

**17. INTENTIONALLY OMITTED PERFORMANCE MEASURES**

17.1 Attachment Performance Measures provides monetary payments for failure to meet specified performance standards. The provisions of that Attachment constitute the sole obligation of AT&T-STATE to pay damages or financial penalties for failure to meet specified performance standards identified in such Attachment and all other Attachments to this Agreement.

- Formatted: Highlight
- Formatted: Font: Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic

**18. INTELLECTUAL PROPERTY**

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

**19. NOTICES**

19.1 Subject to Section 19.2, 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 in sections 19.1.1, 19.1.2, or 19.1.3.
- 19.1.5 Notices will be deemed given as of the earliest of:
  - 19.1.5.1 the date of actual receipt,
  - 19.1.5.2 the next Business Day when sent via express overnight delivery service,
  - 19.1.5.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or
  - 19.1.5.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

19.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	<del>INTRADO CONTACT</del>	<del>AT&amp;T-STATE OHIO CONTACT</del>
NAME/TITLE	Intrado, <i>Communications Inc.</i> Director – Regulatory Compliance	Contract Management ATTN: Notices Manager
STREET ADDRESS	1601 Dry Creek Drive	311 S. Akard, 9 <sup>th</sup> Floor Four AT&T Plaza
CITY, STATE, ZIP CODE	Longmont, CO 80503	Dallas, TX 75202-5398
FACSIMILE NUMBER	«720 494-6600»	(214) 464-2006

- Formatted: Font: Bold, Highlight
- Formatted: Highlight
- Formatted: Font: Bold, Highlight

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

**AT&T proposed language is bolded and underlined**  
*Intrado proposed language is italicized and bolded*

- 19.2 ~~AT&T-STATE~~OHIO communicates official information to CLECs and ~~CESTIC~~ via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.
- 19.3 ~~AT&T-STATE~~OHIO's Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the date set forth on the e-mail message.
- 19.4 In ~~AT&T-STATE~~OHIO, ~~INTRADO~~ may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.

Formatted: Highlight

## 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. NO LICENSE

- 21.1 Except at otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

## 22. CONFIDENTIALITY

- 22.1 Each Party anticipates and recognizes that it will come into possession of technical or business information or data about the other Party and/or its customers (including without limitation ~~its AT&T-STATE~~OHIO - End User customers) as a result of this Agreement which will be considered confidential by such other Party. The Parties agree (1) to treat all such information and data as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. Each Party agrees not to disclose confidential information and/or data of or pertaining to the other Party or its customers (including without limitation ~~its AT&T-STATE~~OHIO End User customers) to any third party without first securing the written consent of such Party. The foregoing shall not apply to information which is in the public domain. Nothing in this Agreement prevents either Party from disclosing operations results or other data that might reflect the results of this Agreement as a part of that Party's aggregate operating data as long as the disclosed data is at a level of aggregation sufficient to avoid disclosing with specificity information obtained in the operation of this Agreement.
- 22.2 If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this section, that Party will immediately inform the other Party of the order or request before such data or information is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic

**AT&T proposed language is bolded and underlined**  
***Intrado proposed language is italicized and bolded***

in cases where a court order requires the production of billing and/or usage records of or pertaining to an individual customer (including without limitation either Party's End User customer).

- 22.3 This section will not preclude the disclosure by a Party of information or data subject to this Section to consultants, agents, or attorneys representing that Party, or the Office of the Public Counsel for a State, or appropriate State Commissions or staffs, or FCC Staff, provided that such representatives are informed of the confidential nature of the information and/or date prior to disclosure and are bound by confidentiality requirements that are at least as restrictive as applicable to the Parties to this Agreement.
- 22.4 The provisions of this section shall survive the expiration and/or termination of this Agreement, unless agreed to in writing by the Parties.

### 23. INTERVENING LAW

- 23.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to reach agreement on appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications within sixty (60) days from the Written Notice, any disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

### 24. GOVERNING LAW

- 24.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of [REDACTED] shall apply, without regard to [REDACTED] conflict of laws principles. The Parties submit to personal jurisdiction in [REDACTED] and waive any and all objection to any such venue.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

### 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. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. 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.

