

COMMERCIAL AGREEMENT

between

Illinois Bell Telephone Company d/b/a AT&T Illinois,
Indiana Bell Telephone Company Incorporated d/b/a AT&T
Indiana,
Michigan Bell Telephone Company d/b/a AT&T Michigan,
Nevada Bell Telephone Company d/b/a AT&T Nevada,
The Ohio Bell Telephone Company d/b/a AT&T Ohio,
Pacific Bell Telephone Company d/b/a AT&T California,
The Southern New England Telephone Company d/b/a AT&T
Connecticut, Southwestern Bell Telephone, L.P. d/b/a AT&T
Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or
AT&T Texas,
Wisconsin Bell, Inc. d/b/a AT&T Wisconsin

and

Trans National Communications International, Inc.

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COMMERCIAL AGREEMENT GENERAL TERMS AND CONDITIONS

This Agreement is entered into by and between Trans National Communications International, Inc. (hereinafter referred to as "CARRIER" or "CLEC") and AT&T-13STATE (as defined herein) (collectively, the "Parties"; each, a "Party").

1. INTRODUCTION

- 1.1 This Agreement sets forth the rates, terms and conditions under which AT&T-13STATE agrees to provide CARRIER certain non-251/252 telecommunications-related products and/or services. The Parties acknowledge and agree that the provisions set forth in this Agreement are not subject to and/or required by the Communications Act of 1934, as amended, ("Act") including without limitation, Sections 251/252 of the Telecommunications Act of 1996 and any regulation or rule of the FCC or any state commission, and are not subject to negotiation and/or arbitration under Section 252 of the Act unless both Parties otherwise voluntarily agree in a writing signed by both Parties. All disputes that arise under this Agreement shall be resolved solely pursuant to the Dispute Resolution provisions of this Agreement.
- 1.2 The products and/or services available under this Agreement are set forth in the following Attachments (which are attached and incorporated herein), and are subject to the provisions of this Agreement. All of the provisions in this Agreement (including all Attachments, appendices, exhibits, schedules, and addenda hereto) are integrally related and non-severable. In the event of any inconsistency or conflict between this Agreement (ignoring the Attachments) and an Attachment, the Attachment shall control but only to the extent of such inconsistency or conflict.
 - 1.2.1 Transit Traffic Service Attachment, Transit Traffic Rates – California, Transit Traffic Rates – Illinois, Transit Traffic Rates – Indiana, Transit Traffic Rates – Kansas, Transit Traffic Rates – Missouri, Transit Traffic Rates – Michigan, Transit Traffic Rates – Nevada, Transit Traffic Rates – Ohio, Transit Traffic Rates – Oklahoma and Transit Traffic Rates – Wisconsin.
- 1.3 This Agreement is applicable to and binding upon both Parties in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, and Connecticut, and only applies within the Service Areas (as defined below).
- 1.4 The facilities used by AT&T-13STATE to provide the products and/or services hereunder shall remain the property of AT&T-13STATE.
- 1.5 Except as may be expressly set herein forth or in an attachment hereto (terms in attachments apply to that specific attachment only), the Parties understand and agree that no performance measures and remedies, including without limitation, any wholesale service quality standards, liquidated damages, and remedies, shall apply to the products and/or services under this Agreement. The Parties agree that the products and/or services under this Agreement are not subject to any AT&T-13STATE change management processes (often referred to as "CMP"), except that changes to systems and processes that are common to both the services and/or products hereunder and other AT&T-13STATE offerings that are subject to any change management process, shall continue to be subject to such process.

2. GENERAL DEFINITIONS APPLICABLE TO THE AGREEMENT (INCLUDING THE ATTACHMENTS)

- 2.1 "AT&T CALIFORNIA" means Pacific Bell Telephone Company d/b/a AT&T California (and previously referred to as "SBC California").
- 2.2 "AT&T CONNECTICUT" means The Southern New England Telephone Company d/b/a AT&T Connecticut (and previously referred to as "SBC Connecticut").
- 2.3 "AT&T MIDWEST REGION 5-STATE" means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T

- Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin (and previously referred to as "SBC Midwest Region 5-State").
- 2.4 "AT&T MISSOURI" means Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (and previously referred to as "SBC Missouri").
- 2.5 "AT&T NEVADA" means Nevada Bell Telephone Company d/b/a AT&T Nevada (and previously referred to as "SBC Nevada").
- 2.6 "AT&T OKLAHOMA" means Southwestern Bell Telephone, L.P. d/b/a AT&T Oklahoma (and previously referred to as "SBC Oklahoma").
- 2.7 "AT&T SOUTHWEST REGION 5-STATE" means Southwestern Bell Telephone, L.P. d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas in Arkansas, Kansas, Missouri, Oklahoma, and/or Texas, respectively (and previously referred to as "SBC Southwest Region 5-State").
- 2.8 "AT&T-2STATE" means AT&T CALIFORNIA and AT&T NEVADA (and previously referred to as "SBC-2STATE").
- 2.9 "AT&T-8STATE" means AT&T SOUTHWEST REGION 5-STATE, AT&T CALIFORNIA, AT&T NEVADA, and AT&T CONNECTICUT (and previously referred to as "SBC-8STATE").
- 2.10 "AT&T-12STATE" means AT&T-2STATE, AT&T SOUTHWEST REGION 5-STATE and AT&T MIDWEST REGION 5-STATE (and previously referred to as "SBC-12STATE").
- 2.11 "AT&T-13STATE" means AT&T-2STATE, AT&T SOUTHWEST REGION 5-STATE, AT&T MIDWEST REGION 5-STATE, and AT&T CONNECTICUT (and previously referred to as "SBC-13STATE").
- 2.12 "**Act**" means the federal Communications Act of 1934, as amended, including without limitation by the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996).
- 2.13 "**Affiliate**" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten (10) percent.
- 2.14 "**Business Day**" means Monday through Friday, excluding holidays on which the applicable AT&T-13STATE ILEC does not provision new orders for retail telecommunications services. The use of only "day" in this Agreement refers to a calendar day.
- 2.15 "**Intellectual Property**" means copyrights, patents, trademarks, service marks, trade secrets, mask works and all other intellectual property rights.
- 2.16 "**Service Area**" means a geographic area in which AT&T-13STATE then serves as the incumbent local exchange carrier.

