

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"). **AT&T-13STATE** will not discontinue any Lawful UNE, Interconnection arrangement, function, facility, product or service (excluding Resale Services), that **AT&T-13STATE** is required to provide to CLEC under this Agreement unless and until: (i) **AT&T-13STATE** provides requisite notice of the planned network change and/or modification in accordance with the Network Disclosure Rules (when applicable) and no objection is made to **AT&T-13STATE**'s proposed network modification(s) and/or change(s) or any objection(s) is denied or deemed denied under such Rules; or (ii) if and when applicable, following **AT&T-13STATE**'s exercise of its rights under applicable law and/or this Agreement including, without limitation, the intervening law/change in law provisions in this Agreement; or (iii) to the extent otherwise permitted in this Agreement.

4. GENERAL RESPONSIBILITIES OF THE PARTIES

- 4.1 Upon approval by the Commission, CLEC agrees to begin providing Telephone Exchange Service within its certificated service area to business End Users within _____ calendar days and to residential End Users within _____ calendar days.
- 4.2 **AT&T-12STATE** and CLEC shall each use their best efforts to meet the Interconnection Activation Dates.
- 4.3 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with **AT&T-13STATE**'s network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.
- 4.4 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End Users in their respective designated service areas.
- 4.5 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.

5. INSURANCE

- 5.1 At all times during the term of this Agreement, each Party 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:
 - 5.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
 - 5.1.2 Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$1,000,000 are also required if this Agreement involves collocation or structure access. **AT&T-13STATE**, its affiliates, officers, agents and employees, shall be listed as additional insured on the Commercial General Liability policy. A waiver of subrogation shall be in favor of **AT&T-13STATE**. The

liability policies shall be primary and non-contributory from any insurance that is maintained by **AT&T-13STATE**.

- 5.1.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 5.1.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in this Section.
- 5.1.5 The Parties agree that companies affording the insurance coverage required under this Section shall have a rating of A or better and a Financial Size Category rating of VIII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 5.1.6 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 5.1.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
 - 5.1.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
 - 5.1.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
 - 5.1.7.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 5.1.8 This Section 5.1 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.
- 5.2 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert its appropriate state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or Lawful Unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services.

6. ASSIGNMENT

6.1 Assignment of Contract

- 6.1.1 CLEC may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated third party without the prior written consent of **AT&T-13STATE**. Any attempted assignment or transfer that is not permitted is void *ab initio*.
- 6.1.2 CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to **AT&T-13STATE**; 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 its Affiliate if that Affiliate is a party to a separate

agreement with AT&T-13STATE under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.

6.2 Corporate Name Change and/or change in "d/b/a" only

6.2.1 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. For a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per end user record. Rates for record orders are contained in the Appendix Pricing, Schedule of Prices. CLEC shall also submit a new Operator Service Questionnaire (OSQ) to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.

6.3 Company Code Change

6.3.1 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. For the purposes of this Section, "assets" means any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide AT&T-13STATE with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change and obtain AT&T-13STATE's consent. AT&T-13STATE shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, AT&T-13STATE's consent to any CLEC Company Code Change is contingent upon cure of any outstanding charges owed under this Agreement and any outstanding charges associated with the "assets" subject to the CLEC Company Code Change. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment if requested under the terms of this Agreement.

6.3.2 For any CLEC Company Code Change, CLEC must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. CLEC shall pay the appropriate charges for each service order submitted to accomplish a CLEC Company Code Change; such charges are contained in the Appendix Pricing, Schedule of Prices. In addition, CLEC shall submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.

6.4 Assignment of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service.

6.4.1 Any assignment or transfer of any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provisioned pursuant to this Agreement without the transfer or the assignment of this Agreement shall be deemed a CLEC to CLEC Mass Migration. The CLEC that is a Party to this Agreement shall provide AT&T-13STATE with ninety (90) calendar days advance written notice of any CLEC to CLEC Mass Migration. CLEC's written notice shall include the anticipated effective date of the assignment or transfer. The acquiring CLEC must cure any outstanding charges associated with any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service to be transferred. In addition, the acquiring CLEC may be required to tender additional assurance of payment if requested under the terms of the acquiring CLEC's agreement.

