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May 20, 2015

By Messenger

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Submission of Contract Pursuant to 47 U.S.C. § 211 and 47 C.F.R. § 43.51

Dear Ms. Dortch:

Pursuant to § 211 (a) of the Communications Act of 1934, as amended, and § 43.51 of the Commission's rules, AT&T hereby files an Commercial agreement between AT&T and US TelePacific Corp. The agreement will add Optional Advance Services in the states of California and Nevada. If you have any questions, please do not hesitate to contact me at (202) 457-2040.

Sincerely,

/s/ William Roughton
General Attorney
AT&T Services, Inc.

AGREEMENT

BETWEEN

**NEVADA BELL TELEPHONE COMPANY D/B/A AT&T NEVADA AND
AT&T WHOLESALE, PACIFIC BELL TELEPHONE COMPANY D/B/A
AT&T CALIFORNIA**

AND

U.S. TELEPACIFIC CORP.



Signature: eSigned - Sean Dugan

Signature: eSigned - Kristen E. Shore

Name: eSigned - Sean Dugan
(Print or Type)

Name: eSigned - Kristen E. Shore
(Print or Type)

Title: Vice President, Service Delivery
(Print or Type)

Title: Executive Director-Regulatory
(Print or Type)

Date: 15 Apr 2015

Date: 15 Apr 2015

U.S. TelePacific Corp.

Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale, Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA by AT&T Services, Inc., its authorized agent

State	Resale OCN	ULEC OCN	CLEC OCN
CALIFORNIA	8892	7453	7453
NEVADA	8892	479H	4652

Description	ACNA Code(s)
ACNA(s)	TFU

GENERAL TERMS AND CONDITIONS

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COMMERCIAL AGREEMENT GENERAL TERMS AND CONDITIONS

This Agreement by and between one or more of the AT&T Inc. owned ILECs hereinafter referred to as **Illinois Bell Telephone Company d/b/a AT&T ILLINOIS; Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA; Michigan Bell Telephone Company d/b/a AT&T MICHIGAN; Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale; The Ohio Bell Telephone Company d/b/a AT&T OHIO; Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA; Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA, and AT&T TEXAS; and Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN** (only to the extent that the agent for each such AT&T-owned ILEC executes this Agreement for such AT&T Inc. owned ILEC and only to the extent that such AT&T Inc. owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and U.S. TelePacific Corp. ("CLEC" also referenced as "U.S. TelePacific"), (a California Corporation), (referred to herein collectively as, the "Parties"; each, a "Party"), and shall apply to the States of California and Nevada. This Agreement sets forth the rates, terms and conditions under which **AT&T-12STATE** agrees to provide CLEC with services provided in the Optional Advanced Services Attachment incorporated herein.

WHEREAS, the Parties acknowledge and agree that the provisions set forth in this Agreement are not subject to and/or required by the Communications Act of 1934, as amended ("Act") including, without limitation, Sections 251/252 of the Telecommunications Act of 1996 and any regulation or rule of the FCC or any state commission, and are not subject to negotiation and/or arbitration under Section 252 of the Act unless both Parties otherwise agree in a writing signed by both Parties.

WHEREAS, for purposes of this Agreement, CLEC represents that it has acquired, or intends to acquire, the authority to offer Telephone Exchange Service and Exchange Access to residential and business End Users and operate where one or more of the AT&T Inc. entities, hereinafter referred to, as applicable for the state to which this Agreement by its terms applies: **Illinois Bell Telephone Company d/b/a AT&T ILLINOIS; Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA; Michigan Bell Telephone Company d/b/a AT&T MICHIGAN; Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale; The Ohio Bell Telephone Company d/b/a AT&T OHIO; Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA; Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA, and AT&T TEXAS; and Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN**, the Incumbent Local Exchange Carrier(s).

NOW, THEREFORE, the Parties hereby agree as follows:

1.0 Introduction

1.1 This Agreement is composed of the foregoing recitals, the General Terms and Conditions (GT&C), set forth below and certain Attachments, Schedules, Exhibits and Addenda immediately following this GT&C, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

2.0 Definitions

- 2.1 "Accessible Letter(s)" means the correspondence **AT&T-12STATE** posts to AT&T CLEC Online website to communicate certain information to the CLEC community.
- 2.2 "Act" means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 2.3 "Affiliate" is as defined in the Act.
- 2.4 "Applicable Law" means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 2.5 "**AT&T Inc.**" **AT&T** means the holding company which directly or indirectly owns the following ILECs: **Illinois Bell Telephone Company d/b/a AT&T ILLINOIS; Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA; Michigan Bell Telephone Company d/b/a AT&T MICHIGAN, Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale; The Ohio Bell Telephone Company d/b/a AT&T OHIO; Pacific Bell**

Telephone Company d/b/a AT&T CALIFORNIA; Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA, and AT&T TEXAS; and/or Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only.

- 2.6 "AT&T-12STATE" means the AT&T Inc.-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 2.7 "AT&T MIDWEST REGION 5-STATE" means the AT&T Inc. owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio and Wisconsin.
- 2.8 "AT&T SOUTHWEST REGION 5-STATE" means the AT&T Inc. owned ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma and Texas.
- 2.9 "AT&T WEST REGION 2-STATE" means the AT&T Inc. owned ILEC(s) doing business in California and Nevada.
- 2.10 "AT&T ARKANSAS" means the AT&T Inc.-owned ILEC doing business in Arkansas.
- 2.11 "AT&T CALIFORNIA" means the AT&T Inc.-owned ILEC doing business in California.
- 2.12 "AT&T ILLINOIS" means the AT&T Inc.-owned ILEC doing business in Illinois.
- 2.13 "AT&T INDIANA" means the AT&T Inc.-owned ILEC doing business in Indiana.
- 2.14 "AT&T KANSAS" means the AT&T Inc.-owned ILEC doing business in Kansas.
- 2.15 "AT&T MICHIGAN" means the AT&T Inc.-owned ILEC doing business in Michigan.
- 2.16 "AT&T MISSOURI" means the AT&T Inc.-owned ILEC doing business in Missouri.
- 2.17 "AT&T NEVADA" means the AT&T Inc.-owned ILEC doing business in Nevada.
- 2.18 "AT&T OHIO" means the AT&T Inc.-owned ILEC doing business in Ohio.
- 2.19 "AT&T OKLAHOMA" means the AT&T Inc.-owned ILEC doing business in Oklahoma.
- 2.20 "AT&T TEXAS" means the AT&T Inc.-owned ILEC doing business in Texas.
- 2.21 "AT&T WISCONSIN" means the AT&T Inc.-owned ILEC doing business in Wisconsin.
- 2.22 "Bill Due Date" means thirty (30) calendar days from the bill date.
- 2.23 "Billed Party" means the recipient Party of a bill rendered from the Billing Party.
- 2.24 "Billing Party" means the Party rendering a bill.
- 2.25 "Business Day" means Monday through Friday, excluding holidays on which the applicable AT&T-11STATE ILEC does not provision new retail services and products.
- 2.26 "CABS" means the Carrier Access Billing System.
- 2.27 "Calling Party Number" or "CPN" is as defined in 47 C.F.R. § 64.1600(c).
- 2.28 "Carrier" means a Telecommunications Carrier as defined in the Act and certificated by the Commission to provide local Telephone Exchange Service.
- 2.29 "Cash Deposit" means a cash security deposit in U.S. dollars held by AT&T-12STATE.
- 2.30 "Central Office Switch (CO)" means the switching entity within the public switched telecommunications network, including but not limited to:
- 2.30.1 "End Office Switch" or "End Office" means the switching machine that directly terminates traffic to and receives traffic from purchasers of local Telephone Exchange Services. An End Office Switch does not include a PBX.
- 2.30.2 "Tandem Office Switch" or "Tandem(s)" are used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 2.31 "Claim" means any pending or threatened claim, action, proceeding or suit.