3. PRICING

- 3.1 The rates which shall apply under this Agreement are set forth in the various pricing schedules to this Agreement, which are incorporated herein by this reference.
- 3.2 Where rates are shown as monthly, a month will be defined as a calendar month. The minimum term for each product and/or service purchased hereunder will be one (1) month. After that initial month, billing will be on the basis of whole or fractional months used.

4. REUSE OF FACILITIES

- 4.1 Each Party will abide by any applicable federal and state laws and regulations in obtaining end user authorization prior to changing an end user customer's provider of services and/or products made available through use of the services and/or products provided under this Agreement or like-services and in assuming responsibility for any charges that may apply to the extent the FCC's rules regarding Subscriber

Carrier Selection Changes (47 C.F.R. §§ 64.1100 through 64.1170) or any state regulation applies to the changing of an end user customer's provider of services and/or products made available through use of the services and/or products provided under this Agreement or like-services.

- 4.2 When an end user changes or withdraws authorization from its carrier, each Party shall immediately release end user-specific facilities belonging to or possessed by AT&T-13STATE in accordance with the end user customer's direction or that of the end user customer's authorized agent. Further, when an end user customer abandons its premise (that is, its place of business or domicile), AT&T-13STATE is free to reclaim the end user-specific facilities, and is free to issue service orders required to reclaim such facilities. In either situation, CARRIER shall promptly provide AT&T-13STATE with all information necessary for AT&T-13STATE to reclaim or reuse the facilities, including, but not limited to the circuit ID of the affected facility.
- 4.3 The Parties agree to the re-use of existing network facilities when a customer (including without limitation an end user customer) changes its provider of service being provided by those existing facilities, and those existing network facilities that are available for use for providing the services and/or products provided under this Agreement.

5. TECHNOLOGY EVOLUTION

- 5.1 Nothing in this Agreement shall constrain or otherwise limit AT&T-13STATE from continuing to evolve and otherwise modify its networks by, for example, deploying new and different technologies and altering the manner in which products and/or services are provided, including without limitation the products and/or services provided for in the Attachments. AT&T-13STATE shall retain the right to deliver those products and/or services, including without limitation local exchange service, over the technologies and in the manner that AT&T-13STATE chooses.

6. TERMINATION

- 6.1 Notwithstanding anything to the contrary in this Agreement, upon violation of any conditions governing the furnishing of products and/or services under this Agreement, AT&T-13STATE may, without incurring any liability, discontinue furnishing products and/or services under this Agreement ("termination") upon proper notice as provided for in Section 16 below. If CARRIER disputes the violation, it shall notify AT&T-13STATE in writing within fourteen (14) days of receipt of notice from AT&T-13STATE and the dispute shall be resolved between the Parties pursuant to Section 11 below (as to billing disputes) and Section 12 below. If CARRIER does not dispute the violation, CARRIER shall correct the violation and notify AT&T-13STATE in writing that the violation has been corrected prior to expiration of the thirty (30) day notice and cure period or as otherwise agreed by the Parties. Following any such termination under this Section 6, neither Party shall have any further obligations under this Agreement (except for those obligations set forth in Sections 19.6 and 19.7 below). In the case of termination, all applicable charges, including without limitation outstanding charges, interest charges, late payment fees and termination charges shall become due. At its option, AT&T-13STATE may net amounts owed by CARRIER against funds which otherwise might be due to CARRIER from AT&T-13STATE under this or any other agreement between the Parties. If AT&T-13STATE does not terminate the provision of the products and/or services on the date specified in the thirty (30) days' notice and CARRIER's noncompliance continues, nothing contained herein shall preclude AT&T-13STATE's right to terminate the provision of the products and/or services to CARRIER without further notice.

7. BRANDING

- 7.1 Except where otherwise required by law or as expressly permitted by this Agreement (including without limitation any Attachment), CARRIER shall not, without AT&T-13STATE's written authorization, (i) offer products and/or services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of AT&T-13STATE or its Affiliates, or (ii) state or imply that there is any joint business association or similar arrangement with AT&T-13STATE or its Affiliates in the provision of

products and/or services to CARRIER's own customers (including without limitation its end user customers). CARRIER may brand products and/or services included in this Agreement with its own brand name, but AT&T-13STATE will not provide for CARRIER branding of those products and/or services.

- 7.2 AT&T-13STATE shall not be obligated by this Agreement to provide CARRIER with branding of any kind including, but not limited to, technician apparel, vehicles, or forms; nor shall the AT&T-13STATE technicians carry and provide to CARRIER's customers (including, without limitation, its end user customers), CARRIER-specific branded business cards or other printed materials.

8. FORCE MAJEURE

- 8.1 AT&T-13STATE shall not be responsible for delays or failures in performance resulting from acts or occurrences beyond AT&T-13STATE's reasonable control, regardless of whether such delays or failures in performance were foreseen or foreseeable, including, without limitation: fire, explosion, power failure, power blackouts/brownouts, cable cuts, embargoes, epidemics, nuclear accidents, acts of God, acts of nature, unusually severe weather conditions, acts of civil or military authority, war, terrorist acts, riots, insurrection, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by CARRIER or by other service or equipment vendors; or any other circumstances beyond AT&T-13STATE's reasonable control. AT&T-13STATE will give prompt notice to CARRIER when an event, as listed above, has occurred. When possible, the notice will identify the area(s) that is(are) affected by the event and the approximate time frame within which the event occurred and if known, the approximate date it is anticipated the event will conclude. When possible, AT&T-13STATE will provide reasonable updates concerning the event and will provide notification to CARRIER when the event will be or has completed and all affected areas are anticipated to return to business as usual.

