

MBR Services Agreement

**Contract ID 090047d48021a6c5
(CLEC Name Redacted)**

Public Inspection Copy # 193

BELLSOUTH / CLEC Agreement

Customer Name: [REDACTED]

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By and Between

BellSouth Telecommunications, Inc.

And



COMPREHENSIVE COMMERCIAL AGREEMENT
FOR E911 SERVICE
GENERAL TERMS AND CONDITIONS

THIS COMPREHENSIVE COMMERCIAL AGREEMENT (Agreement) is made by and between BellSouth Telecommunications, Inc. (BellSouth), a Georgia corporation, and [REDACTED] (CUSTOMER), a Delaware corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or CUSTOMER or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, CUSTOMER is an Aggregator in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, BellSouth desires to provide and CUSTOMER desires to purchase certain E911 Services for aggregation purposes only;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and CUSTOMER agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Aggregator means a company providing a specific service within BellSouth's franchised area to another group of companies, specifically for this agreement for E911 services.

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be November 10, 2005. Notwithstanding

the foregoing, CUSTOMER may not place orders for E911 Service pursuant to this Agreement until five (5) business days following after the Effective Date, which shall be November 10, 2005. Future amendments for rate changes will be effective thirty (30) days after the date of the last signature executing the amendment unless otherwise agreed by the Parties

FCC means the Federal Communications Commission.

General Terms and Conditions means this document including all of the terms, provisions and conditions set forth herein.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 (Act) means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1. Scope of this Agreement

- 1.1 This Agreement sets forth the obligations of each Party with respect to BellSouth's provision of certain services, as described herein, to CUSTOMER (Service(s)).
- 1.2 Notwithstanding Section 16 below (Governing Law), the Parties acknowledge that this Agreement is entered into pursuant to the provisions of 47 U.S.C. §§ 201 and 202, where applicable, and not pursuant to 47 U.S.C. §§ 251 and 252. The services provided hereunder are intended to be provided to CUSTOMER on a nondiscriminatory basis. In the event that a regulatory agency seeks to exert jurisdiction over this Agreement and, as a result, BellSouth wishes to modify this Agreement, BellSouth shall so notify CUSTOMER in writing within fifteen (15) days after BellSouth receives notice that the regulatory agency is seeking such jurisdiction, whereupon the Parties will negotiate such modifications in good faith. If the Parties are unable to reach agreement on such modifications within thirty (30) days of BellSouth's request, CUSTOMER shall have the right to pursue resolution of the dispute in accordance with the dispute resolution procedure outlined in this Agreement. In the event that CUSTOMER does not pursue dispute resolution, BellSouth shall be entitled to terminate this Agreement upon forty-five (45) days advance written notice to CUSTOMER. If BellSouth terminates the Agreement pursuant to this Section, BellSouth agrees to cooperate with CUSTOMER as necessary to adequately wind down or transfer the services to an alternative provider.

2. Term and Termination of the Agreement

The term of this Agreement shall commence on the Effective Date and shall apply to the BellSouth territory in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. It shall continue in effect thereafter until December 31, 2007.

- 2.1 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend or terminate Service in the event that BellSouth facilities or service are used in an unlawful manner or in a manner prohibited by FCC No. 1 tariff, Section 2.
- 2.2 Except as set forth in Attachment 3 regarding failure to pay for Services, if either Party breaches or defaults on any of the terms, conditions, or covenants of this Agreement, the other Party shall give the breaching Party written notice of such breach or default. If such breach or default is not cured within thirty (30) days after such written notice (or such other applicable notice period as specified in FCC No. 1 tariff), then in addition to all other rights and remedies at law, in equity or otherwise, the non-breaching Party may terminate this Agreement without any charge, obligation, or liability whatsoever for such breach, except for payment for Services rendered.

3. Rates

- 3.1 CUSTOMER shall pay the rates set forth in the FCC No. 1 tariff, Section 6.8.1, as applicable. If no rate is set forth for a Service in this Agreement then BellSouth's tariff rates shall apply. If no tariff rate exists, then BellSouth shall not be required to provide such Service until a tariff rate has been established. In the event that BellSouth, due to a billing error, is unable to bill the applicable rate under this Agreement or tariff for any Services provided pursuant to this Agreement or tariff, BellSouth reserves the right to back-bill CUSTOMER for such rate or for the difference between the rate actually billed and the rate that should have been billed pursuant to this Agreement or tariff.

4. Liability and Indemnification

- 4.1 CUSTOMER Liability. In the event that CUSTOMER consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party requests Services under this Agreement using CUSTOMER's codes, all such entities shall be jointly and severally liable for the obligations of CUSTOMER under this Agreement.
- 4.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to CUSTOMER for any act or omission of another entity providing services to CUSTOMER except where such entity is providing services to CUSTOMER pursuant to BellSouth's obligations under this Agreement and at the direction of BellSouth.

