**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To	Board of Education
From	Kyla Johnson-Trammell, Superintendent Vernon Hal, Senior Business Officer *VH* Susan Beltz, Chief Technology Officer *SB*
Board Meeting Date	*10-11-17*
Subject	Ratification of Service Agreement between Oakland Unified School District and Twilio for Telecommunication Services

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Action Requested	Ratification of Service Agreement between Oakland Unified School District and Twilio for Telecommunication Services beginning September 1, 2017 through August 31, 2018 in an amount not to exceed $60,000.
Background	Oakland Unified School District has a standalone, analog phone system at over 80 schools and all but one of our non-instructional facilities. These antiquated phone systems require analog phone lines and services to provide inbound and outbound dialing for our sites. AT&T is the district's phone service carrier. Over the years, analog services have been increasing in cost as Voice Over Internet Protocol (VOIP) phone systems and cellular services have grown in popularity and become mainstream. We have identified a legacy service called Remote Call Forwarding (RCF) that is integral to the operation of our current phone systems, and whose cost has significantly increased over time.
Discussion	The Technology Services Department has researched possible vendors who can host these RCF services and has chosen Twilio as a high-quality, lower-cost alternative to provide RCF services. Twilio is a cloud telecommunications provider that provides flexible digital solutions to interconnect businesses to their own sites and to people. By providing a seemingly analog service to users, and a high-end digital solution in the background, Twilio has the ability to provide transparent RCF services to us. We project the base cost of the RCF lines to the district will drop from $39,540/month to $450/month with usage charges dropping slightly from $5,150/month to $5,000/month. This will provide the district with an annual savings of approximately $480,000.

This move to a new service provider and change to how our phone connections are provided to schools is intended to be the first move in a larger plan to consolidate phone services into one VOIP system and a modern telecommunications infrastructure at the Oakland Unified School District.

Recommendation

Approve the service agreement between Oakland Unified School District and Twilio for a term of one year and a 30 day notice of termination, not to exceed $60,000.

Fiscal Impact

Funding Resource: General Purpose/Central Office Utilities-9991158202

Attachments

- Twilio Master Sales Agreement
- Twilio Order Form
- Contract Justification Form

CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.

Legislative File ID No. 17 - 1990

Department: Technology Services

Vendor Name: Twilio

Contract Term: Start Date: 9/1/2017   End Date: 8/31/2018

Annual Cost: $ 60,000.00

Approved by: Susan Beltz/Vernon Hal

Is Vendor a local Oakland business? Yes ☐ No ☑

Why was this Vendor selected?

Twilio provides a unique cloud based solution that will allow us to link new digital services to legacy analog phone lines. Analog phones lines and services have been increasing in cost from our traditional vendors causing us to seek a new service provider until we are able to upgrade our aging phone systems. Currently we must continue using an analog service called Remote Call Forwarding as it is integral to the our phone systems at all, except for 6, sites. Twilio is able to provide high quality, low cost Remote Call Forwarding and give us visibility into the usage of these lines.

Summarize the services this Vendor will be providing.

We will be using Twilio for Remote Call Forwarding services across all sites.

Was this contract competitively bid? Yes ☐ No ☑

If No, answer the following:

1) How did you determine the price is competitive?

We currently pay $60/month per line for RCF services with AT&T. That base cost of each line will drop to $0.75/month once we have moved these lines to Twilio.

2) Please check the competitive bid exception relied upon:

☐ **Educational Materials**

☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services

☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)

☑ **Professional Service Agreements** of less than $86,000 (increases a small amount on January 1 of each year)

☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)

☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)

☐ **Emergency** contracts

☐ **Technology** contracts

 ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the $86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected

 ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process

 ☐ Western States Contracting Alliance Contracts (WSCA)

 ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]

☐ **Piggyback" Contracts** with other governmental entities

☐ **Perishable Food**

☐ **Sole Source**

☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price

☐ **Other, please provide specific exception**

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Twilio:
Twilio Inc.
375 Beale St, Suite 300,
San Francisco, CA 94105
invoicing@twilio.com

⦂⦂ twilio

Order Form

Twilio Account SID:
ACd0799f38d4c0814fbf4e7329bba52c85

Customer:
Oakland Unified School
District
Oakland, California,
United States,
susan.beltz@ousd.org

Rate Schedule		
Any product Customer purchases that is not explicitly mentioned in this Rate Schedule will be charged at the then-current rate available at http://www.twilio.com/pricing. All rates that Customer is charged will be exclusive of taxes.		
Fixed Discounts		
Product	**Standard Rates**	**Discounted Rates**
Voice & Video		
Programmable Outbound Minute - United States & Canada	$0.013	$0.00975
Programmable Outbound Minute - United States & Canada - Toll Free	$0.013	$0.00975
Programmable Outbound Minute - United States - Alaska	$0.09	$0.0675
Programmable Outbound Minute - United States - Hawaii	$0.013	$0.00975
UNITED STATES Local Incoming Minutes	$0.0085	$0.00638
UNITED STATES Mobile Incoming Minutes	$0.0085	$0.00638

Term: This Order Form shall be valid for 12 months from the first Start Date set forth below (the "*Initial Term*") and shall automatically renew for additional twelve (12) month terms (each, a "*Renewal Term*"), unless either party provides notice of non-renewal no less than thirty (30) days prior to the end of the Initial Term or a Renewal Term. The Initial Term and all Renewal Terms shall be referred to herein as the "*Term*."