- 2.32 "Commission" means the applicable State agency with regulatory authority over certain Telecommunications Services. The following is a list of the appropriate State agencies:
- 2.32.1 the Arkansas Public Service Commission (AR-PSC);
 - 2.32.2 the California Public Utilities Commission (CPUC);
 - 2.32.3 the Illinois Commerce Commission (ICC);
 - 2.32.4 the Indiana Utility Regulatory Commission (IURC);
 - 2.32.5 the Kansas Corporation Commission (KS-CC);
 - 2.32.6 the Michigan Public Service Commission (MPSC);
 - 2.32.7 the Missouri Public Service Commission (MO-PSC);
 - 2.32.8 the Public Utilities Commission of Nevada (PUCN);
 - 2.32.9 the Public Utilities Commission of Ohio (PUC-OH);
 - 2.32.10 the Oklahoma Corporation Commission (OK-CC);
 - 2.32.11 the Public Utility Commission of Texas (PUC-TX); and
 - 2.32.12 the Public Service Commission of Wisconsin.
- 2.33 "Competitive Local Exchange Carrier (CLEC)" means a telephone company certificated by the Commission to provide local Telephone Exchange Service within AT&T-12STATE's franchised area.
- 2.34 "Delaying Event" means any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:
- 2.34.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;
 - 2.34.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
 - 2.34.3 any Force Majeure Event.
- 2.35 "Digital Subscriber Line (xDSL)" describes various technologies and services. The "x" in "xDSL" is a place holder for the various types of DSL services, including, but not limited to ADSL (Asymmetric Digital Subscriber Line), HDSL (High-Speed Digital Subscriber Line), IDSL (ISDN Digital Subscriber Line), SDSL (Symmetrical Digital Subscriber Line), UDSL (Universal Digital Subscriber Line), VDSL (Very High-Speed Digital Subscriber Line), and RADSL (Rate-Adaptive Digital Subscriber Line).
- 2.36 "Discontinuance Notice" means the written Notice sent by the Billing Party to the other Party that notifies the Non-Paying Party that in order to avoid disruption or disconnection of the Products and/or Services, furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within fifteen (15) calendar days following receipt of the Billing Party's Notice of Unpaid Charges.
- 2.37 "Disputed Amounts" means the amount that the Disputing Party contends is incorrectly billed.
- 2.38 "Disputing Party" means the Party to this Agreement that is disputing an amount in a bill rendered by the Billing Party.
- 2.39 "End User(s)" means a Third Party residence or business that subscribes to Telecommunications Services provided by any of the Parties at retail. As used herein, the term "End User(s)" does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.
- 2.40 "Exchange Access" means as defined in the Act.
- 2.41 "Exchange Area" means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 2.42 "FCC" means the Federal Communications Commission.
- 2.43 "Governmental Authority" means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 2.44 "Incumbent Local Exchange Carrier (ILEC)" is as defined in the Act.

- 2.45 "Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 2.46 "Integrated Digital Loop Carrier" means a subscriber loop carrier system that is twenty-four (24) local Loop transmission paths combined into a 1.544 Mbps digital signal which integrates within the switch at a DS1 level.
- 2.47 "Integrated Services Digital Network (ISDN)" means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for a digital transmission of two (2) 64 Kbps bearer channels and one (1) 16 Kbps data channel (2B+D).
- 2.48 "Interconnection Agreement" means the contract executed between U.S. TelePacific and AT&T 12-STATE that governs the products and services U.S. TelePacific purchases from AT&T 12-STATE pursuant to Section 251 of the Act.
- 2.49 "Interexchange Carrier (IXC)" means a carrier that provides, directly or indirectly, InterLATA or IntraLATA Telephone Toll Services.
- 2.50 "InterLATA" is as defined in the Act.
- 2.51 "Late Payment Charge" means the charge that is applied when a CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available or received by AT&T-12STATE as of the Bill Due Date, or if the CLEC does not submit the Remittance Information.
- 2.52 "Letter of Credit" means the unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to AT&T-12STATE naming the AT&T-owned ILEC(s) designated by AT&T-12STATE as the beneficiary(ies) thereof and otherwise on the AT&T-12STATE Letter of Credit form.
- 2.53 "Local Access and Transport Area (LATA)" is as defined in the Act.
- 2.54 "Local Exchange Carrier (LEC)" is as defined in the Act.
- 2.55 "Local Service Provider (LSP)" means the LEC that provides retail local Telephone Exchange Service to an End User. "Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).
- 2.56 "Non-Paying Party" is the Party that has not made payment by the Bill Due Date of all amounts within the bill rendered by the Billing Party.
- 2.57 "Operating Company Number (OCN)" means the numeric Company Code assigned by NECA identifying CLEC as a Resale or UNE provider.
- 2.58 "Operations Support Systems (OSS)" means the suite of functions which permits CLEC to interface to the ILEC for pre-ordering, ordering, provisioning, maintenance/repair and billing as described in the Attachment OSS herein.
- 2.59 "Other Third Party" refers to any person or entity directly or indirectly involved in the originating, routing, transporting, transmitting, or terminating of either telecommunications or other communication services on or over the Public Switched Telephone Network (PSTN).
- 2.60 "Out of Exchange LEC (OE-LEC)" means a LEC providing Telecommunications services outside AT&T-12STATE's incumbent local Exchange Area utilizing NPA-NXXs identified to reside in a Third Party ILEC's local Exchange Area.
- 2.61 "Party" means either CLEC or the AT&T-owned ILEC; use of the term "Party" includes each of the AT&T-owned ILEC(s) that is a Party to this Agreement. "Parties" means both CLEC and the AT&T-owned ILEC.
- 2.62 "Past Due" means when a CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to AT&T-12STATE as of the Bill Due Date (individually and collectively means Past Due).
- 2.63 "Person" means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.

- 2.64 "Remittance Information" means the information that must specify the Billing Account Numbers (BANs) paid; invoices paid and the amount to be applied to each BAN and invoice.
- 2.65 "Surety Bond" means a bond from a Bond company with a credit rating by AMBEST better than a "B". The bonding company shall be certified to issue bonds in a state in which this Agreement is approved.
- 2.66 "Tax" or "Taxes" means any and all federal, state, or local sales, use, excise, gross receipts, transfer, transaction or similar taxes or tax-like fees of whatever nature and however designated, including any charges or other payments, contractual or otherwise, for the use of streets or rights-of-way, whether designated as franchise fees or otherwise, and further including any legally permissible surcharge of or with respect to any of the foregoing, which are imposed or sought to be imposed on or with respect to, or measured by the charges or payments for, any products or services purchased under this Agreement.
- 2.67 "Telecommunications" is as defined in the Act.
- 2.68 "Telecommunications Carrier" is as defined in the Act.
- 2.69 "Telecommunications Service" is as defined in the Act.
- 2.70 "Telephone Exchange Service" is as defined in the Act.
- 2.71 "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.

3.0 Interpretation and Construction

3.1 Definitions:

3.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to". The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

3.2 Headings Not Controlling:

3.2.1 The headings and numbering of Sections, Parts, Attachments, Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

3.2.2 This Agreement incorporates an Attachment which, together with associated Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. It is understood that groupings in the Attachment are for convenience of reference only, and are not intended to limit the applicability of the Attachment, Exhibit, Schedule or Addenda may otherwise have.

3.3 Referenced Documents:

3.3.1 Any reference throughout this Agreement to an industry guideline, AT&T-12STATE's technical guideline or referenced AT&T-12STATE business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at AT&T-12STATE's CLEC Online website.

3.4 References:

3.4.1 References herein to Sections, Paragraphs, Attachments, Exhibits, Parts and Schedules shall be deemed to be references to Sections, Paragraphs, Attachments and Parts of, and Exhibits, Schedules to this Agreement, unless the context shall otherwise require.

3.5 Conflict in Provisions:

3.5.1 If any definitions, terms or conditions in any given Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the products, services or activities listed in that particular Attachment, Exhibit, Schedule or Addenda. In particular, if an Attachment contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Attachment will control the length of time that services or activities are to occur under that Attachment, but will not affect the Term length of the remainder of this Agreement.

3.6 Joint Work Product:

3.6.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

3.6.2 If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement for Products and/or Services as a total arrangement and it is intended to be non-severable.

3.7 Incorporation by Reference:

3.7.1 All of the rates, terms and conditions ("Provisions") set forth in this Agreement (including any and all Attachments, and/or Schedules hereto) and every Product and/or Service provided hereunder, are subject to all other Provisions contained in this Agreement and all such Provisions are integrally related.

3.7.2 Attachment Optional Advanced Services of this Agreement contains operational methods and procedures generally posted in a reference material on CLEC Online. AT&T reserves its rights to modify such operational methods and procedures without an amendment to this Agreement. To the extent AT&T exercises such rights, it shall provide thirty (30) days advanced notice to the CLEC.

