



**Richard T. Howell**  
Area Manager-Regulatory Relations

**AT&T**  
208 S. Akard St.  
#2510.02  
Dallas, Texas 75202  
T: (214)757-8099  
F: (214)746-2232  
[rh2514@att.com](mailto:rh2514@att.com)  
[www.att.com](http://www.att.com)

June 15, 2021

Ms. Talina R. Mathews  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: Filing of Interconnection Agreement

**PSC Reference 01237**

Ms. Mathews:

Please find attached to this cover letter the electronic submission of the following filing:

The Stand-Alone Structure Access Agreement between AT&T Kentucky and OpenFiber Kentucky Company, LLC d/b/a Accelecom.

This document is being electronically filed with the Commission on the date of this letter. If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Richard T. Howell", is located below the "Sincerely," text.

Richard T. Howell  
Area Manager-Regulatory Relations

Attachment

**AGREEMENT**

**BETWEEN**

**BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T KENTUCKY**

**AND**

**OPENFIBER KENTUCKY COMPANY, LLC D/B/A ACCELECOM**



Signature: eSigned - Andrew Ancone

Signature: eSigned - Kristen Shore

Name: eSigned - Andrew Ancone  
(Print or Type)

Name: eSigned - Kristen Shore  
(Print or Type)

Title: Manager  
(Print or Type)

Title: AVP Regulatory  
(Print or Type)

Date: 03 Jun 2021

Date: 03 Jun 2021

**OpenFiber Kentucky Company, LLC d/b/a  
Accelecom**

**BellSouth Telecommunications, LLC d/b/a AT&T  
KENTUCKY by AT&T Services, Inc., its authorized  
agent**

Signature: eSigned - Sam Southall

Signature: eSigned - Kristen Shore

Name: eSigned - Sam Southall  
(Print or Type)

Name: eSigned - Kristen Shore  
(Print or Type)

Title: Manager  
(Print or Type)

Title: AVP Regulatory  
(Print or Type)

Date: 03 Jun 2021

Date: 03 Jun 2021

**OpenFiber Kentucky Company, LLC d/b/a  
Accelecom**

**BellSouth Telecommunications, LLC d/b/a AT&T  
KENTUCKY by AT&T Services, Inc., its authorized  
agent**

**STAND-ALONE STRUCTURE ACCESS AGREEMENT FOR  
POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY –  
NON-FCC STATES**

## Table of Contents

1.0	INTRODUCTION AND SCOPE OF AGREEMENT .....	3
2.0	DEFINITIONS .....	4
3.0	GENERAL PROVISIONS .....	6
4.0	CONFIDENTIALITY OF INFORMATION .....	8
5.0	ACCESS TO RIGHTS-OF-WAY .....	9
6.0	SPECIFICATIONS .....	10
7.0	ACCESS TO RECORDS .....	13
8.0	APPLICATIONS, SURVEYS, ESTIMATES, AND MAKE-READY .....	14
9.0	ADDITIONAL CAPACITY .....	18
10.0	CONSTRUCTION OF ATTACHING PARTY’S FACILITIES.....	18
11.0	USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY’S FACILITIES.....	19
12.0	MODIFICATION OF ATTACHING PARTY’S FACILITIES .....	19
13.0	REQUIRED REARRANGEMENTS OF ATTACHING PARTY’S FACILITIES .....	20
14.0	EMERGENCY REPAIRS AND POLE REPLACEMENTS .....	20
15.0	AT&T INSPECTION OF ATTACHING PARTY’S FACILITIES AND NOTICE OF NON-COMPLIANCE ..	21
16.0	TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS.....	23
17.0	REMOVAL OF ATTACHING PARTY’S FACILITIES .....	24
18.0	RATES, FEES, CHARGES, AND BILLING .....	24
19.0	RADIO FREQUENCY REQUIREMENTS FOR ANY WIRELESS ATTACHMENTS.....	25
20.0	NOTICES .....	26
21.0	DISCLAIMER OF WARRANTIES.....	27
22.0	INDEMNIFICATION .....	27
23.0	LIABILITIES AND LIMITATIONS OF LIABILITY .....	28
24.0	INSURANCE.....	29
25.0	ASSIGNMENT OF RIGHTS.....	30
26.0	TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS; REMEDIES FOR BREACHES .....	31
27.0	ASSURANCE OF PAYMENT .....	32
28.0	NONPAYMENT.....	32
29.0	DISPUTE RESOLUTION .....	33

**STAND-ALONE STRUCTURE ACCESS AGREEMENT FOR  
POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY –  
NON-FCC STATES**

This Agreement is made by and between the “Parties”, identified as the AT&T Inc.-owned Incumbent Local Exchange Carriers (ILECs), as applicable: BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky, and AT&T Louisiana, Illinois Bell Telephone Company, LLC d/b/a AT&T Illinois, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio; Pacific Bell Telephone Company d/b/a AT&T California; and Southwestern Bell Telephone Company d/b/a AT&T Arkansas, hereinafter referred to as “AT&T” as defined below, only to the extent that the agent for each such AT&T Inc.-owned ILEC executes this Agreement for such AT&T Inc.-owned ILEC and only to the extent that such AT&T Inc.-owned ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below and OpenFiber Kentucky Company, LLC d/b/a Acelecom (Attaching Party), a Delaware Limited Liability Company (LLC) that asserts it is expressly entitled, under applicable federal or state law, to access Poles, Ducts, Conduits, and Rights-of-Way owned or controlled by AT&T. This agreement shall apply to the State(s) of Kentucky.

**1.0 INTRODUCTION AND SCOPE OF AGREEMENT**

- 1.1 The purpose of this Agreement is to set forth the basic rates, terms, conditions, and procedures under which Attaching Party shall have access to AT&T’s Poles, Ducts, Conduits, and Rights-of-Way. AT&T shall provide Attaching Party with nondiscriminatory access to Poles, Ducts, Conduits, and/or Rights-of-Way owned or controlled solely by AT&T, or in part by AT&T where it has the right to allow such access, as required under the applicable state law or regulations. This Agreement is intended by the parties to implement, rather than abridge or expand, their respective rights and remedies under federal and state law.
- 1.2 As used in this Agreement, “AT&T” refers to the AT&T Inc. ILECs only; AT&T Inc. is not itself a party to this Agreement.
- 1.3 Separate tariffs or agreements shall govern Attaching Party’s access, if any, to the following facilities which, if allowed, would require special security, technical, and construction arrangements. Access to these facilities is outside the scope of this Agreement.
- 1.3.1 AT&T’s central office vaults, Ducts, and Conduits which serve no purpose other than to provide a means of entry to and exit from AT&T’s central offices;
- 1.3.2 Controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and Ducts and Conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
- 1.3.3 Ducts and Conduits located within buildings owned by AT&T; and
- 1.3.4 Ducts, Conduits, equipment rooms, and similar spaces located in space leased by AT&T from third-party property owners for purposes other than to house cables and other equipment in active service as part of AT&T’s network distribution operations.
- 1.4 No Transfer of Property Rights to Attaching Party. Nothing contained in this Agreement, or any Occupancy Permit subject to this Agreement, shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other.
- 1.5 No Effect on AT&T’s Right to Abandon, Convey or Transfer Structure. Nothing contained in this Agreement, or any Occupancy Permit subject to this Agreement, shall in any way affect AT&T’s right to abandon, convey, or transfer to any other person or entity AT&T’s interest in any of AT&T’s Structure. AT&T shall give Attaching Party at least sixty (60) days’ written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such Structure is to be conveyed or transferred.
- 1.5.1 Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Attaching Party. AT&T shall have the right to grant, renew and extend rights and privileges to others not

Parties to this Agreement, by contract or otherwise, to use any Structure covered by this Agreement and Attaching Party's rights hereunder.

- 1.6 **Effective Date.** This Agreement shall be effective as of the date on which the last Party executes this Agreement, or upon approval by the commission, where applicable.
- 1.7 **Initial Term.** Unless sooner terminated as herein provided, the initial term of this Agreement shall run from the Effective Date until the end of the calendar year, which includes the Effective Date.
- 1.8 **Automatic Renewal.** Unless sooner terminated as herein provided, this Agreement shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the Effective Date.

## **2.0 DEFINITIONS**

- 2.1. **Definitions in General.** As used in this Agreement, the terms defined in this Section shall have the meanings set forth below in Sections 2.2 to 2.19, except as the context otherwise requires.
- 2.2. **AT&T Inc.** means the holding company which directly or indirectly owns the following ILECs: BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee; Illinois Bell Telephone Company, LLC d/b/a AT&T Illinois; Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; Nevada Bell Telephone Company d/b/a AT&T Nevada; The Ohio Bell Telephone Company d/b/a AT&T Ohio; Pacific Bell Telephone Company d/b/a AT&T California; Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin.
- 2.3. **Authorized Contractor.** As used in this Agreement, the term "Authorized Contractor" is used when referring to any contractor included on a list of contractors provided by AT&T and which, subject to Attaching Party's direction, control, and the requirements and policies in each state, performs facilities modification, Make-Ready Surveys, or Make-Ready Work which would ordinarily be performed by AT&T, or persons acting on AT&T's behalf. AT&T shall make available, and keep up-to-date, a reasonably sufficient list of contractors it authorizes to perform Make-Ready Surveys and Make-Ready Work in the communications space on its Poles in cases where AT&T has failed to meet the associated deadlines specified in Section 8 of this Agreement, with the following exclusions:
- 2.3.1. Any Make-Ready Work involving the rearrangement or transfer of AT&T facilities on Poles in AT&T wire center areas where AT&T employs members of the International Brotherhood of Electrical Workers System Council T-9 (IBEW T-9) or Communication Workers of America District 3 (CWA-3) shall be excluded from the Authorized Contractor Make-Ready Work provision. As applies to this Agreement, IBEW T-9 workers are employed by AT&T in portions of Illinois, and CWA-3 workers are employed by AT&T in all AT&T wire centers in Kentucky and Louisiana.
- 2.3.2. A person or entity identified as an Authorized Contractor is only an Authorized Contractor with respect to those tasks for which such person or entity has been listed and is an Authorized Contractor only in those states specified by AT&T on such list.
- 2.3.3. Designation of an Authorized Contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an Authorized Contractor for other purposes, nor shall identification of an Authorized Contractor within a single state constitute authorization of such Authorized Contractor for any other state.
- 2.4. **Conduit.** The term "Conduit" refers to tubes or structures, usually underground or on bridges, containing one (1) or more Ducts used to enclose cables, wires, and associated transmission equipment. As used in this Agreement, the term "Conduit" refers only to Conduit structures, including Ducts, and space within those structures and does not include: (a) cables and other telecommunications equipment located within Conduit structures; or (b) central office vaults, CEVs, and other AT&T structures (such as huts and cabinets) which branch off from or are connected to AT&T's Conduit.
- 2.5. **Conduit System.** The term "Conduit System" refers to any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. As used in this Agreement, the term "Conduit System" does not include: (a) cables



and other telecommunications equipment located within Conduit structures; or (b) central office vaults, CEVs, and other AT&T structures (such as huts and cabinets) which branch off from or are connected to AT&T's Conduit.

