

**Agreement Between
BellSouth Telecommunications Inc.
And
DIECA Communications, Inc. d/b/a Covad Communications Company**

This Agreement (the "Agreement") is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("DIECA"), a California corporation, and shall be deemed effective as of the date of the last signature of both Parties ("Effective Date"). This Agreement may refer to either BellSouth or DIECA or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, DIECA is a competitive local exchange carrier authorized to provide telecommunications services in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana (TSP00340), Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, BellSouth and DIECA have entered into good faith negotiations pursuant to the Act to renegotiate an interconnection agreement ("New Agreement") to replace the existing interconnection agreement between the Parties, which expired on November 30, 2000, ("Expired Agreement"); and

WHEREAS, until such time as the Parties execute the New Agreement, BellSouth and DIECA shall continue to operate under the rates, terms and conditions of the Expired Agreements; and

WHEREAS, BellSouth and DIECA are currently involved in an arbitration proceeding (the "Arbitration") before the Florida and Georgia Public Services Commissions ("PSCs") and the Tennessee Regulatory Authority (TRA) to resolve any and all disputes which arose during the course of the negotiations; and

WHEREAS, DIECA desires access to incorporate rates, terms and conditions for Unbundled Copper Loop-Non Designed (UCL-ND) set forth in a settlement agreement accepted by the Georgia Public Service Commission ("PSC") in Docket Number 11900-U on April 3, 2001 ("Settlement Agreement"); and

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which

1. Attachment 2 of the Expired Agreement is hereby amended to include the terms and conditions for UCL-ND as set forth below:
 - 1.1 The UCL-ND will be provisioned as a dedicated 2-wire metallic transmission facility from BellSouth's Main Distribution Frame to a customer's premises (including the NID). The UCL-ND will be a "dry copper" facility in that it will not have any intervening equipment such as load coils, repeaters, or digital access main lines ("DAMLs"), and may have up to 6,000 feet of bridged tap between the end user's premises and the serving wire center. The UCL-ND typically will be 1300 Ohms resistance and in most cases will not exceed 18,000 feet in length, although the UCL-ND will not have a specific length limitation. For loops less than 18,000 feet and with less than 1300 Ohms resistance, the loop will provide a voice grade transmission channel suitable for loop start signaling and the transport of analog voice grade signals. The UCL-ND will not be designed and will not be provisioned with either a design layout record or a test point.
 - 1.2 The UCL-ND will be provisioned according to the specifications for the UCL-ND set forth in BellSouth's TR73600.
 - 1.3 The UCL-ND facilities may be mechanically assigned using BellSouth's assignment systems. Therefore, the Loop Make Up process is not required to order and provision the UCL-ND. However, DIECA can request Loop Make Up for which additional charges would apply.
 - 1.4 Since this loop is not provisioned with a test point, BellSouth is unable to perform remote testing on the UCL-ND. Accordingly, DIECA agrees to: (i) test and isolate trouble to the BellSouth portion of the UCL-ND before reporting a trouble to BellSouth; (ii) provide the results of such testing when reporting a trouble to BellSouth; and (iii) pay the costs of a BellSouth dispatch if DIECA reports a trouble on the UCL-ND and no trouble is found on BellSouth's portion of the UCL-ND.
 - 1.5 BellSouth will perform continuity validation on UCL-ND loops which require a dispatch to provision prior to order completion.
 - 1.6 At an additional charge, BellSouth also will make available Loop Testing so that DIECA may request further testing on the UCL-ND. The rates for Loop Testing are as set forth in Exhibit 1-AL, Exhibit 1-FL, Exhibit 1-GA, Exhibit 1-KY, Exhibit 1-LA, Exhibit 1-MS, Exhibit 1-NC, Exhibit 1-SC and Exhibit 1-TN attached hereto and incorporated herein by this reference. The Loop Testing rates in

Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee are interim subject to retroactive true-up once the public service commissions in those states establish Loop Testing rates.