3.8 State-Specific Rates, Terms and Conditions:

3.8.1 For ease of administration, this multi-state Agreement may contain certain specified rates, terms and conditions which may apply only in a designated state ("state-specific terms").

3.8.2 State-specific terms, as the phrase is described in Section 3.8.1 above, have been negotiated by the Parties only as to the states where this Agreement has been executed.

3.8.3 Except as specifically referenced in this Agreement (including any and all Attachments, and/or Schedules hereto), the rates, terms and conditions of underlying products and services will be governed by the Parties Interconnection Agreement(s) for each state, as applicable. Nothing herein is intended to eliminate applicable charges under the Interconnection Agreement.

3.9 Scope of Obligations:

3.9.1 Notwithstanding anything to the contrary contained herein, AT&T-12STATE's obligations under this Agreement shall apply only to:

3.9.1.1 the specific operating area(s) or portion thereof in which AT&T-12STATE is then deemed to be the ILEC under the Act (the "ILEC Territory"), and only to the extent that the CLEC is operating and offering service to End Users identified to be residing in such ILEC Territory; and

3.9.1.2 assets that AT&T-12STATE owns or leases and which are used in connection with AT&T-12STATE's provision to CLEC of any Products and/or Services provided or contemplated under this Agreement referenced herein (individually and collectively, the "ILEC Assets").

3.9.2 This Agreement sets forth the terms and conditions pursuant to which AT&T-12STATE agrees to provide CLEC with access to the products and services governed by the rates, terms and conditions set forth in this Agreement in AT&T-12STATE's incumbent local Exchange Areas for the provision of CLEC's Telecommunications Services. AT&T-12STATE has no obligation to provide such products and/or services to CLEC for the purposes of CLEC providing and/or extending service outside of AT&T-12STATE's incumbent local Exchange Areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Agreement shall only apply to the Parties and be available to CLEC for provisioning Telecommunication Services within an AT&T-12STATE incumbent local Exchange Area(s) in the State in which this Agreement is in effect.

3.10 Affiliates:

3.10.1 This Agreement, including subsequent amendments, if any, shall bind AT&T-12STATE, CLEC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between AT&T-12STATE and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein, (subject to any early termination due to default), until either AT&T-12STATE or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supersede a currently effective agreement between any such CLEC Affiliate and AT&T-12STATE until the expiration of such other agreement.

4.0 Notice of Changes - Section 251(c)(5)

4.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise or to otherwise change and/or modify its network including, without limitation, through the retirement and/or replacement of equipment, software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

5.0 Responsibilities of the Parties

5.1 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.

5.2 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

6.0 Insurance

6.1 At all times during the term of this Agreement, CLEC shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law as specified by the Parties' approved Interconnection Agreement in each state(s) as applicable.

7.0 Assignment

7.1 CLEC may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliate without the prior written consent of AT&T-12STATE. Any attempted assignment or transfer that is not permitted is void ab initio.

7.2 CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to an Affiliate by providing sixty (60) calendar days advance written Notice of such assignment or transfer to AT&T-12STATE; provided that such assignment or transfer is not inconsistent with Applicable Law (including the

Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to an Affiliate if that Affiliate is a Party to a separate interconnection agreement with AT&T-12STATE under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void ab initio.

8.0 Effective Date, Term and Termination

8.1 Effective Date:

8.1.1 In AT&T-12STATE, the Effective Date of this Agreement including without limitation, the rates and charges contained herein, shall be ten calendar (10) days after both Parties' final authorizing signatures have been affixed to this Agreement (the "Effective Date").

8.2 Term:

8.2.1 Except as otherwise provided herein, the term ("the Term") of this Agreement shall commence upon the Effective Date of this Agreement. As of the Effective Date, AT&T-12STATE and CLEC are Parties to one or more Interconnection Agreements pursuant to Sections 251/252 of the Act ("Currently Effective Interconnection Agreement(s)"), in one or more states AT&T service area. For each such state, the Term of this Agreement shall continue until the termination date of the Currently Effective Interconnection Agreement. Upon termination of this Agreement, neither Party shall have any further obligation under this Agreement, except as otherwise provided in Section 8.2.2 below, and pursuant to Section 33 - Survival.

8.2.2 Either on or following the termination date of this Agreement, if the Parties have not entered into a new agreement or are in active negotiations as described herein, neither Party should have any further obligation under this Agreement in such state (or states) except that:

8.2.2.1 Each Parties' confidentiality obligations shall survive; and

8.2.2.2 Each Party shall promptly pay all amounts (including any late fees as applicable) owed under this Agreement:

8.2.2.2.1 As provided in Section 33 - Survival; and

8.2.2.2.2 As may be provided elsewhere in this Agreement (including the Attachments)

8.3 Termination for Nonperformance or Breach:

8.3.1 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Product and/or Services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written Notice thereof. If the Party against which the claim of nonperformance or breach is made materially and in good faith disagrees with the claim, it shall notify the claiming Party of its disagreement in writing by 5:00p.m. Central Time of the fourteenth (14th) day following receipt of the nonperformance/breach notice, providing with specificity the basis for its disagreement, and the dispute shall then be resolved between the Parties pursuant to Section 11 (as to billing disputes) and Section 8 above. If the nonperformance/breach is not disputed in a timely manner, the Party shall cure the nonperformance/breach and certify in writing to the other by deadline on the forty-fifth (45th) day that the nonperformance/breach has been cured. If the nonperforming Party fails to cure such nonperformance or breach within the forty-five (45) calendar day period provided for within the original Notice, then the terminating Party will provide a subsequent written Notice of the termination of this Agreement and such termination shall take effect immediately upon delivery of written Notice to the other Party.

8.4 Termination for Federal or State Governmental Action:

8.4.1 AT&T-12STATE shall have the right to terminate this Agreement in whole or in part, upon written notice to CLEC, in the event that any federal action, or state government (including by a regulatory agency, a court, or a legislature) requires AT&T-12STATE to: a) provide, modify, or otherwise make available this

Agreement or any part of this Agreement to CLEC, any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow, CLEC, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties, including by way of example, at prices or price structure/application or arrangements different than agreed to in this Agreement as a whole by the Parties. If such state government action only occurs in one state, AT&T-12STATE shall have the right to terminate the Agreement in that state by written notice to CLEC. If such government action occurs at the federal level or in two or more states, AT&T-12STATE shall have the right to terminate, at its election, the Agreement in its entirety or, alternatively, only in one or more of the affected states, by written notice to CLEC.

8.4.2 Any termination or invalidation of this Agreement under this Section 8.4 shall be effective as of the day before the CLEC effective date of such governmental action that triggered the invalidation or right to terminate, and AT&T-12STATE and CLEC agree to expeditiously adopt and implement a transition plan to avoid or minimize impact on CLEC's customers (including without limitation its end user customers) who are being served using the products and/or services hereunder.

8.5 Termination due to Event of Default:

8.5.1 In addition, AT&T-12STATE shall have the right, at its sole discretion, to terminate this Agreement if an Event of Default occurs, with neither any notice of default by AT&T-12STATE nor an opportunity for cure by CLEC required. Such right shall be exercised by providing a written notice to terminate to CLEC. Events of Default include the following, each of which the Parties agree would be a material breach of this Agreement:

8.5.1.1 The filing of a bankruptcy by CLEC or any of its Affiliates (including the corporate parent of CLEC, if any), pursuant to Chapter 7 or 11 of Title 11 of the United States Bankruptcy Code.

8.5.1.2 The assignment, subcontracting, or otherwise transferring of CLEC's rights or obligations under this Agreement in violation of Section 7, Assignment.

8.6 Notwithstanding anything to the contrary in the Agreement, without limitation, either Party may terminate this Agreement at any time whatsoever (before expiration of the Term) upon thirty (30) days advance written notice to the other Party. Upon termination by either Party under this Section 8, neither Party shall have any further obligation to the other under this Agreement, except as to any charges which may be due to AT&T-12STATE by CLEC for any work performed by AT&T-12STATE hereunder prior to the effective termination of this Agreement.

9.0 Assurance of Payment

9.1 Assurance of Payment provisions between the Parties will be governed as specified by the Parties' approved Interconnection Agreement in each state(s) as applicable.