- 4.3 Limitation of Liability. Except for any indemnification obligations of the Parties hereunder, a Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the Services not performed or improperly performed. Any amounts paid to CUSTOMER or credited to CUSTOMER shall be credited against any damages otherwise payable to CUSTOMER pursuant to this Agreement. Any amounts paid to BellSouth or credited to BellSouth shall be credited against any damages otherwise payable to BellSouth pursuant to this Agreement. Unless credits are to be used against damages or unpaid amounts, any credit amounts owing to CUSTOMER that are outstanding upon expiration or termination of the Agreement shall be refunded to CUSTOMER.
- 4.4 BellSouth shall not be liable for damages to CUSTOMER's or CUSTOMER'S customer's terminal location, equipment or CUSTOMER's or CUSTOMER'S customer's premises resulting from the furnishing of a Service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by BellSouth's negligence or willful misconduct.
- 4.5 Under no circumstance shall BellSouth be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss, punitive damages or lost business or profits, damages arising from BellSouth's performance hereunder, CUSTOMER's or CUSTOMER's customer(s)' use or inability to use services provided pursuant to this agreement, or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, CUSTOMER recognizes that BellSouth may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services described in this Agreement, and, while BellSouth shall use diligent efforts in this regard, CUSTOMER acknowledges and agrees that this limitation of liability shall apply to the provision of such advice, recommendations, and analyses.
- 4.6 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on BellSouth different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 4.7 Indemnification for Certain Claims. Except to the extent caused by BellSouth's gross negligence or willful misconduct, BellSouth, its Affiliates, parent company and their employees and agents, shall be indemnified, defended and held harmless by CUSTOMER against any claim, loss or damage arising from CUSTOMER's or CUSTOMER's customer's use of the Services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content

of CUSTOMER's or CUSTOMER's customer's own communications, or (2) any claim, loss or damage claimed by the customer of CUSTOMER arising from such customer's or CUSTOMER's use or reliance on BellSouth's Services, actions, duties, or obligations arising out of this Agreement.

- 4.8 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, BELLSOUTH MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. BELLSOUTH DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

5. Intellectual Property Rights and Indemnification

- 5.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of Telecommunications Services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.
- 5.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any Service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. 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.

5.3 Intellectual Property Remedies

Indemnification. The Party providing a Service pursuant to this Agreement will defend the Party receiving such Service or data provided as a result of such Service against claims of infringement arising solely from the use by the receiving Party of such Service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 4 preceding.

5.4 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of BellSouth is likely to become, the subject of a third party claim, action, suit, or proceeding based on intellectual property infringement, then BellSouth shall replace or modify the affected facilities, equipment, or software or obtain a license to allow for continued use. To the extent that the affected facilities, equipment, or software cannot be replaced or modified to allow for continued use, BellSouth shall have the right to terminate, upon reasonable notice, this Agreement with respect to use of, or Services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

5.5 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee not authorized by BellSouth; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use pursuant to Section 1.7 of Attachment 3.

5.6 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

6. Proprietary and Confidential Information

6.1 Proprietary and Confidential Information. It may be necessary for BellSouth and CUSTOMER, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in

- writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.
- 6.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.
- 6.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:
- (a) is publicly available; (b) is made publicly available by the Discloser or lawfully by a non-Party to this Agreement; (c) is lawfully obtained by Recipient from any source other than Discloser; (d) is previously known to Recipient without an obligation to keep it confidential; (e) is released from the terms of this Agreement by Discloser upon written notice to Recipient; (f) is independently developed by Recipient without use of Information of the Discloser.
- 6.4 If Recipient is required by law or regulation to disclose Information of the Discloser, Recipient may do so, but only to the extent and for the purposes of such required disclosure, and only if the Recipient first promptly notifies the Discloser of the need for such disclosure and allows the Discloser a reasonable opportunity to seek an appropriate protective order.
- 6.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 6.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 6.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

7. Disclosure

This Agreement shall be considered Information under Section 6. Notwithstanding anything in this Agreement, upon execution hereof, no Party may use the other Party's name in connection with a press release relating to the execution of this Agreement unless they have received prior written consent from the other Party. Such consent shall not be unreasonably withheld. In addition, BellSouth may publicly disclose this Agreement through posting it to the corporate website or may file it with the FCC, as appropriate, to the extent BellSouth reasonably believes such posting or filing may be required by applicable law.

Press releases and other publicity statements that use, mention or imply BellSouth's or its Affiliated Companies' trade names, logos, trademarks or service marks (collectively, the "Marks") are not permitted without written authorization from BellSouth Intellectual Property Marketing Corporation ("BIPMARK"). Customer agrees to submit to BIPMARK all such requests and materials relating to this Agreement or mentioning or implying the Marks and will not publish or use such materials without BIPMARK's prior written consent.

Notwithstanding the foregoing, either Party may disclose the existence of this Agreement to the extent required by federal or state securities or other laws, provided, however, that such Party must give immediate advance written notice of the planned disclosure, along with a copy of the relevant federal or state securities or other laws to the other Party prior to submitting or disclosing pursuant to such laws.

8. Resolution of Disputes

In the event the Parties are unable to resolve any disputes that arise under this Agreement, the aggrieved Party shall pursue resolution of such dispute(s) with the appropriate federal or state court of competent jurisdiction. The Parties submit to personal jurisdiction in Atlanta, Georgia, and waive any objections to a Georgia venue. Except as otherwise provided in this Agreement, nothing herein shall be deemed a waiver of any right of a Party to pursue any remedy at law or in equity.

9. Taxes

9.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the Services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.

