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October 16, 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 agreement between AT&T and Athena Broadband. The agreement will add Transit service in the state of Tennessee. 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

BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T TENNESSEE

AND

ATHENA BROADBAND

Signature: eSigned - Josh Lynch

Signature: eSigned - William A. Bockelman

Name: eSigned - Josh Lynch
(Print or Type)

Name: eSigned - William A. Bockelman
(Print or Type)

Title: Managing Partner
(Print or Type)

Title: Director
(Print or Type)

Date: 15 Sep 2015

Date: 15 Sep 2015

Athena Broadband

**BellSouth Telecommunications, LLC d/b/a AT&T
TENNESSEE by AT&T Services, Inc., its authorized
agent**

GENERAL TERMS AND CONDITIONS

TABLE OF CONTENTS

<u>Section</u>	<u>Page Number</u>
1.0 Introduction	4
2.0 Definitions.....	4
3.0 Interpretation and Construction.....	9
4.0 Notice of Changes - Section 251(c)(5).....	11
5.0 Responsibilities of the Parties	11
6.0 Insurance	11
7.0 Assignment.....	13
8.0 Effective Date, Term and Termination.....	14
9.0 Fraud, Including End User or Other Third Party Fraud.....	16
10.0 Assurance of Payment.....	16
11.0 Billing	18
12.0 Nonpayment and Procedures for Disconnection	21
13.0 Dispute Resolution	22
14.0 Disclaimer of Representations and Warranties.....	25
15.0 Limitation of Liability	26
16.0 Indemnity	27
17.0 Intellectual Property/License	29
18.0 Notices	29
19.0 Publicity and Use of Trademarks or Service Marks	31
20.0 Confidentiality	31
21.0 Severability	32
22.0 Governing Law	32
23.0 Filing of Agreement: Governmental Requirement.....	32
24.0 Changes in End User Local Telephone Exchange Service Provider Selection	32
25.0 Compliance and Certification.....	33
26.0 Law Enforcement	33
27.0 Relationship of the Parties/Independent Contractor.....	34
28.0 No Third Party Beneficiaries; Disclaimer of Agency.....	34
29.0 Subcontracting.....	35
30.0 Force Majeure.....	35
31.0 Taxes.....	35

32.0	Non Waiver	37
33.0	Network Maintenance and Management	37
34.0	End User Inquiries	38
35.0	Expenses	38
36.0	Conflict of Interest	38
37.0	Survival	38
38.0	Scope of Agreement	38
39.0	Amendments and Modifications	38
40.0	Authority	39
41.0	Counterparts.....	39
42.0	Entire Agreement	39

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 **BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and AT&T TENNESSEE; Illinois Bell Telephone Company d/b/a AT&T ILLINOIS, Michigan Bell Telephone Company d/b/a AT&T MICHIGAN, Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale, 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 Athena Broadband ("CLEC" also referenced as "Athena Broadband"), (a Tennessee General Partnership (GP)), (referred to herein collectively as, the "Parties"; each, a "Party"), and shall apply to the State(s) of Tennessee. This Agreement sets forth the rates, terms and conditions under which AT&T-11STATE agrees to provide CLEC with Transit Traffic Service.

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: **BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA, and AT&T TENNESSEE; Illinois Bell Telephone Company d/b/a AT&T ILLINOIS, , Michigan Bell Telephone Company d/b/a AT&T MICHIGAN, Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale, 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-11STATE 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 "Alternate Billing Service (ABS)" or "Alternately Billed Traffic (ABT)", as described in Attachment Alternate Billing Service, means the service that allows End Users to bill calls to accounts that may not be associated with the originating line. There are three types of ABS/ABT calls: calling card, collect and third number billed calls.
- 2.5 "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.
- 2.6 "**AT&T Inc.**" (**AT&T**) means the holding company which directly or indirectly owns the following ILECs: **BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T SOUTH CAROLINA and AT&T TENNESSEE; Illinois Bell Telephone Company d/b/a AT&T**

ILLINOIS, Michigan Bell Telephone Company d/b/a **AT&T MICHIGAN**, Nevada Bell Telephone Company d/b/a **AT&T NEVADA** and AT&T Wholesale, 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.

- 2.7 "**AT&T-11STATE**" means the AT&T-owned ILEC(s) doing business in Alabama, Florida, Georgia, Illinois, Louisiana, Michigan, Mississippi, Nevada, South Carolina, Tennessee, and Wisconsin.
- 2.8 "**AT&T-7STATE**" means the AT&T-owned ILEC(s) doing business in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina and Tennessee.
- 2.9 "**AT&T-3STATE**" means the AT&T-owned ILEC(s) doing business in Illinois, Michigan, and Wisconsin.
- 2.10 "**AT&T ALABAMA**" means the AT&T-owned ILEC doing business in Alabama.
- 2.11 "**AT&T FLORIDA**" means the AT&T-owned ILEC doing business in Florida.
- 2.12 "**AT&T GEORGIA**" means the AT&T-owned ILEC doing business in Georgia.
- 2.13 "**AT&T ILLINOIS**" means the AT&T-owned ILEC doing business in Illinois.
- 2.14 "**AT&T LOUISIANA**" means the AT&T-owned ILEC doing business in Louisiana.
- 2.15 "**AT&T MICHIGAN**" means the AT&T-owned ILEC doing business in Michigan.
- 2.16 "**AT&T MISSISSIPPI**" means the AT&T-owned ILEC doing business in Mississippi.
- 2.17 "**AT&T NEVADA**" means the AT&T-owned ILEC doing business in Nevada.
- 2.18 "**AT&T SOUTH CAROLINA**" means the AT&T-owned ILEC doing business in South Carolina..
- 2.19 "**AT&T TENNESSEE**" means the AT&T-owned ILEC doing business in Tennessee.
- 2.20 "**AT&T WISCONSIN**" means the AT&T-owned ILEC doing business in Wisconsin.
- 2.21 "Audited Party" means the Party being audited by the Auditing Party.
- 2.22 "Auditing Party" means the Party conducting an audit of the Audited Party's books, records, data and other documents.
- 2.23 "Bill Due Date" means thirty (30) calendar days from the bill date.
- 2.24 "Billed Party" means the recipient Party of a bill rendered from the Billing Party.
- 2.25 "Billing Party" means the Party rendering a bill.
- 2.26 "Business Day" means Monday through Friday, excluding holidays on which the applicable **AT&T-11STATE** ILEC does not provision new retail services and products.
- 2.27 "CABS" means the Carrier Access Billing System.
- 2.28 "Calling Party Number" or "CPN" is as defined in 47 C.F.R. § 64.1600(c).
- 2.29 "Carrier" means a Telecommunications Carrier as defined in the Act and certificated by the Commission to provide local Telephone Exchange Service.
- 2.30 "Cash Deposit" means a cash security deposit in U.S. dollars held by **AT&T-11STATE**.
- 2.31 "Central Office Switch (CO)" means the switching entity within the public switched telecommunications network, including but not limited to:
 - 2.31.1 "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.
 - 2.31.2 "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.
- 2.32 "Claim" means any pending or threatened claim, action, proceeding or suit.