10.0 Billing

10.1 Unless otherwise stated, AT&T will render monthly bill(s), remittance in full by the Bill Due Date, to CLEC for Products and Services provided hereunder at the applicable rates set forth in the attached Pricing Sheet.

10.2 A Late Payment Charge will be assessed for all Past Due payments as provided below, as applicable.

10.2.1 If any portion of the payment is not received by AT&T-12STATE on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T-12STATE in funds that are not immediately available to AT&T-12STATE, then a late payment and/or interest charge shall be due to AT&T-12STATE. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in the applicable state tariff, or, if no applicable state tariff exists, as set forth in the Guidebook as referenced on the AT&T CLEC Online website, or pursuant to the applicable state law as determined by AT&T-12STATE. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable state tariff, or, if no applicable tariff exists, as set forth in the Guide Book or pursuant to the applicable state law.

10.3 The Remittance Information to apply payments must accompany the payment. Payment is considered to have been made when the payment and Remittance Information are received by AT&T-12STATE. If the Remittance Information is not received with payment, AT&T-12STATE will be unable to apply amounts paid to CLEC's accounts.

In such event, AT&T-12STATE shall hold such funds until the Remittance Information is received. If AT&T-12STATE does not receive the Remittance Information by the Bill due date for any account(s), Late Payment Charges shall apply.

- 10.4 CLEC shall make all payments to AT&T-12STATE via electronic funds transfers (EFTs) through the Automated Clearing House Association (ACH) to the financial institution designated by AT&T-12STATE. Remittance Information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX Standard Entry Class code. CLEC and AT&T-12STATE will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH payment must be received by AT&T-12STATE no later than the Bill Due Date of each bill or Late Payment Charges will apply. AT&T-12STATE is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.
- 10.5 Prior to establishing EFT, CLEC will complete a Customer Information Form for Electronic Payments (ECF11 Form) found on AT&T-12STATE's CLEC Online website. This form provides AT&T-12STATE with CLEC's set up and contract information for electronic payments. AT&T-12STATE banking information will be provided by AT&T-12STATE Treasury & Remittance Operations on AT&T-12STATE approved forms after the CLEC's completed ECF11 form is received, testing has completed and certification confirmed.
- 10.6 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.

11.0 Dispute Resolution

11.1 Finality of Disputes:

11.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

11.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

11.2 Alternative to Litigation:

11.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

11.3 Commencing Dispute Resolution:

11.3.1 Dispute Resolution shall commence upon one Party's receipt of written Notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written Notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

11.3.1.1 Service Center Dispute Resolution;

11.3.1.2 Informal Dispute Resolution; and

11.3.1.3 Formal Dispute Resolution, each of which is described below.

11.4 Service Center Dispute Resolution - The following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written Notice sent to AT&T-12STATE for Disputed Amounts must be made on the "Billing Claims Dispute Form".

11.4.1 If the written Notice given pursuant to Section 11.3 above discloses that the dispute relates to billing, then the procedures set forth shall be used.

- 11.4.2 For a dispute submitted by the CLEC, the dispute shall first be processed by the appropriate service center for resolution.
- 11.4.3 In order to resolve a billing dispute, the Disputing Party shall furnish the other Party written Notice of:
- 11.4.3.1 the date of the bill in question;
 - 11.4.3.2 the account number or other identification (CLEC must provide the CBA/ESBA/ASBS or BAN number) of the bill in question;
 - 11.4.3.3 telephone number, circuit ID number or trunk number in question;
 - 11.4.3.4 any USOC (or other descriptive information) information relating to the item questioned;
 - 11.4.3.5 amount billed;
 - 11.4.3.6 amount in question; and
 - 11.4.3.7 the reason that the Disputing Party disputes the billed amount.
- 11.4.4 When CLEC is the Disputing Party, CLEC must provide evidence to AT&T-12STATE that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in the Interconnection Agreement and deposited all Unpaid Charges relating to Products and/or Services provided under this Agreement into that escrow account in order for that billing claim to be deemed a "dispute". Failure to provide the information and evidence required by this Section 11.0 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.
- 11.4.5 The Parties shall attempt to resolve Disputed Amounts appearing on current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the Disputing Party furnishes all requisite information and evidence under Section 11.4 above by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, the non-Disputing Party will notify the Disputing Party of the status of the dispute and the expected resolution date.
- 11.4.6 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date Notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 11.4 above, upon request, the non-Disputing Party will notify the Disputing Party of the status of the dispute and the expected resolution date.
- 11.4.7 If the Disputing Party is not satisfied by the resolution of the billing dispute under this Section 11.4 above, the Disputing Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 11.5 below of this Agreement.
- 11.5 Informal Dispute Resolution:
- 11.5.1 Upon receipt by one Party of Notice of a dispute by the other Party pursuant to Section 11.3 above or Section 11.4.7 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.
- 11.6 Formal Dispute Resolution:

- 11.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 11.5 above, then either Party may invoke the formal Dispute Resolution procedures described in this Section 11.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 11.3 above.
- 11.6.2 Claims Subject to Mandatory Arbitration:
- 11.6.2.1 The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 11.7 below:
- 11.6.2.2 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 11.3 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 11.3 above, the Parties will annualize the actual number of months billed.
- 11.6.3 Claims Subject to Elective Arbitration:
- 11.6.3.1 Claims will be subject to elective arbitration pursuant to Section 11.7 below, if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.
- 11.6.4 Claims Not Subject to Arbitration:
- 11.6.4.1 If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism:
- 11.6.4.2 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.
- 11.6.4.3 Actions to compel compliance with the Dispute Resolution process.
- 11.6.4.4 All claims arising under federal or state statute(s), including antitrust claims.
- 11.7 Arbitration:
- 11.8 Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in Dallas, Texas for **AT&T SOUTHWEST REGION 5-STATE**; Chicago, Illinois for **AT&T MIDWEST REGION 5-STATE**, San Francisco, California for **AT&T CALIFORNIA**; or Reno, Nevada for **AT&T NEVADA**, as appropriate, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section 11.0 may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any

court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

12.0 Disclaimer of Representations and Warranties

12.1 DISCLAIMER. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

13.0 Limitation of Liability

13.1 Limitation of Liability provisions identical to those set forth in the currently effective Interconnection Agreement shall apply.

14.0 Indemnity

14.1 Indemnity provisions identical to those set forth in the currently effective Interconnection Agreement shall apply.

15.0 Intellectual Property/License

15.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

15.2 Except as otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

16.0 Notices

16.1 Subject to Section 16.2 below, Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be pursuant to at least one of the following methods:

16.1.1 delivered personally, delivered by express delivery service or mailed via certified mail or first class U.S. Postal Service, with postage prepaid and a return receipt requested.

16.1.2 delivered by facsimile provided CLEC and/or AT&T-12STATE has provided such information in Section 16.3 below.

16.1.3 delivered by electronic mail (email) provided CLEC and/or AT&T-12STATE has provided such information in section 16.3 below.

16.2 Notices will be deemed given as of the earliest of:

16.2.1 the date of actual receipt;

16.2.2 the Business Day for which the Party sending notice contracted delivery to be made;

16.2.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or

16.2.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

16.2.5 notice by email shall be effective on the date it is officially recorded as delivered by delivery receipt and in the absence of such record of delivery, it shall be presumed to have been delivered on the date sent to CLEC by AT&T-12STATE.

16.3 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT
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NAME/TITLE	Nancy Lubamersky VP, Strategic Initiatives & Public Policy
STREET ADDRESS	515 S. Flower Street 47th Floor
CITY, STATE, ZIP CODE	Los Angeles, CA 90071
FACSIMILE NUMBER	(510) 995-5602
PHONE NUMBER*	(510) 995-5603
EMAIL ADDRESS	nlubamersky@telepacific.com

With a copy to:

NOTICE CONTACT	CLEC CONTACT
NAME/TITLE	General Counsel
STREET ADDRESS	515 S. Flower Street 47th Floor
CITY, STATE, ZIP CODE	Los Angeles, CA 90071
PHONE NUMBER*	N/A
FACSIMILE NUMBER	N/A
EMAIL ADDRESS	N/A

	AT&T CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
STREET ADDRESS	311 S. Akard St., 19 th Floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Dallas, TX 75202-5398
FACSIMILE NUMBER	(214) 712-5792
EMAIL ADDRESS	The current email address as provided on AT&T's CLEC Online website

*Informational only and not to be considered as an official notice vehicle under this Section.