9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party

- 9.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 9.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 9.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party
- 9.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 9.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective Service is billed.
- 9.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 9.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 9.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

- 9.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 9.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party
- 9.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 9.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective Service is billed.
- 9.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. If the Parties are unable to resolve such a dispute through consultation, the purchasing Party shall have the right to pursue resolution of the dispute in accordance with the dispute resolution procedure outlined in this Agreement; provided, however, that while such dispute is pending, the purchasing Party shall pay such disputed taxes or fees as are billed by the providing Party, subject to the right of the purchasing Party to claim a refund of such amounts if the dispute is resolved in favor of the purchasing Party. Alternatively, the purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error by filing a claim for refund. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the

- purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 9.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 9.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

10. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by CUSTOMER, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. In the event that a delay, restriction or interference persists for thirty (30) days, the unaffected Party may terminate this Agreement and all services provided hereunder upon written notice to the affected Party with no further obligation. In the event of a request for termination

pursuant to this Section 10, all amounts owed shall be due within thirty (30) days, and interest and late payment charges, as applicable, are not considered waived.

11. Modification of Agreement

11.1 Subject to the provisions of Section 18, if CUSTOMER changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of CUSTOMER to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change, and shall notify the appropriate Commission of such modification of company structure in accordance with the state rules governing such modification in company structure, if applicable.

11.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

12. Non-waiver of Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

13. Indivisibility

The Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, that the obligations of the Parties under this Agreement are interdependent, and that payment obligations under this Agreement are intended to be recouped against other payment obligations under this Agreement.

14. Severability

If any provision of this Agreement, or part thereof, shall be held invalid, in direct contravention to applicable law or otherwise unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to as closely reflect the original intent of the Parties as

possible, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision.

15. Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure or delay, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

16. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

17. Assignments and Transfers

17.1 CUSTOMER shall not assign to any entity any right, obligation or duty, or any other interest hereunder, in whole or in part, without the prior written consent of BellSouth, which consent shall not be unreasonably delayed or withheld. No transfer or assignment of this Agreement or of any right, obligation or duty, or any other interest hereunder to any entity by contract, merger, operation of law or otherwise, shall be effective without the prior written consent of BellSouth and any such assignment or transfer shall be null and void. After BellSouth's consent, the Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. Such assignment may be subject to applicable charges, which charges shall be negotiated in good faith by the Parties. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, CUSTOMER shall not assign this Agreement to any entity unless either (1) CUSTOMER pays all bills, past due and current, under this Agreement, or (2) CUSTOMER's assignee expressly assumes liability for payment of such bills.

17.2 In the event that CUSTOMER desires to transfer any Services hereunder to another entity, the Parties shall follow BellSouth's established process for completing such a transfer. Such transfer may be subject to applicable charges, which charges shall be negotiated in good faith by the Parties. CUSTOMER shall not attempt to transfer services to any entity to avoid its obligations hereunder.

17.3 Change in Control.

- 17.3.1 In the event that CUSTOMER enters into an agreement which, when consummated, would cause CUSTOMER to become subject to a Change of Control and the Parties are unable to satisfy the applicable requirements of Sections 17.1 and 17.2 of this Agreement in a commercially reasonable manner, BellSouth may terminate this Agreement upon forty-five (45) days advance written notice to CUSTOMER. If BellSouth terminates the Agreement pursuant to this Section, BellSouth agrees to cooperate with CUSTOMER as necessary to adequately wind down or transfer the services to an alternative provider.
- 17.3.1.1 The following definitions apply for purposes of this Section 17.3:
- 17.3.1.2 "Change of Control" means a change in Control of CUSTOMER (or its Controlling Affiliate or Controlling Affiliates) where such Control is acquired by any third party.
- 17.3.1.3 "Control" or "Controlling" or "Controlled by" shall, depending upon the context in which it is used, refer respectively to (a) a person that holds fifty percent (50%) or more of the voting power of another person, or (b) a person, fifty percent (50%) or more of whose voting power is held by another person. In addition, Control of a person includes the power, direct or indirect, to elect a majority of its board of directors or similar governing body or to direct or cause the direction of the management and policies of such person, whether by contract or otherwise.
- 17.3.1.4 "Affiliate" means another person that directly or indirectly Controls, is Controlled by, or is under common Control with, CUSTOMER.

18. Notices

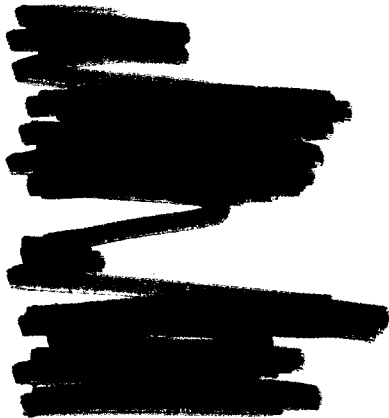
- 18.1 Every notice, consent, or approval of a legal nature required or permitted by this Agreement shall be in writing and shall be delivered by hand, by overnight courier, US mail postage prepaid or by email if an email address is listed below, address to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 10th floor
Birmingham, AL 35203

and

ICS Attorney
Suite 4300
675 West Peachtree Street
Atlanta, GA 30375



or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

18.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

18.3 Notwithstanding the foregoing, BellSouth shall post to BellSouth's Interconnection Web site changes to business processes and policies, and shall post to BellSouth's Interconnection Web site or submit through applicable electronic systems, other business related notices not requiring an amendment to this Agreement.

19. Rule of Construction

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

20. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

21. Multiple Counterparts

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

22. Good Faith Performance

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.

