant BERRY served as a sales representative for Company A, and in or about 2009 she became known as Company A's "Vice President for Major Accounts." From in or about November 2009 through in or about June 2011, defendant BERRY functioned as a senior manager at Company A's Dayton Facility.

4. As part of its telecommunications business, Company A installed and de-installed telecommunications systems for its customers, including AT&T. Among the telecommunications system components installed and de-installed by Company A were electronic circuit boards or "cards," which ranged in cost from several hundred to thousands of dollars. Typically, a given telecommunications system would contain multiple cards.

5. When installing a telecommunications system for a customer, Company A often received some of the specialized cards needed for the system free of charge from the telecommunications carrier, and purchased others from various vendors, as it did with other equipment needed for installation.

6. When Company A de-installed a given telecommunications system for a customer on site, Company A's agreement (or practice) with the customer typically provided that Company A then owned the de-installed components. Often, Company A would then ship those components, including the system's

cards, to its Levittown Facility and then beginning in 2009 to its Dayton Facility. Many of these removed cards, which were owned by Company A, had significant value in the secondary market for used telecommunications equipment.

### **The Scheme and Artifice to Defraud**

7. From in or about 2008 through in or about 2011, in the District of New Jersey and elsewhere, defendant

#### **JUANITA L. BERRY**

did knowingly and intentionally devise a scheme and artifice to defraud Company A, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing and attempting to execute such scheme and artifice, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce writings, signs, signals, and sounds, as more fully set forth below.

### **Object of the Scheme and Artifice to Defraud**

8. The object of the scheme and artifice to defraud was for defendant BERRY to enrich herself by fraudulently obtaining, and concealing her receipt of, several million dollars to which she then knew she was not entitled.

### **Manner and Means of the Scheme and Artifice to Defraud**

9. It was part of the scheme and artifice to defraud that, without the knowledge or authorization of Company A, defendant BERRY provided both

new and used cards along with other telecommunications equipment owned by Company A (the "Stolen Equipment") to a company located in Lakeland, Florida (the "Florida Company"), as though such equipment belonged to her and/or her company J. Starr, and pocketed the proceeds from such fraudulent transactions.

10. It was a further part of the scheme and artifice to defraud that on multiple occasions between in or about 2008 through in or about 2011, defendant BERRY directed one or more employees at Company A at the Dayton Facility to pack Stolen Equipment and ship it to the Florida Company, using shipping labels that made it falsely appear that the equipment was being shipped from J. Starr or from defendant BERRY.

11. It was a further part of the scheme and artifice to defraud that the Florida Company, unaware of defendant BERRY's fraudulent conduct, wired payments for the Stolen Equipment to J. Starr's bank account at Citizens Bank in Pennsylvania ending in 8014 (the "J. Starr Account"). The funds so wired from the Florida Company to the J. Starr Account, including those set forth in Counts 1 through 4, below, cleared in New Jersey through the Federal Reserve system.

12. It was a further part of the scheme and artifice to defraud that between in or about 2008 through in or about 2011, defendant BERRY received:

a. At least approximately \$254,000 from the Florida Company for equipment orders that included new telecommunications equipment that

defendant BERRY stole from Company A and provided to the Florida Company;  
and

b. At least several million dollars from the Florida Company for  
used telecommunications equipment that defendant BERRY stole from  
Company A.

13. It was a further part of the scheme and artifice to defraud that  
defendant BERRY used the funds described in the previous paragraph to,  
among other things, make numerous cash withdrawals from the J. Starr  
Account, including hundreds of thousands of dollars from automated teller  
machines physically located in gambling casinos.

14. On or about the dates set forth below, in the District of New Jersey  
and elsewhere, defendant

**JUANITA L. BERRY**

for the purpose of executing and attempting to execute such scheme and  
artifice, knowingly transmitted and caused to be transmitted in interstate  
commerce the following writings, signs, signals, and sounds, namely, certain  
wire transfers from the Florida Company to the J. Starr Account, each  
constituting a separate count of this Second Superseding Indictment:

<b>Count</b>	<b>Approximate Date</b>	<b>Description of Wire Transfer (Approximate Amounts)</b>
1	July 16, 2010	\$6,000 wire transfer from the Florida Company's bank account to the J. Starr Account
2	October 22, 2010	\$8,750 wire transfer from the Florida Company's bank account to the J. Starr Account



3	December 14, 2010	\$15,000 wire transfer from the Florida Company's bank account to the J. Starr Account
4	July 14, 2011	\$2,500 wire transfer from the Florida Company's bank account to the J. Starr Account

In violation of Title 18, United States Code, Sections 1343 and 2.