- 2.6. Duct. The term "Duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Agreement, the term "Duct" includes "innerducts" created by subdividing a Duct into smaller channels, but does not include cables and other telecommunications equipment located within such Ducts.
- 2.7. Handhole. The term "Handhole" refers to a structure similar in function to a Manhole, but which is too small for personnel to enter. As used in this Agreement, the term "Handhole" refers only to Handholes which are part of AT&T's Conduit System, and does not refer to handholes which provide access to buried cables not housed within AT&T Ducts or Conduits. As used in this Agreement, the term "Handhole" refers only to Handhole structures owned or controlled by AT&T and does not include cables and other telecommunications equipment located within Handhole structures.
- 2.8. Maintenance Duct. The term "Maintenance Duct" generally refers to a full-sized Duct (typically three inches in diameter or larger), and may include an innerduct, for use on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "Maintenance Duct" does not include Ducts and Conduits extending from an AT&T Manhole to customer premises. When only one usable full-sized Duct remains in a Conduit section, that Duct shall be deemed to be the Maintenance Duct. AT&T may elect to reserve an innerduct, in addition to the full-sized Duct, for restoration purposes, dependent on the specific circumstances in a Conduit run. Such reservations shall be communicated, as necessary, when responding to Applications for access.
- 2.9. Make-Ready Survey. The term "Make-Ready Survey," refers to the engineering review by AT&T or, when applicable, an Authorized Contractor of each submitted Application. The review includes, but is not limited to, field review, records review, and validation against the standards referenced in Section 6.2.
- 2.10. Make-Ready Work. The term "Make-Ready Work" refers to all work performed, or to be performed, to prepare AT&T's Structure and any existing related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.11. Manhole. The term "Manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in Ducts or Conduits which are parts of AT&T's Conduit System. As used in this Agreement, the term "Manhole" does not include cables and other telecommunications equipment located within Manhole structures.
- 2.12. Occupancy Permit. The term "Occupancy Permit" refers to a written instrument granting Attaching Party, or Other User, permission to install its facilities on AT&T Structure in accordance with the AT&T-approved design. With very few exceptions, all of which will be based on AT&T's approval for such exceptions, the Occupancy Permit shall be contingent on the completion of all Make-Ready Work identified in the design approved during the Make-Ready Survey phase.
- 2.13. Other User. The term "Other User" refers to an entity, other than Attaching Party, with facilities on or in AT&T Structure to which Attaching Party has obtained access. Other Users may include, but are not limited to, other attaching parties, municipalities or other governmental entities, and electric utilities.
- 2.14. Overlashing. The term "Overlashing" refers to the practice of placing an additional communications cable by lashing such cable with spinning wire over an existing cable and strand on Poles.
- 2.15. Pole. The term "Pole" refers to poles which are owned or controlled by AT&T and does not include cables and other telecommunications equipment attached to Pole structures.
- 2.16. Right(s)-of-Way. The term "Right(s)-of-Way" refers to a party's legal rights to pass over or through property owned by another party. For purposes of this Agreement, "Right(s)-of-Way" includes property owned or controlled by AT&T and used by AT&T for its telecommunications distribution facilities. Rights(s)-of-Way (ROW) do not include:
  - 2.16.1. cables and other telecommunications equipment buried or located on such ROW;
  - 2.16.2. public ROW (which are owned by and subject to the control of governmental entities); or
  - 2.16.3. any space which is owned and controlled by a third-party property owner and occupied by AT&T with permission from such owner rather than as a matter of legal right.
- 2.17. Routine Inspections. The term "Routine Inspections" refers to inspections that are planned and scheduled by AT&T,

for the purpose of inspecting the facilities of Attaching Party and others, including AT&T, on AT&T Structure.

2.18. Spot Inspections. The term “Spot Inspections” refers to spontaneous inspections done by AT&T, which may be initiated at AT&T’s discretion, for the purpose of ensuring safety and compliance with AT&T standards on specific Structure.

2.19. Structure. The term “Structure” refers collectively to Poles, Ducts, Conduits, and ROW.

### **3.0 GENERAL PROVISIONS**

3.1. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the Parties with respect to Attaching Party’s access to Structure.

3.2. Prior Agreements Superseded. This Agreement supersedes all prior agreements and understandings, except for those set forth in current 251 interconnection agreements, whether written or oral, between Attaching Party and AT&T relating to the placement and maintenance of Attaching Party’s facilities on and within AT&T’s Structure within the applicable state(s). This Agreement will terminate on the effective date of any 251 interconnection agreement between the Parties for the states covered by that interconnection agreement. If the Parties decide to continue this Agreement, this Agreement will be referenced in, and made a part of, the interconnection agreement.

3.3. Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective Pole and Conduit Occupancy Permits granted to Attaching Party shall, on the Effective Date of this Agreement, be subject to the rates, terms, conditions, and procedures set forth in this Agreement.

3.4. Responsibilities of Attaching Party. Attaching Party is responsible for the Authorized Contractor(s) or contractor(s) it selects. Subject to state-specific requirements, Authorized Contractors must be utilized to perform any of the following tasks within a specified AT&T construction district, as applicable:

3.4.1. installation of those sections of Attaching Party’s Conduits, Ducts, or innerducts, which connect to AT&T’s Conduit System;

3.4.2. the engineering analysis required for the Make-Ready Survey when Attaching Party performs a Make-Ready Survey as permitted under Section 8.10;

3.4.3. excavation work in connection with the removal of retired or inactive (dead) cables; or

3.4.4. Make-Ready Work, when Attaching Party performs the Make-Ready Work as permitted under Section 8.10.

3.5. Worker Safety. Attaching Party shall be responsible for ensuring that any employee of Attaching Party, or contractor working on Attaching Party’s behalf, has received the training necessary to safely perform any assigned work on, in, or near any AT&T Structure. Attaching Party agrees that its facilities attached to AT&T’s Structure shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction over work practices, including, but not limited to, Occupational Safety and Health Administration (OSHA).

3.6. No Waiver. The failure by either Party to take action to enforce compliance with any of the terms or conditions of this Agreement, to give notice of any breach, or to terminate this Agreement or any Occupancy Permit or authorization subject to this Agreement, shall not constitute a waiver or relinquishment of any term or condition of this Agreement, a wavier or relinquishment of the right to give notice of breach, or waiver or relinquishment of any right to terminate this Agreement.

3.7. Billing. Unless otherwise provided elsewhere in this Agreement, Attaching Party shall pay all rates and charges, as specified in this Agreement, within thirty (30) days from the dates of billing thereof. If Attaching Party wishes to dispute any amount AT&T invoiced, Attaching Party shall follow the Dispute Resolution Procedures found in Sections 28 and 29.

3.8. Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both Parties.

3.9. Survival of Obligations. Any liabilities or obligations of either Party for acts or omissions prior to the termination of this Agreement, any obligations of either Party under provisions of this Agreement relating to confidential and proprietary

information, indemnification, limitations of liability, and any other provisions of this Agreement, which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, will survive the termination of this Agreement through any applicable statute of limitations period.

- 3.10. Force Majeure. Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of nature or a public enemy, fires, floods, disputes, labor disruptions, freight embargoes, earthquakes, volcanic actions, abnormal weather conditions and preparations therefor, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform; provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other Party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.
- 3.11. Severability. If any Article, Section, subsection, or other provision or portion of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement as to either Party, the invalidity of such provision shall not render this entire Agreement unenforceable and this Agreement shall be administered as if it did not contain the invalid provision.
- 3.12. Choice of Law. Except to the extent that federal law controls any aspect of this Agreement, the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the state in which the Structure access at issue exists, applied without regard to the provisions of the state's laws relating to conflicts-of-laws.
- 3.13. Changes in the Law. The Parties agree to negotiate, in good faith, changes to this Agreement to conform to applicable changes in law pertaining to access to Structure, including the applicable state law or regulations. If, pursuant to any order of a court, or other authority, the changes in law apply immediately upon their effective date, the Parties agree the changes shall so apply, but agree to memorialize same in this Agreement as soon as practical.
- 3.14. Applicable Laws. The Parties shall at all times observe and comply with, and the provisions of this Agreement are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the Parties.
- 3.15. No Third-Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. This Agreement shall not provide any person, not a Party hereto, with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.
- 3.16. Subcontracting. If either Party retains or engages any contractor or 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 contractors or subcontractors. Each Party will be solely responsible for payments due that Party's contractors or subcontractors. No contractor or subcontractor will be deemed a third-party beneficiary for any purposes under this Agreement. No contract, subcontract, or other agreement entered into by either Party with any third party in connection with the provision of 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. Any subcontractor that gains access to Customer Proprietary Network Information (CPNI), or confidential or proprietary information covered by this Agreement, shall be required by the contracting Party to protect such CPNI or confidential or proprietary information to the same extent the contracting party is required to protect such CPNI or confidential or proprietary information under the terms of this Agreement.
- 3.17. Authority. Each person whose signature (including e.g., an electronic signature) appears on the signature page represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
- 3.18. Counterparts. 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

## 4.0 **CONFIDENTIALITY OF INFORMATION**

- 4.1 **Information Provided by Attaching Party to AT&T and by AT&T to Attaching Party.** Except as otherwise specifically provided in this Agreement, all company-specific and customer-specific information submitted by Attaching Party (Disclosing Party) to AT&T (Receiving Party) and by AT&T (Disclosing Party) to Attaching Party (Receiving Party) in connection with this Agreement (including, but not limited to, information submitted in connection with Attaching Party's Applications for Occupancy Permit and AT&T's responses) shall be deemed to be "confidential" or "proprietary" information of Disclosing Party and shall be subject to the terms set forth in this Section. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for review of records or its inquiry about AT&T facilities and AT&T's responses. This Section does not limit the use by AT&T of aggregate information relating to the occupancy and use of AT&T's Structure by firms other than AT&T (that is, information submitted by Attaching Party and aggregated by AT&T in a manner that does not directly or indirectly identify Attaching Party).
- 4.2 **Access Limited to Persons with a Need to Know.** Confidential or proprietary information provided by Attaching Party to AT&T in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 4.3-4.6.
- 4.3 **Permitted Uses of Attaching Party's Confidential Information.** Notwithstanding the provisions of Sections 4.1 and 4.2 above, AT&T, and persons acting on AT&T's behalf, may utilize Attaching Party's confidential or proprietary information for the following purposes.
- 4.3.1. posting information, as necessary, to AT&T's outside plant records;
  - 4.3.2. placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing AT&T's Structure and any AT&T facilities located on, within, or in the vicinity of such Structure;
  - 4.3.3. performing AT&T's obligations under this Agreement and similar agreements with third parties;
  - 4.3.4. determining which of AT&T's Structure are (or may in the future be) available for AT&T's own use, and making planning, engineering, construction, and budgeting decisions relating to AT&T's Structure;
  - 4.3.5. preparing cost studies;
  - 4.3.6. responding to regulatory requests for information;
  - 4.3.7. maintaining AT&T's financial accounting records; and
  - 4.3.8. complying with other legal requirements relating to Structure.
- 4.4 **Defense of Claims.** In the event of a dispute between AT&T and any person or entity, including Attaching Party, concerning AT&T's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole Attachment Act, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, AT&T may utilize confidential or proprietary information submitted by Attaching Party in connection with this Agreement as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that AT&T shall not disclose Attaching Party's proprietary or confidential information without first, at AT&T's option:
- 4.4.1. obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of Attaching Party's information;
  - 4.4.2. seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
  - 4.4.3. providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 4.5 **Response to Subpoenas, Court Orders, and Agency Orders.** Nothing contained in this Section shall be construed as

precluding AT&T or Attaching Party from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that AT&T or Attaching Party shall not disclose AT&T or Attaching Party's proprietary or confidential information without first:

- 4.5.1. obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of AT&T's or Attaching Party's information;
- 4.5.2. seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or
- 4.5.3. providing AT&T or Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

4.6 Remedies. It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Section by the Receiving Party and that the Disclosing Party shall be entitled to specific performance as a remedy for any such breach, including, but not limited to injunctive relief. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or equity to the Disclosing Party.

## 5.0 ACCESS TO RIGHTS-OF-WAY

- 5.1 To the extent AT&T has the authority to do so, AT&T grants Attaching Party a right to use any ROW for AT&T Poles, Ducts, or Conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating, and maintaining such Attaching Party's facilities on AT&T's Poles, Ducts, or Conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, ROW, license, permit, permission, certification, or franchise to construct, operate, and/or maintain its facilities on private and public property at the location of the AT&T Pole, Duct, or Conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, ROW, license, permit, permission, certification, or franchise within thirty (30) days of request by AT&T. AT&T does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.
- 5.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither Party shall restrict or interfere with the other Party's access to or right to occupy property, owned by third parties, which is not subject to the other Party's control, including property as to which either Party has access subject to non-exclusive ROW. Each Party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.
- 5.3 Access to Rights-of-Way Generally. At locations where AT&T has access to third-party property pursuant to non-exclusive ROW, AT&T shall not interfere with Attaching Party's negotiations with third-party property owners for similar access; nor with Attaching Party's access to such property pursuant to easements or other ROW obtained by Attaching Party from the property owner. At locations where AT&T has obtained exclusive ROW from third-party property owners or otherwise controls the ROW, AT&T shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits AT&T to provide such access, and provided further that if AT&T has available space that it shares with Attaching Party in such ROW or easements (e.g. for cabinets placed on or underground), Attaching Party agrees to reimburse AT&T for any documented administrative and engineering costs incurred by AT&T that are solely attributable to Attaching Party's requests for such access.
- 5.4 Third-Party Property Owners. Occupancy Permits granted under this Agreement authorize Attaching Party to place facilities in, or attach facilities to, Structure owned or controlled by AT&T but do not affect the rights of landowners to control terms and conditions of access to their property.
- 5.4.1 Attaching Party agrees that neither Attaching Party nor any persons acting on Attaching Party's behalf, including but not limited to Attaching Party's employees, agents, contractors, and subcontractors, shall engage in any conduct which damages public or private property in the vicinity of AT&T's Structure, interferes in any way with the use or enjoyment of public or private property except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including, but not limited to, a hazard or nuisance resulting from any abandonment or failure to remove Attaching Party's facilities or any construction

debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while work performed on Attaching Party's behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).

