

**INTERCONNECTION AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED**

**between
ILLINOIS BELL TELEPHONE COMPANY d/b/a
AT&T ILLINOIS,**

and

IQ TELECOM, INC.

TABLE OF CONTENTS

1. SCOPE OF AGREEMENT	6
2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY	7
3. NOTICE OF CHANGES -- SECTION 251(C)(5)	9
4. GENERAL RESPONSIBILITIES OF THE PARTIES.....	9
5. INSURANCE.....	9
6. OPERATING COMPANY NUMBER (OCN).....	10
7. TERM AND TERMINATION.....	11
8. FRAUD	13
9. DEPOSITS.....	13
10. NONPAYMENT AND PROCEDURES FOR DISCONNECTION.....	16
11. INTENTIONALLY OMITTED	16
12. DISPUTE ESCALATION AND RESOLUTION.....	16
13. AUDITS	18
14. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.....	20
15. LIMITATION OF LIABILITY	20
16. INDEMNITY.....	21
17. REMEDIES.....	22
18. INTELLECTUAL PROPERTY	23
19. NOTICES	24
20. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS	25

21. INTENTIONALLY OMITTED 25

22. CONFIDENTIALITY 25

23. INTERVENING LAW 29

24. GOVERNING LAW 29

25. REGULATORY APPROVAL 29

26. CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION 30

27. COMPLIANCE AND CERTIFICATION 30

28. LAW ENFORCEMENT 30

29. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR..... 31

30. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY 32

31. ASSIGNMENT 32

32. DELEGATION TO AFFILIATE AND SUBCONTRACTING..... 32

33. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION 33

34. FORCE MAJEURE 34

35. TAXES 35

36. NON-WAIVER..... 36

37. INTENTIONALLY OMITTED 37

38. INTENTIONALLY OMITTED 37

39. INTENTIONALLY OMITTED 37

40. CUSTOMER INQUIRIES 37

41. EXPENSES 37

42.	CONFLICT OF INTEREST	37
43.	SURVIVAL	37
44.	INTENTIONALLY OMITTED	38
45.	AMENDMENTS AND MODIFICATIONS.....	38
46.	INTENTIONALLY OMITTED	38
47.	INTENTIONALLY OMITTED	38
48.	AUTHORITY	38
49.	COUNTERPARTS	38
50.	ENTIRE AGREEMENT	38
51.	PURCHASING FROM TARIFFS	38
52.	ALTERNATIVELY BILLED SERVICES.....	39

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement), is dated by and between Illinois Bell Telephone Company d/b/a AT&T Illinois ("AT&T ILLINOIS"), and, IQ Telecom, Inc. ("CLEC").

The effective date of this Agreement ("Effective Date") 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.

WHEREAS, the Parties want to interconnect their networks, to provide Telephone Exchange Services, Exchange Access and ancillary services in ILLINOIS.

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 Interconnect their networks and facilities and provide to each other services and perform their obligations as required by the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the orders, rules and regulations of the Illinois Commerce Commission (the "Commission") and as specifically set forth herein; and

WHEREAS, as of the Effective Date, for purposes of this Agreement, CLEC operates where AT&T ILLINOIS is the certified incumbent Local Exchange Carrier and CLEC is a certified competitive Local Exchange Carrier.

WHEREAS, pursuant to Section 252(i) of the Act, for purposes of this Agreement, CLEC has adopted the MCImetro Access Transmission Services LLC agreement for the State of Illinois ("the Separate Agreement"), and the Parties have agreed to the following provisions contained in the Agreement on a "negotiated" basis: Negotiated ICC Docket 05-0442 TRO/TRRO Collaborative Amendment (collectively the "MFN Agreement"), which are being added to the MFN Agreement by way of a separate amendment(s) entered into by the Parties concurrent with CLEC's adoption of the Separate Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

GENERAL TERMS AND CONDITIONS

1. SCOPE OF AGREEMENT

- 1.1 This Agreement consists of this set of General Terms and Conditions and the following appendices:

Appendix I: Definitions
Appendix II: Bona Fide Request
Appendix III: Intentionally Omitted
Appendix IV: Collocation (Physical & Virtual)
Appendix V: Directory Assistance Listing Information
Appendix VI: Directory Assistance Services
Appendix VII: Invoicing
Appendix VIII: INW
Appendix IX: Intentionally Omitted
Appendix X: Line Sharing
Appendix XI: Network
Appendix XII: Number Portability
Appendix XIII: Numbering
Appendix XIV: Operations Support Systems
Appendix XV: Operator Services
Appendix XVI: Performance Measurements
Appendix XVII: Pricing (including Price List)
Appendix XVIII: Reciprocal Compensation
Appendix XIX: Recording
Appendix XX: Resale
Appendix XXI: ROW
Appendix XXII: Intentionally Omitted
Appendix XXIII: UNE
Appendix XXIV: xDSL
Attachment Yellow Zone Process (YZP)
Attachment RABT YZP
Attachment RABT MMP
Appendix XXV: Intentionally Omitted
Appendix XXVI: 911
Appendix XXVII: Intentionally Omitted
Appendix XXVIII: Intentionally Omitted
Appendix XXIX: White Pages
Appendix XXX: Line Splitting
Appendix XXXI: AIN
Appendix XXXII: Coordinated Hot Cut
Appendix XXXIII: Out of Exchange Traffic
Appendix XXXIV: Transit

- 1.2 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.

- 1.3 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any Special Access or Switched Access charge arrangement.
- 1.4 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

2.1 Definitions

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 "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. See Appendix Definitions.

2.2 Headings Not Controlling

- 2.2.1 The headings and numbering of Sections, Parts, Appendices Schedules and Exhibits to this Agreement are for convenience only and will not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.
- 2.2.2 This Agreement incorporates a number of Appendices which, together with their associated Attachments, Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Appendices have been grouped under broad headings. It is understood that these groupings are for convenience of reference only.

2.3 Referenced Documents

- 2.3.1 Whenever any provision of this Agreement refers to any document specifically incorporated into the Agreement it will be deemed to be a reference to the then-current version or edition.
- 2.3.2 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 said tariff provision or rate applies only in the jurisdiction in which such tariff provision or rate is filed, and applies to CLEC only where AT&T ILLINOIS operates within that jurisdiction. Except as may be specifically set forth elsewhere in the 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.

2.4 Intentionally Omitted.

- 2.5 Intentionally Omitted.
- 2.6 Conflict in Provisions
- 2.6.1 In the event of a conflict between any provision in this General Terms and Conditions and a provision of any Appendix, Attachment, Exhibit, or Schedule of this Agreement, the terms and conditions contained in the Appendix, Attachment, Exhibit or Schedule will supersede those contained in this General Terms and Conditions, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit or Schedule.
- 2.6.2 Intentionally Omitted.
- 2.7 Joint Work Product
- 2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 2.8 Severability
- 2.8.1 If any provision of this Agreement is rejected by the Commission or held to be illegal or invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity and legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.
- 2.9 AT&T ILLINOIS will make available any individual interconnection, service and/or network element arrangement provided under an agreement approved by a regulatory commission under Section 252 of the Act to which it is a party to with any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in accordance with Section 252(i) of the Act, as that Section has been interpreted in Applicable Law.
- 2.10 Intentionally Omitted.
- 2.11 Intentionally Omitted.
- 2.12 Scope of Obligations
- 2.12.1 AT&T ILLINOIS's obligations under this Agreement to provide unbundled Network Elements and Resale shall apply only to the portions of ILLINOIS in which AT&T ILLINOIS is deemed to be the ILEC under the Act.
- 2.12.2 Notwithstanding anything to the contrary contained herein except for the Out of Exchange Appendix, AT&T ILLINOIS's obligations under this Agreement shall apply only to the specific operating area(s) or portion thereof in which AT&T-ILLINOIS is then deemed to be the ILEC under the Act (the "ILEC Territory").