**From:** "AT&T - US" [ordersender-prod@ansmtp.ariba.com]  
**Sent:** Friday, October 22, 2010 3:12 PM  
**To:** aribiainbox  
**Subject:** CA8RCNZ6,AT&T - US,AN-ORD-EID:prod:1wlv17:35:  
**Attachments:** CA8RCNZ6.htm

*This purchase order was delivered by Ariba Supplier Network. For more information about Ariba and Ariba Supplier Network, visit <http://www.ariba.com>.*

## Purchase Order

### CA8RCNZ6

Order submitted on: Friday 22 Oct 2010 2:11 PM GMT-05:00  
Received by Ariba Supplier Network on: Friday 22 Oct 2010 2:11 PM GMT-05:00

#### Supplier

Telamon Technology Corp  
1000 East 116th Street  
Carmel, IN 46032  
United States  
Phone: +1 (317) 8186888  
Fax: +1 (317) 8186907  
Email: [chris.webb@telamon-corp.com](mailto:chris.webb@telamon-corp.com),  
[juanita.berry@telamon-corp.com](mailto:juanita.berry@telamon-corp.com),  
[brad.riddle@telamon.com](mailto:brad.riddle@telamon.com)

#### Bill To

TCG LOS ANGELES INC  
PO BOX 66960  
ST LOUIS, MO 63166-6960  
United States

#### Ship All Items To

TELAMON  
SHIPPING/RECEIVING  
2 CORN ROAD

DAYTON, NJ 08810  
United States

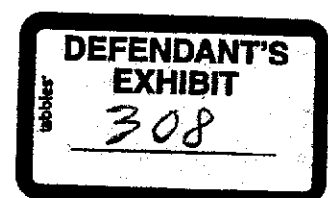
Ship To Code: 0006246905

Email: [damin@ems.att.com](mailto:damin@ems.att.com)

#### Other Information

#### Deliver To

See Ship To Address



InvoiceNotes:

\*\*\*\*\*  
\*\*\*\*\*

1-800-622-7378, PROMPT 2

METRO ITA (FORMERLY DAYTON QAAG) CALL:  
1-800-622-7378, PROMPT 3 TO REACH ONM/METRO ITA (QAAG)

TELEMETRY TESTING CENTER:  
770-929-4172

0002 \*\*\*THERE IS NO SERVICE ON THIS RING, CARDS ARE BEING  
REMOVED  
FROM THIS UNIT\*\*\*

## Comments

## Line Items

Line #	Part ID	Quantity	Unit	Description	Need By	Price	Ext. Price
1	ENGR 950		EA	ENGR	26 Oct 2010	\$1.00USD	\$950.00USD

## Other Information

Cost Category: ENGR  
Telco Furnished Indicator: false  
Operation Code: RM  
Price List ID: 0000000000

2	INST 1,050		EA	INST	26 Oct 2010	\$1.00USD	\$1,050.00USD
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## Comments

### PURCHASE ORDER PROVISIONS:

INCLUDE THE PURCHASE ORDER NUMBER OF THIS ORDER ON ALL CORRESPONDENCE, INVOICES, BILLS OF LADING, ETC.

INVOICES MUST BE CONSISTENT WITH THIS ORDER AND LIST ITEMS IN THE SAME SEQUENCE.

Supplier shall furnish the material or perform the services described in accordance with the provisions set forth below in this Order under the heading entitled "Terms and Conditions". However, if an AT&T Contract Number is shown in this Order, the terms and conditions of that Contract replace those under such heading.

Notwithstanding any other provisions in this Order, the total amount payable by Company for the Work shall be determined by applying the rate of compensation as stated in this Order to the Work actually

27a

performed by Supplier under the Order. Supplier shall not render Work or ship material and Company shall not be required to pay for Work or material in excess of the amount stipulated in this Order unless Supplier shall have first secured an amendment to this Order authorizing the increased expenditure.

