

INTERCONNECTION AGREEMENT-MISSOURI

between

**Southwestern Bell Telephone, L.P.
d/b/a SBC Missouri**

and

Navigator Telecommunications, LLC

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INTERCONNECTION AGREEMENT - MISSOURI

This Interconnection Agreement - Missouri ("Agreement") is between Navigator Telecommunications, LLC ("CLEC"), an Arkansas limited liability company, having its principal office at 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113-0860 and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (hereinafter "SBC MISSOURI"), a Texas Limited Partnership, having its principal office at One SBC Plaza, 208 S. Akard, Dallas, Texas 75202, (collectively "the Parties").

WHEREAS, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), the Parties wish to establish terms for the resale of SBC MISSOURI services and for the provision by SBC MISSOURI of Interconnection, Section 251 (c)(3) Unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

WHEREAS, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business End Users with the use of Section 251 (c)(3) Unbundled Network Elements purchased from SBC and the resale of Telecommunications Services of other carriers.

WHEREAS, the Parties want to provide, Telephone Exchange Services and Exchange Access to residential and business End Users utilizing facilities which are subject to this Agreement; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein; and

WHEREAS, for purposes of this Agreement, CLEC intends to operate where Southwestern Bell Telephone, L.P. d/b/a SBC Missouri is the incumbent Local Exchange Carrier and CLEC, a competitive Local Exchange Carrier, has or, prior to the provisioning of any Interconnection, access to Section 251 (c)(3) Unbundled Network Elements, Resale Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide certain local Telephone Exchange Services in the SBC MISSOURI's areas by Missouri Public Service Commission ("MO-PSC" or "Commission"); and

WHEREAS, CLEC wishes to enter an agreement containing those terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement CLEC and SBC MISSOURI hereby agree as follows:

1.0 INTRODUCTION

- 1.1 This Agreement sets forth the terms, conditions and prices under which SBC MISSOURI agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) Section 251 (c)(3) Unbundled Network Elements, or combinations of such Section 251 (c)(3) Unbundled Network Elements (Combinations), (c) Ancillary Functions and (d) Interconnection to CLEC. This Agreement also sets forth the terms and conditions for the interconnection of CLEC's network to SBC MISSOURI's network Intercarrier Compensation for intercarrier telecommunications traffic exchanged between CLEC and SBC Missouri.
- .2 Subject to the provisions of Attachment 6: Section 251 (c)(3) Unbundled Network Elements (UNE) and upon CLEC request, SBC MISSOURI shall meet its Section 251 (c)(3) UNE combining obligations as and to the extent required by this agreement and FCC rules and orders, and

Verizon Comm. Inc. v. FCC, 535 U.S. 467(May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.

- 1.3 Subject to Attachment 6: Section 251 (c)(3) Unbundled Network Elements, in the event that SBC MISSOURI denies a request to perform the functions necessary to combine Section 251 (c)(3) UNEs or to perform the functions necessary to combine Section 251 (c)(3) UNEs with elements possessed by CLEC, SBC MISSOURI shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC MISSOURI shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.12 (Note: section reference to be finalized at conclusion) of Attachment 6: Section 251 (c)(3) Unbundled Network Elements Appendix. In any dispute resolution proceeding, CLEC shall have the burden to prove that such combination request meets Section 251 (c)(3) UNE combining obligations as and to the extent required by this agreement and FCC rules and orders, and *Verizon Comm. Inc. v. FCC*, 535 U.S. 467(May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.
- 1.4 SBC MISSOURI may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed immediately following the Table of Contents of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 SBC MISSOURI's obligations under this agreement shall only apply to the specific operating area(s) or portion thereof in which SBC MISSOURI 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, except as specifically addressed in the Attachment 6 Section 251 (c)(3) Unbundled Network Elements.
- 1.7 This Agreement sets forth the terms and conditions pursuant to which SBC MISSOURI agrees to provide CLEC with access to Section 251 (c)(3) Unbundled Network Elements under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC MISSOURI's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC MISSOURI is only obligated to make available Section 251 (c)(3) UNEs and access to Section 251 (c)(3) UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC MISSOURI's incumbent local exchange areas. SBC MISSOURI has no obligation to provide such Section 251 (c)(3) UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC MISSOURI's incumbent local exchange areas. In addition, SBC MISSOURI is not obligated to provision Section 251 (c)(3) UNEs or to provide access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC MISSOURI's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Agreement, and any associated provisions set forth elsewhere in this Agreement (including but not limited to the rates set forth in this Agreement

associated with Section 251 (c)(3) UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within SBC MISSOURI's incumbent local exchange area(s) in MISSOURI when this Agreement has been approved by the Commission and is in effect.

1.8 Intentionally Left Blank.

1.9 Successor Rates

1.9.1 Certain of the rates, prices and charges set forth in the pricing appendix have been established by the MISSOURI Public Service Commission cost proceedings or dockets initiated under or pursuant to the Act. If during the Term the Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party refuses to execute an amendment to this Agreement within sixty (60) calendar days after the date of such order or docket, the other Party may pursue its rights under Section 13.

1.10 Affiliates

1.10.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement), including subsequent amendments, if any, shall bind SBC MISSOURI, 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 SBC MISSOURI 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 until either SBC MISSOURI 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 interconnection agreement between any such CLEC affiliate and SBC MISSOURI until the expiration of such other agreement.

2.0 GENERAL RESPONSIBILITIES OF THE PARTIES

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

2.2 Section 251 (c)(3) UNE-based Switch Port providers are responsible for administering their End User records in a LIDB.

2.3 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:

2.3.1 For CLECs that are reselling SBC Missouri Resale Services and/or purchasing UNE-P under this agreement, the minimum insurance coverage and limits are as follows:

- a. Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit;
 - b. \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising;
- 2.3.2 For CLECs that are interconnecting or purchasing any Unbundled Network Elements (other than UNE-P), products or services under this agreement, the minimum insurance coverage and limits are as follows:
 - a. Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.
 - b. Commercial General Liability insurance with minimum limits of: \$6,000,000 General Aggregate limit; \$5,000,000 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; Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.
- 2.3.3 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.
- 2.3.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 2.3 through 2.3.3 of this Agreement.
- 2.3.5 The Parties agree that companies affording the insurance coverage required under Section 2.3 shall have a rating of B+ or better and a Financial Size Category rating of VII 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.
- 2.3.6 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.
- 2.3.7 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:
 - 2.3.7.1 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 the State of MISSOURI covered by this Agreement or the employee's state of hire; and
 - 2.3.7.2 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

- 2.3.7.3 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.
- 2.3.8 This Section 2.3 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.
- 2.4 Simultaneously with CLEC's execution of this Agreement, CLEC shall insert its state-specific authorized and nationally recognized OCN/AECNs for facilities-based (Interconnection and/or Section 251 (c)(3) Unbundled Network Elements) and a separate and distinct OCN/AECN for Resale Services on the signature page of this Agreement and provide SBC MISSOURI with a copy.
- 2.5 When an End User changes its service provider from SBC MISSOURI to CLEC or from CLEC to SBC MISSOURI and does not retain its former telephone number, the Party formerly providing service to such End User shall furnish a Referral Announcement on the original telephone number that specifies the End User's new telephone number.
- 2.6 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.
- 2.7 This Agreement contains comprehensive OSS terms and conditions. CLEC represents, warrants and covenants that it will only use OSS furnished pursuant to this Agreement for activities related to Section 251 (c)(3) UNEs, resold services or other services covered by this Agreement, and for which this Agreement contains explicit rates, terms, and conditions.
- 2.8 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 will agree upon a rate or charge to include in this Agreement before the product or service is ordered or performed. If the Parties cannot agree, either Party may pursue dispute resolution under the applicable provisions of this Agreement.

