

## **VOLUME AND TERM AGREEMENT**

THIS VOLUME AND TERM AGREEMENT ("Agreement") is entered as of the 15<sup>th</sup> day of June, 1998 ("Effective Date") into by and between **BellSouth Telecommunications, Inc.**, a Georgia corporation ("**BellSouth**") and Powertel, Inc., a Delaware corporation, on behalf of itself and its **affiliated** companies signatory hereto (hereinafter collectively referred to as "Powertel" or "Customer").

WHEREAS, Customer desires to purchase certain services **from BellSouth** for use in connection with its provision of Commercial Mobile Radio Service communications services; and

WHEREAS, **BellSouth** desires to provide telecommunication services to meet Customer's requirements; and

WHEREAS, this Agreement sets forth certain rates, terms and conditions for the services to be provided to Customer by **BellSouth**; and

**WHEREAS**, the Parties desire to reduce to writing their understanding relating to this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties do hereby agree as follows:

### **1. DEFINITIONS**

Capitalized terms used herein shall have the meanings set forth hereunder. Any capitalized terms used but not otherwise defined herein shall have the meaning set forth in the applicable state Tariff (as that term is defined hereunder).

**1.1     Acceptance.** "Acceptance" (or "to Accept") of Services has the meaning set forth in Section 3.11 and Schedule 3.11 hereof

**1.2     Activation.** "Activation" means that Services at a Site have been Accepted, and the Site is operational and available for use by Customer to provide CMRS services to its customers.

**1.3     Adds**" means additions to Services.

**1.4     Affiliate.** "**Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with another. For purposes of this Agreement, such control means the power to vote ten (10%) percent or more of the equity securities or comparable interest of the controlled Person.

**1.5 Anniversary Date.** “Anniversary Date” means each annual anniversary of the the Effective Date.

**1.6 Annual Revenue Commitment.** “Annual Revenue Commitment” (“ARC”) is an amount equal to that set forth on Appendix I of this Agreement, adjusted from time to time in accordance with the provisions of this Agreement.

**1.7 Annual True-Up.** “Annual True-Up” has the meaning set forth in Section 6.11.1.

**1.8 Applicable Monthly Rate.** “Applicable Monthly Rate” has the meaning set forth in Section 12.4.2 hereof.

**1.9 Audit.** “Audit” has the meaning set forth in Section 3.6.1 hereof.

**1.10 Business Day(s).** “Business Day(s)” means any calendar day in which the Customer’s offices are open for business.

**1.11 Changes.** “Changes” means a change of transmission rate or functionality for a Service which does not require a visit to a Customer Site by BellSouth personnel.

**1.12 Charges.** “Charges” means charge(s), based on the Rates, incurred by Customer for Services and Other Services.

**1.13 Commercial Mobile Radio Service ("CMRS").** “CMRS” has the meaning set forth in 47 C.F.R. Section 20.3.

**1.14 Comparable Service(s).** “Comparable Service(s)” means any service of a “higher level” that is functionally equivalent to the Services or other services and which are offered by BellSouth at any time during the Term . For purposes of this definition “higher level” means improvements, upgrades or changes to telecommunications or information transmission technology producing higher functionality or increased capacity, where such improvements are determined according to recognized industry standards.

**1.15 Competitive Notice.** “Competitive Notice” has the meaning set forth in Section 6.5 hereof

**1.16 Contract Service Agreement (“CSA”).** “Contract Service Agreement” has the meaning set forth in the following Tariffs, as the case may be: BellSouth Telecommunications, Inc.-Georgia Private Line Services Tariff, Section B5.7; South Central Bell Telephone Company-Tennessee Private Line Services Tariff, Section B5.7; Southern Bell Telephone and Telegraph Company-South Carolina Private Line Services Tariff, Section B5.7; BellSouth Telecommunications, Inc.-Alabama Private Line Services Tariff, Section B5.7; BellSouth Telecommunications, Inc.-Florida Private Line Services Tariff, Section B5.6; BellSouth Telecommunications, Inc.-Mississippi Private

Line Services **Tariff**, Section B5.7; Southern Bell Telephone and Telegraph Company-North Carolina Private Line Services **Tariff**, Section B5.1C; and South Central Bell Telephone Company-Louisiana Private Line Services **Tariff**, Section B5.7; and such other comparable instrument(s) **filed** with the Kentucky Public Utility Commission as may be required to give full force and effect to this Agreement in the **State** of Kentucky.

1.17 **Contract Year.** “A Contract Year” is each consecutive twelve (12) month period during the Term following the Effective Date.

1.18 **Deficiency.** “Deficiency(ies)” means failure of any Service or any Other Service(s) to strictly conform to the Specifications.

1.19 **Delete(s).** “Delete(s)” (or “to Delete”) means the discontinuation of (to discontinue) one or more Services by Customer’s request.

1.20 **Discounts.** “Discounts” mean the applicable percentages for each Contract Year that are set forth in Appendix I of this Agreement.

1.21 **Early Termination.** “Early Termination” means termination by Customer prior to the end of the **Term**, as described in Section 12.2 hereof

1.22 **Effective Date.** “Effective Date” means June 15, 1998.

1.23 **Eligible Services.** “Eligible Services” means those Services listed in Appendix II hereof.

1.24 **End User.** “End User” means Powertel, its **Affiliates**, all officers, employees, agents, contractors, customers or subscribers of the foregoing, and any other Person authorized by Powertel to use its Commercial Mobile Radio Services.

1.25 **Event of Default.** “Event of Default” means an event set forth in Section 13.1 hereof.

1.26 **Expedites.** “Expedites” means accelerated Installation of Services prior to the Installation Date.

1.27 **Expiration Date.** The “Expiration Date” of this Agreement shall be the last day of the Term.

1.28 **Give Back Percentage.** “Give Back Percentage” has the meaning set forth in Section 12.2.2 hereof.

**1.29 Installation (to Install).** “Installation” (or “to Install”) means the **furnishing** of Services or Other Services by **BellSouth** to Customer at a Site as specified in the Installation Schedule attached hereto as Appendix III, or in a Purchase Order, as the case may be.

**1.30 Installation Date.** “Installation Date” means the date upon which **BellSouth** is required to complete Installation of Services at a given Site.

**1.31 Interruption.** “Interruption” has the meaning set forth in Schedule 6.7 hereof.

**1.32 Interruption Credit.** “Interruption Credit” has the meaning set forth in Schedule 6.7 hereof

**1.33 Moves.** “Moves” means a change of(i) Site or (ii) point of demarcation between **BellSouth’s** network and Customer’s facilities.

**1.34 Net Charges.** “Net Charges” means Charges to which Discounts have been applied.

**1.35 Net Charge Payment.** “Wet Charge Payment” means each payment of monthly Net Charges.

**1.36 Option.** “Option” has the meaning set forth in Section 6.5 hereof

**1.37 Other Customer.** “Other Customer” means any other similarly situated customer of **BellSouth** taking Services under a separate agreement.

**1.38 Other Customer Rates.** “Other Customer Rates” means the rates for services provided to any Other Customer.

**1.39 Other Service.** “Other Service” means any service in addition to the Services rendered by **BellSouth** within the scope of this Agreement.

**1.40 Partial Discontinuance.** “Partial **Discontinuance**” means Customer’s discontinuance of certain Services, as described in Section 12.3 hereof

**1.41 Partial Termination.** “Partial Termination” means Customer’s discontinuance of purchase of a Service Element prior to the end of a Service Period, as more fully described in Section 12.4 hereof

**1.42 Partial Termination Charge.** “Partial Termination Charge” means charges for Customer’s discontinuance of purchase of a Service Element prior to the end of a Service Period, as more fully described in Section 12.4 hereof

**1.43 Person.** “Person” means an individual, partnership, limited liability company or partnership, corporation, **business** trust, joint stock company,- trust, unincorporated association, joint venture, business unit, division or other entity of whatever nature.

**1.44 Personal Communication Service (“PCS”).** “PCS” has the meaning set forth in 47 C.F.R. Section 24.5.

**1.45 Proposal.** “Proposal” has the meaning set forth in Section 6.5 hereof.

**1.46 Purchase Order.** “Purchase Order” means Customer prepared documentation used by Customer to order Services under this Agreement, as described in Section 3.3 hereof.

**1.47 Rates.** “Rates” means the recurring and nonrecurring rates for Services (exclusive of Discounts), as set forth in Schedule 1.47 hereof, adjusted from time to time in accordance with the provisions of this Agreement.