The rates in the Rate Schedule shall apply to the Twilio Account SID(s) set forth above when the Initial Term begins.

Agreement History *(Insert an "X" for the applicable option)*:

_X_ This Order Form represents the sole pricing agreement between Twilio and Customer solely for the Twilio Account SID(s) set forth above and voids, supersedes, and replaces all prior order forms and pricing agreements previously entered into between the parties for such Twilio Account SID(s).

____ Rates in this Order Form supplements previous order forms and pricing agreements solely for the Twilio Account SID(s) set forth above.

Invoicing Payment Terms: Invoices will be sent on a monthly basis. Payment of undisputed fees is due Net-30 days from the date of the invoice. Invoices are sent electronically via e-mail as a PDF. Unless otherwise agreed by the parties in writing, all fees will be paid in United States dollars (USD). Except as otherwise provided in the Agreement (defined below), payment obligations are non-cancelable and fees paid are non-refundable. If Customer fails to pay an invoice when due and fails to cure such non-payment within 10 days of written notice thereof, then Twilio may assess and Customer will pay a late fee of the lesser of 1.5% per month or the maximum amount allowable by law and Twilio may suspend the Twilio Services to Customer for failure to pay as outlined in the Agreement (defined below).

Agreement: Rates will be applied to the Twilio Account SID(s) set forth above and its associated subaccounts. This Order Form is hereby incorporated into and subject to that certain Master Sales Agreement or other similar written agreement between Twilio and Customer, effective on or prior to the Order Form Effective Date (as defined below) (the "*Agreement*"), unless this Order Form becomes effective before the Agreement, in which case this Order Form shall be incorporated into and subject to the Twilio Terms of Service as set forth at https://www.twilio.com/legal/tos ("*Terms of Service*") until such Agreement is effective. Capitalized terms used but not defined in this Order Form shall have the meanings provided to them in the Agreement (or the Terms of Service, if applicable). In the event of any direct

conflict between the terms of this Order Form and the terms of the Agreement (or the Terms of Service, if applicable), then the terms of this Order Form shall control. The person signing on behalf of Customer represents that it has the full authority to execute and bind Customer to this Order Form. This Order Form shall be effective on the date that it is executed by the Customer ("*Order Form Effective Date*").

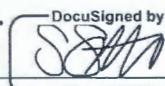[This space is intentionally left blank; signature page follows]

TWILIO INC. – OAKLAND UNIFIED SCHOOL DISTRICT

MASTER SALES AGREEMENT

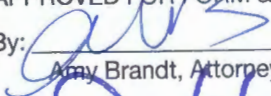|	
Customer: Oakland Unified School District	
Address: 1000 Broadway, Oakland, California, United States, 94607	
Phone: (510) 879-8873	Email: susan.beltz@ousd.org
Contact: Susan Beltz	Title: Chief Technology Officer
Initial Term: September 1, 2017 to August 31, 2018 (12 months)	

Twilio's cloud software platform (the "*Platform*") enables companies to build and integrate communications capabilities into their software applications, including mobile, web-based and desktop applications. Oakland Unified School District wishes to use Twilio's Platform service in connection with its own business applications and operations and/or certain applications that it develops and distributes.

This Master Sales Agreement (this "*Agreement*") sets forth the terms of OUSD's use of Twilio's Platform service and is entered into as of the date on which this Agreement is fully executed as indicated in the signature blocks below ("*Effective Date*") between Twilio Inc., a Delaware corporation located at 375 Beale Street, Suite 300, San Francisco, CA 94105 ("*Twilio*") and Oakland Unified School District, a California school district, located at Oakland, California, United States, ("*OUSD*" or "*Customer*"). This Agreement consists of the following Terms and Conditions and all attachments hereto.
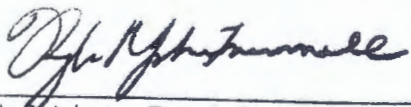
Oakland Unified School District

By: _____

Name: Vernon Hall

Title: Senior Business Officer

Date: 9/18/17

Twilio Inc.

By: _____

Name: Sandra Smith

Title: VP, FP&A

Date: 9/7/2017

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By: _____
Amy Brandt, Attorney at Law

James Harris
President, Board of Education

Kyla R. Johnson-Trammell
Secretary, Board of Education

File ID Number: 17-1990
Introduction Date: 10-11-17
Enactment Number: 17-1437
Enactment Date: 10-11-17
By:

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Oakland Unified School District

By: _____

Name: ___Vernon Hal_____

Title: ___Senior Business Officer_____

Date: ___9/18/7_____

Twilio Inc.

By: ___Sandra A. Smith_____

Name: ___Sandra A. Smith_____

Title: ___VP, FP&A_____

Date: ___9/14/2017_____

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By: _____
Amy Brandt, Attorney at Law

James Harris
President, Board of Education

Kyla R. Johnson-Trammell
Secretary, Board of Education

File ID Number: ___17-1990_____
Introduction Date: ___10-11-17_____
Enactment Number: ___17-1437_____
Enactment Date: ___10-11-17_____
By:

TERMS AND CONDITIONS

1.   Definitions

"*Affiliate*" means, with respect to a specified party, a party that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the party specified. For purposes of this definition, "control" of any party means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such party, whether through the ownership or voting capital stock or equity, by contract or otherwise and includes subsidiaries.