2.12.3 The Agreement sets forth the terms and conditions pursuant to which AT&T ILLINOIS agrees to provide CLEC with access to unbundled Network Elements (UNEs), Collocation, Resale and Interconnection under Applicable Law in AT&T ILLINOIS's incumbent local exchange areas for the provision of CLEC's Telecommunications Services.

3. NOTICE OF CHANGES -- SECTION 251(c)(5)

- 3.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").
- 3.2 AT&T ILLINOIS shall provide services pursuant to the provisions of this Agreement. Except as otherwise specifically provided for in this Agreement, AT&T ILLINOIS shall not discontinue or refuse to provide any service provided or required under this Agreement without CLEC's prior written agreement. This is not intended to impair AT&T ILLINOIS's ability to make changes in its network, provided that such changes are consistent with the Act and this Agreement and do not result in the discontinuance of the offering of network elements made by AT&T ILLINOIS during the term of this Agreement.

4. GENERAL RESPONSIBILITIES OF THE PARTIES

- 4.1 Upon approval by the Commission, the Parties agree to begin providing the services referenced herein immediately or as otherwise established in the applicable Appendix.
- 4.2 The Parties shall each provide their portion of services timely to meet the Interconnection Activation Dates.
- 4.3 The Parties agree to comply with Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275. Each Party is 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.
- 4.3.1 The Parties are each responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5. INSURANCE

- 5.1 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
- 5.2 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, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
- 5.3 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. The other Party must be named as an Additional Insured on the Commercial General Liability policy.

- 5.4 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 5.5 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 5.1 through 5.4 of this Agreement.
- 5.6 The Parties agree that companies affording the insurance coverage required under Section 5.1 shall have a rating of A- or better and a Financial Size Category rating of VIII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 5.7 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, a reduction in limits, or non-renewal of any of the insurance policies required herein.
- 5.8 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 5.8.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and
- 5.8.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 5.8.3 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 5.8.4 This Section 5 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.

6. OPERATING COMPANY NUMBER (OCN)

- 6.1 For the purposes of establishing service and providing efficient and consolidated billing, CLEC is required to provide AT&T ILLINOIS its authorized and nationally recognized Operating Company Number (OCN) for facilities-based (Interconnection and/or

unbundled Network Elements) and a separate and distinct OCN for Resale Services.

CLEC is responsible for costs of implementing any changes to an OCN/ACNA whether or not it involves a merger, consolidation, assignment or transfer of assets shall be determined through the BFR process set forth in Appendix BFR. Nothing in this Section shall be construed to constitute a waiver of either Party's rights under Case No. 02-13533 (United States Bankruptcy Court Southern District of New York).

6.2 Intentionally Omitted.

6.3 When an end user customer changes its service provider from AT&T ILLINOIS to CLEC or from CLEC to AT&T ILLINOIS and does not retain its original telephone number, the Party formerly providing service to such end user customer shall furnish a referral announcement ("Referral Announcement") on the original telephone number that specifies the end user customer's new telephone number. These arrangements will be provided reciprocally for the same period of time and under the same terms and conditions as such Party provides such arrangements to its existing end user customers.

6.3.1 Intentionally Omitted.

6.3.2 Intentionally Omitted.

6.3.3 Intentionally Omitted.

6.3.4 The Parties shall provide each other with Referral Announcements for the period of time specified by ILLINOIS law. However, if either Party provides Referral Announcements for a period longer than the above period(s) when its end user customers change their telephone numbers, such Party shall provide the same level of service to end user customers of the other Party.

6.4 Each Party shall be responsible for labor relations with its own employees.

7. TERM AND TERMINATION

7.1 In AT&T ILLINOIS, the Effective Date of this Agreement shall be May 1, 2005.

7.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and will remain in effect for three (3) years after the Effective Date and continue in full force and effect, thereafter until (i) superseded in accordance with the requirements of this section or (ii) terminated pursuant to the requirements of this section. No earlier than one-hundred eighty (180) days before the expiration of the term, either Party may request that the Parties commence negotiations to replace this Agreement with a superseding agreement by providing the other Party with a written request to enter into negotiations.

7.3 Notwithstanding any other provision of this Agreement either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, 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 materially 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 shall take effect immediately upon delivery of written notice to the Party that failed to cure such material nonperformance or material breach within forty-five (45) days after written notice thereof.

- 7.4 If, upon termination of this Agreement other than pursuant herein, the Parties are negotiating a successor agreement, during such period each Party shall continue to perform its obligations and provide the services described herein that are to be included in the successor agreement until such time as a successor agreement becomes effective; provided, however, that if the Parties are unable to reach agreement prior to the termination of this Agreement, either Party has the right to submit this matter to the Commission for resolution. Until a successor agreement is reached or the Commission resolves the matter, whichever is sooner, the terms, conditions, rates and charges stated herein will continue to apply, subject to a true-up based on the Commission action or the new agreement, if any.
- 7.5 If CLEC requests renegotiations pursuant to Section 7.2, CLEC shall provide a written request to commence negotiations with AT&T ILLINOIS under Sections 251/252 of the Act. If AT&T ILLINOIS requests renegotiations pursuant to Section 7.2, CLEC shall have ten (10) calendar days after its receipt of such notice to provide AT&T ILLINOIS with written confirmation of CLEC's intent to pursue a successor agreement and shall provide a written request to commence negotiations with AT&T ILLINOIS under Sections 251/252 of the Act. Upon receipt of CLEC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 7.6 If neither Party requests renegotiations pursuant to Section 7.2, this Agreement shall continue in full force and effect for one year after the expiration of the original three (3) year term set forth in Section 7.2.
- 7.7 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CLEC withdraws its Section 252(a)(1) request, CLEC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CLEC does not wish to pursue a successor agreement with AT&T ILLINOIS for a given state. If CLEC requests adoption of an agreement under Section 252(i), this Agreement shall remain in full force and effect until such adoption becomes effective. If CLEC affirmatively states that it does not wish to pursue a successor agreement, this Agreement shall continue in full force and effect until the later of: 1) the date one year after the expiration of the original three (3) year term of this Agreement, or 2) ninety (90) calendar days after the date CLEC provides notice of withdrawal of its Section 252(a)(1) request.
- 7.8 Upon termination of this Agreement in accordance with this Section 7:
- a. each Party shall continue to comply with its Confidential Information obligations,
 - b. each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement, and
 - c. each Party's indemnification obligations shall survive.
- 7.9 In the event of termination of this Agreement herein, AT&T ILLINOIS and CLEC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CLEC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.

