

INTERCONNECTION AGREEMENT-MISSOURI

BETWEEN

**SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A
SBC MISSOURI**

AND

TCG KANSAS CITY

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ATTACHMENTS

Resale

Attachment 1: Resale

Appendix Services/Pricing

Appendix Customized Routing-Resale

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Attachment 4: Intentionally Left Blank

Attachment 5: Intentionally Left Blank

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)

UNE Pricing Exhibit 1

Appendix Pricing-UNE

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Attachment 9: Intentionally Left Blank

Attachment 10: Intentionally Left Blank

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture, Parts A, B and C

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Part F: Network Interconnection – Trunk Forecasting

Part G: Space License

Attachment 12: Intercarrier Compensation

Appendix FGA

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Attachment 13: Ancillary Functions

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Collocation Rate Summary

Appendix Poles, Conduit, ROW

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Attachment 29: Condominium Arrangements

Condominium Exhibit 1

Attachment 30: Pricing

INTERCONNECTION AGREEMENT – MISSOURI

This Interconnection Agreement (Agreement) is between TCG Kansas City (referred to as "TCG-KC"), a New York partnership, office at 5501 LBJ Freeway, Dallas, Texas 75240 and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, hereinafter referred to as "SBC MISSOURI," having a principal office at 530 McCullough, San Antonio, Texas 78215, (collectively, the Parties).

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the Agreement) is dated as of _____, 2005 by and between SBC MISSOURI and TCG-KC only to the extent that SBC MISSOURI provides Telephone Exchange Services as an ILEC in Missouri and shall apply only to the state of Missouri.

WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SBC MISSOURI services and for the provision by SBC MISSOURI of Interconnection, Unbundled Network Elements, and Ancillary Functions as designated in the Attachments and Schedules attached hereto.

WHEREAS, on February 8, 1996, the Communications Act of 1934, 47 U.S.C. § 151 et seq., was amended by the Telecommunications Act of 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, telecommunications carriers; and

WHEREAS, SBC MISSOURI is an Incumbent Local Exchange Carrier or has a majority ownership interest in local exchange companies ("ILECs") which are Incumbent Local Exchange Carriers; and

WHEREAS, SBC MISSOURI is willing to provide Interconnection, Unbundled Network Elements, ancillary functions or services, services for resale, and additional features, on the terms and subject to the conditions of this Agreement; and

WHEREAS, for purposes of this Agreement, TCG-KC operates or intends to operate in the State of Missouri where SBC MISSOURI is the ILEC and TCG-KC has or, prior to the provisioning of any Interconnection, access to Unbundled Network Elements, Telecommunications Services or any other functions, facilities, products or services hereunder, will have been granted authority to provide local Telephone Exchange Services in said ILEC service areas by the Public Service Commission of Missouri ("Commission");

WHEREAS, TCG-KC is a telecommunications carrier and has requested that SBC MISSOURI negotiate an Agreement with TCG-KC for the provision of Interconnection, Unbundled Network Elements, ancillary functions or services, services for resale, and additional features pursuant to the Act and in conformance with SBC MISSOURI's duties under the Act; and

WHEREAS, the Parties have arrived at this Agreement through procedures undertaken pursuant to the Act, and acknowledge that its terms and conditions are subject to the Act, including Sections 251 and 252 thereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement TCG-KC and SBC MISSOURI hereby agree as follows:

1. INTRODUCTION

- 1.1 TCG-KC's current Interconnection Agreement sets forth the terms and conditions pursuant to which SBC MISSOURI agrees to provide TCG-KC with access to unbundled network elements (UNEs), Collocation and Resale in SBC MISSOURI's incumbent local exchange areas for the provision of TCG-KC's Telecommunications Services ((Act, Section 251(c)). The Parties acknowledge and agree that SBC MISSOURI is only obligated to make available UNEs, Collocation and Resale to TCG-KC in SBC MISSOURI's incumbent local exchange areas. SBC MISSOURI has no obligation to provide UNEs, Collocation and Resale to TCG-KC for the purposes of TCG-KC providing and/or extending service outside of SBC MISSOURI's incumbent local exchange areas. In addition, SBC MISSOURI is not obligated to provision UNEs, Collocation and Resale or provide any other rights under Section 251(c) of the Act outside of SBC MISSOURI's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in TCG-KC's current Interconnection Agreement, and any associated provisions set forth elsewhere in TCG-KC's current Interconnection Agreement (including but not limited to the associated UNE, Collocation and Resale rates set forth in this Agreement), shall only apply and be available to TCG-KC for provisioning services within an SBC MISSOURI incumbent local exchange area(s) in the State in which TCG-KC's current Interconnection Agreement has been approved by the Commission and is in effect. This Agreement also sets forth the terms and conditions for the interconnection of TCG-KC's network to SBC MISSOURI's network and reciprocal compensation for the transport and termination of telecommunications. Provided however, all references to Resale in this Agreement, apply only where TCG-KC is purchasing resold services from SBC MISSOURI pursuant to terms and conditions negotiated under Section 251(c)(4) of the Telecommunications Act of 1996 and incorporated into this Agreement.
- 1.2 Subject to the terms and conditions of this Agreement, the Unbundled Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected to other Unbundled Network Elements, Combinations or Resale services provided by SBC MISSOURI or to any network components provided by TCG-KC itself or by any other vendor. Subject to the requirements of this Agreement, TCG-KC may at any time add, delete, relocate or modify the Resale services, Unbundled Network Elements or Combinations purchased hereunder.
- 1.3 Except as provided in this Agreement, during the term of this Agreement, SBC MISSOURI will not discontinue, as to TCG-KC, any Unbundled Network Element, Combination, or Ancillary Functions offered to TCG-KC hereunder. During the term of this Agreement, SBC MISSOURI will not discontinue any Resale services or features offered to TCG-KC hereunder except as provided in this Agreement. This Section is not intended to impair SBC MISSOURI's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Unbundled Network Elements, Combinations or Ancillary Functions made by SBC MISSOURI to TCG-KC as set forth in and during the term of this Agreement.
- 1.4 SBC MISSOURI may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed in the Table of Contents of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 Unless otherwise provided in the Agreement, or as required by 47 U.S.C. §224, SBC MISSOURI will perform all of its obligations concerning its offering of Resale services and Unbundled Network Elements under this Agreement throughout the entire service area in Missouri where SBC MISSOURI is the incumbent local exchange carrier.

2. EFFECTIVE DATE, TERM, AND TERMINATION

- 2.1 The effective date of this Agreement (the "Effective Date") shall be as follows: (i) unless this Agreement is a successor agreement to an effective interconnection agreement between the Parties under Sections 251/252 of the Act, then the Effective Date of this Agreement shall be ten (10) calendar days after the Public Service Commission of the State of Missouri (the "Commission") approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act; or (ii) if this Agreement is a successor agreement to an effective interconnection agreement between the Parties under Sections 251/252, then the Effective Date shall be the date upon which the Commission approves the Agreement under the Act, or absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 2.2 The Agreement shall have a term ("Term") of two (2) years commencing on the date that this Agreement is signed by both Parties. Absent the receipt by one Party of written notice from the other Party not earlier than 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term ("Notice of Expiration"), this Agreement shall remain in full force and effect, on a month to month basis, on and after the expiration of the Term until terminated by either Party.
- 2.2.1 If either Party serves Notice of Expiration pursuant to Section 2.2, TCG-KC shall have twenty (20) calendar days to provide SBC MISSOURI written confirmation if TCG-KC wishes to pursue a successor agreement with SBC MISSOURI or alternatively, if TCG-KC wishes to allow the current Agreement to expire. If TCG-KC wishes to pursue a successor agreement with SBC MISSOURI, TCG-KC shall attach to its written confirmation or Notice of Expiration, as applicable, a written request to commence negotiations with SBC MISSOURI under Sections 251/252 of the Act. Upon receipt of TCG-KC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.
- 2.2.1.1 If TCG-KC does not affirmatively state that it wishes to pursue a successor agreement with SBC MISSOURI in its, as applicable, Notice of Expiration or the written confirmation required after receipt of SBC MISSOURI's Notice of Expiration, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date TCG-KC provided or received Notice of Expiration. Unless otherwise agreed by the Parties, if the Term of this Agreement has expired, on the ninety-first (91st) day following TCG-KC provided or received Notice of Expiration, the Parties shall have no further obligations under this Agreement except those described in Section 44 of this Agreement, including but not limited to the obligations described in Section 2.4 below.
- 2.3 The terms and conditions and rates and charges contained herein will continue to apply until the earlier of (i) termination by either Party under the terms of this Agreement; (ii) the date a successor agreement becomes effective or (iii) the date that is ten (10) months after the date on which SBC MISSOURI received TCG-KC's Section 252(a)(1) request, unless an arbitration petition has been filed by either Party, in which case (ii) applies.
- 2.4 TCG-KC may terminate this Agreement in whole or in part at any time for any reason upon sixty (60) days prior notice but its liabilities and obligations shall continue in accordance with Section 44 below.
- 2.5 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, Resale Services, Unbundled Network Elements, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in

the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement, other than as set forth in Section 10, and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 2.5 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.

- 2.6 As long as a non-paying Party has disputed unpaid amounts in good faith and pursuant to the terms of this Agreement, non-payment is not to be deemed, nor should it be construed as, a material breach of this Agreement.
- 2.7 In the event of expiration or termination of this Agreement other than pursuant to Section 2.5, SBC MISSOURI and TCG-KC shall cooperate in good faith to effect an orderly and timely transition of service under this Agreement to TCG-KC or to another vendor. So long as TCG-KC fulfills said obligation to effect an orderly and timely transition of service, SBC MISSOURI shall not terminate service to TCG-KC's end users and such service shall be provided pursuant to the terms of the interconnection agreement during this transition period. SBC MISSOURI and TCG-KC shall continue their responsibilities under the terms and conditions of the terminated or expired Agreement for any order submitted to SBC MISSOURI in connection with this transition of service.