#### TERMS AND CONDITIONS

**ACCEPTANCE - ENTIRE AGREEMENT** - Acceptance of this offer to purchase by acknowledgement, shipment or other performance shall be unqualified, unconditional and subject to and expressly limited to the terms and conditions of this Agreement. All previous offers by Supplier are hereby rejected. Company shall not be bound by terms additional to or different from those in this Agreement that may appear in Supplier's quotations, acknowledgements, invoices or in any other communications from Supplier unless such terms are expressly agreed to in a writing signed by Company. Acceptance of materials, Work or services, payment or inaction by Company shall not constitute Company's consent to or acceptance of any such terms. Estimates or forecasts furnished by Company shall not constitute commitments. Upon acceptance, the terms contained in this Agreement shall constitute the entire agreement between Supplier and Company with respect to the subject matter of this Agreement, superseding all contemporaneous oral agreements and prior understandings of the parties, and may not be modified or rescinded except by a writing signed by Supplier and Company. All references in these terms and conditions to this Agreement or to Work, services, material, equipment, products software or information furnished under, in performance of, pursuant to, or in contemplation of, this Agreement shall also apply to any orders issued pursuant to this Agreement. The term "Work" as used in this Agreement may also be referred to as "services".

**ASSIGNMENT AND SUBCONTRACTING** - Supplier shall not assign any right or interest under this Agreement (excepting monies due or to become due) or delegate or subcontract any Work or other obligation to be performed or owed under this Agreement without the prior written consent of Company. Any assignment, delegation or subcontracting without such consent shall be void. Any assignment of monies shall be void if (1) Supplier shall not have given Company at least thirty (30) days prior written notice of such assignment or (2) such assignment imposes upon Company obligations to the assignee in addition to the payment of such monies, or precludes Company from dealing solely and directly with Supplier in all matters pertaining to this Agreement including amendments or settlements of charges. All Work performed by Supplier's subcontractor(s) at any tier shall be deemed Work performed by Supplier.

**ASSIGNMENT BY COMPANY** - Company shall have the right to assign this Agreement and to assign its rights and delegate its duties under this Agreement either in whole or in part (an "Assignment"), including, but not limited to, software licenses and other grants of intellectual property rights, at any time and without Supplier's consent, to (i) any present or future affiliate of Company (including any subsidiary or affiliated entity thereof); (ii) any unaffiliated new entities that may be formed by Company pursuant to a corporate reorganization, including any subsidiary or affiliated entity thereof; or (iii) any third party which by purchase, lease, outsourcing agreement or otherwise, assumes the operation, administration and/or management of any substantial portion of the business of Company affected by this Agreement. Company shall give Supplier written notice of any Assignment, including (i) the effective date of the Assignment ("Effective Date"), and (ii) the entity or entities receiving rights and/or assuming obligations under this Agreement ("Entities"). Upon the Effective Date and to the extent of the Assignment, Company shall be released and discharged from all further duties under this Agreement as to materials, services, or intellectual property rights transferred to assignee, whether ordered from or provided by Supplier prior to, on or after the Effective Date. Notwithstanding that an Assignment has been made, Company, at its sole option, shall continue to have the right to purchase, lease, or license material, software or services under this Agreement as if an Assignment had not been made. In addition, Supplier agrees that this Agreement may be replicated for any entity referred to above, thus creating one or more additional agreements, each between Supplier and the entity or entities requesting such replication and each identified by its own agreement number, but containing the terms

and conditions of this Agreement, including prices. Company shall give Supplier written notice of any intention to replicate, and copies of the replicated agreement(s) for execution by Supplier. If this Agreement includes a commitment to purchase a stated or determinable quantity of goods, services or rights, or prices that vary based on the quantities purchased, the aggregate of purchases by the Entities under this Agreement and the replicated agreements will be included in determining the quantity.

**COMPLIANCE WITH LAWS** - Supplier and all persons furnished by Supplier shall comply at their own expense with all applicable federal, state, local and foreign laws, ordinances, regulations and codes, including the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections in performance of this Agreement.

**GOVERNING LAW** - This Agreement shall be governed by the laws of the State of New Jersey, excluding application of its conflict of laws provisions. The parties agree that the provisions of the New Jersey Uniform Commercial Code apply to this Agreement and all transactions under it, including agreements and transactions relating to the furnishing of services, the lease or rental of equipment or material, and the license of software. Supplier agrees to submit to the jurisdiction of any court wherein an action is commenced against Company based on a claim for which Supplier has agreed to indemnify Company under this Agreement.