**1.48 Regulatory Authority.** “Regulatory Authority” means the Federal Communication Commission (“FCC”), the United States Congress, any public service commission, administrative agency, judicial authority, or any other federal, state, municipal, international, or foreign governmental body or agency (including without limitation federal, state and local health, safety and environmental regulatory authorities) having authority over this Agreement, the Parties hereto, the Services, the Tariffs or any matter related thereto.

**1.49 Revised Applicable Charges.** “Revised Applicable Charges” has the meaning set forth in Section 12.4.1.3.

**1.50 Revised Rate(s).** “Revised Rates” has the meaning set forth in Section 6.5.1 hereof

**1.51 Revised Service Period.** “Revised Service Period” “RSP” has the meaning set forth in Section 12.4.1.3 hereof.

**1.52 Services.** “Services” means any one or more of the telecommunications services listed in Appendix II to be provided to Customer by **BellSouth** pursuant to this Agreement.

**1.53 Service Element.** “Service Element means a specific circuit at a specific Site.

**1.54 Service Period.** “Service Period” means the length of time for which Customer has agreed to purchase a particular Service at a Site, as specified on the Installation Schedule or in an accepted Purchase Order, as the case may be.

**1.55 Sites.** “Sites” means Customers’ locations where **BellSouth** is authorized to provide Services.

**1.56 Specifications.** "Specifications" means the Service performance specifications set forth in Appendix IV.

**1.57 States.** "States" means Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, North Carolina, and South Carolina.

**1.58 Tariff(s).** "Tariff(s)" means any of BellSouth's tariff(s) filed with the FCC, any state regulatory commission, or any other Regulatory Authority which are now or in the future applicable to the Services provided to Customer hereunder.

**1.59 Term** means a continuous period of five (5) years commencing with the Effective Date, during which this Agreement shall be in effect.

**1.60 Termination Charge.** "Termination Charge" means charges for Customer's termination of Services prior to the end of the Term, as more fully described in Section 12.2.1.

**1.61 Termination Date.** "Termination Date" means the date of any Termination.

**1.62 Third Party Services.** "Third Party Services" means services provided or proposed to be provided to Customer by persons not party to this Agreement, which services are functionally equivalent to and which serve to replace any and all of the Services, in whole or in part, at one or more of the Sites.

**1.63 Underutilization Charges.** "Underutilization Charges" means charges for Underutilization, as more fully described in Section 6.11.2.

**1.64 Updates.** "Updates" means BellSouth's future enhancements to the Services (but excluding Comparable Services), as more fully described in Section 5.2 hereof

**1.65 Wire Center.** "Wire Center" means a building or space within a building that serves as an aggregation point on BellSouth's network, where transmission facilities and circuits are connected and switched. "Wire Center" can also denote a building in which one or more central offices, used for the provision of exchange services and access services, are located.

## **2. AGREEMENT**

**2.1 Scope and Purpose.** This Agreement is a Contract Service Arrangement ("CSA"), pursuant to which BellSouth shall provide and Customer shall purchase Services within the telephone exchanges served by BellSouth in states of Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, North Carolina, and South Carolina. This Agreement neither constitutes an interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (an

“Interconnection Agreement”), nor supersedes any such Interconnection Agreement entered into by the Parties or by any of their respective **Affiliates**. -

2.2 **Relationship Between Tariff and Agreement.** Except as otherwise provided in this Agreement, this Agreement is subject to and controlled by the provisions of Company’s lawfully filed and approved Tariffs, and shall include all changes to said Tariffs **as** may be made **from** time to time. Provided, however, to the extent permitted by law, the Rates, terms and conditions of this Agreement shall supersede any conflicting provisions of the Tariffs and under no circumstances are the Rates herein to be deemed superseded by any conflicting rates that are set forth in any of said **Tariffs**.

**BellSouth** hereby covenants to take any and all necessary action to ensure that the Rates, Discounts, terms, and conditions herein remain in full force and effect at all times throughout the Term. The Parties further agree and acknowledge that Customer has entered into this Agreement in strict reliance upon the enforceability of this Section 2.2 and upon **BellSouth's** representation, warranty, and covenant made in this Section 2.2 that the Rates, Discounts, terms and conditions of this Agreement shall remain in full force and effect for the Term.

### 2.3 **Regulatory Approval.**

2.3.1 The obligations of Customer under this Agreement are expressly conditioned upon **BellSouth's** filing this Agreement where necessary and otherwise obtaining any and all requisite approvals **from** and satisfying all regulatory requirements of Regulatory Authorities, as may be necessary or expedient to **BellSouth's** performance hereunder. **BellSouth** shall exercise its best efforts to expeditiously obtain said approvals and satisfy all regulatory requirements. In the event **BellSouth** is unable to satisfy the conditions of the first sentence of this Section 2.3.1 within ninety (90) days after the Effective Date, then Customer may, at its sole option and discretion, elect: (i) to void this Agreement, in any State(s) where regulatory approval has not been granted, including any payment obligations hereunder; (ii) to continue to take Services under any lawful rates, terms and conditions set forth in any **Tariff**; (iii) to continue to take Services under any unexpired CSA agreement(s) between Customer and **BellSouth**; or (iv) to renegotiate the rates, terms or conditions of a revised CSA agreement (including the rates, terms and conditions available to Other Customers), to be filed with the applicable Regulatory Authorities; and upon Customer’s election of alternative (ii) or (iii) preceding, said new rates, terms and conditions will automatically replace the Rates, terms and conditions set forth herein. Upon Customer’s election of alternative (ii) or (iv) in the preceding sentence, **BellSouth** covenants and agrees to (i) incorporate or (ii) use its best commercially reasonable efforts to renegotiate, such rates, terms or conditions in a revised CSA agreement with all deliberate speed.

2.3.2 **BellSouth** shall not make any other regulatory filing affecting this Agreement whatsoever except in strict accordance with the provisions of Section 2.4.1.1 hereof

## **2.4 Consistency of Agreement.**

**2.4.1 No Voluntary Initiation.** BellSouth shall not during the Term unilaterally initiate the filing of any Tariff to supersede, or attempt in any other manner to alter, revoke or amend, in whole or in part, this Agreement or any term or condition hereof or thereof; provided however, in the event BellSouth is ordered to do so by a Regulatory Authority, it shall strictly comply with the following provisions of Section 2.4.1.1.

**2.4.1.1 Limits on Changes.** If any Regulatory Authority requires this Agreement to be amended, replaced or altered (such amendments, replacement or alterations collectively referred to herein as “changes”), BellSouth (i) shall limit such changes to the specific provisions that the Regulatory Authority has ordered be changed; and (ii) shall make only those changes necessary to satisfy the requirements of the Regulatory Authority that ordered the changes.

**2.4.1.2 Review by Customer.** BellSouth shall give Customer notice with regard to any action directly affecting this Agreement (including any proposed changes hereto) proposed by BellSouth to comply with any orders of Regulatory Authorities. Notice of such action, including a copy of any proposed changes to the Agreement or to any applicable Tariff, as the case may be, shall be given by BellSouth to Customer as soon as available and in no event less than fifteen (15) Business Days prior to filing with any Regulatory Authorities. BellSouth shall provide Customer with a copy of all changes to this Agreement or to any applicable Tariff required by Regulatory Authorities on or before the date they are filed, as well as copies of all other regulatory filings made at any time during the Term by BellSouth in connection with or affecting this Agreement or any applicable Tariff at any time during the Term.

**2.4.2 Remedies.** Notwithstanding the foregoing provisions, nothing in this Section 2.4 is to be construed as limiting Customer’s remedies under Sections 12 and 13 hereof.

**2.5 Regulatory Reports.** BellSouth shall provide written notice to Customer of any inquiry or proceeding (including all correspondence related thereto) initiated by any Regulatory Authority to investigate, examine or rule upon this Agreement no later than five (5) Business Days after receipt thereof.

## **3. SERVICES**

**3.1 Agreement to Provide Services.** BellSouth shall provide Services to Customer in accordance with the Rates (reduced by the Discounts), terms and conditions, set forth herein; Customer agrees to pay for Services in accordance with the provisions of Section 6 hereof; these obligations are to be construed as mutually dependent covenants. Services will be available for any lawful use by End Users.



**3.2 Installation of Services.** BellSouth covenants to timely complete Installation of Services at the Sites as **specified** on the Installation Schedule or in accepted Purchase Orders, no later than the applicable Installation Date as specified on the Installation Schedule, or in any accepted Purchase Orders, or as **otherwise** agreed between the Parties, as the case may be. Upon **BellSouth's** failure to timely complete any Installation by the specified Installation Date or by the date otherwise agreed between the Parties, all nonrecurring charges for any Installation not timely completed by the **specified** Installation Date **will** be waived by **BellSouth**, and in addition, Customer will have the right, but not the obligation, to exercise its right of Partial Discontinuance under Section 12.3 hereof with respect to the uninstalled Service at that Site. Installation at a Site is not to be deemed complete hereunder until Customer has Accepted Services at such Site under the provisions of Section 3.11 hereof.