- 5.5 No Effect on Either Party's Rights to Manage its Own Facilities. This Agreement shall not be construed as limiting or interfering with either Party's rights set forth below, except to the extent expressly provided by the provisions of this Agreement or Occupancy Permits issued hereunder or by the applicable laws, rules, or regulations.
- 5.5.1 To locate, relocate, move, replace, modify, maintain, and operate its own facilities within, or attached to, AT&T's Structure at any time and in any reasonable manner which it deems appropriate to serve its end users, avail itself of new business opportunities, or otherwise meet its business needs; or
- 5.5.2 For AT&T to enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities to or in AT&T's Structure; provided, however, that any relocations, moves, replacements, modifications, maintenance, and operations or new attachments or arrangements shall not substantially interfere with Attaching Party's attachment authorized by Occupancy Permits issued pursuant to this Agreement.
- 5.6 No Right to Interfere with Facilities of Others. The provisions of this Agreement or any Occupancy Permit issued hereunder shall not be construed as authorizing either Party to rearrange or interfere in any way with any of the other Party's facilities, with the facilities of other persons or entities, or with the use of or access to such facilities by such other Party or such other persons or entities, except to the extent expressly provided by the provisions of this Agreement or any Occupancy Permit issued hereunder or by applicable laws, rules, or regulations.
- 5.7 Attaching Party acknowledges that the facilities of persons or entities other than AT&T and Attaching Party may be attached to or occupy AT&T's Structure.
- 5.8 With respect to the Structure occupied by Attaching Party or the subject of an Application for attachment by Attaching Party, AT&T will give to Attaching Party sixty (60) calendar days' written notice for Conduit extensions or reinforcements, Pole line extensions, Pole replacements, or of AT&T's intention not to maintain or use any existing Pole(s) or Conduit.
- 5.9 Where AT&T elects to abandon Structure on or within which other entities have facilities, the affected Structure will be offered to existing occupants on a first-in, first-right-to-maintain basis. The first existing occupant electing to exercise this option will be required to execute the appropriate agreement with AT&T to purchase and transfer ownership from AT&T to that existing occupant, subject to then-existing Occupancy Permits of Other User(s) pertaining to such Structure. If none of the existing occupants elects to maintain such Structure, all occupants will be required to remove their existing facilities within ninety (90) calendar days of written notice from AT&T.
- 5.10 If an emergency or provisions of an applicable joint use agreement require AT&T to construct, reconstruct, expand, or replace Poles, Conduits, or Ducts owned or controlled by AT&T and either occupied by Attaching Party or the subject of an Application for attachment by Attaching Party, AT&T will notify Attaching Party as soon as reasonably practicable of such proposed construction, reconstruction, expansion, or replacement to enable Attaching Party, if it so desires, to request that a Pole, Conduit, or Duct of greater height or capacity be utilized to accommodate an anticipated facility need of Attaching Party.
- 6.0 SPECIFICATIONS**
- 6.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to AT&T's Poles or occupying space in AT&T's Ducts, Conduits, and ROW shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified or referenced in this Agreement.
- 6.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:
- 6.2.1. the Blue Book Manual of Construction Procedures, Special Report SR-1421, published by Bell Communications Research, Inc. (Bellcore) or its successors, and sometimes referred to as the "Blue Book";
- 6.2.2. the National Electrical Safety Code (NESC), published by the Institute of Electrical and Electronic Engineers,

Inc. (IEEE);

6.2.3. the National Electrical Code (NEC), published by the National Fire Protection Association (NFPA);

6.2.4. the AT&T Structure Access Guidelines; and

6.2.5. California Public Utility Commission's General Orders 95 and 128 for attachments to AT&T Structure that exists in the State of California.

### 6.3 Requirements Relating to Personnel and Construction Procedures Generally.

6.3.1 Duct clearing, rodding, or modifications required to grant Attaching Party access to AT&T's Conduit System may be performed by AT&T at Attaching Party's expense at charges which represent AT&T's actual costs. Alternatively (at Attaching Party's option), such work may be performed by an Authorized Contractor. The Parties acknowledge that Attaching Party, its contractors, and other persons acting on Attaching Party's behalf, will perform work for Attaching Party within AT&T's Conduit System. Attaching Party represents and warrants that neither Attaching Party nor any person acting on Attaching Party's behalf shall permit any person to climb or work on any of AT&T's Poles, or to enter AT&T's Manholes, or work within AT&T's Conduit System, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Poles or the Conduit System and to perform the work safely.

6.3.2 Rodding or clearing of Ducts in AT&T's Conduit System shall be done only when specific authorization for such work has been obtained in advance from AT&T. The Parties agree that such rodding or clearing shall be performed according to existing industry standards and practices. Attaching Party may contract with AT&T for performance of such work or, at Attaching Party's option, with an Authorized Contractor.

6.3.3 Personnel performing work on AT&T's or Attaching Party's behalf in AT&T's Conduit System shall not climb on, step on, or otherwise disturb the other Party's or any Other User's cables, air pipes, equipment, or other facilities located in any Manhole or other part of AT&T's Conduit System.

6.3.4 All of Attaching Party's facilities shall be firmly secured and supported in accordance with industry standards as referred to in Section 6.2 above.

6.3.5 Artificial lighting, when required, will be provided by Attaching Party. Only explosion-proof lighting fixtures shall be used.

6.3.6 Upon request and at Attaching Party's expense, AT&T shall remove any retired cable from Conduit Systems to allow for the efficient use of Conduit space within a reasonable period of time. AT&T retains salvage rights on any cable removed. In order to safeguard its Structure and facilities, AT&T reserves the right to remove retired cables and is under no obligation to allow Attaching Party the right to remove such cables. Notwithstanding anything to the contrary in this Agreement or in any other agreement, based on sound engineering judgment and at AT&T's sole discretion, there may be situations where it would neither be feasible nor practical to remove retired cables, in which case they shall not be removed

### 6.4 Additional Electrical Design Specifications. Attaching Party agrees that, in addition to specifications and requirements referred to in Section 6.2 above, Attaching Party's facilities placed in AT&T's Conduit System shall meet all of the following electrical design specifications.

6.4.1 No facility shall be placed in AT&T's Conduit System in violation of Federal Communications Commission (FCC) regulations.

6.4.2 Attaching Party's facilities carrying more than fifty (50) volts AC root mean square (rms) to ground or one hundred thirty-five (135) volts DC to ground shall be enclosed in an effectively grounded sheath or shield.

6.4.3 No coaxial cable of Attaching Party shall occupy a Conduit System containing AT&T's cable unless such cable meets the voltage limitations of Article 820 of the NEC.

6.4.4 Attaching Party's coaxial cable may carry continuous DC voltages up to one thousand eight hundred (1800) volts to ground where the conductor current will not exceed one-half (1/2) ampere and where such cable has two (2) separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer

sheath shall not exceed two hundred (200) microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

6.4.5 Neither Party shall circumvent the other Party's corrosion mitigation measures. Each Party's new facilities shall be compatible with the other Party's facilities so as not to damage any facilities of the other Party by corrosion or other chemical reaction.

6.5 Additional Physical Design Specifications. Attaching Party's facilities placed in AT&T's Conduit System must meet all of the following physical design specifications.

6.5.1 Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in AT&T's Conduit or Ducts

6.5.2 The integrity of AT&T's Conduit System and overall safety of AT&T's personnel and other personnel working in AT&T's Conduit System requires that dielectric cable be placed when Attaching Party's cable utilizes an alternative Duct or route that is shared in the same trench by any current-carrying facility of a power utility.

6.5.3 New construction splices in Attaching Party's fiber optic and twisted pair cables may be located in AT&T's Manholes or Handholes only when, in AT&T's sole judgment: (a) there is sufficient space available; and (b) placing splice cases outside of AT&T's Manholes or Handholes is unreasonable in light of the cost and feasibility. In those cases, AT&T may, in its sole discretion, permit Attaching Party to place new construction splices in AT&T's Conduit System at a location to be determined by AT&T. In no event are any splice points allowed in AT&T's Conduit or Ducts.

6.5.4 Attaching Party will be permitted to connect its Conduit or Duct only at an AT&T Manhole. No attachment will be made by entering or breaking into Conduit between Manholes. All necessary work to install Attaching Party facilities will be performed by Attaching Party, or its contractor, at Attaching Party's expense. In no event shall Attaching Party, or its contractor, "core bore" or make any other modification to AT&T Manhole(s) without the prior written approval of AT&T.

6.5.5 If Attaching Party constructs or utilizes a Duct connected to AT&T's Manhole, the Duct and all connections between that Duct and AT&T's Manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into AT&T's Conduit System. If Attaching Party's Duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into AT&T's Conduit System

6.6 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of AT&T's Manholes and access to AT&T's Conduit System. The opening of AT&T's Manholes shall only be permitted after notification by Attaching Party, and the subsequent approval by AT&T's authorized employee or agent, which approval shall not be unreasonably delayed or withheld.

6.6.1 Attaching Party will notify AT&T not less than five (5) business days in advance before entering AT&T's Conduit System to perform non-emergency work operations. Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed.

6.6.2 An authorized employee or representative of AT&T may be present any time when Attaching Party, or personnel acting on Attaching Party's behalf, enter or perform work within AT&T's Conduit System. Attaching Party must notify AT&T when Attaching Party has completed such work in the Conduit System. If AT&T is not available when Attaching Party notifies AT&T of completion of the facility installation in AT&T's Conduit System, then AT&T may perform a post-construction inspection as described in Section 15.1. Attaching Party shall reimburse AT&T for costs associated with the presence of AT&T's authorized employee or representative.

6.6.3 Each Party, when desiring to enter Manholes, must obtain any necessary authorization from the appropriate authorities prior to opening Manholes. Additionally, each Party is responsible, as the Party desiring entry, to comply with all applicable laws, regulations, and safety requirements including, but not limited to, traffic control, warning devices, and Manhole purging and venting.



- 6.7 Compliance with Environmental Laws and Regulations. AT&T makes no representations to Attaching Party, or personnel performing work on Attaching Party's behalf, that AT&T's Structure, or any specific portions thereof, will be free from environmental contaminants at any particular time. Attaching Party agrees to establish appropriate procedures and controls to assure compliance with all applicable environmental laws and regulations including, but not limited to:
- 6.7.1 Attaching Party acknowledges that some of AT&T's Conduit was fabricated from asbestos-containing materials. Such Conduit is generally marked with a designation of "C Fiber Cement Conduit," "Transite," or "Johns-Manville." Until proven otherwise, Attaching Party will presume that all Conduits not fabricated of plastic, tile, or wood are asbestos-containing and will handle pursuant to all applicable regulations relating to worker safety and protection of the environment.
- 6.7.2 Attaching Party's facilities shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq*), the Toxic Substance Control Act (15 U.S.C. §§ 2601 *et seq*), the Clean Water Act (33 U.S.C. §§ 1251 *et seq*), and the Safe Drinking Water Act (42 U.S.C. §§ 300f- 300j).\
- 6.7.3 All persons acting on Attaching Party's behalf, including but not limited to Attaching Party's employees, agents, contractors, and subcontractors, shall, when working on, within, or in the vicinity of AT&T's Structure, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 6.7.4 Neither Attaching Party nor personnel performing work on Attaching Party's behalf shall discharge water or any other substance from any AT&T Manhole or other part of the Conduit System onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with industry standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. No such waste material shall be deposited on AT&T premises for storage or disposal
- 6.8 Compliance with Other Governmental Requirements. Attaching Party agrees that its facilities attached to AT&T's Structure shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. Attaching Party shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation. Attaching Party shall establish appropriate procedures and controls to assure such compliance by all persons acting on Attaching Party's behalf, including but not limited to, Attaching Party's employees, agents, contractors, and subcontractors
- 6.9 Identification of Personnel Authorized to Have Access to Attaching Party's Facilities. All personnel authorized to have access to Attaching Party's facilities shall, while working on or in AT&T Structure or in the vicinity of AT&T Structure, carry with them suitable identification and produce such identification upon the request of any AT&T employee or person acting on AT&T's behalf
- 7.0 ACCESS TO RECORDS**
- 7.1 AT&T will, upon request and at the expense of Attaching Party, provide Attaching Party electronic copies, either via e-mail or in person, of redacted records relating to the location of AT&T's Structure regarding a specific Attaching Party service need, i.e. start location to end location (A to Z) or a five hundred (500) foot radius from a specific address. Upon request, AT&T will meet with Attaching Party to clarify matters relating to records or additional information, such as capacity or utilization. AT&T does not warrant the accuracy or completeness of information on any maps or records.
- 7.2 Records and information are and remain the proprietary property of AT&T, are provided for Attaching Party's review solely for enabling Attaching Party to obtain access to AT&T's Structure, and may not be resold, reproduced, or disseminated by Attaching Party.
- 7.3 AT&T may provide for viewing only, if available, information currently on AT&T's records regarding:
- 7.3.1 the street addresses for Manholes and Poles, as shown on AT&T's records;

- 7.3.2 the footage between Manholes or lateral Ducts' lengths, as shown on AT&T's records;
  - 7.3.3 the footage between Poles, if shown on AT&T's records;
  - 7.3.4 the total capacity of the Structure, as available on AT&T's records; and/or
  - 7.3.5 the existing utilization of the Structure, as depicted on AT&T's records.
- 7.4 AT&T will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by AT&T.
- 7.5 Charges associated with record preparation, viewing, and assistance will be on a time, including all applicable overheads, and material basis. The charges estimated by AT&T shall be payable prior to Attaching Party receiving the records. If such records review is not in conjunction with a specific Application, subsequent to Attaching Party viewing records, AT&T shall true up the estimate, as compared to actual costs, and issue either a refund or additional invoice to Attaching Party.