9. GOVERNING LAW

- 9.1 Unless otherwise provided by applicable law, this Agreement shall be governed by and construed in accordance with the laws of the AT&T-13STATE State in which the product(s) and/or service(s) at issue were provided, and, if agreement cannot be reached upon which state law applies, or if the issues involve the provision of product(s) and/or service(s) in multiple states, the laws of the State of Texas shall apply, without regard to conflict in law principles of the applicable state's law.

10. LIMITATION OF LIABILITY/INDEMNITY

10.1 LIMITATION OF LIABILITY

- 10.1.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific Attachments, to the maximum extent permitted by applicable law each Party's liability to the other Party (and its Affiliates and their respective officers, directors, employees, agents, and other representatives) for any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees) ("Loss" or "Losses") relating to or arising out of such Party's performance under this Agreement and any and all dealings and arrangements between the Parties relating to the products and/or services hereunder (but excluding any Loss(es) relating to or arising out of any AT&T-13STATE tariffs and products purchased by CARRIER from AT&T-13STATE tariffs, which shall be governed exclusively by such tariffs) ("Commercial Relationship"), including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach this Agreement also constitute a violation of a statute, shall not exceed in total the amount AT&T-13STATE or CARRIER has charged or would have charged to the other Party for the affected products and/or services that was not performed or was improperly performed (not to exceed the billings between the Parties for such affected products and/or services for the month or months in which the condition occurred, but not be exceed twelve (12) months in any event). To the maximum

extent permitted by applicable law, neither CARRIER nor AT&T-13STATE shall be liable to the other Party for any indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits) suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of a statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 10.1.2 to indemnify, defend, and hold the other Party harmless against any amounts payable to a third party, including any Losses, and indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits) of such third party, subject to Section 10.1.3 below; provided, however, nothing in this Section 10.1.1 shall impose indemnity obligations on a Party for any Losses or indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits) suffered by that Party's customers (including without limitation its end user customers) in connection with any affected products and/or services. Rather, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") and Indemnitee's Affiliates (and their respective officers, directors, employees, agents, and other representatives) against any Loss or claim made by or through the Indemnifying Party's customers (including without limitation its end user customers).

- 10.1.2 Except as otherwise expressly provided in specific Attachments, in the case of any Loss alleged or claimed by a third party to have arisen out of the gross negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own gross negligence or willful misconduct or that of its officers, directors, employees, agents, contractors, or others acting in aid or concert with it.
- 10.1.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its customers (including without limitation its end user customers) or third parties that relate to any products and/or services provided or contemplated by this Agreement that, to the maximum extent permitted by applicable law, such Party shall not be liable to such customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged such customer or third party for the products and/or services that gave rise to such Loss and (ii) any indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits). If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 10.1.3.
- 10.1.4 AT&T-13STATE (and its Affiliates and their respective officers, directors, employees, agents, and other representatives) shall not be liable for damages to a customer's premises (including without limitation the premises of its end user customers) resulting from the furnishing of any products and/or services hereunder including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by AT&T-13STATE's gross negligence or willful misconduct, subject to Section 10.1.5 below.
- 10.1.5 **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE PARTIES VOLUNTARILY AGREE, AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL, THAT THE RIGHTS AND REMEDIES AS STATED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DISPUTE RESOLUTION, SECTION 12, OF THIS AGREEMENT (AS TO THE**

SUBJECT-MATTER OF THIS AGREEMENT) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY WITH RESPECT TO ANY CLAIMS, LOSS(ES) AND DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL DEALINGS, ARRANGEMENTS, NEGOTIATIONS, AND/OR COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE COMMERCIAL RELATIONSHIP, INCLUDING SUCH MATTERS WITH RESPECT TO ACTUAL OR POTENTIAL WHOLESALE TERMS AND CONDITIONS APPLICABLE TO ANY AREA WITHIN THE DOMESTIC UNITED STATES IN WHICH AT&T-13STATE OPERATES (BUT EXCLUDING ANY CLAIMS, LOSS(ES) AND DISPUTES RELATING TO OR ARISING OUT OF ANY AT&T-13STATE TARIFFS, WHICH SHALL BE GOVERNED EXCLUSIVELY BY SUCH TARIFFS), AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THAT A PARTY MAY POSSESS PURSUANT TO STATUTE, OR AT COMMON LAW OR IN EQUITY.

10.1.6 Any state or federal tariff references made within this Agreement, including all Attachments/Appendices, refer to tariffs filed by AT&T-13STATE, as such tariffs may be modified from time to time.

10.2 INDEMNITY

10.2.1 **Responsibility of Each Party for its Services:** Except as otherwise expressly provided in this Agreement (including without limitation in a product/service-specific Attachment), each Party shall be responsible only for the products and/or services which are provided by such Party, its agents, contractors, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the products and/or services provided by the other Party, its agents, contractors, subcontractors, or others retained by such other Party.