23. Survival

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.

24. Entire Agreement

24.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 24.2 below, and all incorporated documents, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties as they relate to the Services provided under this Agreement and merges all prior discussions between them. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

24.2 This Agreement includes Attachments incorporated herein by reference with provisions for the following:

- Services
- Ordering, Provisioning, Maintenance and Repair
- Billing

24.3 Any reference throughout this Agreement to a tariff, industry guideline, BellSouth's technical guideline or reference, BellSouth business rule, guide or other such document containing processes or specifications applicable to the Services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these Services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference. References to state tariffs throughout this Agreement shall be to the tariff for the state in which the Services were provisioned and/or the FCC No. 1 tariff.

General Terms and Conditions
Market Agreement
Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.

By: 

Name: Kristen E. Shore

Title: Director

Date: 



By: 

Name: 

Title: 

Date: 



Attachment 1

E911 Services

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- 1. SCOPE OF SERVICES**
- 2. UNDERTAKING OF BELLSOUTH**
- 3. OBLIGATIONS OF THE CUSTOMER**

Services

1. Scope of Services

- 1.1** This agreement enables the CUSTOMER to connect to the BellSouth E911 tandems for the purpose of reporting E911 emergencies on behalf of CUSTOMER's Voice over Internet Service Provider customers. This agreement only allows for connectivity to the E911 tandem switch from the CUSTOMER's Point of Interface (POI) in the BellSouth LATA serving the E911 tandem switch.
- 1.2** This service is offered solely as an aid in handling emergency calls in connection with fire, police and other emergencies and does not create any relationship or obligations, direct or indirect, to any person other than the CUSTOMER subscribing to the service.
- 1.3** BellSouth does not undertake to answer and forward E911 calls, but furnishes the use of its facilities to enable the CUSTOMER to direct calls to the appropriate Public Safety Answering Point (PSAP) in locations where government authorities or their authorized agents have subscribed to E911 service.
- 1.4** Except as noted, services provided in this section are subject to the general regulations set forth in BellSouth's FCC No. 1 Tariff.
- 1.5** The technical specifications for this service are as specified in Technical Reference TR-73610. As an aid to the use of E911 Access Services, BellSouth maintains a VSP E911 User Guide on its web site at: www.interconnection.bellsouth.com. This guide provides an outline of the methods and procedures for obtaining and submitting information to the BellSouth Automatic Location Information (ALI) database and its services.

2. Undertaking of BellSouth

- 2.1** BellSouth will provide connection between CUSTOMER's network and BellSouth's universal Emergency Number Service 911 (hereafter referred to as "911 service") network. This service shall be used exclusively to route calls from the CUSTOMER's network and its customers for access to emergency E911 services.
- 2.2** CUSTOMER shall order and BellSouth will provision a minimum of two dedicated DS0 level trunks per E911 tandem that shall be configured as part of a digital (1.544 Mbps) interface (DS1 facility) terminated in the E911 tandem switch and ordered from the FCC No. 1 Tariff, Section 6.8.1. Switched access rates and charges as set forth in FCC No.1 Tariff, Section 6.8 preceding will apply to all DS1 facilities and trunks ordered by CUSTOMER pursuant to this Agreement. The configuration shall use CAMA-type signaling with multi-frequency (MF) pulsing or SS7/ISUP signaling either of which shall

deliver Pseudo Automatic Number Identification (P-ANI) or Emergency Service Query Key (ESQK) with the voice portion of the call.

3. Obligations of the CUSTOMER

- 3.1** It is the sole responsibility of CUSTOMER to subscribe to a sufficient number of trunks to handle the volume of E911 emergency calls from its customer base. BellSouth requires a minimum of two one-way dedicated trunks originating at the CUSTOMER's Point of Interface (POI) and terminating at the E911 selective router tandems. The POI must be in the same LATA as each of the E911 tandems.
- 3.2** The quantity of trunks ordered shall be determined based on BellSouth's P.01 grade of service.
- 3.3** BellSouth's E911 database consists of data records provided by various service providers located within the BellSouth E911 service area. Each service provider, including the CUSTOMER, is responsible for providing its customers data records for the E911 database using its NENA ID when submitting records for the E911 database. These records must be present in the E911 database for the Real-Time Data Interface (as this term is defined in the VSP E911 User Guide) to function properly. These records must be assigned a Master Street Address Guide (MSAG) valid address. MSAG valid addresses are obtained from the addressing authority in the E911 service area where service is provided. BellSouth will provide one free extract of the CUSTOMER-provided ESQK shell records for reconciliation purposes per year. This extract contains the CUSTOMER-provided ESQK shell records information and is not an MSAG record extract.
- 3.4** The BellSouth Automatic Location Information (ALI) computer provides the PSAP with the caller's location information and call-back number associated with the Pseudo Automatic Number Identification (PANI). This may be accomplished by the CUSTOMER providing real-time updates to the ALI database during the E911 call processing.
- 3.5** The CUSTOMER must identify all premises based ALI systems in their service areas and comply with any special data or interface requirements. CUSTOMER shall contact all PSAPs to determine if selective routing or direct trunking is used to deliver 911 calls. If calls are not selectively routed to premises based ALI systems, the CUSTOMER may need to deliver 911 calls to the PSAP administrative lines or use other arrangements as negotiated with the PSAP outside this Agreement. The CUSTOMER is responsible for coordinating with the government authorities who subscribe to 911 services with any other provider of 911 services to populate any associated database(s) which is used to provide Enhanced Universal Emergency Number (911) service or equivalent.
- 3.6** CUSTOMER must provide a PANI/ESQK that is geographically correct to the serving E911 selective router switch to enable calls to be routed to the appropriate PSAP as

designated by the CUSTOMER. If such PANI/ESQK is not correct, BellSouth may reject the request.