- 1.7 UCL-ND loops are not intended to support any particular service and may be utilized by DIECA to provide a wide-range of telecommunications services so long as those services do not adversely affect BellSouth's network. The UCL-ND will include a Network Interface Device (NID) at the customer's location for the purpose of connecting the loop to the customer's inside wire.
 - 1.8 The UCL-ND will be delivered to DIECA's collocation space via a cross-connect. This cross-connect element will be provisioned as a part of BellSouth's Collocation offering.
 - 1.9 Order Coordination (OC) will be provided as a chargeable option and may be utilized when the UCL-ND provisioning is associated with the reuse of BellSouth's facilities. Order Coordination -Time Specific (OC-TS) does not apply to this product.
 - 1.10 DIECA may use BellSouth's Unbundled Loop Modification (ULM) offering to remove bridge tap and/or load coils from any loop within the BellSouth network. Therefore, some loops that would not qualify as UCL-ND could be transformed into loops that do qualify, using the ULM process.
 - 1.11 The provisioning interval for the UCL-ND will be listed in BellSouth's Interval Guide.
 - 1.12 Cancellation and Expedite charges may be applied according the terms and conditions of DIECA's interconnection agreement.
 - 1.13 When BellSouth provisions a UCL-ND, BellSouth will take necessary steps to identify the pair as an xDSL compatible loop. As such, when making modifications to its network, BellSouth will maintain the same specified physical characteristics of the UCL-ND in accordance with TR 73600 until the loop is disconnected by the CLEC or the end-user.
2. Those rates, terms and conditions in the Settlement Agreement accepted by the Georgia PSC in Docket No. 11900-U for UCL-ND are as set forth in Exhibit 1-GA attached hereto and incorporated herein by this reference. The recurring, nonrecurring, and disconnect rates for the UCL-ND in Georgia are interim subject to retroactive true-up once the Georgia PSC establishes permanent rates for the UCL-ND.

3. The UCL-ND will be made available in Alabama, Florida, Kentucky, Louisiana, Mississippi, and South Carolina at the rates as set forth in Exhibit 1-AL, Exhibit 1-FL, Exhibit 1-KY, Exhibit 1-LA, Exhibit 1-MS, and Exhibit 1-SC attached hereto and incorporated herein by this reference. The recurring, nonrecurring, and disconnect rates for the UCL-ND in Alabama, Florida, Kentucky, Louisiana, Mississippi, and South Carolina are interim subject to retroactive true-up once the public service commissions in those states establish recurring, nonrecurring, and disconnect rates (if applicable) for the SL-1 unbundled loop, which shall be used as a surrogate for the UCL-ND. The SL-1 rates will cease to be used as a surrogate for the UCL-ND as soon as a public service commission has been provided a cost study for the UCL-ND and expressly approves a rate for the UCL-ND.
4. The UCL-ND will be made available in North Carolina and Tennessee using the commission-approved rates for the SL-1 loop as a surrogate as set forth in Exhibit 1-NC and Exhibit 1-TN attached hereto and incorporated herein by this reference. The recurring, nonrecurring, and disconnect rates (if applicable) for the SL-1 loop will cease to be used as a surrogate for the UCL-ND as soon as a public service commission has been provided a cost study for the UCL-ND and expressly approves a rate for the UCL-ND.
5. The rates for each state in Exhibit 1 of Attachment 11 of the Expired Agreement are hereby amended to include the rates and rate elements for UCL-ND as set forth in Exhibit 1-AL, Exhibit 1-FL, Exhibit 1-GA, Exhibit 1-KY, Exhibit 1-LA, Exhibit 1-MS, Exhibit 1-NC, Exhibit 1-SC and Exhibit 1-TN attached hereto.
6. Any rate in the Expired Agreement that is not expressly replaced by the rates set forth in Exhibit 1-AL, Exhibit 1-FL, Exhibit 1-GA, Exhibit 1-KY, Exhibit 1-LA, Exhibit 1-MS, Exhibit 1-NC, Exhibit 1-SC and Exhibit 1-TN as described in paragraphs 2, 3 and 4 above shall remain in full force and effect in accordance with the terms of the Expired Agreement.
7. The Parties agree that all of the other provisions of the Interconnection Agreement, dated December 1, 1998, shall remain in full force and effect.
8. The Parties further agree that either or both of the Parties is authorized to submit this Agreement to the applicable PSC or other regulatory body having jurisdiction over the subject matter of this

Agreement, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives on the data indicated below.

BellSouth Telecommunications, Inc.

Original Signature on File
Signature

C. W. Boltz
Name

Managing Director
Title

5/30/01
Date

DIECA Communications, Inc.

Original Signature on File
Signature

Dhruv Khanna
Name

EVP-CC
Title

5/9/01
Date

General Terms and Conditions

1. Purpose

This Agreement sets forth the terms and conditions under which DIECA will obtain services and unbundled network elements from BellSouth to provide telecommunications services to DIECA customers within the territory of BellSouth. BellSouth will provide DIECA with the functionalities of unbundled network elements so that DIECA can provide any telecommunications service that can be offered by means of the unbundled elements as described in BellSouth's technical references in Attachment 2 of the Expired Agreement.