10.2.2 **Claims of Loss by Third Party(ies):** Except as otherwise expressly provided in this Agreement (including without limitation in a product/service-specific Attachment) and subject to Section 10.1, Limitation of Liability above, 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 Losses to a third party arising out of the gross negligence, recklessness, or willful misconduct ("Fault") of such Indemnifying Party, its officers, directors, employees, agents, its customers (including without limitation its end user customers), contractors, or others retained by the Indemnifying Party, in connection with the Indemnifying Party's provision of products and/or services and performance under this Agreement and the Commercial Relationship; 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 or agency, respectively, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

10.2.3 **Claims of Loss by a Customer (including without limitation an end user customer) of a Party:** Except as otherwise expressly provided in this Agreement (including without limitation in a product/service-specific Attachment) and subject to Section 10.1, Limitation of Liability above, in the case of any Loss alleged or claimed by a customer (including without limitation an end user customer) of either Party, the Party whose customer alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such claims or Losses by such Indemnifying Party customer regardless of whether the underlying product and/or service or performance giving rise to such claim or Loss was provided or provisioned by the Indemnified Party, unless the claim or Loss was caused by the gross negligence, recklessness, or willful misconduct of the Indemnified Party. Notwithstanding anything to the contrary in this Section 10.2.3 and this Agreement, AT&T-13STATE shall have no liability to the customers (including without limitation its end user customers) of CARRIER for claims arising from the provision of the

products and/or services hereunder to CARRIER, including but not limited to claims related to CARRIER's marketing or sales of CARRIER's offerings that are based on or use the products and/or services provided hereunder, delayed restoral or nonrestoral of the products and/or services hereunder, quality of service or any resulting billing or any other type of dispute. CARRIER agrees to indemnify, defend, and hold AT&T-13STATE harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by CARRIER's customer (including without limitation an end user customer) for any products and/or services provided hereunder.

- 10.2.4 **Claims of Loss by a Party Against other Party:** Subject to Section 10.1, Limitation of Liability above, a Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or Loss arising from the Indemnifying Party's use of products and/or services provided hereunder, or performance, under this Agreement, including, without limitation, any claim(s) or Loss(es) arising from: Indemnifying Party's use of products and/or services offered under this Agreement, involving any claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its customer's use (including without limitation use by an end user customer) use.
- 10.2.5 **CARRIER Indemnity for Damage to Facilities:** CARRIER shall reimburse AT&T-13STATE for damages to AT&T-13STATE's facilities utilized to provide any products and/or services hereunder caused by the gross negligence or willful act of CARRIER, its officers, directors, employees, agents, contractors, or subcontractors or CARRIER's customers (including without limitation its end user customers) or resulting from CARRIER's or its customer's improper use of AT&T-13STATE's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than AT&T-13STATE. Upon reimbursement for damages, AT&T-13STATE will cooperate with CARRIER in prosecuting a claim against the person or entity causing such damage. CARRIER shall be subrogated to the right of recovery by AT&T-13STATE for the damages to the extent of such payment. In addition, CARRIER hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other service degradation or damage to AT&T-13STATE facilities and hereby agrees to release, defend and indemnify AT&T-13STATE, and hold AT&T-13STATE harmless, from any claims for loss or damages, including but not limited to direct, indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits), made against AT&T-13STATE by a customer (including without limitation an end user customer), any telecommunications service provider or telecommunications user relating to such testing by CARRIER.
- 10.2.6 **Indemnification Procedures:** Whenever a claim shall arise for indemnification under this Section 10.2, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim. The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party. Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim. Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating

such settlement. At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party. Each Party agrees to cooperate and to cause its officers, directors, employees, agents, and other representatives 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 Nondisclosure, Section 13, of this Agreement.

11. BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES

- 11.1 AT&T-13STATE shall include all charges under this Agreement on the monthly bill(s) rendered to CARRIER (hereinafter "invoice").
- 11.2 CARRIER shall pay all charges under this Agreement within thirty (30) days of the invoice date.
- 11.3 A good faith billing dispute under this Agreement requires CARRIER to provide a written claim to AT&T-13STATE to permit AT&T-13STATE to investigate the merits of the dispute. Such claim must identify the following within ten (10) Business Days from the date AT&T-13STATE is notified of the dispute: (a) the account number under which the invoice has been rendered; (b) the specific charge that the customer believes was billed in error; (c) the date of the invoice; and (d) the reason or grounds for the dispute.
- 11.4 CARRIER billing inquiries and/or claims of overbilling by AT&T-13STATE shall be referred to AT&T-13STATE for investigation within six (6) months of the charge(s) first appearance on the invoice to CARRIER. Absent a claim and/or dispute by CARRIER as to a charge within six (6) months from its first appearance on an invoice to CARRIER, such charge shall be deemed to be correct. If the Parties determine that CARRIER was billed incorrectly for products and/or services rendered pursuant to this Agreement, a billing adjustment shall be calculated. If a refund is due, an adjustment shall be made for the overcharges. If an overcharge is adjusted within three billing cycles of the invoice in error, interest will not be applicable. If the overcharge is not adjusted within three billing cycles, interest on the amount will be credited at the lower of 1 percent per month compounded daily or the highest interest rate permitted by applicable law in the AT&T-13STATE state. If the dispute is decided in favor of AT&T-13STATE, then the resolution date will be the date upon which Notice is deemed to have been received by CARRIER under the Notice provisions in this Agreement ("Resolution Date") and CARRIER shall pay AT&T-13STATE interest on the disputed amount at the lower of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in the AT&T-13STATE state within fourteen (14) days of the Resolution Date.

12. DISPUTE RESOLUTION

12.1 Finality of Disputes

12.1.1 Except as otherwise specifically provided for in this Agreement including without limitation, Section 11 above (as to billing disputes), no claim may be brought for any dispute arising from this Agreement and the Commercial Relationship more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

12.2 Alternative to Litigation

12.2.1 The Parties desire to resolve disputes arising out of or relating to this Agreement and with respect to all dealings, arrangements, negotiations and/or communications between the Parties relating to this Agreement and the Commercial Relationship without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement and the Commercial Relationship.

12.3 Commencing Dispute Resolution

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

12.3.1.1 Billing disputes: Billing Disputes between the Parties arising out of or relating to this Agreement shall be resolved in accordance with the procedures set forth in Section 11 above and Section 12.5 below.

