

Non-Disclosure Agreement

No. 20150430.039.C

among

AT&T Services, Inc.,

The Buske Group,

NewGen Strategies & Solutions, LLC,

and

County of Monterey, California

## NON-DISCLOSURE AGREEMENT (“NDA”)

This NDA, effective as of the date signed by the last of the four Parties to sign (the “**Effective Date**”), is between and among AT&T Services, Inc., a Delaware corporation, on behalf of itself and its Affiliates (collectively “**AT&T**”), The Buske Group, a California general partnership (“**Buske Group**”), NewGen Strategies & Solutions, LLC, a Colorado limited liability company (“NewGen”), (Buske Group and NewGen collectively referred to as “Consultants”) and the County of Monterey, California, a political subdivision of the State of California (“County”) pursuant to the authority in the Video Services Agreement (the “Franchise”) issued pursuant to the Digital Infrastructure and Video Competition Act (“DIVCA”) and the County of Monterey Ordinance # 03391 (“County Code”) by which AT&T provides cable television and video programming services to the service territory administered by the County.

### Preliminary Statement

1. The Parties agree that the purpose of the disclosure hereunder shall be for the sole purpose of permitting Consultants to perform an audit of video franchise and PEG access fees paid by AT&T to the County of Monterey pursuant to the Franchise and County Code (“Audit”). Consultants agree to use Information as defined below in Section 3 solely for such purpose and related actions (such as preparation of a report to the County’s officials and to the County Department of Information Technology to enforce the terms of the Franchise) or other purposes related to the enforcement of AT&T’s obligations pursuant to state law, the Franchise, and County Code.
2. In preparing its Audit report, Consultants may use Information as may be reasonably necessary to defend an Audit report’s findings against any challenge by AT&T. Under no circumstances shall the Consultants be prohibited from reporting the Audit findings with an aggregated numerical impact of such findings, provided that it is necessary for the purposes of determining any under- or over-payments of franchise fees and/or PEG fees.
3. Accordingly, the Parties agree:

### Definitions

“**Affiliate**” means a business association that has legal capacity to contract on its own behalf, to sue in its own name, and to be sued, if (a) such business association owns, directly or indirectly, a majority interest in AT&T (its “parent company”) or (b) a 30% or greater interest in such business association is owned, directly or indirectly, by AT&T or its parent company.

“**Customer/Personal Information**” means information (i) relating to any AT&T customer, including customer name, address, phone number, authentication credentials, internet activities, history, and/or patterns of use, information concerning accounts, network performance and usage information, web browsing and wireless application information, location information, and any other information associated with a customer or persons in the household of a customer, and any information available to AT&T by virtue of AT&T’s relationship with a customer as a provider of mobile and non-mobile communications, internet, data, information or other services, including the quantity, technical configuration, location, type, destination, amount of use of such services subscribed to, and information contained on the telephone bills of an AT&T customer pertaining to telephone exchange service, telephone toll service or other services received by such customer; and (ii) of a personal nature relating to any AT&T customer or employee, including credit card and credit-related information, health or financial information, and authentication credentials..

### Proprietary and Confidential

**“Disclosing Party”** means the Party disclosing confidential information to a Receiving Party.

**“include”** (all forms) means include without limitation by virtue of enumeration.

**“Information”** of a Party means all of its confidential, proprietary or trade secret information including discoveries, ideas, concepts, know-how, techniques, processes, procedures, designs, specifications, strategic information, proposals, requests for proposals, proposed products, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, marketing plans, operations, infrastructure, networks, systems, facilities, rates, and other technical, financial or business information (including, in the case of AT&T, Customer/Personal Information), whether disclosed in writing, orally, or visually, in tangible or intangible form, including in electronic mail or by other electronic communication.

**“Mark”** means for a Disclosing Party to set forth a notice, legend, or other writing designating Information as confidential or proprietary, and **“Markings”** means such notices, legends, or other writings.

**“Party”** means each of AT&T, Buske Group, NewGen, and County and **“Parties”** means AT&T, Buske Group, NewGen, and County collectively.