2. Term of the Agreement

- 2.1 This Agreement shall remain in effect for one year or until such time as the Parties execute the New Agreement, whichever occurs first.
- 2.2 In the event of default, the non-defaulting Party may terminate this Agreement in whole or in part provided that the non-defaulting Party so advises the Defaulting Party in writing of the event of the alleged default and the Defaulting Party does not remedy the alleged default within 60 days after written notice thereof. Default is defined as:
- a. Either Party's material breach of any of the terms or conditions hereof;
or
 - b. Either Party's insolvency or initiation of bankruptcy of receivership proceedings by or against the Party.

3. Ordering Procedures

- 3.1 Detailed procedures for ordering and provisioning BellSouth services are set forth in BellSouth's Local Interconnection and Facility Based Ordering Guide and Resale Ordering Guide, as appropriate.
- 3.2 BellSouth has developed electronic systems for placing most resale and some UNE orders as specified in the Ordering Guides. BellSouth has developed electronic systems for accessing data needed to place orders including valid address, available services and features, available telephone numbers, due date estimation on pre-order and calculation on firm order, and customer service records where applicable. Charge for Operational Support Systems (OSS) shall be as set forth in this agreement in Exhibit A of Attachment 1 and in Exhibit C of Attachment 2.

- 3.3 BellSouth shall provide to DIECA a list of telephone numbers where the service presently provided to said telephone number is through a loop with no load coils, bridge taps, and is within 18,000 feet of the serving central office (hereinafter "Bulk List") for each metropolitan area (hereinafter "Metro") where BellSouth has offered its ADSL service pursuant to FCC tariff. The offering of the Bulk List to DIECA is the same offering, under the same terms and conditions, of the Bulk List provided to subscribers to BellSouth's ADSL service. Said Bulk Lists shall be provided under the following terms and conditions:
- 3.3.1 BellSouth shall make the Bulk Lists for each Metro available on a one-time basis.
- 3.3.2 BellSouth makes no claim as to the accuracy of completeness of the Bulk List.
- 3.3.3 DIECA is responsible for acting within the local, state, and federal law in its use of the Bulk List, and agrees to utilize the Bulk List only for the purpose of pre-qualifying an end user's eligibility for an ADSL capable loop. Further, DIECA will not provide the Bulk List, any portion or portions of the Bulk List, copies of the Bulk List, or any information derived directly from the Bulk List to others without the prior written consent of BellSouth.
- 3.3.4 DIECA will indemnify, defend, and hold harmless BellSouth and any of its licensors, employees, or agents from and against any and all claims, demands, actions, causes of action, suits, proceedings, losses, damages, costs, and expenses, including reasonable attorneys fees, arising from or relating to use of the Bulk List by DIECA.
- 3.3.5 DIECA acknowledges and agrees to BellSouth's right to revoke and terminate the use of the Bulk List by DIECA where BellSouth has discontinued providing said Bulk List to its subscribers of xDSL service or where DIECA has violated the provisions of this section 3.3 BellSouth shall exercise this right of revocation and/or termination at any time during the term of this Agreement and by written notice to DIECA. In such event, DIECA shall immediately destroy or return all copies and/or components of the Bulk List within forty-eight (48) hours of receipt of BellSouth's notice of revocation and termination.

4. Parity

The services and service provisioning that BellSouth provides DIECA for resale will be at least equal in quality to that provided to BellSouth, or any BellSouth subsidiary, affiliate or end user. In connection with resale, BellSouth will provide DIECA with pre-ordering, ordering, maintenance and trouble reporting, and daily usage data functionality that will enable

DIECA to provide equivalent levels of customer service to its customers and end users as BellSouth provides to its own, customers and end users. BellSouth shall also provide DIECA with unbundled network elements, and access to those elements and pre-ordering information, that is at least equal in quality to that which BellSouth provides BellSouth, or any BellSouth subsidiary, affiliate or other telecommunications carrier. BellSouth will provide number portability to DIECA and their customers with minimum impairment of functionality, quality, reliability and convenience.