- 6.4.2 Both CLECs involved in any CLEC to CLEC Mass Migration shall comply with all Applicable Law relating thereto, including but not limited to all FCC and state Commission rules relating to notice(s) to end users. The acquiring CLEC shall be responsible for issuing all service orders required to migrate any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided hereunder. The appropriate service order charge or administration fee (for interconnection) will apply as specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. The acquiring CLEC shall also submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to the acquiring CLEC's agreement. In addition, the acquiring CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.
- 6.5 Project Coordination
- 6.5.1 AT&T-13STATE will provide project management support to effectuate changes of the types identified in Section 6.5.2.
- 6.5.2 AT&T-13STATE will provide project management support to minimize any possible service outages during any CLEC to CLEC Mass Migration. Should AT&T-13STATE's most current version of LSOR or ASOR guidelines not support the required order activity, AT&T-13STATE will issue service orders at the manual rate, as specified in the Appendix Pricing, Schedule of Prices to this Agreement, based upon type of service provided, and on the condition that CLEC provides to AT&T-13STATE any and all information AT&T-13STATE reasonably requests to effectuate such changes.
- 6.6 When an End User changes its service provider from AT&T-13STATE to CLEC or from CLEC to AT&T-13STATE and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish a referral announcement ("Referral Announcement") on the original telephone number that specifies the End User's new telephone number.
- 6.6.1 The following pertains to AT&T ILLINOIS, AT&T WISCONSIN and AT&T CALIFORNIA only:
- 6.6.1.1 Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party's tariff(s); provided, however, if either Party provides Referral Announcements for a period different (either shorter or longer) than the period(s) stated in its tariff(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.
- 6.7 The following applies to AT&T INDIANA only:
- 6.7.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in 170 IAC 7-1.1-11(l)(3)(a) and (b) and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period different than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.
- 6.8 The following applies to AT&T MICHIGAN only:
- 6.8.1 Referral Announcements shall be provided by a Party to the other Party for the period specified in Michigan Administrative Rule 484.134 and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

6.9 The following applies to AT&T OHIO only:

- 6.9.1 Referral Announcements shall be provided by a Party to the other Party for the period of time specified in Rule 4901:1-5-12, Ohio Administrative Code and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period longer than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.
- 6.10 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.
- 6.11 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.
- 6.12 This Agreement contains comprehensive OSS terms and conditions; however, CLEC represents and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to Lawful UNEs, resold services or other services covered by this Agreement, for which this Agreement contains explicit terms, conditions and rates.
- 6.13 The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties agree that they will agree upon a rate or charge to include in this Agreement before the product or service is provided or performed. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.

7. EFFECTIVE DATE, TERM AND TERMINATION

- 7.1 In AT&T-13STATE, with the exception of AT&T OHIO, the Effective Date of this Agreement shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act. In AT&T OHIO, based on the PUC-OH, the Agreement is Effective upon filing and is deemed approved by operation of law on the 91st day after filing.
- 7.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on August 26, 2008, provided; however, should CLEC implement (i.e. provided assurance of payment, ordered facilities, and submitted ASRs for trunking) this Agreement within six (6) months of the Effective Date, then this Agreement will automatically renew for one additional year and expire on August 26, 2009 (the "Term"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 7.3 or 7.4.
- 7.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products 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. Any termination of this Agreement pursuant to this Section 7.3 shall take effect immediately upon delivery of written notice to the other Party that it

failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.

- 7.4 If pursuant to Section 7.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 7.5 and 7.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 7.4 other than its obligations under Sections 7.5 and 7.6.
- 7.5 Upon termination or expiration of this Agreement in accordance with Sections 7.2, 7.3 or 7.4:
- 7.5.1 Each Party shall continue to comply with its obligations set forth in Section 42, Scope of this Agreement; and
- 7.5.2 Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 10.4 hereof;
- 7.5.3 Each Party's confidentiality obligations shall survive; and
- 7.5.4 Each Party's indemnification obligations shall survive.
- 7.6 If either Party serves notice of expiration pursuant to Section 7.2 or Section 7.4, CLEC shall have ten (10) calendar days to provide AT&T-13STATE written confirmation if CLEC wishes to pursue a successor agreement with AT&T-13STATE or terminate its agreement. CLEC shall identify the action to be taken on each applicable (13) state(s). If CLEC wishes to pursue a successor agreement with AT&T-13STATE, CLEC shall attach to its written confirmation or notice of expiration/termination, as applicable, a written request to commence negotiations with AT&T-13STATE under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 7.7 If written notice is not issued pursuant to Section 7.2, the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which AT&T-13STATE received CLEC's Section 252(a)(1) request.
- 7.8 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CLEC does not wish to pursue a successor agreement with AT&T-13STATE for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day following AT&T-13STATE's receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 7.5 of this Agreement.
- 7.9 If CLEC does not affirmatively state that it wishes to pursue a successor agreement with AT&T-13STATE in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of the AT&T-owned ILEC's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CLEC provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC provided or received notice of expiration or termination, the