"*Customer Application*" means a software application that interfaces with the Twilio Services and includes any services (web-based or other services) made available by Customer through that application.

"*Customer Data*" means data and other information made available to Twilio through the use of the Twilio Services under this Agreement, including call records, audio recordings, recording transcriptions and message records and content.

"*Documentation*" means all of the instructions, code samples, the TwiML markup language, on-line help files and technical documentation made publicly available by Twilio for the Twilio Services.

"*Emergency Services*" means services that allow a user to connect with emergency services personnel or public safety answering points such as 911 or E911 services.

"*End User*" means any (i) employee, agent and/or contractor of Customer or its Affiliates, and (ii) any other user of a Customer Application.

"*Initial Term*" is defined on the cover page of this Agreement.

"*Law*" means any statue, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, award, injunction, writ, determination, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, any regulatory authority or any arbitrator court or tribunal of competent jurisdiction.

"*Order Form*" means the schedule of fees and payment terms and any future schedules for Twilio Services ordered by Customer and accepted in writing by Twilio.

"*SLA*" means the service level agreement set forth in Exhibit A attached hereto.

"*Support Terms*" means the terms of support available at https://www.twilio.com/support-plans, as such may be updated from time to time.

"*Twilio Acceptable Use Policy* "and "*Twilio AUP*" means certain terms and conditions relating to the use of the Twilio Services, available at http://www.twilio.com/legal/aup, as such may be updated from time to time upon five (5) days prior notice to Customer.

"*Twilio API*" means an application programming interface for the Twilio Services (or feature of the Twilio Services) provided to Customer by Twilio.

"*Twilio Properties*" means the Twilio website, Twilio API, Documentation and technical support made available by Twilio to Customer in connection with the Twilio Services.

"*Twilio Services*" means the Platform and other services offered and provided by Twilio to Customer under this Agreement, which are generally comprised of two (2) components: a) Platform services, including the Twilio APIs and any separately requested software provided to Customer in connection with its use of the services, and

programs, features, functions and report formats, and subsequent updates or upgrades of any of the foregoing made generally available by Twilio, and b) <u>connectivity services</u>, which include the interconnection capabilities embedded within the Twilio Services that link the Twilio Services to the telecommunication carriers' networks (including fixed-line, cellular, wireless, high-bandwidth, and/or fiber optic cable) via the Internet.

2.   Twilio Customer Program and Services

2.1   <u>Provision of Services</u>. Twilio will make the Twilio Services available to OUSD in accordance with the SLA. The Twilio Services shall perform substantially in accordance with the published Documentation or any modifications thereto as made publicly available by Twilio from time to time during the relevant term. Twilio shall use reasonable commercial efforts to correct any non-conforming Twilio Service at no additional charge as set forth in the Support Terms and SLA. Subject to the terms and conditions of this Agreement, Twilio grants OUSD a non-exclusive, revocable right to:

(a)   Use the Documentation and Twilio APIs as needed to develop Customer Applications;

(b)   Make the Twilio Services available to its End Users in connection with the use of each Customer Application, in accordance with the Documentation and Twilio AUP; and

(c)   Otherwise use the Twilio Properties solely in connection with and as necessary for OUSD's activities hereunder.

2.2   <u>Use of Data</u>. Twilio will use and process the Customer Data solely to the extent necessary for the performance of the Twilio Services and will obtain no rights in such Customer Data by virtue of its use under this Agreement. OUSD acknowledges that it may be necessary for Twilio to access the Customer Data to respond to any technical problems or Customer queries and to ensure the proper working of the Twilio Services. Twilio's access will be limited to such purposes. OUSD acknowledges that, except as agreed by the parties in writing, Twilio may periodically delete Customer Data upon five (5) days prior notice to OUSD. OUSD further acknowledges that data storage is not guaranteed by Twilio and agrees that Twilio will not have any liability whatsoever for any damage, liabilities, losses, or any other consequences that OUSD may incur with respect to the loss or deletion of Customer Data.

2.3   <u>Use of Twilio Services</u>. OUSD will be solely responsible for all use (whether or not authorized) of the Twilio Services and Documentation under its account, including for the quality and integrity of Customer Data and each Customer Application.   OUSD will be solely responsible for all acts and omissions of its End Users. OUSD will take all reasonable precautions to prevent unauthorized access to or use of the Twilio Services and notify Twilio promptly of any known unauthorized access or use.

2.4   <u>Restrictions</u>. Except as expressly provided in Section 2.1 (Provision of Services), OUSD will:

(a)   not transfer, resell, lease, license or otherwise make available the Twilio Services to third parties or offer it on a standalone basis;

(b)   not attempt to use the Twilio Services to access or allow access to Emergency Services;

(c)   ensure that the Twilio Services provided hereunder are used in accordance with all third party rights, as well as the terms of this Agreement, including Twilio's Acceptable Use Policy, as amended from time to time, which is hereby incorporated into this Agreement;

(d)   ensure that Twilio is entitled to use the Customer Data as needed to provide the Twilio Services; and

(e)   not use the Twilio Services in any manner that violates any applicable Law.

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Unless otherwise required by Law, Twilio reserves the right to refuse to allow OUSD to port away any phone number in Twilio's sole discretion. Regardless, Twilio may allow OUSD to port away phone numbers, so long as OUSD: (1) has an upgraded account in good standing, (2) has either ported in or purchased the phone number more than 90 days prior to the port-away date, and (3) has met the minimum usage and call duration requirements on the numbers that OUSD plans to port away from Twilio, as set forth in the AUP.