## **8.0 APPLICATIONS, SURVEYS, ESTIMATES, AND MAKE-READY**

- 8.1. Occupancy Permits Required. Attaching Party shall apply in writing for, and receive, an Occupancy Permit before attaching facilities to specified AT&T Poles or placing facilities within specified AT&T Ducts, Conduits, or ROW.
- 8.2. Structure Access Request Form (Application). To apply for an Occupancy Permit under this Agreement, Attaching Party shall submit to AT&T the appropriate AT&T Application with prepayment of any estimated expenses, as identified on the Application. Additionally, Attaching Party shall provide required information as listed on the Application form, so that AT&T can perform the Make-Ready Survey. Attaching Party shall promptly withdraw its Application if at any time it has determined that it no longer seeks access to specific AT&T Structure, though Attaching Party shall still be responsible for all expenses incurred by AT&T relative to the withdrawn Application.
- 8.3 Cooperation in the Application Process. The orderly processing of Applications submitted by Attaching Party and other parties seeking access to AT&T's Structure requires good faith cooperation and coordination between AT&T's personnel and personnel acting on behalf of Attaching Party and other parties seeking access. The Parties therefore agree to the following procedures which shall remain in effect during the term of this Agreement unless earlier modified by mutual agreement of the Parties.
- 8.3.1 Before submitting a formal written Application for access to AT&T's Structure, Attaching Party shall make a good faith determination that it actually plans to attach facilities to, or place facilities within, the Poles, Ducts, Conduits, or ROW specified in the Application. Applications shall not be submitted for the purpose of holding or reserving space which Attaching Party does not plan to use, or for the purpose of precluding AT&T or any other eligible entity from using such AT&T Structure.
  - 8.3.2 No more than twenty (20) Manholes shall be the subject of any single Conduit Occupancy Permit Application. Although timelines for Estimates and Make-Ready Work in this Section 8 shall not apply to Conduit access requests, AT&T shall endeavor to process all Conduit occupancy requests, including any associated Make-Ready Work, as quickly as practical.
  - 8.3.3 Each Application shall designate an employee as Attaching Party's single point of contact for any and all purposes of that Application under this Section, including, but not limited to, processing Occupancy Permits and providing records and information. Attaching Party may at any time designate a new point of contact by giving written notice of such change while the Application is open.
  - 8.3.4 All Applications, including those submitted by third parties, will be processed on a first-come, first-served basis.
  - 8.3.5 When Attaching Party has multiple Applications on file with AT&T, Attaching Party may identify specific Application(s) to be prioritized. However, prioritizing any Application(s) will result in the tolling of the clock for all Applications submitted prior to the prioritized Application(s). Upon completion of the prioritized Application's Survey and/or Make-Ready Work, the timeline will resume for the Applications submitted prior to the prioritized Application(s).
  - 8.3.6 If Attaching Party desires to modify an Application after AT&T has acknowledged it as complete, such

Application must be cancelled, and Attaching Party must submit a new, updated Application. The new Application will consequently fall in line, as referenced in Section 8.3.4 above, based on the acknowledgement date of the new complete Application.

- 8.4 Make-Ready Survey (Survey). Upon receipt of a complete Application, which includes Attaching Party's payment of the estimated Survey costs, AT&T shall schedule the Survey, which shall be completed by AT&T with a response to Attaching Party within forty-five (45) days. In the case of large requests, as defined in Section 8.8.2, AT&T shall respond within sixty (60) days. The primary purposes of the Survey will be to enable AT&T to:
- 8.4.1 determine whether and where attachment is feasible based on capacity, safety, reliability, and generally applicable engineering purposes;
  - 8.4.2 confirm or determine the modifications, capacity expansion (*i.e.*, taller or stronger Pole), and Make-Ready Work, if any, necessary to accommodate Attaching Party's attachment of facilities to AT&T Structure;
  - 8.4.3 plan and engineer the facilities modification, capacity expansion (*i.e.*, taller or stronger Pole), and Make-Ready Work, if any, required to prepare AT&T's Structure, and associated facilities for Attaching Party's proposed attachments or occupancy;
  - 8.4.4 if applicable, identify the owner of the Pole; and
  - 8.4.5 respond to Attaching Party within the required timeframe with the preceding information.
- 8.5 Selection of Space. AT&T will select, or approve Attaching Party's selection of, the space Attaching Party will occupy on AT&T's Poles or in AT&T's Conduit Systems. Such an assignment or approval by AT&T, which includes any modifications to Attaching Party's design by AT&T, shall constitute an approval of the associated Application. Maintenance Ducts shall not be considered available for Attaching Party's use except as specifically provided elsewhere in this Agreement. Where required by law or franchise agreement, Ducts and attachment space on Poles reserved for municipal use shall not be considered available for Attaching Party's use. All other Ducts, innerducts, space on Poles or space in ROW, which are not assigned or occupied, shall be deemed available for use by AT&T, Attaching Party, and other parties entitled to access under applicable law or executed agreements with AT&T.
- 8.5.1 AT&T will assign the approved Pole, Duct, or Conduit space to Attaching Party for a pre-occupancy period not to exceed twelve (12) months, with the following exception:
    - 8.5.1.1 State of California. The Pole, Duct, or Conduit space selected and/or approved by AT&T in such Application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months as detailed by the California Public Utility Commission.
  - 8.5.2 If Attaching Party does not occupy the assigned space within the twelve (12) or nine (9) month period, the assignment will lapse, and the space will be considered available for use by AT&T or Other User. Prior to the expiration of the twelve (12) or nine (9) month period, Attaching Party may submit a request for an extension of time based on a thorough explanation of delays outside Attaching Party's control. AT&T shall carefully consider the circumstances of any specific request and will not unreasonably withhold or deny an extension.
  - 8.5.3 AT&T may assign space to itself by making appropriate entries in the same records used to log space assignments to Attaching Party and Other Users. If AT&T assigns Pole, Duct, or Conduit space to itself, such assignment will automatically lapse twelve (12) months (nine months in California) after the date the assignment has been entered into the appropriate AT&T record, if AT&T has not occupied such assigned space within such twelve (12) or nine (9) month period. Prior to the expiration of the twelve (12) month period, AT&T may apply an extension when delays outside of its control preclude its ability to occupy the assigned space within such timeframe.
  - 8.5.4 Attaching Party's obligation to pay Pole attachment or Conduit occupancy fees will commence on the date the space assignment is made by AT&T to Attaching Party.
- 8.6 Estimate and Acceptance of Estimate. AT&T shall present to Attaching Party, no more than fourteen (14) days after providing the response required by Section 8.4, an estimate of charges directly associated with performing all necessary Make-Ready Work identified during the Survey and involving AT&T-owned facilities (*i.e.* Pole replacements and subsequent transfer of AT&T-owned cable or AT&T cable rearrangements). In situations where Attaching Party

utilizes an Authorized Contractor to perform the Survey, and AT&T elects to use such Survey results, AT&T will provide this estimate no more than fourteen (14) days after AT&T has received such Survey result.

- 8.6.1 In addition, AT&T shall provide a description of Make-Ready Work required of Other Users to accommodate Attaching Party's proposed attachment(s). Attaching Party shall be responsible for negotiating methods and timing of payments to Other Users by Attaching Party, as identified in Section 8.7.3.
- 8.6.2 AT&T may withdraw an outstanding estimate of charges to perform Make-Ready Work beginning fourteen (14) days after presentation of the estimate to Attaching Party. If Attaching Party does not pay estimate of charges within forty-five (45) calendar days after its presentation, AT&T reserves the right to cancel the Application.
- 8.6.3 Attaching Party may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.
- 8.6.4 Survey Billing - no Make-Ready Work. Immediately following completion of the Survey, AT&T shall true up the billing for costs associated with an Application by comparing estimated to actual costs, and issue either an invoice for the additional costs or refund for the overpayment. In this case, AT&T shall issue the associated Occupancy Permit upon completion of the Survey.
- 8.6.5 Survey Billing with Make-Ready Work. The true-up of estimated to actual Survey costs shall occur upon completion of Make-Ready Work by AT&T and shall be incorporated with the true-up of estimated to actual Make-Ready Work costs.

8.7 Make-Ready Work. For Non-OTMR, upon receipt of payment(s) specified in Section 8.6, AT&T shall notify immediately and in writing Attaching Party and all known Other Users that may be affected by the Make-Ready Work required for Attaching Party's attachment(s).

- 8.7.1 The notice shall:
  - 8.7.1.1 Specify the location and type of Make-Ready Work to be performed;
  - 8.7.1.2 For Pole attachments in the communications space, set a date for completion of Make-Ready Work no later than thirty (30) days after notification is sent (or seventy-five (75) days in the case of larger orders as specified in Section 8.8);
  - 8.7.1.3 For Pole attachments above the communications space, set a date for completion of Make-Ready Work no later than ninety (90) days after notification is sent [or one hundred thirty-five (135) days in the case of larger orders as specified in Section 8.8];
  - 8.7.1.4 State that any entity with an existing attachment may modify the attachment consistent with the specified Make-Ready Work before the date set for completion
  - 8.7.1.5 For Pole attachments, state that AT&T may assert its right to fifteen (15) additional days to complete Make-Ready Work should any Other User(s) fail to complete within the prescribed timeframe.
  - 8.7.1.6 For Pole attachments in the communications space, state that if Make-Ready Work is not completed by the completion date set by AT&T, Attaching Party may utilize an Authorized Contractor to complete the specified Make-Ready Work;
  - 8.7.1.7 For Conduit and Ducts, set a date for completion of Make-Ready Work based upon the amount and complexity of work required; and
  - 8.7.1.8 State the name, telephone number, and e-mail address of a person to contact for more information about the Make-Ready Work procedure.
- 8.7.2 Make-Ready Work performed by Attaching Party, or by an Authorized Contractor selected by Attaching Party, shall be performed in accordance with AT&T's specifications and in accordance with the same standards and practices followed by AT&T or AT&T's contractors. Any proposed deviations from the Make-Ready Work design provided by AT&T must be approved and authorized in writing by AT&T prior to implementation. Neither Attaching Party nor Authorized Contractors selected by Attaching Party shall conduct such work in

any manner which degrades the integrity of AT&T's Structure or interferes with any existing use of AT&T's facilities or the facilities of any Other User.

8.7.2.1 If Make-Ready Work is completed by Attaching Party or its Authorized Contractor, Attaching Party shall notify AT&T upon completion.

8.7.3 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. While AT&T shall be responsible for notifying Other Users pursuant to this Section, Attaching Party shall make arrangements with Other Users regarding reimbursement for any expenses incurred by Other Users in transferring or rearranging Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in AT&T's Structure.

8.7.4 True-Up of Estimated to Actual Costs for AT&T Facility Make-Ready Work. Upon completion of Make-Ready Work, AT&T shall true up AT&T's estimated costs for all aspects of the associated Application and issue either an invoice for the additional costs or refund for the overpayment. Attaching Party shall be responsible for negotiating actual cost billing, if desirable, with Other Users.

8.8 Timelines. The following timelines shall apply:

8.8.1 AT&T shall apply the timeline described in Sections 8.4, 8.6, and 8.7 to all Attaching Party Applications for Pole attachment when the sum of Poles, on the current Application and those received from Attaching Party during the preceding thirty (30) days, does not exceed the lesser of three hundred (300) Poles or one-half (0.5) percent of AT&T's Poles in the applicable state.

8.8.2 AT&T may add fifteen (15) days to the Survey period described in Section 8.4, for all Applications from Attaching Party when the sum of Poles on Attaching Party Applications, current and received within the preceding thirty (30) days, exceeds the limits described in Section 8.8.1 but is smaller than the lesser of three thousand (3,000) Poles or five (5) percent of AT&T's Poles in the applicable state. Furthermore, under these circumstances AT&T may add forty-five (45) days to the Make-Ready Work period described in Section 8.7.

8.8.3 AT&T shall negotiate in good faith the timing when the sum of Poles on Attaching Party Applications, including the current Application and those received during the preceding thirty (30) days, for Pole attachment exceed the lesser of 3,000 Poles or five (5) percent of AT&T's Poles in the applicable state.