3. CHANGE IN LAW; RESERVATION OF RIGHTS

- 3.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the following, as of March 1, 2005: the Act, the applicable rules, regulations and Orders promulgated under the Act by the FCC, and applicable MISSOURI statutes, rules, regulations and Commission orders, and judicial decisions by courts of competent jurisdiction interpreting and applying said federal and MISSOURI statutes, rules, regulations and Orders. In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) that are issued, rendered, or adopted after March 1, 2005. Additionally, each Party expressly reserves its intervening law rights relating to the following actions: *Verizon v. FCC, et al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the impairment proceedings that will be heard before the Commission and any pending appeals (and following remand and appeal, *USTA v. FCC*, 359 F.2d 554 (D.C. Cir. 2004), that relate to, or arise from, the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36) (the "TRO"), including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. August 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued in the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001; the FCC's order *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338 (FCC 04-179, rel. August 20, 2004) (the "Interim Order"), and the FCC's Order *In the Matter of Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. §160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171 (Order No. FCC 04-241) (rel. October 18, 2004) (collectively

"Government Actions"). Except to the extent that SBC-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC-13STATE state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC-13STATE's right to exercise its option at any time to adopt on a date specified by SBC-13STATE the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. For purposes of this Agreement, "Change in Law" shall be defined as any legally binding judicial decision by a court of competent jurisdiction, amendment of the Act or applicable SBC MISSOURI statute, or legislative, federal or state regulatory action, rule, regulation or other legal action that is issued, rendered or adopted after March 1, 2005 and that (i) materially revises, reverses, modifies or clarifies the meaning of the Act, an applicable MISSOURI statute or any of said rules, regulations, Orders, or judicial decisions, (ii) invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationales for any rate(s), terms(s) and/or condition(s) of the Agreement, (iii) and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement specifically including but not limited to those arising with respect to the Government Actions. For purposes of this section, "legally binding" means that the relevant legal action has not been stayed, no request for a stay is pending and if any deadline for requesting a stay is designated by statute or regulation, such deadline has passed. If either Party believes that a Change in Law within the meaning of this section has occurred, that Party may request renegotiation by written notice to the other Party. The Parties shall thereafter renegotiate the affected provisions in this Agreement in good faith and amend this Agreement to reflect such Change in Law. For avoidance of any doubt, this section shall also apply to situations where this Agreement defines the rights or obligations of either Party solely by reference to Applicable Law or similar reference. In the event that any renegotiation under this Section 3.0 is not concluded within sixty (60) days after one Party gives the other notice that it demands renegotiation pursuant to this provision, or if at any time during such sixty (60) day period the Parties shall have ceased to negotiate such terms for a continuous period of fifteen (15) business days or if the non-requesting Party refuses to engage in such renegotiation on the ground that there has been no Change in Law sufficient to require renegotiation under this Section, the dispute shall be resolved as provided in Section 9 of this Agreement. During the negotiation or arbitration of any such Change in Law, the Parties shall remain obligated to perform under the terms set forth in this Agreement.

- 3.2 The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights to participate in any proceedings regarding the proper interpretation and/or application of the Act, applicable rules and regulations nor does it waive any rights, remedies, or arguments with respect to any provisions of this Agreement or any rules, regulations, Orders or laws upon which it is based, including its right to seek legal review or a stay pending appeal.

4. MODIFIED RATES MISSOURI

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4.1.1 For purposes of this Section 4.0, an applicable FCC or Commission ruling means any ruling that is legally binding as described in Section 3 of the General Terms and Conditions of this Agreement, provided, however, that this section does not apply to an order or docket relating only to a specific complaint or interconnection agreement arbitration between parties other than SBC MISSOURI and TCG-KC, including proceedings between SBC MISSOURI and another CLEC ("Applicable Commission Ruling"). When the existing rate listed in the Attachment Pricing for any service, function, or capability provided under this Agreement is modified by an Applicable Commission Ruling, or by a separately executed agreement of the Parties ("Modified Rate or Rates"), the process specified below in 4.2.2 through 4.2.7 will apply. A rate is a Modified Rate for purposes of this Section 4.0 when the amount of the actual existing rate included or referenced in this

Agreement is changed to a higher or a lower amount. For avoidance of any doubt, any legal reclassification of a service, function, or capability is not considered a Modified Rate.

4.2 Intentionally Left Blank

4.2.1 Intentionally Left Blank

4.2.2 After the effective date of the Applicable Commission Ruling or upon a signed agreement between the Parties establishing a Modified Rate or Rates, either Party may give notice ("Rate Change Notice"), as described in Section 11 of the General Terms and Conditions of this Agreement, requesting to incorporate the Modified Rate or Rates into this Agreement.

4.2.3 Following a Rate Change Notice delivered by one Party to the other Party within ninety (90) days after the effective date of any such Applicable Commission Ruling, the Modified Rate or Rates will be incorporated into this Agreement via an amendment approved by the Commission and such rates shall be effective as follows (i) the date set for these rates by the Applicable Commission Ruling, (ii) the effective date of the Applicable Commission Ruling establishing the Modified Rate or Rates, if such ruling does not set an effective date, (iii) or the date established by the Parties in their separate agreement on the Modified Rate or Rates (the "Under 90 Day Notice Effective Date"). Following completion of such amendment or, if the Parties have failed to reach agreement on the amendment following the negotiation period set forth in Section 4.2.4 below, the billing Party will charge the Modified Rate or Rates as of the Under 90 Day Notice Effective Date and the Parties will issue any adjustments that are appropriate (e.g. of additional charges, billing credit adjustments) to implement the Under 90 Day Notice Effective Date.

4.2.3.1 If a Party's Rate Change Notice requesting negotiation of such an amendment is given more than ninety (90) days from the effective date of the Applicable Commission Ruling, the Modified Rate or Rates will be incorporated into this Agreement via an amendment approved by the Commission and such rates shall be effective on the later of (i) the effective date set for these rates by the Applicable Commission Ruling or (ii) the date of the Rate Change Notice (the "Over 90 Day Notice Effective Date"). If a Party's Rate Change Notice requesting negotiation of such an amendment is given more than ninety (90) days from the effective date of the Applicable Commission Ruling, such rates will not be applied retroactively notwithstanding any other provision included herein. Following completion of such amendment or, if the Parties have failed to reach agreement on the amendment following the negotiation period set forth in Section 4.2.4 below, the billing Party will charge the Modified Rate or Rate as of the Over 90 Day Notice Effective Date and the Parties will issue any adjustments that are appropriate (e.g. of additional charges, billing credit adjustments) to implement the Over 90 Day Notice Effective Date.

4.2.4 Notwithstanding anything to the contrary in this Agreement, if the Parties fail to complete their negotiation of an amendment to incorporate the Modified Rate or Rates into the Agreement within thirty (30) days of the date of the Rate Change Notice, the billing Party will begin to bill for the affected service, function, or capability at the Modified Rate or Rates, including the billing of any additional charges or credits described in 4.2.3 and 4.2.3.1 above commencing on the 31st day. The Parties may continue negotiations on the amendment or, at either Party's option, initiate a dispute in connection with the amendment, to be resolved in accordance with Section 9 of the General Terms and Conditions of this Agreement.

4.2.4.1 A dispute raised over the provisions of the amendment will not alter the effective date of the Modified Rate or Rates and related true-up obligations established under Section

- 4.2.3; nor alter the implementation date of the Modified Rate or Rates as established under Section 4.2.4.
- 4.2.5 If the billing Party does not commence billing at the Modified Rate or Rates, pursuant to the negotiated amendment or as specified in 4.2.3 or 4.2.4 above, the billed Party may dispute:
- 4.2.5.1 as described in Section 8.5 of the General Terms and Conditions (Billing Disputes Related to Unpaid Amounts) any unpaid billed charges that do not reflect the Modified Rate or Rates; or
- 4.2.5.2 as described in Section 8.4 of the General Terms and Conditions (Billing Disputes Related to Paid Amounts) any paid billed charges that do not reflect the Modified Rate or Rates.
- 4.2.6 Intentionally Left Blank.
- 4.2.7 In the event the terms and conditions of this Section 4 were not part of an approved and effective interconnection agreement between the Parties at the time the Applicable Commission Ruling became effective, either Party may still give a Rate Change Notice within ninety (90) days of the effective date of this Agreement, and the Modified Rate or Rates shall be effective the later of (i) the effective date that is set for these rates by the Applicable Commission Ruling or (ii) the date this Agreement becomes effective (following the date this Agreement is approved or deemed to have been approved by the Commission) and shall apply on a prospective basis only. Further, both Parties shall be foreclosed from replacing or otherwise superseding the Commission-established Rate(s) or other rates with the Modified Rate(s) for any period prior to the effective date of this Agreement. In no event may this provision be used to incorporate an Applicable Commission Ruling that became effective prior to the date set forth in Section 3.0 of these General Terms and Conditions unless such Applicable Commission Ruling(s) is included in the reservation of rights provisions in Section 3.0.
- 4.2.8 If neither Party provides a Rate Change Notice for a Modified Rate or Rates pursuant to Section 4.2.2 above, the Billing Party shall not be entitled to bill, and the billed Party shall not be obligated to pay, such Modified Rate or Rates. In such situations, the existing rates specified in Attachment Pricing of this Agreement will continue to apply, notwithstanding the issuance of any Applicable Commission Ruling.
- 4.3 NOTICE TO ADOPTING CLECS. Notwithstanding anything to the contrary in this Agreement, in the event that any other telecommunications carrier should adopt provisions in the Agreement pursuant to Section 252(j) of the Act ("Adopting CLEC"), the Adopting CLEC would only be entitled to the rates set forth in this Agreement as of the date that the MFN'd Agreement provisions become effective between SBC ILEC and the Adopting CLEC (i.e., following the date the Commission approves or is deemed to have approved the Adopting CLEC's Section 252(i) adoption ("MFN Effective Date")) and on a prospective basis only. Nothing in this Agreement shall entitle an Adopting CLEC to any retroactive application of any rates under this Agreement to any date prior to the MFN Effective Date and any Adopting CLEC is foreclosed from making any such claim hereunder.
- 4.4 SBC MISSOURI's obligation to provide Interconnection, Unbundled Network Elements, Collocation, Resale discounts, functions, facilities, products or services ("Products or Services") under this Agreement does not extend to Products or Services for which rates, terms and conditions are not contained in this Agreement. Accordingly, to the extent TCG-KC orders a Product or Service for which there are not rates, terms and conditions contained in this Agreement, SBC MISSOURI may reject the order, but only if there are no rates,