8. FRAUD

- 8.1 Except as provided herein, neither Party shall be liable to the other Party for any fraud associated with the other Party's end user customer's account.
- 8.2 Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending OSS by unauthorized third parties is the responsibility of the Party which has administrative control of access to the Network Element or OSS software.
- 8.3 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties agree to cooperate to minimize all costs. The Parties agree that fraud minimization procedures should be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 8.4 In cases of suspected fraudulent activity by an end user customer, at a minimum, the cooperation referenced herein will include providing to the other Party, upon request, information concerning end user customers who are suspected of fraudulent activity. The Party seeking such information is responsible for securing the end user customer's permission to obtain such information.
- 8.5 AT&T ILLINOIS will provide notification messages to CLEC on suspected occurrences of ABS-related fraud on CLEC accounts stored in the applicable LIDB. AT&T ILLINOIS will provide via fax.
- 8.6 AT&T ILLINOIS shall make available to CLEC all present and future fraud prevention or revenue protection features, at parity to what it provides itself, its affiliate or any third party including prevention, detection, or control functionality embedded within any of the Network Elements. AT&T ILLINOIS will use a fraud monitoring system to determine suspected occurrences of ABS-related fraud for CLEC using the same criteria AT&T ILLINOIS uses to monitor fraud on their respective accounts. These features include, but are not limited to, screening codes; information digits, such as information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, NPA-976, 700, 500 and specific line numbers; and the capability to require end-user entry of an authorization code for dial tone. AT&T ILLINOIS shall, in addition, provide fraud alerts for fraud prevention, detection, and control functionality within pertinent operations support systems ("OSS"), including, but not limited to, Line Information Data Base Fraud monitoring systems, High Toll Notifiers, SS7 suspect traffic alerts, and AMA suspect traffic alerts.
- 8.7 Intentionally Omitted.
- 8.8 The Parties will provide contact names and numbers to each other for the exchange of Fraud Monitoring System alert notification information twenty-four (24) hours per day seven (7) days per week.

9. DEPOSITS

- 9.1 Intentionally Omitted.
- 9.2 Upon request by the Billing Party, the Billed Party will provide the Billing party with adequate assurance of payment of amounts due (or to become due) to the Billing Party.

- 9.2.1 at the Effective Date the Paying Party had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to the Other Party for charges incurred as a CLEC or ILEC; or
- 9.2.2 at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health or creditworthiness of the Billed Party. Such impairment will be determined from information available from financial sources, that the Billed Party has not maintained a BBB or better long term debt rating or an A-2 or better short term debt rating by Standard and Pool's for the prior six months, or
- 9.2.3 the Party (a) fails to timely pay a bill rendered to it (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which the Non-Paying Party has complied with the billing dispute requirements set forth herein), and (b) the amount of such undisputed delinquency exceeds five percent (5%) of the aggregate amount billed by AT&T Illinois to CLEC under this Agreement for the month in question; or
- 9.2.4 the Billed Party admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 9.3 Unless otherwise agreed by the Parties any assurance of payment required by the previous section shall consist of:
- 9.3.1 a cash security deposit ("Cash Deposit") held by the Billing Party or;
- 9.3.2 an unconditional, irrevocable standby bank Letter of Credit from a U.S. financial institution acceptable to both Parties naming the Billing Party as the beneficiary thereof and otherwise in form and substance satisfactory to both Parties ("Letter of Credit").
- 9.4 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), for the Interconnection, Resale Services, Network Elements, Collocation or any other functions, facilities, products or services to be furnished by the Billing Party under this Agreement.
- 9.5 To the extent that the Billing Party 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 the Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 9.6 All cash deposits will accrue interest payable when the deposit is returned to the Billing Party. However, the Billing Party will not pay interest on a Letter of Credit.
- 9.7 If during the course of this Agreement the Billed Party paying the Deposit establishes a minimum of twelve (12) consecutive months good credit history with the Billing Party when doing business as a local service provider, the Billing Party holding the Deposit(s) shall return the initial deposits, with interest; provided, however, that the terms and conditions set forth herein shall continue to apply for the remainder of the Term. In determining whether a Billed Party has established a minimum of twelve (12) consecutive

months good credit history, the Billed Party's payment record for the most recent twelve (12) monthly billings occurring within the prior twenty-four (24) months shall be considered.

- 9.8 Any cash deposit shall be held as a guarantee of payment of charges billed, provided, however, the Billing Party holding the Deposit may exercise its right to credit any cash deposit to the Billing Party's account upon the occurrence of any one of the following events:
- 9.8.1 the Billed Party owes the Billing Party undisputed charges under this Agreement that are more than thirty (30) calendar days past due or
 - 9.8.2 the Billed Party admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
 - 9.8.3 when this Agreement expires or terminates; or
 - 9.8.4 during the month following the expiration of twelve (12) months after that cash deposit was remitted, the Billing Party holding the Deposit shall credit any cash deposit to the Billing Party's account so long as it has not been sent more than one delinquency notification letter for that state during the most recent twelve (12) months.
- 9.9 So long as the Billed Party maintains timely compliance with its payment obligations, the Billing Party holding the Deposit will not increase the deposit amount required. If the Billing Party fails to maintain timely compliance with its payment obligations, the Billing Party holding the Deposit reserves the right to require additional deposit(s) in accordance with this Section.
- 9.10 If during the first six (6) months of operations in ILLINOIS, the Billed Party has been sent one delinquency notification letter by the Billing Party holding the Deposit, the deposit amount for that state shall be re-evaluated based upon the actual billing totals and shall be increased if the Billing Party's actual billing average for the two (2) month period exceeds the deposit amount held.
- 9.10.1 Throughout the Term, any time the Billed Party has been sent two (2) delinquency notification letters for any one state by the Party holding the Deposit, the deposit amount shall be re-evaluated based upon actual billing totals and shall be increased if the Billed Party's actual billing average for the three (3) month period exceeds the deposit amount held.
- 9.11 Whenever a deposit is re-evaluated as specified herein, such deposit shall be calculated in an amount equal to the average billing for three (3) month period. The most recent three (3) months billing on all Billing Account Numbers (BAN) s for Resale Services, Network Elements, and Reciprocal Compensation shall be used to calculate the monthly average.
- 9.12 Intentionally Omitted.

- 9.13 Whenever a deposit is re-evaluated, the Billed Party shall remit the additional deposit amount to the Billing Party holding the Deposit within ten (10) calendar days of receipt of written notification requiring such deposit. If the Billed Party fails to furnish the required deposit, the Party holding the Deposit shall suspend the Billed Party's ability to process orders until the deposit is remitted.
- 9.14 Intentionally Omitted.
- 9.15 The fact that the Billing Party holding the Deposit holds either a cash deposit or irrevocable bank letter of credit does not relieve the Billed Party from timely compliance with its payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

10. NONPAYMENT AND PROCEDURES FOR DISCONNECTION

- 10.1 If the Billed Party fails to pay all amounts due by the Bill Due Date, and none of the exceptions listed in Appendix Invoicing of this Agreement apply to that amount, the Billing Party may, in addition to exercising any other rights or remedies it may have under this Agreement or Applicable Law, provide written demand (in accordance with the notice requirements set forth in the General Terms and Conditions) to pay. If the Billed Party does not respond to the written demand to pay within five (5) business days of receipt, the Billing Party may provide a second notice. If the Billed Party does not satisfy the second written demand to pay within five (5) business days of receipt, and the Billed Party has 60 days or greater past due balances for a BAN to which none of the exceptions listed in this Agreement applies, the Billing Party may require provision of a deposit or increase an existing deposit pursuant to a revised deposit request, or refuse to accept new, or complete pending, orders for services. Failure to pay all or any portion of any amount required to be paid also may be grounds for suspension or disconnection of Resale Services, Network Elements and Collocation as provided for in this section. This section does not apply to disputed charges and/or nonpayments arising from Appendix Reciprocal Compensation or Appendix Network.