If OUSD has purchased short codes, then OUSD will not change its use of such short codes from that which OUSD stated in any application to a carrier for approval of such use.

2.5   This section purposefully left blank.

2.6   Add-Ons.   Twilio may make available through the Twilio Services additional features, functionality, and services (each, "an **Add-on**") offered by its third-party partners (each an "**Add-on Provider**"). As part of the Add-on installation process, OUSD will be required to accept the Add-on provider's terms of service ("**Add-on Provider's Terms**"). OUSD acknowledges for each Add-on Customer purchases through the Twilio Services, the Add-on Provider's Terms constitute a binding agreement between Customer and the relevant Add-on Provider only. The Add-on Provider of each Add-on is solely responsible for that Add-on, the content therein, and any claims that Customer or any other party may have relating to that Add-on or Customer's use of that Add-on. OUSD acknowledges that OUSD is purchasing the license to each Add-on from the relevant Add-on Provider; Twilio is acting as agent for the Add-on Provider in providing each such Add-on to Customer; Twilio is not a party to the license between OUSD and the Add-on Provider with respect to that Add-on; and Twilio is not responsible for that Add-on, the content therein, or any claims that OUSD or any other party may have relating to that Add-on or OUSD's use of that Add-on. OUSD acknowledges and agrees that Twilio, and Twilio's subsidiaries, are third party beneficiaries of the agreement between OUSD and the Add-on Provider for each Add-on, and that Twilio will have the right (and will be deemed to have accepted the right) to enforce such license against OUSD as a third party beneficiary thereof. The Add-on Provider's Terms shall not modify or otherwise supersede the terms of this Agreement with respect to the Twilio Services.

By purchasing an Add-on, OUSD grants Twilio permission to share the Customer Application, Content, and user information with the Add-on Provider as necessary in order to provide Customer the Add-on.

The license granted to OUSD to use any Add-on is personal to OUSD, and is not sub-licensable to Customer's End Users. OUSD may not provide or resell Add-ons to others.

2.7   Export Controls. The Twilio Services, including any software Twilio may provide in connection with the Twilio Services, may be subject to applicable U.S. export control laws and economic sanctions regulations. In receiving this software or the Twilio Services, OUSD agrees to comply strictly with all domestic and international export laws and economic sanctions regulations as they apply to this software and the Twilio Services, and to the extent consistent with the Agreement, to obtain any necessary license or other authorization to export, re-export, or transfer such software or other aspects of the Twilio Services. These laws include restrictions on destinations, End Users, and end use. Without limitation, OUSD may not transfer any such software or other aspects of the Twilio Services without U.S. government authorization to any entity on a U.S. government exclusion list (e.g., the Department of Commerce's List of Denied Persons, Entity, or Unverified List, and the Treasury Department's List of Specially Designated Nationals and Consolidated Sanctions List). OUSD represents that Customer is not on a U.S. government exclusion list or under the control of or an agent for any entity on such a list, and OUSD further warrants that Customer will immediately discontinue use of any Twilio-provided software and the Twilio Services if Customer becomes placed on any such list or under the control of or an agent for any entity placed on such a list.

2.8   Changes to Service. OUSD acknowledges that the features and functions of the Twilio Services, including the Twilio Platform, APIs, and the SLA may change over time. It is OUSD's responsibility to ensure that calls or requests Customer makes to the Twilio Services are compatible with then-current Twilio APIs. Although Twilio endeavors to avoid changes to the Twilio APIs that are not backwards compatible, if any such changes become necessary, Twilio will use reasonable efforts to notify Customer at least 60 days prior to implementation.

3.   Fees

3.1   Fees. Customer agrees to pay the usage fees and, if applicable, support plan fees set forth in any Order Form entered into by the parties, which Order Form is attached hereto and incorporated as if fully set forth herein.

3.2   Net of Taxes. Unless otherwise stated in an Order Form, OUSD shall be responsible for and shall pay all applicable federal, state and local taxes, fees, charges, surcharges or other similar exactions (hereinafter called "*Taxes*") imposed on or with respect to the Twilio Services that are the subject of this Agreement whether such Taxes are imposed directly upon Customer or upon Twilio and include, but are not limited to, sales and use taxes, communications service taxes, utility user's taxes or fees, excise taxes, VAT, any other license or business and occupations taxes, 911 taxes, franchise fees and universal service fund fees or taxes. For purposes of this section, Taxes do not include any Taxes that are imposed on or measured by the net income, property tax or payroll taxes of Twilio. If Customer is exempt from any such Taxes for any reason, Twilio will exempt Customer from such Taxes on a going-forward basis once Customer delivers a duly executed, signed and dated valid exemption certificate to Twilio's tax department and Twilio's tax department has approved such exemption certificate. Such exemptions should be sent directly to legalnotices@twilio.com. If for any reason a taxing jurisdiction determines that Customer is not exempt from any such exempted Taxes and then assesses Twilio such Taxes, Customer agrees to promptly pay to Twilio such Taxes, plus any applicable interest or penalties assessed.

3.3   Payment Terms. Except as otherwise set forth in an Order Form and subject to Section 3.4 below, OUSD will make all of the payments due hereunder in accordance with the following applicable payment method:

(a)   This section intentionally left blank.