terms and conditions in an SBC MISSOURI Tariff or generic contract. In the event such an order is rejected, and the Product or Service is appropriate for BFR treatment under the BFR provisions set forth in Attachment UNE of this Agreement, TCG-KC may submit a BFR, which will be evaluated pursuant to such BFR provisions. Alternatively, if appropriate, the Parties may seek to negotiate a mutually agreeable amendment to this Agreement to incorporate rates, terms and conditions for the Product or Service into this Agreement.

4.4.1 In the event that TCG-KC orders a Product or Service to TCG-KC for which there are not rates, terms and conditions in this Agreement, but for which there are rates, terms and conditions in applicable SBC MISSOURI intrastate tariff or generic contract:

4.4.1.1 TCG-KC shall pay for the Product or Service provisioned to TCG-KC at the rates set forth in SBC MISSOURI's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then TCG-KC shall pay for the Product or Service at SBC MISSOURI's current generic contract rate for the Product or Service set forth in SBC MISSOURI's applicable state-specific generic pricing schedule as published on SBC MISSOURI's website;

4.4.1.2 TCG-KC's purchase of the Product or Service as provided in Section 4.4.1.1, above, shall be further subject to the terms and conditions contained in SBC MISSOURI's applicable intrastate tariffs for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then TCG-KC's purchase of the Product or Service will be subject to SBC MISSOURI's current generic contract rates, terms and conditions for the Product or Service. Further, if provisioned pursuant to an applicable SBC MISSOURI tariff or generic contract, either TCG-KC or SBC MISSOURI may request that this Agreement be amended within thirty (30) days of written request for such amendment either to (i) add a pointer that such product or service will be ordered from the SBC MISSOURI tariff or generic contract, as the case may be, or (ii) incorporate by amendment the conditions contained in such SBC MISSOURI tariff or generic contract that are material to a particular product or service, including, but not limited to, the rates for the selected product or service, and the terms and conditions regarding provisioning.

4.4.1.3 SBC MISSOURI's provisioning of orders for such Products or Services is expressly subject to this Section 4.4.1 and in no way constitutes a waiver of SBC MISSOURI's right to charge and collect payment for such Products and/or Services.

4.5 ESTABLISHMENT OF "TBD" RATES. In the event that TCG-KC orders, and SBC MISSOURI provisions, a Product or Service to TCG-KC for which there are terms and conditions in this Agreement but the rate, price or charge in this Agreement is noted as "To Be Determined" or "TBD" is otherwise specified as a product or service for which the price will be determined at a future date, the Parties understand and agree that if and when a rate, price or charge is established by SBC MISSOURI for that Product or Service and incorporated into SBC MISSOURI's current state-specific generic pricing schedule as published on SBC's CLEC website, that rate(s), price(s) or charge(s) (collectively, "Established Rate") shall apply to the affected Product or Service provided under this Agreement, retroactively for the period of time allowed for back billing pursuant to Attachment 28, as to any orders TCG-KC submitted and SBC MISSOURI provisioned for that Product or Service. SBC MISSOURI shall provide written notice to TCG-KC of the application of the Established Rate, and the Parties shall negotiate a conforming amendment to incorporate the Established Rate into the Agreement, unless TCG-KC disputes the Established Rate, and then the Parties shall attempt to negotiate the applicable rate for that Product or Service for a period of thirty (30)

days after SBC MISSOURI's notice of the Established Rate. In addition, as soon as is reasonably practicable after such Established Rate or such other agreed to rate begins to apply, SBC MISSOURI shall bill TCG-KC to reflect the application of the Established Rate retroactively for the period of time permitted by Attachment 28, subject to true-up if a different rate is established for the amendment contemplated by this section 4.5. Notwithstanding anything to the contrary in this Agreement, if the Parties fail to complete their negotiation of an amendment to incorporate the Established Rate or such agreed to rate into the Agreement for such Product or Service within thirty (30) days of the date of SBC MISSOURI's Notice of the Established Rate, SBC MISSOURI will begin to bill for the applicable Product or Service at the Established Rate, commencing on the 31st day after SBC MISSOURI'Ss Notice. The Parties may continue negotiations on the amendment, or, at either Party's option, initiate a dispute in connection with the amendment, to be resolved in accordance with Section 9 of the General Terms and Conditions of this Agreement.

4.5.1 SBC MISSOURI's provisioning of such orders for such Products or Services is expressly subject to this Section 4.5 and in no way constitutes a waiver of SBC MISSOURI's right to charge and collect payment for such Products and/or Services.

5. ASSIGNMENT

5.1 TCG-KC may assign or transfer this Agreement to its Affiliate(s) or a Third Party by providing SBC MISSOURI written notice sixty (60) calendar days' prior to such assignment or transfer; provided such assignment is not inconsistent with Applicable Law. As such, SBC MISSOURI may not delay a transfer for any reason other than to make the determination of the affiliate's or Third Party's ability to pay for the services provided. Notwithstanding the foregoing, TCG-KC may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate(s) or any Third Party if that Affiliate(s) or Third Party is a party to a separate agreement with SBC MISSOURI under Sections 251 and 252 of the Act. However the Affiliate or Third Party may opt into any effective and approved Agreement pursuant to Section 252(i) of the Act. Any attempted assignment or transfer of this Agreement by TCG-KC that is not expressly permitted or allowed shall be void.

5.2 Each Party will notify the other in writing not less than 60 days in advance of anticipated assignment.

5.3 Corporate Name Change and/or change in "d/b/a" only

5.3.1 Any assignment or transfer of this Agreement wherein only TCG-KC's name is changing, and specifically does not include a change to TCG-KC's OCN/ACNA, constitutes a CLEC Name Change, but only to the extent either (a) TCG-KC requests that SBC MISSOURI take action to reflect such name change in its records and systems as set forth in this Section 5.2.1 or (b) as required by the applicable commission. In the event TCG-KC requests SBC MISSOURI to modify individual facility, billing or OS/DA Rate Reference and Branding information to reflect the CLEC Name Change, the following charges shall apply:

5.3.1.1 For affected products billed out of the CABS billing system, a record order charge per BAN;

5.3.1.2 For resale or other affected products billed out of the CRIS billing system, a record order charge per end user record;

5.3.2 Rates for record orders are contained in the Appendix Pricing, Schedule of Prices.

5.3.3 TCG-KC shall also submit a new OSQ to update any affected OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Attachments 1, 22 and 23.

5.4 Company Code Change

5.4.1 Any assignment or transfer of an Agreement including the transfer or acquisition of assets under an Agreement, which results in a change of TCG-KC's OCN/ACNA constitutes a CLEC Company Code Change, but only to the extent either (a) TCG-KC requests that SBC MISSOURI take action to reflect such code change in its records and systems as set forth in this Section 5.3.1 or (b) such code change is required to ensure accurate provisioning for and billing to TCG-KC. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that TCG-KC and a carrier not a party to this Agreement may not share the same OCN and/or ACNA; provided, however, that (1) TCG-KC Affiliates in the same state may share an ACNA if the Affiliates operate under identical interconnection agreement rates, terms, and conditions (2) an TCG-KC Affiliate in one state may share an ACNA with another TCG-KC Affiliate in another state or states, and (3) TCG-KC Affiliates may use resale OCNs in more than one state (subject to subsection (b) above). TCG-KC shall provide SBC MISSOURI with a sixty (60) calendar day advanced written notice of said assignment associated with the Company Code Change. In the event TCG-KC requests SBC MISSOURI to modify individual facility, billing or OS/DA Rate Reference and Branding information to reflect the CLEC Company Code Change, TCG-KC shall submit a service order changing the OCN/ACNA for each affected end user record and/or a service order for each affected circuit ID number, as applicable. TCG-KC shall also submit a new OSQ to update any affected OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of and Attachments 1, 22 and 23. TCG-KC will pay rates for Collocation re-stenciling and/or re-engineering as applicable and as determined on an individual case basis.

5.5 Assignment of Assets:

5.5.1 Any assignment or transfer of assets by TCG-KC which constitutes a transfer of TCG-KC's end user customers without the transfer or the assignment of this Agreement shall be handled as a CLEC to CLEC Mass Migration. TCG-KC shall provide SBC MISSOURI with a ninety (90) calendar days advanced written notice of said mass migration. Included in such written notice TCG-KC shall inform SBC MISSOURI of the date in which the acquiring CLEC will assume financial responsibility of the assets.