3.2.1 Waiver of Nonrecurring Charges. **BellSouth** waives all non-recurring charges for Installation of Services. Notwithstanding the preceding sentence, if, prior to the Second anniversary of the date of Installation of a Service Element, Customer exercises its right to terminate this Agreement with liability pursuant to Section 12.2.1 hereof, Customer will pay **BellSouth** an amount equal to the waived non-retuning charges for Services Installed through the date of termination; provided, however, Customer shall not be obligated to pay any non-recurring charges for any Service that has been (i) Partially Discontinued pursuant to Section 12.3 **hereof**, or (ii) terminated by Customer pursuant to Section 12.2.4 hereof.

3.2.2 **Sites.** Customer, at its sole option and discretion, may substitute, change or add Sites at any time during the **Term** through submission of a Purchase Order.

### **3.3 Ordering of Services.**

3.3.1 During the Term Customer may, but is not obligated to, order Services or Other Services (including Comparable Services) from **BellSouth** by issuing Purchase Orders. Each Purchase Order shall include a description of Services or Other Services to be provided, the Site, the Installation Date, the Service Period and other Installation-related information reasonably required by **BellSouth**.

3.3.2 **BellSouth** will negotiate Installation Dates on an individual case basis for **MegaLink**, **LightGate** and **SMARTRing** services and will provide its best available Installation Date to Customer within ten (10) business days. **BellSouth** may reject a Purchase Order only if such Purchase **Order fails** to conform to the material requirements of this Agreement, or if **BellSouth** reasonably objects to the Installation Date. No additional or different provisions proposed by **BellSouth** shall apply to any Purchase Order unless expressly agreed to by the Parties in writing.

3.3.3 This Agreement and all Purchase Orders accepted by **BellSouth** constitute a single contract for the provision of Services. AU Purchase Orders shall be automatically incorporated herein by reference upon their acceptance by **BellSouth**. In the event of a conflict between any

Purchase Order and this Agreement, the terms and conditions of this Agreement shall control and supersede any such conflicting provision.

3.3.4 Promptly after its acceptance of each Purchase Order, **BellSouth** shall prepare a **BellSouth** service order or other acknowledgment reflecting the details of the Purchase Order and confirming the Installation Date and shall distribute same to Customer and to all other Persons or carriers responsible for installing the Services. **BellSouth** shall be at all times primarily responsible for the accurate processing of Customer's Purchase Orders, and will make good faith efforts to coordinate its Installation of Services with interexchange or other carriers as required.

3.4 **Quarterly Review.** **BellSouth** and Customer agree to review Installation and the composition of the Services on a calendar quarterly basis, with the first review to be scheduled on or about the first **Business** Day of each calendar quarter following the Effective Date. **BellSouth** shall provide the Customer with a quarterly progress report based upon such review. The contents of the progress report shall be determined by mutual agreement between the Parties.

### 3.5 **Billing and Accounting.**

3.5.1 **Billline Period.** **BellSouth** shall bill Customer in arrears on a centralized basis at Customer's address specified herein (or at such other address of which Customer may advise **BellSouth** in writing) for all Services provided during each calendar month or other mutually agreeable billing cycle. All participating Customer accounts will be converted by **BellSouth** to **BellSouth's** Customized Large User Bill ("CLUB") format.

3.5.2 **Billline and Accounting.** **BellSouth** shall provide Customer with mutually agreed upon billing and accounting information concurrent with the invoice to which the information relates. In addition, **BellSouth** shall provide Customer with detailed accounting records covering all Services provided and billed under this Agreement, in a mutually agreed upon format and media. The Parties may develop additional accounting records, charge-back methodologies and other systems under mutually agreeable terms, price and conditions.

3.5.3 **Due Date and Payment.** Customer shall pay **BellSouth** for all undisputed Net Charges by the past due date reflected on each invoice to avoid paying late payment charges. Customer may withhold payment for all disputed Charges, and written notification of the dispute should be given to **BellSouth** in accordance with Section 6.10 hereof. Late payment charges, not to exceed one percent (1%) per month after the past due date, may be assessed by **BellSouth** if undisputed Net Charges are not paid by the past due date of the invoice. **BellSouth** warrants and covenants that all invoices for Charges will be promptly sent after processing, and that Customer may raise late receipt of an invoice as a billing dispute pursuant to Section 6.10 hereof.

### **3.6 Audits.**

**3.6.1 Audits.** The Customer may, at its expense, **from** time to time, audit (“Audit”) BellSouth's performance under this Agreement. Such Audit may cover items such as (but shall not be limited to) billing accuracy, average time to complete repairs, trouble escalation, Interruptions, and effectiveness of BellSouth's personnel in discharging BellSouth's duties and obligations under this Agreement. BellSouth shall produce any documents reasonably **requested** by Customer that BellSouth deems non-confidential and appropriate for dissemination to Customer. BellSouth shall cooperate with the person(s) conducting such Audit, and shall promptly take all action necessary to cure all errors, deficiencies or defects in its performance under this Agreement as may be determined by the findings **thereof**; provided, however, BellSouth's efforts to so cure shall not serve to excuse its obligations under this Agreement, nor to limit Customer's remedies hereunder.

**3.6.2 ARC Adjustment.** If Charges for Customer's use of Services decrease as a result of any Audit made in accordance with Section 3.6.1, the ARC shall be automatically adjusted downward to reflect such decrease in Charges, effective as of the date of delivery of the Audit report.

**3.7 Security.** BellSouth shall ensure that all its personnel requiring access to Customer Sites strictly comply with Customer's security procedures, in effect from time to time.

**3.8 Records and Logs.** BellSouth shall maintain complete and accurate records and logs of all Services and all related maintenance provided under this Agreement. BellSouth will **from** time to time provide Customer with copies of said records and logs. Information **from** the records and logs shall be summarized by BellSouth a report prepared **from** time to time hereunder.

**3.9 Disaster Recover-v.** BellSouth shall exercise its best efforts to make available to Customer disaster recovery measures, including but not limited to, redundant circuits, custom controlled reconfiguration, route diversity, or alternate central office interconnection, or other measures as they become available at rates no less favorable than Other Customer Rates.

**3.10 Third Party Services.** Nothing in this Agreement shall prevent Customer, at its sole option and discretion, **from** using any Third Party Services in conjunction with or in addition to the Services. BellSouth agrees to reasonably cooperate in connecting the Services to such Third Party Services upon Customer% request.

**3.11 Acceptance.** BellSouth shall Install only those Services that have been **tested** in accordance with BellSouth's standard testing procedures and which operate in strict compliance with the Specifications set forth in Appendix IV. Upon completion of any Installation, BellSouth shall provide notice thereof to Customer. Services are to be deemed Installed and BellSouth may commence **billing therefor after** they have been Accepted by Customer in writing, electronically, via facsimile or verbally (subject to BellSouth's written confirmation thereof), subject to satisfactory testing of the Services by Customer in accordance with the Acceptance Testing procedures set forth at Schedule 3.11 attached hereto.

#### **4. STAFFING AND ESCALATION PROCEDURES**

**4.1 Trouble Escalation.** BellSouth shall support Customer's use of Services in accordance with the trouble escalation procedures as set forth in Schedule 4.1 attached hereto, and by this reference made a part hereof

#### **5. SERVICES REPLACEMENT AND UPDATES**

**5.1 Service Replacement.** BellSouth shall give Customer written notice of any Comparable Services within a reasonable time tier they become available. Customer may, at its sole option and discretion, elect, in writing, to replace any or all of the Services with Comparable Services at rates no less favorable than the least of (i) BellSouth's **Tariff** rates for the Comparable Services, (ii) the lowest rate for such Comparable Services available at that time to any Other Customer, or (iii) such other rates as may be mutually agreed upon between the Parties. Upon Customer's election of this option, said Comparable Services shall automatically be deemed Services, and BellSouth shall (with written confirmation thereof by BellSouth to Customer):

**5.1.1** Promptly replace the Rates for the replaced Services with the applicable rates for Comparable Services;

**5.1.2** Adjust Customer's ARC downward as a result of any network optimization associated with such replacement ; and

**5.1.3** Waive any and all non-recurring charges for such replacement to the extent waiver of such charges is (i) available in the Tariff, (ii) made available to any Other Customer, or (iii) mutually agreed upon by the Parties.