3.0 ASSURANCE OF PAYMENT

- 3.1 Upon request by SBC MISSOURI, CLEC will provide SBC MISSOURI with adequate assurance of payment of amounts due (or to become due) to SBC MISSOURI.
- 3.2 Assurance of payment may be requested by SBC MISSOURI if:

- 3.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made a least twelve (12) consecutive months of timely payments to SBC MISSOURI for charges incurred as a CLEC; or where CLEC is doing or has done business as a local service provider,
 - 3.2.2 in SBC MISSOURI'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
 - 3.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC MISSOURI (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 9.4); or
 - 3.2.4 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.
- 3.3 Unless otherwise agreed by the Parties, the assurance of payment will, at SBC MISSOURI's option, consist of:
- 3.3.1 a cash security deposit in U.S. dollars held by SBC MISSOURI ("Cash Deposit") or
 - 3.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC MISSOURI naming SBC MISSOURI as the beneficiary thereof and otherwise in form and substance satisfactory to SBC MISSOURI ("Letter of Credit").
- 3.4 The Cash Deposit or Letter of Credit must be in an amount equal to two (2) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC MISSOURI, for the Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC MISSOURI under this Agreement.
- 3.5 To the extent that SBC MISSOURI 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.
- 3.6 A Cash Deposit will accrue simple interest, however, SBC MISSOURI will not pay interest on a Letter of Credit.
- 3.7 SBC MISSOURI 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:

- 3.7.1 CLEC owes SBC MISSOURI undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
 - 3.7.2 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
 - 3.7.3 The expiration or termination of this Agreement.
- 3.8 If SBC MISSOURI draws on the Letter of Credit or Cash Deposit, upon request by SBC MISSOURI, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 3.4.
- 3.9 Notwithstanding anything else set forth in this Agreement, if SBC MISSOURI makes a request for assurance of payment in accordance with the terms of this Section, then SBC MISSOURI shall have no obligation thereafter to perform under this Agreement until such time as CLEC has furnished SBC MISSOURI with the assurance of payment requested; provided, however, that SBC MISSOURI will permit CLEC a minimum of twenty (20) Days to respond to a request for assurance of payment before invoking this Section.
- 3.9.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, SBC MISSOURI may also invoke the provisions set forth in Section 14.
- 3.10 The fact that a Cash Deposit or Letter of Credit is requested by SBC MISSOURI 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.

4.0 EFFECTIVE DATE AND TERM OF AGREEMENT

- 4.1 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.
- 4.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on date = 2yr plus 90 days, 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 date = 1 yr (the "Term").
- 4.3 If either Party desires to negotiate a successor agreement to this Agreement, such Party must provide the other Party with a written request to negotiate such successor agreement (Request to Negotiate/Notice of Expiration or "Request/Notice") not earlier than 365 calendar days prior to the expiration and not later than 180 calendar days prior to the expiration of this Agreement.

- 4.4 If a Request /Notice is not received pursuant to Section 4.3 then this Agreement shall remain in full force and effect on and after the expiration of the Term on a month-to-month basis until terminated pursuant to this Section or Section 4.6 or 4.7. During any month-to-month extension of this Agreement, 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 SBC MISSOURI received CLEC's Section 252(a)(1) Request to Negotiate.
- 4.5 If CLEC submits a Request under Sections 251/252 (i) of the Act for successor agreement or SBC MISSOURI submits a Notice, the Request/Notice does not activate the negotiation timeframe set forth in this Agreement. If CLEC's Request is pursuant to Section 252 (a)(1), CLEC will delineate the items desired to be negotiated. Not later than 45 days from receipt of said Request/Notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than 135 days prior to expiration of this Agreement. If CLEC's Request is made pursuant to Section 252(i), the Agreement selected for adoption will be prepared for execution by the Parties.
- 4.6 If at any time during the Section 252(a)(1) negotiation process (whether 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 either a request to adopt a successor agreement under Section 252(i) of the Act or an affirmative statement that CLEC does not wish to pursue a successor agreement with SBC MISSOURI for the state of MISSOURI. 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 SBC MISSOURI receives CLEC's 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 after SBC MISSOURI's receipt of CLEC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the adoption of the successor agreement under Section 252(i), then the Parties shall have no further obligations under this Agreement except those set forth in Section 4.10 of this Agreement.
- 4.7 If the CLEC fails to timely respond to SBC MISSOURI's Section 4.3 Notice, 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 its Request or received SBC MISSOURI's Notice. If the Term of this Agreement has expired, on the ninety-first (91st) day following CLEC's Request or receipt of SBC MISSOURI's Notice, the Parties shall have no further obligations under this Agreement except those set forth in Section 4.10 of this Agreement.
- 4.8 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Section 251 (c)(3) 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 4.8 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.

4.9 If pursuant to Section 4.4 this Agreement continues in full force and effect on a month-to-month basis after the expiration of the Term, either Party may terminate this Agreement by delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 4.6 and 4.7. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 4.9 other than its obligations under Sections 4.6 AND 4.7.

4.10 Upon termination or expiration of this Agreement in accordance with Sections 4.6, 4.6 or 4.7.

4.10.1 Each Party shall continue to comply with its obligations set forth in Section 51 Survival of Obligations; and

4.10.2 Each Party shall promptly pay all non-disputed amounts owed under this Agreement.

4.11 In the event of expiration or termination of this Agreement other than pursuant to Section 4.6, SBC MISSOURI and CLEC shall cooperate in good faith to effect an orderly and timely transition of service provided under this Agreement to CLEC or to another vendor but in any event not later than the 91st day after the expiration or termination of this Agreement. So long as CLEC fulfills said obligation to effect an orderly and timely transition of service, and continues to pay SBC MISSOURI for the charges incurred during the transition of service, SBC MISSOURI shall not terminate service to CLEC's End Users and such service shall be provided pursuant to the terms of the interconnection agreement during this transition period. 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; and CLEC will relinquish Section 251 (c)(3) Unbundled Network Element facilities pursuant to this Agreement.

4.1.2 Should CLEC opt to incorporate any provision for interconnection, service, or Section 251 (c)(3) Unbundled Network Element from another Commission-approved interconnection agreement into this Agreement pursuant to Section 252(i) of the Act and 47 C.F.R. § 51.809, such incorporated provision shall expire on the date it would have expired under the interconnection agreement from which it was taken. Should CLEC opt to incorporate any provision for interconnection, service or Section 251 (c)(3) Unbundled Network Element from this Agreement into another Commission-approved interconnection agreement pursuant to Section 252(i) of the Act, the provision from this Agreement shall expire on the date specified in Section 4.1 above and shall not control the expiration date of any other provisions of the other interconnection agreement. All monetary obligations of the Parties to one another under the immediately previous interconnection agreement between the Parties shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement.

5.0 ASSIGNMENT

5.1.1 Assignment of Contract

5.1.1.1 Intentionally Left Blank

5.1.1.2 Either party may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, by providing sixty (60) calendar days' advance written notice of such assignment or transfer to SBC MISSOURI;

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.

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

5.1.2.1 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 251 (c)(3) UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.

5.1.3 Company Code Change

5.1.3.1 Any assignment or transfer of an interconnection agreement associated with the transfer or acquisition of "assets" provisioned under that interconnection agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of Section 5.1.3.1, "assets" means any Interconnection, Resale Service, **251 (c)(3)** Unbundled Network Element, function, facility, product or service provided under that interconnection agreement. CLEC shall provide SBC MISSOURI with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change and obtain SBC MISSOURI's consent. SBC MISSOURI shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, SBC MISSOURI'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.

5.1.3.2 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 Section 251 (c)(3) 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, new signage and any other work necessary with respect to Collocation, as determined on an individual case basis.

5.1.4 Assignment of any Interconnection, Resale Service, Section 251 (c)(3) Unbundled Network Element, function, facility, product or service.