12.3.1.2 Informal Dispute Resolution (described below); and

12.3.1.3 Formal Dispute Resolution (described below).

12.4 Informal Resolution of Non-Billing Disputes

12.4.1 Billing disputes which are addressed in Section 11 of this Agreement are not subject to this Informal Resolution Process.

12.4.2 Upon receipt by one Party of notice of a non-billing related dispute by the other Party pursuant to Section 12.3.1 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement and the Commercial Relationship. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. If the Parties are unable to resolve the non-billing dispute through informal dispute resolution procedures within sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 12.3.1 of this Agreement, then either Party may invoke Formal Dispute Resolution under Section 12.5 of this Agreement, or the Parties may agree, in writing, to extend the informal dispute resolution period for the number of days that they deem necessary to resolve the dispute.

12.5 Formal Dispute Resolution

12.5.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 11 above (as to billing disputes) or Section 12.4 above (as to non-billing related disputes), then either Party may invoke the formal Dispute Resolution procedures described in this Section 12.5. Formal Dispute Resolution procedures may not be invoked by either Party with respect to non-billing

related disputes earlier than the date that is sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 12.3.1 of this Agreement.

12.5.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through the informal procedure described in Section 11 above (as to billing disputes) will be subject to mandatory arbitration pursuant to Section 12.6 below:

12.5.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement and the Commercial Relationship in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 11 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 11 the Parties will annualize the actual number of months billed.

12.5.2.2 All Other Claims and Relief. Any claim and any relief other than as specified in Section 12.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate judicial or regulatory authority with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

12.5.3 All Other Claims and Relief. Any claim and any relief other than as specified in Section 12.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate judicial or regulatory authority with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

12.6 Arbitration

12.6.1 Disputes subject to mandatory arbitration (or when arbitration is agreed to by both Parties) under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. All arbitrations will be held in Dallas, Texas unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

13. NONDISCLOSURE

13.1 Each Party anticipates and recognizes that it will come into possession of technical or business information or data about the other Party and/or its customers (including without limitation its end user customers) as a result of this Agreement which will be considered confidential by such other Party. The Parties agree (1) to

- treat all such information and data as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. Each Party agrees not to disclose confidential information and/or data of or pertaining to the other Party or its customers (including without limitation its end user customers) to any third party without first securing the written consent of such Party. The foregoing shall not apply to information which is in the public domain. Nothing in this Agreement prevents either Party from disclosing operations results or other data that might reflect the results of this Agreement as a part of that Party's aggregate operating data as long as the disclosed data is at a level of aggregation sufficient to avoid disclosing with specificity information obtained in the operation of this Agreement.
- 13.2 If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section 13, that Party will immediately inform the other Party of the order or request before such data or information is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of billing and/or usage records of or pertaining to an individual customer (including without limitation an end user customer).
- 13.3 This Section 13 will not preclude the disclosure by a Party of information or data subject to this Section to consultants, agents, or attorneys representing that Party, or the Office of the Public Counsel for a State, or appropriate State Commissions or staffs, or FCC Staff, provided that such representatives are informed of the confidential nature of the information and/or data prior to disclosure and are bound by confidentiality requirements that are at least as restrictive as applicable to the Parties to this Agreement.
- 13.4 The provisions of this Section 13 shall survive the expiration and/or termination of this Agreement, unless agreed to in writing by the Parties.

14. PUBLICITY

- 14.1 Except as may be expressly provided elsewhere in this Agreement (including without limitation the Attachments), 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 or business relationships by the other Party or any of its employees without such Party's prior written approval. Each Party will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain symbols, pictures, or language from which a connection to said name and/or marks may be inferred or implied.

15. ASSIGNMENT

- 15.1 CARRIER may not assign, subcontract, or otherwise transfer any of its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to CARRIER and AT&T-13STATE and with AT&T-13STATE's prior written consent, which consent shall not be unreasonably withheld.

16. NOTICES

- 16.1 Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement, including without limitation, Section 7 above to be delivered to another representative, point of contact or specific manner, shall be: (a) delivered personally; or (b) delivered by express overnight delivery service; or (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by facsimile; provided that a paper copy is also sent by a method described above in subsections (a), (b) or (c).
- 16.2 Except as otherwise explicitly provided for in this Agreement including, without limitation, Section 16.1 above, Notices will be deemed given as of the earliest of: (a) the date of actual receipt; or (b) the next Business Day when sent via express overnight delivery service; or (c) five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or (d) on the date set forth on the confirmation

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

16.3 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CARRIER CONTACT	<u>AT&T-13STATE</u> CONTACT
NAME/TITLE	Brenda McDonald/Vice President Carrier Relations	Contract Management ATTN: Notices Manager
STREET ADDRESS	2 Charlesgate West	311 S. Akard, 9 th Floor Four SBC Plaza
CITY/STATE/ZIP CODE	Boston, MA 02214	Dallas, TX 75202
FACSIMILE NUMBER	(617) 369-1082	(214) 464-2006

Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

16.4 In addition, Carrier agrees that it is responsible for providing AT&T-13STATE with Carrier's OCN and ACNA numbers for the states in which Carrier is authorized to do business and in which Carrier is requesting that this Agreement apply. Notwithstanding the other provisions of this Section 16, Carrier shall provide the OCN and ACNA numbers to AT&T-13STATE through its "CLEC Profile", using the web-based interface that AT&T-13STATE provides for such purposes. In the event that CARRIER wants to change and/or add to the OCN and/or ACNA information in the CLEC Profile, CARRIER shall send written notice to AT&T-13STATE to be received at least 30 days prior to the change and/or addition in accordance with this Section 16 notice provision; Carrier shall also update its CLEC Profile through the web-based interface.

17. THIRD PARTY BENEFICIARIES

17.1 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 non-party with any remedy, claim, cause of action or other right.