8.8.4 In the State of California Only. Make-Ready Work performed by AT&T must be completed within thirty (30) business days of receipt of advance payment from Attaching Party, provided that such a timeframe is not inconsistent with applicable legal, safety, and reliability requirements. For all requests with more than five hundred (500) Poles or five (5) miles of Conduit, the timeline for requests for information, as well as Make-Ready Surveys and Make-Ready Work completed by AT&T, shall be negotiated by the Parties in order to establish a mutually satisfactory timeframe. Alternatively, Attaching Party may utilize Authorized Contractors to complete the Make-Ready Survey and AT&T's required Make-Ready Work with notice to, and approval from, AT&T.

8.9 Deviation by AT&T. AT&T may deviate from the time limits specified in this Section 8:

8.9.1 Before offering an estimate of charges, if the Parties have no Agreement specifying the rates, terms, and conditions of attachment.

8.9.2 During performance of Make-Ready Work for good and sufficient cause that renders it infeasible for AT&T to complete the Make-Ready Work within the prescribed timeframe. If so, AT&T shall immediately notify, in writing, Attaching Party and affected Other Users with existing attachments on the affected Poles, and shall include the reason for and date and duration of the deviation. AT&T shall deviate from the time limits specified in this Section 8 for a period no longer than necessary and shall resume Make-Ready Work performance without discrimination when it returns to routine operations.

8.10 Deviation by Attaching Party – Self-Help Remedies. Allowable deviations by Attaching Party with respect to this Section 8:

8.10.1 If AT&T fails to respond as specified in Section 8.4, Attaching Party may hire an Authorized Contractor to complete the Make-Ready Survey. Attaching Party shall provide AT&T the results of the Make-Ready Survey

in order for AT&T to approve the Application and provide an Estimate

- 8.10.2 When Make-Ready Work is not completed by the date specified under Section 8.7.1.2 notice, and is not excluded from the Authorized Contractor process under Section 2.3.1, Attaching Party may hire an Authorized Contractor to complete such Make-Ready Work.
- 8.10.3 When Make-Ready Work is not completed by the date specified under Section 8.7.1.2 notice, and is excluded from the Authorized Contractor process under Section 2.3.1, AT&T and Attaching Party will work together to reach an equitable solution for both Parties.
- 8.10.4 If Attaching Party hires an Authorized Contractor for purposes specified in this Section, it shall choose from among AT&T's published list of Authorized Contractors. If Attaching Party hires an Authorized Contractor for the Make-Ready Survey or Make-Ready Work, it shall provide AT&T with a reasonable opportunity for an AT&T representative to accompany and consult with the Authorized Contractor and Attaching Party.
- 8.11 Occupancy Permit and Attachment. After all required Make-Ready Work is completed and, as required under Section 8.7.2.1, notification by Attaching Party, AT&T will issue an Occupancy Permit confirming that Attaching Party may attach specified facilities to AT&T's Structure. Alternatively, in the absence of any Make-Ready Work requirements, the Occupancy Permit shall be issued upon approval of the Application, which is coincident with completion of the Survey.
- 8.12 Except as expressly stated to the contrary in individual Occupancy Permits issued hereunder, each Occupancy Permit issued pursuant to this Agreement shall incorporate all terms and conditions of this Agreement, whether or not such terms or conditions are expressly incorporated by reference on the face of the Occupancy Permit itself.

## **9.0 ADDITIONAL CAPACITY**

- 9.1 Reimbursement for the Creation of Additional Capacity. If Attaching Party utilizes space or capacity on any AT&T Structure that was created by a modification paid for by AT&T or Other User after February of 1996 and such modification rendered possible Attaching Party's attachment, Attaching Party shall pay its pro-rata share of the modification to the party or parties that paid for the modification when requested by AT&T or Other User. Such pro-rata share shall be calculated at the depreciated value of the Structure that was modified, provided that AT&T or the Other User that shared in the cost of such modification has records detailing the cost of the modification and the current depreciated value of the Structure created by the modification.
- 9.2 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of Make-Ready Work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to AT&T for the use of such additional capacity. If AT&T utilizes additional space or capacity created at Attaching Party's expense, AT&T will reimburse Attaching Party on a pro-rata basis for AT&T's share, if any, of Attaching Party's capacity expansion at the depreciated value of the Structure that was modified, to the extent reimbursement is required by applicable rules, regulations, and commission orders. In order to potentially qualify for such reimbursement, Attaching Party must provide records detailing the costs of the additional capacity, calculated in a way that is reasonable in light of the full costs of the Make-Ready Work. AT&T shall not be required to collect or remit any such amounts to Attaching Party to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.

## **10.0 CONSTRUCTION OF ATTACHING PARTY'S FACILITIES**

- 10.1 Responsibility for Attaching and Placing Facilities. Attaching Party shall be solely responsible for the actual attachment of its facilities to AT&T's Poles and/or the placement of such facilities in AT&T's Ducts, Conduits, and ROW and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 10.2 Construction Schedule. After the issuance of an Occupancy Permit, Attaching Party shall provide AT&T with a construction schedule and thereafter keep AT&T informed of anticipated changes in the construction schedule.
- 10.3 Attachment Position. The approved Application shall specify the point of attachment at each Pole to be occupied by Attaching Party's facilities, and, generally, such Attaching Party's facilities shall be attached above AT&T's facilities. When the facilities of more than one applicant are involved, AT&T will attempt, to the extent practicable, to designate the same relative position on each Pole for each applicant's facilities.

- 10.4 AT&T will evaluate and approve in its sole discretion, on an individual case basis, the location of certain Pole-mounted equipment, such as cabinets, amplifiers and wireless equipment including, but not limited to, antennas. The approval and location of such attachments are dependent upon factors including, but not limited to, climbing space requirements and the types of existing attachments.
- 10.5 In the event Attaching Party proposes to deviate from the installation design provided or approved by AT&T during the Application process, any such proposed deviations must be approved and authorized in writing by AT&T prior to implementation.
- 10.6 Completion of Attaching Party's Construction. For each Attaching Party attachment to or in AT&T's Structure, Attaching Party will provide to AT&T a notice indicating the completion of construction of its attachment in accordance with the AT&T-approved Application within twenty (20) calendar days of Attaching Party's construction complete date. Make-Ready Work completion notifications, if applicable, are separate and described in Section 8.7.2.1.

## **11.0 USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES**

- 11.1 Routine Maintenance of Attaching Party's Facilities. Each Occupancy Permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within AT&T's Structure. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's Occupancy Permit. Notwithstanding the foregoing, Attaching Party may Overlash its facilities in accordance with applicable safety specifications, as necessary, without approval from, but with notice to, AT&T.
- 11.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance Ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed thirty (30) days) non-emergency maintenance or repair activities by any entity with facilities in the Conduit section in which the Maintenance Duct is located; provided, however, that use of the Maintenance Duct for non-emergency maintenance and repair activities must be scheduled by AT&T. A person or entity using the Maintenance Duct for non-emergency maintenance or repair activities shall immediately notify AT&T of such use and must either vacate the Maintenance Duct within thirty (30) days or, with AT&T's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one (1) full-sized replacement Maintenance Duct (or, if the designated Maintenance Duct was an innerduct, a suitable replacement innerduct) is available for use by all occupants in the Conduit section within thirty (30) days after such person or entity occupies the Maintenance Duct. Cables temporarily placed in the Maintenance Duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies, which may occur while the Maintenance Duct is occupied.
- 11.3 Attaching Party shall maintain its facilities in accordance with the provisions of this Section (including but not limited to all requirements set forth in this Agreement) and all Occupancy Permits issued hereunder. Attaching Party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of Attaching Party's facilities, and for directing the activities of all persons acting on Attaching Party's behalf while they are physically present on or in AT&T's Structure or in the immediate vicinity of AT&T's Structure.

## **12.0 MODIFICATION OF ATTACHING PARTY'S FACILITIES**

- 12.1 Notification of Planned Modifications. Attaching Party shall notify AT&T in writing at least sixty (60) days prior to adding to, relocating, replacing, or otherwise modifying its facilities already attached to an AT&T Structure. The notice shall contain sufficient information to enable AT&T to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present Occupancy Permit or requires a new or amended Occupancy Permit.
- 12.2 Replacement of Facilities and Overlapping Additional Cables. Attaching Party may replace existing facilities with new facilities of the same or lesser weight, occupying the same AT&T Structure, and may Overlash additional cables to its own existing facilities without approval from, but with notice to, AT&T. Attaching Party shall notify AT&T of any Make-Ready Work necessary to accommodate Attaching Party's Overlapping.
- 12.3 Attaching Party shall provide at least sixty (60) days' advance notice prior to any Overlapping that it conducts or permits,

and warrants that any Overlapping Attaching Party conducts or permits (via a third party or contractor), shall meet the following requirements: (1) the Overlapping complies with the standards referenced in this Agreement; (2) Attaching Party has computed the Pole loading with the additional Overlashed facility, and the Pole will not be overloaded with the addition of the Overlashed facility; (3) Attaching Party has determined that no Make-Ready Work is necessary to accommodate the Overlashed facility, or will ensure that any Make-Ready Work necessary will be conducted before the Overlapping occurs. Such notice shall include a map indicating the affected Poles and applicable engineering information, including the Pole loading calculations. Attaching Party agrees to indemnify AT&T should any of the preceding warranties be breached.

12.3.1 Before allowing any Overlapping of Attaching Party's facilities with an Other User's facilities, Attaching Party shall ensure such Other User has an executed agreement with AT&T for Structure access.

### **13.0 REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES**

13.1. Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with AT&T and Other Users in making rearrangements to AT&T Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the Parties in accordance with then applicable law.

13.2. Except for emergencies, and routine maintenance, AT&T shall give Attaching Party not less than sixty (60) days' prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this Section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, AT&T will rearrange those facilities at Attaching Party's expense. In no event shall AT&T be liable to Attaching Party or Other User for damages or other harm caused by, or in connection with, any such AT&T rearrangement, except to the extent caused by AT&T's negligence.

### **14.0 EMERGENCY REPAIRS AND POLE REPLACEMENTS**

14.1. Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each Party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such Party to make such repairs.

14.1.1 Nothing contained in this Agreement shall be construed as requiring either Party to perform any repair or service restoration work of any kind with respect to the other Party's facilities or the facilities of Other Users.

14.1.2 Maintenance Ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the Conduit section in which the Maintenance Duct is located; provided, however, that an entity using the Maintenance Duct for emergency repair activities will notify AT&T within twelve (12) hours of the current business day (or first business day following a non-business day) that such entity is entering the AT&T Conduit System and using the Maintenance Duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance Ducts will be used to restore the highest priority services, as defined in Section 14.3, first. Existing spare Ducts may be used for restoration purposes providing the spare Ducts are restored after restoration work is complete. Any spare Ducts not returned will be assigned to the user of the Duct and an Occupancy Permit issued.

14.1.3 Attaching Party shall either vacate the Maintenance Duct within thirty (30) days or, with AT&T's consent, rearrange its facilities to ensure that at least one (1) full-sized replacement Maintenance Duct (or, if the designated Maintenance Duct was an innerduct, a suitable replacement innerduct) is available for use by all occupants in the Conduit section within thirty (30) days after Attaching Party occupies the Maintenance Duct. If Attaching Party fails to vacate the Maintenance Duct as described above, AT&T may install a maintenance Conduit at Attaching Party's expense.

14.2. Designation of Emergency Repair Coordinators and Other Information. For each AT&T construction district, Attaching Party shall provide AT&T with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's facilities and shall thereafter notify AT&T of changes to such information.



- 14.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, AT&T, Attaching Party, and Other Users shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.
- 14.3.1 Emergency service restoration work requirements shall have the highest precedence.
- 14.3.2 Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security, and hospital lines) shall be given the highest priority and temporary occupancy of the Maintenance Duct (and, if necessary, other unoccupied Ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the work site, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.
- 14.3.3 AT&T shall determine the order of precedence of work operations and assignment of Duct space in the Maintenance Duct (and other unoccupied Ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by AT&T on a nondiscriminatory basis in accordance with the principles set forth in this Section.
- 14.4 Emergency Pole Replacements.
- 14.4.1 When emergency Pole replacements are required, AT&T shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.
- 14.4.2 If notified by AT&T that an emergency exists which will require the replacement of a Pole, Attaching Party shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an AT&T replacement Pole, the transfer shall be in accordance with AT&T's placement instructions.
- 14.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise AT&T and thereby authorize AT&T (or any Other User sharing the Pole with AT&T) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf at Attaching Party's expense.
- 14.5 Expenses Associated with Emergency Repairs. Each Party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency Pole replacements made in accordance with the provisions of this Section.
- 14.5.1 Each Party shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such Party's facilities.
- 14.5.2 Attaching Party shall reimburse AT&T for the costs incurred by AT&T for work performed by AT&T on Attaching Party's behalf in accordance with the provisions of this Section.
- 14.6 Pole Replacements for Other than Emergencies. AT&T shall give Attaching Party not less than sixty (60) days' prior written notice of the need for Attaching Party to transfer its facilities as the result of Pole replacements for reasons other than emergencies and routine maintenance. The notice shall state the date by which such transfers are to be completed. Attaching Party shall complete such transfers within the time prescribed in the notice. If Attaching Party does not transfer facilities within the noted time, AT&T, at its sole discretion, may complete those facility transfers at Attaching Party's expense. For non-OTMR-initiated Pole replacements, after notification deadline lapses, Other User may complete associated facility transfers using an Authorized Contractor at Other User's expense. In no event shall AT&T be liable to Attaching Party for damages or other harm caused by or in connection with any such transfers completed by AT&T or Other User, except to the extent caused by AT&T's gross negligence.