- 16.4 Either Party may unilaterally change its designated contact name, address, email address, and/or facsimile number for the receipt of notices by giving written Notice to the other Party in compliance with this Section 16.0. Any Notice to change the designated contact name, address, email address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.
- 16.5 In addition, CLEC agrees that it is responsible for providing **AT&T-12STATE** with CLEC's OCN and ACNA numbers for the states in which CLEC is authorized to do business and in which CLEC is requesting that this Agreement apply. In the event that CLEC wants to change and/or add to the OCN and/or ACNA information in the CLEC Profile, CLEC shall send written notice to **AT&T-12STATE** to be received at least thirty (30) days prior to the change and/or addition in accordance with this Section 16 notice provision; CLEC shall also update its CLEC Profile through the applicable form and/or web-based interface.
- 16.6 **AT&T-12STATE** communicates official information to CLECs via its Accessible Letter, or other applicable, notification processes. These processes involve electronic transmission and/or posting to the AT&T CLEC Online website, inclusive of a variety of subjects including changes on business processes and policies, and other product/service related notices not requiring an amendment to this Agreement.
- 17.0 **Publicity and Use of Trademarks or Service Marks**

- 17.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly.
- 17.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

18.0 Confidentiality

- 18.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 18.2 Each Party anticipates and recognizes that it will come into possession of technical or business information or data about the other Party and/or its customers (including without limitation its end user customers) as a result of this Agreement which will be considered confidential by such other Party. The Parties agree (1) to treat all such information and data as strictly confidential; and (2) to use such information only for the purposes of performance under this Agreement. Each Party agrees not to disclose confidential information and/or data of or pertaining to the other Party or its customers (including without limitation its end user customers) to any Third Party without first securing the written consent of such Party. The foregoing shall not apply to information which is in the public domain. Nothing in this Agreement prevents either Party from disclosing operations results or other data that might reflect the results of this Agreement as a part of that Party's aggregate operation data as long as the disclosed data is at a level of aggregation sufficient to avoid disclosing with specificity information obtained in the operation of this Agreement.
- 18.3 If a court or governmental agency orders or a Third Party requests a Party to disclose or to provide any data or information covered by this Section 18, that Party will immediately inform the other Party, both by telephone and certified mail, of the order or request before such data or information is provided. Notification and consent requirements described above are not applicable in cases where a court order requires the production of billing and/or usage records of, or pertaining to, an individual customer (including without limitation an end user customer).
- 18.4 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 18.4.1 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
 - 18.4.2 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - 18.4.3 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
 - 18.4.4 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
 - 18.4.5 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

19.0 Severability

- 19.1 This Agreement is the result of good faith negotiations between the Parties. Notwithstanding any provisions contained in Section 8 herein, if any action by federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either

Party that are addressed by this Agreement, the Parties shall negotiate diligently in good faith to amend this Agreement to replace the unenforceable provision(s) in order to comport with such actions while maintaining the spirit and intent of this agreement. Provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon ninety (90) days written notice in accordance with Section 16.0 above ("Written Notice"), during which time the Parties shall work cooperatively to establish an orderly transition of CLECs (as above) customers/End Users to other serving arrangements. In any situation in which the right to terminate under this Section 19.1 is triggered by State government action, the right to terminate shall arise only in the State in which such action occurred and would apply for that State only unless this Agreement otherwise permits a Party to terminate this Agreement in more than one State.

- 19.2 If the Parties are unable to agree upon the conforming modifications within ninety (90) days from the Written Notice, and neither Party elects to terminate this Agreement subject to the provisions herein, any remaining disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

20.0 Governing Law

- 20.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Products and Services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles.
- 20.2 Except as specified below, the Parties agree that the only proper venue for any judicial or regulatory proceeding involving or arising out of the interpretation or enforcement of this Agreement as it pertains to any state shall be the city in which the state commission that approved the Currently Effective Interconnection Agreement for that state is located. Notwithstanding the foregoing, the Parties agree that the only proper venue in the following states is as follows: Illinois, Chicago; Michigan, Detroit; and Missouri, St. Louis.

21.0 Filing of Agreement: Governmental Requirement

- 21.1 To the extent required (and not exempted), the Parties understand and agree that this Agreement will be filed with the FCC pursuant to 47 U.S.C. § 211.
- 21.2 The Parties further understand and agree that to the extent a Party ("Disclosing Party") is requested, required or ordered by a state regulatory body, or a court of competent jurisdiction finds, that this Agreement should be filed, or that such Agreement should be submitted to a state regulatory body for approval, or should a regulatory body or court of competent jurisdiction find that its provisions should be tariffed pursuant to applicable law or regulation, the Disclosing Party shall provide the other Party ("Receiving Party") with written notice of such requirement as soon as possible and the Receiving Party shall cooperate with the Disclosing Party in expeditiously complying with any such request, order or finding.

22.0 Compliance and Certification

- 22.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 22.2 Each Party warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Products and/or Services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 22.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 22.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA, to the extent applicable.

22.5 CLEC shall provide AT&T-12STATE with CLEC's complete and valid OCNs/AECNs as assigned by NECA and ACNA as assigned by Telcordia ("Profile Codes"), for each state to which this Agreement applies. For renegotiated agreements, CLEC shall also provide a list of all OCNs/AECNs and ACNAs associated with products and services purchased prior to the Effective Date of this Agreement. The CLEC shall provide the Profile Codes via the appropriate OSS, (e.g., CLEC Profile) within thirty (30) calendar days of the effective date of this Agreement. CLEC shall not order products or services under this Agreement until it has provided its Profile Codes as set forth in this Section.

23.0 Relationship of the Parties/Independent Contractor

23.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

23.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

24.0 No Third Party Beneficiaries; Disclaimer of Agency

24.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a Party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

25.0 Subcontracting

25.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.

25.2 Each Party will be solely responsible for payments due that Party's subcontractors.

25.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.

25.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Products and/or Services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

25.5 Any subcontractor that gains access to Customer Proprietary Network Information (CPNI) or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

26.0 Force Majeure

26.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make monetary payments) resulting from a "Force Majeure Event" or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. A Force Majeure Event" is defined as acts or occurrences beyond the reasonable control of a Party or the Parties, including without limitation acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, labor difficulties, including without limitation, strikes, slowdowns, picketing, boycotts or other work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers, individually and collectively a Force Majeure Event. If a Force Majeure Event shall occur, the Party affected shall give notice to the other Party of such Force Majeure Event within a reasonable period of time following such an event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like Notice and proceed to perform with dispatch once the causes are removed or cease.

27.0 Taxes

27.1 CLEC shall be responsible for all federal, state or local, sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees or surcharges (herein ("Tax(es)")) imposed on or with respect to the products and/or services provided under this Agreement including those Taxes the incidence of which is imposed on AT&T-12STATE other than taxes imposed on the income of AT&T-12STATE. CLEC shall reimburse AT&T-12STATE for the amount of any such Taxes that AT&T-12STATE is required to pay or collect. CLEC agrees to indemnify and hold harmless AT&T-12STATE for any costs incurred by AT&T-12STATE as a result of actions taken by the applicable taxing authority to collect the Tax from AT&T-12STATE due to the failure of CLEC to pay or collect and remit any Tax to such authority. Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the providing Party fails to bill the purchasing Party for a Tax at the time of billing the products or services to which the Tax relates, then, as between the providing Party and the purchasing Party, the providing Party shall be liable for any penalties or interest thereon. However, if the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible for payment of the Tax and any penalties or interest thereon. Subject to the provisions of this Section 27.0 governing contests of disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this subsection, which is paid by Providing Party to the respective Governmental Authority; within the applicable statute of limitations periods for assessment or collection of such Tax, including extensions; provided, however, that the providing Party notifies the purchasing Party within the earlier of (i) sixty (60) days following the running of such limitations period for, including extensions, or (ii) six (6) years following the purchasing Party's payment for the products or services to which such Tax relates.

