

ACES US TERMS AND CONDITIONS

ADTRAN CUSTOM EXTENDED SERVICES (ACES) is a comprehensive and flexible installation and maintenance service program. An ACES maintenance plan ("**Plan**") is provided under buyer's order ("**Order**") for an initial term of the time span specified in such Order. Upon expiration of the initial term or a renewal term, the Plan will, at ADTRAN's discretion, automatically renew for successive renewal terms with each renewal term for the same length of time as the initial term, or if the Plan has been renewed, the same length of time as the most recent renewal term, unless either party gives notice in writing to the other party at least thirty (30) days prior to expiration of the then current term and advises of its intent not to renew the Plan. ADTRAN Custom Extended maintenance Services ("**ACES**") shall begin thirty (30) days after ADTRAN's receipt of Order unless ADTRAN agrees to an earlier date. During such thirty (30) day period ADTRAN may conduct on-site inspections to verify the operating condition of equipment covered by the Order (the "Equipment") and determine if the Equipment is properly installed. Improperly installed or malfunctioning equipment must be restored to good operating condition before ADTRAN will be obligated to perform ACES under the Order. At the Customer's request, ADTRAN shall perform such restoration for an additional charge based on ADTRAN's then current Time and Material ("**T&M**") rates. "Customer" means a customer that purchased ACES directly from ADTRAN or from an ADTRAN-approved reseller ("**Reseller**").

SERVICES PROVIDED ADTRAN offers various levels of on-site and off-site ACES. The Customer shall receive the level of ACES purchased as indicated on the face of its Order and the ACES maintenance plan Verification Letter. If at any time the Customer requires service above the level provided for by the particular ACES plan it purchased, Customer may elect to have ADTRAN perform such additional service on a T&M basis. ADTRAN reserves the right to bill for dispatches resulting in but not limited to a No Trouble Found ("**NTF**"), Excessive On-Site Wait Time (billable after 30 minutes) or Site Not Ready ("**SNR**").

CUSTOMER'S OBLIGATIONS Customer shall maintain environmental conditions at the location of the Equipment in accordance with the Equipment's specifications. Customer shall provide to ADTRAN full access to the Equipment and any relevant technical documentation or information necessary for ADTRAN to perform its maintenance and service obligations. Customer shall notify ADTRAN of any Equipment adds or relocation at least (30) days in advance. Customer's failure to do so shall void ADTRAN's obligation to maintain the new and/or moved Equipment.

SERVICES EXCLUDED ADTRAN shall not provide support for products that are altered, modified, mishandled, destroyed or damaged by natural causes, public enemy, electrical stress or damage due to a negligent or willful act or omission or use other than as specified in the ADTRAN-supplied documentation, or resolution of software or hardware problems resulting from third party products or causes beyond ADTRAN's control. ADTRAN will provide ACES as set forth in the Order on the Equipment listed on the applicable maintenance plan Verification Letter, which, together with

these terms and the Order, constitute this "Agreement."

PLAN CHANGES During the term of ACES plan, Customer may, upon thirty (30) days written notice, upgrade its ACES plan, provided that any upgrade in service shall be subject to ADTRAN's approval. During the initial term, Customer may, subject to ADTRAN's approval, add Equipment to its ACES plan for an additional charge.

TERMINATION ADTRAN may terminate a Customer's ACES plan without notice to Customer if (i) any maintenance or alteration is made to the Equipment by non-ACES personnel and without ADTRAN's prior authorization, or (ii) Customer becomes insolvent, makes an assignment for the benefit of creditors, or ceases functioning as a going concern. ADTRAN may terminate a Customer's ACES plan upon thirty (30) days notice if (i) Customer breaches the terms of its ACES plan and fails to correct such default within thirty (30) days. ADTRAN may withhold / suspend services if the Reseller / Customer fails to pay within thirty (30) days for the invoiced service fees incurred, such as, but not limited to, T&M, NTF, SNR or Excessive On-Site Wait Time.

