

# INDEMNITY BOND

Bond Number: K06294091

We, DIALTONE AND MORE, INC., as Principal and applicant for approval of a registration application to provide resold ~~LOCAL EXCHANGE~~ telecommunications services within the State of Georgia and INDEMNITY INS. CO. OF NORTH AMERICA, as an admitted surety insurer, bind ourselves unto the State of Georgia, Public Service Commission, as Obligee, in the penal sum of TWO HUNDRED THOUSAND AND 00/100 (\$ 200,000.00) Dollars.

The total aggregate liability under this bond is limited the TWO HUNDRED THOUSAND AND 00/100 (\$ 200,000.00) Dollars.

The conditions of this obligation are such that Principal shall in all respects fully and faithfully comply with all applicable provisions of the Public Service Commission. Also, to assure the financial ability of the Principal when requiring advance deposits from its customers. This obligation shall be used to return customer deposits and advance payments to individuals who have paid for the intrastate telecommunication services of the Principal if the Principal is unable to provide such service or return the deposits and advance payments to its customers. Within forty eight (48) hours of such event, Principal shall provide to Surety a list of prepaid card account codes it believes to be outstanding in the State of Georgia together with the remaining balances. Surety agrees to act as administrator of the funds and to distribute remaining account balances to cardholders who request refunds in writing.

This bond shall take effect as of the date hereon and shall remain in force and effect until the Surety is released from liability by the written order of the Public Service Commission, provided that the Surety may cancel this bond and be relieved of further liability hereunder by delivering thirty (30) days written notice to the Public Service Commission. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty (30) day period. The Principal will promptly reissue a bond before the end of the thirty (30) day period for an amount equal to or greater than the value of this instrument unless the parties agree otherwise.

Dated this 3rd day of March, 2000.

DIALTONE AND MORE, INC.

By: Elaine B. Lister

INDEMNITY INS. CO. OF NORTH AMERICA

By: Dianne L. Hrehor

DIANNE L. HREHOR, Attorney-In-Fact

## BOND AGREEMENT

### STATE OF GEORGIA COUNTY OF BALDWIN

THIS AGREEMENT (hereafter the "Agreement") made and entered into this 3RD day of March, 2000 between Dialtone & More, Inc, a Georgia Corporation having its principal place of business in Milledgeville, Georgia, (hereafter "DTM"), and Indemnity Insurance Company of North America (hereafter "IIC").

Whereas, DTM was granted on June 19, 1997 an Interim Certificate of Authority to Resell Local Exchange Telecommunications Services ("the Certificate) by the Georgia Public Service Commission (the "Commission") pursuant to O.C.G.A. 46-5-164(a):

Whereas the Commission has issued an order dated August 31, 1999, in Docket Number 9108 authorizing the issuance of a surety bond to protect the customers of DTM who prepay DTM for local telecommunication services; and

Whereas, DTM and BellSouth and Alltel have entered into Resale Agreements, whereby BellSouth and Alltel will provide certain local exchange telecommunications services to DTM for resale; and

Whereas, BellSouth has returned DTM's security deposit and Alltel made no requirement for a deposit; and

Whereas DTM proposes to require customers to pay for local exchange telecommunications services one month in advance; and

Whereas, the parties hereto desire that funds be provided to insure that monthly telephone service paid for by DTM customers in advance is delivered to them regardless of the financial or business condition of DTM.

Now therefore, for and in consideration of the payment by DTM to IIC of Ten (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged and the mutual promises hereinafter set forth the parties hereto agree as follows:

#### **SECTION ONE: BOND**

A Financial Guarantee Bond, # 868881, has been issued to DTM in the amount of Two Hundred Thousand (\$200,000.00) Dollars by IIC in favor of the customers of DTM dated March 3, 2000.

#### **SECTION TWO: LIABILITY**

In performing its duties under this Agreement, or upon the claimed failure to perform any of its duties hereunder, IIC shall not be liable to anyone for any damages, losses, or expenses which may be incurred as a result of IIC so acting or failing to so act; provided,

however IIC shall not be relieved from liability for damages arising out of its proven negligence or willful default under this Agreement. IIC shall in no event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any questions relating to the duties and responsibilities of IIC hereunder or (ii) any action taken or omitted to be taken in reliance upon any document delivered to IIC and believed by it to be genuine and to have been signed or presented by the proper party or parties. IIC shall not be bound in any way by any agreement or contract other than this Agreement (whether or not IIC has knowledge of any such agreement or contract) and the only duties and responsibilities of IIC hereunder shall be to disburse the Bond funds in accordance with the terms of this Agreement.