27.2 With respect to any purchase under this Agreement of products or services that are resold by the purchasing Party to a Third Party or used as a component part of or integrated into a product or service sold to a Third Party, if any Tax is imposed on or with respect to such sale by the purchasing Party, the purchasing Party shall pay or remit such Tax to the respective Governmental Authority. If the purchasing Party fails to pay or remit any Tax as required by Applicable Law, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such Tax and any interest and penalties thereon. Notwithstanding any other provision of this Agreement, the purchasing Party agrees to protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any Tax, any interest or penalties thereon, and any costs or expenses (including attorney fees) incurred by the providing Party as a result of any claim asserted or actions taken by the respective Governmental Authority to assess against or collect from the providing Party any Tax related to any sale by the purchasing Party to a Third Party.

- 27.3 To the extent a purchase of products or services under this Agreement is claimed by the purchasing Party to be for resale or otherwise exempt from a Tax, the purchasing Party shall furnish to the providing Party an exemption certificate in the form prescribed by the providing Party and any other information or documentation required by Applicable Law or the respective Governmental Authority. Prior to receiving such exemption certificate and any such other required information or documentation, the Providing Party shall have the right to bill, and the Purchasing Party shall pay, Tax on any products or services furnished hereunder as if no exemption were available, subject to the right of the Purchasing Party to pursue a claim for credit or refund of any such Tax pursuant to the provisions of this Section 27.0 and the remedies available under Applicable Law. If it is the position of the purchasing Party that Applicable Law exempts or excludes a purchase of products or services under this Agreement from a Tax, or that the Tax otherwise does not apply to such a purchase, but Applicable Law does not also provide a specific procedure for claiming such exemption or exclusion or for the purchaser to contest the application of the Tax directly with the respective Governmental Authority prior to payment, then the providing Party may in its discretion agree not to bill and/or not to require payment of such Tax by the purchasing Party, provided that the purchasing Party (i) furnishes the providing Party with any exemption certificate requested by and in the form prescribed by the providing Party, (ii) furnishes the providing Party with a letter signed by an officer of the purchasing Party setting forth the basis of the purchasing Party's position under Applicable Law; and (iii) furnishes the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by the providing Party in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such Tax from the providing Party.
- 27.4 To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 27.0, the purchasing Party shall have the right to contest with the respective Governmental Authority, or if necessary under Applicable Law to have the providing Party contest (in either case at the purchasing Party's expense) any Tax that the purchasing Party asserts is not applicable, from which it claims an exemption or exclusion, or which it claims to have paid in error; provided, however, that (i) the purchasing Party shall ensure that no lien is attached to any asset of the providing Party as a result of any contest of a disputed Tax; (ii) with respect to any Tax that could be assessed against or collected from the providing Party by the respective Governmental Authority, the providing Party shall retain the right to determine the manner of contesting such disputed Tax, including but not limited to a decision that the disputed Tax will be contested by pursuing a claim for credit or refund; (iii) except to the extent that the providing Party has agreed pursuant to this Section 27.0 not to bill and/or not to require payment of such Tax by the purchasing Party pending the outcome of such contest, the purchasing Party pays any such Tax previously billed by the providing Party and continues paying such Tax as billed by the providing Party pending the outcome of such contest. In the event that a disputed Tax is to be contested by pursuing a claim for credit or refund, if requested in writing by the purchasing Party, the providing Party shall facilitate such contest (i) by assigning to the purchasing Party its right to claim a credit or refund, if such an assignment is permitted under Applicable Law; or (ii) if an assignment is not permitted, by filing and pursuing the claim on behalf of the purchasing Party but at the purchasing Party's expense. Except as otherwise expressly provided in this Section 27.0, nothing in this Agreement shall be construed to impair, limit, restrict or otherwise affect the right of the providing Party to contest a Tax that could be assessed against or collected from it by the respective Governmental Authority. With respect to any contest of a disputed Tax resulting in a refund, credit or other recovery, as between the purchasing Party and the providing Party, the purchasing Party shall be entitled to the amount that it previously paid, plus any applicable interest allowed on the recovery that is attributable to such amount, and the providing Party shall be entitled to all other amounts.
- 27.5 If either Party is audited by or on behalf of a Governmental Authority with respect to a Tax, and in any contest of a Tax by either Party, the other Party shall cooperate fully and timely by providing records, testimony and such additional information or assistance as may reasonably be necessary to expeditiously resolve the audit or pursue the contest. All Notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 27.0 shall be sent in accordance with Section 16.0 above hereof.

28.0 Non Waiver

- 28.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party

shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

29.0 Network Maintenance and Management

- 29.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, escalation processes, etc.) to achieve this desired result.
- 29.2 AT&T will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a twenty-four (24)-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 29.3 AT&T maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or seven (7)-digit and ten (10)-digit code gaps, to selectively cancel the completion of traffic over its network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload.
- 29.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by AT&T to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing.
- 29.5 CLEC shall not use any products and/or services hereunder in any manner that interferes with or impairs or undermines service over any facilities of AT&T-12STATE, its Affiliated companies or another connecting telecommunications carriers, prevents any telecommunications carrier from using its telecommunications service, impairs the quality or the privacy of telecommunications service to other carriers or to either Party's end users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue using or refuse to provide the products and/or services hereunder, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

30.0 End User Inquiries

- 30.1 Except as otherwise required, each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.
- 30.2 Except as otherwise required, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:
- 30.2.1 Direct the callers who inquire about the other Party's services or products to their local service provider.
- 30.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.
- 30.3 Except as otherwise provided in this Agreement, CLEC shall be the primary point of contact for CLEC's End Users with respect to the services CLEC provides such End Users.
- 30.4 CLEC acknowledges that AT&T-12STATE may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement.

31.0 Expenses

- 31.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.

32.0 Conflict of Interest

32.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

33.0 Survival

33.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Section 8.0 above and Section 8.1.1 above on Termination; Section 14.0 above on Indemnity; Section 15.0 above on Intellectual Property/License; Section 16.0 above on Notices; Section 17.0 above on Publicity and Use of Trademarks or Service Marks; Section 18.0 above on Confidentiality; Section 20.0 above on Governing Law; Section 27.0 above on Taxes; Section 28.0 above on Non Waivers and Section 35.0 below on Amendments and Modifications.

34.0 Scope of Agreement

34.1 This Agreement is the arrangement under which the AT&T-12STATE may provide the Yellow Zone Process, as outlined by the terms and conditions herein. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement that is not expressly provided herein.

34.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

35.0 Amendments and Modifications

35.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties.

36.0 Authority

36.1 Each of the AT&T-owned ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the AT&T-owned ILEC(s) for which this Agreement is executed represents and warrants that AT&T Services, Inc. has full power and authority to execute and deliver this Agreement as agent for that AT&T-owned ILEC. Each of the AT&T-owned ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

36.2 CLEC represents and warrants that it is a Corporation duly organized, validly existing and in good standing under the laws of the State of California and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. CLEC represents and warrants that it has been or will be certified as a LEC by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

36.3 Each Person whose signature (including e.g., an electronic signature) appears on the signature page represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

37.0 Counterparts

37.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

38.0 Entire Agreement

38.1 The terms contained in this Agreement and any Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement

and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

OPTIONAL ADVANCED SERVICES ATTACHMENT

The following voluntary products and services are available under this Optional Advanced Services Attachment.