- 2.33 "Commercial Mobile Radio Service(s) (CMRS)" is as defined in the Act and FCC rules.
- 2.34 "Commission" means the applicable State agency with regulatory authority over certain Telecommunications Services. The following is a list of the appropriate State agencies:
- 2.34.1 the Alabama Public Service Commission;
 - 2.34.2 the Florida Public Service Commission;
 - 2.34.3 the Georgia Public Service Commission;
 - 2.34.4 the Illinois Commerce Commission;
 - 2.34.5 the Louisiana Public Service Commission;
 - 2.34.6 the Michigan Public Service Commission;
 - 2.34.7 the Mississippi Public Service Commission;
 - 2.34.8 the Public Utilities Commission of Nevada;
 - 2.34.9 the Public Service Commission of South Carolina;
 - 2.34.10 the Tennessee Regulatory Authority; and
 - 2.34.11 the Public Service Commission of Wisconsin.
- 2.35 "Competitive Local Exchange Carrier (CLEC)" means a telephone company certificated by the Commission to provide local Telephone Exchange Service within AT&T-11STATE's franchised area.
- 2.36 "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:
- 2.36.1 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;
 - 2.36.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or
 - 2.36.3 any Force Majeure Event.
- 2.37 "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).
- 2.38 "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.
- 2.39 "Disputed Amounts" means the amount that the Disputing Party contends is incorrectly billed.
- 2.40 "Disputing Party" means the Party to this Agreement that is disputing an amount in a bill rendered by the Billing Party.
- 2.41 "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.
- 2.42 "Exchange Access" means as defined in the Act.
- 2.43 "Exchange Area" means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 2.44 "FCC" means the Federal Communications Commission.

- 2.45 "Fraud Monitoring System" means an off-line administration system that monitors suspected occurrences of ABT-related fraud.
- 2.46 "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.
- 2.47 "Incumbent Local Exchange Carrier (ILEC)" is as defined in the Act.
- 2.48 "Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 2.49 "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.
- 2.50 "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).
- 2.51 "Interexchange Carrier (IXC)" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 2.52 "InterLATA" is as defined in the Act."
- 2.53 "IntraLATA Toll Traffic" means the IntraLATA traffic, regardless of the transport protocol method, between two locations within one LATA where one of the locations lies outside of the mandatory local calling area as defined by the Commission.
- 2.54 "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-11STATE as of the Bill Due Date, or if the CLEC does not submit the Remittance Information.
- 2.55 "LEC-carried" means the transport of calls or messages on a Carrier's network.
- 2.56 "Letter of Credit" means the unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to AT&T-11STATE naming the AT&T-owned ILEC(s) designated by AT&T-11STATE as the beneficiary(ies) thereof and otherwise on the AT&T-11STATE Letter of Credit form.
- 2.57 "Line Information Data Base (LIDB)" means a transaction-oriented database system that functions as a centralized repository for data storage and retrieval. LIDB is accessible through CCS networks. LIDB contains records associated with End User line numbers and special billing numbers.
- 2.58 "Local Access and Transport Area (LATA)" is as defined in the Act.
- 2.59 "Local Exchange Carrier (LEC)" is as defined in the Act.
- 2.60 "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).
- 2.61 "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.
- 2.62 "North American Numbering Plan (NANP)" means the numbering architecture in which every station in the NANP Area is identified by a unique ten (10)-digit address consisting of a three (3)-digit NPA code, a three (3)-digit central office code of the form NXX, and a four (4)-digit line number of the form XXXX.
- 2.63 "Numbering Plan Area (NPA)" also called area code, means the three (3)-digit code that occupies the A, B, C positions in the ten (10)-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits two (2) through nine (9) and X represents any digit zero (0) through nine (9). In the NANP, NPAs are classified as either geographic or non-geographic: a) Geographic NPAs are NPAs which

correspond to discrete geographic areas within the NANP Area: b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, (e.g., 800).

- 2.64 "NXX" or "Central Office Code" is the three (3)-digit switch entity indicator that is defined by the fourth (4th) through sixth (6th) digits of a ten (10)-digit telephone number within the NANP. Each NXX Code contains ten thousand (10,000) station numbers.
- 2.65 "Operating Company Number (OCN)" means the numeric Company Code assigned by NECA identifying CLEC as a Resale or UNE provider.
- 2.66 "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.
- 2.67 "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).
- 2.68 "Out of Exchange LEC (OE-LEC)" means a LEC providing Telecommunications services outside AT&T-11STATE's incumbent local Exchange Area utilizing NPA-NXXs identified to reside in a Third Party ILEC's local Exchange Area.
- 2.69 "Out of Exchange Traffic" is defined as local, transit, or intraLATA traffic to or from a non-AT&T-11STATE Exchange Area.
- 2.70 "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.
- 2.71 "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-11STATE as of the Bill Due Date (individually and collectively means Past Due).
- 2.72 "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.
- 2.73 "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.
- 2.74 "Section 251(b)(5) Traffic" means Telecommunications Traffic in which the originating End User of one Party and the terminating End User of the other Party are both physically located in the same incumbent local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable Commission or regulatory agency; or both physically located within neighboring incumbent local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes. For Section 251(b)(5) Traffic exchanged between CLEC's End users and the End users of a CMRS provider that terminates the call, such traffic shall originate and terminate within the same Major Trading Area (MTA) as defined in 47 CFR§ 24.202(a).
- 2.75 "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.
- 2.76 "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.
- 2.77 "Telecommunications" is as defined in the Act.

- 2.78 "Telecommunications Carrier" is as defined in the Act.
- 2.79 "Telecommunications Service" is as defined in the Act.
- 2.80 "Telephone Exchange Service" is as defined in the Act.
- 2.81 "Telephone Toll Service" is as defined in the Act.
- 2.82 "Third Party" is any Person other than a Party.
- 2.83 "Third Party Originating Carrier" means a Carrier that originates traffic that transits AT&T-11STATE's network and is delivered to CLEC.
- 2.84 "Third Party Terminating Carrier" means a Carrier to which traffic is terminated when CLEC uses AT&T-11STATE's Transit Traffic Service.
- 2.85 "Third Party Trunk Group" (AT&T-7STATE) is a trunk group between CLEC and AT&T-7STATE's Tandem that is designated and utilized to transport Traffic that neither originates with nor terminates to an AT&T-7STATE End User. All such traffic is collectively referred to as Third Party Traffic.
- 2.86 "Transit Service Provider" means AT&T-11STATE when providing its Transit Traffic Service.
- 2.87 "Transit Traffic" means traffic originating on CLEC's network that is switched and transported by AT&T-11STATE and delivered to a Third Party's network, or traffic originating on a Third Party's network that is switched and transported by AT&T-11STATE and delivered to CLEC's network. A call that is originated or terminated by a CLEC purchasing local switching pursuant to a commercial agreement from AT&T-11STATE including, but not limited to; 271 Local Switching (271-LS), Local Wholesale Complete, Wholesale Local Platform Service agreement(s) is not considered a transit call for the purposes of this Agreement. Additionally, Transit Traffic may include but is not limited to, EAS calls and ELC calls but does not include traffic to/from IXCs.
- 2.88 "Transit Traffic MOUs" means all Transit Traffic minutes of use to be billed at the Transit Traffic rate by AT&T-11STATE.
- 2.89 "Transit Traffic Service" is an optional switching and intermediate transport service provided by AT&T-11STATE for Transit Traffic between CLEC and a Third Party Originating or Terminating Carrier, where CLEC is directly interconnected with an AT&T-11STATE Tandem.
- 2.90 "Trunk" means a communication line between two switching systems.
- 2.91 "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-11STATE's technical guideline or referenced AT&T-11STATE 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-11STATE'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.

3.8 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. When the Parties negotiate an agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating state-specific terms for the state in which they are to apply.