18. TAXES

18.1 CARRIER shall be responsible for all federal, state or local, sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax(es)") imposed on or with respect to the products and/or services provided under this Agreement including those Taxes the incidence of which is imposed on AT&T-13STATE other than taxes imposed on the income of AT&T-13STATE. CARRIER shall reimburse AT&T-13STATE for the amount of any such Taxes that AT&T-13STATE is required to pay or collect. CARRIER agrees to indemnify and hold harmless AT&T-13STATE for any costs incurred by AT&T-13STATE as a result of actions taken by the applicable taxing authority to collect the Tax from AT&T-13STATE due to the failure of CARRIER to pay or collect and remit any Tax to such authority. Nothing shall prevent AT&T-13STATE from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills CARRIER for such Tax, or (2) it collects the Tax from CARRIER. Notwithstanding anything in this Agreement to the contrary, CARRIER shall be liable for and AT&T-13STATE 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.

18.2 CARRIER acknowledges and agrees that it is required to comply with Chapter 283 of the Texas Local Government Code, as it may be amended from time to time, and the reporting and compensation requirements of Subchapter R of the P.U.C. Substantive Rules – Chapter 26, Applicable to Telecommunications Service Providers, as they may be amended from time to time. With respect to municipal fees charged pursuant to Chapter 283, Tex. Loc. Gov't Code, CARRIER agrees that it will directly

- report its access lines to the Texas Public Utility Commission, will remit the related payments to municipalities, and will otherwise comply with Chapter 283 and applicable P.U.C rules, as they may be amended from time to time.
- 18.3 To the extent a purchase of any products and/or services provided under this Agreement is claimed to be for resale and thus subject to tax exemption, CARRIER shall furnish AT&T-13STATE a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the CARRIER for any period prior to the date that CARRIER presents a valid certificate. If applicable law excludes or exempts a purchase of a product and/or service provided under this Agreement from a Tax, but does not also provide an exemption procedure, then AT&T-13STATE will not collect such Tax if CARRIER (a) furnishes AT&T-13STATE with a letter signed by an officer of the CARRIER claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies AT&T-13STATE with an indemnification agreement, reasonably acceptable to AT&T-13STATE, which holds AT&T-13STATE harmless from any Tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 18.4 With respect to any Tax or Tax controversy covered by this Section 18, CARRIER is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any Tax that it is ultimately obligated to pay. CARRIER will ensure that no lien is attached to any asset of AT&T-13STATE as a result of any contest. CARRIER shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by AT&T-13STATE shall be refunded to AT&T-13STATE.
- 18.5 If a Party is assessed by a taxing authority or jurisdiction any Tax which has been paid by or been invoiced to the other Party that arises in conjunction with or directly related to this Agreement, then the Parties will work cooperatively and assist each other as necessary in resolving the matter with the taxing authority or jurisdiction.

19. EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION

- 19.1 The Effective Date of this Agreement shall be ten (10) Business Days after both Parties' final authorizing signatures have been affixed to this Agreement (the "Effective Date").
- 19.2 Except as otherwise provided herein, the term (the "Term") of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on July 19, 2007 (the "Expiration Date"). This Agreement shall automatically terminate on the first day following the Expiration Date of the Term ("Termination Date"), unless both Parties otherwise agree to extend the Term in writing via an amendment to this Agreement. Otherwise, upon the Termination Date of this Agreement, neither Party shall have any further obligation under this Agreement, except as otherwise set forth in Section 19.7 below and pursuant to Survival, Section 32.
- 19.3 In the event that CARRIER should wish to pursue a successor agreement with AT&T-13STATE to have in place upon the Termination Date of this Agreement, CARRIER must provide AT&T-13STATE with a written request to negotiate no later than 180 days prior to the Expiration Date of this Agreement. Upon AT&T-13STATE's receipt of CARRIER's request to negotiate, the Parties shall commence good faith negotiations for a successor agreement.
- 19.4 The rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of: (i) the effective date of the successor agreement, if any; or (ii) the Termination Date set forth in Section 19.2 above.
- 19.5 Notwithstanding any other provision of this Agreement, and in addition to AT&T-13STATE's rights to terminate under other Sections of this Agreement, including without limitation Sections 19.8, 19.9, and 32, a Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or breaches a material provision of this Agreement and the other Party fails to cure such nonperformance or