- 5.1.4.1 Any assignment or transfer of any Interconnection, Resale Service, 251 (c)(3) 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 SBC MISSOURI with thirty (30) 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 non-disputed charges associated with any Interconnection, Resale Service, 251(c)(3) 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.
- 5.1.4.2 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, Section 251 (c)(3) 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 interconnection 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 Section 251 (c)(3) 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, new signage and any other work necessary with respect to Collocation, as determined on an individual case basis.

5.1.5 Project Coordination

- 5.1.5.1 SBC MISSOURI will provide project management support to effectuate changes of the types identified in Sections 5.1.2, 5.1.3, and 5.1.4.
- 5.1.5.2 SBC MISSOURI will provide project management support to minimize any possible service outages during any CLEC to CLEC Mass Migration. Should SBC MISSOURI's most current version of LSOR or ASOR guidelines not support the required order activity, SBC MISSOURI 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 SBC MISSOURI any and all information SBC MISSOURI reasonably requests to effectuate such changes.

6.0 CONFIDENTIALITY

- 6.1 Both Parties agree to treat proprietary information received from the other in accordance with Section 222 of the Act.
- 6.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such proprietary information that:

- 6.2.1 Was at the time of receipt, already known to the receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the disclosing Party; or
- 6.2.2 Is or becomes publicly known through no wrongful act of the receiving Party; or
- 6.2.3 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 the receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
- 6.2.4 Is independently developed by an agent, employee, representative or Affiliate of the receiving Party and such person/entity 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
- 6.2.5 Is disclosed to a Third Party by the disclosing Party without similar restrictions on such Third Party's rights; or
- 6.2.6 Is approved for release by written authorization of the disclosing Party, but only to the extent of the authorization granted; or
- 6.2.7 Is required to be made public or disclosed by the receiving Party pursuant to Applicable Law or regulation or court order or Section 251 (c)(3) process.

7.0 LIABILITY AND INDEMNIFICATION

7.1 Limitation of Liabilities

- 7.1.1 Except as specifically provided in Attachment 25 DSL-MO, the Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below in Sections 7.3.1 and 7.3.6, following, except for willful or intentional misconduct (including gross negligence), will not exceed the total of any amounts charged to CLEC by SBC MISSOURI under this Agreement during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.

7.2 No Consequential Damages

- 7.2.1 EXCEPT AS OTHERWISE PROVIDED IN ATTACHMENT 17, NEITHER CLEC NOR SBC MISSOURI WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR

RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT THE LIABILITY OF EITHER SBC MISSOURI OR CLEC TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY THE SBC MISSOURI OR CLEC'S NEGLIGENCE ACT OR OMISSION OF EITHER PARTY HERETO OR THE NEGLIGENCE ACT OR OMISSION THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

7.3 Obligation to Indemnify

7.3.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Party.

7.3.2 Except as otherwise expressly provided herein or in specific appendices, 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 Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and 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, 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.

7.3.3.2 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 Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and services provided under this Agreement involving:

7.3.3.2.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and 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.

- 7.3.3.2.1.1 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 Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products 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 Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement.
- 7.3.3.2.1.2 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 Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:
 - 7.3.3.2.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products or services provided under this Agreement; and
 - 7.3.3.2.1.2.2 no infringement would have occurred without such modification.
- 7.3.3.2.2 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.
- 7.3.4 CLEC acknowledges that its right under this Agreement to interconnect with SBC MISSOURI's Missouri network and to unbundle and/or combine SBC MISSOURI's Section 251 (c)(3) Unbundled Network Elements (including combining with CLEC's network elements) may be subject to or limited by Intellectual Property rights (Intellectual Property means, including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.

- 7.3.5 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), *In the Matter of Petition of MCI for Declaratory Ruling*.
- 7.3.5.1 SBC MISSOURI agrees to use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each Section 251 (c)(3) Unbundled Network Element necessary for CLEC to use such Section 251 (c)(3) Unbundled Network Element in the same manner as SBC MISSOURI.
- 7.3.5.2 SBC MISSOURI shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any Section 251 (c)(3) Unbundled Network Element in a different manner than used by SBC MISSOURI is entitled to use that Section 251 (c)(3) Unbundled Network Element.
- 7.3.5.3 To the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, SBC MISSOURI shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to SBC MISSOURI under the vendor contract and the terms of the contract (excluding cost terms). SBC MISSOURI shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.
- 7.3.6 SBC MISSOURI hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any Third Party's) rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such interconnection or unbundling and/or combining of Section 251 (c)(3) Unbundled Network Elements (including combining with CLEC's network elements) in SBC MISSOURI'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 Section 251 (c)(3) Unbundled Network Elements are vendor licenses and warranties and are a part of the Intellectual Property rights SBC MISSOURI agrees in Section 7.3.5.1 to use its best efforts to obtain.
- 7.3.7 SBC MISSOURI 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 Damages 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 interconnection with SBC MISSOURI's network and unbundling and/or combining SBC MISSOURI's Section 251 (c)(3) Unbundled Network Elements (including combining with CLEC's network elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with Section 251 (c)(3) Unbundled Network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SBC MISSOURI agrees in Section 7.3.5.1 to use its best efforts to obtain.
- 7.3.8 CLEC hereby agrees to release, indemnify and hold SBC MISSOURI harmless from and against all Damages arising out of, caused by, or relating to any Claim that CLEC's interconnection with SBC MISSOURI's network, or CLEC's use of SBC MISSOURI's

Section 251 (c)(3) Unbundled Network Elements, or unbundling and/or combining of SBC MISSOURI's Section 251 (c)(3) Unbundled Network Elements (including combining with CLEC's network elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement violates or infringes upon any Third Party Intellectual Property rights or constitutes a breach of contract rights of Third Parties.

- 7.3.9 All costs associated with the extension of Intellectual Property rights to CLEC pursuant to Section 7.3.3.1, 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 the Section 251 (c)(3) Unbundled Network Element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that Section 251 (c)(3) Unbundled Network Element including SBC MISSOURI.

7.4 Obligation to Defend; Notice; Cooperation

- 7.4.1 Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will 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. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth in this section, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, subject to consultation with the relevant Indemnitee. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that may affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at the refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee 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 Indemnitee and also will be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. 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 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. 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 7.

8.0 COMPLIANCE AND CERTIFICATION

- 8.1 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.
- 8.2 Each Party warrants that it has obtained all necessary state certification required in MISSOURI prior to ordering any Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 8.3 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.
- 8.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

9.0 PAYMENT OF RATES AND CHARGES

- 9.1 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all non-disputed rates and charges due and owing under this Agreement within thirty (30) days from the date of the invoice. For purposes of this Agreement, the "Bill Due Date" shall be defined to mean thirty (30) calendar days from the date of the invoice.)
- 9.2 If CLEC fails to remit payment for any non-disputed charges for services by the Bill Due Date, or if a payment or any portion of a payment is received from CLEC after the Bill Due Date, or if a payment or any portion of a payment is received in funds which are not immediately available to SBC MISSOURI as of the Bill Due Date (individually and collectively, "Past Due"), then a late payment charge shall be assessed as provided in Sections 9.2.1 through 9.2.2, as applicable.
 - 9.2.1 If any charge incurred under this Agreement that is billed out of any SBC MISSOURI billing system other than the SBC MISSOURI Customer Records Information System (CRIS) becomes Past Due, the unpaid amounts shall bear interest from the day following the Bill Due Date until the day paid at the lesser of (i) the rate used to compute the Late Payment Charge in the SBC MISSOURI intrastate access services tariff and (ii) the highest rate of interest that may be charged under Applicable Law, The application of interest (at the rate set forth in the preceding sentence) to any Past Due charge incurred under this Agreement that is billed out of any SBC MISSOURI billing system other than SBC_MISSOURI's CRIS will comply with the process set forth in the SBC MISSOURI intrastate access services tariff.

