

TELECOMMUNICATIONS SERVICES AGREEMENT

Between

[insert name of Exelon entity],

[acting by and through its agent,

Exelon Business Services Company]

and

Dated as of _____, 200_

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TELECOMMUNICATIONS SERVICES AGREEMENT

THIS AGREEMENT is made and entered into on _____ (the “Effective Date”), by and between _____, a _____ corporation (hereinafter referred to as “Service Provider”), whose principal place of business is located at _____ and [insert the EXELON entity] [acting by and through its agent, Exelon Business Services Company], a Pennsylvania corporation with offices at 10 South Dearborn Street, Chicago, Illinois 60603 (“Exelon”). As used in this Agreement, “Party” means either Exelon or Service Provider, as appropriate, and “Parties” means Exelon and Service Provider.

WHEREAS, Exelon desires to receive from Service Provider, and Service Provider desires to provide Exelon with dedicated transport and/or other communications services.

NOW, THEREFORE, Service Provider and Exelon agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.1 The Capitalized terms used in this Agreement shall have their normal or common meaning or the meaning given them in the Tariffs, except that the following terms shall have the following meanings for the purpose of this Agreement:
- (a) **“Acceptance”** or **“Accepted”** shall mean when Exelon will be deemed to have given its “Acceptance” or to have “Accepted” a Service after the applicable test and acceptance procedures have been conducted which are set forth in the Service exhibit(s) applicable to the Service ordered. Joint testing and Acceptance of a Circuit shall take place five (5) business days prior to the requested Start of Service Date and billing for a Circuit will begin on the requested Start of Service Date unless testing of the Circuit has not met all applicable standards or the requested Start of Service Date has been changed by Service Provider. If a Circuit has failed the testing process, billing will begin after the Circuit has passed applicable Circuit standards.
 - (b) **“ASR”** shall mean the capacity order for Service which delineates the type of Service, quantity of Circuits, location served, Point of Termination, protocols, Circuit term, requested Start of Service Date and other information necessary for the Service Provider to provide Service to Exelon.
 - (c) **“Agreement”** shall mean this Agreement, including any Exhibits and documents attached hereto and made a part hereof, or incorporated herein by reference as well as any written amendments to this Agreement which have been signed by the authorized representatives of the Parties.
 - (d) **“Broadband Wireless Access”** shall mean the delivery of high speed data and voice services by free space (wireless) means, including radio frequency or optical systems.
 - (e) **“Chronic Trouble”** shall mean a situation in which a particular Circuit has experienced Inferior Performance three (3) times or more within an annual period, for which trouble tickets have been opened, and the Trouble is found not to be the fault of Exelon or End User.
 - (f) **“Circuit”** shall mean the individual telecommunications facility included as part of the Service.

- (g) **“Dedicated Long Distance Services”** consists of Circuits (trunks) dedicated to long distance traffic connecting the Exelon Premises with a Service Provider dedicated long distance POP. Exelon can transport 1+ (outbound) and toll free (inbound) long distance traffic via the dedicated Circuits (trunks).
- (h) **“DSL”** shall mean a Dedicated internet access service offering speeds of 144Kbps to 1.5Mbps, G.Lite and ADSL. Exelon’s choice of speed will be indicated on the Internet/DSL Order Form. The Service includes local loop transport, Internet backbone connectivity, pre-configured Exelon premise equipment, full installation, operation and maintenance.
- (i) **“Emergency Maintenance”** shall mean maintenance that if not accomplished promptly by Service Provider, could result in a serious degradation or loss of Service to Exelon or the End User.
- (j) **“End User”** shall mean a user to whom Exelon will provide telecommunications services utilizing, in part, the telecommunications Services provided by Service Provider to Exelon under this Agreement.
- (k) **“Ethernet Services”** are Services which function as a Local Area Network (“LAN”) interconnection. Ethernet services are used to connect more than one Exelon site utilizing native ethernet format, i.e., LAN to LAN connections, without the use of overlying SONET or ATM technologies.
- (l) **“Fixed Wireless Service”** is Broadband Microwave Technology that facilitates point-to-point or point-to-multi-point transmission.
- (m) **“Gigabit Ethernet Services”** is a product that provides an Ethernet frame forwarding service between two (2) or more locations, i.e., ports, on a single Service Provider metropolitan fiber network. This forwarding service provides transparent connections at 1000 Mbps between two (2) or more Ethernet LANs in a metropolitan area, joining these LANs together in a single broadcast domain.
- (n) **“Inferior Performance”** shall mean when any of the transport services identified in **Exhibit A** do not meet the applicable Service Availability Commitment(s). In this event, Exelon will notify Service Provider that Inferior Performance is being experienced on any given circuit and provide Service Provider with a fifteen (15) day cure period. During the cure period, Service Provider will perform a root cause analysis and report its findings to Exelon two (2) weeks thereafter. Service Provider will take any associated corrective action immediately thereafter, or as soon as feasible.
- (o) **“ISDN”** and **“PRI”** is a digital trunking technology that provides Exelon with high capacity digital access from its premise equipment to Service Provider’s local switched network. The connection is provided over a DS-1 facility that carries up to twenty-four (24) channels delivering 64 Kbps clear channels and up to 1.544 Mbps of dedicated bandwidth. PRI is configured using twenty-three (23) bi-directional B or Bearer channels and 1 D or Data channel (23B+D). Service Provider may provide Exelon with ISDN PRI pursuant to applicable Tariffs and Service Provider’s price lists.
- (p) **“Interconnection Facilities”** shall mean all local access facilities between Exelon’s POP, the local exchange carrier’s central office, the long-distance carrier’s POP and the End-User sites.

- (q) **“Losses”** shall mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
- (r) **“Network”** shall mean the telecommunications network of one of the Parties, as the context of the provision requires or as contemplated under this Agreement.
- (s) **“Off-Net Services”** are those where one (1) or both locations to be connected are not served by Service Provider’s Network. Off-Net Services have a portion of the Services provided by another local access provider. In the instances where Service Provider is able to provide Off-Net Services, the terms, conditions and pricing of such Service will be provided on an individual case basis (**“ICB”**).
- (t) **“On-Net Services”** shall mean those Services that connect two (2) locations served by Service Provider’s Network. On-Net Services are provided entirely by Service Provider.
- (u) **“Planned Service Outage”** shall mean any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to the Network as described in the applicable Service exhibits.
- (v) **“POP”** shall mean a specific location within a Local Access Transport Area (**“LATA”**) where Exelon terminates and/or originates its service.
- (w) **“Point of Termination”** shall mean the point at which Service Provider’s responsibility to provide equipment and service ends and where Exelon’s or Exelon’s End-User responsibilities begin, identified as the interface between Service Provider and Exelon at Exelon’s POP, the local exchange carrier’s central office, a long-distance carrier’s POP or End-User sites identified on the ASR.
- (x) **“Premises”** shall mean the address to which Service is provided, identified as a Point of Termination on the ASR.
- (y) **“Service”** shall mean communications service provided by Service Provider as agreed to by Exelon and Service Provider, as further described in the applicable Exhibit and as specifically identified on the ASR or order form.
- (z) [**“Service Availability Commitment(s)”** shall mean]
- (aa) **“Service Outage”** shall mean a disruption or degradation of On-Net Service as set forth in **Exhibit A, Section 11**.
- (bb) **“Start of Service Date”** (for Service) shall be the later of (i) the date requested by Exelon for in-service as indicated on the ASR, or (ii) the date after Circuit testing and Acceptance has been completed per this Agreement.
- (cc) **“Tariff(s)”** shall refer to all of Service Provider’s applicable Tariffs for international, interstate, intrastate and local voice services, including PRI services. This Agreement incorporates by reference the terms of each such Tariff. Service Provider may modify its Tariffs from time to time in accordance with law and thereby affect the Services furnished to Exelon.

- (dd) “**Term**” shall have the meaning set forth in Article 4.
- (ee) “**Trouble**” shall mean a degradation in Service from the standards set forth in Exhibit A, Section 11 or a Service Outage.
- (ff) “**Voice Services**” shall mean international, interstate, intrastate and local voice service(s) provided to Exelon by Service Provider pursuant to applicable Tariffs, if any, and the price lists of Service Provider.
- (gg) “**Wavelength Services**” or “**MWS**” shall mean a Service offering Exelon the potential to realize OC-48, i.e., 2.5 Gbps, capacity between multiple sites within a metropolitan area. Service Provider will utilize Dense Wavelength Division Multiplexing (“DWDM”) equipment as the foundation of the MWS Service. DWDM technology enables increasing capacity of fiber optic data transmission systems through simultaneously mixing multiple wavelengths of light. Each wavelength is, in essence, a virtual channel and it operates as though it were a separate light pipe. DWDM allows the capability for each signal to operate at a different bit rate (OC-3, OC-12, etc.) and in a different format or protocol (SONET, ATM, etc.).