- 3.7** CUSTOMER must provide valid data records as described in the VoIP Service Provider E911 Guide for inclusion in the Telephone Number (TN) database prior to testing or activating service. Valid data records may include the telephone number, name of the subscriber, address, location, class and type of service, or the PANI/ESQK telephone number assigned by the CUSTOMER and included in security tables. If there is any missing information on a data record, such request may be rejected by BellSouth.
- 3.8** CUSTOMER will be required to provide shell PANI/ESQK data records using the Service Order Interface (SOI) process to the E911 host with MSAG valid addresses. Customer will be required to provide BellSouth daily and dynamic updates to the E911 database as necessary to facilitate this service offering.
- 3.9** Determining the proper PSAP to which VoIP E911 calls should be routed, must be negotiated between the CUSTOMER and the E911 Coordinator(s) in the serving areas, including the PSAP to receive the 911 call in the event of an Automatic Number Identification (ANI) failure. The Emergency Service Number (ESN) must be provided to BellSouth when placing a service order for VoIP E911 trunks. This process is outlined in the VoIP Service Provider E911 Guide located on the BellSouth Interconnection Web site at: www.interconnection.bellsouth.com.
- 3.10** CUSTOMER is required to establish VPC connectivity via the E2 Interface. BellSouth is not responsible for the location determination technology, the accuracy of the location determination technology, solution trouble investigation or maintenance of said technologies. The delivery, or lack of delivery, of additional data elements, which may be provided by the CUSTOMER will not be the responsibility of BellSouth and BellSouth assumes no responsibility or liability for such information.
- 3.11** CUSTOMER may use its own VPC equipment and will be required to purchase E2 Interface data link port connectivity to each ALI database host computer, or may utilize existing E2 Interface data link ports. Existing links are purchased under a separate E911 Mobile Position Center (MPC) Operator Interface agreement. VPC connectivity to the ALI database host computer which utilizes existing data links for VoIP Position Center connectivity and service is purchased under a separate Wireless E-911 Phase 2 MPC Operator Interface Agreement. Connectivity to the E2 Interface is set forth in technical reference TR73610.
- 3.12** CUSTOMER will be required to obtain a National Emergency Numbering Association (NENA) Company ID and provide a 24X7 contact number of the appropriate Voice over Internet Protocol Service Provider (VSP) center that can provide assistance to the PSAP during live 911 calls. This 24X7 number should be a number that will allow the safety agencies to contact the VSP switching entity support center for line interrupts, call traces, or other emergency contact reasons. This Company Identifier database is maintained by

NENA. The form may be found in the VSP E911 User Guide located at:
www.interconnection.bellsouth.com.

Attachment 2

**Ordering, Provisioning,
Maintenance and Repair
For E911 Service**

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ORDERING, PROVISIONING, MAINTENANCE AND REPAIR

1. Ordering

- 1.1 CUSTOMER shall place orders for Services by submitting a complete and correct (valid) Access Service Request (ASR) to BellSouth via the CAFÉ ordering system. An individual ASR will be identified for billing purposes by its Purchase Order Number (PON). CUSTOMER shall adhere to all Ordering and Billing Forum (OBF) standards under the guidelines of the Access Service Order Guide.
- 1.2 Pending Orders and ASRs. To the extent that CUSTOMER submits an ASR with incomplete, incorrect or conflicting information, BellSouth will return the ASR to CUSTOMER for clarification. CUSTOMER shall respond to the request for clarification within thirty (30) days by submitting a supplement ASR with the correct or missing information. If CUSTOMER does not submit a supplement ASR within thirty (30) days, BellSouth will cancel the original ASR and CUSTOMER shall be required to submit a new ASR, with a new PON.

2. Provisioning

- 2.1 BellSouth shall provision Services during its regular working hours. To the extent CUSTOMER requests provisioning of Service to be performed outside BellSouth's regular working hours, or the work so requested requires BellSouth's technicians or Project Manager to work outside of regular working hours, and CUSTOMER approves overtime charges in advance, the overtime charges set forth in BellSouth's intrastate Access Services Tariff, Section 13.2, shall apply. Notwithstanding the foregoing, if such work is performed outside of regular working hours by a BellSouth technician or Project Manager during his or her scheduled shift and BellSouth does not incur any overtime charges in performing the work on behalf of CUSTOMER, BellSouth will not assess overtime charges. To the extent CUSTOMER requests project management for provisioning of Services under this Agreement, additional charges may apply and shall be negotiated by the Parties.
- 2.2 In the event BellSouth must dispatch to the CUSTOMER's location more than once due to incorrect or incomplete information provided by CUSTOMER (e.g., incomplete address, incorrect contact name/number, etc.), BellSouth will bill CUSTOMER for each additional dispatch required to provision the Service due to the incorrect/incomplete information provided. BellSouth will assess applicable Maintenance of Service rates from BellSouth's FCC No. 1 Tariff, Section 13.3.1.