**15.0 AT&T INSPECTION OF ATTACHING PARTY'S FACILITIES AND NOTICE OF NON-COMPLIANCE**

- 15.1 Post-Construction Inspections. AT&T may, at AT&T's sole discretion and at Attaching Party's expense, conduct a post-construction inspection of Attaching Party's attachment of facilities to or in AT&T's Structure. This type of inspection shall be conducted for the sole purpose of determining the conformance of the attachment(s) to the Occupancy Permit(s) and standards identified in Section 6. AT&T will endeavor to notify Attaching Party of proposed date and time prior to the post-construction inspection, so that Attaching Party may accompany AT&T on the post-construction inspection. Findings of nonconformance shall be communicated by AT&T to Attaching Party as soon as practical.
- 15.2 Right to Make Routine or Spot Inspections. AT&T shall have the discretionary right, but not the obligation, to make Routine or Spot Inspections of all facilities attached to AT&T's Structure to help ensure compliance with the terms and conditions of the applicable agreements. AT&T will give Attaching Party advance notice of Routine Inspections involving Attaching Party facilities.
- 15.3 Cost of Routine or Spot Inspection. With the exception of any state law or regulation providing otherwise, if Attaching Party's facilities are found to be in compliance with this Agreement, there will be no charges incurred by Attaching Party for the Routine or Spot Inspection. However, if Attaching Party's facilities are found not in compliance with this Agreement, AT&T may charge Attaching Party for the cost of the Routine Inspection, as applicable to the particular item of Structure with the noncompliant attachment.
- 15.4 Notice of Noncompliance. If, pursuant to a post-construction, Routine, or Spot Inspection, AT&T determines that Attaching Party's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Agreement, AT&T may send notice to Attaching Party specifying the alleged noncompliance. Attaching Party will acknowledge receipt of the notice as soon as practicable.
- 15.5 Disputes over Alleged Noncompliance. If Attaching Party disputes AT&T's assertion that Attaching Party's facilities are not in compliance, Attaching Party shall notify AT&T in writing of the basis for Attaching Party's objection to the assertion that its facilities are noncompliant within sixty (60) days of notice of noncompliance.
- 15.6 Bringing Facilities into Compliance. Attaching Party shall bring its noncompliant facilities into compliance within ninety (90) days after being notified of such noncompliance when no Make-Ready Work is required. If any Make-Ready Work or modification work to AT&T's Structure is required to bring Attaching Party's facilities into compliance, Attaching Party shall provide notice to AT&T and the Make-Ready Work or modification will be treated in the same fashion as Make-Ready Work or modifications for a new request for attachment. In any event, if the violation creates a hazardous condition, facilities must be brought into compliance upon notification. Attaching Party shall notify AT&T when the facilities have been brought into compliance.
- 15.7 No Liability on AT&T. Neither the act of inspection by AT&T of Attaching Party's facilities nor any failure to inspect such facilities shall operate to impose on AT&T any liability of any kind whatsoever or to relieve Attaching Party of any responsibility, obligation, or liability under this Section or otherwise existing. \
- 15.8 Failure to Bring Facilities into Compliance. If Attaching Party has not brought the facilities into compliance within ninety (90) days, or provided AT&T with proof sufficient to persuade AT&T that AT&T erred in asserting that the facilities were not in compliance, AT&T may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement. If Attaching Party fails to bring its facilities into compliance with the Occupancy permit and/or the standards set forth in this Agreement, it shall be deemed a Continuing Violation.
- 15.9 Correction of Conditions by AT&T. If AT&T elects to bring Attaching Party's facilities into compliance, the provisions of this Section shall apply.
- 15.9.1 AT&T will, whenever practicable, notify Attaching Party in writing before performing such work. The written notice shall describe the nature of the work to be performed and AT&T's schedule for performing the work.
- 15.9.2 If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within an AT&T Manhole, AT&T may, at Attaching Party's expense, reattach them but shall not be obligated to do so. If AT&T does not reattach Attaching Party's facilities, AT&T shall endeavor to arrange with Attaching Party for the reattachment of any facilities affected.

15.9.3 AT&T shall, as soon as practicable after performing the work, advise Attaching Party in writing of the work performed or action taken. Upon receiving such notice, Attaching Party shall inspect the facilities and take such steps, as Attaching Party may deem necessary to ensure that the facilities meet Attaching Party's performance requirements.

15.10 Attaching Party to Bear Expenses. Attaching Party shall bear all expenses arising out of or in connection with any work performed to bring Attaching Party's facilities into compliance with this Section; provided, however that nothing contained in this Section or any Occupancy Permit issued hereunder shall be construed as requiring Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

15.11 Inventory Survey. AT&T shall have the right, upon thirty (30) days' notice to Attaching Party, to determine the total number and exact location of Attaching Party's attachments on AT&T Poles and/or Conduit through a physical survey conducted by AT&T or its agents. Attaching Party shall have the right to participate in the survey. The costs incurred by AT&T to conduct the physical inventory shall be shared proportionately with AT&T by Attaching Party. If the attachments of Other Users are included in the inventory, all parties, including Attaching Party, shall share proportionately in the costs with AT&T.

## **16.0 TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS**

16.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities, placed on or in AT&T's Structure, in a manner sufficient to identify the facilities as those belonging to Attaching Party. In the case of existing attachments, Attaching Party shall tag such attachments as they are visited by Attaching Party for the performance of maintenance or other work. Attaching Party's facilities on AT&T's Poles shall be tagged at each Pole attachment, and Attaching Party's facilities in AT&T's Conduits shall be tagged inside each Manhole and Handhole so as to identify Attaching Party as the owner of the facilities. On aerial attachments, the tags shall be of sufficient size and lettering so as to be easily read from the ground.

16.2 Notice to Attaching Party. If any of Attaching Party's facilities for which no Occupancy Permit is presently in effect are found attached to AT&T's Structure, AT&T, without prejudice to other rights or remedies available to AT&T under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no Occupancy Permit is presently in effect with respect to the facilities and that Attaching Party must, within thirty (30) days, respond to the notice as provided in Section 16.3 of this Agreement.

16.3 Attaching Party's Response. Within thirty (30) days after receiving a notice under Section 16.2 of this Agreement, Attaching Party shall acknowledge receipt of the notice and: (1) submit to AT&T an existing Occupancy Permit covering the alleged unauthorized attachments; or (2) if an Occupancy Permit does not exist, submit an Application under Section 8.

16.4 Charges for Unauthorized Attachments. Attachment fees shall continue to accrue until the unauthorized facilities are removed from AT&T's Structure. In addition, Attaching Party shall be liable for an unauthorized attachment fee as specified in Section 18.2 of this Agreement. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at AT&T's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to AT&T or Other User, and shall pay AT&T for all costs incurred by AT&T in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.

16.5 Removal of Unauthorized Attachments. If Attaching Party does not apply for a new or amended Occupancy Permit as set forth in Section 16.3, AT&T shall by written notice advise Attaching Party to remove its unauthorized facilities not later than sixty (60) days from the date of notice. If the facilities have not been removed within the time specified in the notice, AT&T may, at AT&T's option, remove Attaching Party's facilities at Attaching Party's expense.

16.6 No Ratification of Unpermitted Attachments or Unauthorized Use of AT&T's Facilities. No act or failure to act by AT&T with regard to any unauthorized attachment or unauthorized use of AT&T's Structure shall be deemed to constitute a ratification by AT&T of the unauthorized attachment or use, nor shall the payment by Attaching Party of fees and charges for unauthorized attachments exonerate Attaching Party from liability for any trespass or other illegal or

wrongful conduct in connection with the placement or use of such unauthorized facilities.

## **17.0 REMOVAL OF ATTACHING PARTY'S FACILITIES**

- 17.1 When Attaching Party no longer intends to occupy space on or in AT&T Structure, Attaching Party will provide written notification to AT&T that it wishes to terminate the Occupancy Permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Attaching Party's facilities, the Occupancy Permit shall terminate and the space shall be available for reassignment.
- 17.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from AT&T's Structure.
- 17.1.2 Except as otherwise agreed upon in writing by the Parties, Attaching Party must, after removing its facilities, plug all previously occupied Ducts at the entrances to AT&T's Manholes.
- 17.1.3 Attaching Party shall be solely responsible for the removal of its own facilities from AT&T's Structure.
- 17.2 At AT&T's request, Attaching Party shall remove from AT&T's Structure any of Attaching Party's facilities, which are no longer in active use. Upon request, Attaching Party will provide proof satisfactory to AT&T that Attaching Party's facility is in active service. Attaching Party shall not abandon any of its facilities by leaving such facilities on or in AT&T's Structure.
- 17.3 Removal Following Termination of Occupancy Permit. Attaching Party shall remove its facilities from AT&T's Structure within sixty (60) days after termination of the Occupancy Permit.
- 17.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from AT&T's Structure within sixty (60) days after the date Attaching Party replaces existing facilities on a Pole or in a Conduit with substitute facilities.
- 17.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in AT&T's Structure would cause a forfeiture of the rights of AT&T to occupy the property where such Structure is located, AT&T will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. AT&T will give Attaching Party not less than sixty (60) days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of AT&T's rights. At Attaching Party's request, the Parties will engage in good faith negotiations with each other, with Other Users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the removal of Attaching Party's facilities.
- 17.6 Removal of Facilities by AT&T; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from AT&T's Structure in accordance with the provisions of Sections 17.1-17.5 of this Agreement, AT&T may remove such facilities and store them at Attaching Party's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. AT&T shall give Attaching Party not less than sixty (60) days' prior written notice of its intent to remove Attaching Party's facilities pursuant to this Section.
- 17.7 Removal of Facilities by AT&T. If AT&T removes any of Attaching Party's facilities pursuant to this Section, Attaching Party shall reimburse AT&T for AT&T's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

## **18.0 RATES, FEES, CHARGES, AND BILLING**

- 18.1 Recurring Rates and One-Time Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All recurring rates, and some one-time fees, associated with Attaching Party's access to AT&T Structure as outlined in this Agreement will be set forth on a pricing sheet available via AT&T's CLEC Online website. All rates, one-time fees, and changes thereto, shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 18.2 Unauthorized Attachments. For all states that have not established their own unauthorized attachment fees, the following shall apply:
- 18.2.1 Upon AT&T's discovery of unauthorized attachments in an Inventory Survey or Attaching Party's self-report

of unauthorized attachments and written notice of said unauthorized attachments (including location), Attaching Party shall pay AT&T the back-rent, including interest, that would have been due for these attachments, up to five (5) times the annual rent per attachment for each unauthorized attachment.

18.2.2 If Attaching Party declines to participate in an Inventory Survey (i.e., providing the locations of its existing attachments), and AT&T discovers an unauthorized attachment by Attaching Party, AT&T will also be entitled to invoice Attaching Party a sanction, as set forth in the pricing sheet, for each such unauthorized attachment that is discovered.

18.2.3 Attaching Party can avoid the sanction referenced in 18.2.2 by submitting an Application within sixty (60) days of receiving written notice from AT&T and correcting any safety violations within one hundred eighty (180) days.

18.3 In the state of California, each individual unauthorized attachment shall be assessed a penalty, as set forth in the pricing sheet, in addition to all other costs which are part of Attaching Party's responsibility.

18.4 Changes to Rates and Fees. Subject to applicable federal and state laws, rules, regulations and orders, AT&T shall have the right to change the rates and fees associated with this Agreement. Notice of changes in rates or fees, and their effective date, will be provided to Attaching Party via one or both of the following ways at least sixty (60) calendar days before the specific changes being made take effect: (1) posting an Accessible Letter to the AT&T CLEC Online and/or Prime Access websites, or (2) sending a notification directly to Attaching Party. If the changes outlined in the notice are not acceptable to Attaching Party, Attaching Party may either: (1) seek renegotiation of this Agreement; (2) terminate this Agreement; or (3) seek relief through the dispute resolution process in Section 29 of this Agreement.

18.5 Late Fees. Attaching Party agrees that in the event Attaching Party fails to pay an amount due and payable within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 1 ½% or the maximum interest rate permitted by law, whichever is the lesser amount per month, for each month from the expiration of such period until payment is received by AT&T.