(b)   Invoicing. OUSD will make all payments due within thirty (30) days of the date of issuance of a Twilio invoice. All fees hereunder are payable in United States dollars. Payment obligations are non-cancelable and fees paid are non-refundable. Subject to Section 3.4 below, if OUSD is overdue on any payment and fails to cure such non-payment within ten (10) business days of written notice of the non-payment, then Twilio may i) assess and OUSD will pay a late fee of the lesser of 1.5% per month or the maximum amount allowable by Law, and/or ii) suspend the Twilio Services associated with OUSD 's account until such non-payment is corrected.

Any OUSD purchase order document or other similar document shall be construed solely as evidence of OUSD's internal business processes, and the terms and conditions contained thereon shall be void and of no effect with regard to this Agreement between the parties.

3.4   Disputes. OUSD will notify Twilio in writing in the event OUSD disputes any portion of any fees or Taxes paid or payable by OUSD under this Agreement. OUSD will provide such notice to Twilio within 60 days of the date of invoice and the parties will work together to resolve the applicable dispute promptly. Upon expiration of the 60-day period described in this Section, OUSD will not be entitled to dispute any fees or Taxes paid or payable by Customer.

4.   Ownership and Confidentiality

4.1   Ownership Rights. As between the parties, Twilio exclusively owns and reserves all right, title and interest in and to the Twilio Services, Twilio Properties and Twilio's Confidential Information. As between the parties, OUSD exclusively owns and reserves all right, title and interest in and to the OUSD Data, OUSD Applications and OUSD 's Confidential Information.

4.2   Use of Marks. Subject to the terms of this Agreement, each party (the "*Licensor*") grants to the other party (the "*Licensee*") the right to use and display Licensor's name and logo (the "*Licensor Marks*") on its website and in other promotional materials solely in connection with its activities under this Agreement. All such use of the Licensor Marks will be in accordance with the Licensor's usage guidelines as provided by Licensor, if any, and will inure to the benefit of Licensor. Licensee will not use, register or take other action with respect to any

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of the Licensor Marks, except to the extent authorized in advance writing by Licensor. In its efforts, Licensee will always use the then-current Licensor Marks and will not add to, delete from or modify any of Licensor Marks. Licensee will not, at any time, misrepresent its relationship with Licensor. The license described in this Section will terminate automatically in the event of any termination of this Agreement.

4.3 Confidentiality.

(a) Definition. "*Confidential Information*" means any information or data, regardless of whether it is in tangible form, disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding disclosure including but not limited to all information covered by applicable privacy laws and any proprietary and confidential information of the disclosing party or its Affiliates, including, without limitation, Customer Data, Documentation, customer lists, pricing, phone numbers, concepts, processes, plans, designs and other strategies, "know how", financial and other business and/or technical information and materials of the disclosing party and its Affiliates. Confidential Information does not include any information which: (i) is publicly available through no breach of this Agreement or fault of receiving party; (ii) was properly known to receiving party, without restriction to the knowledge of the receiving party, prior to disclosure by the disclosing party; (iii) was properly disclosed to receiving party, without restriction to the knowledge of the receiving party, by another person without violation of disclosing party's rights; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. Nor does Confidential Information include the terms of or this actual Agreement.

(b) Use and Disclosure. Each party agrees that it will maintain the other's Confidential Information in confidence to the same extent that it protects its own similar Confidential Information (but in no event less than a reasonable degree of care) and use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose such information to any third party without the other party's prior written consent, except as otherwise permitted hereunder solely in connection with Twilio's internal business purposes including but not limited to providing and supporting the Twilio Services. Each party may disclose the Confidential Information of the other party, in whole or in part to its employees, representatives, actual or potential investors and subcontractors who have a need to know and are legally bound to keep such information confidential consistent with the terms of this Section. Either party may disclose the Confidential Information of the other party as required by Law provided that, prior to any such compelled disclosure, the receiving party will, if permissible: (i) promptly notify the disclosing party in writing to allow the disclosing party a reasonable opportunity to resist such disclosure and/or seek a protective order, and (ii) reasonably cooperate with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure. In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure.

4.4 Injunctive Relief.
The Parties expressly acknowledge and agree that no adequate remedy exists at law for an actual or threatened breach of this Section and that, in the event of an actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Section.

5. Warranties and Disclaimer

5.1 Power and Authority. Each party warrants to the other party that it has sufficient rights and authority to enter into this Agreement, and to grant the rights and assume all of their respective rights and obligations set forth herein.

5.2 Compliance with Laws. Each party warrants that, as of the date hereof, it does comply with the applicable Law relating to its respective activities under this Agreement, including but not limited to privacy and data protection laws, U.S. Foreign Corrupt Practices Act, and applicable rules established by the Federal Communications Commission.

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5.3   Warranty.

(a)   Twilio warrants that: (a) the Twilio Services and any deliverables will operate in accordance with applicable Documentation and will materially conform to any specifications contained therein; and (b) if applicable, the Twilio Services will be provided by trained, qualified personnel and in accordance with the Support Terms and other requirements of this Agreement.

(b)   Viruses and Disabling Devices. Twilio further agrees to use all reasonable efforts to ensure the Twilio Services and any other materials and deliverables supplied by Twilio to Customer hereunder do not include any of the following: (i) viruses, worms, Trojan horses, spyware and other computer instructions, devices or techniques than can or were designed to threaten, infect, assault, vandalize, defraud, disrupt damage, disable, alter, inhibit or shut down the Twilio Services or Customer's processing environment; or (ii) computer instructions, code or other disabling devices intended by Twilio to limit the use of the Twilio Services to particular computers, servers or processors/CPUs.