ARTICLE 2 - BILLING AND PAYMENT

- 2.1 (a) As compensation for the Services provided by Service Provider, Exelon shall pay the recurring and non-recurring rates and charges and the usage charges set forth herein and/or in the ASRs and order forms beginning on the Start of Service Date. Exelon agrees to pay the appropriate charges for the Services, at the address provided for herein or on the invoice, within forty-five (45) days from receipt of the invoice. The Parties shall provide one another with reasonably requested information for bill validation including, but not limited to, the number of Circuits and charges for each Service.
- (b) Service Provider shall utilize software to generate and reproduce invoices in accordance with the terms hereof and in compliance with the requirements set out in **Exhibit B**
- 2.2 In the event Exelon disputes any billing by Service Provider, Exelon shall notify Service Provider in writing, providing the billing identification, Circuit number, any trouble ticket number and an explanation for the dispute. Service Provider will investigate the dispute and attempt to resolve the billing issues within fifteen (15) days. Exelon shall pay any amounts not in dispute within the time periods set forth in the Agreement. Payment shall not prejudice Exelon’s right to later dispute charges, so long as they are disputed in the manner specified in this Section 2.2. The Parties will cooperate in good faith to resolve any such disputes within a sixty (60) day period after the dispute is submitted to Service Provider. If the dispute is not resolved during this period, then either Party may seek alternative dispute resolution in accordance with Article 12.
- 2.3 When Service is initiated on other than the first day of the month or terminates on other than the last day of the month, the charge for that month shall be determined by prorating the monthly payment by the number of days during which Service was provided.

ARTICLE 3 - TAXES

Each Party shall be fully responsible for the payment of any and all taxes required by law to be paid by that Party.

ARTICLE 4 - TERM AND RENEWAL OPTIONS

The term of this Agreement shall commence on the Effective Date of this Agreement, and shall terminate [____] year(s) thereafter. This Agreement shall be automatically renewed in successive one (1) month periods unless terminated by thirty (30) days' written notice by one of the Parties. *Provided, however*, that in the event the period of time for a particular Service or Services to be provided by Service Provider to Exelon pursuant to the ordering provisions set forth in the applicable Exhibit, as attached hereto and made a part hereof, extends beyond the effective date of termination, such Services(s) shall remain in effect for the agreed upon time of Service, subject to all of the terms and conditions of this Agreement as if it were still in effect with respect to such Service(s).

ARTICLE 5 – INSURANCE

- 5.1 Service Provider shall provide and maintain, and shall require each subcontractor (regardless of tier) to provide and maintain, in effect during the performance of any Service under the Agreement minimum insurance coverage with carriers satisfactory to Exelon including:
- (a) Workers Compensation insurance with statutory limits, as required by the state in which the Work is to be performed, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence.
 - (b) Commercial general liability insurance (with coverage consistent with ISO CG 0001 (10/98)) providing bodily injury, property damage, and personal injury/advertising injury with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence and per project or location aggregate and shall include blanket contractual covering Service Provider's obligations under this Agreement.
 - (c) Automobile liability insurance for owned, non-owned, and hired autos with a combined single limit of not less than one million dollars (\$1,000,000.00) per accident.
 - (d) Excess or Umbrella liability insurance with a combined single limit of not less than three million dollars (\$3,000,000.00) per occurrence and project or per location aggregate. These limits apply in excess of each of the above-mentioned policies.
- 5.2 Insurance coverage provided by Service Provider under this Article shall not include any of the following; any claims made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000.00) unless approved in writing by Exelon; any endorsement limiting coverage available to Exelon which is otherwise required by this Article 5; any policy or endorsement wording that negates coverage to Exelon for Exelon's own negligence; any policy or endorsement language which limits the duty to defend Exelon under the policy; and any policy or endorsement language which provides coverage to Exelon only if Service Provider is negligent.
- 5.3 To the extent permitted by applicable law all above-mentioned insurance policies shall provide the following:
- (a) Be primary to any other insurance carried by Exelon;
 - (b) Contain standard cross-liability provisions; and

- (c) Provide for a waiver of all rights of subrogation, which Service Provider's insurance carrier might exercise against Exelon.
- 5.4 Additional Coverages. Exelon reserves the right to require Service Provider to provide and maintain additional coverages in the event that the particular Service involves unusual risks.
- 5.5 All liability insurance policies shall name Exelon Corporation, its officers, directors, employees, agents, representatives, Affiliates, subsidiaries, successors, and assigns, as additional insureds, shall be primary to any other insurance carried by Exelon, and shall provide coverage consistent with ISO CG 2026 (11/85).
- 5.6 Service Provider shall provide evidence of the required insurance coverage and file with Exelon a Certificate of Insurance ("Certificate of Insurance") acceptable to Exelon prior to commencement of the Service. The Insurance and the insurance policies required by this Article 5 shall contain a provision that coverages afforded under the policies will not be canceled, allowed to expire or the limits in any manner reduced until at least thirty (30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to Exelon. Exelon may inspect any or all policies of insurance at any time.
- 5.6 Service Provider shall waive all rights of subrogation against Exelon under those policies procured in accordance with this Agreement.
- 5.7 All insurance coverage shall be provided by insurance companies acceptable to Exelon and having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Section 5.6 of this Article 5).
- 5.8 Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Service Provider will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to Exelon from such breach, unless a written waiver of the specific insurance requirement is provided to Service Provider by Exelon.
- 5.9 Failure of Service Provider to provide insurance as herein required or failure of Exelon to require evidence of insurance or to notify Service Provider of any breach by Service Provider of the requirements of this Article 5 shall not be deemed to be a waiver by Exelon of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Service Provider to defend, indemnify, and hold harmless Exelon as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Service Provider and independent of the duty to furnish a copy or certificate of such insurance policies.
- 5.10 In the event of any failure by Service Provider to comply with the insurance requirements of this Agreement, Exelon may, without in any way compromising or waiving any right or remedy at law or in equity, upon five (5) days written notice to Service Provider, purchase such insurance, at Service Provider's expense, provided that Exelon shall have no obligation to do so and if Exelon shall do so, Service Provider shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such costs incurred by Exelon shall be promptly reimbursed by Service Provider and/or may be withheld from any payment due Service Provider.

- 5.11 Commencement of Work without the required Certificates of Insurance, or without compliance with any other provision of this Agreement, shall not constitute a waiver by Exelon of any rights in this Agreement.
- 5.12 None of the requirements contained herein as to types, limits, or Exelon's approval of insurance coverage to be maintained by Service Provider are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Service Provider under this Agreement, any other agreement with Exelon, or otherwise provided by law.

ARTICLE 6 - WARRANTIES AND NETWORK STANDARDS FOR ON-NET SERVICES

- 6.1 Service Provider represents and warrants to Exelon that it has the right to provide Exelon the Service specified herein.
- 6.2 Service Provider represents and warrants to Exelon that all On-Net Service rendered by it hereunder shall be designed, produced, installed, furnished and in all respects provided and maintained in conformance and compliance with applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and Service Provider shall be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities.
- 6.3 Service Provider represents and warrants to Exelon that in the provision of On-Net Services it shall at all times, comply with all relevant provisions of the Scope of Work set forth in **Exhibit A**. The Parties agree that if any Party, in its sole discretion, determines that an emergency action is necessary to protect its own Network the Party may block any transmission path over its Network by the other Party where transmissions do not meet the above requirements of **Exhibit A**. Each Party agrees, to the extent practicable, to notify the other Party in advance of any such blockage and to work with the other Party to minimize interruption in service. The Parties further agree that none of their respective obligations to one another under this Agreement shall be affected by any such blockage except that the Party affected by such blockage shall be relieved of all obligations to make payments for charges relating to such Service which is so blocked and that no Party shall have any obligation to the other Party for any claim, judgment or liability resulting from such blockage.
- 6.4 Service Provider represents and warrants to Exelon that the On-Net Service provided over its Network hereunder shall meet the standards set forth in **Exhibit A**, and that the On-Net Services shall be performed by qualified personnel in a competent manner, and in accordance with industry standards, except for reasons of Planned Service Outages (scheduled maintenance), or reasons set forth in Article 12 hereof.
- 6.5 Remedies.
- (a) Services. If any of the Services do not comply with the foregoing warranties and Exelon notifies Service Provider within one (1) year (or such longer period as provided by a manufacturer, supplier, or subcontractor) after the date Exelon has Accepted Service Provider shall (at its sole expense) promptly replace or re-perform the nonconforming Services and repair or replace any material damaged or otherwise adversely affected thereby. All such re-performed Services shall be performed on a schedule to be agreed upon by Exelon. The warranty for any such re-performed Services shall be extended to one (1) year from the date of Exelon's acceptance of such re-performed Services or for the duration of the unused warranty period if such period is longer.