5.5.2 For a Transfer of Assets without assumption or assignment of this Agreement, unless otherwise ordered by a bankruptcy court or other governing authority, the acquiring CLEC must cure any outstanding debt associated with such transfer of assets, and tender any requested assurance of payment as required under the terms of this Agreement.

5.5.3 The acquiring and selling CLECs shall coordinate the migration between themselves by sharing customer service records, and/or any other CPNI required information to effectuate such migration.

5.5.4 SBC MISSOURI will provide project management support to minimize any possible service outages during the mass migration. The project management support will be provided at no cost to either CLEC. Should the LSR or ASR guidelines not support the required order activity, SBC MISSOURI will issue service orders at the manual rate based upon type of service provided TCG-KC provides to SBC MISSOURI a list of all transferring assets including end users telephone numbers, circuit ID numbers, and customer service information.

5.6 When an End User changes its service provider from SBC MISSOURI to TCG-KC or from TCG-KC to SBC MISSOURI and does not retain its original telephone number, the Party formerly providing service to such

End User shall furnish a referral announcement ("Referral Announcement") on the original telephone number that specifies the End User's new telephone number.

- 5.7 Referral Announcements shall be provided by a Party to the other Party for the period specified under Applicable Law, if any, and at the rates set forth in the referring Party's tariff(s). However, if either Party provides Referral Announcements for a period different than the above period(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

6. CONFIDENTIALITY AND PROPRIETARY INFORMATION

For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by one Party (the "Discloser") to the other Party (the "Recipient") and identified by the Discloser as Confidential Information in accordance with this Section 6. Additionally, such Confidential Information shall include any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the extent the same contain, reflect, are derived from, or are based upon, any of the information described in this Section, unless such information contained or reflected in such notes, analyses, etc. is so commingled with the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as "Derivative Information").

- 6.1 All information which is to be treated as Confidential Information under this Agreement shall: (a) if in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential Information"; and (b) if oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential Information", and (ii) be set forth in a written summary which identifies the information as "Confidential Information" and which is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.

Each Party shall have the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within thirty (30) days after the information is disclosed. The Recipient shall, from that time forward, treat such information as Confidential Information.

- 6.2 In addition, by way of example and not limitation, information regarding orders for Resale Services, Network Elements or Combinations placed by TCG-KC pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of TCG-KC's customers pursuant to the Act and the rules and regulations of the FCC, and Recorded Usage Data as described in Attachment 28 concerning Recorded Usage Data, whether disclosed by TCG-KC to SBC MISSOURI or otherwise acquired by SBC MISSOURI in the course of the performance of this Agreement, will be deemed Confidential Information of TCG-KC for all purposes under this Agreement.

- 6.3 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.

- 6.4 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections

as the original and will bear the same copyright and proprietary rights notices as are contained on the original.

- 6.5 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 6.6 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- 6.7 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 6.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 6.9 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 6.10 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

7. LIABILITY, INDEMNIFICATION, INTELLECTUAL PROPERTY AND INSURANCE

7.1 Limitation of Liabilities

7.1.1 Intentionally Left Blank.

7.1.2 Except for 1) indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices or attachments, 2) payment obligations expressly required by and pursuant to Attachment 17 to this Agreement ("Performance Measures") each Party's liability to the other Party

for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or inadvertent omission, whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC MISSOURI or TCG-KC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed. "Loss" is defined as any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

- 7.1.3 Except as otherwise provided below or in specific Attachments or Schedules or other attachments to this Agreement, in the case of any loss alleged or claimed by a third party arising under the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this section shall be limited to, that portion of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 7.1.4 SBC MISSOURI shall not be liable to TCG-KC for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after SBC MISSOURI has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from TCG-KC until service is restored.
- 7.1.5 In the event TCG-KC provides E911 Service to SBC MISSOURI, TCG-KC shall not be liable to SBC MISSOURI, its end Users or its E911 calling parties or any other parties or persons for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after TCG-KC has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from SBC MISSOURI until service is restored.
- 7.2 No Consequential Damages
- 7.2.1 NEITHER TCG-KC NOR SBC MISSOURI WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SBC MISSOURI'S OR TCG-KC'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY

PROXIMATELY CAUSED BY SBC MISSOURI OR TCG-KC'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW. ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW. ADDITIONALLY, NOTHING CONTAINED IN THIS SECTION 7.2.1 SHALL EXCLUDE OR LIMIT THE LIABILITY OF EITHER PARTY WITH RESPECT TO THE OBLIGATIONS EXPRESSLY REQUIRED BY AND PURSUANT TO ATTACHMENT 17 TO THIS AGREEMENT ("PERFORMANCE MEASURES") PROVIDED HOWEVER NO PARTY SHALL BE ENTITLED TO MORE THAN ONE RECOVERY FOR THE SAME LOSS.

7.3 Obligation to Indemnify

7.3.1 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnitee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any omissions, breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions, omissions or status of its employees, agents, and subcontractors.

7.3.1.1 In the case of any loss alleged or made by an end user of either Party, the Party whose end user alleged or made such loss (Indemnifying Party) shall defend and indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or intentional or willful misconduct or breach of applicable law of the other (Indemnified) Party.

7.3.2 Intellectual Property

7.3.2.1 TCG-KC acknowledges that its right under this Agreement to interconnect with SBC MISSOURI network and to unbundle and/or combine SBC MISSOURI network elements (including combining with TCG-KC's network elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.

7.3.3 The Parties will abide by the April 27, 2000 FCC order in CC Docket No. 96-98 (File No. CCBPol. 97-4), *In the Matter of Petition of MCI for Declaratory Ruling*.

7.3.3.1 SBC MISSOURI agrees to use its best efforts to obtain co-extensive rights for TCG-KC, under commercially reasonable terms, for Intellectual Property rights to each unbundled network element necessary for TCG-KC to use such unbundled network element in the same manner as SBC MISSOURI.

- 7.3.3.2 SBC MISSOURI shall have no obligation to attempt to obtain for TCG-KC any Intellectual Property right(s) that would permit TCG-KC to use any unbundled network element in a different manner than used by SBC MISSOURI.
- 7.3.3.3 To the extent not prohibited by a contract with the vendor of the network element sought by TCG-KC that contains Intellectual Property licenses, SBC MISSOURI shall reveal to TCG-KC the name of the vendor, the Intellectual Property rights licensed to SBC MISSOURI under the vendor contract and the terms of the contract (excluding cost terms). SBC MISSOURI shall, at TCG-KC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to TCG-KC.
- 7.3.4 Except as may be required by state or federal law, nothing in this Agreement shall be construed as licenses to use such Intellectual Property rights or warranties, express or implied, concerning TCG-KC's (or any third party's) rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such interconnection or unbundling and/or combining of network elements (including combining with TCG-KC's network elements) in SBC MISSOURI's network or TCG-KC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with unbundled network elements are vendor licenses and warranties and are a part of the Intellectual Property rights SBC MISSOURI agrees in Section 7.3.3.1 to use its best efforts to obtain.
- 7.3.5 Unless otherwise required by Applicable Law, neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim that arises out of, is caused by, or relates to TCG-KC's interconnection with SBC MISSOURI' network and unbundling and/or combining SBC MISSOURI's network elements (including combining with TCG-KC's network elements) or TCG-KC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with unbundled network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SBC MISSOURI agrees in Section 7.3.3.1 to use its best efforts to obtain.
- 7.3.6 Intentionally Left Blank.
- 7.3.7 TCG-KC acknowledges that services and facilities to be provided by SBC MISSOURI hereunder may use or incorporate products, services or information proprietary to third party vendors and may be subject to third party intellectual property rights. In the event that proprietary rights restrictions in agreements with such third party vendors do not permit SBC MISSOURI to provide to TCG-KC, without additional actions or costs, particular unbundled Network Element(s) otherwise required to be made available to TCG-KC under this Agreement, then, as may be required by applicable state or federal law:
- a) SBC MISSOURI agrees to provide written notification to TCG-KC, directly or through a third party, of such restrictions that extend beyond restrictions otherwise imposed under this Agreement or applicable Tariff restrictions; and

- b) For any new agreements that SBC MISSOURI enters into or existing agreements that it renews, SBC MISSOURI shall use its best efforts to procure rights or licenses to allow SBC MISSOURI to provide to TCG-KC the particular unbundled Network Element(s), on terms comparable to terms provided to SBC MISSOURI, directly or on behalf of TCG-KC (“Additional Rights/Licenses”).
- c) For any new agreements that SBC MISSOURI enters into or existing agreements that it renews, in the event that SBC MISSOURI, after using its best efforts, is unable to procure Additional Rights/Licenses for TCG-KC, SBC MISSOURI will promptly provide written notification TCG-KC of the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as any and all related facilities or equipment; the extent to which it asserts TCG-KC's use has exceeded (or will exceed) the scope of the license; and the specific circumstances that prevented it from obtaining the revised provisions.
- d) In the event TCG-KC provides in writing within thirty (30) calendar days of written notice in section (c) above that SBC MISSOURI has not exercised such best efforts, TCG-KC may seek a determination through an expedited petition to the Missouri Commerce Commission as to whether SBC MISSOURI has exercised such best efforts.
- e) If and to the extent SBC MISSOURI is unable to make all warranties required pursuant to this agreement without additional costs, including payment of additional fees, in renegotiating with its vendors or licensors, SBC MISSOURI may seek recovery of such costs as are reasonable. Such additional costs shall be shared among all requesting carriers, including SBC MISSOURI, provided, however, all costs associated with the extension of Intellectual Property rights to TCG-KC pursuant to Section 7.3.3.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element including SBC MISSOURI.