5.4   Disclaimer. WITHOUT LIMITING TWILIO'S EXPRESS WARRANTIES AND OBLIGATIONS HEREUNDER, TWILIO HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES RELATED TO THIRD-PARTY EQUIPMENT, MATERIAL, SERVICES, OR SOFTWARE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5, SLA (AND SUPPORT TERMS), TWILIO'S SERVICES AND PROPERTIES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE EXTENT SUCH DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

5.5   Beta Services. FROM TIME TO TIME, CUSTOMER MAY HAVE THE OPTION TO PARTICIPATE IN A PROGRAM WITH TWILIO WHERE CUSTOMER GETS TO USE ALPHA OR BETA SERVICES, PRODUCTS, FEATURES AND DOCUMENTATION ("**BETA SERVICES**") OFFERED BY TWILIO. THESE BETA SERVICES ARE NOT GENERALLY AVAILABLE AND MAY CONTAIN BUGS, ERRORS, DEFECTS OR HARMFUL COMPONENTS. ACCORDINGLY, TWILIO IS PROVIDING THE BETA SERVICES TO CUSTOMER "AS IS." TWILIO MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THE BETA SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NOTWITHSTANDING ANY PUBLISHED DOCUMENTATION THAT STATES OTHERWISE, TWILIO DOES NOT WARRANT THAT THE BETA SERVICES WILL BE ERROR-FREE OR THAT THEY WILL MEET ANY SPECIFIED SERVICE LEVEL, OR WILL OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

6.   Indemnification

6.1   Infringement Indemnity.

(a)   Defense.   Twilio will fully indemnify, hold harmless and defend (collectively "indemnify" and "indemnification") OUSD and its directors, officers, employees, agents, and Affiliates (collectively the "*Customer Indemnified Parties*") from and against all third-party claims, demands, actions, suits, discovery demands, government investigations or enforcement actions, damages, liabilities, losses settlements, judgments, costs and expenses (including but not limited to reasonable attorney's fees and costs) related thereto ("*Claim*") alleging that the use of the Twilio Services as permitted hereunder infringes or misappropriates a third party copyright, trade secret, trademark or patent. Twilio will pay all costs, reasonable legal fees and any settlement amounts agreed to be paid by Twilio or damages awarded against any Customer Indemnified Party in connection with any such Claim. Notwithstanding anything herein to the contrary, Twilio will not settle any claims for which it has an obligation to indemnify under this Section 6.1 admitting liability or fault on behalf of a Customer

Indemnified Party, nor create any obligation on behalf of a Customer Indemnified Party without Customer's prior written consent after full disclosure.

(b)   Infringement Options. If the use of the Twilio Services by Customer has become, or in Twilio's opinion is likely to become, the subject of any claim of infringement, Twilio may at its option and expense: (i) procure for Customer the right to continue using the Twilio Services as set forth herein; (ii) modify the Twilio Services to make such services non-infringing; or (iii) if the foregoing options are not reasonably practicable, terminate this Agreement and refund Customer any unused pre-paid fees. This Section 6.1 (Infringement Indemnity) states Customer's exclusive remedy, for any claim by a third party alleging that the use of the Twilio Services as permitted hereunder infringes or misappropriates a third party copyright, trade secret, trademark or patent.

(c)   Limitations. Twilio will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by: (i) use of the Twilio Services by Customer not in accordance with this Agreement; or (ii) the combination, operation or use of the Twilio Services with other applications, portions of applications, products or services where the Twilio Services would not by itself be infringing and such combination, operation or use is not explicitly directed by the Documentation as a requirement in order to use the Twilio Services.

6.2   Indemnification by Customer. Except as stated in Section 6.1 above, Customer will fully indemnify, hold harmless and defend Twilio and its directors, officers, employees, agents, stockholders and Affiliates (collectively the "*Twilio Indemnified Parties*") from and against all third-party Claims made or brought against a Twilio Indemnified Party by a third party arising out of or relating to:

(a)   Customer's or any of its End Users' breach or alleged breach of or activities under this Agreement;

(b)   Customer's or any of its End Users' use of the Twilio Services; and

(c)   Customer's acts or omissions in connection with the provision of the Customer Application, including without limitation, any intellectual property claims relating to the Customer Application.

Customer will pay all costs, reasonable legal fees and any settlement amounts agreed to be paid by Customer or damages awarded against a Twilio Indemnified Party in connection with any such Claim. Notwithstanding anything herein to the contrary, Customer will not settle any claims for which it has an obligation to indemnify under this Section 6.2 admitting liability or fault on behalf of a Twilio Indemnified Party, nor create any obligation on behalf of a Twilio Indemnified Party without Twilio's prior written consent after full disclosure.

6.3   Conditions of Indemnification. As a condition of the foregoing obligations: (a) the indemnified party ("*Indemnified Party*") will promptly notify the indemnifying party ("*Indemnifying Party*") of any Claim, provided, however, that the failure to give such notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party was actually and materially prejudiced by such failure; (b) the Indemnifying Party will have the sole and exclusive authority to defend or settle any such Claim (provided that, the Indemnifying Party will obtain the Indemnified Party's consent in connection with any act or forbearance required by the Indemnified Party, which consent will not be unreasonably withheld); and (c) the Indemnified Party will reasonably cooperate with the Indemnifying Party in connection with the Indemnifying Party's activities hereunder, at the Indemnifying Party's expense.