5. White Pages Listings

BellSouth shall provide DIECA and its customers access to white pages directory listings under the following terms:

- 5.1 Listings. BellSouth or its agent will include DIECA residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories. Directory listings will make no distinction between DIECA and BellSouth subscribers.
- 5.2 Rates. Subscriber primary listing information in the White Pages shall be provided at no charge to DIECA or its subscribers provided that DIECA provides subscriber listing information to BellSouth at no charge.
- 5.3 Procedures for Submitting DIECA Subscriber Information. BellSouth will provide to DIECA a magnetic tape or computer disk containing the proper format for submitting subscriber listings. DIECA will be required to provide BellSouth with directory listings and daily updates to those listings, including new, changed, and deleted listings, in an industry-accepted format. These procedures are detailed in BellSouth's Local Interconnection and Facility Based Ordering Guide.
- 5.4 Unlisted Subscribers. DIECA will be required to provide to BellSouth the names, addresses and telephone numbers of all DIECA customers that wish to be omitted from directories.
- 5.5 Inclusion of DIECA Customers in Directory Assistance Database. BellSouth will include and maintain DIECA subscriber listings in BellSouth's directory assistance databases at no charge. BellSouth and DIECA will formulate appropriate procedures regarding lead time, timeliness, format and content of listing information.
- 5.6 Listing Information Confidentiality. BellSouth will accord DIECA's directory listing information the same level of confidentiality that BellSouth accords its own directory listing information, and BellSouth shall limit access to

DIECA's customer proprietary confidential directory information to those BellSouth employees who are involved in the preparation of listings.

- 5.7 Optional Listings. Additional listings and optional listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.
- 5.8 Delivery. BellSouth or its agent shall deliver White Pages directories to DIECA subscribers at no charge.

6. Bona Fide Request/New Business Request Process for Further Unbundling

BellSouth shall, upon request of DIECA, provide to DIECA access to its unbundled elements at any technically feasible point for the provision of DIECA's telecommunications service where such access is necessary such that failure to provide access would impair the ability of DIECA to provide services that it seeks to offer. Any request by DIECA for access to an unbundled element that is not already available shall be treated as an unbundled element Bona Fide Request/New Business Request, and shall be submitted to BellSouth pursuant to the Bona Fide Request/New Business Request process set forth in Attachment 9 of the Expired Agreement.

7. Liability and Indemnification

7.1 Liability Cap.

- 7.1.1 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by DIECA, any DIECA customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by DIECA, any DIECA customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth and claims for damages by DIECA resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.
- 7.1.2 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other

- person or entity, for damages associated with any of the services provided by DIECA pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, DIECA's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, any BellSouth customer or any other person or entity resulting from the gross negligence or willful misconduct of DIECA and claims for damages by BellSouth resulting from the failure of DIECA to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.
- 7.2 Neither party shall be liable for any act or omission of any other telecommunications company to the extent such other telecommunications company provides a portion of a service.
- 7.3 Neither party shall be liable for damages to the other party's terminal location, Interconnection Point or the other party's customers' premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent the damage is caused by such party's gross negligence or willful misconduct.
- 7.4 Notwithstanding subsection A of this Section, the party providing services under this Agreement, its affiliates and its parent company shall be indemnified, defended and held harmless by the party receiving such services against any claim, loss or damage arising from the receiving party's use of the services provided under this Agreement, involving: 1) claims for libel, slander, invasion of privacy or copyright infringement arising from the content of the receiving party's own communications; 2) any claim, loss, or damage claimed by the receiving party's customer(s) arising from such customer's use of any service, including 911/E911, that the customer has obtained from the receiving party and that the receiving party has obtained from the supplying party under this Agreement; or 3) all other claims arising out of an act or omission of the receiving party in the course of using services provided pursuant to this Agreement. Notwithstanding the foregoing, to the extent that a claim, loss or damage is caused by the gross negligence or willful misconduct of a supplying party the receiving party shall have no obligation to indemnify, defend and hold harmless the supplying party hereunder. Nothing herein is intended to modify or alter in any way the indemnification obligations set forth in Section 8, relating to intellectual property infringement.

- 7.5 Neither party guarantees or makes any warranty with respect to its services when used in an explosive atmosphere. Notwithstanding subsection A of this Section, each party shall be indemnified, defended and held harmless by the other party or the other party's customer from any and all claims by any person relating to the other party or the other party's customer's use of services so provided.
- 7.6 Promptly after receipt of notice of any claim or the commencement of any action for which a party may seek indemnification pursuant to this Section, such party (the "indemnified Party") shall promptly give written notice to the other party (the "indemnifying Party") of such claim or action, but the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party except to the extent the Indemnifying Party has actually been prejudiced thereby. The Indemnifying Party shall be obligated to assume the defense of such claim, at its own expense. The indemnified Party shall cooperate with the Indemnifying Party's reasonable requests for assistance or information relating to such claim, at the Indemnifying Party's expenses. The Indemnified Party shall have the right to participate in the investigation and defense of such claim or action, with separate counsel chosen and paid for by the Indemnified Party.
- 7.7 Both parties agree that they, at their own cost and expense, shall maintain throughout the term of this Agreement, all insurance required by law, and may at their own cost and expense purchase insurance of self-insure their employer, public, professional and legal liabilities. No limit of liability on any policy, no program or self-insurance, nor any failure to maintain adequate insurance coverage shall limit the direct or indirect liability of either party.