- 9.2.2 If any charge incurred under this Agreement that is billed out of SBC MISSOURI's CRIS system is Past Due, the unpaid amounts shall bear interest from the Bill Due Date until paid. The interest rate applied to SBC MISSOURI CRIS-billed Past Due unpaid amounts shall be the lesser of (i) the rate used to compute the Late Payment Charge contained in the SBC MISSOURI General Exchange tariff for business End Users in Missouri or (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.
- 9.3 The Parties shall make all payments to one another via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by each Party. Remittance information will be communicated together with the funds transfer via the ACH network. The Parties must use the CCD+ or the CTX transaction set. The Parties will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by the Billing Party no later than the Bill Due Date of each bill or Late Payment Charges will apply. Neither Party will be liable for any delays in receipt of funds or errors in entries caused by the other Party or Third Parties, including the Paying Party's financial institution. Each Party is responsible for its own banking fees.
- 9.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. Each Party will be responsible for any Late Payment Charges resulting from that Party's failure to use electronic funds credit transfers through the ACH network.
- 9.4 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 that are listed in Section 13.4.1. The Non-Paying Party should utilize any existing and preferred form provided by the Billing Party to provide written notice of disputes to the Billing Party. The Non-Paying Party must pay when due: (i) all undisputed amounts to the Billing Party, and (ii) those disputed amounts that are required to be paid into escrow pursuant to this Section, which must be deposited into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:
- 9.4.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 9.4.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 9.4.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.
- 9.4.4 In addition to the foregoing requirements for the Third Party escrow agent, the Non-Paying 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:
- 9.4.4.1 The escrow account must be an interest bearing account;

- 9.4.4.2 All charges associated with opening and maintaining the escrow account will be borne by the Non-Paying Party;
- 9.4.4.3 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;
- 9.4.4.4 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and
- 9.4.4.5 Disbursements from the escrow account shall be limited to those:
 - 9.4.4.5.1 authorized in writing by both the Non-Paying Party and the Billing Party (that is, signature(s) from representative(s) of the Non-Paying Party only are not sufficient to properly authorize any disbursement); or
 - 9.4.4.5.1 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 9.7; or
 - 9.4.4.5.2 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 9.7.
- 9.5 Disputed Amounts in escrow shall not be subject to late payment charges as set forth in Section 8.1.5.
- 9.6 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in paragraph 13.
- 9.7 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 shall cooperate to ensure that all of the following actions are completed:
 - 9.7.1 the Billing Party shall 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;
 - 9.7.1.1 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 shall be released to the Non-Paying Party, together with any accrued interest thereon;
 - 9.7.1.2 within ten (10) Business days after resolution of the Dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon; and
 - 9.7.1.3 no later than the third Bill Due Date after 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 9.4.

- 9.8 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 9.7.1.1 and Section 9.7.1.3 are completed within the times specified therein.
- 9.9 Failure by the Non-Paying Party to pay any undisputed charges determined to be owed to the Billing Party within the times specified in Section 9.7 shall be grounds for termination of the Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 9.10 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.
 - 9.10.1 Each additional copy of any bill provided for billing from SBC MISSOURI's Carrier Access Billing System (CABS) billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.
 - 9.10.2 Bills provided to CLEC from SBC MISSOURI's CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.

10.0 LIMITATION ON BACK-BILLING AND CREDIT CLAIMS:

- 10.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to 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.
- 10.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Reciprocal Compensation is specifically excluded from this Section 10 and is addressed separately in the Reciprocal Compensation Attachment.

11.0 DAILY USAGE FILE

- 11.1 SBC MISSOURI will provide CLEC a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services and Section 251 (c)(3) Unbundled Network Element usage sensitive services

provided hereunder ("End User Usage Data"). Such End User Usage Data will be provided by SBC MISSOURI 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 SBC MISSOURI. 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 and Section 251 (c)(3) Unbundled Network Element to the extent that similar usage sensitive information is provided to retail End Users of SBC MISSOURI, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by SBC MISSOURI in connection with Resale Services and Section 251 (c)(3) Unbundled Network Elements provided by SBC MISSOURI. Procedures and processes for implementing the interfaces with SBC MISSOURI will be included in implementation requirements documentation.

- 11.2 To establish file transmission for the Daily Usage File, CLEC must provide to SBC MISSOURI a separate written request no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 11.3 Unless otherwise specified in Appendix Alternate Billed Service, call detail for LEC-carried calls that are alternately billed to CLEC End Users' lines provided by SBC MISSOURI through Resale or Section 251 (c)(3) Unbundled Network Elements will be forwarded to CLEC as rated call detail on the DUF.
- 11.4 SBC MISSOURI will bill CLEC for Usage Extract furnished by SBC MISSOURI in accordance with the price(s) provided in the applicable Schedule of Prices under "Electronic Billing Information".
- 11.5 Interexchange call detail on Resale Services or Unbundled Network Elements (ports) that is forwarded to SBC MISSOURI for billing, of the type which would otherwise be processed by SBC MISSOURI 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 and Unbundled Network Elements (ports) will be passed through when SBC MISSOURI records the message.
- 11.6 CLEC is responsible for providing all billing information to each of its End Users, regardless of the method used to provision the End User's service.

12.0 ALTERNATELY BILLED TRAFFIC (ABT)

- 12.1 As used herein, Alternately Billed Traffic (ABT) shall mean calls made by an End User and billed to an account not associated with the originating line. There are three types of ABT: Calling card, collect, and third number calls. Billing and compensation for intraLATA ABT will be handled as described below.
- 12.2 When CLEC serves its end users via Section 251 (c)(3) Unbundled Local Switching (ULS) alone or in combination with the Section 251 (c)(3) UNE-Platform (UNE-P), each Party will pay all tariffed ABT charges for calls accepted by its End Users, including ABT charges passed through by a Third Party. Rated ABT message detail is provided via the Daily Usage File (DUF) as described in Attachment 10. The originating Party will pay the Party that has the billable End User a Billing and Collection (B&C) fee for each message as set forth in the pricing schedule. Alternatively, either Party may choose to block its End Users from receiving ABT by ordering Toll

Billing Exception on a line by line basis or the Parties may enter into a separate agreement for the billing, collecting, and remitting of intraLATA ABT revenue.

- 12.3 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, including ABT charges passed through by a Third Party. 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.

13.0 DISPUTE RESOLUTION

13.1 Finality of Disputes

- 13.1.1 Except as otherwise specifically provided in this Agreement, no Claims will be brought for disputes arising from this Agreement more than 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.

13.2 Alternative to Litigation

- 13.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or Claim arising out of or relating to this Agreement or its breach.

13.3 Informal Resolution of Disputes

- 13.3.1 At the written request of a Party, 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 informal 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.

13.3.2 Request for Expedited Resolution

When a dispute affects the ability of a party to provide uninterrupted service or hinders the provisioning of any service, functionality or network element, the party may file a complaint to initiate an expedited informal dispute resolution proceeding. This process applies to the following types of issues: establishment of service, service interruption, service outage or disconnection. This process is not intended to address complex

business problems that do not preclude a CLEC from providing service, such as billing accuracy.

This process is in addition to any other dispute resolution process or procedure that exists under the rules and regulations of the Commission. The parties agree to recommend that the Commission appoint Commission Staff to the case to proceed on an expedited bases.

Any complaint filed pursuant to this procedure must include the following information:

- a) the specific circumstances that make the dispute eligible for the expedited dispute resolution process;
- b) a description of the particular service-affecting issue giving rise to the complaint;
- c) a description of the parties' efforts to resolve the disputed issue;
- d) A list of cross-references to the area or areas of the M2A applicable to the issue in dispute as applicable; and
- e) Any proposed resolution of the dispute.