- breach by 5:00 p.m. Central Time on the 45th calendar day after receipt of written notice thereof. If the Party against which the claim of nonperformance or breach is made materially and in good faith disagrees with the claim, it shall notify the claiming Party of its disagreement in writing by 5:00 p.m. Central Time of the 14th day following receipt of the nonperformance/breach notice, providing with specificity the basis for its disagreement, and the dispute shall then be resolved between the Parties pursuant to Section 11 above (as to billing disputes) and Section 12 above. If the nonperformance/breach is not disputed in a timely manner, the Party shall cure the nonperformance/breach and certify in writing to the other by deadline on the 45th day that the nonperformance/breach has been cured. Any termination of this Agreement pursuant to this Section 19 shall take effect in accordance with the written notice delivered to the nonperforming/breaching Party after it failed to cure and/or to certify by the deadline on that 45th day.
- 19.6 By the Expiration Date or Termination Date of this Agreement, AT&T-13STATE and CARRIER shall cooperate in good faith to effect an orderly transition of CARRIER's customers (including without limitation its end user customers) who are being served by CARRIER using the products and/or services hereunder; provided that CARRIER shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its customers (including without limitation its end user customers) have been transitioned to another serving arrangement or to a different telecommunications carrier by the Expiration Date or Termination Date of this Agreement or that such customers (including without limitation its end user customers) have otherwise been informed by CARRIER that their CARRIER-provided products and/or services will be discontinued/disconnected by CARRIER on or before the Expiration Date or Termination Date, unless otherwise provided herein or agreed by both Parties. If, before the Expiration Date or Termination Date, CARRIER has not transitioned or disconnected/discontinued the services that are being provided using the products and/or services hereunder, then AT&T-13STATE may terminate any such CARRIER services still in-service on the first day following such Expiration Date or Termination Date unless otherwise agreed in a writing signed by both Parties.
- 19.7 Upon the Expiration Date or Termination Date of this Agreement, in one or more State, neither Party shall have any further obligation under this Agreement in such State or State(s), except:
- 19.7.1 Each Party's confidentiality obligations shall survive; and
- 19.7.2 Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;
- 19.7.3 As provided in Survival, Section 32; and
- 19.7.4 As may be provided elsewhere in the Agreement (including without limitation the Attachments).
- In any event, AT&T-13STATE shall be under no obligation to provision any products and/or services pursuant to this Agreement as of and after the Expiration Date or Termination Date.
- 19.8 In the event that any federal or state government action (including by a regulatory agency, a court, or a legislature) requires AT&T-13STATE to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to CARRIER, any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow CARRIER, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement, including by way of example, at prices or price structure/application or arrangements different than agreed to in this Agreement as a whole by the Parties, the Parties both agree, except to the extent prohibited by law, to waive their respective rights to such change in the Agreement, including but not limited to waiving any right they may have to obtain the terms available to other carriers, persons or entities as a result of such government action. However, if the Parties are prohibited from legally waiving the effects of such government action, then as between the Parties the procedures of Section 32 (Severability) shall be invoked to address those provisions that were required to be provided, modified, or otherwise made available to CARRIER, any other telecommunications carrier, or any other person or entity. Where the foregoing invocation of Section 32 (Severability) results in a right to terminate and is the result of a state government action, the right shall arise only in the state in

- which such action occurred and any termination of this Agreement would be for that state only (unless this Agreement is terminated pursuant to Section 19.9).
- 19.9 Section 19.9 (all references to Section 19.9 expressly includes its subsections) applies in accordance with its provisions, notwithstanding Section 19.8 or any other provision in this Agreement to the contrary.
- 19.9.1 AT&T-13STATE shall have the right to terminate this Agreement in whole or in part, upon written notice to CARRIER, in the event that any federal action, or state government actions in two or more states, (including by a regulatory agency, a court, or a legislature) requires AT&T-13STATE to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow CARRIER, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement as they were agreed to by the Parties, including by way of example, at prices or price structure/application or arrangements different than agreed to in this Agreement as a whole by the Parties. If such state government action only occurs in one state, AT&T-13STATE shall have the right to terminate the Agreement in that state by written notice to CARRIER. If such government action occurs at the federal level or in two or more states, AT&T-13STATE shall have the right to terminate, at its election, the Agreement in its entirety or, alternatively, only in one or more of the affected states, by written notice to CARRIER.
- 19.9.2 This Agreement shall be null and void, automatically and in its entirety in any single state if this Section 19.9 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect in such state. This Agreement shall be null and void, automatically and in its entirety if either a) by state government action in two or more states, or b) by federal government action, this Section 19.9 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect by such state and/or federal government action(s).
- 19.9.3 Any termination or invalidation of this Agreement under this Section 19.9 shall be effective as of the day before the effective date of such governmental action that triggered the invalidation or right to terminate, and AT&T-13STATE and CARRIER agree to expeditiously adopt and implement a transition plan to avoid or minimize impact on CARRIER's customers (including without limitation its end user customers) who are being served using the products and/or services hereunder.
- 19.9.4 Each Party understands and acknowledges that (i) any right to terminate under this Section 19.9 becomes available even if this Agreement between the Parties themselves would otherwise be unaffected by the triggering federal or state government action; and (ii) that this Section 19.9 (as well as Section 19.8) is triggered and applies on each occurrence of any federal or state government action described in Sections 19.8, 19.9.1 and/or 19.9.2.
- 19.10 In addition, AT&T-13STATE shall have the right, at its sole discretion, to terminate this Agreement if an "Event of Default" occurs, with neither any notice of default by AT&T-13STATE nor an opportunity for cure by CARRIER required. Such right shall be exercised by providing a written notice to terminate to CARRIER. Events of Default include the following, each of which the Parties agree would be a material breach of this Agreement:
- 19.10.1 The filing of a bankruptcy by CARRIER or any of its Affiliates (including the corporate parent of CARRIER, if any), pursuant to Chapter 7 or 11 of Title 11 of the United States Code.
- 19.10.2 The assignment, subcontracting, or otherwise transferring of CARRIER's rights or obligations under this Agreement in violation of Section 15.

20. WAIVER

- 20.1 The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but

this Agreement shall be and remain at all times, in full force and effect, unless terminated or amended as provided for herein.

21. DISCLAIMER OF WARRANTIES

21.1 AT&T-13STATE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER, AND AT&T-13STATE DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR INTENDED OR PARTICULAR PURPOSE FOR EACH PRODUCT AND SERVICE. ADDITIONALLY, AT&T-13STATE ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY CARRIER WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

22. RELATIONSHIP OF THE PARTIES

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

22.2 This Agreement shall 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 shall have any authority to bind the other or to act as an agent or representative for the other unless written authority, separate from this Agreement, is provided. Nothing in this Agreement shall 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 shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. No Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

23. FILING OF AGREEMENT; GOVERNMENTAL REQUIREMENT

23.1 To the extent required (and not exempted), the Parties understand and agree that this Agreement will be filed with the Federal Communications Commission pursuant to 47 U.S.C. § 211.