7.3.8 Intentionally Left Blank.

7.3.9 Both Parties agree to promptly inform the other of any pending or threatened Intellectual Property Claims of third parties that may arise in the performance of this Agreement.

7.3.10 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party. Notwithstanding the exclusive ownership of Intellectual Property originated by a Party, the Party that owns such Intellectual Property will not assess a separate fee or charge to the other Party for the use of such Intellectual Property to the extent used in the provision of a product or service, available to either party under this Agreement, that utilizes such Intellectual Property to function properly.

7.4 Obligation to Defend; Notice; Cooperation

7.4.1 Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give

written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnitees. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at the refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also will be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

7.5 OSHA Statement

- 7.5.1 TCG-KC, in recognition of SBC MISSOURI's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SBC MISSOURI with all federal, state and local laws, safety and health regulations relating to TCG-KC's activities concerning Collocated Space, and to indemnify and hold SBC MISSOURI harmless for any judgments, citations, fines, or other penalties which are assessed against SBC MISSOURI as the result solely of TCG-KC's failure to comply with any of the foregoing. SBC MISSOURI, in its status as an employer, will comply with all federal, state and local laws, safety and health standards and regulations with respect to all other portions of the Premises, and agrees to indemnify and hold TCG-KC harmless for any judgments, citations, fines or other penalties which are assessed against TCG-KC as a result solely of SBC MISSOURI's failure to comply with any of the foregoing.

7.6 COMPLIANCE AND CERTIFICATION

- 7.6.1 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.
- 7.6.2 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. § 2522, and 47 U.S.C. §§ 229, 1001-1010) ("CALEA"). The Parties agree to work jointly, cooperatively and in good faith to allow each Party to comply with CALEA. Unless otherwise specified, each Party shall bear its own cost of complying with CALEA.
- 7.6.3 OSS
- 7.6.3.1 TCG-KC shall be responsible for and indemnifies SBC MISSOURI against any cost, expense or liability relating to any unauthorized entry or access into, or improper use or

manipulation of SBC MISSOURI's OSS by TCG-KC employees or persons using authorization granted to that person by TCG-KC to access SBC MISSOURI's OSS and shall pay SBC MISSOURI for any and all damages caused by such unauthorized entry, improper use or manipulation of SBC MISSOURI's OSS.

- 7.7 Insurance. At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
- 7.7.1 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, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
 - 7.7.2 Commercial General Liability and, if necessary, excess liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$10,000,000 each occurrence sub-limit for bodily injury, property damage, Personal Injury, Advertising injury and a separate Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,500,000 are also required if this Agreement involves collocation. Each Party must be included as an Additional Insured on the other Party's Commercial General Liability policy, but only with respect to liability arising from the respective parties' operations for which they have assumed responsibility herein.
 - 7.7.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
 - 7.7.4 Each Party shall require primary contractors providing services under this Agreement to maintain in force the insurance coverage and limits required in this Section 7.7.
 - 7.7.5 The Parties agree that companies affording the insurance coverages required under this Section 7.7 shall have a rating of A- or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Both at the time of execution of this Agreement and prior to the expiration of any insurance policy required herein, each Party shall provide to the other Party a certificate of insurance evidencing such insurance coverage. To the extent that one Party is afforded coverage under an insurance policy of the other Party, the other Party's insurance policy shall be primary and non-contributory. Each Party agrees to provide the other with at least thirty (30) days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein, except for cancellation due to non-payment of premium, for which such notice shall be ten (10) days.
 - 7.7.6 Intentionally Left Blank.
 - 7.7.7 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
 - 7.7.7.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and

- 7.7.7.2 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and
- 7.7.7.3 The Party desiring to satisfy its general liability and property insurance obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 7.7.8 For all locations other than those governed by 3D agreements between SBC MISSOURI and TCG-KC, each Party shall maintain All Risk Property Insurance with limits covering the full replacement value of the building and contents, other than the contents belonging to the other Party, on either an agreed amount or 100% coinsurance basis. This policy shall include a waiver of subrogation in favor of the other Party, except with respect to loss arising from the other party's gross negligence or willful misconduct. Each Party shall have the right to self-insure this obligation, subject to providing proof of such insurance as set forth in Section 7.7.7, above, and agrees to waive any rights of recovery from the other Party, other than for gross negligence or willful misconduct.

8. PAYMENT OF RATES AND CHARGES, DEPOSITS

- 8.1 Except as otherwise specifically provided elsewhere in this Agreement, including but not limited to Section 8.5, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of the date of the invoice or within twenty (20) days of receipt of an invoice, whichever is later; provided, the paying Party shall advise the billing Party via fax or e-mail in the event the bill is received 10 or more days after the bill date. For the purposes of this Section 8.1, each Parties' respective billing contact information shall be as designated in Section 11 of this Agreement.
- 8.1.1 If the payment due date is a Sunday or is a Monday that has been designated a bank holiday by the JP Morgan Chase Bank (or such other bank as the Parties agree), payment will be made the next business day. If the payment due date is a Saturday or is on a Tuesday, Wednesday, Thursday or Friday that has been designated a bank holiday by the JP Morgan Chase Bank (or such other bank as the Parties agree), payment will be made on the preceding business day.
- 8.2 If either Party fails to remit payment for any charges for services by the applicable due date, or if a payment or any portion of a payment is received by the billing Party from the paying Party after the applicable due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the billing Party as of the due date (individually and collectively, "Past Due"), then a late payment charge/interest* shall be assessed as follows in Sections 8.2.1. No other late payment fee or charge applies to overdue amounts.
- *For purposes of billing under this Agreement, the terms "interest" and "late payment charge" shall have the same meaning, as set forth in 8.2.1 below; provided, however, that neither party will assess a flat fee penalty charge. The Parties shall only charge interest as set forth in Sections 8.2.1.
- 8.2.1 If any charge incurred under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date, until paid at the lesser of (i) the rate used to compute the Late Payment Charge in the applicable SBC MISSOURI intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law.

- 8.3 Each Party shall make all Payments in U.S. Dollars to the other party via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by Party receiving the payment. At least thirty (30) days prior to the first transmission of billing data and information for payment, SBC MISSOURI will provide the name and address of its bank, its account and routing number and to whom billing payments should be made payable. If such banking information changes, each Party will provide the other Party at least sixty (60) days written notice of the change and such notice will include the new banking information. TCG-KC and SBC MISSOURI shall abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer shall be received by the billing Party no later than the applicable due date of each bill or late payment charge/interest will apply as provided in Section 8.2.1 above. The Party receiving payment shall not be liable for any delays in receipt of funds or errors in entries caused by the paying Party or third parties, including the paying Party's financial institution. The paying Party is responsible for its own banking fees. Each Party will provide the other Party with a contact person for the handling of billing payment questions or problems.
- 8.3.1 SBC MISSOURI and TCG-KC shall provide each other with remittance advices, providing detailed account information for proper application of the payment made by the paying Party. The remittance advice shall be transmitted electronically by 1:00 A.M. Eastern Time on the date the payment is effective, via an 820 EDI process, or, if the Parties agree, through the ACH network. Such process shall be utilized by the Parties beginning no later than three (3) months after the Effective Date of this Agreement, unless otherwise agreed between the Parties.
- 8.3.2 In the event TCG-KC receives multiple and/or other bills from SBC MISSOURI which are payable on the same date, TCG-KC may remit one payment for the sum of all such bills payable to SBC MISSOURI's bank account designated pursuant to Section 8.3 and TCG-KC will provide SBC MISSOURI with a payment advice pursuant to Section 8.3.1.
- 8.4 Billing Disputes Related to Paid Amounts
- 8.4.1 In order for a Billed Party to dispute all or a portion of amounts it has paid, it must:
- 8.4.1.1 Within eleven months of the Billed Party's receipt of the bill in question, give written notice to the Billing Party, by using the standard document, if any, made available by the Billing Party, unless otherwise agreed, of the amounts it disputes ("Disputed Amounts") and include in such written notice the total amount disputed and the specific details and reasons for disputing each item (including, without limitation, and as applicable, the date of the bill in question, BAN/Invoice number of the bill, and the level of detail required to communicate the extent of dispute, which may include the telephone number, customer code, circuit ID number or trunk number, and the USOC information questioned).
- 8.4.1.2 follow the dispute resolution procedures set forth in Section 9, below.
- 8.4.2 If a Billed Party brings a dispute pursuant to this Section 8.4, and any portion of the dispute is resolved, at the conclusion of the applicable dispute resolution process pursuant to Section 9, in favor of the Billed Party, the Billing Party shall pay or credit the account of the Billed Party the amount determined through the dispute resolution process, plus interest computed in the manner specified under the dispute resolution process (or under Section 8.2, whichever is applicable), as follows:
- (a) the Billing Party shall determine if the Billed Party has any undisputed amount Past Due (as defined under Section 8.2 of this Attachment) and owing to the Billing Party;

- (b) at the Billing Party's discretion, the amount determined through the dispute resolution process, plus interest computed in the manner specified under the dispute resolution process (or under Section 8.2, whichever is applicable), will be applied as a credit against the amount determined under subparagraph (a) preceding;
- (c) the amount so credited shall be reflected in the immediately next issued invoice with a breakout of the dispute resolution credit and accrued interest listed separately or other supplemental report with appropriate detail; and
- (d) to the extent the amount of dispute resolution exceeds the amount credited by the Billing Party in (a) then the Billing Party will issue a check to the Billed Party of that difference at the same time that the credit is issued pursuant to subparagraph (b).

The Parties also agree that the foregoing credit process will not apply to any significant settlements that the Parties enter into that expressly specify a reconciliation process, in which event the terms of such settlement agreement will govern the payment of the settlement amounts.