The respondent shall file a response to the complaint within five business days after the filing of the complaint. The respondent shall serve a copy of the response on the complainant by hand-delivery or facsimile on the same day as it is filed with the Commission.

The parties agree to meet with the appointed Commission Staff within 10 business days, but no sooner than 5 business days, of the date the response is filed. The parties agree that Commission Staff has authority to oversee the discussion between the parties and may act in the capacity of the mediator.

If a party believes that a more formal proceeding is necessary, the party may file a Complaint to proceed according to the rules and regulations governing administrative procedure by the Commission and the parties agree to jointly recommend expedited handling of the complaint.

13.4 Billing Disputes

- 13.4.1 Each Party agrees to notify the other Party of a billing dispute by using the standard document, if any, made available by the Billing Party and may invoke the informal dispute resolution process described in Section 12.3. The Parties will endeavor to resolve the dispute within thirty (30) to sixty (60) calendar days after receipt of the Non-Paying Party's written notice. In order to resolve a billing dispute, the Non-Paying Party shall furnish the Billing Party written notice of (i) the date of the bill in question, (ii) CBA 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 (vi) amount in question (vii) the reason that the Non-Paying Party disputes the billed amount and (viii) PON.

- 13.4.2 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 receives notice of such dispute.

13.5 Formal Resolution of Disputes

- 13.5.1 Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to matters not specifically addressed elsewhere in this Agreement that require clarification, renegotiation, modifications or additions to this Agreement, either Party may invoke dispute resolution procedures available pursuant to the dispute resolution rules, as amended from time to time, of the Public Service Commission of Missouri. As an alternative to the dispute resolution procedures referenced in the preceding sentence, and in lieu thereof, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 13.6.

13.5.2 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

13.6 Arbitration

- 13.6.1 When both Parties agree to binding arbitration, disputes 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. Arbitration will be held in Jefferson City, Missouri, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within 60 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 30 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. The Parties agree that, notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the arbitrator has no authority to order punitive, exemplary, multiple, or Consequential 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 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. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

14.0 NON-PAYMENT AND PROCEDURES FOR DISCONNECTION

- 14.1 Failure to pay all or any portion of any undisputed amount required to be paid may be grounds for disconnection of Resale Services, Section 251 (c)(3)Unbundled Network Elements under this Agreement. If a Party fails to pay any undisputed 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 undisputed 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 Resale Services, Section 251 (c)(3)Unbundled Network Elements furnished under this Agreement, the Non-Paying Party must remit all Unpaid Non-disputed Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.
- 14.1.1 SBC MISSOURI will also provide any written notification to the MISSOURI Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
- 14.2 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:
- 14.2.1 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 9.4 of this Agreement, together with the reasons for its dispute; and
- 14.2.2 pay all undisputed Unpaid Charges to the Billing Party;
- 14.2.3 Intentionally Left Blank.
- 14.2.4 Intentionally Left Blank.
- 14.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 13.
- 14.4 After expiration of the written notice furnished pursuant to Section 14.1 hereof, if CLEC continues to fail to comply with Section 14.2.1 through 14.2.4, inclusive, or make payment(s) in accordance with the terms of any mutually agreed payment arrangement, SBC MISSOURI may, in addition to exercising any other rights or remedies it may have under Applicable Law, furnish a second written demand to CLEC for payment within five (5) Business Days of any of the obligations enumerated in Section 14.1. On the day that SBC MISSOURI provides such written demand to CLEC, SBC MISSOURI may also exercise any or all of the following options:
- 14.4.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or
- 14.4.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement.

- 14.5 Notwithstanding anything to the contrary in this Agreement, SBC MISSOURI's exercise of any of its options under Section 4.4, 10.4.1 and 14.4.2:
- 14.5.1 will not delay or relieve CLEC's obligation to pay all undisputed charges on each and every invoice on or before the applicable Bill Due Date, and
 - 14.5.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.
- 14.6 A copy of the demand provided to CLEC under Section 14.4 will be provided to the Commission.
- 14.7 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand letter provided under Section 14.4 of this Agreement, the Billing Party may, provided that the undisputed amount of the Unpaid Charges exceeds five percent (5%) of the aggregate amount billed by SBC MISSOURI to CLEC for the immediately preceding month under this Agreement, in addition to exercising any other rights or remedies it may have under Applicable Law:
- 14.7.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
 - 14.7.2 disconnect any Resale Services, Section 251 (c)(3) Unbundled Network Elements and/or Collocation furnished under this Agreement.
 - 14.7.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by SBC MISSOURI will comply with MISSOURI Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
- 14.8 Within five (5) calendar days following any such disconnection, SBC MISSOURI will notify each Resale End User that because of CLEC's failure to pay SBC MISSOURI, the End User's local service will continue for an additional thirty (30) calendar days and that the End User has thirty (30) calendar days from the disconnection date to select a new Local Service Provider.
- 14.9 If any Resale End User fails to select a new Local Service Provider within thirty (30) calendar days of the disconnection, SBC MISSOURI may terminate the Resale End User's service.
- 14.10 SBC MISSOURI will notify the Commission of the names of all Resale End Users whose local service was terminated pursuant to Section 14.9.
- 14.11 CLEC shall be responsible for all charges for any service furnished by SBC MISSOURI to any End User pursuant to Section 14.8 hereof.
- 14.12 Nothing in this Agreement shall be interpreted to obligate SBC MISSOURI to continue to provide local service to any Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights SBC MISSOURI has with regard to such Resale End Users under Applicable Law.

15.0 NOTICES

15.1 In the event any notices are required to be sent under the terms of this Agreement, they must be made in writing (unless specifically provided otherwise herein) they may be sent by mail, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested and are deemed to have been received five (5) calendar days after mailing in the case of first class or certified U.S. Post Service. Notice may also be given by personal delivery or by overnight courier, and will be deemed given upon receipt of personal delivery; or by overnight courier and will be deemed given the next Business Day. Notice may also be provided by facsimile, provided a paper copy is also sent by another method described in this Section, which will be deemed given 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. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

15.2 If to CLEC:

Michael McAlister, General Counsel
Navigator Telecommunication, LLC
8525 Riverwood Park Drive
North Little Rock AR 72113

15.3 If to SBC MISSOURI:

Contract Management
ATTN: Notices Manager
Four SBC Plaza, 9th Flr.
311 S. Akard St.
Dallas, TX 75202-5398

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving ten (10) calendar days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

15.4 SBC MISSOURI communicates official information to CLECs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues. The parties acknowledge that the Accessible Letter Notification process in no way authorizes SBC Missouri to unilaterally change, revise, supersede, amend, modify or otherwise alter the provisions of this agreement. Except provisions regarding services offered via tariff.

15.5 SBC MISSOURI Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the transmission date set forth on the e-mail message.

15.6 CLEC may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.

15.7 CLEC shall submit a completed Accessible Letter Recipient Change Request Form to the individual specified on that form to designate in writing each individual's e-mail address to whom

CLEC requests Accessible Letter notification be sent. CLEC shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any CLEC recipient of SBC MISSOURI's Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) calendar days following receipt by SBC MISSOURI. SBC MISSOURI may, at its discretion, change the process by which the CLEC provides Accessible Letter recipient information. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.

- 15.8 SBC MISSOURI shall provide a toll free facsimile number to CLEC for the submission of requests for Resale Services and Section 251 (c)(3) Unbundled Network Elements under this Agreement; CLEC shall provide SBC MISSOURI with a toll free facsimile number for notices from SBC MISSOURI relating to requests for Resale Services and Section 251 (c)(3) Unbundled Network Elements under this Agreement.