## **19.0 RADIO FREQUENCY REQUIREMENTS FOR ANY WIRELESS ATTACHMENTS**

19.1 Attaching Party is solely responsible for the radio frequency (RF) emissions emitted by its equipment and will comply with all FCC regulations regarding RF exposure limitations. To the extent required by FCC rules and any applicable state rules, Attaching Party shall install appropriate signage to notify workers and the public of the potential for exposure to RF emissions.

19.2 Attaching Party is under a duty and obligation in connection with the operation of its own facilities, now existing or in the future, to protect against RF interference to the RF signals of any party legally utilizing AT&T Structure, as applicable, as may emanate or arise. Attaching Party shall endeavor to correct any interference, created by Attaching Party's RF emissions, to the RF signals of any Other User legally utilizing AT&T Structure. In the event AT&T's operations interfere with Attaching Party's lawful use of its RF signals, AT&T and Attaching Party shall cooperate to stop such interference.

19.3 Attaching Party shall install a power cut-off switch on every AT&T Pole to which it has attached facilities that can emit RF energy. AT&T's authorized field personnel will contact Attaching Party's designated point of contact not less than 24 hours in advance to inform Attaching Party of the need for a temporary power shut-down. In the event of an unplanned power outage or other unplanned cut-off of power, or an emergency, the power-down will be with such advance notice as may be practicable. In all instances, once the work has been completed and the workers have departed the exposure area, the party who accomplished the power-down shall restore power and inform Attaching Party as soon as possible that power has been restored.

19.4 Emergency After Hours Contact Information. Attaching Party shall provide emergency after hours contact information to AT&T. Attaching Party shall be required to include signage which indicates Attaching Party's emergency contact information and NESC-required information.

19.5 Installation and Upkeep of Sign(s). Attaching Party is responsible for the installation and upkeep of its sign(s) on each Pole. The signage will be placed so that it is clearly visible to workers who climb the Pole or ascend by mechanical means. The sign(s) will contain the information approved for such signs by the FCC or applicable state agency, or in the absence of such standards, the information commonly used in the industry for such sign(s).

**20.0 NOTICES**

20.1 Operational Contact Information. Contact information for operational issues including Applications for Occupancy Permits, Make-Ready Surveys, Make-Ready Work, and other day-to-day matters concerning Structure access:

20.1.1 AT&T:

Region/state-specific contact information is available in an online document found at the following URL: <https://clec.att.com/clec/hb/shell.cfm?section=2921>.

20.1.2 Attaching Party:

<b>NOTICE CONTACT</b>	<b>Attaching Party</b>
NAME/TITLE	John Dickinson
STREET ADDRESS	7035 Pelican Island Dr.
CITY, STATE, ZIP CODE	Tampa, FL 33634
TELEPHONE NUMBER	813-505-8185
E-MAIL ADDRESS	jd@justdigitaltransformations.com

20.2 Contractual Notice Information. Notices given by Attaching Party to AT&T 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 pursuant to at least one (1) of the following methods.

20.2.1 delivered by electronic mail (email); and/or

20.2.2 delivered by facsimile.

20.3 Notices given by AT&T to Attaching 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 pursuant to at least one of the following methods.

20.3.1 delivered by electronic mail (email) provided Attaching Party has provided such information in Section 20.5 below; or

20.3.2 delivered by facsimile provided Attaching Party has provided such information in Section 20.5 below.

20.4 Notices will be deemed given as of the earliest of

20.4.1 the date of actual receipt;

20.4.2 notice by email shall be effective on the date it is officially recorded as delivered by delivery receipt and in the absence of such record of delivery, it shall be presumed to have been delivered on the date sent; or

20.4.3 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.

20.5 Legal notices shall be addressed to AT&T using contact information available in an online document found at the following URL: <https://clec.att.com/clec/hb/shell.cfm?section=2921>. Legal notices shall be addressed to the Attaching Party as follows:

<b>NOTICE CONTACT</b>	<b>ATTACHING PARTY CONTACT</b>
NAME/TITLE	Andrew Ancone Manager
STREET ADDRESS	125 W. 55th Street
CITY, STATE, ZIP CODE	New York, NY, 10019
PHONE NUMBER*	(212) 231-1660

FACSIMILE NUMBER	(212) 231-1717
EMAIL ADDRESS	Andrew.Ancone@macquarie.com

\*Informational only and not to be considered as an official notice vehicle under this Section

- 20.6 Either Party may unilaterally change its designated contact name, address, email address, and/or facsimile number for the receipt of Notices by giving written Notice to the other Party in compliance with this Section 20. Unless explicitly stated otherwise, any change to the designated contact name, address, email address, and/or facsimile number will replace such information currently on file. Any Notice to change the designated contact name, address, email address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.
- 20.7 AT&T communicates official information to Attaching Parties via its Accessible Letter or other applicable notification processes. These processes involve electronic transmission and/or posting to the AT&T CLEC Online website, on a variety of subjects including declaration of a force majeure, changes to business processes and policies, and other product/service related notices not requiring an amendment to this Agreement.

## 21.0 **DISCLAIMER OF WARRANTIES**

AT&T MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT AT&T'S STRUCTURE IS SUITABLE FOR ATTACHING PARTY'S INTENDED USES OR IS FREE FROM DEFECTS. ATTACHING PARTY SHALL, IN EVERY INSTANCE, BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF AT&T'S STRUCTURE FOR ATTACHING PARTY'S INTENDED USE

## 22.0 **INDEMNIFICATION**

- 22.1 Definitions. The following terms shall have the described meanings when used in Section 22:
- 22.1.1 "AT&T" shall mean AT&T, as defined in the opening paragraph immediately preceding Section 1, its parents, subsidiaries, affiliates, agents, directors, and employees.
- 22.1.2 "Claims" shall mean any allegation, claim, demand, or lawsuit, of any kind and character, including but not limited to claims for property damage, personal injury, including sickness and disease, and/or death.
- 22.1.3 "Liability" shall mean any and all loss, damage, liability, settlement amount, judgment, order, award, cost, fee, fine, penalty, or expense, of every kind and character, including but not limited to costs of defense and attorneys' fees.
- 22.2 Attaching Parties' Indemnification Obligations to AT&T: Attaching Party agrees that it will indemnify, hold harmless, and, on request, defend AT&T from any Claim or Liability, if such Claim and/or Liability arises out of Attaching Party's work on, in, or in the vicinity of AT&T's Structure and/or Attaching Party's access to or use of AT&T's Structure, except to the extent caused by the willful or intentional misconduct, or gross negligence, of AT&T.
- 22.3 AT&T's Indemnification Obligations to Attaching Party: AT&T agrees that it will indemnify, hold harmless, and, on request defend Attaching Party from any Claim or Liability, if such Claim and/or Liability arises out of AT&T's work on, in, or in the vicinity of AT&T's Structure and/or AT&T's access to or use of AT&T's Structure, except to the extent caused by the willful or intentional misconduct, or gross negligence, of Attaching Party.
- 22.4 The Indemnification Obligations Identified in Sections 22.2 and 22.3 shall include, but not be limited to the following types of Claims and/or Liabilities: (a) workplace Claims and/or Liabilities from employees, agents, contractors, subcontractors, or any other person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf; (b) Claims and/or Liabilities brought by Attaching Party's or AT&T's vendors, suppliers, and customers; (c) claims brought by third parties; (d) environmental Claims and/or Liabilities arising out of or in connection with: (i) an alleged violation or breach by Attaching Party or AT&T, its employees, agents, contractors, subcontractors, or any other person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf of any federal, state, or local environmental statute, rule, regulation, ordinance, or other law and/or any provision or requirement of this Agreement dealing with hazardous substances or protection of the environment; (ii) the release or discharge, onto any public or private property of any hazardous substances, regardless of the source of such hazardous substances, by any of Attaching Party's or AT&T's

employees, agents, contractors, subcontractors, or any other person or person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf; and/or (iii) the removal, disposal, storage, processing or other handling of any hazardous substances by any of Attaching Party's or AT&T's employees, agents, contractors, subcontractors, or any other person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf from the site of any AT&T Structure; (d) Claims and/or Liabilities for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on AT&T or Attaching Party due to the placement or presence of Attaching Party's or AT&T's facilities on or in AT&T's Structure; (e) Claims and/or Liabilities based on Attaching Party's or AT&T's, or any person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf, alleged violation of any third-party's intellectual property rights, including but not limited to Claims and/or Liabilities for copyright infringement, patent infringement, unauthorized use or transmission of television or radio broadcast programs or other material, unauthorized use of any apparatus, appliances, equipment, or parts thereof furnished, installed, and/or utilized by Attaching Party or AT&T; (f) Claims and/or Liabilities based on Attaching Party's or AT&T's, and/or any person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf, furnishing, performance, or use of any material supplied or any product Claims or Liabilities relating to any material supplied; (g) Claims or Liabilities based on Attaching Party's or AT&T's, or any person or entity acting directly or indirectly on Attaching Party's or AT&T's behalf, to comply with any term of this Agreement or any applicable local, state, or federal statute, rule, regulation, ordinance or other law, including but not limited to OSHA; and (h) any Claims and/or Liabilities for economic damages that may arise, including damages for delay or other related economic damages that AT&T or AT&T may suffer or allegedly suffer as a result of the performance or failure to perform work by Attaching Party or AT&T.

- 22.5 With respect to Attaching Party's obligation to procure insurance naming AT&T as an additional insured, as set forth in Section 24, it shall be Attaching Party's obligation to request and confirm issuance of a "waiver of subrogation clause" in favor of AT&T.

### **23.0 LIABILITIES AND LIMITATIONS OF LIABILITY**

- 23.1 AT&T Not Liable to Attaching Party for Acts of Third Parties or Acts of Nature. By affording Attaching Party access to AT&T Structure, AT&T does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 23.3 of this Agreement, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to or placed in AT&T's Structure and AT&T shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 23.3. In no event shall AT&T be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of: (1) any Other User or any person acting on behalf of an Other User; (2) any governmental body or governmental employee; (3) any third-party property owner or persons acting on behalf of such property owner; or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any AT&T Structure in any capacity other than as an AT&T employee or person acting on AT&T's behalf. In no event shall AT&T be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of nature (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage, or other criminal acts, cable cuts by persons other than AT&T's employees or persons acting on AT&T's behalf, or other causes beyond AT&T's control which occur at sites subject to this Agreement.
- 23.2 Damage to Facilities. Each Party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the Party and persons acting on the Party's behalf. A Party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to reimburse the other Party, and/or Other Users for any property damage caused by the Party or persons acting on the Party's behalf.
- 23.3 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this Section shall be construed as exempting either Party from any liability, or limiting such Party's liability, in contravention of federal law or in contravention of the laws of the applicable state(s).
- 23.4 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO NON-ECONOMICS LOSS, DAMAGES FOR INCREASED COST OF OPERATIONS, LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER



ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

## **24.0 INSURANCE**

- 24.1 At all times in which Attaching Party has facilities on or in AT&T Structure, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set forth below. Attaching Party shall require that all contractors, subcontractors and/or any other person acting on Attaching Party's behalf maintain coverage, requirements and limits at least as broad as those listed below and, with respect to any maintained on a "claims made" basis, for two (2) years thereafter. Attaching Party must procure the required insurance from an insurance company eligible to do business in the state(s) where the work will be performed and having and maintaining a minimum rating of "A- :VII" from A.M. Best Key Rating Guide.
- 24.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits, and \$1,000,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by law, the policy must include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers, and employees.
- 24.1.2 Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit; and Fire Legal Liability/Damage to Premises Rented sub-limits of a minimum of \$1,000,000 is also required. AT&T, its affiliates, officers, agents, and employees shall be endorsed as additional insureds on the Commercial General Liability policy. A waiver of subrogation shall be in favor of AT&T. The liability policies shall be primary and non-contributory from any insurance that is maintained by AT&T.
- 24.1.3 Umbrella/Excess Liability insurance with limits of at least \$5,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Automobile Liability, and Employers Liability policies. Umbrella/Excess Liability limits will be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T.
- 24.1.4 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired, and non-owned vehicles. AT&T, its affiliates, officers, agents, and employees shall be endorsed as additional insureds.
- 24.2 Attaching Party agrees to provide AT&T's third-party administrator certificates of insurance stating the types of insurance and policy limits.
- 24.3 AT&T agrees to accept Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
- 24.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to AT&T its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire, supply such Certificate annually, and obtain Worker's Compensation immediately if the state rescinds the Certificate of Authority to self-insure;
- 24.3.2 Automobile Liability: Attaching Party shall submit to AT&T a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement, supply such letter annually, and obtain Automobile Liability insurance immediately if the state rescinds the authority to self-insure; and
- 24.3.3 General Liability: Attaching Party must provide annually a copy of its most recent audited financial statement with an unqualified opinion from the auditor along with evidence acceptable to AT&T that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's or Standard and Poor's, or a current Dunn and Bradstreet report with a composite credit appraisal of '1' or '2.' Attaching Party must obtain Commercial General Liability insurance immediately if it is unable to comply with the financial strength requirements above.