8. Intellectual Property Rights and Indemnification

- 8.1 No License. Other than any implied licenses granted by BellSouth to DIECA for access gateways to BellSouth's operational support systems and as set forth in Section 8.2, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any of the other Party's name, service marks or trademarks.
- 8.2 Ownership of Intellectual Property. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for DIECA to use any of BellSouth's facilities or equipment (including software) or to receive any service from BellSouth solely as provided under this Agreement, no license in patent,

- copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of BellSouth to ensure at no additional cost to DIECA that BellSouth has obtained any necessary licenses in relation to intellectual property of third parties used in its network that may be required to enable DIECA to use any BellSouth facilities or equipment (including software), to receive any service from BellSouth, or to perform its respective obligations under this Agreement.
- 8.3 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 7 of this Agreement.
- 8.4 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense, but subject to the limitations of liability set forth below:
- 8.4.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 8.4.2 obtain a license sufficient to allow such use to continue.
- 8.4.3 In the event 8.4.1 or 8.4.2 are commercially unreasonable, then said Party may, terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 8.5 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

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

9. Treatment of Proprietary and Confidential Information

9.1 Confidential Information. It may be necessary for BellSouth and DIECA to provide each other with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). All Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. The Information shall not be copied or reproduced in any form. BellSouth and DIECA shall receive such Information and not disclose such Information. BellSouth and DIECA shall protect the Information received from distribution, disclosure or dissemination to anyone except employees of BellSouth and DIECA with a need to know such Information. (No BellSouth employee associated with the provision of any retail xDSL service by BellSouth or its subsidiaries and affiliates has a need to know any confidential information provided by DIECA.) BellSouth and DIECA will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

9.2 Exception to Obligation. Notwithstanding the foregoing, there will be no obligation on BellSouth or DIECA to protect any portion of the Information that is: (1) made publicly available by the owner of the Information or lawfully disclosed by a Party other than BellSouth or DIECA; (2) lawfully obtained from any source other than the owner of the Information; or (3) previously known to the receiving Party without an obligation to keep it confidential.

10. **Assignments**

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate company of the Party without the consent of the other Party. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment of delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

11. **Resolution of Disputes**

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

12. **Taxes**

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

12.2 **Taxes and Fees Imposed Directly On Either Seller or Purchaser.**

12.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

12.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

- 12.3 Taxes and Fees Imposed on Purchaser But Collected And Remitted By Seller.
- 12.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 12.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 12.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 12.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 12.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 12.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are

incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

12.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

12.4 Taxes and Fees Imposed on Seller But Passed On To Purchaser.

12.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

12.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

12.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

12.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

12.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

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

13. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

14. Year 2000 Compliance

Each party warrants that it has implemented a program the goal of which is to ensure that all software, hardware and related materials (collectively

called "Systems") delivered, connected with BellSouth or supplied in the furtherance of the terms and conditions specified in this Agreement: (i) will record, store, process and display calendar dates falling on or after January 1, 2000, in the same manner, and with the same functionality as such software records, stores, processes and calendar dates falling on or before December 31, 1999; and (ii) shall include without limitation date data century recognition, calculations that accommodate same century and multicity formulas and date values, and date data interface values that reflect the century.

15. Modification of Agreement

- 15.1 BellSouth shall make available to DIECA any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252 as controlled by the appropriate court of judicial review. The adopted agreement shall apply to the same states as such other agreement and for the identical term.
- 15.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 15.3 Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).
- 15.4 In the event that any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of DIECA or BellSouth to perform any material terms of this Agreement, DIECA or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section 11.
- 15.5 BellSouth and DIECA agree that the terms and conditions of this Agreement were agreed to in order to effectuate the legal requirements in effect at the time the Agreement was negotiated and executed. In the event that the FCC in its proceeding relating to Section 706 of the Telecommunications Act ("the 706 Proceeding") issues an order adopting rules or regulations that modify such legal requirements, to the extent that

the effective date of said Order is not stayed, the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which are consistent with such rules. In the event the Parties cannot agree on an amendment within thirty (30) days from the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable Dispute Resolution procedures set forth herein this Agreement. If, as a result of any further administrative or judicial proceedings, the FCC or a court of competent jurisdiction vacates or modifies, or otherwise changes the rules, regulations or requirement adopted in the 706 Proceeding, the Parties will, within 30 days, further modify this Agreement to comply with such vacation, modification or changes.