Parties shall have no further obligations under this Agreement except those set forth in Section 7.5 of this Agreement.

- 7.10 In the event of termination of this Agreement pursuant to Section 7, AT&T-13STATE and CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.

8. END USER FRAUD

- 8.1 AT&T-13STATE shall not be liable to CLEC for any fraud associated with CLEC's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Traffic (ABT). ABT is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three types of ABT calls: calling card, collect, and third number billed calls.
- 8.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud involving 1+ IntraLATA toll calls, ABT, and ported numbers. 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.
- 8.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in Section 8.2 will include providing to the other Party, upon request, information concerning Customers who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the End User's permission to obtain such information.
- 8.4 AT&T-10STATE, AT&T CALIFORNIA and AT&T CONNECTICUT will provide notification messages to CLEC on suspected occurrences of ABT-related fraud on CLEC accounts stored in the applicable LIDB. AT&T CALIFORNIA will provide such alert messages by e-mail. AT&T-10STATE and AT&T CONNECTICUT will provide via fax.
- 8.4.1 AT&T SOUTHWEST REGION 5-STATE (on behalf of itself and AT&T CONNECTICUT) and AT&T CALIFORNIA will use a Fraud Monitoring System to determine suspected occurrences of ABT-related fraud for CLEC using the same criteria AT&T SOUTHWEST REGION 5-STATE and AT&T CALIFORNIA use to monitor fraud on their respective accounts.
- 8.4.2 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.
- 8.4.3 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification.
- 8.5 In AT&T SOUTHWEST REGION 5-STATE and AT&T CALIFORNIA ABT-related alerts are provided to CLEC at no additional charge, except as related in 8.6 below.
- 8.6 In AT&T CALIFORNIA 1+ IntraLATA toll fraud alerts are offered for Resale only under the product name Traffic Alert Referral Service (TARS). For TARS, CLEC agrees to pay a recurring usage rate as outlined in Appendix Pricing. For terms and conditions for TARS, see Appendix Resale.

9. ASSURANCE OF PAYMENT

- 9.1 Upon request by AT&T-13STATE, CLEC will provide AT&T-13STATE with adequate assurance of payment of amounts due (or to become due) to AT&T-13STATE.

9.2 Assurance of payment may be requested by AT&T-12STATE if:

- 9.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to AT&T-13STATE for charges incurred as a CLEC; or
- 9.2.2 in AT&T-12STATE's reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined 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; or
- 9.2.3 CLEC fails to timely pay a bill rendered to CLEC by AT&T-12STATE (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 11.3); or
- 9.2.4 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.

9.3 Unless otherwise agreed by the Parties, the assurance of payment will consist of

- 9.3.1 a cash security deposit in U.S. dollars held by AT&T-12STATE ("Cash Deposit") or
- 9.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to AT&T-12STATE naming the AT&T-owned ILEC(s) designated by AT&T-12STATE as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to AT&T-12STATE ("Letter of Credit").
- 9.3.3 The Cash Deposit or Letter of Credit must be in an amount equal 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-12STATE, for the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by AT&T-12STATE under this Agreement.
 - 9.3.3.1 Notwithstanding anything else set forth in this Agreement, AT&T SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by AT&T SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount that would exceed one (1) month's projected bill for CLEC's initial market entry; provided, however, that after three (3) months of operation, AT&T SOUTHWEST REGION 5-STATE may request assurance of payment of charges reasonably anticipated by AT&T SOUTHWEST REGION 5-STATE to be incurred in Arkansas in an amount not to exceed two times projected average monthly billing to CLEC.
 - 9.3.3.2 Notwithstanding anything else set forth in this Agreement, AT&T SOUTHWEST REGION 5-STATE will not request assurance of payment of charges reasonably anticipated by AT&T SOUTHWEST REGION 5-STATE to be incurred in Oklahoma in an amount that would exceed two times projected average monthly billing to CLEC.