3.9 Scope of Obligations:

3.9.1 Notwithstanding anything to the contrary contained herein, AT&T-11STATE'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-11STATE 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-11STATE owns or leases and which are used in connection with AT&T-11STATE'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-11STATE 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-11STATE's incumbent local Exchange Areas for the provision of CLEC's Telecommunications Services. AT&T-11STATE 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-11STATE'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-11STATE 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-11STATE, 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-11STATE 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-11STATE 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-11STATE 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:
- 6.1.1 With respect to CLEC's performance under this Agreement, and in addition to CLEC's obligation to indemnify, CLEC shall at its sole cost and expense:
- 6.1.1.1 maintain the insurance coverage and limits required by this Section 6.0 and any additional insurance and/or bonds required by law:
- 6.1.1.1.1 at all times during the term of this Agreement and until completion of all work associated with this Agreement is completed, whichever is later;
- 6.1.1.2 require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverage, requirements, and limits at least as broad as those listed in this Section 6.0 from the time when the subcontractor begins work, throughout the term of the subcontractor's work; and
- 6.1.1.3 procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, CLEC may procure insurance from the state fund of the state where work is to be performed; and
- 6.1.1.4 deliver to AT&T-11STATE certificates of insurance stating the types of insurance and policy limits. CLEC shall provide or will endeavor to have the issuing insurance company provide at least thirty (30) days advance written notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to AT&T-11STATE. CLEC shall deliver such certificates:
- 6.1.1.4.1 prior to execution of this Agreement and prior to commencement of any Work;
- 6.1.1.4.2 prior to expiration of any insurance policy required in this Section 6.0.
- 6.1.2 The Parties agree:
- 6.1.2.1 the failure of AT&T-11STATE to demand such certificate of insurance or failure of AT&T-11STATE to identify a deficiency will not be construed as a waiver of CLEC's obligation to maintain the insurance required under this Agreement;
- 6.1.2.2 that the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect CLEC, nor be deemed as a limitation on CLEC's liability to AT&T-11STATE in this Agreement;
- 6.1.2.3 CLEC may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance; and
- 6.1.2.4 CLEC is responsible for any deductible or self-insured retention.
- 6.2 The insurance coverage required by this Section 6.0 includes:
- 6.2.1 Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:
- 6.2.1.1 \$500,000 for Bodily Injury – each accident; and
- 6.2.1.2 \$500,000 for Bodily Injury by disease – policy limits; and
- 6.2.1.3 \$500,000 for Bodily Injury by disease – each employee.
- 6.2.1.4 To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of AT&T-11STATE, its Affiliates, and their directors, officers and employees.

- 6.2.2 In states where Workers' Compensation insurance is a monopolistic state-run system, CLEC shall add Stop Gap Employers Liability with limits not less than \$500,000 each accident or disease.
- 6.2.3 Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:
 - 6.2.3.1 \$2,000,000 General Aggregate limit; and
 - 6.2.3.2 \$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence; and
 - 6.2.3.3 \$1,000,000 each occurrence limit for Personal Injury and Advertising Injury; and
 - 6.2.3.4 \$2,000,000 Products/Completed Operations Aggregate limit; and
 - 6.2.3.5 \$1,000,000 each occurrence limit for Products/Completed Operations; and
 - 6.2.3.6 \$1,000,000 Damage to Premises Rented to You (Fire Legal Liability).
- 6.2.4 The Commercial General Liability insurance policy must:
 - 6.2.4.1 include AT&T-11STATE, its Affiliates, and their directors, officers, and employees as Additional Insureds and
 - 6.2.4.2 be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T-11STATE.
- 6.2.5 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles.

6.3 This Section 6.0 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.

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-11STATE. 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-11STATE; 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-11STATE under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void ab initio.
- 7.3 Corporate Name Change and/or change in "d/b/a" only:
 - 7.3.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change under this Section. For such a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. Rates for service order charges are contained in the Pricing Schedule(s) of one or more Interconnection Agreements by or between AT&T-11STATE and CLEC pursuant to Sections 251/252 of the Act ("Currently Effective Interconnection Agreement").
- 7.4 Company Code Change:
 - 7.4.1 Any assignment or transfer of an Agreement associated with the transfer or acquisition of "assets" provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing

constitutes a "CLEC Company Code Change" under this Section. For the purposes of this Section 7.0, "assets" means any product or service provided under that Agreement. CLEC shall provide AT&T-11STATE with ninety (90) days advance written Notice of any assignment associated with a CLEC Company Code Change and obtain AT&T-11STATE's consent. AT&T-11STATE shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, AT&T-11STATE's consent to any CLEC Company Code Change is contingent upon payment of any outstanding charges, owed under this Agreement and/or CLEC's Currently Effective Interconnection Agreement, and payment of any outstanding charges associated with the "assets" subject to the AT&T Wholesale Customer Merger and Acquisition process published on the AT&T CLEC Online website. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment to AT&T-11STATE if requested under the terms of this Agreement.

8.0 Effective Date, Term and Termination

8.1 Effective Date:

8.1.1 In AT&T-11STATE, the Effective Date of this Agreement including without limitation, the rates and charges contained herein, shall be ten (10) Calendar 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-11STATE 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. Thereafter, this Agreement shall remain in effect until the effective date of a successor agreement governing Transit Traffic Service, as defined in the Transit Traffic Service Attachment, including either a commercial agreement or an interconnection agreement pursuant to Sections 251/252 of the Act; provided, however, that this Agreement shall at all times be subject to termination as provided in this 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 37 - 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 37 - 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-11STATE 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-11STATE 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-11STATE 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-11STATE 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-11STATE 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-11STATE 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-11STATE 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 Termination of Agreement after initial term expiration:

8.6.1 Where CLEC has no End Users or is no longer purchasing any services under this Agreement, either Party may terminate the Agreement by providing "Notice of Termination" to the other Party at any time after the initial term of this Agreement.

8.6.2 Where CLEC has End Users and/or is purchasing Transit Traffic Service under this Agreement and either Party seeks to terminate this Agreement, CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement. CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users are not impacted by the expiration or termination of this Agreement prior to the expiration or termination date of this Agreement.

8.6.3 If at any time within one hundred and eighty (180) days or any time thereafter of the expiration of the Term, if either Party serves "Notice of Expiration", CLEC shall have ten (10) calendar days to provide AT&T-11STATE written confirmation to the Notice of Expiration indicating if CLEC wishes to pursue a successor agreement with AT&T-11STATE or terminate its Agreement. If CLEC wishes to pursue a successor agreement with AT&T-11STATE, CLEC shall attach to its written confirmation or Notice of Expiration, a written request to commence negotiations with AT&T-11STATE and identify each of the state(s) to which

the successor agreement will apply. Upon receipt of CLEC's request, the Parties shall commence good faith negotiations for a successor agreement.

- 8.6.4 The rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of: (i) the effective date of the successor agreement, if any; or (ii) the Termination Date set forth in Section 8.2 above; or (iii) any other termination date pursuant to any other terms of this Agreement. For avoidance of doubt, nothing in this Agreement obligates AT&T-11STATE after the Termination Date to continue to offer or provide any services and/or product that were provided under this Agreement.
- 8.6.5 In any event, AT&T-11STATE shall be under no obligation to provision any products and/or services pursuant to this Agreement as of and after the Expiration Date or Termination Date.

9.0 Fraud, Including End User or Other Third Party Fraud

- 9.1 AT&T-11STATE shall not be liable to CLEC for any fraud, including fraud associated with CLEC's End User account, whether regarding 1+ IntraLATA toll, ported numbers, ABT or any other kinds of traffic, whatever the nature of said traffic.
- 9.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud or suspected fraud of any nature, including but not limited to fraud or suspected fraud involving 1+ IntraLATA toll calls, ABT ported numbers or any other kinds of traffic, whatever the nature of said traffic. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 9.3 In cases of suspected fraudulent activity, at a minimum, the cooperation referenced in Section 9.2 above will include providing to the Requesting Party information concerning End Users or Other Third Parties who originate, terminate or route traffic to or through the Non-Requesting Party when it is suspected that the Requesting Party has been impaired from appropriately and timely billing all relevant charges. The Non-Requesting Party, as the Party obligated to provide such information, is responsible for securing the End User's or Other Third Party's permission to provide such information to the Requesting Party, to the extent such permission is legally required.
- 9.4 AT&T-11STATE will use a Fraud Monitoring System to determine suspected occurrences of ABT-related fraud and will provide notification messages to CLEC on suspected occurrences of ABT-related fraud on CLEC accounts stored in the applicable LIDB.
- 9.5 CLEC understands that Fraud Monitoring System alerts only identify potential occurrences of fraud. CLEC understands and agrees that it will need to perform its own investigations to determine whether a fraud situation actually exists. CLEC understands and agrees that it will also need to determine what, if any, action CLEC should take as a result of a Fraud Monitoring System alert.
- 9.6 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification.