11. INTENTIONALLY OMITTED

12. DISPUTE ESCALATION AND RESOLUTION

- 12.1 Intentionally Omitted.
- 12.2 Alternative to Litigation
- 12.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 12.3 Commencing Dispute Resolution
- Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party in

accordance with the Notice provisions herein. There are three (3) separate Dispute Resolution methods:

- LSC Billing Disputes / Billing Claims Process (see Appendix Invoicing)
- Informal Dispute Resolution; and
- Formal Dispute Resolution, each of which is described below.

12.3.1 Intentionally Omitted.

12.3.2 Informal Dispute Resolution

Upon receipt by one Party of notice of a dispute by the other Party pursuant herein, 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, provided, however, and notwithstanding anything to the contrary, either Party may commence Formal Dispute Resolution Procedures no sooner than forty-five (45) days after receipt of the notice of dispute. In addition to the dispute resolution procedures detailed herein, the Parties have the option to resolve any dispute arising out of this Agreement through a state-supervised mediation process. Further, upon mutual agreement of the Parties, the representatives may utilize other alternative dispute resolution procedures to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

12.3.3 Formal Dispute Resolution Procedures

12.3.3.1 The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. The Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve by Informal Dispute Resolution, may be submitted to the Commission for Formal Dispute Resolution, including arbitration or other procedures as appropriate, not earlier than forty-five (45) calendar days after receipt of the letter initiating Dispute Resolution, unless otherwise agreed by the Parties. The Parties may seek expedited resolution by the Commission, and if chosen, shall request that resolution occur in no event later than sixty (60) days from the date of submission of such dispute. If the Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, and the Commission does not pay for such expert or other facilitator, each Party shall pay half of the fees and expenses so incurred. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement; provided, however that neither Party shall be required to act in any unlawful fashion. This provision shall not preclude the Parties from seeking relief available in any other forum.

- 12.3.3.2 Claims will be subject to final and binding commercial arbitration pursuant to this Section if, and only if, the claim is not settled through Informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may pursue a remedy for the Dispute with the Commission, a court, an agency or regulatory authority of competent jurisdiction. Disputes subject to arbitration under this section will be submitted to a single arbitrator pursuant to the rules of The American Arbitration Association or by a provider of arbitration services to which the Parties agree, pursuant to the United States Arbitration Act, 9 USC Sec. 1 et seq. The Parties agree that the arbitrator should be knowledgeable about telecommunications issues. Such arbitration will be held in a mutually agreeable location. The Parties agree to use commercially reasonable efforts to begin the arbitration process within sixty (60) calendar days of the written demand for arbitration with The American Arbitration Association, with a copy provided to the other Party. The arbitration will be conducted in accordance with the provisions of The American Arbitration Association's Comprehensive Arbitration Rules and Procedures or such other rules as the Parties may agree that are in effect at the time of the filing of the demand for arbitration. The Parties shall file the arbitrator's decision with the Commission. Each Party will bear its own costs of these procedures, including attorneys' fees. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. In an action to enforce a decision of the Arbitrator, the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, costs, and expenses without regard to the local rules of the district in which the suit is brought. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
- 12.3.3.3 Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator have the authority to make any award that provides for punitive, or 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.

13. AUDITS

- 13.1 Subject to restrictions regarding Proprietary Information set forth in this Agreement, a Party (Auditing Party) may audit the other Party's (Audited Party) books, records, data and other documents, as provided herein, two (2) times each Contract Year for the purpose of evaluating the accuracy of Audited Party's billing and invoicing. For purposes of this Section 13.1, "Contract Year" means a twelve (12) month period during the term of the Agreement commencing on the Effective Date and each anniversary thereof.
- 13.2 The scope of any audit under this Section shall be limited to the services provided and purchased by the Parties and the associated charges, books, records, data and other documents relating thereto for 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 Effective Date) and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit. Any audit under this Section shall be for the purpose of evaluating (i) the accuracy of Audited 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. Except as otherwise agreed upon by the Parties, such audit shall begin no fewer than thirty (30) days after Audited Party receives a written notice requesting an audit and shall be completed no later than forty-five (45) calendar days after the start of such audit.

- 13.3 As mutually agreed upon by the Parties, such audit shall be conducted by one (1) or more independent auditor(s). The Parties shall select such auditor(s) by the thirtieth day following Audited Party's receipt of a written audit notice. The Auditing Party shall cause the independent auditor(s) to execute a nondisclosure agreement in a form consistent with the Confidentiality requirements set forth below. Notwithstanding the foregoing, an Auditing Party may audit as provided herein not more than two (2) times during any Contract Year with a non-auditing period not to exceed twelve months if (i) the previous audit found previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least one and one-half percent (1 1/2%) of the amounts payable by 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.
- 13.4 Each Party shall bear its own expenses in connection with the conduct of the audit. Each audit shall be conducted on the premises of Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit, providing the auditor reasonable access to any and all appropriate Audited Party employees and books, records and other documents reasonably necessary to assess the accuracy of Audited Party's billing and invoicing. No Party shall have access to the data of the other Party, but shall rely upon summary results provided by the auditor. Audited Party may redact from the books, records and other documents provided to the auditor any confidential Audited Party information that reveals the identity of other Customers of Audited Party. Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 13.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) for any overpayment promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of or failure to act by Audited Party, immediately compensate Auditing Party for such undercharge, in each case with interest at the lesser of (x) one and one-half (1 1/2%) percent per month and (y) the highest rate of interest (compounded daily) that may be charged under Applicable Law, for the number of 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, as the case may be. Notwithstanding the foregoing, CLEC shall not be liable for any Underbilled Charges for which Customer Usage Data was not furnished by AT&T ILLINOIS to CLEC within six (6) months of the date such usage was incurred.

- 13.6 Intentionally Omitted.
- 13.7 Any Disputes concerning audit results shall be referred to the Parties' designated representative(s) who have authority to settle the Dispute. If these individuals cannot resolve the Dispute within thirty (30) days of the referral, either Party may request in writing that one additional audit shall be conducted by an auditor acceptable to both Parties, subject to the requirements set out in this Audit Section. Such additional audit shall be at the requesting Party's expense. If the second audit fails to resolve the Dispute, the matter shall be resolved in accordance with the procedures set forth herein regarding Dispute Resolution.

14. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 14.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES 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.