### **Section Three: Disagreement**

As an additional consideration for and as an inducement for IIC to act hereunder, it is understood and agreed that in the event of any disagreement resulting in adverse claims and demands being made in connection with or for any money or other property involved in or affected by this Agreement, IIC, shall be entitled, at the election of IIC to withhold delivery or disposition of the Bond funds or any part thereof. Anything herein to the contrary notwithstanding, IIC shall not be or become liable to DTM or any other person for the failure of IIC to comply with conflicting or adverse demands pertaining to the Bond. IIC shall be entitled to continue and refrain and refuse to deliver or otherwise dispose the Bond funds or any part thereof or to otherwise act hereunder, as stated above, unless and until:

- (a) the right of the parties to this Agreement and beneficiaries of this Agreement have been duly adjudicated in court, arbitration forum or other forum having jurisdiction of the parties and the Bond; or
- (b) the disputing parties (other than IIC) have reached an agreement And have provided IIC with indemnity satisfactory to IIC against any liability, claims or damages resulting from compliance by IIC with such agreement.

In the event of a disagreement, as described above, IIC shall have the right, in addition to the rights described above and at the election of IIC to tender into the registry or custody of any court jurisdiction, all money and property comprising the Bond, and may take such other legal action as may be appropriate or necessary, in the opinion of IIC. Upon such tender, the parties hereto agree that IIC shall be discharged from all further duties under this Agreement; provided, however, that the filing of any such legal proceedings shall not release IIC of its duties hereunder.

### **Section Four: Fees and Expenses**

DTM agrees to pay IIC for its ordinary services as invoiced. Such expenses shall be paid to IIC within five (5) days following receipt by the parties hereto of a written statement setting forth such expenses.

DTM agrees that in the event any controversy arises under or in connection with this

Agreement or the Bond, or if IIC is made a party to or intervenes in any litigation pertaining to this Agreement or the Bond, to pay to IIC reasonable compensation for its extraordinary services and to reimburse IIC for all costs and expenses associated with such controversy or litigation.

**Section Five: Resignation**

IIC may resign from its obligations under this Agreement by providing written notice to the parties and Commission hereto. Such resignation shall be effective on the date set forth as the expiration date of the bond provided that thirty days (30) written notice has been given. IIC shall have no responsibility for the appointment of a successor to IIC hereunder. DTM shall promptly secure a substitute agent and shall notify all DTM customers and the Commission of the name and address of such substitute no later than ten (10) days prior to IIC's resignation. DTM shall forward a copy of the executed Bond Agreement entered into by the substitute agent promptly to the Commission.

**Section Six: Indemnification**

DTM agrees to indemnify IIC and its officers, directors, employees and agents and save IIC and its officers, directors, employees and agents harmless from and against any and all Claims (as hereinafter defined) and Losses (as hereinafter defined) which may be incurred by IIC or any of such officers, directors, employees or agents as a result of or in connection with IIC acting in its capacity as such under this Agreement. For the purpose hereof the term "claims" shall mean all claims, lawsuits, causes of action or other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counterclaim, cross action, or impleader) IIC or any such officer, director, employee or agent, even if groundless, false or fraudulent, so long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, result from, relate or be based upon, in whole or in part: (a) the acts or omissions of DTM, (b) the appointment of IIC as bond agent under the Agreement, or (c) the performance by IIC of its powers and duties under this Agreement; and the "losses" shall mean losses, costs, damages, expenses, judgements, and liabilities of whatever nature (including, but not limited to, attorneys', accountants', and other professionals' fees, litigation and court costs and expenses, and amounts paid in settlement), directly or indirectly resulting from or arising out of or relating to claims. Upon the written request of IIC or any such officer, director, employee or agent (each referred to hereinafter as an ("Indemnified Party")), DTM agrees to assume the investigation and defense of any Claim, including the employment of counsel acceptable to the applicable Indemnified Party and the payment of all expenses related thereto and notwithstanding any such assumption, the Indemnified Party shall have the right, and DTM agrees to pay the cost and expense thereof, to employ separate counsel with respect to any such Claim and participate in the investigation and defense thereof in the event that such Indemnified Party which are different from or additional to those available to DTM or IIC. DTM shall use all reasonable efforts to fully cooperate with the Indemnified party in the defense of any Claim.