**“Receiving Party”** means a Party receiving confidential information of a Disclosing Party.

4. (a) **Marking of Information.** Information of a Disclosing Party shall be deemed to be confidential or proprietary only if it is Marked or otherwise identified by the Disclosing Party as being confidential or proprietary, provided that if it is orally or visually disclosed (including Information conveyed to an answering machine, voice mail box or similar medium), the Disclosing Party shall designate it as confidential or proprietary at the time of such disclosure. Notwithstanding the foregoing, a Disclosing Party shall not have any such obligation to so Mark or identify, or to so designate, Information that the Disclosing Party discloses to, or is otherwise obtained by, the Receiving Party’s employees, contractors, or representatives (i) who are located on the Disclosing Party’s premises; or (ii) who access the Disclosing Party’s systems. Additionally, the failure to Mark, identify, or designate information will not serve to waive the confidentiality thereof where it is reasonably obvious, under the circumstances surrounding disclosure, that the Information is confidential or proprietary; any such Information so disclosed or obtained shall automatically be deemed to be confidential and proprietary.

(b) **Disclosure prior to Effective Date.** Information provided by a Party to another Party prior to the Effective Date of this NDA in connection with the Project shall not be subject to the terms of this NDA.

5. **Receiving Party’s duty to protect Disclosing Party’s Information.** A Receiving Party shall:

- a. hold such Information in confidence with the same degree of care with which such Receiving Party protects its own confidential or proprietary Information, but no less than reasonably prudent care;
- b. restrict disclosure of the Information solely to its employees, contractors and agents with a need to know such Information, advise such persons of their obligations hereunder as to such Information, and ensure that such persons are bound by obligations of confidentiality no less stringent than those imposed in this NDA;
- c. use the Information only as needed for purposes of the Project or other purposes related to the enforcement of AT&T’s obligations pursuant to state law, the Franchise, and the County Code;
- d. except for purposes of the Project, not copy, distribute, or otherwise use such Information or knowingly allow anyone else to copy, distribute, or otherwise use such Information; and ensure that any copy bears the same Markings, if any, as the original;
- e. upon the Disclosing Party’s request, promptly return or destroy all or any requested portion of the Information, including tangible and electronic copies, notes thereon, summaries thereof, extracts

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therefrom, mail or other communications relating thereto, and certify in writing within 15 business days to the Disclosing Party that all such Information has been returned or destroyed; and

- f. not identify the Disclosing Party, its Affiliates or any other owner of Information in any advertising, sales material, press release, public disclosure or publicity without prior written authorization of the Disclosing Party.
6. Special protections for AT&T Customer/Personal Information. If Consultants or County receives Customer/Personal Information (or any other Information that AT&T designates as requiring special protection under this Agreement) such Party shall:
- a. for such Information in tangible form:
    - 1) keep it at all times (a) under the direct supervision of such Party's authorized personnel, or (b) physically secured (e.g., in a locked desk or file cabinet, or other securable storage);
    - 2) ensure that when a person authorized to receive or access such information is traveling, he or she does not check baggage containing such Information or put such baggage in a public holding facility or baggage storage;
    - 3) ensure that no person authorized to receive access to such Information views or keeps such Information in areas where it can be seen by unauthorized persons;
    - 4) ensure that any copy bears the same Marking as the original; and
    - 5) when destroying such Information, cross shred it.
  - b. for such Information in electronic form:
    - 1) keep it at all times (a) under the direct supervision of such Party's authorized personnel, or (b) secured (e.g., by requiring the use of a log-in password to access such Information and keeping the hardware on which it is stored in a locked office, desk or filing cabinet);
    - 2) ensure that when a person authorized to receive or access such Information is traveling, he or she does not (a) check baggage containing devices with (or capable of accessing) such Information, or (b) put devices containing (or capable of accessing) such Information in a public holding facility or baggage storage;
    - 3) ensure that no person authorized to receive or access such Information views such Information where it can be seen or accessed by unauthorized persons;
    - 4) when transmitting such Information, encrypt it, where practicable, using the strongest commercially available (but no less than 256-bit) encryption; and
    - 5) when it is no longer needed, in addition to the requirements of Section 3.e., destroy it by rendering it irretrievable or securely store it using a method approved by AT&T.
  - c. notify AT&T immediately if any Information is lost, stolen, or otherwise disclosed to any person not authorized to have access to such Information under this NDA.
7. Exceptions to non-disclosure obligation. Except for Customer/Personal Information, the Receiving Party shall have no obligation to preserve the confidential or proprietary nature of any Information which:
- a. at the time of disclosure was already known to such Receiving Party free of any obligation to keep it confidential (as evidenced by such Receiving Party's written records prepared prior to such disclosure);
  - b. is or becomes publicly known through no wrongful act of such Receiving Party (such obligations ceasing at the time such Information so becomes publicly known);
  - c. is lawfully received from a third party free of any obligation to keep it confidential;