10.0 Assurance of Payment

- 10.1 Upon request by AT&T-11STATE, CLEC will provide AT&T-11STATE with the AT&T-11STATE Credit Profile form and provide information to AT&T-11STATE regarding CLEC's credit and financial condition.
- 10.2 Assurance of payment may be requested by AT&T-11STATE:
- 10.2.1 If based on AT&T-11STATE's analysis of the AT&T-11STATE Credit Profile and other relevant information regarding CLEC's credit and financial condition, there is an impairment of the credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from Third Party financial sources; or
- 10.2.2 CLEC fails to timely pay a bill rendered to CLEC by AT&T-11STATE (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below); and/or

- 10.2.3 CLEC's gross monthly billing has increased, AT&T-11STATE reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in CLEC's "accounts receivables and proceeds"; or
- 10.2.4 When CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 10.3 If AT&T-11STATE requires CLEC to provide a security deposit, CLEC shall provide such security deposit prior to the inauguration of service or within fifteen (15) calendar days of AT&T-11STATE's request, as applicable. Deposit request notices will be sent to CLEC via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in AT&T-11STATE's applicable Tariff.
- 10.4 Unless otherwise agreed by the Parties, the assurance of payment will consist of:
- 10.4.1 a Cash Deposit; or
- 10.4.2 a Letter of Credit; or
- 10.4.3 a Surety Bond.
- 10.5 The Cash Deposit, Letter of Credit or Surety Bond must be in an amount up to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by AT&T-11STATE, for products or services to be furnished by AT&T-11STATE under this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if CLEC has received service from AT&T-11STATE during such period at a level comparable to that anticipated to occur over the next six (6) months. If either CLEC or AT&T-11STATE has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, CLEC and AT&T-11STATE shall agree on a level of estimated billings based on all relevant information.
- 10.6 To the extent that AT&T-11STATE elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 10.7 Interest on a Cash Deposit shall accrue and be applied or refunded in accordance with the terms in the appropriate AT&T-11STATE Tariff. AT&T-11STATE will not pay interest on a Letter of Credit or a Surety Bond.
- 10.8 AT&T-11STATE may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
- 10.8.1 CLEC owes AT&T-11STATE undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
- 10.8.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 10.8.3 The expiration or termination of this Agreement.
- 10.9 If AT&T-11STATE draws on the Letter of Credit or Cash Deposit, upon request by AT&T-11STATE, CLEC will provide a replacement or supplemental Letter of Credit, Surety Bond or Cash Deposit conforming to the requirements of Section 10.4 above.
- 10.10 Notwithstanding anything else set forth in this Agreement, if AT&T-11STATE makes a request for assurance of payment in accordance with the terms of this Section 10.0 then AT&T-11STATE shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished AT&T-11STATE with the assurance of

payment requested; provided, however, that AT&T-11STATE will permit CLEC a minimum of fifteen (15) calendar days to respond to a request for assurance of payment before invoking this Section 10.10.

- 10.11 In the event CLEC fails to provide AT&T-11STATE with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to CLEC may be suspended, discontinued or terminated in accordance with the terms of Section 10.0 above. Upon termination of services, AT&T-11STATE shall apply any security deposit to CLEC's final bill for its account(s). If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, AT&T-11STATE may also invoke the provisions set forth in Section 12.0 below.
- 10.12 A Cash Deposit held by AT&T-11STATE shall be returned to CLEC if the following conditions have been met:
- 10.12.1 Payment was made on bills rendered to CLEC by AT&T-11STATE (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 12.4 below) as of the Bill Due Date for all but one time during the prior twelve month period and all payments were made with checks that were honored; and
- 10.12.2 There has been no impairment of the established credit and/or financial health from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems.
- 10.13 The fact that a Cash Deposit or Letter of Credit is requested by AT&T-11STATE shall in no way relieve CLEC from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.
- 10.14 At least seven (7) calendar days prior to the expiration of any Letter of Credit provided by CLEC as security under this Agreement, CLEC shall renew such Letter of Credit or provide AT&T-11STATE with evidence that CLEC has obtained a suitable replacement for the Letter of Credit. If CLEC fails to comply with the foregoing, AT&T-11STATE shall thereafter be authorized to draw down the full amount of such Letter of Credit and utilize the cash proceeds as security for CLEC account(s). If CLEC provides a security deposit or additional security deposit in the form of a Surety Bond as required herein, CLEC shall renew the Surety Bond or provide AT&T-11STATE with evidence that CLEC has obtained a suitable replacement for the Surety Bond at least seven (7) calendar days prior to the cancellation date of the Surety Bond. If CLEC fails to comply with the foregoing, AT&T-11STATE shall thereafter be authorized to take action on the Surety Bond and utilize the cash proceeds as security for CLEC's account(s). If the credit rating of any bonding company that has provided CLEC with a Surety Bond provided as security hereunder has fallen below "B", AT&T-11STATE will provide written Notice to CLEC that CLEC must provide a replacement bond or other suitable security within fifteen (15) calendar days of AT&T-11STATE's written Notice. If CLEC fails to comply with the foregoing, AT&T-11STATE shall thereafter be authorized to take action on the Surety Bond and utilize the cash proceeds as security for CLEC's account(s). Notwithstanding anything contained in this Agreement to the contrary, AT&T-11STATE shall be authorized to draw down the full amount of any Letter of Credit or take action on any Surety Bond provided by CLEC as security hereunder if CLEC defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein.
- 11.0 Billing**
- 11.1 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 Schedule and the underlying Currently Effective Interconnection Agreement.
- 11.2 A Late Payment Charge will be assessed for all Past Due payments as provided below, as applicable.
- 11.2.1 If any portion of the payment is not received by AT&T-11STATE on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T-11STATE in funds that are not

immediately available to AT&T-11STATE, then a late payment and/or interest charge shall be due to AT&T-11STATE. 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-11STATE. 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.

- 11.3 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-11STATE. If the Remittance Information is not received with payment, AT&T-11STATE will be unable to apply amounts paid to CLEC's accounts. In such event, AT&T-11STATE shall hold such funds until the Remittance Information is received. If AT&T-11STATE does not receive the Remittance Information by the Bill due date for any account(s), Late Payment Charges shall apply.
- 11.4 CLEC shall make all payments to AT&T-11STATE via electronic funds transfers (EFTs) through the Automated Clearing House Association (ACH) to the financial institution designated by AT&T-11STATE. 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-11STATE will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH payment must be received by AT&T-11STATE no later than the Bill Due Date of each bill or Late Payment Charges will apply. AT&T-11STATE 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.
- 11.5 Prior to establishing EFT, CLEC will complete a Customer Information Form for Electronic Payments (ECF11 Form) found on AT&T-11STATE's CLEC Online website. This form provides AT&T-11STATE with CLEC's set up and contract information for electronic payments. AT&T-11STATE banking information will be provided by AT&T-11STATE Treasury & Remittance Operations on AT&T-11STATE approved forms after the CLEC's completed ECF11 form is received, testing has completed and certification confirmed.
- 11.6 Processing of payments not made via electronic funds 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 transfers through the ACH network.
- 11.7 If Unpaid Charges are subject to a billing dispute between the Parties, the Non-Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below. The Disputing Party should utilize the preferred form or method provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay: (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent that is mutually agreed upon by the Parties.
- 11.8 Requirements to Establish Escrow Accounts:
- 11.8.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 11.8.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States; and
- 11.8.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 11.8.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.
- 11.8.2 In addition to the foregoing requirements for the Third Party escrow agent, the Disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:

- 11.8.2.1 The escrow account must be an interest bearing account;
- 11.8.2.2 all charges associated with opening and maintaining the escrow account will be borne by the Disputing Party;
- 11.8.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
- 11.8.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
- 11.8.2.5 disbursements from the escrow account will be limited to those:
 - 11.8.2.5.1 authorized in writing by both the Disputing Party and the Billing Party (that is, signature(s) from representative(s) of the Disputing Party only are not sufficient to properly authorize any disbursement); or
 - 11.8.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 13.7 below; or
 - 11.8.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 13.7 below.
- 11.9 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 11.2 above.
- 11.10 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 13 below.
- 11.11 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:
 - 11.11.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;
 - 11.11.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;
 - 11.11.3 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and
 - 11.11.4 no later than the third (3rd) Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.8 above.
- 11.12 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 11.12.1 above and Section 11.12.3 above are completed within the times specified therein.
- 11.13 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 11.12 above shall be grounds for termination of the Products and/or Services provided under this Agreement.
- 11.14 CLEC will notify AT&T-11STATE at least ninety (90) calendar days or three (3) monthly billing cycles prior to any billing changes. At that time a sample of the new invoice will be provided so that AT&T-11STATE has time to program for any changes that may impact validation and payment of the invoices. If notification is not received in the specified time frame, then invoices will be held and not subject to any Late Payment Charges, until the appropriate amount of time has passed to allow AT&T-11STATE the opportunity to test the new format and make changes deemed necessary.

- 11.15 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy as specified in CLEC's Currently Effective Interconnection Agreement Pricing Schedule, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

12.0 Nonpayment and Procedures for Disconnection

- 12.1 If a Party is furnished Products and/or Services under the terms of this Agreement in more than one (1) state, Section 12.2 below through Section 12.10 below, inclusive, shall be applied separately for each such state.
- 12.2 Failure to pay charges shall be grounds for disconnection of Products and/or Services furnished under this Agreement. If a Party fails to pay any charges billed to it under this Agreement, including but not limited to any Late Payment Charges or Unpaid Charges, and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will send a Discontinuance Notice to such Non-Paying Party. The Non-Paying Party must remit all Unpaid Charges to the Billing Party within fifteen (15) calendar days of the Discontinuance Notice.
- 12.3 **AT&T-11STATE** will also provide any written notification to any Commission if required by any State Order or Rule.
- 12.4 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's notice of Unpaid Charges:
- 12.4.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in Section 13.4 below of this Agreement, together with the reasons for its dispute; and
 - 12.4.2 pay all undisputed Unpaid Charges to the Billing Party; and
 - 12.4.3 pay all Disputed Amounts (other than Disputed Amounts arising from Inter-carrier Compensation) into an interest bearing escrow account that complies with the requirements set forth in Section 11.9 above; and
 - 12.4.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 11.9 above and deposited a sum equal to the Disputed Amounts into that account (other than Disputed Amounts arising from Inter-carrier Compensation). Until evidence that the full amount of the Disputed Charges (other than Disputed Amounts arising from Inter-carrier Compensation) has been deposited into an escrow account that complies with Section 11.9 above is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 13.0 below.
- 12.5 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 13.0 below.
- 12.6 If the Non-Paying Party fails to:
- 12.6.1 Pay any undisputed Unpaid Charges in response to the Billing Party's Discontinuance Notice as described in Section 12.2 above.
 - 12.6.2 Deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 11.9 above within the time specified in Section 12.2 above.
 - 12.6.3 Timely furnish any assurance of payment requested in accordance with Section 10.4 above; or
 - 12.6.4 make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section 12.0 within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:
 - 12.6.4.1 Suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Products and/or Services under this Agreement; and/or
 - 12.6.4.2 suspend completion of any pending application, request or order from the Non-Paying Party for

new or additional Products and/or Services Service under this Agreement.

- 12.7 If required, a copy of the demand provided to CLEC under Section 12.6 above will also be provided to the Commission at the same time.
- 12.8 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 12.6 above, and Sections 12.6.4.1 above and 12.6.4.2 above:
 - 12.8.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date; and
 - 12.8.2 will exclude any affected application, request, order or service from any otherwise Performance Measure.
- 12.9 For AT&T-3STATE only, if the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 12.6 above of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law:
 - 12.9.1 cancel any pending application, request or order for new or additional Products and/or Services, under this Agreement; and
 - 12.9.2 disconnect any Products and/or Services furnished under this Agreement.
 - 12.9.3 discontinue providing any Products and/or Services furnished under this Agreement.
- 12.10 Limitation on Back-billing and Credit Claims; Exceptions to Limitation for Certain Situations (True-Ups):
 - 12.10.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to:
 - 12.10.1.1 Back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve (12) month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement. Nothing herein shall prohibit either Party from rendering bills or collecting for any Products and/or Services more than twelve (12) months after the Products and/or Services was provided when the ability or right to charge or the proper charge for the Products and/or Services was the subject of an arbitration or other Commission docket or any FCC order, including any appeal of such arbitration, docket or FCC order. In such cases (hereinafter a "true-up") the time period for billing shall be the longer of (a) the period specified by the Commission in the final order allowing or approving such change or (b) eighteen (18) months from the date of the final order allowing or approving such charge (c) twelve (12) months from the date of approval of any executed amendment to this Agreement required to implement such charge.
 - 12.10.1.2 Back-billing and credit claims, and true-ups, as limited above, will apply to all Products and/or Services purchased under this Agreement.

13.0 Dispute Resolution

- 13.1 Finality of Disputes:
 - 13.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twelve (12) 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.

13.1.2 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.

13.2 Alternative to Litigation:

13.2.1 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.

13.3 Commencing Dispute Resolution:

13.3.1 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:

13.3.1.1 Service Center Dispute Resolution

13.3.1.2 Informal Dispute Resolution; and

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

13.4 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-11STATE for Disputed Amounts must be made on the "Billing Claims Dispute Form".

13.4.1 If the written Notice given pursuant to Section 13.3 above discloses that the dispute relates to billing, then the procedures set forth in Section 12.4 above shall be used.

13.4.2 For a dispute submitted by the CLEC, the dispute shall first be processed by the appropriate service center for resolution.

13.4.3 In order to resolve a billing dispute, the Disputing Party shall furnish the other Party written Notice of:

13.4.3.1 the date of the bill in question;

13.4.3.2 the account number or other identification (CLEC must provide the CBA/ESBA/ASBS or BAN number) of the bill in question;

13.4.3.3 telephone number, circuit ID number or trunk number in question;

13.4.3.4 any USOC (or other descriptive information) information relating to the item questioned;

13.4.3.5 amount billed;

13.4.3.6 amount in question; and

13.4.3.7 the reason that the Disputing Party disputes the billed amount.

13.4.4 When CLEC is the Disputing Party, CLEC must provide evidence to AT&T-11STATE that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 11.9 above of this 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 13.0 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.

13.4.5 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 13.4 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.

13.4.6 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 13.4 above furnishes all requisite information and evidence under Section 13.4 above, upon request, the non-Disputing Party will notify the Disputing Party of the status of the dispute and the expected resolution date.

13.4.7 If the Disputing Party is not satisfied by the resolution of the billing dispute under this Section 13.4 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 13.5 below of this Agreement.

13.5 Informal Dispute Resolution:

13.5.1 Upon receipt by one Party of Notice of a dispute by the other Party pursuant to Section 13.3 above or Section 13.4.7 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.

13.6 Formal Dispute Resolution:

13.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 13.5 above, then either Party may invoke the formal Dispute Resolution procedures described in this Section 13.6. 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 13.3 above.

13.6.2 Claims Subject to Mandatory Arbitration:

13.6.2.1 The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 13.7 below:

13.6.2.1.1 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 13.3 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 13.3 above, the Parties will annualize the actual number of months billed.

13.6.3 Claims Subject to Elective Arbitration:

13.6.3.1 Claims will be subject to elective arbitration pursuant to Section 13.7 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.

13.6.4 Claims Not Subject to Arbitration:

13.6.4.1 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.