- (b) Inspection. Exelon's inspection, testing, Acceptance, payment, or use of Services shall not affect the warranties and obligations of Service Provider under this Agreement and such warranties and obligations shall survive any such inspection, testing, acceptance, payment, or use.

6.6 Exelon's Right to Perform.

In the event of Service Provider's failure to re-perform the Services in accordance with the terms hereof, Exelon, after notice to Service Provider, may correct any deficiencies in the Services, or may purchase replacement Services. Exelon may either invoice Service Provider for the cost of correcting the deficiencies (including the costs directly attributable to other services that are required to be performed in connection with the correction of such deficiencies), invoice Service Provider for the cost of replacement, or, deduct the cost associated with correction or replacement from any payments due or subsequently due Service Provider.

6.7 Cumulative Remedies.

Each of Exelon's rights and remedies under this Agreement shall be cumulative and additional to any other or further rights or remedies provided in law or equity or otherwise. Exelon shall specifically retain all rights of legal action in tort under this Agreement on all issues relating to contribution, insurance coverage, and contractual indemnity.

6.8 Assignment of Warranties.

Service Provider shall and does hereby assign to Exelon the benefits of any of Service Provider's subcontractor's warranties. Such assignment shall not relieve Service Provider of its warranty obligations to Exelon under this Agreement.

ARTICLE 7 – TERMINATION

- 7.1 A Party shall be deemed in default of this Agreement upon the occurrence of any one or more of the following events: (i) a Party violates any applicable laws, statutes, ordinances, codes or other legal requirements with respect to the Service and such violation(s) are not remedied within fifteen (15) business days after written notice thereof; or (ii) a Party fails to perform its obligations under this Agreement, such as a failure to maintain Service Availability Commitments, and such nonperformance is not remedied within fifteen (15) business days after notice thereof.
- 7.2 In addition to all remedies available at law or in equity, the non-defaulting Party hereunder may terminate this Agreement upon the occurrence of a default, subject to applicable notice and cure periods.
- 7.3 In the event of termination for Service Provider's default, Exelon shall not be required to make any payments to Service Provider for Services that have not been provided as of the date of termination, with the exception of monetary obligations incurred to date. Disputed amounts are subject to the process set forth in Section 2.2.
- 7.3 Exelon may terminate the Agreement for convenience upon thirty (30) days written notice to Service Provider. If Exelon terminates for convenience then it shall pay to Service Provider all undisputed amounts due for Service up to the effective date of termination, and all reasonable and unavoidable disbursements and expenses that Service Provider has incurred or become obligated for prior to the notice of termination.

ARTICLE 8 - CONFIDENTIAL INFORMATION

- 8.1 The term “Confidential Information” shall mean all information that relates to past, present, and future business activities of Exelon and its affiliated companies, including inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, system plans, flow charts, source codes, algorithms, procedures, data and other proprietary information of Exelon.
- 8.2 Confidential Information shall not include:
- (a) Information lawfully known to Service Provider prior to the Effective Date other than through other agreements with Exelon; or
 - (b) Information that is publicly disclosed through no act of Service Provider or any of its employees, either prior or subsequent to Exelon’s disclosures of such information to Service Provider.
- 8.3 During the term of this Agreement and thereafter, except as Exelon may authorize in writing, Service Provider shall and shall cause its employees and subcontractors to:
- (a) Treat and cause to be treated as confidential all Confidential Information;
 - (b) Use Confidential Information only in connection with the performance of Service pursuant to this Agreement;
 - (c) Make copies of any tangible embodiment of Confidential Information only as necessary for the performance of the Services;
 - (d) Remove any tangible embodiment of Confidential Information from the premises of Exelon only with the express written permission of Exelon; and
 - (e) Return any or all tangible embodiments of Confidential Information to Exelon promptly following the request of Exelon, and in any event upon the termination of the Agreement.
- 8.4 Notwithstanding the foregoing, Service Provider may disclose Confidential Information to the extent that disclosure is required by a court or other governmental agency of competent jurisdiction, provided that Service Provider shall provide notice to Exelon of the request for such disclosure promptly upon receiving it.
- 8.5 Service Provider acknowledges that the breach of any of the covenants contained in this Article 8 will result in irreparable harm and continuing damages to Exelon and Exelon’s business, and that Exelon’s remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to Exelon at law or in equity in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including, but not limited to, an injunction restraining Service Provider from disclosing, in whole or in part, any Confidential Information. Service Provider shall pay all of Exelon’s costs and expenses, including reasonable attorneys’ fees and accountants’ fees, incurred in enforcing such covenants.

ARTICLE 9 - INDEMNIFICATION

9.1 Indemnification.

The Service Provider has the absolute and entire responsibility for all damage, loss or injury of any kind, direct or indirect, to any person (including death) or property arising directly or indirectly out of or in any manner associated with performance by Service Provider under this Agreement or in any way caused by or resulting from the performance of the work covered by this Agreement. Service Provider shall, to the fullest extent permitted by law, indemnify, defend upon request, and hold harmless Exelon against all losses, claims, damage, expense (including attorneys fees and costs) and liabilities sustained or incurred by Exelon by reason of any act, omission, conduct, negligence or default by Service Provider or its subcontractors or their respective employees or agents. Service Provider shall further, to the fullest extent permitted by law, indemnify, defend Exelon upon request, and hold Exelon harmless against any loss sustained or incurred by Exelon (including attorneys fees and expenses) for any breach or nonperformance by Service Provider or its subcontractors of any portion of this Agreement. Exelon's right to indemnification shall specifically include loss or damage to Exelon's property. Exelon's right to indemnification under this Article 9 shall include, but not be limited to all loss or expense associated with legal fees and/or expense associated with obtaining legal advice, prosecuting or defending any legal claim regarding insurance coverage, breach of this Agreement, contractual indemnity under this Agreement, or defense of any lawsuit filed by anyone for any claim relating either directly or indirectly to the Service.

9.2 Limitations on Indemnity.

Except as may be otherwise provided by applicable law, Exelon's right to indemnification shall not be impaired or diminished by any act, omission, misconduct, negligence or default of Exelon or any employee or agent of Exelon who may be alleged to have contributed thereto. To the extent any state or other applicable law may prohibit any application of all or any part of this indemnity obligation, it is the intent of the Parties that this clause is severable, and that this clause be construed to impose the indemnity obligation in all circumstances, applications, and situations to the fullest extent permitted by law. Exelon's right to indemnity under this Article 9 shall not extend to those losses sustained by Exelon which Service Provider has obtained insurance under Article 5 and such insurance has fully reimbursed and indemnified Exelon.

9.3 Indemnification for Claims by Governmental Authorities.

Service Provider agrees to indemnify, hold harmless, and upon request, defend Exelon and its officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns, from any claim, liability, damage, expense, suit, or demand (including, without limitation, reasonable attorneys' fees and court costs) for claims by governmental authorities or others (including Service Provider's subcontractors and the employees of Service Provider, said subcontractors, or Exelon) of any actual or asserted failure of Service Provider to comply with any law, ordinance, regulation, rule, or order of any governmental or quasi-governmental body, including without limitation actual or asserted failure of the Service Provider to pay taxes, duties, or fees or to comply with employee safety orders, safe place, or employment laws.

9.4 Survivability. The provisions of this Article 9 shall survive termination of the Agreement.

ARTICLE 10 - PATENTS AND INFRINGEMENTS

- 10.1 Service Provider shall pay all royalties and license fees which may be payable on account of the Service. Service Provider shall at its own expense defend any claim brought by others against Exelon or its successors and assigns because the Service infringes, or is alleged to infringe directly or contributorily, upon rights in, to, or under patents or inventions, copyrights, trade secrets, and other proprietary rights or is the basis for a claim of unfair competition resulting from similarity in design, trademark, or appearance of goods by reason of the Service and Service Provider will save Exelon harmless from any liability of any nature or kind (including all costs or expenses (including reasonable attorneys' fees)), arising out of any infringement or alleged infringement or claim of unfair competition. In addition, Service Provider shall save Exelon harmless against, and shall pay all awards of damages assessed and all costs of suit adjudged against Exelon in such suits or proceedings, provided Exelon promptly gives Service Provider such information and assistance as is readily available to Exelon, and authority as may be necessary to enable Service Provider so to do. At Exelon's expense, Exelon may be represented by and actively participate through its own counsel in any such suits and proceedings if it so desires.
- 10.2 In case any part of the Service is held in any such suit to constitute infringement and its use is enjoined, Service Provider shall, or at any time after a claim of infringement arises, Service Provider may (at Exelon's option), promptly either (i) secure for Exelon the perpetual right to continue the use of the Service by procuring for Exelon a royalty-free license or such other permission as will enable Service Provider to secure the suspension of any injunction, (ii) replace at Service Provider's own expense such part of the Service with an adequate non-infringing service or modify it so that it becomes non-infringing, or (iii) refund the entire payments made by Exelon for the Service affected.