7.   Exclusion of Damages; Limitation of Liability

7.1   Indirect Damages. EXCEPT FOR LIABILITY ARISING FROM VIOLATIONS OF SECTIONS 2.4 (RESTRICTIONS), 4 (OWNERSHIP AND CONFIDENTIALITY) OR 6 (INDEMNIFICATION), UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR

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BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

7.2   Direct Damages. EXCEPT AS SET FORTH BELOW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID OR PAYABLE BY OUSD DURING THE TWELVE (12) MONTHS PRECEDING THE INCIDENT OR CLAIM. THE FOREGOING LIMITATION WILL NOT APPLY TO CUSTOMER'S OBLIGATIONS UNDER SECTIONS 3 (FEES), 2.4 (RESTRICTIONS), OR 2.6 (ADD-ONS), OR EITHER PARTY'S OBLIGATIONS UNDER SECTIONS 4 (OWNERSHIP AND CONFIDENTIALITY) OR 6 (INDEMNIFICATION).

7.3   Emergency Services. THE TWILIO SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS TO ANY EMERGENCY SERVICES. NEITHER TWILIO NOR ITS REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE, OR LOSS (AND CUSTOMER WILL HOLD TWILIO HARMLESS AGAINST ANY AND ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE THE TWILIO SERVICES TO CONTACT EMERGENCY SERVICES.

8.   Term and Termination

8.1   Term. The term of this Agreement will commence on September 1, 2017 and continue to August 31, 2018 (the *"Initial Term,")* as stated on the cover page of this Agreement). This Agreement will automatically renew for additional one-year terms (each, a *"Renewal Term"*), unless either party provides notice of non-renewal no less than thirty (30) days prior to the end of the Initial Term or a Renewal Term. The Initial Term and all Renewal Terms shall be referred to herein as the *"Term"*. Notwithstanding the foregoing, if there is an OUSD Board-approved Order Form in effect, then this Agreement will not terminate until all OUSD Board-approved Order Forms have expired or been terminated

8.2   Termination.

(a)   Material Breach. Either party may terminate this Agreement in the event the other party commits any material breach of this Agreement and fails to remedy such breach within ten (10) business days after written notice of such breach. If Twilio terminates the Agreement because of Customer's material breach, then Twilio may also suspend and/or terminate Customer's Twilio account.

(b)   Suspension. Twilio may suspend the Twilio Services immediately upon notice for cause if: (a) Customer or an End User materially violates (or Twilio reasonably believes that Customer or an End User has materially violated) any provision of the Twilio Acceptable Use Policy; (b) there is an unusual spike or increase in Customer's use of the Twilio Services where Twilio reasonably believes that such traffic or use is fraudulent or materially negatively impacting the operating capability of the Twilio Services; (c) Twilio determines, in its sole discretion, that its provision of any of the Twilio Services is prohibited by applicable Law, or will not be able to continue without violating any applicable Law; or (d) subject to applicable Law, upon Customer's liquidation, commencement of dissolution proceedings, disposal or transfer to a third party of all of substantially all of Customer assets, a failure to continue business, assignment for the benefit of creditors, or if Customer become the subject of bankruptcy or similar proceeding.

(c)   Termination by OUSD. Subject to Section 8.1 (Term), OUSD may terminate this Agreement upon thirty (30) days prior written notice to Twilio. OUSD shall compensate Twilio for services satisfactorily provided through the date of termination. If OUSD terminates this Agreement without cause as provided for in this paragraph, Twilio will refund OUSD any unused, prepaid fees covering the remainder of the Initial Term or Renewal Term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

8.3   Survival. Upon termination or expiration of this Agreement, OUSD's payment obligations prior to the effective termination or expiration date, the terms of this Section 8.3 and the terms of the following Sections will survive: Section 2.2 (Use of Data), Section 2.3 (Use of Twilio Services), Section 2.4 (Restrictions), Section 4 (Ownership and Confidentiality), Section 5 (Warranties and Disclaimer), Section 6 (Indemnification), Section 7 (Exclusion of Damages; Limitation of Liability), Section 8.2(c) (Termination by OUSD), and Section 9 (General).

9.   General

9.1   Compliance with Laws. Each party will comply with the applicable Law relating to their respective activities under this Agreement, including but not limited to privacy and data protection laws, U.S. Foreign Corrupt Practices Act, and applicable rules established by the Federal Communications Commission.

9.2   Assignment. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without consent to (a) a successor to all or substantially all of its assets or business or (b) an Affiliate. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

9.3   Amendment; Waiver. No modification to this Agreement or any Order Forms or other attachments thereto, nor any waiver of any rights, will be effective unless consented to in a writing signed by both parties. Any waiver of any breach or default by either party will not constitute a waiver of any other right or any subsequent breach or default. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

9.4   Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.5   Relationship. Each party is an independent contractor in the performance of each and every part of this Agreement. Nothing in this Agreement is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. Each party will be solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of its activities, or those of its employees or agents, in the performance of this Agreement. Neither party has the authority to commit the other party in any way and will not attempt to do so or imply that it has the right to do so.

9.6   Unenforceability. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be limited or eliminated to the minimum extent necessary to render such provision enforceable and, in any event, the remainder of this Agreement will continue in full force and effect.