**AT&T proposed language is bolded and underlined**  
***Intrado proposed language is italicized and bolded***

**26. INTENTIONALLY OMITTED CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION**

**26.1 Applies to AT&T-STATE**

26.1.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier or to itself and in assuming responsibility for any applicable charges as specified in the FCC's rules regarding Subscriber Carrier Selection Changes (47 CFR 64.1100 through 64.1170) and any applicable state regulation. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its ILEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge.

26.1.2 Only an End User can initiate a challenge to a change in its ILEC. If an End User notifies one Party that the End User requests local exchange service, and the other Party is such End User's ILEC, then the Party receiving such request shall be free to immediately access such End User's CPNI subject to the requirements of the applicable Appendix OSS restricting access to CPNI in order to immediately provide service to such End User.

26.1.3 When an End User changes or withdraws authorization from its ILEC, each Party shall release End User-specific facilities belonging to the ILEC in accordance with the End User's direction or that of the End User's authorized agent. Further, when an End User abandons its premise (that is, its place of business or domicile), AT&T-STATE is free to reclaim the Lawful UNE facilities for use by another End User and is free to issue service orders required to reclaim such facilities.

26.1.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange service (slamming) at the request of the other Party, provided, however, that each Party shall cooperate with any investigation of a complaint alleging an unauthorized change in local exchange service at the request of the FCC or the applicable state Commission.

Formatted: Font: Not Italic

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold, Not Italic

**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 warrants that it has obtained all necessary state certification required in each state covered by this Agreement prior to ordering any Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.

27.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

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

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

**AT&T proposed language is bolded and underlined**  
*Intrado proposed language is italicized and bolded*

## 28. LAW ENFORCEMENT

28.1 ~~AT&T-STATE OHIO~~ and ~~INTRADO~~ shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

Formatted: Highlight

### 28.1.1 Intercept Devices:

28.1.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with ~~INTRADO~~ an End User of the other Party, it shall refer such request to the Party that serves such ~~customer of~~ End User, 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.

Formatted: Font: Not Bold,

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

### 28.1.2 Subpoenas:

28.1.2.1 If a Party receives a subpoena for information concerning ~~INTRADO~~ an End User the Party knows to be ~~INTRADO~~ an End User 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 receiving Party was the ~~customer of~~ End User's service provider, in which case that Party will respond to any valid request.

Formatted: Font: Not Bold,

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Font: Not Bold,

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

### 28.1.3 Emergencies:

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

Formatted: Font: Not Bold,

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

## 29. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

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

29.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**AT&T proposed language is bolded and underlined**  
**Intrado proposed language is italicized and bolded**

**30. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY**

30.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

**31. SUBCONTRACTING**

31.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.

31.2 Each Party will be solely responsible for payments due that Party's subcontractors.

31.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.

31.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

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

Formatted: Font: Not Bold, Not Italic, Highlight

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

**32. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION**

32.1 Each Party shall be solely responsible at its own expense for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, or any other management by such Party 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.

32.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, AT&T-STATEOHIO shall, at INTRADO's request, indemnify, defend, and hold harmless INTRADO, 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-STATEOHIO or any person acting on behalf of AT&T-STATEOHIO, 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-STATEOHIO or any person acting on behalf of AT&T-STATEOHIO, or (iii) the presence at the work location of an Environmental Hazard for which AT&T-STATEOHIO is responsible under Applicable Law or a Hazardous Substance introduced into the work location by AT&T-STATEOHIO or any person acting on behalf of AT&T-STATEOHIO.

Formatted: Highlight

Formatted: Highlight

32.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, INTRADO shall, at AT&T-STATEOHIO's request, indemnify, defend, and hold harmless AT&T-STATEOHIO, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's 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

Formatted: Highlight

AT&T proposed language is bolded and underlined  
Intrado proposed language is italicized and bolded

any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by [REDACTED] or any person acting on behalf of [REDACTED], 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 [REDACTED] or any person acting on behalf of [REDACTED], or (iii) the presence at the work location of an Environmental Hazard for which [REDACTED] is responsible under Applicable Law or a Hazardous Substance introduced into the work location by [REDACTED] or any person acting on behalf of [REDACTED].