ARTICLE 11 – REGULATIONS

- 11.1 Each Party represents that it is not aware of any facts that would justify a complaint to the Federal Communications Commission or any state regulatory authority concerning the prices, terms or conditions of the transactions contemplated by this Agreement. The Parties also agree that in the event a decision by a telecommunications regulatory authority at the federal, state or local level necessitates modifications in this Agreement, including modifications to the pricing or compensation issues associated with the provision of the Service provided hereunder, the Parties will negotiate in good faith to modify this Agreement in light of such decision.

ARTICLE 12 - DISPUTE RESOLUTION

- 12.1 Dispute Resolution Process.

Except as provided below, in the event of a dispute under this Agreement (“Dispute”), the parties shall follow the dispute resolution process as set forth herein (the “Dispute Resolution Procedure”). Notwithstanding the foregoing, the dispute resolution process shall not apply to actions in tort under this Agreement by Exelon relating to contribution, insurance coverage, and contractual indemnity, which rights of legal action Exelon retains pursuant to Section 6.7.

12.2 Step Negotiations.

The parties shall attempt in good faith to resolve all Disputes promptly by negotiation as follows. Any party may give the other party written notice of any Dispute not resolved in the normal course of business. Executives of both parties at levels one level above the personnel who have previously been involved in the Dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the matter has not been resolved within thirty (30) days from the referral of the Dispute to senior executives or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either party may initiate mediation as provided hereinafter. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) Days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section 12.2 are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

12.3 Mediation.

In the event that any Dispute, which involves an amount less than ten million dollars (\$10,000,000.00), arising out of or relating to this Agreement is not resolved in accordance with the procedures provided in Section 12.1, such Dispute shall be submitted to private, non-binding mediation with the American Arbitration Association (“AAA”) at the AAA regional office closest to the headquarters of the Exelon subsidiary which issued the Purchase Order for the Specific Project, or to another mutually agreed upon mediator. In the event that any non-construction Dispute, which involves an amount in excess of ten million dollars (\$10,000,000.00), arising out of or relating to this Agreement, is not resolved in accordance with the procedures provided in Section 12.2, such Dispute shall be submitted to private, non-binding mediation with the CPR Institute for Dispute Resolution (“CPR”), or to another mutually agreed upon mediator. Such AAA or CPR mediator shall be selected from the then current list of approved AAA or CPR mediators. The mediation shall take place at Exelon’s facilities unless otherwise agreed to by the parties. If the mediation process has not resolved the Dispute within sixty (60) days of the submission of the matter to mediation or within such longer period as the parties may agree to, the Dispute shall be decided by arbitration as set forth below. Any mediation that takes place pursuant to this Agreement shall be conducted according to the then current AAA or CPR mediation procedures, whichever apply, unless some other process or procedure is mutually agreed upon.

12.4 Arbitration.

All Disputes in question not resolved by mediation between the parties to this Agreement shall be submitted to private, binding arbitration with AAA at the AAA regional office closest to the headquarters of the Exelon subsidiary which issued the Purchase Order for the Specific Project, or by a mutually agreed upon arbitrator. The arbitration shall take place at or near the location of the facilities of the Exelon subsidiary which issued the Purchase Order for the Specific Project and shall be conducted in accordance with the then current AAA Construction Industry Arbitration Rules or AAA Commercial Arbitration Rules, as applicable, then in effect, or a mutually agreed upon set of arbitration rules. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith will be specifically enforceable by any court having jurisdiction. Notice of demand for arbitration must be filed in writing with the other party to this Agreement and with AAA. The demand must be made within a reasonable time after the Dispute has arisen. Subject to the provisions of Section 12.1, in no

event may the demand for arbitration be made if the institution of legal or equitable proceedings based on such Dispute is barred by the applicable statute of limitations. Any arbitration may be consolidated with any other arbitration proceedings. The arbitrators will have no authority to award attorneys' fees, punitive, or treble damages to any party. The award of the arbitrator shall be specifically enforceable in a court of competent jurisdiction. If the total Dispute, exclusive of interest and arbitration costs, does not equal or exceed one million dollars (\$1,000,000.00), the arbitration shall be heard by one neutral arbitrator. If the total Dispute equals or exceeds one million dollars (\$1,000,000.00), then the arbitration shall be heard by three (3) neutral arbitrators. The procedures for the resolution of Disputes set forth herein shall be the sole and exclusive procedures for the resolution of Disputes; provided, however, that a party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the parties will continue to participate in good faith in the procedures specified herein.

12.5 Services to Continue.

In the case of any Dispute (including any Dispute which is or may be the subject of mediation or arbitration), Service Provider shall continue to perform the Services pending final determination of the Dispute, and Exelon shall continue to make payments to Service Provider for those portions of the Services completed that are not the subject of Dispute, in accordance with the Agreement.

ARTICLE 13 – ASSIGNMENT

Subject to the provisions of this Agreement, Service Provider shall not assign its interest (including any interest in or claim to monies owed) in the Agreement, or delegate any obligation under the Agreement, without the prior written consent of Exelon. An "Assignment" shall include any transfer of a majority interest in Service Provider by merger or otherwise. Any attempted assignment or delegation by the Service Provider shall be wholly void and totally ineffective for all purposes. No assignment or delegation made by Service Provider with the consent of Exelon shall relieve Service Provider of any of its obligations under the Agreement. Exelon reserves the right, without the consent of Service Provider, to assign this Agreement or any Purchase Order, in whole or in part, to a third-party to be selected by Exelon.

ARTICLE 14 – NOTICES

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this [Article 14](#)), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Service Provider:

[To be completed]

In the case of Exelon:
Exelon Business Services Company
227 West Monroe Street
Chicago, Illinois 60606

Attn: [_____]

With a copy to:

Exelon Business Services Company
10 South Dearborn Street
Chicago, Illinois 60603
Attn: General Counsel

Either Party may from time to time change the individual(s) to receive notices under this Article 14 and its address for notification purposes by giving the other prior written notice of the new individual(s) and address and the date upon which the change will become effective.

ARTICLE 15 - MISCELLANEOUS

- 15.1 In the event of a conflict or inconsistency between this Agreement and any, Exhibits, ASRs or other order form the Exhibits, ASR's or other order form shall govern in that order. Notwithstanding the foregoing, the documents forming the Agreement shall be taken as mutually explanatory of one another; however, in case of ambiguities, discrepancies, or inconsistencies, the primacy of documents shall govern.
- 15.2 Service Provider's telecommunications equipment shall remain the sole and exclusive property of Service Provider or its assignee, and nothing contained herein shall give or convey to Exelon any right, title or interest whatsoever in such telecommunications equipment, which shall at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. Service Provider shall prominently affix identifying plates, tags or labels on such telecommunications equipment showing Service Provider's ownership thereof. Exelon shall not tamper with, remove or conceal such identifying plates, tags or labels. Service Provider agrees not to tag or label Exelon-owned equipment.
- 15.3 This Agreement does not render either Party the agent or legal representative of the other Party and does not create a partnership or joint venture between Exelon and Service Provider. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This Agreement confers no rights of any kind upon any third-party.
- 15.4 No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision and all terms shall remain in full force and effect.
- 15.5 No subsequent agreement among the Parties concerning the Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties.
- 15.6 This Agreement, together with any applicable Tariffs, and Exhibits, sets forth the entire understanding of the Parties and supersedes any and all prior agreements, arrangements or understandings relating to the subject matter hereof.
- 15.7 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