8.5 Billing Disputes Related to Unpaid Disputed Amounts; Escrow Requirements

8.5.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Billed Party") shall, five (5) business days prior to the applicable due date, advise the Billing Party in writing by using the standard document, if any, made available by the Billing Party, unless otherwise agreed, of the amounts it disputes ("Disputed Amounts") and within ten (10) business days after the applicable due date give the Billing Party written notice of the amount disputed, specific details and reasons for disputing each item (including, without limitation, as applicable, the date of the bill in question BAN/invoice number of the bill, and the level of detail required to communicate the extent of dispute, which may include the telephone number, customer code, circuit ID number or trunk number, the USOC information questioned), and pay to the Billing Party all undisputed unpaid charges by their applicable due date. All disputes must be in good faith and have a reasonable basis.

8.5.2 Intentionally left blank

8.5.3 The Billed Party shall pay (i) when due, all undisputed amounts to the Billing Party, and (ii) within thirty (30) days after its written notice of dispute, except as otherwise provided in Section 8.7 below, place all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties. To be acceptable, the third party escrow agent must meet all of the following criteria:

8.5.3.1 The financial institution proposed as the third party escrow agent must be located within the continental United States;

8.5.3.2 The financial institution proposed as the third party escrow agent may not be an affiliate of either Party; and

8.5.3.3 The financial institution proposed as the third party escrow agent must be authorized to handle Automatic Clearing House (ACH) credit transactions transfers.

- 8.5.3.4 In addition to the foregoing requirements for the third party escrow agent, the disputing Party and the financial institution proposed as the third party escrow agent must agree that the escrow account will meet all of the following criteria:
- 8.5.3.5 The escrow account must be an interest bearing account;
- 8.5.3.6 All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
- 8.5.3.7 That none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the third party escrow agent;
- 8.5.3.8 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and
- 8.5.3.9 Disbursements from the escrow account shall be limited to those:
- 8.5.3.9.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or
- 8.5.3.9.2 made in accordance with the final, non-appealable order or award of an arbitrator appointed pursuant to the provisions of Sections 9.5.1 or 9.6.1; or
- 8.5.3.9.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter an arbitrator's award pursuant to Section 9.6.1.
- 8.5.4 Disputed Amounts in escrow shall be subject to late payment charges/interest as set forth in Section 8.2.1 as applicable.
- 8.6 Intentionally Left Blank.
- 8.7 The Billed Party shall not be required to place Disputed Amounts in escrow, as required by Section 8.5, above, if the Billed Party does not have a proven history of late payments and has established a minimum of twelve consecutive (12) months good credit history with the Billing Party (prior to the date it notifies the Billing Party of its billing dispute); and either
- (i) the Billed Party has not filed more than three previous billing disputes within the twelve (12) months immediately preceding the date it notifies the Billing Party of its current billing dispute, which previous disputes were resolved in Billing Party's favor; or,
- (ii) if the bill containing the disputed charges is not the first bill for a particular service to the Billed Party, the Billed Party's dispute does not involve 50% or more of the total amount of the previous bill out of the same billing system.
- 8.8 Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 9.

- 8.9 If the Billed Party disputes in accordance with Section 8.5, any charges and any portion of the dispute is resolved in favor of such Billed Party, the Parties shall cooperate to ensure that all of the following actions are taken:
- 8.9.1 no later than the second bill date after the resolution of the dispute, the Billing Party shall credit the invoice of the Billed Party for that portion of the Disputed Amounts resolved in favor of the Billed Party, including a credit for any late payment charge/interest assessed or applied with respect to such portion of the Disputed Amounts;
 - 8.9.2 within fifteen (15) calendar days after resolution of the dispute, the portion of the escrowed Disputed Amounts, if any, resolved in favor of the Billed Party shall be released to the Billed Party, together with any accrued interest thereon, and any portion of the Disputed Amounts not in escrow and resolved in favor of the Billed Party shall be paid to Billed Party, together with any late payment charge/interest assessed or applied with respect thereto; and
 - 8.9.3 within fifteen (15) calendar days after resolution of the dispute, any portion of the escrowed Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon (and if the accrued interest does not equal any late payment charge/interest that would have been assessed pursuant to Section 8.2.1 had the Disputed Amounts remained undisputed and unpaid during the period of the Dispute, the Billed Party shall remit payment of the difference to the Billing Party within this same time period) and, as applicable, any portion of the Disputed Amounts not in escrow and resolved in favor of the Billing Party shall be paid to Billing Party, together with any late payment charge/interest assessed or applied with respect thereto.
- 8.10 Failure by the Billed Party to knowingly take all necessary actions to effect a release of escrowed Disputed Amounts determined at the conclusion of the applicable dispute resolution process to be owed to the Billing Party or to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.9 shall be grounds for termination of this Agreement as specified in Section 10.1, following.
- 8.11 Deposits
- 8.11.1 The deposit requirements set forth in this Section 8 apply to SBC MISSOURI's providing the Resale Services and Network Elements and collocation (exclusive of interconnection facilities, collocation cage construction and reciprocal compensation) furnished under this Agreement. SBC MISSOURI may, in order to safeguard its interests, require that TCG-KC, if it has a proven history of late payments or has not established a minimum of twelve consecutive months good credit history with the SBC-owned ILEC in each state where the Parties are doing business, make a reasonable deposit to be held by SBC MISSOURI as a guarantee of the payment of charges. For purposes of this provision, a Party shall not be deemed to have "a proven history of late payments" or "not established credit" based in whole or in part on the failure to pay amounts which such Party has properly disputed in good faith in accordance with all applicable provisions of Sections 8.5 through 8.10.
 - 8.11.2 Intentionally Left Blank.
 - 8.11.3 Unless TCG-KC is not required to make a deposit payment as described in Section 8.11.1 above, TCG-KC shall remit an initial cash deposit within thirty (30) days after written request by SBC MISSOURI. The deposit required by the previous sentence, if any, shall be determined as follows: (i) if, immediately prior to the Effective Date, TCG-KC was not operating as a local service provider in Missouri, the initial deposit shall be in the amount of \$17,000; or (ii) if, immediately prior to the

Effective Date, TCG-KC was operating as a local service provider in Missouri, the deposit shall be in the amount calculated using the method set forth in Section 8.11.7 of this Agreement. This cash deposit will be held by SBC MISSOURI as a guarantee of payment of charges billed to TCG-KC. If TCG-KC is not required to make a deposit payment as set forth in Section 8.11.1 above, SBC MISSOURI shall not require an initial deposit requirement; provided, however, that the terms and conditions set forth in Section 8.11.1 and Sections 8.11.4 through Section 8.11.10 of this Agreement shall continue to apply for the term of this Agreement and any extension(s) hereof. In determining whether TCG-KC has established the minimum twelve (12) months good credit history, TCG-KC's payment record for the most recent twelve (12) months immediately prior to the Effective Date shall be considered.

- 8.11.4 So long as TCG-KC maintains timely compliance with its payment obligations, SBC MISSOURI will not increase any deposit amount required. If TCG-KC fails to maintain timely compliance with its payment obligations, SBC MISSOURI reserves the right to require additional deposit(s) determined in accordance with Section 8.11.5 and Section 8.11.6 through Section 8.11.10 of this Agreement.
- 8.11.5 If during the first six (6) months of operations under this Agreement, TCG-KC (a) has been sent at least one valid delinquency notification letter (a letter notifying TCG-KC of charges that remain unpaid more than fifteen (15) days past their due date (30 days from the date of the invoice or 20 days from TCG-KC's receipt, whichever due date applies to the bill in question, pursuant to, Section 8.1, above)) by SBC MISSOURI, where at least a portion of the charges addressed by the delinquency notification letter are not the subject of a dispute under Section 8.5; and (b) the amounts covered by such delinquency notices equals or exceeds three percent (3%) of the aggregate amount billed by SBC MISSOURI to TCG-KC under this Agreement of the state in which TCG-KC is delinquent for the months in question, the deposit amount for the service(s) subject to such delinquency notification letter shall be re-evaluated based upon TCG-KC's actual billing totals and shall be increased if TCG-KC's actual billing average for a two month period exceeds the deposit amount held.
- 8.11.6 Throughout the term of this Agreement and any extension(s) thereof, any time TCG-KC (a) has been sent at least two (2) valid delinquency notification letters (letters notifying TCG-KC of charges that remain unpaid more than fifteen (15) days past their due date) by SBC MISSOURI within the immediately preceding twelve (12) months, where at least a portion of the charges addressed by each delinquency notification letter are not the subject of a dispute under Section 8.5; and (b) the amounts covered by such delinquency notices equals or exceeds three percent (3%) of the aggregate amount billed by SBC MISSOURI to TCG-KC under this Agreement of the state in which TCG-KC is delinquent for the months in question, the deposit amount for the service subject to such delinquency notification letters shall be re-evaluated based upon TCG-KC's actual billing totals and shall be increased if TCG-KC's actual billing average for a two month period exceeds the deposit amount held.
- 8.11.7 Whenever TCG-KC's deposit is re-evaluated as specified in Section 8.11.5 or Section 8.11.6, above, such deposit shall be calculated in an amount equal to the average billing to TCG-KC for Resale service and/or unbundled elements, as applicable, for a two month period. With respect to TCG-KC, the most recent three (3) months billing on all of TCG-KC's BANs/Invoice numbers, as applicable, for resale services or network elements shall be used to calculate TCG-KC's monthly average, which monthly average shall be multiplied by two (2) to arrive at the amount of deposit permitted by Sections 8.11.5 and 8.11.6.