13.6.4.2 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

13.6.4.3 Actions to compel compliance with the Dispute Resolution process.

13.6.4.4 All claims arising under federal or state statute(s), including antitrust claims.

13.7 Arbitration:

13.7.1 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 Atlanta, Georgia for AT&T-7-STATE; Chicago, Illinois for AT&T-3STATE; 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 13.0 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.

13.8 Subject to the restrictions set forth in Section 20.0 below and except as may be otherwise expressly provided in this Agreement, the Auditing Party may audit the Audited Party's books, records, data and other documents, as provided herein, the purpose of verification of compliance with any provision of this Agreement of whatever nature, including any that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audits may be requested not more than once a year. Audits are to be at the Auditing Party's expense. Where an audit results in findings requiring adjustments by, changes by, or other corrective action the part of the Audited Party, the Audited Party shall pay the Auditing Party for the expenses of the audit.

13.9 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

13.10 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 11.2.1 above (depending on the AT&T-owned ILEC(s) involved), for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

13.11 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may pursue resolution subject to Section 13.6 herein.

14.0 Disclaimer of Representations and Warranties

14.1 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.

15.0 Limitation of Liability

- 15.1 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any Loss relating to or arising out of any cause whatsoever, including any negligent act or omission (whether willful or inadvertent) whether based in contract, tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the facilities, products, services or functions not performed or provided or improperly performed or provided.
- 15.2 Except as otherwise expressly provided in specific Attachments, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 15.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Products and/or Services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Products and/or Services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 15.0.
- 15.4 Neither CLEC nor AT&T-11STATE shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 15.0 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 15.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Products and/or Services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnities' Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.
- 15.5 AT&T-11STATE shall not be liable for damages to an End User's premises resulting from the furnishing of any Products and/or Services, including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by AT&T-11STATE's gross negligence or willful misconduct. AT&T-11STATE does not guarantee or make any warranty with respect to Products and/or Services when used in an explosive atmosphere.
- 15.6 CLEC hereby releases AT&T-11STATE from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided by CLEC to AT&T-11STATE under this Agreement, including any errors or omissions occurring in the Directory Database or the White Pages directory, or any claims by reason of delay in providing the Directory Assistance listing information, printing or provisioning of non-published numbers or the printing or providing of CLEC End User information in the White Pages directory including, but not limited to, special, indirect, Consequential, punitive or incidental damages.
- 15.7 AT&T-11STATE shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.

- 15.8 This Section 15.0 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.

16.0 Indemnity

- 16.1 Except as otherwise expressly provided herein or in specific Attachments, each Party shall be responsible only for the Products and/or Services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Products and/or Services, provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 16.2 Except as otherwise expressly provided herein or in specific Attachments, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Products and/or Services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 16.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims or Losses by its End User regardless of whether the underlying product and/or Service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.
- 16.4 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any Claim or Loss arising from the Indemnifying Party's use of Products and/or Services provided under this Agreement involving:
- 16.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Products and/or Services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.
- 16.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Products and/or Services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any Products and/or Services provided pursuant to this Agreement.
- 16.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Products and/or Services, provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:
- 16.4.1.2.1 where an Indemnified Party or its End User modifies Products and/or Services, provided under this Agreement; and
- 16.4.1.2.2 no infringement would have occurred without such modification.
- 16.4.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment,

facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

- 16.5 All costs associated with the extension of Intellectual Property rights to CLEC pursuant to Section 17.1 below, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing product and/or service to which the Intellectual Property rights relate and apportioned to all requesting carriers using that product and/or service including AT&T-11STATE.
- 16.6 AT&T-11STATE hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by products and/or services in AT&T-11STATE's network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with products and/or service furnished under this Agreement are subject to the ownership terms stated in Section 17 of this Agreement.
- 16.7 AT&T-11STATE does not and shall not indemnify, defend or hold CLEC harmless, nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's use of functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with products and/or services furnished under this Agreement shall be vendor's indemnities and are subject to the ownership terms stated in Section 17 of this Agreement.
- 16.8 CLEC shall reimburse AT&T-11STATE for damages to AT&T-11STATE's facilities utilized to provide Products and/or Services hereunder caused by the negligence or willful act of CLEC, its agents or subcontractors or CLEC's End User or resulting from CLEC's improper use of AT&T-11STATE's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than AT&T-11STATE. Upon reimbursement for damages, AT&T-11STATE will cooperate with CLEC in prosecuting a claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by AT&T-11STATE for the damages to the extent of such payment.
- 16.9 Notwithstanding any other provision in this Agreement, each Party agrees that should it cause any non-standard digital subscriber line ("xDSL") technologies (as that term is defined in herein and/or the applicable Commission-ordered tariff, as appropriate) to be deployed or used in connection with or on AT&T-11STATE facilities, that Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other Telecommunications Service degradation, or damage to the other Party's ("Indemnitee's") facilities.
- 16.10 Indemnification Procedures:
- 16.10.1 Whenever a claim shall arise for indemnification under this Section 16.0, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 16.10.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 16.10.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 16.10.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

- 16.10.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 16.10.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 16.10.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
- 16.10.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 16.11 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.0 below.

17.0 Intellectual Property/License

- 17.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.
- 17.2 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.

18.0 Notices

- 18.1 Notices given by CLEC to AT&T-11STATE 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:
- 18.1.1 delivered by electronic mail.
- 18.1.2 delivered by facsimile.
- 18.2 Notices given by AT&T-11STATE to the CLEC 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:
- 18.2.1 delivered by electronic mail (email) provided CLEC has provided such information in Section 18.4 below.
- 18.2.2 delivered by facsimile provided CLEC has provided such information in Section 18.4 below.
- 18.3 Notices will be deemed given as of the earliest of:
- 18.3.1 the date of actual receipt;
- 18.3.2 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;

18.3.3 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;

18.4 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT
NAME/TITLE	Josh Lynch Managing Partner
STREET ADDRESS	1215 Union Street
CITY, STATE, ZIP CODE	Shelbyville, TN 37160
FACSIMILE NUMBER	N/A
PHONE NUMBER*	(931) 680-4668
EMAIL ADDRESS	josh@athenabroadband.com
NOTICE CONTACT	CLEC CONTACT
NAME/TITLE	Kristopher E. Twomey Law Office of Kristopher E. Twomey
STREET ADDRESS	1725 I Street NW, Suite 300
CITY, STATE, ZIP CODE	Washington, DC 20006
FACSIMILE NUMBER	(202) 517-9175
PHONE NUMBER*	(202) 681-1850
EMAIL ADDRESS	kris@lokt.net
	AT&T CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
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.

18.5 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 18.0. Unless explicitly stated otherwise, any change to the designated contact name, address, email address, and/or facsimile number will replace such information currently on file. 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.

- 18.6 In addition, CLEC agrees that it is responsible for providing AT&T-11STATE 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-11STATE to be received at least thirty (30) days prior to the change and/or addition in accordance with this Section 18 notice provision; CLEC shall also update its CLEC Profile through the applicable form and/or web-based interface.
- 18.7 AT&T-11STATE 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 declaration of a force majeure, changes on business processes and policies, and other product/service related notices not requiring an amendment to this Agreement.

19.0 Publicity and Use of Trademarks or Service Marks

- 19.1 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.
- 19.2 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.

20.0 Confidentiality

- 20.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 20.2 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.
- 20.3 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 20, 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).
- 20.4 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 20.4.1 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
- 20.4.2 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

- 20.4.3 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 20.4.4 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 20.4.5 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

21.0 Severability

- 21.1 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 18.0 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 21.1 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.
- 21.2 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.

22.0 Governing Law

- 22.1 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.
- 22.2 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.

23.0 Filing of Agreement: Governmental Requirement

- 23.1 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.
- 23.2 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.