9.4 To the extent that AT&T-12STATE 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.

9.5 A Cash Deposit will accrue interest, however, AT&T-12STATE will not pay interest on a Letter of Credit.

- 9.6 AT&T-12STATE 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:
- 9.6.1 CLEC owes AT&T-12STATE undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
- 9.6.2 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
- 9.6.3 The expiration or termination of this Agreement.
- 9.7 If AT&T-12STATE draws on the Letter of Credit or Cash Deposit, upon request by AT&T-12STATE, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 9.3.
- 9.8 Notwithstanding anything else set forth in this Agreement, if AT&T-12STATE makes a request for assurance of payment in accordance with the terms of this Section, then AT&T-12STATE shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished AT&T-12STATE with the assurance of payment requested; provided, however, that AT&T-12STATE will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section.
- 9.8.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, AT&T-12STATE may also invoke the provisions set forth in Section 11.5 through Section 11.7.
- 9.9 A cash deposit held by AT&T-12STATE shall be returned to CLEC at the expiration of twelve months from the date the CLEC receives its first bill under this Agreement after paying the cash deposit, so long as CLEC made satisfactory payment of all charges billed under this Agreement during that twelve month period. For purposes of the preceding sentence, "satisfactory payment" shall mean that payment was made after the date the bill is due no more than one time during the twelve month period and that no payment was made by a check that was subsequently dishonored. If the CLEC does not meet these refund criteria, the deposit may be retained for an additional six months, at the end of which another review will be made to determine whether CLEC has made satisfactory payment (as defined in the preceding sentence) of all charges within the twelve months immediately preceding that review.
- 9.10 The fact that a Cash Deposit or Letter of Credit is requested by AT&T-12STATE 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.
- 9.11 For adequate assurance of payment of amounts due (or to become due) to AT&T CONNECTICUT, see the applicable DPUC ordered tariff.

10. BILLING AND PAYMENT OF CHARGES

- 10.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party.
- 10.1.1 Remittance in full of all bills rendered by AT&T-10STATE and AT&T CALIFORNIA is due within thirty (30) calendar days of each bill date (the "Bill Due Date"). Payment must be made in accordance with the terms set forth in Section 10.3 of this Agreement.

- 10.1.2 Remittance in full of all bills rendered by AT&T NEVADA is due in accordance with the terms set forth in the Commission C2-A Tariff, with the date on which amounts are due referred to herein as the "Bill Due Date."
- 10.1.3 Remittance in full of all bills rendered by AT&T CONNECTICUT is due in accordance with the terms set forth in the Connecticut Access Service Tariff approved by the DPUC, with the date on which amounts are due referred to herein as the "Bill Due Date."
- 10.1.4 Remittance in full of all bills rendered by CLEC is due within thirty (30) calendar days of each bill date (the "Bill Due Date").
- 10.1.5 If CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to AT&T-12STATE as of the Bill Due Date (individually and collectively, "Past Due"), then a late payment charge will be assessed as provided below, as applicable.
- 10.1.5.1 If any charge incurred under this Agreement that is billed out of any AT&T-8STATE billing system other than the AT&T SOUTHWEST REGION 5-STATE Customer Records Information System (CRIS) is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid at the lesser of (i) the rate used to compute the Late Payment Charge in the applicable AT&T-8STATE intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of any AT&T-8STATE billing system other than AT&T SOUTHWEST REGION 5-STATE's CRIS will comply with the process set forth in the applicable AT&T-8STATE intrastate access services tariff for that state.
- 10.1.5.2 If any charge incurred under this Agreement that is billed out of AT&T SOUTHWEST REGION 5-STATE's CRIS is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied to AT&T SOUTHWEST REGION 5-STATE CRIS-billed Past Due unpaid amounts will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable AT&T SOUTHWEST REGION 5-STATE intrastate retail tariff governing Late Payment Charges to AT&T SOUTHWEST REGION 5-STATE's retail End Users that are business End Users in that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of AT&T SOUTHWEST REGION 5-STATE's CRIS will be governed by the AT&T SOUTHWEST REGION 5-STATE intrastate retail tariff governing Late Payment Charges to AT&T SOUTHWEST REGION 5-STATE's retail End Users that are business End Users in that state.
- 10.1.5.3 If any charge incurred under this Agreement that is billed out of any AT&T MIDWEST REGION 5-STATE billing system is Past Due, the unpaid amounts will accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.
- 10.2 If any charge incurred by AT&T-13STATE under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable AT&T-13STATE intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.