- 1.0 **Yellow Zone Process ("YZP"):** YZP is an optional ordering process offered by AT&T-12STATE only in connection with xDSL loops with an actual loop length of 17,500 feet or less.
- 1.1. **Provisioning Process:** CLEC will order eligible xDSL Loops using the Loop Specification Code ("Spec Code") or Loop Modification Type ("LMT") designated for YZP and shall provide AT&T-12STATE with the type of technology it seeks to deploy at the time of ordering, including the PSD. If the technology does not fall within an existing PSD mask, then YZP shall not apply. CLEC may perform a mechanized loop qualification prior to placing an initial YZP order, but no manual loop qualification requests shall be submitted when CLEC is utilizing YZP. Each LSR submitted with the appropriate YZP SPEC code or LMT, shall initially receive a minimum three (3) Business Day service provisioning due date for an xDSL Loop.
- 1.2. CLEC may not request and AT&T-12STATE will not perform Acceptance Testing in association with xDSL Loops ordered via YZP.
- 1.3. **Maintenance Process:** The initial YZP service order must have completed and closed prior to the opening of a YZP trouble ticket as a result of the CLEC experiencing a situation in which its DSLAM will not communicate with the end-user premises. Prior to opening a YZP trouble ticket, CLEC must: verify the DSLAM is built properly, check the logical translations, perform a loop back from its DSLAM, insure proper routing, profile, and modem settings and confirm that the problem is not CLEC-related. All YZP order-related initial trouble tickets opened by CLEC will require load coil, excessive bridged tap and/or repeater information on that loop to be provided by the CLEC technician to AT&T-12STATE at the time of opening the trouble ticket and thus, CLEC shall equip its field technician(s) with appropriate test sets that can detect and detail the frequency, location and/or presence of such inhibitors (AT&T-12STATE does not specify the type of test equipment or specific tests for CLEC to determine the presence of inhibitors). After such verifications/testing, CLEC may choose one of the following two options:
 - Option 1:** Generate a trouble ticket with AT&T-12STATE's LOC and specify that CLEC's DSLAM will not communicate with the end-user premises (based on CLEC's own testing), the YZP trouble ticket may be conditioning related and the AT&T-12STATE LOC will analyze the CLEC-provided test results to attempt to determine why the CLEC's DSLAM is not communicating with the end-user premises and resolve by addressing any non-conditioning related reason (to the extent one exists) on AT&T-12STATE's side of the network, and/or by conditioning the facility as needed. YZP-related trouble tickets will receive a zero plus five (0 + 5) business day interval after the xDSL Loop has been determined to need conditioning (CLEC's submission of a trouble ticket on a YZP facility shall constitute authorization by CLEC for AT&T-12STATE to perform any recommended conditioning). AT&T SOUTHWEST REGION 5-STATE's and AT&T MIDWEST REGION 5-STATE's LOC may elect to perform LSTs in lieu of conditioning when applicable and AT&T WEST REGION 2-STATE may elect to perform LSTs in lieu of conditioning if and when available, and CLEC shall be obligated to pay for such LST at the rate(s) set forth in the parties' applicable Interconnection Agreement.
 - Option 2:** CLEC may cancel the Order by issuing an LSR to disconnect the circuit prior to submitting any trouble ticket (i.e., when CLEC is utilizing the YZP process and wishes to avail itself of this Option 2), CLEC must request a disconnect at the time it determines its DSLAM will not communicate with the end-user premise on a completed service order.
- 1.3.1. CLEC can open a YZP-related Trouble Ticket by one of the following methods: (i) Via Live Call (by identifying that the original order was YZP related and whether the trouble ticket is a conditioning related trouble ticket); or (ii) via an Electronic Bonding Ticket: (by noting in the 'Remarks' field that the ticket is YZP related and whether the trouble is conditioning related). If the ticket is not opened by CLEC as a possible conditioning-related ticket, the AT&T-12STATE LOC will handle the ticket pursuant to the present method of operation for all Repair tickets and will look for physical faults. If no fault is found, the LOC will contact CLEC so that CLEC can conduct its own Sync test. If CLEC's DSLAM does not communicate with the end-user premises, CLEC shall open another trouble ticket to address any conditioning that CLEC believes may

be required on the facility. CLEC may request a Cooperative Test at the time it opens the YZP trouble ticket, as more specifically provided for herein below.

1.3.2. CLEC shall pay Maintenance of Service charges pursuant to the Maintenance of Service charges referenced in Section 5 below, if: a YZP trouble ticket is opened, and 'No Trouble is Found' (NTF) in AT&T-12STATE's portion of the network; or the loop specific inhibitor information provided by CLEC to AT&T-12STATE requires a dispatch by AT&T-12STATE but is found to be incorrect upon subsequent investigation during the trouble ticket resolution process; or a retrip is involved (when CLEC notifies AT&T-12STATE that the loop is not working properly after initial trouble resolution, but there is NTF by AT&T-12STATE in its portion of the network); or the need for a vendor meet is agreed upon by AT&T-12STATE and CLEC is not equipped properly at the vendor meet site or is not at the site at the scheduled time or within ten (10) minutes thereafter.

1.3.3. After CLEC is notified that the trouble has been resolved, with or without loop conditioning, CLEC shall repeat its Sync Test between its DSLAM and the end-user premises. If the loop does not Sync, due to undetermined reasons, a second trouble ticket shall be opened by CLEC which will be governed by the same provisions set forth above.

2.0 **Removal of All or Non-Excessive Bridged Tap – Yellow Zone Process:** CLEC may request RABT conditioning via a trouble ticket after its Yellow Zone Process "As-Is" service order for the xDSL Loop or xDSL Subloop has been completed as provided in more detail below.

2.1. CLEC shall assist in trouble isolation for RABT-related initial trouble tickets by obtaining and providing to AT&T-12STATE interferer information on the loop at the time of opening the trouble ticket. CLEC should utilize its testing equipment to determine the following: the number and location of load coil(s), repeater(s) and bridged tap(s), including the length of individual sections. If an RABT trouble ticket is opened, and it is later determined by AT&T-12STATE that the requested conditioning is not available because no such bridged tap was on the loop, the trouble ticket will be closed in AT&T WEST REGION 2-STATE and AT&T SOUTHWEST REGION 5-STATE as a 'No Trouble Found' (NTF) and in AT&T MIDWEST REGION 5-STATE as 'Customer Provided Equipment,' and CLEC shall pay the Maintenance of Service charges referenced in Section 5 below.

2.2. CLEC may open an RABT-YZP trouble ticket via one of the following two methods: (i) by calling the LOC and opening a manual ticket and specifying it is a YZP trouble ticket and its specific RABT conditioning request; or (ii) by opening an electronic bonding ticket and in such case, shall identify it is a YZP trouble ticket and its specific RABT conditioning request in the remarks field. If the specific RABT conditioning request is not documented on the CLEC trouble ticket, the trouble ticket will be returned to CLEC for specific information; provided, however, upon CLEC's request, the LOC (AT&T-12STATE) will also investigate and address any AT&T-12STATE non-conditioning related reasons for any No Sync situation, or ensure CLEC's RABT request is appropriate by verifying the subject bridged tap is located on the loop, but AT&T-12STATE does not guarantee the synchronization of any loop. The submission by CLEC of a trouble ticket for RABT shall constitute CLEC's authorization for AT&T-12STATE to condition the loop as requested. CLEC shall then be billed and shall pay the applicable RABT conditioning charges set forth in Pricing Sheet. If and when All Bridged Tap has been removed, any future trouble tickets concerning bridged tap will require a vendor meet with the AT&T-12STATE LOC. The AT&T-12STATE LOC will notify CLEC as soon as the trouble is closed, whether conditioning has been performed or not.

2.3. A trouble ticket opened by CLEC for RABT conditioning will be assigned a zero plus five (0+ 5) business day interval or in parity with the repair intervals AT&T-12STATE provides to its advanced services affiliate. When AT&T-12STATE determines it is not possible to perform RABT e.g., in those situations in which (i) municipalities will not grant rights of way to certain areas; or (ii) there are other issues associated with access to the subject facilities; or (iii) events, actions or circumstances exist or arise that are outside the sole control of AT&T-12STATE, AT&T-12STATE has no obligation to perform such conditioning. In the event conditioning should be required during non-working hours, the due date may be adjusted consistent with the end-user's release of the voice grade circuit and the Maintenance of Service charges referenced in Section 5 below shall apply.