**GOVERNMENT CONTRACT PROVISIONS** - The following provisions regarding equal opportunity, and all applicable laws, rules, regulations and executive orders specifically related thereto, including applicable provisions and clauses from the Federal Acquisition Regulation and all supplements thereto are incorporated in this Agreement as they apply to work performed under specific U.S. Government contracts: 41 CFR Part 60-1, Obligations of Contractors and Subcontractors, Sections: 41 CFR 60-1.4, Equal Opportunity Clause; 41 CFR 60-1.7, Reports and Other Required Information; 41 CFR 60-1.8, Segregated Facilities; 41 CFR Part 60-250, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era, Section 41 CFR 60-250.4, Coverage and Waivers (for contracts and subcontracts of \$10,000 or more); and, from 41 CFR Part 60-741, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, Section 41 CFR 60-741.4, Coverage and Waivers (for contracts and subcontracts in excess of \$10,000), wherein the terms "contractor" and "subcontractor" shall mean "Supplier". In addition, orders placed under this Agreement containing a notation that the material or services are intended for use under Government contracts shall be subject to such other Government provisions printed, typed or written thereon, or on the reverse side thereof, or in the attachments thereto.

**IDENTIFICATION** - Supplier shall not without Company's prior written consent: (a) disclose to any third party the contents and/or the facts of this Agreement; (b) engage in any advertising, promotion or publicity related to this Agreement; and (c) make public use of Company's trade name, trademark, service mark, insignia, symbol, logo, or other designation of AT&T Corp. or its affiliates.

**INDEMNITY** - All persons furnished by Supplier shall be considered solely Supplier's employees or agents, and Supplier shall be responsible for payment of all unemployment, social security and other payroll taxes, including contributions when required by law. Supplier agrees to indemnify Company, its affiliates, its and their customers and each of their officers, directors, employees, successors and assigns (all hereinafter referred to in this clause as "Company") from and against any proved or alleged claims, demands or suits, or any losses, damages, liabilities, fines, penalties and expenses (including attorney's fees) that in any way arise out of, relate to or result from this Agreement or the items, tangible or intangible, furnished or services performed under or in contemplation of this Agreement including, but not limited to: (1) injuries or death to persons or damage to property, including theft; (2) failure by Supplier to perform any of its obligations under this Agreement; (3) negligent or intentional acts or omissions of Supplier; and (4) infringement of any patent, copyright, trademark, trade secret or other intellectual property right. Supplier agrees to defend Company, at Company's request, against any such claim, demand or suit. Company agrees to notify Supplier within a reasonable time of any written claims or demands against Company for which Supplier is responsible under this clause. Company

shall have no indemnity obligations to Supplier.

**INSPECTION** - Supplier will provide safe access to the Work at all times for Company's inspection.

**INVOICING** - If Supplier is enabled to transact business with Company using the internet-based Ariba Supplier Network ("ASN"), Supplier agrees to submit invoices in electronic form to Company's Accounts Payable organization through the ASN. If Supplier is not so enabled, it agrees to submit invoices to Company's Accounts Payable organization at P.O. Box 66960, St. Louis, MO 63166. Supplier shall submit invoices promptly upon the later of (1) completion of shipment of all the deliverables, or (2) receiving notice that the Work has been completed to Company's reasonable satisfaction. Invoices shall contain such information as Company may reasonably request. Unless this Agreement calls for payment at a later time, invoices shall be payable forty-five (45) days after receipt of an accurate invoice by Company's Accounts Payable organization. Payment of invoices shall not waive Company's rights to inspect, test or reject.

**MEDIATION** - If a dispute arises out of or relates to this Agreement, or its breach, and the parties have not been successful in resolving such dispute through negotiation, the parties agree to attempt to resolve the dispute through mediation by submitting the dispute to a sole mediator selected by the parties or, at any time at the option of a party, to mediation by the American Arbitration Association ("AAA"). Each party shall bear its own expenses and an equal share of the expenses of the mediator and the fees of the AAA. The parties, their representatives, other participants and the mediator shall hold the existence, content and result of the mediation in confidence. If such dispute is not resolved by such mediation, the parties shall have the right to resort to any remedies permitted by law. All defenses based on passage of time shall be tolled pending the termination of the mediation. Nothing in this clause shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending mediation. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate.