Notwithstanding any other provision **hereof**, Customer shall not be liable for any Termination Charges, Partial Termination Charges, Underutilization Charges or other similar Charges made by BellSouth pursuant to this Agreement, to any Tariff or any other agreement or instrument whatsoever, by virtue of replacing any or all Services with Comparable Services.

**5.2 Service Updates.** BellSouth agrees to provide Customer, upon request, with any and all Updates for the Services as they become generally available, at standard **Tariffed** Rates. BellSouth warrants that the addition of Updates shall not cause any degradation of Services such that performance thereof fails to comply with the Specifications.

## **6. RATES AND CHARGES**

**6.1 Rates and Charges.** Except as otherwise provided in this Section 6, and except as they may be supplemented pursuant to Section 5 hereof, Charges for Services shall be calculated at the Rates in accordance with Schedule 1.47 **hereof**, and reduced by Discounts as described in Section 6.2 following. Charges will be made to Customer for Services (other than Comparable Services) in accordance with said Rates and Discounts.

**6.2 Discount Levels.** On each monthly invoice, **BellSouth** shall reduce all Charges billed to Customer for Services by the applicable Discount for such Contract Year set forth at Appendix I.

**6.2.1** Charges billed to Powertel under other Contract Service Arrangements or Special Service Arrangements, or for **WATSSaver**, end user common line charges, Flex Serv service and special access are not eligible for Discounts.

**6.3 Rate Assurance.** The Parties acknowledge that the Rates will remain fixed for the Term except as otherwise provided in this Section 6, and except as they may be supplemented pursuant to Section 5 hereof

**6.3.1 Other Customer Rates.** In the event **BellSouth** at any time during the Term provides any Other Customers more favorable rates, terms or conditions than those available at that time to Customer under this Agreement, **BellSouth** shall promptly offer to Customer a new Contract Service Arrangement that includes the more favorable rates, terms or conditions. Such rates, terms or conditions shall be retroactive to the date such lower rates, terms and conditions became effective for such Other Customer. For purposes of determining whether any Other Customer is receiving more favorable rates, terms or conditions, the factors that **BellSouth** will take into consideration in good faith include, but are not limited to, the service mix, geographic factors and **BellSouth's** margins therefor. In the event of the aforesaid reduction in Rates, the ARC for each year or part thereof for the remainder of the Term shall be automatically reduced by an amount equal to the difference between (i) Customer's average, actual monthly Charges for the Services to which such lower rate will apply for the three (3) months immediately preceding such decrease and (ii) what the average monthly Charges for such Services for said three (3) month period would have been **if calculated** at the lower rate, times twelve (12).

**6.3.2 Notice.** **BellSouth** shall notify Customer in writing, within thirty (30) days of the effective date thereof, of Other Customer rate decreases described in this Section 6.3 and the intended effective date **thereof**, provided however, **BellSouth's** failure to so notify Customer shall not affect Customer's right to receive credit adjustments to its Charges based on same.

**6.3.3 Retroactive Effect** **BellSouth** shall promptly reflect any adjustment or credit to Charges in favor of Customer pursuant to Other Customer rate decreases on **Customer's** invoice on the next immediately following billing cycle, retroactive to the date said Other Customer rate

decreases became effective; provided, however, that nothing in this Section 6.3.3 shall be construed as limiting Customer's remedies under Sections 12 and 13 hereof. The ARC for the remainder of the Term shall also be adjusted downward effective as of the date such decreases become effective, to reflect the decrease in Customer's Rates.

6.4 **Most Favored Customer.** BellSouth shall review the rates of Other Customers at least one (1) time per Contract Year to ensure that Customer's Charges are in accordance with Section 6.3.1 and, upon completion of such review, shall make any corresponding adjustments or credits to Customer's Charges within the billing cycle immediately following such review, retroactive to the time such Other Customer rates became effective.

6.5 **Third Party Services.** If at any time after the twenty fourth (24th) month of the Term, Customer is offered a bona fide proposal for Third Party Services at rates that are at least 20% percent less than the Rates for any or all of the Services for a volume commitment equal to or less than the ARC ("Proposal"), Customer shall provide BellSouth notice of the Proposal ("Competitive Notice"), together with information reasonably sufficient to validate the terms, rates and volume commitments of the Proposal, thereby giving BellSouth the right and option ("Option") to respond to the Proposal as described herein; provided, however, Customer shall not be required to disclose the identity of the Person making the Proposal or to disclose any other information that would violate any confidentiality obligations to such Person.

6.5.1 Upon receipt of a Competitive Notice, BellSouth may exercise its Option by delivering Customer a written proposal for provision of Services at rates ("Revised Rates") that are no greater than fifteen (15%) higher than the rates in the Proposal.

6.5.2 BellSouth shall have fourteen (14) Business Days from its receipt of the Competitive Notice to deliver to Customer notice in writing of its exercise of the Option. BellSouth shall have an additional thirty (30) consecutive days after delivery of its notice of exercise of the Option to deliver its written alternative proposal, together with such Revised Rates, to Customer.

6.5.3 If BellSouth elects not to exercise the Option within fourteen (14) Business Days of its receipt of the Competitive Notice, Customer may, at its sole option and discretion, by written notice to BellSouth, discontinue use of the Services to be replaced by the Third Party Services without liability of any kind, including without limitation, any Termination Charges, Partial Termination Charges, Underutilization Charges or any other similar charges set forth in the Tariffs, and, upon such discontinuation the ARC for each year or part thereof for the remainder of the Term shall be deemed automatically reduced, effective as of the date of the Competitive Notice, by an amount equal to Customer's average, actual monthly Charges for the Services to be replaced with Third Party Services for the three (3) months immediately preceding the month in which the Competitive Notice was given times twelve (12).

6.5.4 If **BellSouth** exercises the Option, the Rates shall be deemed automatically reduced to the Revised Rates and any Charges for the Services to which the Revised Rates will apply shall automatically be readjusted to reflect such decrease, retroactive to the date of the Competitive Notice. Additionally, the ARC for each year or part thereof for the remainder of the Term shall be deemed automatically reduced, effective as of the date of the Competitive Notice, by an amount equal to the difference between (i) Customer's average, actual monthly Charges for the Services to which the Revised Rates will apply for the three (3) months immediately preceding the month in which the Competitive Notice was given and (ii) what the average monthly Charges for such Services for said three (3) month period would have been if calculated at the Revised Rate times twelve (12).

6.6 **Rates and Charges for Moves, Adds, Changes and Expedites.** Except as otherwise provided in this Section 6, Rates for Moves, Adds, Changes and Expedites are set forth in the applicable Tariffs **from** time to time in effect during the Term

6.7 **Interruptions and Credits.** Except where caused by negligence of Customer or failure of facilities **furnished** by the Customer, Customer shall be entitled to Interruption Credits as set forth at Schedule 6.7 for any and all Interruptions. Interruption Credits shall accrue from the time that Customer gives oral or written notice to **BellSouth** that an Interruption has occurred, until the time that said Interruption has been cured to Customer's reasonable satisfaction. Customer agrees to promptly release any affected circuits for testing and maintenance upon **BellSouth's** reasonable request. Interruption Credits will not apply to Interruptions scheduled in advance by Customer or **BellSouth**, subject to reasonable prior notice thereof to the other Party. **BellSouth** shall apply all Interruption Credits accrued within a calendar month to Customer's Charges on the next immediately following billing cycle.

6.8 **Business Downturn or Divestiture.**

Notwithstanding the provisions of this Agreement regarding Customer's failure to ~~tsatisfy~~ satisfy the ARC, in the event Customer:

6.8.1 (i) Experiences a business downturn beyond Customer's control that results in a customer end-user growth rate that is less than one-half of the projected average growth of the PCS industry based on U.S. Commerce Department statistics (or other generally recognized statistics for the PCS industry) (such downturn hereinafter referred to as a "Business Downturn"), or (ii) sells one or more of its **Affiliates** or operating divisions or eliminates product lines or areas of geographic coverage (such sale or elimination hereinafter referred to as a "Sale"); and

6.8.2 As a result of such **Business** Downturn or Sale, Customer reasonably believes that its Charges for use of Services during any Contract Year will be less **than** the ARC; and

6.8.3 Customer certifies in writing, with reasonably detailed support, no later than 30 days prior to any Anniversary Date of said Contract Year to **BellSouth** that it will not substitute

6.8.4 **BellSouth** shall reduce Customer's ARC for each year for the remainder of the Term, based on, as applicable, either (i) Customer's average monthly Charges or (ii) the divested **Affiliate's** or operating division's average monthly Charges for Services, in either case measured by the average of the three (3) full calendar months immediately preceding the Business Downturn or Sale, respectively. The revised **ARC** will become effective as of the first calendar day of the Contract Year immediately following the Contract Year during which the Business Downturn or Sale occurs, (i) the revised ARC will automatically replace the original ARC under this Agreement, (ii) Customer shall remain liable for Charges based on the revised ARC, and (iii) Customer and **BellSouth** shall in good faith negotiate a reduction in the Discounts commensurate with the reduction in the ARC.