3.0 **INTENTIONALLY OMITTED**

4.0 **Voluntary, Optional xDSL Loop Only Testing Options**

4.1. Acceptance Testing

- 4.1.1. Should the CLEC desire Acceptance Testing, as applicable, it shall request such testing on a per xDSL Loop basis upon issuance of the Local Service Request (LSR). Acceptance Testing will be conducted at the time of installation of the service request; provided, however, because acceptance testing is a part of the standard provisioning process for IDSL Loops, this Section 4 shall not apply to IDSL Loops. For IDSL Loops that are provisioned through repeaters or Digital Loop Carrier, the AT&T-12STATE field technician will not perform a short or open circuit due to technical limitations. If the LSR was placed without a request for Acceptance Testing, and the CLEC should determine that it is desired or needed during any subsequent phase of provisioning, the request may be added at any time; however, this may cause a new standard due date to be calculated for the service order.
- 4.1.2. Acceptance Testing Procedure:
- 4.1.2.1. Upon delivery of a loop to/for CLEC, AT&T-12STATE's field technician will call the LOC and the LOC tester will call a toll free number provided by CLEC so that CLEC can initiate performance of a series of Acceptance Tests.
- 4.1.2.2. If the loop passes the "Proof of Continuity" parameters, as defined by this Attachment, CLEC will provide AT&T-12STATE with a confirmation number and AT&T-12STATE will complete the order. CLEC shall then be billed and shall pay for the Acceptance Test at the Maintenance of Service charges set forth in Section 5 below.
- 4.1.2.3. If the Acceptance Test fails loop continuity test parameters, the LOC technician will take any or all reasonable steps to immediately resolve the problem with CLEC on the line including, but not limited to, calling the central office to perform work or troubleshooting for physical faults. If the problem cannot be resolved in an expedient manner, the technician will release the CLEC representative, and perform the work necessary to correct the situation. Once the loop is correctly provisioned, AT&T-12STATE will re-contact the CLEC representative to repeat the Acceptance Test. When the aforementioned test parameters are met, the CLEC will provide AT&T-12STATE with a confirmation number and AT&T-12STATE will complete the order. If CLEC's xDSL-based service does not function as desired, yet test parameters are met, AT&T-12STATE will still close the order. AT&T-12STATE will not complete an order that fails Acceptance Testing.
- 4.1.2.4. Until such time as CLEC and AT&T-12STATE agree, or industry standards establish, that their test equipment can accurately and consistently send signals through repeaters or Digital Loop CLECs, the CLEC agrees to accept IDSL Loops, designed with such reach extenders, without testing the complete circuit.
- 4.1.2.5. AT&T-12STATE will be relieved of the obligation to perform Acceptance Testing on a particular loop and will assume acceptance of the loop by the CLEC when the CLEC cannot provide a "live" representative (through no answer or placement on hold) for over ten (10) minutes. AT&T-12STATE may then close the order utilizing existing procedures, document the time and reason, and may bill CLEC as if the Acceptance Test had been completed and the loop accepted and CLEC shall pay the charges referenced in Section 5 below. If, however, a trouble ticket is opened on the loop within twenty-four (24) hours and the trouble resulted from AT&T-12STATE error as determined through standard testing procedures, CLEC will be credited for the cost of the Acceptance Test. Additionally, CLEC may request AT&T-12STATE to re-perform the Acceptance Test at the conclusion of the repair phase again at no charge.
- 4.1.3. Acceptance Testing Billing: CLEC will be billed and shall pay for Acceptance Testing for xDSL Loops that are installed correctly by the committed interval without the benefit of corrective action due to Acceptance Testing. In particular, CLEC shall pay the Maintenance of Service charges referenced in Section 5 below.

4.2. Cooperative Testing – xDSL Loop Repair and Maintenance Cycle

- 4.2.1. Should CLEC desire Cooperative Testing, it shall request such testing on each xDSL Loop upon issuance of the trouble ticket.

4.2.2. If the trouble ticket was opened without a request for Cooperative Testing, and CLEC should determine that it is desired or needed during any subsequent phase of maintenance and repair, the request may be added; however, a new due date will be calculated to account for the additional work.

4.2.3. Cooperative Testing Procedure:

4.2.3.1. The AT&T-12STATE field technician will call the LOC and the LOC will contact CLEC for testing and resolution of the trouble ticket and to verify basic metallic loop parameters including proof of continuity and pair balance.

4.2.3.2. If the loop passes the "Proof of Continuity" parameters, as defined by this Attachment, the technician will close out the trouble report and the CLEC shall pay the Maintenance of Service charges referenced in Section 5 below.

4.2.3.3. If the Cooperative Test fails "Proof of Continuity" parameters, the LOC technician will take any reasonable steps to immediately resolve the problem with the CLEC representative on the line including, but not limited to, calling the central office to perform work or troubleshooting for physical faults. If the problem cannot be resolved in an expedient manner, the technician will release the CLEC representative, and perform the work reasonably necessary to bring the loop to standard continuity parameters as defined by this Attachment. When the aforementioned test parameters are met, the LOC will contact CLEC for another Cooperative Test.

4.2.3.4. AT&T-12STATE will be relieved of the obligation to perform Cooperative Testing on a particular loop and will assume acceptance of the test by CLEC when CLEC cannot provide a "live" representative (through no answer or placement on hold) for over ten (10) minutes. AT&T-12STATE may then close the trouble ticket, document the time and reason, and may bill CLEC as if the Cooperative Test had been completed and in such case, CLEC shall pay the Maintenance of Service charges referenced in Section 5 below.

5.0 **Maintenance of Service charges:** CLEC shall pay Maintenance of Service charges on a time and material basis, for the AT&T-12STATE technician time involved, pursuant to the following, applicable, regional FCC tariffed rates referenced below, as they may be modified from time to time:

AT&T CALIFORNIA only: FCC No. 1

AT&T MIDWEST REGION 5-STATE only: FCC No. 2

AT&T NEVADA only: FCC No. 1

AT&T SOUTHWEST REGION 5-STATE only: FCC No. 73

If requested by the CLEC, Overtime and Premium time charges will apply as provided for in such FCC tariffs for any work or tests requested by CLEC and performed by AT&T-12STATE which are not covered by this Agreement or which are performed outside of standard business hours.

6.0 **Definitions:**

6.1. "All Bridged Tap" means both "Excessive" and "Non-excessive" Bridged Tap.

6.2. "Excessive Bridged Tap" as used herein shall refer to bridged tap in excess of 2,500 feet in total length.

6.3. "Non-excessive Bridged Tap" as used herein shall refer to bridged tap less than 2,500 feet in total length.

6.4 "Proof of Continuity" as used herein shall be determined by performing a physical fault test from the MPOE or other demarcation point to the POI located on the horizontal side of the MDF by providing a short across the circuit on the tip and ring, and registering whether it can be received at the far end. This test will be known hereafter as "Proof of Continuity" or "Continuity Test". "Continuity" as used herein is defined as a single, uninterrupted path along a circuit, from the Minimum Point of Entry (MPOE) or other demarcation point to the Point of Interface (POI) located on the horizontal side of the Main Distribution Frame (MDF).

PRICING SHEETS

Attachment	State	Product	Rate Element Description	COS (Class of Service)	USOC	Zone	Monthly Recurring Charge (MRC)	Non-Recurring Charge (NRC) First	Non-Recurring Charge (NRC) Additional	Per Unit
Optional Advanced services	CA	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of All Bridged Tap DSL Loops 12Kft. To 17.5Kft.		NRMRP		None	\$ 765.21	N/A	
Optional Advanced services	CA	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of non-excessive bridged tap DSL loops >0Kft. And <17.5Kft.		NRMRJ		None	\$ 295.60	N/A	
Optional Advanced services	CA	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of All Bridged Tap DSL loops >17.5Kft. - per element incremental		NRMRM		None	\$ 295.60	N/A	
Optional Advanced services	CA	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of non-excessive bridged tap DSL loops >17.5Kft DSL Loops - per element incremental		NRMRS		None	\$ 295.60	N/A	
Optional Advanced services	CA	HFPL LST	Line & Station Transfer(LST)		OPEN			\$203.04		

PRICING SHEETS

Attachment	State	Product	Rate Element Description	COS (Class of Service)	USOC	Zone	Monthly Recurring Charge (MRC)	Non-Recurring Charge (NRC) First	Non-Recurring Charge (NRC) Additional	Per Unit
Optional Advanced services	NV	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of All Bridged Tap DSL Loops 12Kft. To 17.5Kft.		NRMRP		None	\$ 1,101.85	N/A	
Optional Advanced services	NV	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of non-excessive bridged tap DSL loops >0Kft. And <17.5Kft.		NRMRJ		None	\$ 425.64	N/A	
Optional Advanced services	NV	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of All Bridged Tap DSL loops >17.5Kft. - per element incremental		NRMRM		None	\$ 425.64	N/A	
Optional Advanced services	NV	Remove All or NON-Excessive Bridged Tap (RABT) - MMP	Removal of non-excessive bridged tap DSL loops >17.5Kft DSL Loops - per element incremental		NRMRS		None	\$ 425.64	N/A	
Optional Advanced services	NV	HFPL LST	Line & Station Transfer(LST)		OPEN			\$245.99		