- 10.3 CLEC shall make all payments to AT&T-12STATE via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by AT&T-12STATE. Remittance information will be communicated together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and AT&T-12STATE will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by AT&T-12STATE no later than the Bill Due Date of each bill or Late Payment Charges will apply. AT&T-12STATE is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.
- 10.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.
- 10.3.2 CLEC must make all payments to AT&T CONNECTICUT in "immediately available funds." All payments to AT&T CONNECTICUT must be made using one of the methods set forth in the Connecticut Access Service Tariff approved by the DPUC or via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by AT&T CONNECTICUT. If CLEC makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If CLEC makes payment through funds transfer via the ACH network, CLEC must use the CCD+ or the CTX transaction set. CLEC and AT&T CONNECTICUT will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each payment must be received by AT&T CONNECTICUT no later than the Bill Due Date of each bill or Late Payment Charges will apply. AT&T CONNECTICUT is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.
- 10.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item listed in Section 12.4.1. The Disputing Party should utilize any existing and preferred form 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 [other than disputed charges arising from Appendix Intercarrier Compensation] into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties.
- 10.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 10.1.5.
- 10.6 Requirements to Establish Escrow Accounts.
- 10.6.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 10.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 10.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 10.6.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.
- 10.6.2 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:
- 10.6.2.1 The escrow account must be an interest bearing account;

- 10.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
- 10.6.2.3 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;
- 10.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
- 10.6.2.5 disbursements from the escrow account will be limited to those:
 - 10.6.2.5.1 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
 - 10.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 12.7; or
 - 10.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 12.7.
- 10.6.3 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 10.1.5.
- 10.6.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 12.
- 10.7 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:
 - 10.7.1 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;
 - 10.7.1.1 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;
 - 10.7.1.2 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
 - 10.7.1.3 no later than the third 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 10.1.5.
- 10.8 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 10.7.1.1 and Section 10.7.1.3 are completed within the times specified therein.
 - 10.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 10.7 shall be grounds for termination of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 10.9 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, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

10.9.1 Each additional copy of any bill provided for billing from AT&T SOUTHWEST REGION 5-STATE's CABS billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.

10.9.2 Bills provided to CLEC from AT&T SOUTHWEST REGION 5-STATE's CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.

10.10 Exchange of Billing Message Information

10.10.1 AT&T-13STATE will provide CLEC a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services provided hereunder ("Customer Usage Data"). Such Customer Usage Data will be provided by AT&T-13STATE in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for each AT&T-owned ILEC. The DUF will include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service to the extent that similar usage sensitive information is provided to retail End Users of AT&T-13STATE within that state, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by AT&T-13STATE in connection with Resale Service provided by AT&T-13STATE. Procedures and processes for implementing the interfaces with AT&T-13STATE will be included in implementation requirements documentation.

10.10.2 To establish file transmission for the Daily Usage File, CLEC must provide to AT&T-13STATE a separate written request for each state no less than sixty (60) calendar days prior to the desired first transmission date for each file.

10.10.3 Call detail for LEC-carried calls that are alternately billed to CLEC End Users' lines provided by AT&T-13STATE through Resale will be forwarded to CLEC as rated call detail on the DUF.

10.10.4 AT&T SOUTHWEST REGION 5-STATE will bill CLEC for Usage Extract furnished by AT&T SOUTHWEST REGION 5-STATE in accordance with the price(s) provided in the applicable Appendix Pricing under "Electronic Billing Information Data (Daily Usage) per message" or "Provision of Message Detail a.k.a. Daily Usage File (DUF)."

10.10.5 Interexchange call detail on Resale Services that is forwarded to AT&T-13STATE for billing, which would otherwise be processed by AT&T-13STATE for its retail End Users, will be returned to the IXC and will not be passed through to CLEC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services will be passed through when AT&T-13STATE records the message.