6.9.1 **Taxes.** Customer shall be responsible for payment of applicable taxes for Services provided hereunder, subject to the condition that all such taxes be separately and clearly identified in detail on **BellSouth's** invoices; provided, however, Customer shall not be liable for payment of federal, state or local excise, sales, use or similar taxes from which the Services are exempt. Notwithstanding any provision hereof, **BellSouth** shall be fully and solely responsible for appropriate identification, segregation, and other applicable compliance measures required to ensure the availability of such tax exemptions for Services ("Exempt Services") provided hereunder, and shall promptly reimburse Customer (in the form of a credit to Customer's account) for the full amount of any such taxes improperly billed to Customer for any Exempt Services.

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## **6.11 Annual Revenue Commitment, True-UD and Underutilization.**

**6.11.1 Annual True-Up.** With ninety (90) days **after** the end of each Contract Year **BellSouth** will compare all Customer's actual charges (before application of any Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable **Tariff**) with the applicable ARC for such Contract Year (said comparison referred to herein as the "Annual True-Up"). The following charges to Customer will contribute to meeting the ARC: (i) Charges for the Services (before application of any Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable **Tariff**); (ii) charges for interstate special access; (iii) charges for **FlexServ** service; and (iv) Partial Termination Charges.

**6.11.2 Failure to Achieve ARC.** Customer agrees that if it **fails** to meet its ARC as measured by the Annual True-Up for any particular Contract Year ("Underutilization"), **BellSouth** shall bill and Customer agrees to pay an amount equal to (i) the difference, between (x) the amount of Charges **billed** to Customer for Services for the preceding Contract Year and (y) its ARC for such preceding Contract Year, multiplied by (ii) the Discount (said difference referred to herein as the "Underutilization Charge"). **BellSouth** must invoice Customer for any Underutilization Charge within sixty (60) days of the Annual True-Up and failure to do so shall constitute a waiver of said Underutilization Charge. Customer shall pay said Underutilization Charges in accordance with Section 3.5.3 hereof. The Parties agree that Customer's failure to meet its ARC for a Contract Year is not an Event of Default under this Agreement.

**6.11.2.1** **In the** event the ARC is adjusted due to a Business Downturn, Sale, Audit, Comparable Services replacement or for any other reason set forth in this Agreement, the ARC levels contained in Appendix I shall be reduced.

**6.11.2.2** Customer shall not be subject to Underutilization Charges or Partial Termination Charges if Underutilization occurs pursuant to:

- (i) Termination, Early Termination or Partial Discontinuance without liability by either Party, or
- (ii) **An** Event of **Default** with regard to **BellSouth's** obligations under this Agreement or an Adverse Regulatory Determination as set forth in Section 14.1, or
- (iii) A Force Majeure event as described in Section 10 hereof.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Nondisclosure.** The Parties shall (i) maintain the confidentiality of this Agreement, and the information and materials of the other that may be reasonably understood **from** legends, the

nature of such information itself and/or the circumstances of such information's disclosure, to be confidential and/or proprietary thereto or to third parties to which either of them owes a duty of nondisclosure (collectively, "Confidential Information"); (ii) take reasonable action in connection therewith, including at least the action that each takes to protect the confidentiality of its comparable proprietary assets; (iii) to the extent within their respective possession and/or control, upon termination of this Agreement for any reason, immediately return to the provider thereof all **Confidential** Information not licensed or authorized to be used or enjoyed after termination or expiration hereof, and (iv) with respect to any person to which disclosure is contemplated, require such person to execute an agreement providing for the treatment of Confidential Information set forth in clauses (i) through (iii). The foregoing shall not require separate written agreements with employees and agents already subject to written agreements substantially conforming to the requirements of this Section, nor with legal counsel, certified public accountants, or other professional advisers under a professional obligation to maintain the confidences of clients.

7.2 **Exceptions to Nondisclosure.** Notwithstanding the foregoing, the obligation of a person to protect the confidentiality of any Confidential Information or materials shall terminate as to any information or materials which: (i) are, or become, public knowledge through no act or failure to act of such person; (ii) are publicly disclosed by the proprietor ~~thereof~~; (iii) are lawfully obtained without obligations of confidentiality by such person ~~from~~ a third party after reasonable inquiry regarding the authority of such third party to possess and divulge the same; (iv) are independently developed by such person ~~from~~ sources or through persons that such person can demonstrate had no access to **Confidential** Information; or (v) are lawfully known by such person at the time of disclosure other than by reason of discussions with or disclosures by the Parties. In the event disclosure of Confidential Information is required by any Regulatory Authority, the disclosing Party shall (i) promptly advise the other Party; and (ii) seek confidential treatment by such Regulatory Authority of any disclosed Confidential Information to the extent available in the applicable jurisdiction.

## 8. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

BellSouth represents, warrants, and covenants that:

8.1 **Compliance with Laws.** The provision of Services hereunder and under the Tariffs is and shall be throughout the Term in full compliance with all applicable laws, including without limitation all applicable rules, regulations and policies of all Regulatory Authorities. The Rates recover **BellSouth's** costs, meet applicable standards of rate regulation, and are otherwise in full compliance with all applicable review standards issued by all Regulatory Authorities.

8.2 **Compliance with Specifications.** Upon Acceptance by Customer of any Services, such Services shall continuously operate strictly in accordance with the Specifications throughout the Term. **BellSouth** shall, at mutually agreed upon intervals, provide Customer with all reports, test results and other documentation necessary to demonstrate the continuous operation of the Service in accordance with the Specifications. **If BellSouth's** standard test procedures or Customer's own

audit(s) establish that an installed line, circuit, system or other Service(s) component does not perform in accordance with the Specifications, then (i) **BellSouth** shall immediately commence and diligently pursue efforts to correct such Deficiency; and (ii) Customer shall be entitled to Interruption Credits until such Deficiency has been corrected to Customer's reasonable satisfaction.

**8.3     Non-Suspension of Services.** Except by reason of an Event of Default by reason of Customer's non-payment of undisputed charges, **BellSouth** shall not suspend or cancel Services to any Site; provided, however, this provision shall not apply to Interruptions scheduled by **BellSouth** with Customer in advance for testing purposes. This provision shall survive the termination of this Agreement.

**8.4     Legal Authority and Enforceability.** (i) The execution, delivery and performance of this Agreement (together with regulatory filings related thereto), and any collateral agreements related thereto, and the consummation of all transactions contemplated hereby, have been duly authorized by all requisite corporate action; (ii) this Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which **BellSouth** is a party constitute the valid and legally binding obligations of **BellSouth**, enforceable against **BellSouth** in accordance with their respective terms; (iii) the execution, delivery and performance by **BellSouth** of this Agreement and the agreements provided for herein (together with any regulatory filings related thereto), and the consummation of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (x) violate the provisions of any law, rule or regulation applicable to **BellSouth**, (y) violate any judgment, decree, order or award of any court, or Regulatory Authority binding upon **BellSouth**, or (z) conflict with or violate the terms of any other agreement by which **BellSouth** or its property is bound.

**8.5     Waiver of Rights.** **BellSouth** waives and relinquishes, to the maximum extent permitted by law, any and all rights it has or may have at any time during the Term, at law or in equity, to raise or assert in any manner, at any time, in any forum, action or proceeding, the "filed rate doctrine" or any similar argument for the purpose of challenging or contesting the validity or enforceability of this Agreement, all amendments and modifications hereto, the provision of Services hereunder, or the Rates and Discounts set forth herein.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION**

### **9.1     Intellectual Property Indemnification.**

**9.1.1** **BellSouth** represents and warrants that neither the software, hardware, or any other materials provided to Customer hereunder or utilized by **BellSouth** in operation of the Services will infringe upon any patent, copyright, trade secret or other proprietary right of a third party (collectively, "Proprietary Rights"). **BellSouth** shall defend, settle, or otherwise manage at its sole cost and expense any claim, suit or action against the Customer or any End User, or any of their respective directors, officers, employees or agents (collectively "Indemnitees") for infringement of

any Proprietary Right arising directly or indirectly from an Indemnitee's use of the Services or use of any other materials furnished hereunder by **BellSouth**. **BellSouth** shall have the sole right to conduct the defense of any such claim, suit or action and all negotiations for its settlement or compromise. **BellSouth** agrees to indemnify and hold Indemnitees harmless from and against any claim, action, loss, damage, liability or expenses, including without limitation reasonable attorney's fees, arising or incurred directly or indirectly from or in connection with any such claim, suit or action.