- 15.8 This Agreement for Service is made pursuant to and shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to its choice of law principles.
- 15.9 This Agreement is non-exclusive. Nothing in this Agreement shall prevent Exelon or Service Provider from entering into similar arrangements with, or otherwise providing services to, any other person or entity.
- 15.10 Neither Party shall issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of this Agreement or the Services to be provided hereunder without obtaining the prior written approval of the other Party.
- 15.11 The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties shall survive the completion of performance and termination of this Agreement, including, without limitation, the making of any and all payments hereunder.
- 15.12 Any additional services provided by Service Provider not included in an ASR or other order form shall be governed by the terms of this Agreement and priced in accordance with Service Provider's standard pricing as set forth in either its applicable Tariffs, Guides or price lists.
- 15.13 Service Provider may subcontract its obligations under this Agreement only with the prior written authorization of Exelon. In such event Service Provider shall not be relieved of its obligations under this Agreement with respect to such Services, and Service Provider agrees to bring the provisions of this Agreement to the attention of and to bind every subcontractor (regardless of tier) to whom it subcontracts any of the Services by the provisions of this Agreement as far as applicable to that portion of the Services to be performed by the subcontractor.
- 15.14 Service Provider shall, unless exempt, comply with the federal laws, rules and regulations pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including the following, all of which are incorporated herein by reference: (i) Affirmative Action Compliance Program (41 CFR 60-1.40); (ii) Affirmative Action – Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action – Handicapped Workers (41 CFR 60-741.4); (iv) Equal Opportunity (41 CFR 60-1.4); (v) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vi) Fair Labor Standards Act of 1938, as amended; (vii) Prohibition of Segregated Facilities (41 CFR 60-1.8); (viii) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7) and (ix) union-related posting and contract clause requirements under Executive Order 13201 (29 CFR, part 470). Service Provider shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.
- 15.15 Diversity Supplier Spend. Exelon is actively committed to supporting Diversity Suppliers as defined in Exelon Procedure No. SM-AC-4001. In support of Exelon's commitment, Service Provider will make certain required expenditures with Diversity Suppliers as set forth in a ASR or other writing from Exelon to Service Provider. Service Provider shall report its expenditures with Diversity Suppliers on a monthly basis, or on a negotiated periodicity, depending on the term of the Agreement or ASR. Service Provider shall provide this reporting information by completing the "2nd Tier Diversity Reporting Web form" located on Exelon's Supplier Diversity Website http://www.exeloncorp.com/supply/eed/tier2_report/tier2_report.shtml. Service Provider can obtain a user-id and password for the 2nd Tier Diversity Reporting Website by contacting the Supplier Diversity Office at (215) 841-5746. All submitted Diversity Suppliers must be

supported by evidence of certification and Exelon's 2nd Tier Direct/Indirect Profile Form for consideration as 2nd Tier Diversity participation. Exelon recognizes a number of organizational certifications, including without limitation the following:

Chicago Minority Business Development Council (MBE)
Woman's Business Development Center (WBE)
Illinois Department of Transportation (MBE/WBE)
City of Chicago (MBE/WBE)
WMBE Clearinghouse (MBE/WBE)
Minority Supplier Development Council of PA, NJ and DE
Women's Business Enterprise Council of PA, NJ and DE
Minority Business Enterprise Council - City of Philadelphia
Bureau of Contract Administration and Business Development - Commonwealth of
Pennsylvania

Recognition for certifications held by any other Diversity Supplier accreditation organization must be submitted to Exelon's Diversity Manager for approval.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to sign this Agreement effective as of the Effective Date.

**[insert the EXELON entity] [acting
by and through its agent,
Exelon Business Services Company]**

[Insert Name of Service Provider]

By: _____

By: _____

(Type or print name)

(Type or print name)

Title: _____

Title: _____

EXHIBIT A
SCOPE OF WORK
DEDICATED TRANSPORT SERVICES
(Not Applicable to Broadband Wireless Access)

Service Provider's Dedicated Transport Services provide dedicated (i.e., non-switched) connectivity for voice, data and video applications. These dedicated services typically consist of non-switched communications circuits and any required equipment, connecting one (1) or more locations. Network configurations vary greatly and can include point-to-point connection, or various multi-point connections between locations. Service Provider's Dedicated Transport Services as set forth herein include On-Net and Off-Net local and long haul private lines and SONET rings (i.e., IntraLATA, InterLATA and Interstate services). The term "Customer" as used in this Exhibit means Exelon as defined in the Agreement

1. SERVICE DESCRIPTIONS FOR ON-NET SERVICES

1.1 Dedicated.

Each Transport Service is dedicated to Customer and is billed on a fixed monthly basis. The entire usable bandwidth for each Service is available to Customer for its exclusive use, twenty-four (24) hours a day, seven (7) days a week.

1.2 Point-To-Point.

Dedicated Transport Services are available between Customer designated locations on a point-to-point basis. Service may be ordered between the Customer's POP and an End User location, between two (2) Customer POP's, or between two (2) End User locations. There are two (2) basic configurations for Dedicated Transport Service: Hubbed Service and Two Point Service.

- (a) Hubbed Service allows Customer to aggregate multiple lower capacity transport services terminating at multiple locations onto one higher capacity service terminating at one other Customer location.
- (b) Two Point Service allows for two (2) Customer designated locations to be connected by one dedicated transport service. The service terminated at both locations must be the same speed/capacity.

1.3 Local Service.

Local Service refers to services that are provided entirely within a local calling area.

1.4 Long-Haul Service.

Long-Haul Service refers to services not provided entirely within a local calling area, i.e., InterLATA and Interstate services.

1.5 Local Loop Service.

A Local Loop refers to the connection from the End User location to the Central Office. For the purposes of this Exhibit, a Local Loop is the connection from the IXC POP to the End User location.

1.6 DS-1 Service.

DS-1 Service is a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Binary 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe formats. DS1 Service has the equivalent capacity of twenty-four (24) Voice Grade (VG) services or twenty-four (24) DSO services. AMI can support twenty-four (24) each 56 Kbps channels and B8ZS can support twenty-four (24) each 64 Kbps channels.

1.7 DS-3 Service.

DS-3 Service is a dedicated, high capacity, full duplex channel with a line speed of 44.736 Mbps isochronous serial data having a line code of binary with three zero substitution (B3ZS). DS3 Service has the equivalent capacity of twenty-eight (28) DS-1 Services at 1.544 Mbps or 672 Voice Grade (VG) services or 672 DS0 Services at 56/64 Kbps.

1.8 OCN Services.

OC-1 Optical Carrier level-1 is 51.840 Mbps. The optical counterpart of STS-1 (Synchronous Transport Signal-1), which is the fundamental signaling rate of 51.840 Mbps on which the SONET (Synchronous Optical Network) hierarchy is based. OC-1 provides for the direct electrical-to-optical mapping of the STS-1 with frame synchronous scrambling. The STS-1 originates as a DS-3 (T-3) electrical signal, which operates at a raw signaling rate of 44.736 Mbps and which supports 672 voice grade digital channels of 64 Kbps; the additional bps are attributable to optical processing overhead. (signaling and control data). All levels are direct multiples of OC-1.

OC-3 Optical Carrier level 3. A SONET channel equal to three (3) DS3s, equal to 155.52 Mbps.

OC-12 Optical Carrier level 12. A SONET channel of 622.08 Mbps.

OC-48 Optical Carrier level 48. A SONET channel of 2.488 Gbps.

OC-192 Optical Carrier level 192. A SONET channel of 9.953 Gbps.

The optical interface designed to work with STS-n signals signaling rate in a Synchronous Optical Network (SONET). Optical Carrier Level N. The optical signal that result from an optical conversion of an STS-N signal. N=1,3,9,12,18,24,36,48,192, or 256.

1.9 Gigabit Ethernet.

Gigabit Ethernet service consists of Ethernet connections of 1 Gbps within a single metropolitan area. The Customer manages an extended network as one (1) large Ethernet Metropolitan Area Network (“MAN”) using standard IEEE 1000BaseLX connections. No customer-owned CPE is required for transport. Service Provider will provide twenty-four (24) hours, seven (7) days a week monitoring and support services. The demarcation is Customer facing site LAN interface on Service Provider’s transport equipment. Support for IEEE 802.1Q VLANs and IEEE 802.1D (Spanning Tree Protocol) is provided. Gigabit Ethernet services are designed and priced on an individual case basis.

1.10 Wavelength Services.

The initial version of the Metro Wavelength Services (“MWS”) product provides connection at 2.5 Gbps within a metropolitan area. The MWS product will provide a dedicated and protected wavelength between two (2) or more locations, i.e., ports, on Service Provider’s metropolitan fiber network. The MWS platform will support up to thirty-two (32) wavelengths running at 2.5 Gbps. Both point-to-point and add-drop ring topologies can be supported by the platform. These topologies may be mixed within the same instance of the platform. The MWS platform is a Metro Dense Wave Division Multiplexing (“DWDM”) system. Customer site interfaces are standard DWDM optical connections to enable multi-vender equipment interoperability. Interfaces are bit-rate and format independent. Service Provider will provide twenty-four (24) hours, seven (7) days a week monitoring and support services. The bandwidth can be divided into customized portions (OC-3 to OC-48) on the customer end. Optical protection is provided on each wavelength. Wavelength Services are designed and priced on an individual case basis.