- Formatted: Highlight

- 32.4 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.
- 32.5 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.
- 32.6 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.

**33. FORCE MAJEURE**

33.1 No 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 Delaying Event caused by the other Party 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 be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease.

**34. TAXES**

34.1 Each Party purchasing Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible

- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight

AT&T proposed language is bolded and underlined  
*Intrado proposed language is italicized and bolded*

for all 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, Lawful 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.

**Formatted:** Font: Not Bold, Not Italic, Highlight

**Formatted:** Highlight

**Formatted:** Font: Not Bold, Not Italic, Highlight

34.2 Intentionally Omitted

34.3 With respect to any purchase of Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, functions, facilities, products and services under this Agreement if any Tax is required or permitted 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 remit such Tax 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.

**Formatted:** Font: Not Bold, Not Italic, Highlight

**Formatted:** Highlight

**Formatted:** Font: Not Bold, Not Italic, Highlight

**Formatted:** Font: Not Bold, Not Italic

34.4 With respect to any purchase hereunder of Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the ~~customer or~~ 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 ~~customer or~~ 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.

**Formatted:** Font: Not Bold, Not Italic, Highlight

**Formatted:** Highlight

**Formatted:** Font: Not Bold, Not Italic, Highlight

34.5 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.

34.6 If the purchasing Party fails to impose and/or collect any Tax from ~~customers of~~ 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 ~~customers of~~ 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.

34.7 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.

34.8 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

**AT&T proposed language is bolded and underlined**  
***Intrado proposed language is italicized and bolded***

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, Lawful 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.

34.9 With respect to any Tax or Tax controversy covered by this Section 34, the purchasing 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. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party 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.

34.10 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 34 shall be sent in accordance with Section 19 hereof.

### 35. NON-WAIVER

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

### 36. NETWORK MAINTENANCE AND MANAGEMENT

36.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.

36.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when ~~e~~**End** ~~u~~**Users** are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.

36.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

36.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns.

**AT&T proposed language is bolded and underlined**  
***Intrado proposed language is italicized and bolded***

Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.

36.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's ~~customers or~~ End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.

36.6 Neither Party shall use any Interconnection, ~~Resale Service, Lawful Unbundled Network Element~~, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of ~~AT&T-STATE OHIO~~, its affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other carriers or **customers or** to ~~customers or~~ either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

**Formatted:** Font: Not Bold, Not Italic, Highlight

**Formatted:** Font: Not Bold,

**Formatted:** Font: Not Bold,

**Formatted:** Highlight

**Formatted:** Font: Not Bold, Not Italic, Highlight

### 37. SIGNALING

37.1 ~~AT&T-STATE OHIO~~ will provide SS7 signaling pursuant to its applicable access tariff.

### 38. CUSTOMER INQUIRIES

38.1 Except as otherwise required by Section 26.1, 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.

38.2 Except as otherwise required by Section 26.1, each Party will ensure that all of its representatives who receive inquiries regarding the other Party's services:

38.2.1 Provide the number described in Section 38.1 to callers who inquire about the other Party's services or products; and

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

38.3 Except as otherwise provided in this Agreement, ~~INTRADO~~ shall be the primary point of contact for ~~INTRADO~~'s ~~CLEC's~~ **customers End Users** with respect to the services ~~INTRADO~~ provides such **customers End Users**.

**Formatted:** Highlight

**Formatted:** Highlight

38.4 Intentionally Omitted.

### 39. EXPENSES

39.1 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.

39.2 Intentionally Omitted.

### 40. CONFLICT OF INTEREST

40.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the negotiation of this Agreement or any associated documents.