15. LIMITATION OF LIABILITY

- 15.1 Liabilities of CLEC – CLEC's liability to AT&T ILLINOIS during any Contract Year resulting from any and all causes, other than as specified in Sections 27, 33, 15.3 and 16 of these general terms and conditions, shall not exceed the total of any amounts due and owing by CLEC to AT&T ILLINOIS under this Agreement during the Contract Year during which such cause accrues or arises. For purposes of this Section 15, "Contract Year" means a twelve (12) month period during the term of the Agreement commencing on the Effective Date and each anniversary thereof.
- 15.2 Liabilities of AT&T ILLINOIS – AT&T ILLINOIS's liability to CLEC during any Contract Year resulting from any and all causes, other than as specified in Sections 27, 33, 15.3 and 16 of these general terms and conditions, shall not exceed Twenty Five Million Dollars (\$25,000,000).
- 15.3 No Consequential Damages - Neither CLEC nor AT&T ILLINOIS shall 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 15 shall limit AT&T ILLINOIS's or CLEC's liability 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 AT&T ILLINOIS's or CLEC's negligent act or omission or that of their respective agents, subcontractors or employees, nor shall anything contained in this Section 15 limit the Parties' indemnification obligations, as specified in Section 16 of these general terms and conditions. For purposes of this Section 15, amounts due and owing to either Party pursuant to Appendix Performance Measures shall not be considered to be indirect, incidental, consequential, reliance, or special damages.

16. INDEMNITY

16.1 General Indemnity Rights. Each Party (the "Indemnifying Party") shall defend and indemnify the other Party, its officers, directors, employees and permitted assignees (collectively, the "Indemnified Party") and hold such Indemnified Party harmless against:

- (a) any loss to a third party arising out of the negligent acts or omissions, or willful misconduct ("Fault") by such Indemnifying Party or the Fault of its employees, agents and subcontractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement; provided, however, that: (1) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (2) 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 (3) 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;
- (b) any loss to a third party arising from such Indemnified Party's use of Interconnection, Resale Services, Network Elements, functions, facilities, products and services offered under this Agreement, involving pending or threatened claims, actions, proceedings or suits, claims for libel, slander or invasion of privacy arising from the Indemnifying Party's own acts, omissions or communications.

The foregoing includes any losses arising from disclosure, by the Indemnifying Party, in violation of Applicable Law, of any end user customer-specific information associated with either the originating or terminating numbers used to provision Interconnection, resale services, Network Elements provided on an unbundled basis, functions, facilities, products or services provided under this Agreement or disclosure otherwise committed by the Indemnifying Party or at the Indemnifying Party's direction;

- (c) any loss 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 Indemnified Party's or an Indemnified Party's end user customer's use of a service provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply in the case of: (i) (A) any use by an Indemnified Party of a service (or element thereof) in combination with elements, services or systems supplied by the Indemnified Party or persons other than the Indemnifying Party, or (B) where an Indemnified Party or its end user customer modifies or directs the Indemnifying Party to modify such service; and (ii) no infringement would have occurred without such combined use or modification;
- (d) any and all penalties imposed upon the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 ("CALEA") and, at the sole cost and expense of the Indemnifying Party, 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; and

- (e) any Loss arising from such Indemnifying Party's failure to comply with Applicable Law.
- 16.2 A Party (for purposes of this Section the "Reimbursing Party") shall reimburse the other Party (for purposes of this Section the "Reimbursed Party") for property damage to the Reimbursed Party's facilities to the extent such damage is caused by the acts or omissions of the Reimbursing Party, its agents, contractors or employees.
- 16.3 Indemnification Procedures. Whenever a claim, lawsuit or demand by a third party ("Claim") shall arise for indemnification, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request 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 such 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. 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. 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 relevant Indemnified 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 relevant Indemnified Party shall 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 also shall 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 relevant Indemnified Party shall have the right to employ counsel for such defense at the expense 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 the provisions in this Agreement relating to confidential information.

17. REMEDIES

- 17.1 Intentionally Omitted.
- 17.2 Intentionally Omitted.
- 17.3 In addition to any other available rights or remedies, CLEC may sue in equity for specific performance. However, the Parties agree that AT&T ILLINOIS reserves it right to argue in any given case that specific performance is not an appropriate remedy.

18. INTELLECTUAL PROPERTY

- 18.1 The Parties acknowledge that this Agreement to Interconnect with AT&T ILLINOIS's network and to unbundle and/or combine AT&T ILLINOIS's Network Elements (including combining with CLEC's Network Elements) may be subject to patent, copyright, trade secret, or other applicable rights (Intellectual Property Rights) of third party vendors/licensors (Vendor/Licensors). To the extent required by the Act, Commission decisions, and any applicable judicial decisions and consistent with the FCC Memorandum Opinion and Order dated April 27, 2000 (and any appeal there from) in CC Docket No. 96-98 (File No. CCBPol 97-4), In the Matter of Petition of MCI for Declaratory Ruling, AT&T ILLINOIS will use its best efforts to provide CLEC with Intellectual Property Rights related to AT&T ILLINOIS's unbundled Network Elements as necessary to permit CLEC to use such unbundled Network Elements in the same manner as AT&T ILLINOIS.
- 18.2 AT&T ILLINOIS agrees to use its best efforts to (i) obtain, under commercially reasonable terms, the necessary rights set forth in Section 18.1 and (ii) obtain permission, if required, under any applicable confidentiality agreements, to disclose to CLEC the names of Vendor/Licensors, the subject intellectual property, and the relevant contract provisions (excluding cost terms) which govern use of the intellectual property. AT&T ILLINOIS will provide a list of all Vendor/Licensors applicable to the subject unbundled Network Element(s). AT&T ILLINOIS shall promptly notify CLEC of any Vendor/Licensors from which AT&T ILLINOIS is unable to obtain the necessary rights or contract information set forth in this Section 18.2. AT&T ILLINOIS shall, at CLEC's request, contact the Vendor/Licensor to attempt to obtain permission to reveal additional contract details to CLEC.
- 18.3 Intentionally Omitted.
- 18.4 The reasonable costs, if any, associated with the extension of Intellectual Property Rights pursuant to Section 18.1 above, including the cost of the license extension itself and the costs associated with the effort to obtain the extension, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property Rights relate and reasonably apportioned, as ordered by the Commission, among AT&T ILLINOIS and requesting carriers using that unbundled network element.
- 18.5 AT&T ILLINOIS will indemnify CLEC for any claims of infringement arising from CLEC's use within the scope of this Agreement of third party Intellectual Property Rights associated with Network Elements for which AT&T ILLINOIS has obtained the necessary rights provided in Section 18.2(i).
- 18.6 Intentionally Omitted.
- 18.7 Except as set forth in Section 18.2, AT&T ILLINOIS hereby conveys no licenses to use such Intellectual Property Rights and makes no warranties, express or implied, concerning CLEC's (or any Third Parties') rights with respect to such Intellectual Property Rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of Network Elements (including combining with CLEC's Network Elements) in AT&T ILLINOIS's network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Except as provided in this Section 18.7, any licenses or warranties for Intellectual Property Rights associated with unbundled Network Elements are vendor licenses and warranties and are a part of the Intellectual Property Rights AT&T ILLINOIS agrees in Section 18.2 to use its best efforts to obtain.

- 18.8 Any intellectual property, which originates from or is developed by a Party, shall remain in the exclusive ownership of the Party.

19. NOTICES

- 19.1 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 to be delivered to another representative or point of contact, shall be:

19.1.1 delivered personally;

19.1.2 delivered by express overnight delivery service;

19.1.3 mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or

19.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described above, and such method is noted on the facsimile.

- 19.2 Notices will be deemed given as of:

19.2.1 in the case of written notice, the date of actual receipt; or

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

- 19.3 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT	AT&T ILLINOIS CONTACT
NAME/TITLE	Daniel Gentile Vice President	Contract Administration ATTN: Notices Manager
STREET ADDRESS	3221 W. Burr Oak Ave.	311 S. Akard, 9 th Floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Blue Island, IL 60406	Dallas, TX 75202-5398
FACSIMILE NUMBER	708-489-6480	214-464-2006

- 19.4 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.