1.11 Metropolitan SONET Ring Services.

Metropolitan SONET Ring Services provide Optical Carrier speeds in metropolitan ring configurations dedicated to the Customer. Each SONET Ring Service is designed and priced on an individual case basis.

2. INTERFACE REQUIREMENTS

2.1 DS-3 Interface Requirements.

The interface at Network Interface and Customer Interface will be at DSX-3 cross connect located in the customer DSX-3 environment and be of the type equaling the current customer standard.

2.2 DS-1 Interface Requirements.

The interface at Network Interface and Customer Interface will be at DSX-1 cross connect. The signal format shall be B8ZS. AMI shall be provided as an option. The frame format shall be that of the Extended Superframe (ESF). Super Frame (SF) frame format shall be provided as an option.

2.3 OCN Interface Requirements.

The interface at Network Interface and Customer Interface will be at the fiber distribution panel located in the customer Optical environment and be of the type equaling the current customer standard.

3. TERM AND AUTOMATIC RENEWAL OF CIRCUITS

With respect to each individual On-Net and Off-Net Circuit provided to the Customer under this Agreement, the term shall be as specified in the ASR for each Circuit. In the event no term is specified in the ASR for each individual Circuit, it shall be ___ years and shall commence on the date of service activation. Unless a Party notifies the other Party in writing not less than thirty (30) days prior to the expiration of the original or renewal term that it intends not to renew the Circuit, the Circuit shall automatically renew on a month-to-month basis and upon the same pricing, terms, and conditions as set forth herein.

4. PRICING

4.1 Local Dedicated Transport Services Pricing:

Local Loop Pricing. Service Provider will provide to Customer Local Loop service(s) pursuant to the applicable Tariffs and price lists of Service Provider. In the event any of the Service Provider's applicable Tariffs are cancelled, see Section 1.2 of the Agreement.

4.2 Local Dedicated Transport Services Pricing:

Local Private Line Pricing. Service Provider will provide to Customer Local Private Line service(s) pursuant to the applicable Tariffs and price lists of Service Provider. In the event any of the Service Provider's applicable Tariffs are cancelled, see Section 1.2 of the Agreement.

4.3 Long Haul Dedicated Transport Services Pricing.

On-Net Long Haul Dedicated Transport Services are priced based on the bandwidth, routes, Network status, and mileage of each individual Circuit. Each Circuit carries a minimum mileage requirement of one hundred (100) miles. The monthly recurring price for each Circuit is calculated by multiplying the mileage times the distance in vertical and horizontal ("V&H") miles times the number of Voice Grade Equivalents (DS-0's). Prices for each Circuit shall remain in effect for the entire length of the term.

There are two (2) possible network routings possible:

- (1) An On-Net Long Haul Circuit is a Circuit that is physically riding a Service Provider-owned fiber system.
- (2) A "Forward-Priced" Long Haul Circuit is a Circuit that does not physically ride a Service Provider-owned fiber system at this time, but will due so no later than [insert date].

Circuits matching this specific Network routing are priced at the On-Net price point where the requested Circuit term is a minimum of twenty-four (24) months. Forward-Priced Circuits with a term less than twenty-four (24) months will be priced at the Off-Net price point. The Network routings are subject to change; however, pricing in effect at the time of the Circuit order will remain in effect through the entire term of the Circuit. In addition, the Network routing applicable to each Circuit ordered by the Customer will be determined at Service Provider's sole discretion at the time of the Circuit order.

Special pricing: Customer shall pay Service Provider, monthly in advance for Service, a monthly charge equal to the rate set forth for each Circuit, *provided, however*, that the first such payment shall be for the period from the Start of Service through the end of the next full month and shall be due after the Start of Service. The nonrecurring and installation charges set forth herein are due with such first payment. Payments shall be due forty-five (45) days from the monthly invoice date.

Monthly Service Reports. Along with the monthly invoice, Service Provider shall deliver to Customer a monthly report containing, at a minimum, the following information with respect to service performance during the previous month: (i) total availability (up-time) of circuit (in minutes); (ii) maintenance events, both planned and unscheduled emergency; (iii) bandwidth restriction events; and (iv) equipment alarm events.

No payment shall be due until Customer receives the monthly service report.

4.4 Gigabit Ethernet Services Pricing.

Gigabit Ethernet Services will be priced and ordered on an individual case basis.

4.5 Wavelength Services Pricing.

Wavelength Services will be priced and ordered on an individual case basis.

4.6 Metropolitan SONET Ring Services Pricing.

Each SONET Ring ordered will be priced and ordered on an individual case basis.

4.7 Competitive Pricing.

Customer and Service Provider agree to renegotiate pricing of any Services based on current market conditions or technological obsolescence/innovation that results in a material decrease in the market price for similar services. In the event the Parties are unable to reach agreement respecting new rates within thirty (30) days after Customer's delivery of written notice requesting price renegotiation, Customer may terminate the affected Service without termination liability by delivering thirty (30) days' written notice of termination to Service Provider.

5. PROVISIONING OF SERVICE

Service Provider shall provide Service to Customer, in accordance with the following procedures:

5.1 Service to On-Net Locations.

- (a) Customer shall order Service from Service Provider by following the "Ordering Procedures for On-Net Services" set forth in Section 6 below. If the Service Provider accepts the ASR, each such ASR shall form part of the Agreement, subject to all terms and conditions herein.
- (b) Service to On-Net locations shall include normal maintenance, inspection, repair and testing as provided herein.

5.2 Service to Off-Net Locations.

- (a) Customer will submit to Service Provider a Request For Quotation ("RFQ") specifying the Service requested, quantity of Circuits, the location to be served, the Point of Termination, the requested Start of Service Date, the Circuit term, and other information specific to the applicable RFQ.
- (b) Service Provider shall, within five (5) business days of receipt of an RFQ, notify the Customer verbally as to whether (1) the requested Service is available at the Off-Net location; and (2) Service Provider will provide a quotation for the requested Service. If Service Provider has determined the requested Service is available and that it will provide a quotation, Service Provider shall, within ten (10) business days of receipt of an RFQ, submit to Customer a written quotation specifying: (a) the type of Service; (b) quantity of Circuits; (c) location to be served; (d) Point of Termination; (e) the Start of Service Date;

- (f) the applicable non-recurring charge; (g) the applicable monthly recurring charge; and (h) the Circuit term.
- (c) If Service Provider has submitted a quotation under Subparagraph (b) above, Customer may order the applicable Service from Service Provider by tendering to Service Provider an ASR with a copy of the Service Provider's written quotation attached. Upon acceptance of the ASR by Service Provider, it shall form a part of the Agreement, subject to all terms and conditions contained therein.
- (d) In the event the ASR is inconsistent with any of the terms of Service Provider's written quotation under Subparagraph (b) above, then the terms stated in Service Provider's written quotation shall govern.
- (e) While Service Provider will act as Customer's single point of contact for Off-Net Services, Service Provider shall provide such Services in accordance with and subject to, the terms of Service Provider's agreement(s) with the local access provider of such services. Service Provider therefore cannot be responsible for the installation, maintenance, repair or testing of the portion of Off-Net Services provided by another local access provider.

5.3 Equipment Substitution.

Service Provider may substitute, change or rearrange telecommunications equipment used in providing Service as long as the quality, cost and type of Service is not impaired or changed; provided, however, that Customer will receive at least sixty (60) days prior notice of any such change. The notice will include an explanation of the change and will advise the Customer if access to Customer's facilities is required. Equipment changes at Customer's premises must be coordinated with Customer

6. ORDERING PROCEDURES FOR ON-NET SERVICES

6.1 Building Lists.

Service Provider shall provide building list(s), including Local Exchange Carrier (LEC) CO's and IXC POPs, to Customer's Access Management group upon request, but no more than quarterly during the term of the Agreement. Building lists shall include buildings that are considered on the Service Provider's Network (On-Net), and also include planned building addresses. Building list information will include street addresses, names of buildings, and city and state. Service Provider will provide information to Customer in a mutually agreeable format.

6.2 Ordering Vehicle.

If an electronic format is available to transmit ASR from Customer to Service Provider, this vehicle will be used. If an electronic format is utilized, Service Provider will follow any OBF standards for use thereof. If an electronic format cannot be utilized, Customer will transmit ASR to Service Provider via facsimile. Facsimile information will be provided to Customer and updated as needed.

6.3 Contacts and Escalation.

Service Provider will provide a complete list of contacts to the Customer to support escalation of Customer orders and service. Customer requires that this list of contacts with escalation be provided before execution of the Agreement.