- 15.6 If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be effective thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

16. Waivers

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

17. Governing Law

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

18. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

19. Notices

- 19.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

CLEC Account Team
9th Floor
600 North 19th Street
Birmingham, Alabama 35203

and

General Attorney - COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

Dhruv Khanna
Executive Vice President and General Counsel
Covad Communications Company
4250 Burton Drive
Santa Clara, CA 95054

and

Catherine F. Boone
Regional Counsel
Covad Communications Company
10 Glenlake Parkway, Suite 650
Atlanta, GA 30328

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

- 19.2 Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.
- 19.3 BellSouth shall provide DIECA 45-day advance notice via Internet posting of price changes and of changes to the terms and conditions of services available for resale. To the extent that revisions occur between the time BellSouth notifies DIECA of changes under this Agreement and the time

the changes are scheduled to be implemented, BellSouth will immediately notify DIECA of such revisions consistent with its internal notification process. DIECA may not hold BellSouth responsible for any cost incurred as a result of such revisions, unless such costs are incurred as a result of BellSouth's intentional misconduct. DIECA may not utilize any notice given under this subsection concerning a service to market resold offerings of that service in advance of BellSouth.

20. Rule of Construction

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

21. Headings of No Force or Effect

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

22. Multiple Counterparts

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

23. Implementation of Agreement

Within 60 days of the execution of this Agreement, the parties will adopt a schedule for the implementation of the Agreement. The schedule shall state with specificity time frames for submission of including but not limited to, network design, interconnection points, collocation arrangement requests, pre-sales testing and full operational time frames for the business and residential markets. An implementation template to be used for the implementation schedule is contained in Attachment 12 of this Agreement.

24. Entire Agreement

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party

shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

Unbundled Network Elements
MISSISSIPPI

UNBUNDLED NETWORK ELEMENT	Interim	Zone	BCS	USOC	RATES				OSS RATES						
					Nonrecurring		Nonrecurring		Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l	
					Rec	First	Add'l	First							Add'l
					Disconnect		Disconnect		Disconnect		Disconnect		Disconnect		Disconnect
UNBUNDLED EXCHANGE ACCESS LOOP															
2-Wire Unbundled Copper Loop - Non Designed															
2-Wire Unbundled Copper Loop - Non Designed - Zone 1	I	1	UEQ	UEQ2X	\$11.01	\$44.69	\$22.40	\$25.65	\$7.06	\$3.50		\$25.52	\$11.34		
2-Wire Unbundled Copper Loop - Non Designed - Zone 2	I	2	UEQ	UEQ2X	\$12.67	\$44.69	\$22.40	\$25.65	\$7.06	\$3.50		\$25.52	\$11.34		
2-Wire Unbundled Copper Loop - Non Designed - Zone 3	I	3	UEQ	UEQ2X	\$20.22	\$44.69	\$22.40	\$25.65	\$7.06	\$3.50		\$25.52	\$11.34		
2-Wire Unbundled Copper Loop - Non Designed - Zone 4	I	4	UEQ	UEQ2X	\$20.22	\$44.69	\$22.40	\$25.65	\$7.06	\$3.50		\$25.52	\$11.34		
Order Coordination for 2-Wire Unbundled Copper Loop - Non Designed (per loop)	I		UEQ	USBMC		\$50.29	\$50.29								
Engineering Information Document	I		UEQ			\$28.72	\$28.72								
Loop Testing - Basic 1st Half Hour	I		UEQ	URET1		\$78.92	\$78.92								
Loop Testing - Basic Additional Half Hour	I		UEQ	URETA		\$23.33	\$23.33								
Loop Testing - Overtime 1st Half Hour	I		UEQ			\$102.99	\$102.99								
Loop Testing - Overtime Additional Half Hour	I		UEQ			\$30.31	\$30.31								
Loop Testing - Premium 1st Half Hour	I		UEQ			\$127.04	\$127.04								
Loop Testing - Premium Additional Half Hour	I		UEQ			\$37.28	\$37.28								