**RELEASES VOID** - Neither party shall require (i) waivers or releases of any personal rights or (ii) execution of documents which conflict with the terms of this Agreement, from employees, representatives or customers of the other in connection with visits to its premises and both parties agree that no such releases, waivers or documents shall be pleaded by them or third persons in any action or proceeding.

**SHIPPING** - Supplier shall: (1) ship the material covered by this Agreement or order complete unless instructed otherwise to the designated destination; (2) ship according to routing instructions given by Company; (3) place the Agreement and/or order number on all subordinate documents, packages and shipping papers; (4) enclose a packing memorandum with each shipment and, when more than one package is shipped, identify the package containing the memorandum. Adequate protective packing shall be furnished at no additional charge. Shipping and routing instructions may be furnished or altered by Company without writing. If Supplier does not comply with Company's shipping or routing instructions, Supplier authorizes Company to deduct from any invoice of Supplier (or to charge back to Supplier) any increased costs incurred by Company as a result of Supplier's noncompliance.

**SUPPLIER'S INFORMATION** - Notwithstanding anything to the contrary in this Agreement, Supplier agrees that Company shall have no confidentiality obligation with respect to any information (whether in tangible or intangible form) that is delivered to Company under or in contemplation of this Agreement. If Supplier delivers any third party-owned information to Company under or in contemplation of this Agreement, Supplier represents and warrants that it has the right to deliver such third party-owned information.

**SURVIVAL OF OBLIGATIONS** - It is agreed that certain obligations of the parties under this Agreement, which, by their nature would continue beyond the termination, cancellation, or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement. Such obligations include, by way of illustration only and not limitation, those contained in the

**COMPLIANCE WITH LAWS, IDENTIFICATION, INDEMNITY, (INSURANCE if included in this Agreement), RELEASES VOID, USE OF INFORMATION and WARRANTY clauses.**

**TAXES** - Company shall reimburse Supplier only for the following tax payments with respect to transactions under this Agreement unless Company advises Supplier that an exemption applies: state and local sales and use taxes, as applicable. Taxes payable by Company shall be billed as separate items on Supplier's invoices and shall not be included in Supplier's prices. Company shall have the right to have Supplier contest any such taxes that Company deems improperly levied at Company's expense and subject to Company's direction and control.

**TITLE AND RISK OF LOSS** - Title and risk of loss and damage to material purchased by Company under this Agreement shall vest in Company when the material has been delivered at the FOB point. If this Agreement or an order issued pursuant to this Agreement calls for additional services including, but not limited to, unloading, installation or testing, to be performed after delivery, Supplier shall retain title and risk of loss and damage to the material until the additional services have been performed. Notwithstanding the foregoing sentence, if Supplier is expressly authorized to invoice Company for material upon shipment or prior to the performance of additional services, title to such material shall vest in Company upon payment of the invoice, but risk of loss and damage shall pass to Company as provided in the foregoing sentence.

**USE OF INFORMATION** - As a result of Supplier's anticipated or actual performance under this Agreement, Supplier may receive or become exposed to (a) Company's intangible information expressed in the form of ideas, data, programs, technical, business or other types of intangible information, or (b) Company's documents, prints, tapes, discs, or other types of tangible information (such tangible and intangible information hereinafter called "Information"). Supplier agrees to (1) keep all such Information confidential and use such Information only for performing under this Agreement; (2) inform Supplier's employees, contractors and agents of their obligations to keep such Information confidential and require those employees, contractors and agents to honor such obligations; and (3) promptly surrender or destroy such Information, and any copies thereof, free-of-charge, when requested to do so by Company.

**WAIVER** - An effective waiver under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation or responsibility under this Agreement will not be deemed a waiver of subsequent or other prior instances of non-compliance.

**WARRANTY** - Supplier warrants to Company and its customers that material furnished will be new, merchantable, free from defects in design, material and workmanship and will conform to and perform in accordance with the specifications, and if applicable, drawings and samples. These warranties extend to the future performance of the material and shall continue for the longer of (a) the warranty period applicable to Company's sales to its customers of the material or of products which incorporate the material, (b) one year after the material is accepted by Company or (c) such greater period as may be specified elsewhere in this Agreement. Supplier also warrants to Company and its customers that services will be performed in a first class, workmanlike manner. Supplier also warrants that if materials are capable of processing, providing, receiving and/or displaying data, they will do so correctly, as well as exchange accurate data with all products with which the materials are intended to be used, within and between the twentieth and twenty-first centuries, and that services will continue to be provided in accordance with this Agreement for any time period before, on or after January 1, 2000. In addition, if material furnished contains one or more manufacturers' warranties, Supplier hereby assigns such warranties to Company and its customers. All warranties shall survive inspection, acceptance and payment. Material or services not meeting the warranties will be, at Company's option, returned for or subject to refund, repaired, replaced or reperformed by Supplier at no cost to Company or its customers and with transportation costs and risk of loss and damage in transit borne by Supplier. Repaired and replacement material shall be warranted as set forth above in this clause.