6.4 Service Order Intervals.

- 6.4.1 ASR Issuance - Upon receipt of an ASR from the Customer, Service Provider will provide a response to Customer pertaining to any corrections or clarifications required to process the ASR. This will be completed by the Service Provider within twenty-four (24) business hours following the receipt of the ASR.
- 6.4.2 Firm Order Commitment (FOC) and Design Layout Record (DLR) - Service Provider will provide a FOC and DLR information to Customer for: (a) DS-1/Fractional DS-1 within five (5) business days of receipt of a complete and accurate ASR; (b) DS-3 within five (5) business days of receipt of a complete and accurate ASR; (c) OCN (OC-3, OC-12 and OC-48) within fifteen (15) business days of receipt of a complete and accurate ASR; and (d) Gigabit Ethernet and Wavelength Services within fifteen (15) business days of receipt of a complete and accurate ASR. The FOC will provide any necessary service intervals.

6.5 Installation Intervals.

- 6.5.1 On-Net Local OCN, DS-1 and DS-3 Services. The standard installation interval for On-Net Local Services is: OCN (OC-3, OC-12 and OC-48) forty-five (45) business days; DS-3 twenty-five (25) business days; and DS-1/Fractional DS-1 twenty-five (25) business days. It is understood between Customer and Service Provider that Service Provider will provide Service on an ICB. If a shorter installation interval is required that is less than the standard interval, Service Provider will make reasonable efforts to meet the expected Start of Service Date.
- 6.5.2 On-Net Long Haul OCN, DS-1 and DS-3 Services. The standard installation interval for On-Net Long Haul Services is: OCN (OC-3, OC-12 and OC-48) ninety to one hundred and fifty (90-150) business days; and DS3 ninety (90) business days. It is understood between Customer and Service Provider that Service Provider will provide Service on an ICB. If a shorter installation interval is required that is less than the standard interval, Service Provider will make reasonable efforts to meet the expected Start of Service Date.
- 6.5.3 On-Net Gigabit Ethernet and Wavelength Services. The installation interval for On-Net Gigabit Ethernet and Wavelength Services is: Gigabit Ethernet ninety (90) business days and Wavelength Services ninety (90) business days.
- 6.5.4 Off-Net Local and Long Haul Services. Off-Net Services terms and conditions, including intervals, FOC, and DLR will be negotiated on an ICB dependent upon the standard intervals from the LECs or other local access providers for a particular city.
- 6.5.5 Installation Delay Credits. If a Local DS-1, DS-3 or OCN is ordered with an agreed upon Start of Service Date and the due date is missed due to the sole fault of the Service Provider by more than twenty-four (24) hours, the Customer will be entitled to a delay credit of an amount equal to twenty-five percent (25%) of the Monthly Recurring Charge for that Circuit for each business day of delay. The delay credits for any Circuit, in any given month, will be capped at one hundred percent (100%) of the Monthly Recurring Cost for the Circuit. Customer shall have the right to terminate the Agreement and any affected Service if the installation delay extends more than fourteen (14) days beyond the due date defined in the Service Order. To the extent that all or any part of the Services is delayed upon installation, Customer's sole remedy shall be that which is set forth

hereunder. Delay credits do not apply in those instances where installation is delayed by or at the request of the Customer.

7. SYSTEM ACCEPTANCE CRITERIA

7.1 End-to-End System Performance.

The following acceptance tests will be conducted:

DS-1: DS-1 testing shall run for a forty-eight (48) hour period mutually agreed upon by the Parties. Customer shall review test results and shall notify Service Provider in writing of its acceptance. Customer shall accept a SONET Circuit when it is error-free over the forty-eight (48) hour test period and the overall availability is 99.999% over that forty-eight (48) hour period.

DS-3: DS-3 testing shall be clear channel, head-to-head cooperative testing. Testing shall run a forty-eight (48) hour period mutually agreed upon by the Parties. Customer shall review test results and shall notify Service Provider of its acceptance. Customer shall accept a SONET Circuit when it is error-free over any forty-eight (48) hour period and the overall availability is 99.999% over that forty-eight (48) hour period.

OCN: OCN Testing shall be head-to-head cooperative testing or equivalent (i.e., Loop back.). Testing shall run a forty-eight (48) hour period mutually agreed upon by the Parties. Customer shall review test results and shall notify Service Provider of its acceptance. Customer shall accept a SONET Circuit when it is error-free over any forty-eight (48) hour period and the overall availability is 99.999% over that forty-eight (48) hour period.

7.2 Equipment Alarm and Status Indication Functionality.

All equipment alarm functions and status indicators provided by the equipment vendor will function properly under all simulated (non-destructive) alarm conditions.

8. EQUIPMENT AND INSTALLATION FOR ON-NET SERVICES

Service Provider shall provide, install, maintain, repair, operate and control the telecommunications equipment necessary for Service. Except as otherwise provided herein, Service Provider shall pay the cost of purchasing and installing all telecommunications equipment necessary for Service.

Service Provider will provide telecommunications equipment and Service to the Point of Termination. Service Provider shall be responsible for the procurement and maintenance of all rights-of-way and private or public easements or licenses required for the installation of Service Provider's equipment. Customer provided equipment ("CPE") space and conduit, if applicable, will be specified in separate and unique co-location agreements.

Service Provider shall provide notice to Customer as soon as practicable, but in all events prior to entering a POP.

The provisions of this Article 8 shall only apply to On-Net Services.

9. MAINTENANCE AND REPAIR OF ON-NET SERVICES

Except as provided in Article 8 above, any maintenance and repair required on the Service Provider's system, on Service Provider or Customer End User Premises, shall be performed by Service Provider or its designated contractor(s) at no additional cost to Customer if the failure is due to the failure of facilities or employees of Service Provider.

9.1 Specifications.

Maintenance and repair of the system will be performed so as to meet the manufacturer's specification and other specifications as set forth herein. Customer shall provide and update a list of Customer contacts for maintenance and escalation purposes.

9.2 Response and Repair Times.

In the event of a Service Outage, Service Provider will respond within thirty (30) minutes after receiving notification of the Outage from Customer. After receiving notification of the Outage from Customer, Service Provider shall restore the Service on its failed system as follows:

- (i) **Electronic Restoration.** In the event of an electronic failure, Service Provider shall use reasonable commercial efforts to restore Service to the affected electronics within one and one half (1½) hours of arrival of maintenance personnel on site.
- (ii) **Cable Restoration.** In the event of a cable failure, Service Provider shall begin cable restoration within two (2) hours after the faulty cable is identified.
- (iii) **Emergency Reconfiguration.** If the Customer's network architecture has the capability to provide route reconfiguration to maintain Service, Service Provider will provide reconfiguration if other means of restoration will not restore Service within the time frames stated in subparagraph (i) and (ii) above. Reconfiguration will begin one (1) hour after the need to reconfigure is determined.

Service Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact for Customer to report to Service Provider system Troubles.

9.3 Maintenance Spares.

Service Provider will provide all maintenance spares plus repair and return Service of defective parts. In general, Customer will not provide equipment storage space in Customer facilities over and above storage space available in Service Provider's equipment racks.

9.4 Scheduled Maintenance.

Service Provider shall perform all trouble maintenance and repair functions on its system and facilities from the End User Premises to the demarcation point at the Customer facilities twenty-four (24) hours per day, seven (7) days per week. Service Provider scheduled maintenance will be performed during specified Customer maintenance windows, except in the case of emergencies, in which case as much notice as is practicable will be given.

Customer must also be prepared to provide a maintenance window with seventy-two (72) hours notice from the Service Provider. Scheduled routine maintenance will be performed during

specified Customer maintenance windows and will be coordinated between Service Provider and Customer.

Maintenance that may place the system in jeopardy or require system down time will normally be performed during the "Maintenance Window" during a time mutually agreed to by Customer and Service Provider. Jeopardy and down time must be scheduled by the Service Provider with the Customer with a minimum of seventy-two (72) hours prior notice of the requested maintenance time unless otherwise agreed to by Customer.

Service Provider maintenance personnel will notify Customer prior to beginning scheduled maintenance work and must receive concurrence, which shall not be unreasonably withheld, to proceed. Service Provider personnel will make reasonable efforts to notify Customer upon completion of scheduled maintenance work and receive concurrence that all Service is fully operational.

9.5 Access to Equipment and Facilities.

Employees or agents of Service Provider shall have escorted access to any Service Provider equipment or facilities at a Customer End User Premise or Customer Premises, subject to End User or Customer's access and security regulations. These shall include, but not be limited to:

- Proper Identification
- Service Provider Authorized Personnel List
- Restricted Area Access Provisions
- Accompaniment by End Users/Customer personnel

Service Provider employees or agents, while on Customer End User Premises or Customer Premises, shall comply with the State/Federal, End Users and/or Customer plant rules and regulations, including but not limited to safety and security rules.