- 2.3 Cancellation Charges. If CUSTOMER cancels an ASR subsequent to BellSouth's generation of a service order, any costs incurred by BellSouth in conjunction with the provisioning of Services as requested on the cancelled ASR will be recovered in accordance with the cancellation methodology set forth in the FCC No. 1 tariff, Section 5.3 . In addition, BellSouth reserves the right to cancel the ASR and apply cancellation charges if CUSTOMER fails to respond within nine (9) business days to a missed appointment order notification that results in service order cancellation.
- 2.4 Service Date Advancement Charges (Expedites). Service date advancement charges will apply where CUSTOMER requests that Services be provisioned prior to the due date provided by BellSouth, and where BellSouth agrees to an expedited provisioning time frame as set forth in the FCC No. 1 tariff, Section 5.3.
- 2.5 Order Modification Charges. If CUSTOMER modifies an order (Order Modification Charge (OMC) or Order Modification Charge Additional Dispatch (OMCAD)) after being sent a Firm Order Confirmation (FOC) from BellSouth, any costs incurred by BellSouth to accommodate the modification will be paid by CUSTOMER as set forth in the FCC No. 1 tariff, Section 5.3.

3 Maintenance and Repair

- 3.1 BellSouth will make interfaces available to CUSTOMER for the purpose of reporting and monitoring service troubles. CUSTOMER's use of BellSouth's maintenance and repair interfaces shall be in accordance with the applicable guides, business rules and specifications for maintenance and repair.
- 3.2 CUSTOMER shall isolate all troubles to the BellSouth provided network, prior to issuing a trouble report to BellSouth. Once a trouble report is issued to BellSouth by CUSTOMER, BellSouth will take actions necessary to repair BellSouth's side of the network where the trouble is found. BellSouth will repair its network facilities to its Wholesale customers in the same time frames that BellSouth repairs similar emergency services to its own End Users.
- 3.3 If CUSTOMER reports a trouble and no trouble is found in BellSouth's network, BellSouth will charge CUSTOMER a Maintenance of Service Charge for any dispatching and testing (both inside and outside the CO) required by BellSouth in order to confirm the Service's working status. BellSouth will assess the applicable Maintenance of Service rates from BellSouth's FCC No.1 Tariff, Section 13.3.1. It will be the sole responsibility of the CUSTOMER to isolate trouble back to the Voice over Internet Protocol Service Provider since individual trunk groups will not be order per VSP.
- 3.4 In the event BellSouth must dispatch to the CUSTOMER's location more than once due to incorrect or incomplete information provided by CUSTOMER (e.g., incomplete address, incorrect contact name/number, etc.), BellSouth will bill CUSTOMER for each additional dispatch required to provision the Service due to the incorrect/incomplete

information provided. BellSouth will assess applicable Maintenance of Service rates from BellSouth's FCC No. 1 Tariff, Section 13.3.1.

4 Miscellaneous

4.1 Single Point of Contact. CUSTOMER will be the single point of contact with BellSouth for ordering activity pursuant to this Agreement.

4.2 Contact Numbers. The Parties agree to provide one another with contact telephone numbers for the purpose of ordering, provisioning and maintenance of Services.

Guides, Business Rules and Specifications

The applicable guides, business rules and specifications are set forth on the BellSouth Interconnection Services web site and include, but are not limited to, the following:

VoIP E911 Guide
CAFÉ
Technical References
Tools
Ordering Tutorials

Attachment 3
Billing
of E911 Service

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BILLING

1 PAYMENT AND BILLING ARRANGEMENTS

- 1.1 The terms and conditions set forth in this Attachment shall apply to all Services ordered and provisioned pursuant to this Agreement.
- 1.2 Billing. BellSouth will bill CUSTOMER in Carrier Access Billing System (CABS) Billing Output Specification (CBOS) standard format. BellSouth's billing format may change in accordance with applicable industry standards.
- 1.2.1 Subject to Section 3 of the General Terms and Conditions of this Agreement BellSouth will render bills each month on established bill days for each of CUSTOMER's accounts. If CUSTOMER requests multiple billing media or additional copies of the bills, BellSouth will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3.
- 1.2.2 BellSouth will bill CUSTOMER in advance for all Services to be provided during the ensuing billing period except charges associated with nonrecurring charges, which will be billed in arrears.
- 1.3 Establishing Accounts. BellSouth will bill for Services using wholesale billing accounts established by BellSouth. After submitting a credit profile and deposit, if required by BellSouth, CUSTOMER will provide the appropriate BellSouth advisory team/local contract manager the necessary documentation to enable BellSouth to establish accounts for the Services described in this Agreement. Such documentation shall include an application for the establishment of accounts, if applicable, the appropriate Operating Company Number (OCN) as assigned by the National Exchange Carriers Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), Blanket Letter of Authorization (LOA), and a tax exemption certificate, if applicable.
- 1.3.1 Company Identifiers. If CUSTOMER needs to change, add to, eliminate or convert its OCN(s), ACNAs, and other identifying codes (collectively "Company Identifiers") under which it operates when CUSTOMER has already been conducting business utilizing those Company Identifiers, CUSTOMER shall pay all charges as a result of such change, addition, elimination or conversion to the new Company Identifiers, which charges are specified in FCC No. 1 Tariff, Section 6.8.9. Such charges may include, but are not limited to, all time required to make BellSouth's system updates to all of CUSTOMER's records and any other changes to BellSouth systems or CUSTOMER records, and will be handled in a separately negotiated agreement or as otherwise required by BellSouth.

