

### 5.3 Proof of Authorization

5.3.1 Where so indicated in specific sections of this Agreement, each Party shall be responsible for obtaining and having in its possession Proof of Authorization ("POA"). POA shall consist of documentation of the end user's selection of its local service provider. Such selection may be obtained in the following ways:

- 5.3.1.1 The end user's written Letter of Authorization.
- 5.3.1.2 The end user's electronic authorization by use of an 8XX number.
- 5.3.1.3 The end user's oral authorization verified by an independent third party (with third party verification as POA).

5.3.2 The Parties shall make POAs available to each other upon request, in accordance with applicable laws and rules. Unless prohibited by applicable laws or regulations, a charge equal to the amount of the Customer Transfer Charge as reflected on Exhibit A ("slamming charge") will be assessed if the POA cannot be provided supporting the change in service provider. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.

### 5.4 Payment

5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day.

5.4.2 Qwest may discontinue processing orders for the failure of CLEC to make full payment, less any disputed amount as provided for in this Section, for the services provided under this Agreement within thirty (30) days of the due date on CLEC's bill. Qwest will notify CLEC in writing at least ten (10) days prior to discontinuing the processing of orders. If Qwest does not refuse to accept additional orders on the date specified in the ten (10) days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders from the noncomplying CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past and current charges. Additionally, Qwest may require a deposit (or additional deposit) from CLEC, pursuant to this Section.

5.4.3 Qwest may disconnect any and all services for failure by CLEC to make full payment, less any disputed amount as provided for in this Section of this Agreement, for the services provided under this Agreement within sixty (60) days of the due date on CLEC's bill. CLEC will pay the Tariff charge required to reconnect each resold end user line disconnected pursuant to this paragraph. Qwest will notify CLEC in writing at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable charges, including termination charges, shall become due. If Qwest does not disconnect CLEC's service(s) on the date specified in the ten (10) days notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all services of the noncomplying CLEC without further notice. For reconnection of service to occur, CLEC will be required to make full payment of all past and current charges. Additionally, Qwest

will request a deposit (or additional deposit) from CLEC, pursuant to this Section. Qwest agrees, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the monthly billing under this Agreement, the Parties will notify each other in writing within thirty (30) calendar days of the receipt of such billing, identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges will be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second billing period following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the bill of the disputing Party for the amount of the disputed charges no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.

5.4.4.2 If a Party pays the disputed charges and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the disputing Party's bill for the disputed amount and any associated interest no later than the second bill payment due date after the resolution of the dispute. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.5 Qwest will determine CLEC's credit status based on previous payment history with Qwest or credit reports such as Dun and Bradstreet. If CLEC has not established satisfactory credit with Qwest or if CLEC is repeatedly delinquent in making its payments, Qwest may require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a surety if allowed by the applicable Commission rules, regulations or Tariffs, bond, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ten (10) calendar days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the two year term or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely payments in full by CLEC. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 Qwest may review CLEC's credit standing and modify the amount of deposit required.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 CLEC agrees to inform end-user in writing of pending disconnection by CLEC to allow end user to make other arrangements for telecommunications services.

## 5.5 Taxes

5.5.1 Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied.

## 5.6 Insurance

5.6.1 Should CLEC request and obtain Collocation or Interconnection with Qwest, CLEC shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII. This provision is not applicable until and unless collocation with Qwest is requested and obtained by CLEC.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the Premises, including coverage for independent contractor's protection (required if any work will be subcontracted), Premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by CLEC hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

5.6.1.3 Comprehensive automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of \$10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is \$11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the Premises. CLEC may elect to

**Amendment to the Interconnection Agreement  
Between  
Tel West Communications, LLC  
and  
Qwest Corporation  
[Re: Billing Disputes]  
For the State of Washington**

This Amendment ("Amendment") is made and entered into by and between Tel West Communications, LLC ("CLEC") and Qwest Corporation ("Qwest").

**RECITALS**

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement ("Agreement") for service in the state of Washington which was approved by the Washington Utilities and Transportation Commission ("Commission") on October 31, 2001, as referenced in Docket No. UT-013086; and

WHEREAS, the Parties wish to amend the Agreement further under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Amendment Terms**

This Amendment is made in order to add a new provision to Section 5.4.4 as set forth below:

CLEC, in good faith, assumes responsibility for auditing its records with respect to all disputed charges prior to submitting such disputes to Qwest. The disputes may include one or more charges ("Unblocked Charges") CLEC believes should have been blocked or restricted by a blocking or restriction service CLEC believes it ordered from Qwest. CLEC shall provide Qwest all CLEC's billing disputes for all resale Billing Account Numbers ("BANs") for a particular state for a particular month at one time and all billing disputes for all UNE-P BANs for a particular state for a particular month at one time. For purposes of this section, the term "batch" shall refer to: (1) all disputes received from CLEC by Qwest for all resale BANs for a particular state for a particular month; and (2) all disputes received from CLEC by Qwest for all UNE-P BANs for a particular state for a particular month. Upon receipt of a batch of CLEC's disputes, Qwest may review a random sample of up to 10% of the total number of disputed charges in that batch. Qwest may return the entire batch of disputed charges without further investigation or action if Qwest determines, based on its review of the random sample, that one percent (1%) or more of the total number of disputed charges (but no less than 5 disputes) in the batch constitute Unblocked Charges on lines for which CLEC had not ordered an appropriate

blocking or restriction service. At such time CLEC has re-audited its records with regard to the batch of disputes, CLEC may resubmit the disputes to Qwest for its investigation, subject to the same sampling described immediately above. The sampling mechanism described in this paragraph shall not constitute a waiver by Qwest or CLEC of any other dispute resolution right or remedy permitted at law or under this Agreement.

Qwest agrees to provide CLEC a report, once per month between the effective date of this amendment and Qwest's release of IMA Version 11.0 (currently scheduled for November 18, 2002), displaying each of CLEC's resold lines that do not, according to Qwest's CPRGD database, contain USOC OC4 or SEA as of the month of the report. The report shall include the following fields of data: RSID (reseller identification); ST (state); and BTN (billing telephone number).

## **2. Effective Date**

This Amendment shall be deemed effective upon Commission approval; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Customer Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

## **3. Further Amendments**

The provisions of this Amendment, including the provisions of this sentence, may not be interpreted, amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

## **4. Entire Agreement**

This Amendment (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Tel West Communications, LLC

Jeff K. Swickard  
Authorized Signature

JEFF K. SWICKARD  
Name Printed/Typed

MANAGER  
Title

11/11/02  
Date

Qwest Corporation

L. T. Christensen  
Authorized Signature

L. T. Christensen  
Name Printed/Typed

Director - Business Policy  
Title

11/14/02  
Date