- 19.5 Other than legal notice under this Agreement, which shall be provided in accordance with Sections 19.1 – 19.4, AT&T ILLINOIS may also communicate official information to CLEC via its CLEC Online 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.

20. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

20.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.

20.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

21. INTENTIONALLY OMITTED**22. CONFIDENTIALITY**

22.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by one Party (the "Discloser") to the other Party (the "Recipient") that: 1) the Recipient either has reason to know based upon the facts surrounding the disclosure of the information and/or the nature of the information itself that the Discloser safeguards by exercising at least a reasonable standard of care to protect as confidential information, or that the Recipient is presumed to know that the Discloser believes is confidential because it falls within one or more types of information described herein. All information which is of the following types disclosed by one Party to the other in connection with this Agreement shall automatically be deemed Confidential Information subject to this Agreement. Confidential Information shall be of the following types: all information, including specifications, microfilm, photocopies, magnetic disks, magnetic tapes, audit information, models, system interfaces, forecasts, computer programs, software, documentation, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data shall be deemed "Confidential" if :

22.1.1 Furnished or made available or otherwise disclosed by the Discloser or its agent, employee, representative or Affiliate to the Recipient or its agent, employee, representative or Affiliate dealing with End User-specific, facility-specific, or usage-specific information, other than End User information communicated for the purpose of publication, directory, or other database inclusion, 911, call processing, billing or settlement or for such other purposes as mutually agreed upon; all orders for Network Elements, Ancillary Functions, Combinations, Local Services or other services placed by CLEC or AT&T Illinois pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of CLEC or AT&T Illinois customers pursuant to the Act and the rules and regulations of the FCC, and recorded usage data, whether disclosed by CLEC to AT&T Illinois or AT&T Illinois to CLEC or otherwise acquired by AT&T Illinois or CLEC in the course of the performance of this Agreement, shall be deemed Confidential Information of CLEC or AT&T Illinois, as the case may be, for all purposes under this Agreement.

22.2 For a period of ten years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees:

- i. to use it only for the purpose of performing under this Agreement,
- ii. to hold it in confidence and disclose it to no one other than its employees, contractors, agents or Affiliates having a need to know for the purpose of performing under this Agreement, and
- iii. to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information.

If the Recipient wishes to disclose the Discloser's Confidential Information to a third party consultant, such disclosure must be mutually agreed to in advance and in writing by the Parties to this Agreement, and the consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.

22.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and Confidential rights notices as are contained on the original.

22.4 Return of Confidential Information

22.4.1 All Confidential Information shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that conspicuously embody such Confidential Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Confidential Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

22.5 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Confidential Information that:

22.5.1 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

22.5.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or

22.5.3 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 such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or

22.5.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Confidential Information; or

- 22.5.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 22.5.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 22.5.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation, provided that such production or disclosure shall have been made in accordance with the requirements of this Agreement.
- 22.6 Proposed Disclosure of Confidential Information to a Governmental Authority
- 22.6.1 If a Receiving Party desires to disclose or provide to the Commission, the FCC or any other governmental authority any Confidential Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Confidential Information to be disclosed and (ii) attempt to obtain in accordance with the applicable procedures of the intended recipient of such Confidential Information an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Confidential Information.
- 22.6.2 If a Receiving Party is required by any Governmental Authority or by Applicable Law to disclose any Confidential Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible, and in no event later than five (5) calendar days after receipt of such requirement, and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Confidential Information, the Disclosing Party at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this Section 22 with respect to all or part of such requirement.
- 22.6.3 The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this Section 22. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Confidential Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Confidential information, including cooperating with the Disclosing Party, at the Disclosing Party's expense, to obtain an appropriate order for protective relief or other reliable assurance that confidential treatment will be accorded the Confidential Information.
- 22.6.4 Notwithstanding any of the foregoing, AT&T Illinois shall be entitled to disclose Confidential Information on a confidential basis to regulatory agencies upon request for information as to AT&T Illinois's activities under the Act and AT&T Illinois need not provide prior written notice of such disclosure to CLEC if AT&T Illinois has obtained an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Confidential Information.
- 22.7 Customer Proprietary Network Information ("CPNI")

- 22.7.1 CPNI related to CLEC's subscribers obtained by virtue of Interconnection or any other service provided under this Agreement shall be CLEC's proprietary information and may not be used by AT&T Illinois for any purpose except performance of its obligations under this Agreement or as otherwise permitted by law, and in connection with such performance, shall be disclosed only to AT&T Illinois's employees, contractors, agents or Affiliates with a need to know, unless the CLEC subscriber expressly directs CLEC to disclose, or approves the disclosure of, such information to AT&T Illinois pursuant to the requirements of Section 222(c)(1) or (2) of the Act. If AT&T Illinois seeks and obtains approval to use or disclose such CPNI from CLEC's subscribers, such approval shall be obtained only in compliance with Section 222(c)(1) or (2) and, in the event such authorization is obtained, AT&T Illinois may use or disclose only such information as CLEC provides pursuant to such authorization and may not use information that AT&T Illinois has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement except as permitted by law. CPNI related to AT&T Illinois's subscribers obtained by virtue of Interconnection or any other service provided under this Agreement shall be AT&T Illinois's proprietary information and may not be used by CLEC for any purpose except performance of its obligations under this Agreement or as otherwise permitted by law, and in connection with such performance shall be disclosed only to CLEC's employees, contractors, agents or Affiliates with a need to know, unless the AT&T Illinois subscriber expressly directs AT&T Illinois to disclose, or approves the disclosure of, such information to CLEC pursuant to the requirements of Section 222(c)(1) or (2). If CLEC seeks and obtains approval to use or disclose such CPNI from AT&T Illinois's subscribers, such approval shall be obtained only in compliance with Section 222(c)(1) or (2) and, in the event such authorization is obtained, CLEC may use or disclose only such information as AT&T Illinois provides pursuant to such authorization and may not use information that CLEC has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement except as permitted by law.
- 22.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement. Notwithstanding the immediately preceding sentence, neither Party's obligations under such sentence shall exceed those required by law, regulation or regulatory or judicial decision.
- i. Any intellectual property, which originates from or is developed by a Party, shall remain in the exclusive ownership of that Party.
 - ii. Except as provided hereunder, or as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information. This provision shall not require either Party to grant a license in violation of any law. Nothing in this paragraph shall relieve the Parties of their obligations and responsibilities set forth in Section 18.
- 22.9 The Parties agree that an impending or existing violation of any provision of this Section 22 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that Disclosing Party shall be entitled to obtain

immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages.

- 22.10 Nothing in this Section 20 or anywhere else in this Agreement shall prevent AT&T Illinois from using recorded usage data for the limited purposes of designing and/or maintaining AT&T Illinois's telecommunications network and/or ensuring that AT&T Illinois's telecommunications network performs properly in providing its intended telecommunications functions and services. AT&T Illinois shall not use recorded usage data for any other purpose except as mutually agreed upon.