9.7   Governing Law; Fees. This Agreement will be governed by and interpreted according to the laws of the State of California without regard to conflicts of Laws and principles that would cause the application of the Laws of another jurisdiction. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Except as provided in Section 9.8 below, any legal suit, action or proceeding arising out of or related to this Agreement or the services provided hereunder shall be instituted in either the state or federal courts of San Francisco, California and the parties hereby consent to the personal jurisdiction of these courts. In the event of any adjudication of any dispute under this Agreement, the prevailing party in such action will be entitled to reimbursement of its reasonable attorneys' fees and related costs by the other party.

9.8   Arbitration. Any dispute, claim, or controversy arising out of or in connection with this Agreement or the breach, termination, enforcement, interpretation or validity thereof (other than for claims or disputes related to the intellectual property of a party), shall be determined through binding arbitration under JAMS' Comprehensive Arbitration Rules and Procedures. The Parties shall share equally the fees and expenses of the JAMS arbitrator. The arbitration shall be conducted by a sole arbitrator chosen by the mutual agreement of the parties or, failing that, by JAMS under its then prevailing rules. Judgment on the award rendered by the arbitrator

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may be entered in any court of competent jurisdiction. The arbitrator shall have the authority to grant specific performance or any other equitable or legal remedy, including provisional remedies. Each party will be responsible for its own incurred expenses arising out of any dispute resolution procedure. The parties will jointly bear the expense of any arbitrator. Any arbitration proceedings shall take place in San Francisco, California.

9.9   Notices. Any notice required or permitted to be given hereunder will be given in writing to the party at the address specified in this Agreement by personal delivery, certified mail, return receipt requested, overnight delivery by a nationally recognized carrier or by email upon confirmation of receipt. Notices to Twilio shall be copied to legalnotices@twilio.com, Attn: General Counsel and to marion.mcwilliams@ousd.org and mike.smith@ousd.org.

9.10   Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Twilio certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (https://www.sam.gov/).

9.11   Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. Twilio agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

9.12   Contract Contingent on Governing Board Approval: OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to Twilio absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

9.13   Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

9.14   Entire Agreement. This Agreement and all attachments hereto shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements, oral and written. No oral or written information or advice given by Twilio, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement. Any Customer purchase order document or similar document shall be construed solely as evidence of Customer's internal business processes, and the terms and conditions contained thereon shall be void and have no effect with regard to this Agreement between the parties even if signed by the parties after the date hereof. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

9.15   Force Majeure. No failure, delay or default in performance of any obligation of a party shall constitute an event of default or breach of this Agreement to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil or military authority, fire, strike, lockout or other labor dispute, flood, terrorist act, war, or riot, theft earthquake and other natural disaster The party affected by such cause shall take all reasonable actions to minimize the consequences of any such cause.

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Exhibit A
SLA

1.   Definitions:

(a)   "**Monthly Uptime Percentage**" means the difference between 100% and the percentage of Unavailable Time for the applicable month.

(b)   "**Service Credit**" means a dollar credit, equal to 10% of Customer's usage fees in the month in which the Unavailable Time (*as defined below*) occurred, that Twilio will credit back to an eligible Customer account.

(c)   "**Unavailable Time**" means the Twilio API for the applicable product is not available for use, as measured in continuous 5-minute increments. "Unavailable Time" does not include any unavailability resulting from any Exclusion (as defined below).

Monthly Uptime Percentage	Service Credit
<99.95%	10%

2.   Service Commitment: Twilio will make the Twilio API available 99.95% of the time. In the event Twilio does not meet the goal of 99.95% API availability in a given calendar month, Customer will be eligible to receive a Service Credit as described in Section 3 below. Availability of the Twilio API is measured by the third party performance and monitoring services contracted by Twilio (the "**Monitoring Service**"). The Monitoring Service reports of availability are currently available through the "Uptime" button located at http://status.twilio.com. Twilio may adjust the measure of availability by the Monitoring Service to account for any Exclusions applicable to such period.

3.   Credit Request and Payment Procedures: To receive a Service Credit, Customer must submit a request to Twilio as described in this Section. Customer must make the submission through the Twilio customer service portal within thirty (30) days from the time the Customer becomes eligible to receive the applicable Service Credit. Such submission must include: (a) "SLA Claim" as the subject of the ticket; (b) the dates and times of Unavailable Time for which a credit is being claimed; (c) any documentation of the applicable outage. Each Service Credit will be applied to future amounts payable by Customer in connection with the applicable product. No refunds or cash value will be given.

4.   Exclusions: Notwithstanding any provision in this Agreement to the contrary, no "Unavailable Time" will be deemed to have occurred where such event: (a) is caused by factors outside of Twilio's reasonable control, including, without limitation, carrier related problems or issues, or Internet access or related problems occurring beyond the point in the network where Twilio maintains access and control over the Twilio Services; (b) results from any actions or inactions of Customer or any third party (other than Twilio's agents and subcontractors); (c) results from the Customer Applications, Customer's equipment, software or other technology or third party equipment, software or other technology (other than equipment within Twilio's direct control); (d) occurs during Twilio's scheduled maintenance for which Twilio will provide at least twenty-four (24) hours prior notice; or (e) results from any alpha, beta or not otherwise generally available Twilio features or products (collectively, the "**Exclusions**").

5.   Entire SLA Liability: With respect to any failure of Twilio to meet this SLA, this Exhibit states Twilio's sole and entire liability to Customer and Customer's sole remedy.

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