- 8.11.8 Whenever a deposit is re-evaluated as specified in Section 8.11.5 and Section 8.11.6, above, TCG-KC shall remit the additional deposit amount to SBC MISSOURI within thirty (30) calendar days of receipt of written notification SBC MISSOURI requiring such deposit.
- 8.11.9 The deposit requirements of this Section 8.11 may be satisfied in whole or in part with an irrevocable bank letter of credit reasonably acceptable to SBC MISSOURI. No interest shall be paid by SBC MISSOURI for any portion of the deposit requirement satisfied by an irrevocable bank letter of credit.
- 8.11.10 The fact that SBC MISSOURI holds a cash deposit or irrevocable bank letter of credit does not relieve TCG-KC from timely compliance with its payment obligations under this Agreement.
- 8.11.11 Any cash deposit held by SBC MISSOURI shall be credited to TCG-KC's account during the month following the expiration of twelve (12) months after the cash deposit was remitted, so long as TCG-KC has not been sent more than one delinquency notification letter (as defined in Section 8.11.5) during the most recent twelve (12) months, in which case such cash deposit will be credited during the first rolling twelve (12) month period in which TCG-KC has been sent less than two delinquency notifications. For the purposes of this Section 8.11.11, interest will be applied from the date paid and calculated as defined in Section 8.2.1 above, and shall be credited to TCG-KC's account on an annual basis.
- 8.11.12 Any cash deposit shall be held by SBC MISSOURI as a guarantee of payment of charges billed to TCG-KC, provided, however, SBC MISSOURI may exercise its right to credit any cash deposit to TCG-KC's account upon the occurrence of any one of the following events:
- 8.11.12.1 when SBC MISSOURI sends TCG-KC the second valid delinquency notification under this Agreement during the most recent twelve (12) months (provided that a delinquency notification shall be deemed valid if no dispute has been filed under Section 8.5 as to any amount covered by the delinquency notice); or
 - 8.11.12.2 when SBC MISSOURI suspends TCG-KC's ability to process orders in accordance with Section 10.1.2; or
 - 8.11.12.3 when TCG-KC files for protection under the bankruptcy laws; or
 - 8.11.12.4 when an involuntary petition in bankruptcy is filed against TCG-KC and is not dismissed within sixty (60) days; or
 - 8.11.12.5 when this Agreement expires or terminates (provided, upon expiration or termination of this Agreement, any deposit monies not applied under this Agreement against charges payable by TCG-KC shall be refunded to TCG-KC by SBC MISSOURI);
 - 8.11.12.6 during the month following the expiration of twelve (12) months after that cash deposit was remitted, SBC MISSOURI shall credit any cash deposit to TCG-KC's account so long as SBC MISSOURI has not sent to TCG-KC more than one delinquency notification letter under this Agreement during the most recent twelve (12) months; or
 - 8.11.12.7 upon mutual agreement of the Parties.

8.11.13 For the purposes of this Section 8.11.13, interest will be calculated as specified in Section 8.2 and shall be credited to TCG-KC's account at the time that the cash deposit is credited to TCG-KC's account.

8.12 Assuming that the previous payment and credit history of a Party (a "Requesting Party") justifies doing so, upon request the other Party (the "Acknowledging Party") will issue a written acknowledgement that the Requesting Party satisfies the condition that the Requesting Party does not have a proven history of late payments and that it has established a minimum of twelve consecutive months good credit history with the Acknowledging Party. Such an acknowledgement, whenever given, shall not be barred by Section 33, below, and shall be enforceable pursuant to its own terms. Such an acknowledgement shall not be required in order for a Party to meet the conditions necessary to avoid imposition of a deposit requirement under this Agreement, assuming it otherwise meets the conditions.

9. DISPUTE RESOLUTION

9.1 Finality of Disputes

9.1.1 Except as otherwise specifically provided in this Agreement (for example, in Section 8.5.1, above), no claims will be brought for disputes arising from this Agreement more than 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.

9.1.2 During the pendency of resolution of any dispute raised in accordance with this Section 9 of this Agreement, whether by settlement or by arbitration award, ruling, order or judgment, each Party shall continue to perform all of its obligations under this Agreement, and shall not, based upon an act or omission that is the subject of the dispute that is pending resolution, discontinue or cease to provide all or any portion of obligations pursuant to this Agreement, unless otherwise directed by the other Party.

9.2 Alternative to Litigation

9.2.1 Dispute resolution under the procedures provided in this Section 9 shall be the preferred, but not the exclusive, remedy for all disputes between SBC MISSOURI and TCG-KC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction with respect to disputes as to which the Commission or such court, agency, or regulatory authority specifies a particular remedy or procedure. However, except for an action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, no action or complaint may be filed in the Commission or a court, agency or regulatory authority of competent jurisdiction before the Informal Resolution of Disputes procedures set forth in Section 9.3 below have been followed, in good faith, by the Party commencing such action or complaint.

9.3 Informal Resolution of Disputes

9.3.1 Upon receipt by one Party of written notice of a dispute, including billing disputes, 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 informal 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, which are 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.

9.3.2 If the Parties are unable to resolve a dispute through the informal procedures described above, then either Party may invoke the Formal Resolution of Disputes or the Parties may agree to invoke Arbitration processes set forth below. Unless the Parties otherwise agree, Formal Resolution of Disputes processes, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) days after the date of the letter initiating informal dispute resolution under this Section 9.3.

9.3.3 Either Party may notify the other Party in writing at any time after the 60th day after the date of the letter initiating informal dispute resolution under this Section 9.3 that it considers the matter to be at impasse. Such notice shall be provided by any acceptable means under Section 11, below, other than via facsimile. If the other Party does not pursue additional dispute resolution measures pursuant to this Section 9 within 10 business days of the date of the notice letter, the notifying Party may exercise its rights to disconnection and termination in accordance with the processes set forth in Section 10.

9.4 Intentionally Left Blank

9.5 Formal Resolution of Disputes

9.5.1 Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to billing disputes and matters not specifically addressed elsewhere in this Agreement which require clarification, renegotiation, modifications or additions to this Agreement, either Party may invoke dispute resolution procedures available pursuant to the dispute resolution rules, as amended from time to time, of the applicable commission. Also, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 9.6.

9.5.2 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

9.5.3 Claims Not Subject to Commercial Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to commercial arbitration as provided in Section 9.6 below and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

9.5.3.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

9.5.3.2 Actions to compel compliance with the Dispute Resolution process.

9.5.3.3 All claims arising under federal or state statute(s), including antitrust claims

9.6 Commercial Arbitration

9.6.1 When both Parties agree to binding commercial arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association for commercial disputes or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each separate arbitration will be held will be Dallas, Texas, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within 60 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 30 days after the close of hearings. The arbitrator has 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. 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.

10. NON-PAYMENT AND PROCEDURES FOR DISCONNECTION

10.1 If a Party is furnished Resale Services, Unbundled Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 10.1 through 10.5, inclusive, shall be applied separately for each such state. The Parties agree to follow the procedures set forth in this Section 10: Termination of Service for Non-payment and Procedures for Disconnection when either Party fails to pay all or any portion of any amounts required to be paid (including Late Payment Charges) that have not been disputed pursuant to Section 8.5 ("Unpaid Charges").

10.2 If a Party fails to pay or dispute any charges billed to it under this Agreement as required by Section 8, the Billing Party will notify the Billed Party in writing that in order to avoid disruption, or disconnection, of the Resale Services, Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Billed Party must remit all Unpaid Charges to the Billing Party within fifteen (15) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

10.2.1 SBC MISSOURI will also provide any written notification to the Public Service Commission of the State of Missouri as may be required by Applicable Law, if any.

10.2.2 If the Billed Party desires to dispute any portion of the Unpaid Charges, the Billed Party must complete all of the following actions not later than fifteen (15) Business Days following receipt of the Billing Party's notice of Unpaid Charges:

10.2.2.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in Section 8.5.1 of this Agreement, together with the reasons for its dispute; and

10.2.2.2 pay all undisputed Unpaid Charges to the Billing Party; and

10.2.2.3 pay all Disputed Amounts [other than disputed charges arising from Attachment 12: Intercarrier Compensation] into an interest bearing escrow account that complies with the

requirements set forth in Section 8.5, unless the nonpaying party is not required to escrow such amounts pursuant to Section 8.7 herein; and

10.2.2.4 the Nonpaying Party is required to deposit Disputed Amounts into an interest bearing escrow account, it must provide written evidence that it has established an interest bearing escrow account that complies with all the terms set forth in Section 8.5 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Attachment 12: Intercarrier Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.5 is furnished to the Billing Party, such Disputed Amounts will not be deemed to be "disputed" under Section 8.5.

10.2.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 9.

10.3 After receipt of the first written notice delivered pursuant to Section 10.2 above, if the Billed Party continues to fail to comply with Section 10.2.2.1 through 10.2.2.4 or make payment(s) in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide a second written demand to the Billed Party for payment within fifteen (15) Business Days. On the day that the Billing Party provides such second written demand to the Billed Party, the Billing Party may also exercise any or all of the following options:

10.3.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or

10.3.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement.

10.4 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 10.3, 10.3.1 and 10.3.2:

10.4.1 will not delay or relieve the Billed Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

10.4.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

10.5 If the Billed Party fails to pay the Billing Party on or before the date specified in the second demand notice provided under Section 10.3 of this Agreement, the Billing Party may, provided that the undisputed amount of the Unpaid Charges exceeds five percent (5%) of the aggregate amount billed by SBC MISSOURI to TCG-KC for the immediately preceding month under this Agreement, in addition to exercising any other rights or remedies it may have under Applicable Law:

10.5.1 cancel any pending application, request or order from the Billed Party for new or additional Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

10.5.2 discontinue providing any Resale Services, Collocation, Unbundled Network Elements, functions,

facilities, products or services furnished under this Agreement.