#### **SUPPLEMENTAL TERMS APPLICABLE IF SERVICES ARE PROVIDED**

**CHANGES** - Company may at any time during the progress of the Work require additions, deletions or alterations (all hereinafter referred to as a "Change") to the Work. Within ten (10) days after a request

for a Change, Supplier shall submit a proposal to Company which includes any changes in Supplier's costs or in the delivery or Work schedule necessitated by the Change. Company shall within ten (10) days of receipt of the proposal, either (i) accept the proposal with a written amendment directing Supplier to perform the Change or (ii) advise Supplier not to perform the Change in which event Supplier shall proceed with the original Work. No such Change shall be considered nor shall Supplier be entitled to any compensation for work done pursuant to or in contemplation of a Change, unless made pursuant to a written amendment or Change Order issued by Company.

**COMPANY'S EQUIPMENT** - Unless otherwise specifically provided in this Agreement, Supplier shall provide all labor and equipment for performance of this Agreement. Should Supplier actually use any equipment owned or rented by Company or its customer, Supplier acknowledges that Supplier accepts the equipment "as is, where is," that neither Company nor its customer have any responsibility for its condition or state of repair and that Supplier shall have risk of loss and damage to it. Supplier agrees not to remove the equipment from Company's or its customer's premises and to return it to Company or its customer upon completion of use, or at such earlier time as Company or its customer may request, in the same condition as when received by Supplier, reasonable wear and tear excepted.

**INSURANCE** - Supplier shall maintain and cause Supplier's subcontractors to maintain during the term of this Agreement: (1) Workers' Compensation insurance as prescribed by the law of the state or nation in which the Work is performed; (2) employer's liability insurance with limits of at least \$1,000,000 for each occurrence; (3) automobile liability insurance if the use of motor vehicles is required, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; (4) Commercial General Liability ("CGL") insurance, ISO 1988 or later occurrence form of insurance, including Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; and (5) if the furnishing to Company (by sale or otherwise) of products, material or construction, installation, maintenance or repair services is involved, CGL insurance endorsed to include products liability and completed operations coverage in the amount of \$5,000,000 per occurrence, which shall be maintained for at least one (1) year following the expiration or termination of this Agreement. All CGL and automobile liability insurance shall designate AT&T Corp., its affiliates, and each of their directors, officers and employees (all referred to in this clause as "Company") as additional insureds. All the foregoing insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. Any other coverage available to Company shall apply on an excess basis. Supplier agrees that Supplier, Supplier's insurer(s) and anyone claiming by, through, under or in Supplier's behalf shall have no claim, right of action or right of subrogation against Company or its customers based on any loss or liability insured against under the foregoing insurance. Supplier and Supplier's subcontractors shall furnish prior to the start of Work certificates or adequate proof of the foregoing insurance including, if specifically requested by Company, copies of the endorsements and policies. Company shall be notified in writing at least thirty (30) days prior to cancellation of or any material change in the policy. Insurance companies providing coverage under this Agreement must be rated by A.M. Best with at least an A- rating and a financial size category of at least Class VII.

**TERMINATION** - Company may at any time terminate this Agreement or an order, in whole or in part, by written notice to Supplier. In such case, Company's liability shall be limited to payment of the amount due for Work performed up to and including the date of termination (which amount shall be substantiated with proof satisfactory to Company and shall not exceed the price of Work being terminated), and no further Work will be rendered by Supplier. Such payment shall constitute a full and complete discharge of Company's obligations.

**WORK DONE BY OTHERS** - If any of the Work is dependent on work done by others, Supplier shall inspect and promptly report to Company's Representative any defect that renders such other work unsuitable for Supplier's proper performance. Supplier's silence shall constitute approval of such work as fit and suitable for Supplier's performance.



## Other Information

Cost Category:

INST

Telco Furnished Indicator:

false

Operation Code:

RM

Price List ID:

0000000000