**Section Seven: Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the

State of Georgia.

**Section Eight: Notices**

Notice to any of the parties hereto shall be by first class United States mail, postage prepaid, or telefax at the following addresses:

(A) **Bond Agent:**

Indemnity Insurance Company of North America      ATTN: Bond Dept.  
1601 Chesnut St.  
TL 33-B  
Philadelphia, PA 19103  
Tel: 215-640-1907  
Fax: 215-640-5590

(B) Dialtone & More, Inc.

ATTN: Elaine B. Licster

2485 N. Columbia St  
Suite 103  
Milledgeville, GA 31061  
Tel: 1-888-494-9440  
Fax: 912-452-0036

(C) Georgia Public Service Commission

ATTN:   
HELEN O'LEARY

47 Trinity Avenue, SW  
Atlanta, GA 30334

**Section Nine: Arbitration**

Any disputes or controversies arising out of the subject matter of this agreement where a party presents a claim against the Bond pursuant to this agreement, and where the parties cannot agree as set forth in Section Three shall be decided by arbitration. The decision of the arbitrator shall be delivered in writing to IIC and will be final and IIC shall be entitled to rely conclusively on said decision.

**Section Ten: Instructions**

IIC hereby acknowledges the following instructions:

- 1(a) Should, during the term of this agreement, IIC be notified in writing by any DTM Customer or person claiming to be a DTM customer that DTM has defaulted In its obligation to provide that customer with local exchange telecommunications Services for which that customer had paid in advance and requested Reimbursement, IIC shall notify DTM within five (5) business days after Receipt of such customer notification. In the event that DTM disputes a Customer's claim on the grounds that local exchange telecommunication services Were provided, DTM shall have an additional five (5) days from disputing the Claim to file an adverse claim. If a claim is not disputed, DTM shall provide IIC with written instructions to pay to the customer a sum specified in such Instructions calculated by DTM at the rate of \$49 for each month such pre-paid Service was not provided, or such greater or lesser sum as customer shall have Paid DTM for service. The adverse claims shall be handled by IIC in accordance

With Section Three and Nine of this Agreement.

- 1(b) Should IIC receive multiple claims from DTM customers it shall pay the claims In the order in which they were received.
  
2. Upon the expiration of DTM's Certificate or at such time as the Commission Waives its requirement that DTM maintain a Bond Agreement, whichever Comes first, this Agreement shall terminate unless funds previously requested By one or more of DTM's customers (in which case the funds shall continue To be held until such claims are resolved) be paid over DTM and this Agreement shall terminate; except that the provisions of Section Six shall Survive the termination of this Agreement

**Section Eleven: Irrevocable Instructions**

This Agreement shall create irrevocable instructions to IIC from the date hereof until the Agreement shall expire according to its terms or be terminated and proceeds of the Bond shall be held for the use and benefit of the customers of DTM, as herein provided, and shall not until the expiration or termination of this Agreement be considered the property of DTM, but a bond in trust for the uses and purposes herein set out.

**Section Twelve: Limitation of Liability**

It is understood and agreed that IIC's liability under this agreement is limited to the payment of the face amount of the bond, Two Hundred Thousand (\$200,000.00) Dollars. The parties further agree that any subsequent bonds or increase in the face amount of this bond purchased in the future by DTM to comply with the terms of the Commission Order in Docket Number 9108 shall be subject to the terms of this agreement.

**Section Thirteen: Audit**

DTM, Georgia Consumers' Utility Council and/or Georgia Public Service Commission shall have the right upon reasonable notice during regular business hours to request proof of the issuance of the Bond with IIC.

**Section Fourteen: Miscellaneous**

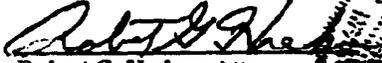
The Commission shall be notified by IIC ten (10) business days prior to the distribution of any portion of the Bond.

In Witness Whereof, the parties have here set their hands and seals the day first above written.

Dialtone & More, Inc  
BY:

  
Elaine B. Lester, President  
2485 N. Columbia St  
Suite 103  
Milledgeville, GA 31061

Indemnity Insurance Company of North America  
BY:

  
Robert G. Hrehor, Attorney  
P. O. Box 7716  
Philadelphia, PA 19192