16.0 TAXES

- 16.1 With respect to any purchase of service under this Agreement, if any Federal, state or local government sales, use, excise, gross receipts, municipal fee, transfer, transaction or similar tax, fee, surcharge, or other tax-like charge (a "Tax") is required or permitted by Applicable Law, ordinance or tariff to be collected from a purchasing Party by the providing Party, except for (a) any Tax on either Party's existence, status, or income or (b) any corporate franchise Taxes or (c) any gross receipts or municipal fee taxes, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) the purchasing Party will timely remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable taxing authority.
- 16.2 If the providing Party does not collect a Tax because the purchasing Party asserts that it is not responsible for the tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable taxing authority or governmental entity. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 16.3 With respect to any purchase hereunder of Interconnection, Resale Services, Section 251 (c)(3) Unbundled Network Elements, functions, facilities, products and services under this Agreement that are resold to a Third Party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of

actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

- 16.4 If either Party is audited by a taxing authority or other governmental entity the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 16.5 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 16.2, will not collect such Tax during the effective period of the exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate.
- 16.6 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (i) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law which allows such exemption, and (ii) supplies 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 expense with respect to forbearing to collect such Tax.
- 16.7 With respect to any Tax or Tax controversy covered by this Section 16, the purchasing Party will be entitled to contest, pursuant to Applicable Law, and at its own expense, any Tax that it is ultimately obligated to pay. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party will be entitled to the benefit of any refund or recovery resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 16.8 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 16, shall be sent in accordance with Section 15 Notices hereof .

17.0 FORCE MAJEURE

Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure conditions occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will give prompt notice to the other Party, whereupon such Party's obligation or performance shall be suspended to the extent that the Party is affected by such Force Majeure Event. 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. Upon cessation of such Force Majeure condition, the Party whose performance fails or is delayed because of such Force Majeure conditions will give like notice and commence performance hereunder as promptly as reasonable practicable.

18.0 PUBLICITY

- 18.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 18.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

19.0 NETWORK MAINTENANCE AND MANAGEMENT

- 19.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.
- Each Party 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.
- 19.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.
- 19.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's 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. Each Party shall immediately notify the other Party of any protective control action planned or executed.
- 19.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
- 19.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.

- 19.6 Neither Party will use any Interconnection, Resale Service, network element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in a manner that interferes with or impairs service over any facilities of SBC MISSOURI, its affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or to either Party'. 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 or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party will provide the other Party notice of the violation at the earliest practicable time.

20.0 LAW ENFORCEMENT AND CIVIL PROCESS

20.1 Intercept Devices

- 20.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a End User of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request.

20.2 Subpoenas

- 20.2.1 If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the End User's service provider, the receiving Party will respond to any valid request.

20.3 Law Enforcement Emergencies

- 20.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an End User of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any Claims or Damages arising from compliance with such requests, and the Party serving the End User agrees to indemnify and hold the other Party harmless against any and all such Claims.

21.0 CHANGES IN SUBSCRIBER CARRIER SELECTION

- 21.1 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 Carrier 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 deliver to the other Party a representation of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. 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.

- 21.2 Only an End User can initiate a challenge to a change in its Local Exchange Carrier. If an End User notifies one Party that the End User requests local 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 the applicable Appendix OSS restricting access to CPNI in order to immediately provide service to such End User.
- 21.3 When an End User changes or withdraws authorization, each Party will release customer specific facilities belonging to the ILEC in accordance with the End User directions, or the directions of the End User's agent. Further, when an End User abandons the premise, (that is, its place of business or domicile), SBC MISSOURI is free to reclaim the Section 251 (c)(3) Unbundled Network Elements for use by another End User and is free to issue service orders required to reclaim such Section 251 (c)(3) Unbundled Network Elements.
- 21.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local 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 Exchange Service at the request of the FCC or the Commission.

22.0 AMENDMENTS OR WAIVERS

- 22.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition.

23.0 INTERVENING LAW

- 23.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36), and the FCC's

Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), SBC MISSOURI shall have no obligation to provide Section 251 (c)(3) UNEs, combinations of Section 251 (c)(3) UNEs, combinations of Section 251 (c)(3) UNE(s) and CLEC's own elements or Section 251 (c)(3) UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Except to the extent that SBC MISSOURI has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC MISSOURI state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC MISSOURI's right to exercise its option at any time to adopt on a date specified by SBC MISSOURI the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or 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, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

24.0 AUTHORITY

- 24.1 SBC MISSOURI 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. SBC MISSOURI represents and warrants that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for SBC MISSOURI. SBC MISSOURI represents and warrants that it has full power and authority to perform its obligations hereunder.
- 24.2 CLEC represents and warrants that it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arkansas 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.

- 24.3 Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

25.0 BINDING EFFECT

- 25.1 This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

26.0 CONSENT

- 26.1 Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.

27.0 EXPENSES

- 27.1 Except as specifically set out in this Agreement, each Party will be solely responsible for its own expenses incurred in all activities related to the subject of this Agreement.

28.0 HEADINGS

- 28.1 The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

29.0 RELATIONSHIP OF PARTIES

- 29.1 This Agreement will not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party will have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement will be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

30.0 CONFLICT OF INTEREST

- 30.1 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 arranging or negotiation of this Agreement or associated documents.

31.0 MULTIPLE COUNTERPARTS

- 31.1 This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one, and the same document.

32.0 THIRD PARTY BENEFICIARIES

- 32.1 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.

33.0 REGULATORY APPROVAL

- 33.1 Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval of this Agreement. During the term of this Agreement, each Party agrees to continue to cooperate with each other and any regulatory agency so that the benefits of this Agreement may be achieved.

34.0 TRADEMARKS AND TRADE NAMES

- 34.1 Except as specifically set out in this Agreement, nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent written consent of the other Party. Nothing in this Agreement shall be construed as preventing either Party from publicly stating that it has executed this Agreement with the other Party.

35.0 REGULATORY AUTHORITY

- 35.1 SBC MISSOURI will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. CLEC will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to CLEC End Users contemplated by this Agreement.

36.0 COMMISSION INTERPRETATION OF SAME OR SUBSTANTIVELY SIMILAR LANGUAGE

- 36.1 Any ruling by the Commission in a post interconnection agreement dispute interpreting the same or substantially similar language in another Interconnection Agreement shall be deemed applicable to the same or substantially similar language in this Agreement.

37.0 TARIFF REFERENCES

- 37.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.
- 37.2 Wherever the term "Customer" is used in connection with SBC MISSOURI's retail tariffs, the term "Customer" means the ultimate "consumer" or the "End User" of any tariffed service.

38.0 VERIFICATION REVIEWS

- 38.1 Subject to each Party's reasonable Confidentiality requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's books, records, data, and other documents once in each twelve (12) month period with the audit period commencing not earlier than the date on which services were first supplied under this Agreement ("service start date") for the purpose of evaluating (i) the accuracy of the other Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.
- 38.2 The scope of the audit shall be limited to the services specified in the written notice and to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date) and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date.
- 38.3 Such audit will take place at a time and place agreed on by the Parties and begins no later than thirty (30) calendar days after receipt of written notice and shall be completed no later than thirty (30) calendar days after the start of such audit.
- 38.4 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the twentieth calendar day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
- 38.5 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party will cooperate fully in any such audit, provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of the Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from

the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of End User(s) of Audited Party except the calling party number.

- 38.6 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.
- 38.7 If any audit confirms any undercharge or overcharge, then the Audited Party will (i) promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the 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 9.9, 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.
- 38.8 Except as may be otherwise provided in this Agreement, audits shall be performed at the Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 38.9 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 request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 38.1. Any additional audit shall be at the requesting Party's expense.
- 38.10 Either Party may audit the other Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by the Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit
- 38.11 Information obtained or received by either Party in connection with performance of an audit under this Section 38 will be subject to the confidentiality provisions of Section 6 of this Agreement.