10.11 When CLEC serves its end user via switch-based service, both Parties will settle tariffed ABT charges for calls accepted by each Party's end users, except in AT&T Connecticut. The originating Party will pay the Party that has the billable end user a Billing and Collection (B&C) fee per billed message as set forth in the pricing schedule.

11. **NONPAYMENT AND PROCEDURES FOR DISCONNECTION**

11.1 If a Party is furnished Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 11.1 through 11.7, inclusive, shall be applied separately for each such state.

11.2 Failure to pay charges shall be grounds for disconnection of Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and 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 miscellaneous charges ("Unpaid Charges"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale

Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

11.2.1 **AT&T INDIANA** will also provide any written notification to the Indiana Utility Regulatory Commission as required by rule 170 IAC 7-6.

11.2.2 **AT&T KANSAS** will also provide any written notification to the Kansas Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

11.2.3 **AT&T MISSOURI** will also provide any written notification to the Missouri Public Service Commission as required by Rule 4 CSR 240-32.120.

11.3 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 ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:

11.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in Section 12.4.1 of this Agreement, together with the reasons for its dispute; and

11.3.2 pay all undisputed Unpaid Charges to the Billing Party; and

11.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Intercarrier Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 10.6; and

11.3.4 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 10.6 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Intercarrier Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Intercarrier Compensation] has been deposited into an escrow account that complies with Section 10.6 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 12.

11.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 12.

11.5 **AT&T-12STATE**

11.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 11.2 notice, (b) 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 10.6 within the time specified in Section 11.3, (c) timely furnish any assurance of payment requested in accordance with Section 9 or (d) 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 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:

11.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or

11.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled

Network Elements, Collocation, functions, facilities, products or services under this Agreement.

11.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 11.5.1, Section 11.5.1.1 and Section 11.5.1.2:

11.5.2.1 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

11.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

11.6 AT&T MIDWEST REGION 5-STATE only

11.6.1 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 11.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

11.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

11.6.1.2 discontinue providing any Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

11.6.1.2.1 Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by AT&T INDIANA will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6.

11.6.1.2.2 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of discontinuance of service.

11.6.1.2.3 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

11.7 AT&T-7STATE only

11.7.1 Any demand provided by AT&T-7STATE to CLEC under Section 11.5.1 will further specify that upon disconnection of CLEC, AT&T-7STATE will cause CLEC's End Users that are provisioned through Resale Services to be transferred to AT&T-7STATE local service.

11.7.1.1 A copy of the demand provided to CLEC under Section 11.7.1 will be provided to the Commission.

11.7.2 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 11.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

11.7.2.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

11.7.2.2 disconnect any Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

11.7.2.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by AT&T KANSAS will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

11.7.3 On the same date that Resale Services to CLEC are disconnected, AT&T-7STATE will transfer CLEC's End Users provisioned through Resale Services to AT&T-7STATE's local service. To the extent available at retail from AT&T-7STATE, the Resale End Users transferred to AT&T-

7STATE's local service will receive the same services that were provided through CLEC immediately prior to the time of transfer; provided, however, AT&T-7STATE reserves the right to toll restrict (both interLATA and intraLATA) such transferred End Users.

11.7.3.1 Notwithstanding any inconsistent provisions in this Agreement, the transfer of Resale End Users to AT&T MISSOURI will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

11.7.3.2 AT&T-7STATE will inform the Commission of the names of all Resale End Users transferred through this process.

11.7.3.3 Conversion charges and service establishment charges for transferring Resale End Users to AT&T-7STATE as specified in Section 11.7.3 will be billed to CLEC.

11.7.3.4 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of disconnection of service in compliance with Section 11.7.2. AT&T-7STATE has no liability to CLEC or CLEC's End Users in the event of disconnection of service to CLEC and the transfer of any Resale End Users to AT&T-7STATE local service in connection with such disconnection.

11.7.4 Within five (5) calendar days following the transfer, AT&T-7STATE will notify each transferred Resale End User that because of CLEC's failure to pay AT&T-7STATE, the End User's local service is now being provided by AT&T-7STATE. This notice will also advise each transferred Resale End User that the End User has thirty (30) calendar days from the date of transfer to select a new Local Service Provider.