- 1.3.2 Tax Exemption. It is the responsibility of CUSTOMER to provide BellSouth with a properly completed tax exemption certificate at intervals required by the appropriate taxing authorities. A tax exemption certificate must be supplied for each individual CUSTOMER entity purchasing Services under this Agreement. Upon BellSouth's receipt of a properly completed tax exemption certificate, subsequent billings to CUSTOMER will not include those taxes or fees from which CUSTOMER is exempt. Prior to receipt of a properly completed exemption certificate, BellSouth shall bill, and CUSTOMER shall pay all applicable taxes and fees. In the event that CUSTOMER believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to BellSouth's receipt of a properly completed exemption certificate, BellSouth shall assign to CUSTOMER its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by BellSouth, BellSouth shall, after receiving a written request from CUSTOMER and at CUSTOMER's sole expense, pursue such refund claim on behalf of CUSTOMER, provided that CUSTOMER promptly reimburses BellSouth for any costs and expenses incurred by BellSouth in pursuing such refund claim, and provided further that BellSouth shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to CUSTOMER.
- 1.3.3 Deposit Policy. Prior to the inauguration of Service or, thereafter, upon BellSouth's request, CUSTOMER shall complete the BellSouth Credit Profile (BellSouth form) and provide information to BellSouth regarding CUSTOMER's credit and financial condition. Based on BellSouth's analysis of CUSTOMER's Credit Profile and other relevant information regarding CUSTOMER's credit and financial condition, BellSouth reserves the right to require CUSTOMER to provide BellSouth with a suitable form of security deposit for CUSTOMER's account(s). If, in BellSouth's reasonable discretion, circumstances so warrant and/or CUSTOMER's gross monthly billing has increased, BellSouth reserves the right to request additional security (or to require a security deposit if none was previously requested).
- 1.4.1 Security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in BellSouth's reasonable discretion, some other form of security proposed by CUSTOMER. Any such security deposit shall in no way release CUSTOMER from its obligation to make complete and timely payments of its bill(s). If BellSouth requires CUSTOMER to provide a security deposit, CUSTOMER shall provide such security deposit prior to the inauguration of Service or within fifteen (15) days after BellSouth's request, as applicable. Deposit request notices will be sent to CUSTOMER via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in BellSouth's General Subscriber Services Tariff (GSST).

- 1.4.2 Security deposits collected under this Section 1.3.3 shall not exceed two (2) months' estimated billing. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if CUSTOMER has received service from BellSouth during such period at a level comparable to that anticipated to occur over the next six (6) months. If either CUSTOMER or BellSouth has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, CUSTOMER and BellSouth shall agree on a level of estimated billings based on all relevant information.
- 1.4.3 In the event CUSTOMER fails to provide BellSouth with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to CUSTOMER may be Suspended, Discontinued or Terminated in accordance with the terms of Section 1.6 below. Upon Termination of Services, BellSouth shall apply any security deposit to CUSTOMER's final bill for its account(s).
- 1.4.3.1 At least seven (7) days prior to the expiration of any letter of credit provided by CUSTOMER as security under this Agreement, CUSTOMER shall renew such letter of credit or provide BellSouth with evidence that CUSTOMER has obtained a suitable replacement for the letter of credit. If CUSTOMER fails to comply with the foregoing, BellSouth shall thereafter be authorized to draw down the full amount of such letter of credit and utilize the cash proceeds as security for CUSTOMER account(s). If CUSTOMER provides a security deposit or additional security deposit in the form of a surety bond as required herein, CUSTOMER shall renew the surety bond or provide BellSouth with evidence that CUSTOMER has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If CUSTOMER fails to comply with the foregoing, BellSouth shall thereafter be authorized to take action on the surety bond and utilize the cash proceeds as security for CUSTOMER's account(s). If the credit rating of any bonding company that has provided CUSTOMER with a surety bond provided as security hereunder has fallen below B, BellSouth will provide written notice to CUSTOMER that CUSTOMER must provide a replacement bond or other suitable security within fifteen (15) days of BellSouth's written notice. If CUSTOMER fails to comply with the foregoing, BellSouth shall thereafter be authorized to take action on the surety bond and utilize the cash proceeds as security for CUSTOMER's account(s). Notwithstanding anything contained in this Agreement to the contrary, BellSouth shall be authorized to draw down the full amount of any letter of credit or take action on any surety bond provided by CUSTOMER as security hereunder if CUSTOMER defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein.