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- d. is independently developed by the Receiving Party or a third party as evidenced by such Receiving Party's written records, without any direct or indirect use of or access to the Information received from the Disclosing Party; or
  - e. the Disclosing Party consents in writing to be free of restriction.
8. Compelled disclosure. If a Receiving Party is required to produce Information of a Disclosing Party to any court or government agency pursuant to a written court order, subpoena, regulatory demand or process of law, such Receiving Party must first provide the Disclosing Party with prompt written notice of such requirement and reasonably cooperate with the Disclosing Party should the Disclosing Party seek protective arrangements for the production of such Information. Such Receiving Party will continue to otherwise protect all Information produced in response to such order, subpoena, regulation or process of law. Except for such required production, such Information shall remain subject to the terms of this NDA and may only be disclosed as set forth in Sections 5 or 7.
9. Term. The term of this NDA is three years from the Effective Date.
10. No grant of license. Information remains at all times the property of the Disclosing Party, which shall retain exclusive rights to such Information. Nothing contained in this NDA shall be construed as granting to or conferring on the Receiving Party any patent, copyright, trademark, trade secret or other proprietary rights by license or otherwise in any Information, except for the sole right to use such Information in connection with the Project in accordance with the terms of this NDA.
11. Binding nature. This NDA shall be binding upon the Parties and their respective Affiliates, successors and assigns.
12. No representations or warranties. NOTWITHSTANDING ANYTHING IN THIS NDA TO THE CONTRARY, THE DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER AS TO ANY INFORMATION FURNISHED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
13. Material breach; return of Information; remedies. Any disclosure of any Information received from the Disclosing Party, except as provided in Sections 5, 7, or 8, shall be deemed a material breach of this NDA. In the event of such breach, the Disclosing Party may demand prompt return of all Information previously provided to the Receiving Party and terminate this NDA. The provisions of this Section are in addition to any other legal rights or remedies the Disclosing Party may have at law or in equity.
14. Amendments; waivers. This NDA may only be changed by a written amendment signed by an authorized representative of each Party. No forbearance, failure or delay by a Party in exercising any right, power or privilege is a waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.
15. Severability. To the extent any provision of this NDA is held invalid or unenforceable at law, such provision will be deemed stricken and the remainder of this NDA will continue in effect and be valid and enforceable to the fullest extent permitted by law.
16. (a) Governing law. This NDA shall be governed by and construed in accordance with the laws of the State of California, irrespective of its choice of law principles. Venue for any proceeding shall be in Monterey County Superior Court.
- (b) Compliance with law (including export controls). Each Party shall comply with all applicable laws; without limiting the foregoing, the Receiving Party shall not use, transfer, transmit, export, directly or indirectly, any product or any Information of the Disclosing Party except in compliance with the export control laws and regulations of the U.S.A. or the laws of any other country governing such activities.

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17. Miscellaneous. (a) Section headings are solely for purposes of the reader's convenience and shall not affect the interpretation or enforcement of this NDA. (b) Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document (e.g. .pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as those of original signatures on original documents. (c) This NDA may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

Each Party has caused this NDA to be executed by its duly authorized representative.

**AT&T Services, Inc.**

By: \_\_\_\_\_

Printed Name: Lisa Whitfill

Title: Contract Sourcing Specialist

Date Signed: \_\_\_\_\_

**The Buske Group**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**NewGen Strategies & Solutions, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**County of Monterey**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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