24.0 Changes in End User Local Telephone Exchange Service Provider Selection

- 24.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange CLEC to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170), and any applicable state regulation. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.
- 24.2 Only an End User can initiate a challenge to a change in its LEC. If an End User notifies one Party that the End User requests local Telephone Exchange Service, and the other Party is such End User's LEC, then the Party receiving such request shall be free to immediately access such End User's CPNI subject to the requirements of Attachment OSS restricting access to CPNI in order to immediately provide service to such End User.
- 24.3 When an End User changes or withdraws authorization from its LEC, each Party shall release End User-specific facilities belonging to the ILEC in accordance with the End User's direction or that of the End User's authorized agent. Further, when an End User abandons its premise (that is, its place of business or domicile), AT&T-11STATE is free to reclaim the facilities for use by another End User and is free to issue service orders required to reclaim such facilities.
- 24.4 When an End User of CLEC elects to discontinue service and to transfer service to another Local Exchange Carrier, including AT&T-11STATE, AT&T-11STATE shall have the right to reuse the facilities provided to CLEC, and regardless of whether the End User served with such facilities has paid all charges to CLEC or has been denied service for nonpayment or otherwise. AT&T-11STATE will notify CLEC that such a request has been processed after the disconnect order has been completed.
- 24.5 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local Telephone Exchange Service (slamming) at the request of the other Party; provided, however, that each Party shall cooperate with any investigation of a complaint alleging an unauthorized change in local Telephone Exchange Service at the request of the FCC or the Commission.

25.0 Compliance and Certification

- 25.1 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.
- 25.2 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.
- 25.3 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.
- 25.4 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.
- 25.5 CLEC shall provide AT&T-11STATE 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.

26.0 Law Enforcement

- 26.1 AT&T-11STATE and CLEC shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

26.1.1 Intercept Devices:

26.1.1.1 Local and federal law enforcement agencies periodically request information or assistance ("Requesting Authority") from a Telecommunications Carrier. When either Party receives a request ("Receiving Party") associated with an End User of the other Party and the Receiving Party does not provide the network end-office/loop switching functionality to such End User, the Receiving Party will promptly notify the Requesting Authority so that the Requesting Authority may redirect its request to the appropriate Party that provides such functionality. Notwithstanding the foregoing, a Receiving Party shall comply with any valid request of a Requesting Authority to attach a pen register, trap-and-trace or form of intercept on the Receiving Party's Facilities.

26.1.2 Subpoenas:

26.1.2.1 If a Receiving Party receives a subpoena (or equivalent legal demand regardless of nomenclature, e.g., warrant) for information concerning an End User the Receiving Party knows to be an End User of the other Party and for whom the Receiving Party has no responsive information, the Receiving Party shall promptly notify the person or entity that caused issuance of such subpoena so that it may redirect its subpoena to the other Party.

26.1.3 Emergencies:

26.1.3.1 If a Receiving Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the Receiving Party's switch regarding an End User of the other Party, the Receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any claims or Losses alleged by the other Party's End Users arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such claims or Losses.

26.2 Each of the Parties agree to comply with the applicable state and federal law enforcement authorities, laws, and requirements, including but not limited to, the Communications Assistance for Law Enforcement Act (CALEA) and to report to applicable State and Federal law enforcement authorities as required by law.

27.0 Relationship of the Parties/Independent Contractor

27.1 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.

27.2 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.

28.0 No Third Party Beneficiaries; Disclaimer of Agency

- 28.1 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.

29.0 **Subcontracting**

- 29.1 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.
- 29.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 29.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.
- 29.4 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.
- 29.5 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.

30.0 **Force Majeure**

- 30.1 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.

31.0 **Taxes**

- 31.1 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-11STATE** other than taxes imposed on the income of **AT&T-11STATE**. CLEC shall reimburse **AT&T-11STATE** for the amount of any such Taxes that **AT&T-11STATE** is required to pay or collect. CLEC agrees to indemnify and hold harmless **AT&T-11STATE** for any costs incurred by **AT&T-11STATE** as a result of actions taken by the applicable taxing authority to collect the Tax from **AT&T-11STATE** 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 31.0 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.

- 31.2 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.
- 31.3 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 31.0 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.
- 31.4 To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 31.0, 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 31.0 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 31.0, 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.

- 31.5 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 31.0 shall be sent in accordance with Section 18.0 above hereof.

32.0 Non Waiver

- 32.1 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.

33.0 Network Maintenance and Management

- 33.1 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.
- 33.2 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.
- 33.3 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.
- 33.4 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.
- 33.5 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-11STATE, 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.

34.0 End User Inquiries

34.1 Except as otherwise required by Section 24.1 above, 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.

34.2 Except as otherwise required by Section 24.1 above, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

34.2.1 Direct the callers who inquire about the other Party's services or products to their local service provider.

34.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.

34.3 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.

34.4 CLEC acknowledges that AT&T-11STATE may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement.

35.0 Expenses

35.1 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.

36.0 Conflict of Interest

36.1 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.

37.0 Survival

37.1 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; 10.6 above on Cash Deposits, Section 10.7 above on Deposit Interest, Section 10.8 above on Drawing on Cash Deposits; Section 11.9 above, Escrow requirements; Sections 11.1 above thru Section 11.6 above on Billing & Payment of Charges; Section 12.0 above on Non Payment and Procedures for Disconnection, Section 13.8 thru Section 13.10 on Audits, Section 14.0 above on Warranties, Section 16.0 above on Indemnity; Section 17.0 above on Intellectual Property/License; Section 18.0 above on Notices; Section 19.0 above on Publicity and Use of Trademarks or Service Marks; Section 20.0 above on Confidentiality; Section 22.0 above on Governing Law; Section 16.4.2 CALEA Compliance; Section 31.0 above on Taxes; Section 32.0 above on Non Waivers and Section 39.0 below on Amendments and Modifications.

38.0 Scope of Agreement

38.1 This Agreement is the arrangement under which the AT&T-11STATE may provide Transit Traffic Service, 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 described in the Act that is not expressly provided herein.

38.2 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.

39.0 Amendments and Modifications

- 39.1 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.

40.0 Authority

- 40.1 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.
- 40.2 CLEC represents and warrants that it is a General Partnership (GP) duly organized, validly existing and in good standing under the laws of the State of Tennessee 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.
- 40.3 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.

41.0 Counterparts

- 41.1 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.

42.0 Entire Agreement

- 42.1 AT&T-11STATE only:
- 42.1.1 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.

TRANSIT TRAFFIC SERVICE ATTACHMENT

TABLE OF CONTENTS

<u>Section</u>	<u>Page Number</u>
1.0 Introduction	3
2.0 Responsibilities of the Parties	3
3.0 CLEC Originated Traffic.....	3
4.0 CLEC Terminated Traffic	4
5.0 Transit Traffic Trunk Groups.....	4
6.0 Direct Trunking Requirements	4
7.0 Transit Traffic Rate Application	4
8.0 Reservation of Rights/Intervening Law	5

1.0 Introduction

- 1.1 This Transit Traffic Service Attachment ("Attachment") sets forth the rates, terms and conditions for AT&T-11STATE's Transit Traffic Service when AT&T-11STATE acts as a Transit Service Provider for CLEC. AT&T-11STATE's Transit Traffic Service is provided to Telecommunications Carriers for Telecommunications traffic that does not originate with, or terminate to, AT&T-11STATE's End Users. Transit Traffic Service allows CLEC to exchange CLEC originated traffic with a Third Party Terminating Carrier, to which CLEC is not directly interconnected, and it allows CLEC to receive traffic originated by a Third Party Originating Carrier.
- 1.2 AT&T-11STATE's offers Transit Traffic Services to interconnected CLECs or to interconnected Out of Exchange Local Exchange Carriers ("OE-LEC(s)").

2.0 Responsibilities of the Parties

- 2.1 AT&T-11STATE will provide CLEC with AT&T-11STATE's Transit Traffic Service to all Third Party Terminating Carriers with which AT&T-11STATE is interconnected, but only in the LATA, or outside of the LATA to the extent a LATA boundary waiver exists.
- 2.2 Transit Traffic Service rates apply to all Transit Traffic that originates on CLEC's network. Transit Traffic Service rates are only applicable when calls do not originate with (or terminate to) an AT&T-11STATE End User.