- 1.5 Payment Responsibility. Payment of all charges will be the responsibility of CUSTOMER. CUSTOMER shall pay invoices utilizing check, wire transfer services or automatic clearing house services. CUSTOMER shall make payment to BellSouth for all services billed including disputed amounts. BellSouth will not become involved in billing disputes that may arise between CUSTOMER and CUSTOMER's End User.
- 1.5.1 Payment Due. Payment for Services provided by BellSouth, including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify BellSouth of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by BellSouth. If the Remittance Information is not received with payment, BellSouth will be unable to apply amounts paid to CUSTOMER's accounts. In such event, BellSouth shall hold such funds until the Remittance Information is received. If BellSouth does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.
- 1.5.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.5.1.2, below, shall apply.
- 1.5.1.2 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment and/or interest charge shall be due to BellSouth. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the intrastate Access Services Tariff or pursuant to the applicable state law as determined by BellSouth. In addition to any applicable late payment and/or interest charges, CUSTOMER may be charged a fee for all returned checks at the rate set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law.
- 1.6 Discontinuing Service to CUSTOMER. The procedures for discontinuing Service to CUSTOMER are as follows:
- 1.6.1 BellSouth reserves the right to Suspend, Discontinue or Terminate service in the event that BellSouth facilities are used in a manner prohibited by FCC No. 1 Tariff, Section 2.

- 1.6.2 Suspension. Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or fifteen (15) days from the date of a deposit request in the case of security deposits, BellSouth will provide written notice to CUSTOMER that Services will be Suspended if payment of such amounts, and all other amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or check in the manner set forth in Section 1.5.1 above or in the case of a security deposit request, in the manner set forth in Section 1.4.1 above: (1) within seven (7) days following such notice for CABS billed Services; and (2) within seven (7) days following such notice for security deposit requests.
- 1.6.2.1 For CABS billed services, BellSouth will provide a Discontinuance notice that is separate from the Suspension notice, that all past due charges for CABS billed Services, and all other amounts that become past due for such Services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CABS billed Services. This Discontinuance notice may be provided at the same time that BellSouth provides the Suspension notice.
- 1.6.2.2 Discontinuance. Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, BellSouth will provide written notice that BellSouth may Discontinue the provision of existing Services to CUSTOMER if payment of such amounts and all other amounts that become past due before Discontinuance, including requested security deposits, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.5.1 above or in the case of a security deposit in accordance with Section 1.4.1 within thirty (30) days following such written notice; provided, however, that BellSouth may provide written notice that such existing Services may be Discontinued within fifteen (15) days following such notice, subject to the criteria described in Section 1.5.
- 1.6.3 BellSouth may take the action to Discontinue the provision of existing Service upon fifteen (15) days from the day after BellSouth provides written notice of such Discontinuance if (a) such notice is sent by certified mail or overnight delivery; (b) CUSTOMER has not paid all amounts due pursuant to a subject bill(s), or has not provided adequate security pursuant to a deposit request; and (c) either:
- (1) BellSouth has sent the subject bill(s) to CUSTOMER within (7) business days of the bill date(s), verifiable by records maintained by BellSouth:

- i. in paper or CDROM form via the United States Postal Service (USPS),
or
- ii. in magnetic tape form via overnight delivery, or
- iii. via electronic transmission; or

(2) BellSouth has sent the subject bill(s) to CUSTOMER, using one of the media described in (1) above, more than thirty (30) days before notice to discontinue service has been rendered.

- 1.6.4 In the case of Discontinuance of Services, all billed charges, as well as applicable disconnect, interest and late payment charges, shall become due.
- 1.6.5 CUSTOMER is solely responsible for notifying the End User of the Discontinuance of service. If, within seven (7) days after CUSTOMER's Services have been Discontinued, CUSTOMER pays, by wire transfer, automatic clearing house or cashier's check all past due charges, including late payment charges, outstanding security deposit request amounts if applicable and any applicable restoral charges as set forth in Section A4 of the GSST, then BellSouth will reestablish Service for CUSTOMER.
- 1.6.6 Termination. Terminate/Termination is the disconnection of Service by the billing Party to the billed Party. If within seven (7) days after CUSTOMER's Service has been discontinued and CUSTOMER has failed to pay all past due charges as described above, then CUSTOMER's Service will be Terminated.
- 1.7 Notices. Notwithstanding anything to the contrary in this Agreement, notices regarding billing matters, disconnection of services for nonpayment of charges, and rejection of additional orders from CUSTOMER, shall be forwarded to the individual and/or address provided by CUSTOMER as the contact for such notices in the General Terms and Conditions of this Agreement. The notice of discontinuance of services purchased by CUSTOMER under this Agreement provided for in Section 1.6.2 of this Attachment shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.

2. BILLING DISPUTES

- 2.1 CUSTOMER shall electronically submit all billing disputes to BellSouth using the form specified by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within five (5) business days of BellSouth's denial, or partial denial, of the billing dispute, if CUSTOMER is not satisfied with BellSouth's resolution of the billing dispute or if no response to the billing dispute has been received by CUSTOMER by such sixtieth (60th) day, CUSTOMER must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on the BellSouth Interconnection Services Web site, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the

aggrieved Party, if it elects to pursue the dispute, shall pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.

2.2

For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 of a specific amount of money actually billed by BellSouth. The billing dispute must be clearly explained by CUSTOMER and supported by written documentation, which clearly shows the basis for disputing charges. The determination as to whether the billing dispute is clearly explained or clearly shows the basis for disputing charges shall be within BellSouth's reasonable discretion. Disputes that are not clearly explained or those that do not provide complete information may be rejected by BellSouth. Claims by CUSTOMER for damages of any kind will not be considered a billing dispute for purposes of this Section. If BellSouth resolves the billing dispute, in whole or in part, in favor of CUSTOMER, any credits and interest due to CUSTOMER as a result thereof shall be applied to CUSTOMER's account by BellSouth upon resolution of the billing dispute.