23. INTERVENING LAW

- 23.1 In the event any legislative or administrative body of competent jurisdiction (including the FCC and the Commission) or any court of competent jurisdiction promulgates legally effective statutes, rules, regulations or orders which materially affect any provision of this Agreement or either Party's obligations under Applicable Law, then the Parties, upon the written request of either Party, shall negotiate promptly and in good faith in order to amend the Agreement in accordance with such statutes, rules, regulations or orders. In the event the Parties cannot agree on an amendment within sixty (60) days after the date of a written request to negotiate, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 12 (Dispute Escalation and Resolution). Anything to the contrary in this Agreement notwithstanding, the Parties shall continue to comply with all obligations set forth in this Agreement during the pendency of any negotiations or dispute resolution pursuant to this Section 23.
- 23.2 The Parties agree that amendments to the rates and prices contained in this Agreement shall be subject to the requirements set forth in Sections 1.5 and 1.6 of Appendix Pricing.
- 23.3 Except as specifically set forth in this Agreement, the Parties do not waive their rights to pursue legal challenges or appeals of the statutes, rules, regulations and orders that form the basis for the provisions of this Agreement.
- 23.4 As provided in Section 45 of these general terms and conditions, any amendments to this Agreement must be in writing and signed by both Parties.

24. GOVERNING LAW

- 24.1 Unless otherwise provided by Applicable Law, This Agreement shall be governed by and construed in accordance with the Act and the FCC's Rules and Regulations, Commission Rules and Regulations, interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the State of ILLINOIS shall govern, without regard to its conflicts of laws principles.

25. REGULATORY APPROVAL

- 25.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. If any governmental authority or agency rejects any provision of this Agreement, the Parties will negotiate promptly and in good faith, in accordance with the requirements of Section 23, the revisions which may reasonably be required to achieve approval. The Parties intend that

any additional services requested by either Party relating to the subject matter of this Agreement will be incorporated into this Agreement by amendment. Each amendment will be effective between the Parties on the date specified in the amendment. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

26. CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION

- 26.1 Each Party will abide by applicable federal and state laws and regulations in obtaining end user customer authorization prior to changing an end user customer's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in Applicable Law, including but not limited to the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 et. seq.). 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 change in an end user customer's local service provider. A Party's representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. In accordance with Applicable Law, each Party shall retain on file all applicable letters and other documentation of authorization relating to its end user customer's selection of such Party as its LEC.
- 26.2 Unless otherwise allowed by Applicable Law, only an end user customer can initiate a challenge to a change in its LEC. If an end user customer notifies one Party that the end user customer requests local exchange service, and the other Party is such end user customer's LEC, then the Party receiving such request shall be free to immediately access such end user customer's CPNI subject to the requirements of Appendix OSS of this Agreement restricting access to CPNI.
- 26.3 The terms and conditions for the release of end user specific facilities shall be set forth in Appendix UNE of this Agreement.

27. COMPLIANCE AND CERTIFICATION

- 27.1 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.
- 27.2 Each Party will be responsible for obtaining all necessary state certification.
- 27.3 Each Party shall be responsible for obtaining and keeping in effect all approvals necessary to perform its obligations under this Agreement.
- 27.4 Each Party will be responsible for ensuring that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA.

28. LAW ENFORCEMENT

The Parties shall handle law enforcement requests in accordance with the requirements of this Section 28.

28.1 Intercept Devices:

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

28.2 Subpoenas:

If a Party receives a subpoena for information concerning an end user customer the Party knows to be an end user customer of the other Party, it shall refer the subpoena to the requesting party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the Party was the end user's service provider, in which case the Party will respond to any valid request.

28.3 Emergencies:

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

29. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

29.1 Each Party is an independent contractor and has and hereby retains the right, subject to Section 32 of these General Terms and Conditions (Delegation to Affiliate and Subcontracting), to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

29.2 Nothing contained herein shall constitute the Parties as joint ventures, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

29.3 Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether

regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

30. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

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.

31. ASSIGNMENT

31.1 Any assignment or delegation by either Party to any non-Affiliate entity of any right, obligation or duty, or of any other interest under this Agreement, in whole or in part, without the prior written consent of the other Party will be void. A Party assigning or delegating this Agreement or any right, obligation, duty or other interest under this Agreement to an Affiliate shall provide sixty (60) calendar days' prior written notice to the other Party. All obligations and duties of any Party under this Agreement will be binding on all successors in interest and assigns of that Party. No assignment or delegation of this Agreement (in whole or part) will relieve the assignor of its obligations under this Agreement.

31.2 Intentionally Omitted.

31.3 If during the term, AT&T ILLINOIS sells, assigns or otherwise transfers any ILEC Territory or ILEC Assets to a person other than an Affiliate or subsidiary, AT&T ILLINOIS shall provide CLEC not less than one hundred eighty (180) calendar days prior written notice of such sale, assignment or transfer. Upon the consummation of such sale, assignment or transfer, CLEC acknowledges that AT&T ILLINOIS shall have no further obligations under this Agreement with respect to the ILEC Territories and/or ILEC Assets subject to such sale, assignment or transfer, and that CLEC must establish its own Section 251 and 252 arrangement with the successor to such ILEC Territory and/or ILEC Assets, provided, however, that insofar as such sale, assignment or transfer affects CLEC's interests pursuant to this Agreement AT&T ILLINOIS shall (i) comply with the requirements of Applicable Law and (ii) work cooperatively with CLEC and the third party acquiring the ILEC Territory or ILEC Assets regarding the potential assignment of this Agreement (in whole or in part) to such third party. For purposes of this Section 31.3, "ILEC Territory" is defined as any specific operating areas, or portion thereof, in which AT&T ILLINOIS is deemed to be the ILEC under the Act and "ILEC Assets" is defined as assets that AT&T ILLINOIS owns or leases which are used in connection with AT&T ILLINOIS's provision to CLEC of any Interconnection, resale services, unbundled Network Elements, functions, facilities, products or services provided or contemplated under this Agreement.

32. DELEGATION TO AFFILIATE AND SUBCONTRACTING

32.1 Each Party may without the consent of the other Party fulfill its obligations under this Agreement by itself or may cause its Affiliate(s) or a third party to take some or all of such actions to fulfill such obligations. In the event of any delegation to an Affiliate or a third party pursuant to this Section 32, the delegating Party shall remain fully liable for the performance of this Agreement in accordance with its terms. Any Party, which elects to

perform its obligations through an Affiliate or third party, shall cause its Affiliate or any third party to take all action necessary for the performance of such Party's obligations hereunder. Each Party represents and warrants that if an obligation under this Agreement is to be performed by an Affiliate or third party, such Party has the authority to cause such Affiliate or third party to perform such obligation and such Affiliate or third party will have the resources required to accomplish the delegated performance. No contract, subcontract or other agreement entered into by either Party with any third party in connection with the provision of local services or unbundled Network Elements hereunder shall provide for any indemnity, guarantee, 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 shall be deemed a third party beneficiary for any purposes under this Agreement.

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

32.3

33. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

33.1 Each Party will be solely responsible at its own expense for the proper handling, storage, transport, treatment, transport disposal, or any other management by or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law.

33.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, AT&T ILLINOIS shall, at CLEC's request, indemnify, defend, and hold harmless CLEC, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by AT&T ILLINOIS or any person acting on behalf of AT&T ILLINOIS, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by AT&T ILLINOIS or any person acting on behalf of AT&T ILLINOIS, or (iii) the presence at the work location of an Environmental Hazard for which AT&T ILLINOIS is responsible under Applicable Law or a Hazardous Substance introduced into the work location by AT&T ILLINOIS or any person acting on behalf of AT&T ILLINOIS.