9.1.2 Customer agrees to give **BellSouth** prompt written notice of any written threat, warning, or notice of any such claim, suit or action related to the Services and to provide copies of applicable papers served upon or received by Customer. **BellSouth** agrees to give the Customer prompt written notice of any written threat, warning or notice of any such claim, suit or action against **BellSouth** or, to **BellSouth's** knowledge, against any user or supplier of components of software utilized in the Services which could have a material adverse impact on the price, availability, quality or performance of the Services or Indemnitee's ability to use the Services.

9.1.3 **If the use or provision of the Services or other materials furnished hereunder is enjoined, BellSouth shall, at its own expense, either:** (i) procure for Customer the right to continue' using the Services or materials; or (ii) **modify** the Services and/or materials to become **non-infringing** (provided that such Services as modified remain, in the opinion of Customer, functionally equivalent to the Services); or (ii) substitute for the Services functionally equivalent (in the reasonable opinion of Customer), non-infringing Services and/or materials provided by **BellSouth** at no additional charge to Customer.

## **10. FORCE MAJEURE**

**10.1 General.** Neither Party shall be liable to the other for any delay, impairment or failure to perform during any period in which such delay, impairment or failure is (i) due to causes beyond its control and reasonable anticipation, and (ii) without such Party's fault or negligence (hereinafter a "Force Majeure"), including, but not limited to, fires, floods, epidemics, third-party negligence, quarantine restrictions, war, labor disputes and freight embargoes; provided, however, that Interruption Credits shall fully apply to the Customer's Charges throughout any Force Majeure.

**10.2 Duty to Mitigate.** Each Party whose performance is impaired under this Section 10 shall exercise its best efforts (including interconnection and cooperation with other carriers) to mitigate the extent of such delay or failure, including those arising from labor disputes or strikes.

## **11. RELATIONSHIP OF PARTIES**

**11.1 Representations and Authority.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the Parties. Neither Party has or shall have any

authority to bind, assume any obligation for or incur any debt on behalf of the other Party. Nothing in this Agreement shall be construed as preventing Customer from entering into agreement(s) with other carrier(s) or vendor(s) for the provision of services which are the same or similar to Services.

## **12. TERMINATION**

**12.1 Transitional Support.** In the event Customer elects termination, Early Termination, Partial Termination of Service, or Partial Discontinuance of this Agreement by reason of (i) an Event of Default of BellSouth's obligations, (ii) an Adverse Regulatory Determination, or (iii) as otherwise authorized herein BellSouth covenants to reasonably cooperate in facilitating Customer's conversion of Services to Third Party Services, including the continued provision of Services to Customer at the Rates for a period of up to four (4) months following the date of termination or discontinuance, until such conversion is completed, in a manner reasonably satisfactory to Customer or its counsel.

**12.2 Early Termination.** Customer shall have the right at any time during the Term hereof to terminate this Agreement and all outstanding Purchase Orders ("Early Termination") upon the, following terms and conditions specified below:

**12.2.1 Termination at Customer's Option with Liability.** If such Early Termination occurs prior to the end of the Term, Customer shall give BellSouth ninety (90) days advance written notice of such termination and shall pay BellSouth a Termination Charge equal to the following:

**12.2.2 Give Backs.** The product of (i) total Net Charge Payments made through the Termination Date, multiplied by (ii) a percentage (the "Give Back Percentage") equal to the following:

<u>Give Back Percentage</u>	<u>Termination Date falls on or before:</u>
44.93%	1st Anniversary Date
31.62%	2nd Anniversary Date
16.72%	3rd Anniversary Date
3.33%	4th Anniversary Date
1.69%	5th Anniversary Date;
plus	

**12.2.2.1 Interest.** Interest for each Net Charge Payment in an amount equal to the product of (i) the Net Charge Payment, multiplied by (ii) the Give Back Percentage, multiplied by (iii) the number of complete calendar months between the date of the Net Charge Payment and the Termination Date, multiplied by (iv) one percent (1%).

**12.2.3 Sole Termination Charge.** The application of the Termination Charge pursuant to this Section shall be in lieu of any other Termination Charges, Underutilization Charges or other similar charges made by BellSouth pursuant to this Agreement, any Tariff or any other

agreement or instrument. Provided, however, notwithstanding the foregoing, Customer shall remain liable to **BellSouth** for Partial Termination Charges calculated in accordance with Section 12.4.1.

12.2.4 **Termination by Customer Without Liability.** Any other provision of this Agreement to the contrary notwithstanding, Customer may, but shall not be obligated to, terminate this Agreement, in whole or in part, upon sixty (60) days advance written notice to **BellSouth**, without liability of any kind, including without limitation, Underutilization Charges, Termination Charges, Partial Termination Charges or other similar charges made by **BellSouth** pursuant to this Agreement, to any Tariffs or to any other agreement or instrument, in the event of:

12.2.4.1 The occurrence of an Event of Default with reference to **BellSouth's** obligations, as set forth in Section 13.1.1; or

12.2.4.2 An Adverse Regulatory Determination as set forth in Section 14.1 in which event Customer may exercise any election set forth in the second sentence of Section hereof.

12.3 **Partial Discontinuance Without Liability.** Customer may discontinue purchase of any Service Element as a result of Chronic Interruptions (as defined below) at any time, upon thirty (30) days advance written notice to **BellSouth**, without liability of any kind, including without limitation any Underutilization Charges, Termination Charges, Partial Termination Charges or other similar charges set forth in the Tariffs. If Customer discontinues purchase of a Service Element having Chronic Interruptions and does not replace such Service Element with substitute service from **BellSouth**, the ARC for each year or part thereof for the remainder of the Term shall be automatically reduced, effective as of the date Customer discontinues purchase of a Service Element, by an amount equal to the average, actual monthly Charges for the discontinued Service Element measured **over** the last three (3) billing months prior to discontinuation ~~time twelve (12)~~. Element shall be deemed to undergo "Chronic Interruptions" upon the occurrence of (i) three (3) Interruptions of said Service Element, or (ii) cumulative Interruptions (in the aggregate) of said Service Element of twenty-four (24) or more hours, within any three (3) consecutive calendar months of the Term.

## 12.4 **Partial Termination of Service With Liability**

Customer shall have the right at anytime during the Term hereof, to discontinue its purchase of any Service Element upon no less than thirty (30) days advance written notice to **BellSouth**. If Customer elects to discontinue its purchase of a **Service** Element pursuant to this Section, it shall pay **BellSouth** a Partial Termination Charge, calculated as follows:

### 12.4.1. **Partial Termination Charges.**

12.4.1.1 If Partial Termination occurs at anytime during the first twelve (12) months of the Service Period, the Partial Termination Charge shall equal the number of months

remaining in the Service Period times the Applicable Monthly Rate for the discontinued Service Element;

**12.4.1.2** If Partial Termination occurs **after the twelfth** (12th) month and before the twenty-fourth (24th) month of the Service Period, the Partial Termination Charge shall equal the number of months remaining in the Service Period times sixty percent (60%) of the Applicable Monthly Rate for the discontinued Service Element ; and

**12.4.1.3** If Partial Termination occurs at any time **after** the twenty-fourth (24th) month of the Service Period, the Partial Termination Charge, **if any**, shall equal the difference between (i) Customer's actual monthly Charges for the discontinued Service Element for the number of complete calendar months in the period of time commencing with (x) the first month of the Service Period and ending with (y) the month in which the discontinuance notice is delivered to **BellSouth** (said period of time hereinafter referred to as the "Revised Service Period") and (ii) what Customer's Charges for the discontinued Service Element for the Revised Service Period would have been if calculated at an Applicable Monthly Rate based on the Revised Service Period (hereinafter "Revised Applicable Charges").

**12.4.2 Applicable Monthly Rate.** For purposes of this Section 12.4, Applicable Monthly Rate means the Rate for the Service Element based on the length of the Service Period or Revised Service Period, as the case may be.

**12.4.3 Annual Calculation of Partial Termination Charges.** Within ninety (90) days after the end of each Contract Year **BellSouth** will calculate Revised Applicable Charges for Service Components discontinued by Customer during the preceding Contract Year, compare the Revised Applicable Charges with Customer's actual Charges (before application of any discounts or Interruption Credits provided pursuant to this Agreement or any applicable **Tariff**), for Service Components discontinued by Customer, during the preceding Contract Year, and calculate Partial Termination Charges for such Contract Year. **BellSouth** shall bill and Customer agrees to pay, pursuant to Section 3.5.3 hereof, after application of the Discount, all undisputed Partial Termination Charges for the preceding Contract Year. **BellSouth** agrees to send Customer copies of all records and accounting information supporting its calculation of Revised Applicable Charges and Partial Termination Charges along with Customer's invoice for such Partial Termination Charges. **BellSouth** must invoice Customer for any Partial Termination Charges within sixty (60) days of the aforesaid calculation and failure to do so shall constitute a waiver of said Partial Termination Charges.