**AT&T proposed language is bolded and underlined**  
*Intrado proposed language is italicized and bolded*

#### 41. SURVIVAL

41.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: ~~Section 7.1; Section 7.2; Section 7.3; Section 7.4; Section 7.5; Section 7.6; Section 9.3; Section 10.1; Section 10.4; Section 10.5; Section 10.6; Section 10.7; Section 10.8; Section 12; Section 13; Section 15; Section 16; Section 17; Section 18.1; Section 20; Section 21; Section 22; Section 24; Section 27.4; Section 28.1.3; Section 34; Section 35 and Section 43.~~

Formatted: Highlight

Formatted: Highlight

#### 42. SCOPE OF AGREEMENT

42.1 This Agreement is intended to describe and enable specific ~~interconnection and compensation competitive emergency service~~ arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.

Formatted: Font: Not Bold, Not Italic, Highlight

42.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

#### 43. AMENDMENTS AND MODIFICATIONS

43.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commissions; and such amendment will not require refunds, true-up or retroactive crediting or debiting prior to the approval of the Amendment. ~~AT&T-STATE OHIO~~ and ~~INTRADO~~ shall each be responsible for its share of the publication expense (i.e., filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.

Formatted: Font: Bold, Underline

Formatted: Highlight

43.2 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.

#### 44. APPENDICES INCORPORATED BY REFERENCE

##### 44.1 ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4)

44.1.1 ~~AT&T-STATE OHIO~~ shall provide to ~~INTRADO~~ access to Poles, Conduits and Rights of Ways pursuant to the applicable Appendix Structure Access, which is attached hereto and incorporated herein by reference.

Formatted: Font: Bold, Underline

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Font: Not Bold,

Formatted: Highlight

Formatted: Font: Not Bold, Not Italic, Highlight

##### 44.2 COLLOCATION -- SECTION 251(c)(6)

44.2.1 Collocation will be provided pursuant to the applicable Appendix ~~Structure Access~~ Collocation ~~Appendix~~ which is ~~attached~~ attached hereto and incorporated herein by reference.

Formatted: Font: Not Bold, Not Italic

##### 44.3 ~~INTRADO~~ DIALING PARTY -- SECTION 251(d)(3)

~~44.3.1~~ ~~The Parties shall provide Local Dialing Party to each other as required under Section 251(d)(3) of the Act.~~

Formatted: Font: Not Bold, Not Italic, Highlight

**AT&T proposed language is bolded and underlined**  
***Intrado proposed language is italicized and bolded***

- 44.3.2 ~~AT&T-STATE~~ shall provide Intra-ATA Dialing Parity in accordance with Section 271(e)(2) of the Act.
- 44.4 INTERCONNECTION PURSUANT TO SECTION 251(c)(2)(A),(B),(C); 47 CFR § 51.305(a)(1)
- 44.4.1 ~~AT&T-STATE~~ OHIO shall provide to ~~AT&T-STATE~~ Interconnection of the Parties' facilities and equipment for the transmission and routing of ~~AT&T-STATE~~ Telephone Exchange Service traffic ~~AT&T-STATE~~ pursuant to the applicable Appendix ~~AT&T-STATE~~ Competitive-Emergency Services, which is/are attached hereto and incorporated herein by reference. Methods for Interconnection and Physical Architecture shall be as defined in the applicable Appendix ~~AT&T-STATE~~, which is/are attached hereto and incorporated herein by reference.
- 44.5 ~~AT&T-STATE~~ LOCAL NUMBER PORTABILITY - SECTION 251(b)(2)
- 44.5.1 The Parties shall provide to each other Permanent Number Portability (PNP) on a reciprocal basis as outlined in the applicable Appendix Number Portability, which is/are attached hereto and incorporated herein by reference.
- 44.6 OTHER SERVICES
- 44.6.1 ~~AT&T-STATE~~
- 44.6.1.1 The Parties will make nondiscriminatory access to 911 and E911 services available under the terms and conditions of the applicable Appendix ~~AT&T-STATE~~, which is/are attached hereto and incorporated herein by reference.
- 44.6.1.2 Intentionally Omitted.
- 44.6.2 Intentionally Omitted - Directory Assistance (DA)
- 44.6.2.1 ~~AT&T-STATE~~ will provide nondiscriminatory access to Directory Assistance services under the terms and conditions identified in the applicable Appendix DA, which is/are attached hereto and incorporated herein by reference.
- 44.6.3 Intentionally Omitted Hosting [AT&T note - Hosting is only available to ILECs, not CLECs, so section should be omitted. Previously included in error.]
- 44.6.3.1 *At CESTC's request, AT&T-OHIO shall perform hosting responsibilities for the provision of billable message data and/or access usage data received from CESTC for distribution to the appropriate billing and/or processing location or for delivery to CESTC of such data via AT&T-OHIO's internal network or the nationwide CMDS network pursuant to the applicable Appendix HOST, which is/are attached hereto and incorporated herein by reference.*
- 44.6.4 Operator Services (OS)
- 44.6.4.1 ~~AT&T-STATE~~ shall provide nondiscriminatory access to Operator Services under the terms and conditions identified in the applicable Appendix OS, which is/are attached hereto and incorporated herein by reference.
- 44.6.5 Intentionally Omitted - Publishing and Directory
- 43.6.5.1 ~~AT&T-STATE~~ will make nondiscriminatory access to Publishing and Directory service available under the terms and conditions of the applicable Appendix White Pages, which is/are attached hereto and incorporated herein by reference.