- 24.4 All insurance required in accordance with this Section must be in effect before AT&T will issue Pole attachment or Conduit Occupancy Permits under this Agreement. Attaching Party will provide renewal Certificates of Insurance prior to expiration of any policy.
- 24.5 Attaching Party agrees to provide AT&T with at least thirty (30) calendar days' advance written notice of cancellation, material reduction, or non-renewal of any of the insurance policies required herein that are not replaced.
- 24.6 The Parties agree that:
- 24.6.1 the failure of AT&T to demand certificates of insurance or failure of AT&T to identify a deficiency will not be construed as a waiver of Attaching Party's obligation to maintain the insurance required;
- 24.6.2 the insurance required does not represent that coverage and limits will necessarily be adequate to protect Attaching Party, nor shall it be deemed as a limitation on Attaching Party's liability to AT&T;
- 24.6.3 Attaching Party may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance; and
- 24.6.4 Attaching Party is responsible for payment of any deductible or self-insured retention.

## 25.0 **ASSIGNMENT OF RIGHTS**

- 25.1 Sub-Permits. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or Occupancy Permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third party to attach or place facilities to or in Pole or Conduit space occupied by or assigned to Attaching Party or to utilize such space.
- 25.2 Assignment Permitted. Neither Party may assign, or otherwise transfer its rights or obligations, under this Agreement except as provided in this Section.
- 25.2.1 AT&T may assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with AT&T, or which acquires or succeeds to ownership of substantially all of AT&T's assets.
- 25.2.2 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without AT&T's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Agreement, subject to the express terms of this Agreement. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an agreement with Attaching Party ("the Agreement"), Attaching Party's lender or the third party acquiring Attaching Party's rights under this Agreement shall assume all outstanding obligations of Attaching Party under the Agreement and provide proof satisfactory to AT&T that such lender or third party has complied or will comply with all requirements established under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under this Agreement, including liability to AT&T for any act, omission, default, or obligation that arose or occurred under this Agreement prior to the date on which such lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.
- 25.2.3 No assignment or transfer by Attaching Party of rights under this Agreement, Occupancy Permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this Section, secured AT&T's prior written consent to the assignment or transfer, if necessary, and given AT&T notice of the assignment or transfer pursuant to Section 25.3, and secured AT&T's prior written consent to the assignment or transfer, unless such

consent is not necessary pursuant to Section 25.2.2 of this Agreement.

- 25.3 Notice of Assignment. Attaching Party shall provide AT&T sixty (60) days' advance notice in writing of its intent to assign, when required to obtain consent pursuant to Section 25.2.3, and thirty (30) days' notice in writing following any consented-to assignment.
- 25.4 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this Section; it being understood that this Section shall not apply to transfers of ownership of the direct or indirect equity interests of Attaching Party. However, if Attaching Party provides sixty (60) days' written notice to AT&T of its intent to assign its rights, delegate its benefits, and delegate its duties and obligations under this Agreement to any entity controlling, controlled by, or under common control with Attaching Party, or to any entity which acquires or succeeds to ownership of substantially all of Attaching Party's assets, such assignment and delegations shall be deemed approved if AT&T has not indicated otherwise by the end of this sixty (60) day notice period. AT&T shall not unreasonably withhold or deny consent.
- 25.5 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by AT&T in writing, no assignment permitted by AT&T under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 22 of this Agreement.
- 25.6 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. AT&T may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 26.0 TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS; REMEDIES FOR BREACHES**
- 26.1 Subject to notice and the opportunity to cure as provided in Section 26.4 below, individual Occupancy Permits subject to this Agreement shall terminate if (a) Attaching Party ceases to utilize the Pole attachment or Conduit or ROW space subject to such Occupancy Permit; or (b) Attaching Party's permission to use or have access to particular Structure has been revoked, denied, or terminated by local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access.
- 26.2 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to AT&T's Structure shall not materially interfere with or impair service over any facilities of AT&T or any Other User, cause material damage to AT&T's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of AT&T or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of AT&T's Structure, or to the public. Upon reasonable notice and opportunity to cure, AT&T may limit, terminate, or refuse access if Attaching Party violates this provision.
- 26.3 Termination Due to Non-Use of Facilities or Loss of Required Authority. Subject to notice and the opportunity to cure as provided in Section 26.4 below, this Agreement and all Occupancy Permits subject to this Agreement shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in the applicable state(s), ceases to have authority to provide or ceases to provide cable television services in the applicable state(s) (if Attaching Party is a cable television system having access to AT&T's Structure solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in any applicable state(s) (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in the applicable state(s)), or ceases to make active use of AT&T's Structure.
- 26.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either Party, the aggrieved Party may give written notice of such claimed breach.
- 26.4.1 The complaining Party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given; and
- 26.4.2 the breaching Party fails to cure the breach within thirty (30) days of such notice, if the breach is one which can be cured within thirty (30) days; or

26.4.3 the breaching Party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than thirty (30) days will be required to effect such cure.

26.5 **Remedies for Breach.** Subject to the provisions of this Section, either Party may terminate this Agreement in the event of a material breach by the other Party or exercise any other legal or equitable right, which such Party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing Party shall be entitled to recover all costs and expenses incurred by such Party.

26.6 **Elective Termination.** Either Party may terminate this Agreement by giving the other Party at least six (6) months prior written notice as provided in this Section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: (a) the last day of the current term of this Agreement; or (b) six (6) months after the date the notice is given.

26.7 **Elective Termination by AT&T.** In the event of elective termination by AT&T, AT&T shall, within sixty (60) days after the effective date of the elective termination, either initiate negotiations for a replacement agreement for continued access to AT&T's Structure or, at Attaching Party's option, Attaching Party will remove its facilities in accordance with the provisions of Section 17 of this Agreement. Notwithstanding AT&T's elective termination, this Agreement will remain in full force and effect during good faith negotiations until the replacement agreement is in effect or until this Agreement is otherwise terminated pursuant to its terms and conditions, whichever occurs first.

26.8 **Effect of Elective Termination.** Elective termination of this Agreement by either Party, as permitted under Section 26.6 of this Agreement, shall not affect either Party's liabilities and obligations incurred under this Agreement prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to AT&T under this Agreement.

## 27.0 **ASSURANCE OF PAYMENT**

27.1 **Payment and Performance Bonds in Favor of Contractors and Subcontractors.** Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen, and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Agreement. In the event any lien, claim, or demand is made on AT&T by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performance of such work, AT&T may require, in addition to any security provided under Section 27.2 of this Agreement, that Attaching Party provide cash deposits, or execute payment, performance bonds, letters of credit, and/or such other security as AT&T may deem reasonable.

27.2 **Bonds, Letters of Credit, or Cash Deposits May Be Required.** AT&T may require Attaching Party, Authorized Contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds, letters of credit, or cash deposits (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of Attaching Party's obligations arising out of or in connection with this Agreement.

27.2.1 If a bond or similar form of assurance is required of Attaching Party, an Authorized Contractor, or other personnel acting on Attaching Party's behalf, Attaching Party shall promptly submit to AT&T adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed, or materially altered without first providing AT&T sixty (60) days' written notice.

27.2.2 Upon request by AT&T, Attaching Party will provide AT&T with the AT&T Credit Profile form and provide information to AT&T regarding Attaching Party's credit and financial condition.

## 28.0 **NONPAYMENT**

28.1 Failure to pay charges shall be grounds for removal of Structure access furnished under this Agreement. If Attaching Party fails to pay any charges billed to it under this Agreement, including but not limited to any late payment charges, and any portion of such unpaid charges remain unpaid after the bill due date, AT&T will send a notice of unpaid charges to Attaching Party. Attaching Party must remit all unpaid charges to AT&T within fifteen (15) calendar days of the notice.

28.2 If Attaching Party desires to dispute any portion of the unpaid charges, Attaching Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of AT&T's notice of unpaid charges:

- 28.2.1 notify AT&T in writing which portion(s) of the unpaid charges it disputes, including the total disputed, together with the reasons for its dispute; and
- 28.2.2 pay all unpaid charges to AT&T.
- 28.3 Issues related to disputed amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 29 below.
- 28.4 If Attaching Party fails to:
- 28.4.1 pay any unpaid charges in response to and within fifteen (15) calendar days of AT&T's notice of unpaid charges;
- 28.4.2 timely furnish any assurance of payment requested in accordance with Section 27; or
- 28.4.3 make a payment in accordance with the terms of any mutually agreed payment arrangement, then:
- 28.4.4 AT&T may, in addition to exercising any other rights or remedies it may have under applicable law, provide written demand to Attaching Party that it pay any of the obligations set forth above within ten (10) Business Days. On or after the day that AT&T provides such written demand to Attaching Party, AT&T may also exercise any or all of the following options:
- 28.4.4.1 suspend acceptance of any Application, request, or order from Attaching Party for new or additional Structure access under this Agreement; and/or
- 28.4.4.2 suspend completion of any pending Application, request, or order from Attaching Party for new or additional Structure access under this Agreement; and/or
- 28.4.4.3 terminate the associated Occupancy Permit(s), which may result in AT&T exercising its rights under Section 17 of this Agreement.
- 28.5 Notwithstanding anything to the contrary in this Agreement, AT&T's exercise of any of its options will not delay or relieve Attaching Party's obligation to pay all charges on each and every invoice on or before the applicable bill due date.

## **29.0 DISPUTE RESOLUTION**

### **29.1 Finality of Disputes.**

29.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Any legal action arising in connection with this Agreement must be filed within twenty-four (24) months after the cause of action accrues, with the exception of a Continuing Violation, or it will be deemed time-barred and waived. The Parties waive any statute of limitations to the contrary. Continuing Violations are specifically exempt from the waiver of any statute of limitations and shall be brought within the time set forth in the applicable state's statutes.

29.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which AT&T received notice of such disputed amounts.

29.2 Alternative to Litigation. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

29.3 Commencing Dispute Resolution. Dispute Resolution shall commence upon one (1) Party's receipt of written Notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written Notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods, each of which is described further below:

29.3.1 Billing Dispute Resolution;

29.3.2 Informal Dispute Resolution; and

29.3.3 Formal Dispute Resolution.

29.4 Billing Dispute Resolution. The following dispute resolution procedures will apply with respect to any billing dispute arising out of or relating to this Agreement. Attaching Party must send written Notice to AT&T for disputed amounts.

29.4.1 If the written Notice given under Section 29.3 above discloses that the dispute relates to billing, then the procedures set forth in Section 28.2 apply.

29.4.2 The Parties shall attempt to resolve disputed amounts appearing on current billing statements thirty (30) to sixty (60) calendar days from the bill due date (provided Attaching Party furnishes all requisite information needed to evaluate the dispute). Upon request, AT&T will notify Attaching Party of the status of the dispute and the expected resolution date.

29.4.3 If Attaching Party is not satisfied by the resolution of the billing dispute under this Section, Attaching Party may notify AT&T in writing that it wishes to invoke the Informal Dispute Resolution under Section 29.5 of this Agreement.

29.5 Informal Dispute Resolution. Upon receipt by one Party of Notice of a dispute by the other Party pursuant to Section 29.3 or 29.4.3, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures, such as mediation, to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in, or provided with, such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

29.6 Formal Dispute Resolution.

29.6.1 If the Parties are unable to resolve the dispute through the informal procedures described in Section 29.5 above, then either Party may invoke the Formal Dispute Resolution procedures described in this Section. Unless agreed among all Parties, Formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Informal Dispute Resolution under Section 29.5.

29.6.2 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 29.7 below, if, and only if, the claim is not settled through Informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity, or agency mechanism.

29.6.3 Claims Not Subject to Arbitration. If the following claims are not resolved through Informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity, or agency mechanism:

29.6.3.1 actions seeking a temporary restraining order, or an injunction related to the purposes of this Agreement; and

29.6.3.2 all claims arising under federal or state statute(s), including antitrust claims.

29.7 Arbitration. Disputes subject to elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in Atlanta, Georgia for AT&T Kentucky, or AT&T Louisiana; in Dallas, Texas for AT&T Arkansas; in Chicago, Illinois for AT&T Michigan or AT&T Ohio; or in San Francisco for AT&T California, as appropriate, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days

after the close of hearings. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

- 29.8 Compliance with Dispute Resolution Process. The Parties agree that any actions and/or claims seeking to compel compliance with the Dispute Resolution process should be brought before the FCC, or, in the case of reverse preemption by a state, before the commission in the state where AT&T provides the Structure access at issue. However, each Party reserves any rights it may have to seek review of any ruling made by the FCC or commission, as applicable, concerning this Agreement by a court of competent jurisdiction.