39.0 COMPLETE TERMS

- 39.1 This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

- 39.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the Commission.

40.0 COOPERATION ON PREVENTING END USER FRAUD

- 40.1 Each Party shall be liable for any fraud associated with that Party's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). ABS 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 ABS calls: calling card, collect, and third number billed calls.
- 40.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. 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.
- 40.3 In cases of suspected fraudulent activity by an End User, at a minimum, the cooperation referenced in the above paragraph will include providing to the other Party, upon request, information concerning End Users 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.
- 40.4 SBC MISSOURI will provide notification messages via fax to CLEC on suspected occurrences of ABS-related fraud on CLEC accounts stored in the applicable LIDB.
- 40.4.1 SBC MISSOURI will use a Fraud monitoring system to determine suspected occurrences of ABS-related fraud for CLEC using the same criteria SBC MISSOURI uses to monitor fraud on its own accounts.
- 40.4.2 CLEC understands that Fraud monitoring 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 alert.
- 40.4.3 The Parties will provide contact names and numbers to each other for the exchange of Fraud monitoring alert notification information twenty-four (24) hours per day seven (7) days per week.
- 40.4.4 For each alert notification provided to CLEC, CLEC may request a corresponding thirty-day (30-day) historical report of ABS-related query processing. CLEC may request up to three reports per alert.
- 40.5 ABS-related alerts are provided to CLEC at no additional charge.

41.0 NOTICE OF NETWORK CHANGES

- 41.1 SBC MISSOURI agrees to provide CLEC reasonable notice consistent with applicable 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), of changes in the information necessary for the transmission and routing of services using SBC MISSOURI's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit SBC MISSOURI's ability to upgrade its network through the incorporation of new equipment, new software or otherwise.
- 41.2 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 SBC MISSOURI'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.

42.0 GOOD FAITH PERFORMANCE

- 42.1 In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

43.0 RESPONSIBILITY OF EACH PARTY

- 43.1 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 will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting there from or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

44.0 TRANSMISSION OF TRAFFIC TO THIRD PARTIES

- 44.1 CLEC will not send to SBC MISSOURI local traffic that is destined for the network of a third Party unless CLEC has the authority to exchange traffic with that Third Party.

45.0 GOVERNMENTAL COMPLIANCE

- 45.1 CLEC and SBC MISSOURI each will comply at its own expense with all Applicable Law related to i) its obligations under or activities in connection with this Agreement; of ii) its activities undertaken at, in connection with or relating to work locations. CLEC and SBC MISSOURI each agree to indemnify, defend, (at the other party's request) and save harmless the other, each of its officers, directors and employees from and against any Losses, Damages, Claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from i) its failure or the failure of its contractors or agents to so comply or ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. Each Party, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary to provide the Section 251 (c)(3) Unbundled Network Elements and Resale services pursuant to this Agreement.

46.0 RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

- 46.1 Disclosure of Potential Hazards: When and if CLEC notifies SBC MISSOURI that CLEC intends to enter or perform work pursuant to this Agreement in, on, or within the vicinity of any particular SBC MISSOURI building, manhole, pole, duct, conduit, right-of-way, or other facility (hereinafter "work location"), SBC MISSOURI shall timely notify CLEC of any Environmental Hazard at that Work Location of which SBC MISSOURI has actual knowledge, except that this duty shall not apply to any Environmental Hazard (i) of which CLEC already has actual knowledge or (ii) was caused solely by CLEC or (iii) would be obvious and apparent to anyone coming to the work location. For purposes of this Agreement, "Environmental Hazard" shall mean (i) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations; (ii) the presence of electrical cable in a conduit system; (iii) asbestos-containing materials; (iv) emergency exit routes and warning systems, if and to the extent owned or operated by SBC MISSOURI; and (v) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 46.2 Evaluation of Potential Hazards: Without limiting the foregoing, after providing prior notice to SBC MISSOURI, CLEC shall have the right to inspect, test, or monitor any work location for possible Environmental Hazards as necessary or appropriate to comply with law or to protect its employees, contractors or others from the possible effects of Environmental Hazards. CLEC shall be responsible for conducting such inspections, testing or monitoring in a way that does not unreasonably interfere with SBC MISSOURI's business operations after consultation with SBC MISSOURI, and shall return SBC MISSOURI's property to substantially the same condition as it would have been without such inspections, testing or monitoring.
- 46.3 Managing Disturbed Materials and Media: If and to the extent that CLEC's activity at any work location involves the excavation, extraction, or removal of asbestos or other manmade materials or contaminated soil, groundwater, or other environmental media, then CLEC rather than SBC MISSOURI shall be responsible in the first instance for the subsequent treatment, disposal, or other management of such materials and media.

47.0 INDEMNIFICATION:

- 47.1 Each Party shall indemnify, on request defend, and hold harmless the other Party and each of its officers, directors and employees from any and all suits, Claims, Demands, losses, Damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, Loss, or Damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with the violation or breach, by any employee of the indemnifying Party or other person acting on the indemnifying Party's behalf, of this Section 47.0 or any federal, state, or local environmental statute, rule, regulation, ordinance, or other Applicable Law or provision of this Agreement dealing with hazardous substances or protection of human health or the environment.
- 47.2 CLEC shall indemnify, on request defend, and hold harmless SBC MISSOURI and each of its officers, directors and employees from any and all suits, Claims, demands, Losses, Damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), on account of or in connection with any injury, Loss, or Damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of CLEC, or by any person acting on CLEC's behalf, while at a work location or (ii) the removal or disposal of any hazardous substances by any employee of CLEC or by any person acting on CLEC's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a work location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance caused or created by CLEC or its contractors or agents.
- 47.3 SBC MISSOURI shall indemnify, on request defend, and hold harmless CLEC and each of its officers, directors and employees from any and all suits, Claims, demands, Losses, Damages, liabilities, fines, penalties, or expenses, of every kind and character (including reasonable attorneys' fees), asserted by any government agency or other Third Party on account of or in connection with any injury, Loss, or Damage to any person or property, or to the environment, to the extent any of them arise out of or in connection with (i) the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of SBC MISSOURI or by any person acting on SBC MISSOURI's behalf, at a work location or (ii) the removal or disposal of any hazardous substances by any employee of SBC MISSOURI or by any person acting on SBC MISSOURI's behalf, or the subsequent storage, processing or other handling of such hazardous substances by any person or entity, after such substances have thus been removed from a work location or (iii) any environmental contamination or Environmental Hazard or release of a hazardous substance caused or created by SBC MISSOURI or its contractors or agents.

48.0 SUBCONTRACTING

- 48.1 If any obligation is performed through a subcontractor, 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, and each Party will be solely responsible for payments

due the Party's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any Third Party in connection with the provision of Resale services or Section 251 (c)(3) Unbundled Network Elements hereunder will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to Customer Proprietary Information (CPNI) or confidential information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or confidential information to the same extent the subcontracting Party is required to protect such information under the terms of this Agreement.

49.0 REFERENCED DOCUMENTS

- 49.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, SBC MISSOURI Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, CLEC Practice, SBC MISSOURI Practice, or publication of industry standards.

50.0 SEVERABILITY

- 50.1 The Parties negotiated the terms and conditions of this Agreement for Interconnection, services and Section 251 (c)(3) Unbundled Network Elements as a total arrangement and it is intended to be nonseverable. If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement will be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party will be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties will promptly negotiate a replacement provision or provisions. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 13.