SERVICE CHARGES AND PAYMENT The initial charge for ACES plan shall be invoiced in advance of service commencement unless otherwise specified by ADTRAN in the Order. All payments shall be due thirty (30) days from the date of invoice. The charges shall be fixed for the initial term except as otherwise provided for in the Order. Thereafter, ADTRAN may change ACES plan maintenance charges upon thirty (30) days notice to Customer. T&M, NTF, SNR, and Excessive On-Site Wait shall be charged upon each appropriate incidence, invoiced post-event and the applicable rates are subject to change without notice. To ensure continuity of service, renewal Orders must be received before the ACES plan expiration. A lapsed ACES plan will be reinstated thirty (30) days from the receipt of the renewal Order, subject to ADTRAN's approval. T&M charges will apply for maintenance dispatches requested during such thirty (30) day reinstatement period. T&M, NTF, SNR, and Excessive On-Site Wait shall be charged upon each appropriate incidence, invoiced post-event and the applicable rates are subject to change without notice.

WARRANTY ADTRAN warrants to Customer that services performed by ADTRAN or its agents or subcontractors under the ACES plan will be performed according to these terms and conditions. ADTRAN warrants to Customer that such services will be performed in a workmanlike manner and that **parts and materials furnished by ADTRAN** hereunder will be free from defects in workmanship and will conform to applicable specifications upon installation and for thirty (30) days thereafter. If any failure to meet this warranty occurs within the warranty period, ADTRAN shall repeat the service and at its option, either repair or replace the defective parts or materials without additional charge to Customer. ADTRAN does not warrant that the operation of any Equipment item under service will be uninterrupted. Where possible, ADTRAN will pass through to Customer any third party manufacturer's warranty for materials supplied hereunder. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES,**

WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. If services, conditions or support other than those addressed in this document have been pledged, the party that pledged the delivery of such additional services is responsible to deliver those services.

ASSIGNMENT The ACES plan is assignable only upon the written consent of ADTRAN, and such consent shall not be unreasonably withheld.

GOVERNING LAW The ACES plan and all the rights and duties in connection therewith shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict of laws provisions.

ARBITRATION Any controversy or claim arising out of, concerning, or relating to the ACES plan or the services and materials provided thereunder, or the breach thereof, shall be settled by arbitration in accordance with Expedited Procedures and the then current rules of the American Arbitration Association, and judgment upon the award by the arbitrator shall be entered in any court having jurisdiction thereof. Any arbitration shall be conducted in Huntsville, Alabama. The costs, fees, and expenses of or associated with the arbitration shall be shared equally by each party.

SEVERABILITY AND WAIVER If any provision of this Agreement shall be held invalid in a court of law or by an arbitrator, the remaining provisions shall be construed as if the invalid provision was not included in this Agreement. No course of dealing or failure of either party to strictly enforce any provision of this Agreement shall be construed as a waiver of the future performance of that or any other provision hereof.

ADTRAN'S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT AND THE SERVICES AND PRODUCTS PROVIDED HEREUNDER SHALL BE LIMITED TO THE CHARGES PAID BY CUSTOMER FOR SUCH SERVICES AND PRODUCTS HEREUNDER. IN NO EVENT WILL ADTRAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE MAINTENANCE AGREEMENT OR THE SERVICES AND PRODUCTS PROVIDED HEREUNDER WHETHER OR NOT ADTRAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IMPLEADER Customer shall not implead or bring any action against ADTRAN based on any claim by any person for personal injury or death to an employee of ADTRAN for which ADTRAN has previously paid or is obligated to pay Worker's Compensation benefits to such employee or claimant and for which such employee or claimant could not otherwise bring legal action against ADTRAN.

RELATIONSHIP OF THE PARTIES

If purchased through Reseller, CUSTOMER ACKNOWLEDGES AND EXPRESSLY AGREES THAT NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CUSTOMER'S SOLE RECOURSE FOR ANY ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE AGAINST RESELLER.

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ENTIRE AGREEMENT The Agreement constitutes the entire agreement between ADTRAN and Customer with respect to the subject matter hereto and is in lieu of all other agreements, express, oral or implied. Except as expressly provided herein, the Agreement may only be modified by written /amendment signed by both parties. 10/11