10.5.2.1 SBC MISSOURI will also provide any written notification to the Public Service Commission of the State of Missouri as may be required by Applicable Law, if any.

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10.5.4 The Billing Party has no liability to the Billed Party or its End Users in the event of discontinuance of service if such discontinuance of service is put into effect in accordance with this Section 10.5.

10.5.5 Following the discontinuance of any service, TCG-KC will not be subject to additional charges with respect to such discontinued service, other than charges that accrue under the express provisions of this Agreement. Except for charges or fees contemplated by this Agreement or any applicable tariff, SBC MISSOURI will not be entitled to charge TCG-KC a penalty or fee solely as a result of such discontinuance of service.

10.5.6 Only when required by Applicable Law will SBC MISSOURI be required to obtain an order from a governmental, administrative, or regulatory body or a court of competent jurisdiction approving such termination and/or disconnection, prior to terminating this Agreement and/or disconnecting the other party's Resale Services, Unbundled Network Elements, Collocation, functions, facilities, products or services furnished to the other Party under this Agreement.

11. NOTICES

11.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent (i) by certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; (ii) by personal delivery or by overnight courier using a recognized commercial courier service with services prepaid and proof of delivery requested; or (iii) by facsimile. Such notices shall be deemed received by the Party to whom they are addressed as follows: (a) if sent by certified mail or first class U.S. Postal Service, upon receipt or should delivery be declined, upon the first attempted delivery, as reflected in the records of the U.S. Postal Service; (b) if sent by personal delivery or by overnight courier, upon receipt or should delivery be declined, upon the first attempted delivery, as reflected in the records of the courier service; and (c) if by facsimile, on the next business day following the date of transmission; provided, however, that notices sent by facsimile are also sent by one of the other acceptable delivery methods and notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

11.2 If to TCG-KC:

Billing Notices:

For SBC Notices Involving Billing by TCG-KC US Postal Service or Overnight Delivery:

TCG-KC
Carrier Billing Manager
300 North Point Parkway
FLOC 131B01
Alpharetta, GA 30005

For SBC Notices Regarding Bills to TCG-KC**US Postal Service:**

TCG-KC
Caller Service 6908
Alpharetta, Georgia 30009
Attn: Local and Access Bill Coordinator

For SBC Notices Regarding Bills to TCG-KC**Overnight Delivery:**

TCG-KC
600 North Point Parkway
FLOC 64024B
Alpharetta, Georgia 30005
Attn: Local and Access Bill Coordinator

All Notices Other than Billing:

TCG-KC Vice President
c/o Fredrik Cederqvist
32 Avenue of the Americas
New York, NY 10013-2412
(212) 387-4018 (Voice); 212-539-9492 (Fax)

With a copy of all notices to the following:

Mitchell Menezes
1875 Lawrence Street
Denver CO 80202-1847
720-890-6081 (Voice); 303-298-6488(Fax)

11.3 If to SBC MISSOURI:

Contract Management
Attn: Notices Manager
311 S. Akard, 9th Floor
Dallas, Texas 75202-5398
214-464-2006 (Fax)

- 11.4 Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) Business days prior written notice to the other Party in compliance with this Section.

12. TAXES

- 12.1 Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, these Taxes shall be billed as a separate item on the invoice.

- 12.2 With respect to any purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by applicable law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. The following provisions govern the backbilling of Taxes by the providing Party:
- 12.2.1 Taxes for which the purchasing Party is liable: with respect to Taxes for which the purchasing Party is liable, the providing Party shall use reasonable best efforts to bill the purchasing Party for such Tax simultaneously with the bill for service to which the Tax relates; however, the purchasing Party shall remain responsible for such Tax for the applicable statute of limitations period.
- 12.2.2 Taxes for which the providing Party is liable: With respect to Taxes for which the providing Party is liable, the providing Party may backbill the purchasing Party for any surcharges based on such Taxes and permitted by Applicable Law, subject to the same time limits that apply to the services to which the Taxes relate, as set forth in Section 2.3 of Attachment 28, Comprehensive Billing Attachment.
- 12.2.3 Notwithstanding Section 12.2.2 above, if as a result of a notice of proposed adjustment by a taxing authority, the taxing authority imposes a Tax on the providing party, the providing party may back bill the Tax to the purchasing party for a period, not to exceed four years from the date of the notice of proposed adjustment. In order for the providing party to be permitted to backbill a tax under this Section, the purchasing party must be notified of the audit determination from which the surcharge results, within 30 days of the notice of proposed adjustment but in no event less than ten days before the last day, under applicable law, for the purchasing party to exercise any rights it might have to contest the notice of proposed adjustment.
- 12.3 With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by applicable law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 12.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax to the extent provided in Section 12.2 above and all subsections thereunder; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 12.5 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable

taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

- 12.6 If either Party is audited by a taxing authority or other governmental entity, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 12.7 To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If applicable law excludes or exempts a purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 12.8 With respect to any Tax or Tax controversy covered by this Section 12, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any a Tax that it previously billed, or was billed that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 12.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 12 shall be sent in accordance with Section 11 hereof.

13. FORCE MAJEURE

- 13.1 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 God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, 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 conditions will give prompt notice to the other Party, whereupon such Party's obligation or performance shall be suspended to the extent that the Party is affected by such Force Majeure Event. The other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with. Upon cessation of such Force Majeure condition, the Party whose performance fails or is delayed because of such Force Majeure conditions will give like notice and commence performance hereunder as promptly as reasonably practicable.

14. PUBLICITY

- 14.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 14.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

15. NETWORK MAINTENANCE AND MANAGEMENT

- 15.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.
- 15.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they will work cooperatively to ensure that all such events will attempt to be conducted in such a manner as to avoid disruption or loss of service to other end users. Each party will maintain the capability of respectively implementing basic protective controls such as "Cancel To" or "Call Gap."
- 15.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers or to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

16. LAW ENFORCEMENT AND CIVIL PROCESS

16.1 Intercept Devices

- 16.1.1 Local and federal law enforcement agencies may periodically request information or assistance from either Party. When either Party receives a request associated with a customer of TCG-KC, the receiving Party will advise the law enforcement agency (LEA) that 1) this is a resold service; 2) SBC MISSOURI is the underlying local service provider and TCG-KC provides the billing and customer care to its end-user customers; 3) an interception access point will be provided by SBC MISSOURI; 4) both carriers should be named and served in the legal demand. SBC MISSOURI should be named and served to provide the LEA with all inbound and outbound call detail records, the intercept access point and all technical assistance. TCG-KC should be named and served in the legal demand to provide verification of customer billing information (name and address) and copies of customer billing records; and 5) SBC MISSOURI is responsible for billing any charges for services incurred by the LEA. However, if the LEA insists that SBC MISSOURI immediately provide any requested information in its possession, and/or insists that SBC MISSOURI not communicate with any other party about the request for information, including TCG-KC, then SBC MISSOURI shall be permitted to comply with the LEA's valid request.
- 16.1.2 Should either Party receive a court order authorizing surveillance on the other Party's End User, the Party in receipt shall unless prohibited by the terms of such court order refer such order to the

Party that serves the End User. Should a court order pertain to an TCG-KC customer (trap & trace, pen register or wiretap) or an ALS Type II customer (pen register or wiretap), the Party in receipt will request the issuing authority to amend the order, naming both Parties, and serve both Parties concurrently. SBC MISSOURI shall provide law enforcement with all necessary assistance, including plant information and local loop access, to facilitate implementation of court orders pertaining to pen registers or wiretaps. Additionally, SBC MISSOURI shall provision on its equipment trap & trace orders pertaining to TCG-KC Local customers. As specified in Section 16.4.3, below SBC MISSOURI may bill the appropriate law enforcement agency for these services under its customary practices. Once TCG-KC implements CALEA solutions in its switches, TCG-KC will assume full responsibility for the implementation of court-ordered surveillance on ALS Type II customers.

16.2 Subpoenas

16.2.1 If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the receiving party is able to do so; if response requires the assistance of the other Party, such assistance will be provided by the other Party. Should the subpoena demand AMA records (call dump) for an TCG-KC End User, the Party in receipt will request the issuing authority to amend the order, naming both Parties, and serve both Parties concurrently. SBC MISSOURI shall provide the issuing authority with the requested data. As specified in Section 16.4.3 below, SBC MISSOURI may bill the appropriate law enforcement agency for these services under its customary practices.

16.3 Law Enforcement Emergencies

16.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

16.4 Law Enforcement Interface

16.4.1 SBC MISSOURI will provide TCG-KC with a SPOC with whom to interface on a twenty-four (24) hour, seven (7) day a week basis for situations involving immediate threat to life or at the request of law enforcement officials. Court orders authorizing surveillance of TCG-KC customers provisioned on SBC MISSOURI facilities (TCG-KC Local and ALS Type II, as hereinafter defined) shall be served on both TCG-KC and SBC MISSOURI. SBC MISSOURI shall provide law enforcement with all necessary assistance, including plant information and local loop access, to facilitate implementation of such court orders. Once TCG-KC implements CALEA solutions in its switches, TCG-KC will notify SBC and will assume full responsibility for the implementation of court-ordered surveillance on ALS Type II customers.

16.4.1.1 As used in this Section 16, the term ALS Type II shall mean customers connected to the TCG-KC network through SBC MISSOURI-owned facilities. ALS Type II customers are located in a building which is connected to an SBC MISSOURI Central Office by an SBC MISSOURI-owned cable using customer's premise equipment connected to that cable.