51.0 SURVIVAL OF OBLIGATIONS

- 51.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding liability and indemnification, assurance of payment, payment of rates and charges, dispute resolution, taxes, publicity, subpoenas, relinquishing facilities, environmental contamination, subcontracting, governing law, performance measurements, disclaimer of warranty, Third Party beneficiaries, trademarks and trade names, confidential information, Section 6, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

52.0 GOVERNING LAW

- 52.1 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the domestic laws of the State of Missouri without regard to conflicts of laws principles, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern such aspect. The Parties submit to personal jurisdiction in Jefferson City, Missouri, and waive any and all objections to a Missouri venue.

53.0 PERFORMANCE MEASUREMENTS

- 53.1 Performance Measures are discussed in Attachment 17.

54.0 SIGNALING

- 54.1 SBC MISSOURI will provide SS7 signaling on inter switch calls originating from an ULS port pursuant to Appendix Section 251 (c)(3) UNEs, Shared Transport. All other use of SS7 signaling is pursuant to the access tariff.

55.0 DIALING PARITY; NUMBER PORTABILITY

- 55.1 SBC MISSOURI will ensure that all CLEC End Users who are provisioning dial tone from SBC MISSOURI switches experience the same Dialing Parity as similarly-situated End Users of SBC MISSOURI services, such that, for all call types: (i) an CLEC End User is not required to dial any greater number of digits than a similarly-situated SBC MISSOURI End User; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by an CLEC End User is at least equal in quality to that experienced by a similarly-situated SBC MISSOURI End User; and (iii) the CLEC End User may retain its local telephone number. The Parties further agrees to provide Number Portability in accordance with the requirements of the Act. Specific requirements concerning Number Portability are set forth in Attachment 14: Location Routing Number - Permanent Number Portability.

56.0 BRANDING

- 56.1 Specific provisions concerning the branding of services provided to CLEC by SBC MISSOURI under this Agreement are contained in the following Attachments and Appendices to this Agreement: Attachment 1: Resale; Appendix OS-Resale; Appendix DA-Resale; Attachment 2: Ordering & Provisioning-Resale; Attachment 3: Maintenance-Resale; Attachment 7: Ordering & Provisioning-Unbundled Network Elements; Attachment 8: Maintenance- Section 251 (c)(3) Unbundled Network Elements; and 23: OS – Facilities Based, Section 251 (c)(3) UNE and UNE-P.

57.0 END USER INQUIRIES

- 57.1 Except as otherwise required by Section 20.1, 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.
- 57.2 Except as otherwise required by Section 20.1, each Party will ensure that all of their representatives who receive inquiries regarding the other Party's services: (i) provide the numbers described in Section 57.1 to callers who inquire about the other Party's services or products; and (ii) do not in any way disparage or discriminate against the other Party or its products or services.
- 57.3 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.
- 57.4 CLEC acknowledges that SBC MISSOURI may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement at the rates found in its retail tariff to the extent that the service is offered pursuant to a retail tariff.

58.0 DISCLAIMER OF WARRANTIES

- 58.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, Section 251 (c)(3) UNBUNDLED , FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

59.0 DEFINITIONS

- 59.1 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.

60.0 RESALE

- 60.1 At the request of CLEC, and pursuant to the requirements of the Act, any telecommunications service that SBC MISSOURI currently provides or hereafter offers to any End User in the geographic area where SBC MISSOURI is the incumbent LEC will be made available to CLEC by SBC MISSOURI for Resale in accordance with the terms, conditions and prices set forth in this Agreement. Specific provisions concerning Resale are addressed in Attachment 1: Resale, and other applicable Attachments.

61.0 SECTION 251 (C)(3) UNBUNDLED NETWORK ELEMENTS

- 61.1 At the request of CLEC and pursuant to the requirements of the Act, SBC MISSOURI will offer in the geographic area where SBC MISSOURI is the incumbent LEC, Section 251 (c)(3) Unbundled Network Elements to CLEC on an unbundled basis on rates, terms and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory. Specific provisions concerning Section 251 (c)(3) Unbundled Network Elements are addressed in Attachment 6: Section 251 (c)(3) Unbundled Network Elements, and other applicable Attachments.

62.0 ORDERING AND PROVISIONING, MAINTENANCE, CONNECTIVITY BILLING AND RECORDING, AND PROVISION OF END USER Usage Data

- 62.1 In connection with its Resale of services to CLEC, SBC MISSOURI agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of End User Usage Data services pursuant to the terms specified in Attachments 2, 3, 4 and 5, respectively.
- 62.2 In connection with its furnishing Section 251 (c)(3) Unbundled Networks Elements to CLEC, SBC MISSOURI agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of End User Usage Data services pursuant to the terms specified in Attachments 7, 8, 9 and 10, respectively.

63.0 NETWORK INTERCONNECTION ARCHITECTURE

- 63.1 Where the Parties interconnect their networks, for purposes of exchanging traffic between their networks, the Parties agree to utilize the interconnection methods specified in Attachment 11: Network Interconnection Architecture. SBC MISSOURI expressly recognizes that this provision and said Attachment are in no way intended to impair in any way CLEC's right to interconnect with Section 251 (c)(3) unbundled Network Elements furnished by SBC MISSOURI at any technically feasible point within SBC MISSOURI's network, as provided in the Act.

64.0 COMPENSATION FOR DELIVERY OF TRAFFIC

- 64.1 The Parties agree to compensate each other for the transport and termination of traffic as provided in Attachment 12: Compensation.

65.0 ANCILLARY FUNCTIONS

- 65.1 Ancillary Functions may include, but are not limited to, Collocation, Rights-of-Way, Conduit and Pole Attachments. SBC MISSOURI agrees to provide Ancillary Functions to CLEC as set forth in Attachment 13: Ancillary Functions.

66.0 AMENDMENTS AND MODIFICATIONS

- 66.1 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. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the Commission; and such amendment will not require refunds, true-up or retroactive crediting or debiting prior to the approval of the Amendment. SBC MISSOURI and CLEC shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.
- 66.2 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

67.0 ENTIRE AGREEMENT

- 67.1.1 The terms contained in this Agreement and any Appendices, 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.

68.0 SCOPE OF AGREEMENT

- 68.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. 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.
- 68.2 Except as specifically contained herein or provided by the FCC or any Commission within its Section 251 (c)(3) jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

69.0 OTHER REQUIREMENTS AND ATTACHMENTS

- 69.1 This Agreement incorporates a number of listed Attachments which, together with their associated Appendices, Exhibits, and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under the following broad headings: Resale; Section 251 (c)(3) Unbundled Network Elements; Network Interconnection Architecture; Ancillary Functions; and Other Requirements. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability which any particular Attachment may otherwise have.
- 69.2 Appended to this Agreement and incorporated herein are the Attachments listed below. To the extent that any definitions, terms or conditions in any given Attachment 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 services or activities listed in that particular Attachment. 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 the Attachment, but will not affect the term length of the remainder of this Agreement, except as may be necessary to interpret the Attachment.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

CLEC's State-Specific: Missouri

Facilities-Based OCN # 0525

Resale OCN # 8798

ACNA NVG

Navigator Telecommunications, LLC

Southwestern Bell Telephone, L.P. d/b/a SBC Missouri
by SBC Operations, Inc., its authorized agent

Signature: [Signature]

Signature: [Signature]

Name: Kenrick Le Doux
(Print or Type)

Name: _____
(Print or Type)

Title: V.P. Engineering + CTO
(Print or Type)

Title: AVP-Local Interconnection Marketing

Date: 8/8/05

Date: 8-9-05

Intercarrier Compensation Option Choice:

Designate Choice with X	Option Number	Description
	Option 1	Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic
	Option 2	All ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's ISP Terminating Compensation Plan Rate
X	Option 3	Long-term local Bill and Keep as the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound Traffic

THIS AGREEMENT CONTAINS ARBITRATED PROVISIONS AS DETERMINED BY THE MISSOURI PUBLIC SERVICE COMMISSION IN CASE NO. TO-2005-0336.