- Formatted: Font: Not Italic, Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic
- Formatted: Highlight
- Formatted: Font: Not Bold, No underline
- Formatted: Highlight
- Formatted: Font: Not Bold,
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Font: Not Bold,
- Formatted: Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, No underline, Highlight
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic
- Formatted: Font: Not Italic, Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Highlight
- Formatted: Font: Not Italic, Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic

AT&T proposed language is bolded and underlined  
*Intrado proposed language is italicized and bolded*

44.6.6 ~~Intentionally Omitted - Resale - Sections 251(b)(1)~~

44.6.6.1 ~~AT&T-STATE, INC. shall provide to ~~RESALE~~ Telecommunications Services for resale at wholesale rates pursuant to the applicable Appendix Resale, which is/are attached hereto and incorporated herein by reference.~~

44.6.7 ~~Intentionally Omitted~~

44.6.7.1 ~~AT&T-STATE shall provide to ~~RESALE~~ Telecommunications Services for resale at wholesale rates pursuant to the applicable Appendix Resale, which is/are attached hereto and incorporated herein by reference.~~ Intentionally Omitted

44.6.8 ~~Intentionally Omitted~~

44.6.8.1 ~~AT&T-STATE shall provide to ~~RESALE~~ Telecommunications Services for resale at wholesale rates pursuant to the applicable Appendix Resale, which is/are attached hereto and incorporated herein by reference.~~ Intentionally Omitted

44.6.9 ~~Intentionally Omitted - Lawful Unbundled Network Elements - Sections 251(c)(3)~~

44.6.9.1 Pursuant to the applicable Appendix Lawful UNEs, which is/are attached hereto and incorporated herein by reference, ~~AT&T-STATE, INC.~~ will provide ~~RESALE~~ access to Lawful UNEs for the provision of Telecommunications Service as required by Sections 251 and 252 of the Act and in the Appendices hereto. ~~RESALE~~ agrees to provide access to its Network Elements to ~~AT&T-STATE, INC.~~ under the same terms, conditions and prices contained herein and in the applicable Appendices hereto.

45. AUTHORITY

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

45.2 ~~RESALE~~ represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. ~~RESALE~~ represents and warrants that it has been or will be certified as a ~~RESALE~~ by the Commission(s) prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

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

46. COUNTERPARTS

46.1 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.

- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic
- Formatted: Font: Not Italic, Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Italic, Highlight
- Formatted: Font: Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Italic
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Font: Not Bold, No underline, Highlight
- Formatted: Highlight
- Formatted: Font: Not Bold, Not Italic, No underline, Highlight
- Formatted: Font: Not Bold, Not Italic, No underline
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Italic, Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Italic, Underline, Highlight
- Formatted: Font: Not Bold, Not Italic, Highlight
- Formatted: Font: Not Bold, Not Italic
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight

AT&T proposed language is bolded and underlined  
*Intrado proposed language is italicized and bolded*

47. ENTIRE AGREEMENT

47.1 AT&T-STATE/ OHIO

47.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

AT&T proposed language is bolded and underlined  
*Intrado proposed language is italicized and bolded*