3.0 CLEC Originated Traffic

- 3.1 CLEC acknowledges and agrees that it is solely responsible for compensating Third Party Terminating Carriers for Transit Traffic that CLEC originates. AT&T-11STATE will directly bill CLEC CLEC-originated Transit Traffic. AT&T-11STATE will not act as a billing intermediary, i.e., clearinghouse, between CLEC and Third Party Terminating Carriers, nor will AT&T-11STATE pay any termination charges to the Third Party Terminating Carriers on behalf of CLEC.
- 3.2 If CLEC originates Transit Traffic destined to a Third Party Terminating Carrier with which CLEC does not have a traffic compensation arrangement, then CLEC will indemnify, defend and hold harmless AT&T-11STATE against any and all Losses, including, without limitation, charges levied by such Third Party Terminating Carrier against AT&T-11STATE for such Transit Traffic. Furthermore, if CLEC originates Transit Traffic destined for a Third Party Terminating Carrier with whom CLEC does not have a traffic compensation arrangement, and a regulatory agency or court orders AT&T-11STATE to pay such Third Party Terminating Carrier for the Transit Traffic AT&T-11STATE has delivered to the Third Party Terminating Carrier, then CLEC will indemnify AT&T-11STATE for any and all Losses related to such regulatory agency or court order, including, but not limited to, Transit Traffic termination charges, interest on such Transit Traffic Termination charges, and any billing and collection costs that AT&T-11STATE may incur to collect any of the foregoing charges, interest or costs from CLEC.
- 3.3 CLEC shall be responsible for sending CPN and other appropriate information, as applicable, for calls delivered to AT&T-11STATE's network. CLEC shall not strip, alter, modify, add, delete, change, or incorrectly assign or re-assign any CPN. If AT&T-11STATE identifies improper, incorrect, or fraudulent use of local exchange services, or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, then CLEC agrees to cooperate to investigate and take corrective action. If CLEC is sending CPN to AT&T-11STATE, but AT&T-11STATE is not receiving proper CPN information, then CLEC will work cooperatively with AT&T-11STATE to correct the problem. If AT&T-11STATE does not receive CPN from CLEC, then AT&T-11STATE cannot forward any CPN to the Third Party Terminating Carrier, and CLEC will indemnify, defend and hold harmless AT&T-11STATE from any and all Losses arising from CLEC's failure to include CPN with Transit Traffic that AT&T-11STATE delivers to a Third Party Terminating Carrier on behalf of CLEC.
- 3.4 CLEC, when acting as an originating carrier of Transit Traffic, has the sole responsibility for providing appropriate information to identify Transit Traffic to Third Party Terminating Carriers.

4.0 CLEC Terminated Traffic

- 4.1 CLEC shall not charge AT&T-11STATE when AT&T-11STATE provides Transit Traffic Service for calls terminated to CLEC.
- 4.2 Where AT&T-11STATE is providing Transit Traffic Service from a Third Party Originating Carrier to CLEC, AT&T-11STATE will pass the CPN received from the Third Party Originating Carrier to CLEC. If AT&T-11STATE does not receive CPN from the Third Party Originating Carrier, then AT&T-11STATE cannot forward CPN to CLEC; therefore, CLEC will indemnify, defend and hold harmless AT&T-11STATE from any and all Losses arising from or related to the lack of CPN in this situation. If AT&T-11STATE or CLEC identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN from a Third Party Originating Carrier, CLEC agrees to cooperate with AT&T-11STATE and the Third Party Originating Carrier to investigate and take corrective action. If the Third Party Originating Carrier is sending CPN, but AT&T-11STATE or CLEC is not properly receiving the information, then CLEC will work cooperatively with AT&T-11STATE and the Third Party Originating Carrier to correct the problem.
- 4.3 CLEC agrees to seek terminating compensation for Transit Traffic directly from the Third Party Originating Carrier. AT&T-11STATE, as the Transit Service Provider, is not obligated to pay CLEC for such Transit Traffic, and AT&T-11STATE is not to be deemed as the default originator of such Transit Traffic.

5.0 Transit Traffic Trunk Groups

- 5.1 In AT&T-3STATE and AT&T Nevada, the Parties will route Transit Traffic over the same facilities and trunking that they route Section 251(b)(5) traffic pursuant to the Parties' Currently Effective Interconnection Agreement.
- 5.2 In AT&T-7STATE
- 5.2.1 The same facilities and trunking (ordering, provisioning, servicing, etc.) used pursuant to CLEC's Currently Effective Interconnection Agreement for Transit Trunk Groups or Third Party Trunk Groups will be utilized for the routing of Transit Traffic.
- 5.3 Transit Traffic not routed to the appropriate AT&T-11STATE Tandem shall be considered misrouted. Transit Traffic routed by CLEC through any AT&T-11STATE End Office Switch shall be considered misrouted. Upon written notification from AT&T-11STATE of misrouting of Transit Traffic, CLEC will correct such misrouting within sixty (60) days.

6.0 Direct Trunking Requirements

- 6.1 When Transit Traffic from CLEC through the AT&T-11STATE tandem to another Local Exchange Carrier, CLEC or CMRS carrier requires twenty-four (24) or more trunks, upon AT&T-11STATE written request, CLEC shall establish a direct trunk group or alternate transit arrangement between itself and the other Local Exchange Carrier, CLEC or CMRS carrier within sixty (60) calendar days. Once this trunk group has been established, CLEC agrees to cease routing Transit Traffic through the AT&T-11STATE Tandem to the Third Party Terminating Carrier, unless the Parties mutually agree otherwise.

7.0 Transit Traffic Rate Application

- 7.1 Unless otherwise specified, Transit Traffic Services rates apply to all Minutes of Use ("MOU" or "MOUs") when CLEC sends Transit Traffic to a Third Party Terminating Carrier's network through AT&T-11STATE's Tandem switch where an AT&T-11STATE end user is neither the originating nor the terminating Party. CLEC agrees to compensate AT&T-11STATE operating as a Transit Service Provider at the applicable rates set forth in Transit Traffic Service Appendix Pricing.
- 7.1.1 Transit Rate Elements – the following rate elements apply, (the corresponding rates are specified in Transit Traffic Service Appendix Pricing, attached hereto):
- 7.1.1.1 AT&T-3STATE
- 7.1.1.1.1 Tandem Switching - compensation for the use of Tandem switching.

7.1.1.1.2 Tandem Transport - compensation for the transmission of traffic between the local Tandem and the end offices subtending that Tandem consisting of a transport termination (per minute) rate element and transport facility mileage (per minute) rate element.

7.1.1.2 AT&T-7STATE

7.1.1.2.1 Local Intermediary Charge (LIC) - charge for Transit Service on a per MOU basis.

7.1.1.3 AT&T NEVADA

7.1.1.3.1 Terminating MOU Tandem Transit

7.2 AT&T-7STATE

7.2.1 Traffic between CLEC and CMRS providers that do not engage in Meet Point Billing with AT&T-7STATE shall not be treated as Transit Traffic from a routing or billing perspective until such time as such traffic is identifiable as Transit Traffic.

7.2.2 CLEC shall send all IntraLATA toll traffic to be terminated by a Third Party ILEC to the End User's IntraLATA toll provider and shall not send such traffic to AT&T-7STATE as Transit Traffic. IntraLATA toll traffic shall be any traffic that originates outside of the terminating ILEC's local calling area.

8.0 Reservation of Rights/Intervening Law

8.1 In entering into this Agreement and this Attachment, each Party agrees to abide by and honor the rates, terms, conditions set forth in this Agreement and this Attachment without challenging its provisions throughout the Term of this Agreement.

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
TRANSIT	TN	TRANSIT TRAFFIC SERVICE	Local Intermediary Charge, composite, per MOU				\$0.0030			MOU