Upon request, (and predefined schedules) employees or agents of Customer shall be given escorted access, for viewing only, to areas at Service Provider locations containing facilities and/or equipment associated with Customer's Service, subject to Service Provider's access and security regulations.

- Proper Identification
- Customer Authorized Personnel List
- Restricted Area Access Provisions
- Accompaniment by Service Provider personnel

Customer employees or agents, while on Service Provider Premises, shall comply with Service Provider's facilities rules and regulations.

Customer shall have the right to be present during Service Provider equipment testing, and during scheduled and non-scheduled maintenance and repair activity. Customer will notify Service Provider in advance of such requests.

10. EQUIPMENT REQUIREMENTS

Notwithstanding any provision of this Agreement to the contrary, if Customer provides its own telecommunications equipment, Customer and Service Provider shall negotiate arrangements related to installation, maintenance or repair of such Customer equipment.

Neither Party shall adjust, align, or attempt to repair, the other Party's telecommunications equipment except as expressly authorized in advance in writing by the other Party. Neither Party's telecommunications equipment shall be removed or relocated by the other Party unless otherwise mutually agreed upon.

11. PERFORMANCE MONITORING AND REPORTING

Service Provider will be responsible for performing surveillance on its major systems. However, Customer at its expense may also perform surveillance of Service Provider's system to the End User Premises to the terminating equipment Network side of the DSX-1 cross connect frame.

Customer, at its expense, may provide Service Provider approved surveillance equipment connected to Service Provider transmission equipment, which will provide to Customer surveillance system operations the capability to perform surveillance of the bypass system to the End User Premises. Customer is responsible for obtaining necessary connectivity from the Service Provider's transmission equipment to the Customer's surveillance site.

Service Provider will sectionalize faults occurring within the system localized to the Customer system elements as follows: Service Provider Transmission equipment on the End User Premises; and equipment between Service Provider and Customer facilities.

12. SERVICE PROVIDER SERVICE AVAILABILITY COMMITMENTS/SERVICE LEVEL AGREEMENTS

12.1 Bit Error Rate Table

Signal Type	Maximum Bit Error Rate
DS-1	1 X 10E -6
DS-3	1 X 10E -7
OC-3	1 X 10E -8
OC-12	1 X 10E -8
OC-48	1 X 10E -9

Error Free Seconds % ("EFS%") > 99.99999% PASS (more than 99.99999% EFS required)
 Severely Error Seconds ("SES") 0 (zero SES required)

12.2 Availability Per Annum

DS-3 99.999%
 DS-1 99.999%
 OCN 99.999%

12.3 Max Consecutive Zero: 15

12.4 Clocking: Derived from T1 source - stratum 2 level clocking, traceable to a stratum

12.5 Line Build Out: DB loss range between 5 and 15

12.6 Standards Organizations Reference Numbers:

Electrical DS-1: ANSI T1.403 DS1
 ANSI T1.510-1999
 Electrical DS-3: ANSI T1.404-19994
 SONET (OCN): ANSI T1.105.06-1996
 ANSI T1.105.04-1995

12.7 Ethernet Services (including Gigabit Ethernet Services)

The Service Level Agreement (“SLA”) set forth in this Section 12.7 is only applicable to protected Ethernet Services, including Gigabit Ethernet Services. For purposes of this Section 12.7, protected Ethernet Services shall mean that each Circuit is terminated with two (2) paths, e.g., in the case of fiber, there would be two (2) fiber strands.

12.7.1 Availability Commitment Per Month: 99.999%

12.7.2 Latency within a Metropolitan Area: <10 milliseconds port-to-port

12.7.3 Bandwidth Guarantee: Service Provider guarantees, for periods when the Ethernet Service is available, that full port-to-port Circuit bandwidth is available for the Customer’s use at all times.

12.8 Wavelength Services.

The Service Level Agreement (“SLA”) set forth in this Section 12.8 is only applicable to protected Wavelength Services. For the purposes of this SLA, protected Wavelength Services shall mean that each Circuit is terminated with two (2) paths, e.g., in the case of fiber, there would be two (2) fiber strands.

12.8.1 Availability Commitment Per Month: 99.999%

12.8.2 Bandwidth Guarantee: Service Provider guarantees, for periods when the Wavelength Service is available, that full bandwidth is available for the Customer’s use at all times.

13. CREDIT ALLOWANCES FOR SERVICE OUTAGES FOR ON-NET SERVICES

In the event that Service Provider is unable to restore a portion of the Service as required hereunder, or in the event of a Service Outage, Customer shall be entitled to a credit for the prorated monthly recurring charges for the affected Circuits for all unplanned network outages in excess of six (6) minutes. This figure is based on the annual Service Availability Commitment. All outage time in any given year exceeding six (6) minutes results in a credit to Customer. Credit allowances, if any, shall be deducted from the charges payable by Customer hereunder and shall be expressly indicated on a subsequent bill to Customer. A Service Outage begins when Service Provider is notified or becomes aware of the failure, whichever occurs first. A Service Outage ends when the affected line and/or associated station equipment is fully operative, subtracting any delay time associated with Service Provider’s ability to access the Customer or End User Premise. If the Customer reports Services or a facility or Circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but shall not be deemed a Service Outage. With the exception of Wavelength and Ethernet Services, including Gigabit Ethernet Services, if more than five (5) related Service Outages, or more than forty-eight (48) aggregate hours of outages, occurs over any thirty (30) consecutive day period, the Customer shall be entitled to terminate the affected Circuit provided under this Agreement upon written notice to Service Provider.

(a) Credit Allowances do not apply to Service Outages (i) caused by the negligence or acts of Customer and/or End User or its agents, (ii) due to failure of power; (iii) the failure or malfunction of Customer equipment or systems; (iv) force majeure events, circumstances or causes beyond the reasonable control of Service Provider or its agents; (v) during any period in which Service Provider is not given access to the Service Premises; or (vi) a Planned Service

Outage, unscheduled Emergency Maintenance, scheduled maintenance, alteration or implementation as described herein, provided, if the outage or maintenance was planned, that prior notice thereof was provided to Customer.

(b) Service Provider shall issue credit allowances to Customer on the invoice covering the period when the service outage occurred, or the next invoice period; provided Services are billed in advance. If Service Provider fails to timely issue a credit allowance as required, within five (5) business days' written notice from Customer, Service Provider shall issue Customer a refund check in the amount of the outstanding credit allowance. Customer must request a credit allowance for a Service Outage within one hundred fifty (150) days after the Service Outage occurs or any claim for an allowance is waived.

Service Outages for On-Net, protected SONET Transport Services:

<u>Total Service Outage Time (in Minutes)</u> <u>In any Given Year</u>	<u>Credit Per Circuit</u>
6 minutes or less	None
Over 6 minutes	10% of monthly recurring revenue of the circuit in month when aggregate outage time for the year exceeds 6 minutes.
Over 12 minutes	10% of monthly recurring revenue of the circuit in month when aggregate outage time for the year exceeds 12 minutes.
Over 18 minutes	10% of monthly recurring revenue of the circuit in month when aggregate outage time for the year exceeds 18 minutes.

*Assuming the Service has not been terminated, the same 10% credit applies to each additional 6 minutes of total outage time in any given year.

With the exception of Wavelength and Ethernet Services, including Gigabit Ethernet Services, notwithstanding Service Provider's obligation to provide credit allowances, in the event of Service Outages, the Customer is granted the option to disconnect a Circuit without termination liability if that specific Circuit has experienced Inferior Performance. Whenever a Customer reports to the Service Provider (or vice versa) that a Circuit has experienced Inferior Performance, the Service Provider shall immediately perform a detailed investigation and report the findings to the Customer. With the exception of Wavelength and Ethernet Services, including Gigabit Ethernet Services, in the event that the Circuit continues to experience Chronic Trouble within a thirty (30) day period after clearing the most recent Chronic Trouble for the same Circuit, the Customer may disconnect the specific Circuit without incurring termination liability. If a Circuit is disconnected due to Inferior Performance, Service Provider shall refund to customer a pro rata portion (based on the remaining service term at the time of termination) of any paid installation and non-recurring charges. Customer's credit and termination rights shall not apply, however, in the event that any Trouble is caused or contributed to, directly or indirectly, by any act or omission of Customer and/or End User, affiliates, agents or representatives.

The provisions of this Article 13 shall apply only to Service Outages of On-Net Services.

14. CANCELLATION CHARGES

There will be no cancellation charge if a Circuit is cancelled within ten (10) days of Customer's Circuit order.

Customer Initial and Date

Customer Name

EXHIBIT B

Invoice Format
[To be Supplied]