23.2 The Parties further understand and agree that to the extent a Party ("Disclosing Party") is requested, required or ordered by a state regulatory body or a court of competent jurisdiction finds, that this Agreement should be filed, or that such Agreement should be submitted to a state regulatory body for approval, or should a regulatory body or court of competent jurisdiction find that its provisions should be tariffed pursuant to applicable law or regulation, the Disclosing Party must provide the other Party ("Receiving Party") with written notice of such requirement as soon as possible and the Receiving Party shall cooperate with the Disclosing Party in expeditiously complying with any such request, order or finding.

24. AMENDMENTS AND MODIFICATIONS

24.1 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. 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.

25. INTERPRETATION/JOINT WORK PRODUCT

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

26. NO LICENSE

26.1 Except as otherwise expressly provided in this Agreement (including without limitation any Attachment), no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

27. INTELLECTUAL PROPERTY

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

28. COMPLIANCE AND CERTIFICATION

28.1 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.

28.2 CARRIER warrants that, to the extent applicable and required, it has obtained all necessary State certification required in each State covered by this Agreement. Upon request, each Party shall provide proof of certification.

28.3 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.

28.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA, to the extent applicable.

29. NETWORK MAINTENANCE AND MANAGEMENT

29.1 The Parties will exchange information appropriate for the implementation and performance of this Agreement (for example, as applicable, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, escalation processes, etc.).

29.2 Each Party will provide a 24-hour contact number for network management issues to the other's surveillance management center.

29.3 CARRIER shall not use any products and/or services hereunder in any manner that interferes with or impairs or undermines service over any facilities of AT&T-13STATE, its Affiliated companies or other connecting telecommunications carriers, prevents any telecommunications carrier from using its telecommunications service, impairs the quality or the privacy of telecommunications service to other carriers or to either Party's end users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue using or refuse to provide the products and/or services hereunder, but only for so long as the other Party is violating this

provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

30. CUSTOMER INQUIRIES/END USER NOTICES

- 30.1 Except as may otherwise be required hereunder, each Party will refer all questions regarding the other Party's services or products directly to the other Party.
- 30.2 Except as may otherwise be required hereunder, each Party will ensure that its representatives who receive inquiries regarding the other Party's services:
 - 30.2.1 Direct the caller to the other Party if the caller inquires about the other Party's services or products; and
 - 30.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.
- 30.3 CARRIER shall be responsible for all notices and other communications with its customers (including without limitation end user customers), including without limitation any notices of pending disconnection due to the termination or expiration of this Agreement.

31. INSURANCE

- 31.1 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by applicable law:
 - 31.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
 - 31.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 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; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. AT&T-13STATE, its affiliates, officers, agents and employees shall be listed as additional insured on the Carrier's Commercial General Liability policy. A waiver of subrogation shall be in favor of AT&T-13STATE. The Carrier's liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T-13STATE.
 - 31.1.3 If use of a motor vehicle 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.
 - 31.1.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 31.1.1 through 31.1.3 of this Agreement.
 - 31.1.5 The Parties agree that companies affording the insurance coverage required under this Section 31 shall have a rating of A or better and a Financial Size Category rating of VIII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
 - 31.1.6 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
 - 31.1.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

31.1.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and

31.1.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and

31.1.7.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

31.1.7.4 A certificate of insurance stating the types of insurance and policy limits provided the contractor must be received prior to the commencement of any work.

31.1.8 This Section 31 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement, including without limitation any LWC Appendix.

32. SEVERABILITY

32.1 Except as otherwise provided herein, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith and diligent efforts to amend this Agreement to replace the unenforceable provision with an enforceable provision that is mutually acceptable and that reflects the intent of the unenforceable provision as closely as possible; provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon 90 days written notice to the other, during which time the Parties shall work cooperatively to establish an orderly transition of CARRIER's customers/End Users to other serving arrangements. In any situation in which the right to terminate under this Section 32.1 is triggered by State government action, the right to terminate shall arise only in the State in which such action occurred and would apply for that State only unless this Agreement otherwise permits a Party to terminate this Agreement in more than one State, including without limitation in its entirety.

33. SURVIVAL

33.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following sections are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Sections 19 (Effective Date, Term, Expiration and Termination), 10 (Limitation of Liability/Indemnity), 21 (Disclaimer of Warranties), 11 (as to any billing/charges matters hereunder), 12 (as to any disputes hereunder), 13 (Nondisclosure) and 18 (Taxes).

34. AUTHORITY

34.1 Each of the AT&T-13STATE ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the AT&T-13STATE ILEC(s) for which this Agreement is executed represents and warrants that AT&T Operations, Inc. has full power and authority to execute and deliver this Agreement as agent for that AT&T-13STATE ILEC. Each of the AT&T-13STATE ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

34.2 CARRIER represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

34.3 Each individual 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.

35. COUNTERPARTS

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

36. ENTIRE AGREEMENT

36.1 AT&T-12STATE only: The rates, terms and condition contained in this Agreement and any Attachments, appendices, exhibits, schedules, and addenda and other documents or instruments referred to herein and incorporated into this Agreement by reference (if any) 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.

36.2 AT&T CONNECTICUT only: The rates, terms and conditions contained in this Agreement and any Attachments, appendices, exhibits, schedules, Addenda, and commission tariffs and other documents or instruments referred to herein and incorporated into this Agreement by reference 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 pre-dating the execution of this Agreement; provided, however, that none of the rates, terms or conditions of this Agreement shall be construed to apply in any manner to any period prior to the termination and/or expiration date of any agreement that this Agreement replaces. 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.

COMMERCIAL AGREEMENT Signatures

Trans National Communications International, Inc.

Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, Nevada Bell Telephone Company d/b/a AT&T Nevada, Pacific Bell Telephone Company d/b/a AT&T California, The Southern New England Telephone Company d/b/a AT&T Connecticut, Southwestern Bell Telephone, L.P. d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas by AT&T Operations, Inc., its authorized agent

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: _____
(Print or Type)

Date: _____

Date: _____