**12.4.4 Sole Charge.** Payment of the Partial Termination Charge pursuant to this Section 12.4 constitutes **BellSouth's** sole remedy for Customer's Partial Termination of Service and is in lieu of any other Termination Charges, Underutilization Charges or any other similar charges made by **BellSouth** pursuant to this Agreement, to any **Tariff** or to any other agreement or instrument.

### **13. DEFAULT AND REMEDIES**

**13.1 Events of Default.** Upon ten (10) days prior written notice either Party may terminate this Agreement or any Purchase Order(s) issued hereunder, in whole or in part, without cost or liability to the terminating Party, or may exercise any other right or remedy available to it, upon the occurrence of an Event of Default by the other, as hereinafter described; provided, however, that the non-defaulting Party seeking termination shall have previously given the other Party notice of such Event of Default and forty-five (45) days to cure.

**13.1.1 Default by BellSouth.** An Event of Default shall have occurred with respect to BellSouth if

**13.1.1.1** BellSouth has breached any of its material obligations, covenants or warranties or made any material misrepresentation hereunder; or

**13.1.1.2** Customer has exercised its right of Partial Discontinuance pursuant to Section 12.3 with respect to one hundred (100) or more Service Elements within any period of six (6) consecutive calendar months.

**13.1.2 Default by Customer.** An Event of Default shall have occurred with respect to Customer if (i) Customer has breached any of its material obligations or warranties or made any material misrepresentation hereunder, or (ii) Customer shall have failed to make any undisputed payment due in accordance with the provisions hereof within thirty (30) days after receipt of written notice of delinquency.

**13.1.3 Default of Either Party.** An Event of Default shall have occurred with respect to either Party to this Agreement if such Party:

**13.1.3.1** Ceases to do business as a going concern;

**13.1.3.2** Makes a general assignment for the benefit of, or enters into any composition or arrangement with creditors;

**13.1.3.3** Is unable to or admits in writing its inability to pay its debts as they become due;

**13.1.3.4** Authorizes, applies for, or consents to the appointment of a trustee or liquidator of all or a substantial part of its assets or has proceedings seeking such appointment commenced against it which are not terminated within sixty (60) days of such commencement;

**13.1.3.5** Files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions of the laws of the



United States pertaining to bankruptcy or any similar law of any jurisdiction or has proceedings under any such law instituted against it which are not terminated within sixty (60) days of such commencement; or

13.1.3.6 Has any substantial part of its property become subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without said levy, seizure, assignment or sale being released, ~~lifted~~, reversed or satisfied within ten (10) days thereafter.

#### **14. ADVERSE REGULATORY DETERMINATION AND REGULATORY CONSIDERATIONS**

14.1 **Adverse Regulatory Determination.** ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IF ANY REGULATORY AUTHORITY DETERMINES, AT ANY TIME, THAT THIS AGREEMENT IN WHOLE OR IN PART IS UNLAWFUL OR UNENFORCEABLE BY CUSTOMER, ("ADVERSE REGULATORY DETERMINATION") CUSTOMER SHALL HAVE THE RIGHT, AT ITS SOLE OPTION AND, DISCRETION, (i) TO TERMINATE THIS AGREEMENT, IN WHOLE OR IN PART, INCLUDING ANY PURCHASE ORDER ISSUED HEREUNDER, IN WHOLE OR IN PART, IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 12.2.4 AND 12.3 HEREOF, UPON NO LESS THAN TEN (10) DAYS PRIOR WRITTEN NOTICE TO BELLSOUTH, (ii) TO CONTINUE TO TAKE THE SERVICES UNDER ANY LAWFUL RATES, TERMS AND CONDITIONS SET FORTH IN ANY TARIFF, (iii) TO CONTINUE TO TAKE SERVICES UNDER ANY UNEXPIRED CSA AGREEMENTS BETWEEN CUSTOMER AND BELLSOUTH, AND UPON CUSTOMER'S ELECTION OF ALTERNATIVE (ii) OR (iii) PRECEDING, SAID NEW RATES, TERMS AND CONDITIONS WILL AUTOMATICALLY REPLACE THE RATES, TERMS AND CONDITIONS SET FORTH HEREIN, OR (iv) TO RENEGOTIATE THE RATES, TERMS AND CONDITIONS OF A REVISED CSA AGREEMENT (INCLUDING THE RATES, TERMS AND CONDITIONS AVAILABLE TO OTHER CUSTOMERS), TO BE FILED WITH THE APPLICABLE REGULATORY AUTHORITIES. UPON CUSTOMER'S ELECTION TO EXERCISE ITEM (iv) PRECEDING, BELLSOUTH COVENANTS AND AGREES TO USE ITS BEST COMMERCIALY REASONABLE EFFORTS TO RENEGOTIATE SUCH RATES, TERMS AND CONDITIONS OF A REVISED CSA AGREEMENT, AND TIME WILL BE OF THE ESSENCE IN SUCH RENEGOTIATION AND FILING.

#### **15. MISCELLANEOUS**

15.1 **Advertising or Publicity.** Except as otherwise agreed to in writing between the Parties, neither Party shall advertise or publish any materials related to this Agreement.

**15.2 Assignment by Customer.** Customer shall have the right to assign this Agreement to any CMRS **Affiliate** of Customer. This Agreement shall be binding upon and inure to the benefit of Customer and its successors and assigns. This Agreement shall be deemed automatically assigned to any successor-in-interest to Customer created by merger, acquisition, consolidation or divestiture.

**15.3 Assignment by BellSouth.** BellSouth shall neither assign its rights nor delegate its obligations hereunder to any third party without the express written consent of Customer, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, **BellSouth** may assign or delegate its obligations hereunder to any Affiliate of **BellSouth** without the prior written consent of the Customer but upon reasonable written notice to Customer; provided, however, such assignment shall not relieve **BellSouth** of any liabilities hereunder. This Agreement shall be binding upon and inure to the benefit of **BellSouth** and its successors and assigns.

**15.4 Notices.** Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective upon receipt, and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package delivery or courier service; (iii) by the United States Postal Service, first class, **certified** mail, return receipt requested, postage prepaid; or (iv) by prepaid, telecopier, telex, or other similar means of electronic communication (followed by confirmation on the same or following day by mail as aforesaid). All notices given under this Agreement shall be addressed, in the case of Customer, as follows:

Powertel, Inc.  
**1233 O.G. Skinner Drive**  
West Point, GA 3 1833  
Attn: Jill F. Dorsey  
Vice President • General Counsel

with a copy to:

Gerry, Friend & Saprnov, LLP  
**Three Ravinia Drive**  
Suite 1450  
Atlanta, GA 30346  
Attn: Walt Saprnov, Esq.

and, in the case of **BellSouth**, as follows:

Mr. Scott Schaefer  
675 West Peachtree Street, N.E.  
Room **34A51**  
Atlanta, Georgia 30375

with a copy to:

Mr. William Warburton  
675 West Peachtree Street, N.E.  
R o o m 34A51  
Atlanta, Georgia 30375

or to such other addresses or telecopier numbers of which the Parties have been advised in writing by any of the above-described means. Personal delivery to a Party or to any officer, partner, agent, or employee of such Party at its address herein shall constitute receipt. The following shall also constitute receipt: (i) a Party's rejection or other refusal to accept notice, and (ii) the inability to deliver to a Party because of a changed address or telecopier number of which no notice has been received by the other Party. Notwithstanding the foregoing, no notice of change of address or telecopier number shall be effective until ten (10) days after the date of receipt thereof. This Section shall not be construed in any way to affect or impair any waiver of notice or demand herein provided.

**15.5 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the following laws in the following order of priority (i) the laws of the State of Georgia, without regard to Georgia's conflict of law principles, (ii) the various State **Tariffs**, and (iii) State utility codes authorizing the execution and the filing of this Agreement with the applicable Regulatory Authorities in the States.

**15.6 Construction of the Agreement.** To the extent possible and reasonable, this Agreement shall be construed in conformity with and not in conflict with applicable Tariffs and regulations. Provided, however, **BellSouth's** obligations to provide Services at the Rates and with the Discounts and Customer's obligations to pay for Services and to remain bound for the **Term**, all in accordance with the provisions herein, are to be construed as mutually dependent, in accordance with generally accepted principles of contract law and construction.