11.7.4.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Missouri Resale End Users will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

11.7.4.1.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Kansas Resale End Users will comply with Kansas Corporation Commission Order No. 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

11.7.5 The transferred Resale End User shall be responsible for any and all charges incurred during the selection period other than those billed to CLEC under Section 11.7.3.3.

11.7.6 If any Resale End User transferred to AT&T-7STATE's local service under Section 11.7.3 of this Agreement fails to select a new Local Service Provider within thirty (30) calendar days of the transfer, AT&T-7STATE may terminate the transferred Resale End User's service.

11.7.6.1 AT&T-7STATE will notify the Commission of the names of all transferred Resale End Users whose local service was terminated pursuant to Section 11.7.5.

11.7.6.2 Nothing in this Agreement shall be interpreted to obligate AT&T-7STATE to continue to provide local service to any transferred Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights AT&T-7STATE has with regard to such transferred Resale End Users under Applicable Law; provided, however,

11.7.6.2.1 in AT&T CALIFORNIA only, following expiration of the selection period and disconnection of such transferred Resale End Users, where facilities permit, AT&T CALIFORNIA will furnish transferred and subsequently disconnected local residential End Users with "quick dial tone."

11.8 AT&T CONNECTICUT only

11.8.1 For nonpayment and procedures for disconnection for AT&T CONNECTICUT, see the applicable DPUC ordered tariff.

11.9 Limitation on Back-billing and Credit Claims:

11.9.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to

11.9.1.1 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 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.

11.9.1.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Inter-carrier Compensation is specifically excluded from this Section and is addressed separately in the Inter-carrier Compensation Attachment.

12. DISPUTE RESOLUTION

12.1 Finality of Disputes

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

12.1.2 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.

12.2 Alternative to Litigation

12.2.1 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.

12.3 Commencing Dispute Resolution

12.3.1 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:

12.3.1.1 Service Center (**AT&T MIDWEST REGION 5-STATE**), LSC (**AT&T-7STATE**) or LEC-C (**AT&T CONNECTICUT**) or Collocation Service Center (CSC);

12.3.1.2 Informal Dispute Resolution; and

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

12.4 LSC/Service Center/LEC-C or CSC 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-13STATE** for Disputed Amounts must be made on the "13 Billing Claims Dispute Form".

- 12.4.1 If the written notice given pursuant to Section 12.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 12.4 shall be used and the dispute shall first be referred to the appropriate service center AT&T MIDWEST REGION 5-STATE Service Center; AT&T-7STATE Local Service Center (LSC); AT&T CONNECTICUT Local Exchange Carrier Center (LEC-C)] for resolution. In order to resolve a billing dispute, CLEC shall furnish AT&T-13STATE written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. To be deemed a "dispute" under this Section 12.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 10.6 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Lawful Unbundled Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 12.4.1 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.
- 12.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on AT&T-13STATE's current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the CLEC furnishes all requisite information and evidence under Section 12.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, AT&T-13STATE will notify CLEC of the status of the dispute and the expected resolution date.
- 12.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 12.4.1), AT&T-13STATE will notify CLEC of the status of the dispute and the expected resolution date.
- 12.4.4 Any notice of Disputed Amounts given by AT&T-13STATE to CLEC pursuant to Section 12.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that AT&T-13STATE disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided AT&T-13STATE furnishes all requisite information by the Bill Due Date) and 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, CLEC will notify AT&T-13STATE of the status of the dispute and the expected resolution date.
- 12.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 12.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 12.5 of this Agreement.

12.5 Informal Resolution of Disputes

- 12.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 12.3 or Section 12.4.5, 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.

12.6 Formal Dispute Resolution

12.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 12.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 12.6. 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 12.3.

12.6.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 12.7 below:

12.6.2.1 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 12.3. 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 12.3, the Parties will annualize the actual number of months billed.

12.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 12.7 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.

12.6.4 Claims Not Subject to Arbitration. 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.

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

12.6.4.2 Actions to compel compliance with the Dispute Resolution process.

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

12.7 Arbitration

12.7.1 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 **Dallas, Texas (AT&T SOUTHWEST REGION 5-STATE); Chicago, Illinois (AT&T MIDWEST REGION 5-STATE); San Francisco, California (AT&T CALIFORNIA); Reno, Nevada (AT&T NEVADA); or New Haven, Connecticut (AT&T CONNECTICUT)**, 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