33.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, CLEC shall, at CLEC's request, indemnify, defend, and hold harmless CLEC, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a

Hazardous Substance by AT&T ILLINOIS or any person acting on behalf of AT&T ILLINOIS, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by AT&T ILLINOIS or any person acting on behalf of AT&T ILLINOIS, or (iii) the presence at the work location of an Environmental Hazard for which AT&T ILLINOIS is responsible under Applicable Law or a Hazardous Substance introduced into the work location by AT&T ILLINOIS or any person acting on behalf of AT&T ILLINOIS.

- 33.4 For the purposes of this agreement, "Hazardous Substances" means i) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, ii) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or iii) asbestos and asbestos containing material in any form, and iv) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above.
- 33.5 For the purposes of this agreement, "Environmental Hazard" means 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) asbestos containing materials, or iii) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.
- 33.6 For the purposes of this agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposal, or other movement into i) the work location, or ii) other environmental media, including but not limited to, the air, ground or surface water, or soil.

34. FORCE MAJEURE

Neither Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event") or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or, if appropriate, be excused from performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

35. TAXES

- 35.1 Each Party purchasing Interconnection, Resale Services, unbundled Network Elements, Functions, Facilities, products and services under this Agreement shall pay or otherwise be responsible for all applicable Federal, state or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees or surcharges (hereinafter "Tax") imposed on or with respect to, the Interconnection, Resale Services, unbundled Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.
- 35.2 With respect to any purchase of Interconnection, Resale Services, Unbundled Network Elements, functions, facilities products or services under this Agreement if any Tax is required by Applicable Law to be collected from the purchasing Party by the providing Party, then (i) the providing Party shall bill the purchasing Party for such Tax (ii) the purchasing party shall be required to pay all such taxes to the providing Party and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. 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: (i) it bills the purchasing Party for such Tax, or (ii) 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.
- 35.3 With respect to any purchase hereunder of Interconnection, Resale Services, Unbundled Network Elements, functions, facilities, products or 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. 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.
- 35.4 Intentionally Omitted.
- 35.5 Intentionally Omitted.
- 35.6 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 35.7 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed

thereon with respect to the uncollected Tax by 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.

- 35.8 If either Party is audited by a taxing authority or other Governmental Authority, 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.
- 35.9 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party 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 purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, Resale Services, Unbundled Network Elements, functions, facilities, products and 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 (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) 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.
- 35.10 With respect to any Tax or Tax controversy covered by this Section 35, either Party 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 or collect, or to seek refund of Taxes that it has previously paid. The Parties will cooperate in any such contest. The Purchasing Party will ensure that no lien is attached to any asset of the other Party as a result of any contest. The purchasing Party 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 the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 35.11 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 35 shall be sent in accordance with Section 19, Notices, hereof.

36. NON-WAIVER

No waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

37. INTENTIONALLY OMITTED

38. INTENTIONALLY OMITTED

39. INTENTIONALLY OMITTED

40. CUSTOMER INQUIRIES

40.1 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.

40.2 Each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

40.2.1 Provide the number described in Section 40.1 to callers who inquire about the other Party's services or products; and

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

40.3 Except as otherwise provided in this Agreement, CLEC shall be the primary point of contact for CLEC's end user customers with respect to the services CLEC provides such end user customers.

40.4 Customer Contact. CLEC will provide the exclusive interface to CLEC end user customers concerning service provided by CLEC, except as CLEC may otherwise specify. When CLEC requires AT&T ILLINOIS personnel or systems to interface with CLEC end user customers, the AT&T ILLINOIS personnel shall identify themselves as representing CLEC, or any brand as CLEC may specify, and shall not identify themselves as representing AT&T ILLINOIS or any other entity.

41. EXPENSES

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

42. CONFLICT OF INTEREST

42.1 The Parties represent that no employee or agent of either Party has been paid a fee, or otherwise received any compensation or consideration from the other Party, in connection with the negotiation of this Agreement or any associated documents.

43. SURVIVAL

43.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement (or to be performed after) shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Indemnification, Confidential Information, Limitation of Liability, Deposits, Non-payment and Disconnection, Dispute Resolution and any liability or obligations of a Party for acts or omissions prior to the expiration or termination of this Agreement.

44. INTENTIONALLY OMITTED**45. AMENDMENTS AND MODIFICATIONS**

45.1 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 unless agreed to by the Parties or specifically ordered by the Commission.

45.2 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.

46. INTENTIONALLY OMITTED**47. INTENTIONALLY OMITTED****48. AUTHORITY**

48.1 AT&T ILLINOIS represents and warrants that it is a ILLINOIS Limited Partnership duly organized, validly existing and in good standing under the laws of the state of ILLINOIS. AT&T ILLINOIS represents and warrants that AT&T Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for AT&T ILLINOIS. AT&T ILLINOIS represents and warrants that it has full power and authority to perform its obligations hereunder.

48.2 CLEC represents 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. CLEC represents that it is certified as a LEC by the Commission prior to submitting any orders hereunder and is authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such service.

49. COUNTERPARTS

49.1 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.

50. ENTIRE AGREEMENT

50.1 The terms contained in this Agreement and all 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.

51. PURCHASING FROM TARIFFS

51.1 Except as may be provided in Appendix Pricing, the Parties agree that the rates, terms and conditions of this Agreement will not be superceded by the rates, terms and

conditions of any tariff AT&T may file, absent Commission order to the contrary. The Parties agree that CLEC is not precluded from ordering products and services available under any effective AT&T tariff or any tariff that AT&T may file in the future provided that CLEC satisfies all conditions contained in such tariff and provided that the products and services are not already available under this Agreement. (In which case CLEC may incorporate such products and services including legitimately related rates, terms and conditions by amendment into this Agreement). If CLEC chooses to order products or services under an AT&T Illinois tariff, it is bound by all applicable terms and conditions of the tariff and shall not seek to apply terms and conditions of this Agreement to the items it orders from the tariff. CLEC is not precluded from amending the agreement to incorporate by reference individual and independent rates, terms and conditions available to other carriers through Agreement or tariff, even when such products or services are already available under this Agreement, provided such incorporation by reference must include material terms and conditions that are applicable and legitimately related to the requested product or services.

52. ALTERNATIVELY BILLED SERVICES

- 52.1 The Parties agree that Alternately Billed Services (ABS) shall mean local and intraLATA collect calls, calling card calls and bill to third number calls, when those calls are originated from or terminated to end user customers served via the AT&T ILLINOIS's unbundled Local Switching (ULS) or UNE-P, further defined in the 13 State ABS Agreement. ABS is subject to the terms, conditions and pricing set forth in the 13 State ABS Agreement between the Parties effective January 1, 2004.

IQ Telecom, Inc.

**Illinois Bell Telephone Company d/b/a AT&T
Illinois by AT&T Operations, Inc., its authorized
agent**

Signature: 

Signature: 

Name: Daniel Gr-Tice
(Print or Type)

Name: Rebecca L. Sparks
(Print or Type)

Title: J.P.
(Print or Type)

Title: Executive Director-Regulatory
(Print or Type)

Date: 8/9/06

Date: 9-8-06