**15.7 No Waiver.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be **binding** on either Party **unless** evidenced by a written notice or amendment signed by an authorized representative of the Party to be bound.

**15.8 Disputes.** The Parties agree to attempt to resolve any dispute arising under this Agreement (**including** all documents incorporated herein by reference and attached hereto), under the following procedures:

**15.8.1** Each Party shall notify an appropriate representative of the dispute in writing, setting forth relevant facts and explaining why the Party believes the dispute should be resolved in its favor;

**15.8.2** Within five (5) Business Days after such notice has been given, the program managers for each Party shall meet, by conference call or in person, in an effort to resolve the dispute. If they are unable to do so, they shall prepare a joint report, detailing the reasons for the dispute and each Party's position, and shall deliver the report within five Business Days after their meeting to a senior executive within each company, selected by the respective program manager.

**15.8.3** The senior executives shall meet, by conference call or in person, within ten calendar days from delivery of their program managers' reports, in an effort to resolve the dispute.

**15.8.4** If the senior executives cannot resolve the dispute, then either Party may institute arbitration as hereinafter set forth.

**15.9 Arbitration.** Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled by binding arbitration in Atlanta, Georgia, in accordance with the Commercial Arbitration Rules of American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**15.10 Entirety of Agreement.** This Agreement (together with all Appendices, Exhibits, Schedules and all Purchase Orders accepted by BellSouth from time to time pursuant to Section 3.3.3 hereof) constitute the entire agreement between the Parties with respect to the subject matter hereof, and upon satisfaction of all regulatory approvals pursuant to Section 2.3.1 hereof, superseding all prior understandings and agreements (including without limitation any existing CSA agreements entered into by the Parties prior to the Effective Date), and may not be modified or altered except by a written instrument duly executed by the Parties.

**15.11 Severability.** Should any provision or portion of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then, at Customer's sole option and discretion (i) the remaining provisions of this Agreement shall remain in full force and effect, or (ii) Customer may terminate this Agreement without liability in accordance with Section 12.2.4 hereof

**15.12 Headings.** Headings used in this Agreement are for reference purposes only, and shall not be deemed a part of this Agreement. The recitals set forth at the outset of this Agreement shall be deemed to be a part hereof

**15.13 Survival.** The following provisions of this Agreement shall survive termination or expiration:

**15.13.1** Section 8.1, Compliance with Laws;

**15.13.2** Section 8.3, Non-Suspension of Services;

**15.13.3** Section 9, Intellectual Property Indemnification;

- 15.13.4 Section 12.1, Transitional Support;
- 15.13.5 Section 12.2, Early Termination;
- 15.13.6 Section 12.3, Partial Discontinuance;
- 15.13.7 Section 12.4, Partial Termination;
- 15.13.8 Section 14, Adverse Regulatory Determination; and

15.13.9 any other provision which by its terms or by any reasonable interpretation thereof is intended to survive termination or expiration.

**15.14 Counterparts.** This Agreement shall be signed in as many counterparts as may be required for filing with Regulatory Authorities.

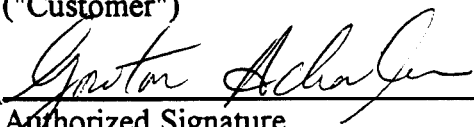
**15.15 Time of the Essence.** Time is of the essence in the performance by **BellSouth** of its, obligations under this Agreement.

**15.16 Remedies Cumulative and Non-Exclusive.** Unless otherwise expressly limited or excluded herein, all remedies provided in this Agreement are cumulative and non-exclusive, and are in addition to all other remedies, including without limitation, any actions for damages, available at law or in equity.

**15.17 Resale to Third Parties.** If Customer enters into any agreement with a certificated reseller of **BellSouth** local services ("Reseller"), pursuant to which Customer transfers its rights, benefits and obligations under this Agreement to Reseller and purchases the Services from Reseller rather than from **BellSouth**, then Customer agrees to pay **BellSouth** an amount equal to the administrative costs and expenses incurred by **BellSouth** in implementing and administering this Agreement. Notwithstanding the foregoing, Customer shall not be obligated to pay **BellSouth** an amount greater than sixty thousand (\$60,000) dollars for administrative costs and expenses, plus ten thousand (\$10,000) dollars per year for **BellSouth** maintenance for each year remaining in the Term after the year in which Customer enters into the **aforescribed** agreement with Reseller.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

POWERTEL, INC.  
("Customer")

By:   
Authorized Signature

GOWTON ACHAIBAR  
Printed Name

VICE PRESIDENT  
Title

POWERTEL\ATLANTA, INC.  
("Customer")

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

POWERTEL\BIRMINGHAM, INC.  
("Customer")

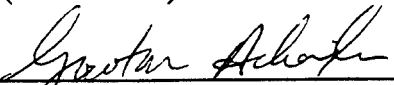
By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

*[signatures continued on the following page]*

POWERTEL JACKSONVILLE, INC.  
("Customer")

By:   
Authorized Signature  
GOWTONI ACHAIISON  
Printed Name  
VICE PRESIDENT  
Title

POWERTEL KENTUCKY, INC.  
("Customer")

By: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

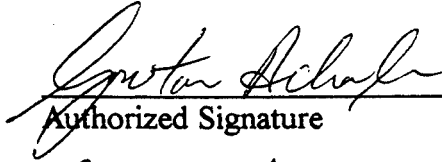
POWERTEL MEMPHIS, INC.  
("Customer")

By: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

*[signatures continued on the following page]*

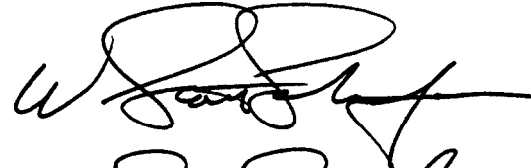
BELLSOUTH TELECOMMUNICATIONS,  
INC. "  
("BellSouth")

By:

  
Authorized Signature

GWOTON ACHAIBAN  
Printed Name

VICE PRESIDENT  
Title

By: 

W. Scott Sumner

President - International Services  
BellSouth



ANNUAL REVENUE COMMITMENT AND DISCOUNTS

This page has been redacted. For information you can contact Jarrett Board at (404) 927-1277.

## **APPENDIX II**

### **ELIGIBLE SERVICES**

## APPENDIX II

### ELIGIBLE SERVICES

Services to be provided by **BellSouth** to Customer pursuant to this Agreement and Charges for which contribute to the ARC are as follows:

- A. - **MegaLink** @S-1)
- B. - **LightGate** (DS-3)
- C. - **SmartRing** Services

D. **DESIGN SUPPORT SERVICES:**

1. **BellSouth** shall provide Customer with Design Support Services for new Site provisioning or Installation of Services at a new Site at no additional charge to the Customer. Design Support Services include:

a. The Services of a dedicated system designer from the date of the execution of this Agreement to Customer's activation of **CMRS** service at each of its Sites in all of Customer's license areas in the **BellSouth** service areas covered in this Agreement;

b. Initial system design;

c. Initial planning of new cell sites;

d. Site visits for quotes of all special engineering and construction charges;

e. Site construction meeting; and

f. Final site inspection.

2. Any Design Support Services provided to Customer other than for new Site provisioning or Installation of Services at a new Site will be provided to Customer at the rate of \$175 per hour.

3. **BellSouth** agrees to perform the annual network optimization at no charge to Customer. Any additional network optimization services requested by Customer will be provided to Customer at the rate of \$175 per hour.

4. The charges for Design Support Services and network optimization services, if any, at Customer's option, may be deferred and allocated over the term of the Agreement at an annual interest rate of twelve percent (12%) per annum. In the event of Early Termination of this Agreement, any **deferred** charges will be due fifteen (15) days after the termination becomes effective.

**APPENDIX III**  
**INSTALLATION SCHEDULE**

**APPENDIX III**

**INSTALLATION SCHEDULE**

**[MUST LIST SERVICE ORDER PERIOD FOR EACH SERVICE AT EACH SITE]**

## **APPENDIX IV**

### **PERFORMANCE SPECIFICATIONS**

## **APPENDIX IV**

### **PERFORMANCE SPECIFICATIONS**

<b><u>TR# / ID</u></b>	<b><u>Issue / Date</u></b>	<b><u>Technical Reference Title</u></b>
TR-73501	D/Jul 1995	LightGate® Service Interface and Performance Specifications
TR-73 525	C/May 1996	MegaLink® Service, BellSouth® MegaLink® Channel Service, & BellSouth® MegaLink® Plus Service Interface and Performance Specification
TR-73 582	B/Dec 1994	SMARTRing® Service OC-N & STS-1 Interface and Performance Specifications