

**Amendment No. 70 (NE)****SOW: p No**  
**o Yes****ATTACHMENT 2**  
**TO**  
**AMENDMENT NO. 70****Amended and Restated Article 32 of the Master Agreement****ARTICLE 32 — GATEWAY EVALUATION PROCESS EFFECTIVE UPON THE IMPLEMENTATION OF RATE CARD NO. 5 UNDER AMENDMENT NO. 70****32.1 Gateway Evaluation Process Overview**

This version of Article 32 is effective upon the implementation of Rate Card No. 5, set forth in Attachment 1 to Exhibit E to the Master Agreement, as introduced by Amendment No. 70. The version of Article 32 effective immediately before the implementation of Rate Card No. 5 shall remain effective with respect to Exhibit E immediately before the implementation of Rate Card No. 5.

The Gateway Evaluation Process (the “GEP”) shall measure Contractor’s satisfaction of seven separate elements (collectively, the “GEP Elements”) set forth in this Article 32, during specific 12 consecutive calendar month periods described in this Article 32 (each period referred to as an “Evaluation Period” or “EP”). The GEP for each respective EP shall, pursuant to the Audit Plan (as defined below), be measured by Contractor and audited (the “GEP Audit”) by an auditor selected and compensated in accordance with the requirements of Section 32.4 of this Agreement (the “GEP Auditor”).

The GEP and the GEP Audit, including the results thereof, for any EP will be used solely for purpose of determining whether a Monthly GEP Porting Charge Adjustment (defined in Section 32.5 hereof) shall apply for an “Applicable Reduction Period” (defined in Section 32.5 hereof) in the Service Area. The GEP is independent of any of the requirements in the Agreement for Contractor to provide Services in accordance with the Agreement. Further, nothing in this Article 32 shall limit or otherwise restrict the rights of the Customer or any User under any other provision of the Agreement or any User Agreement. The parties acknowledge that the implementation of the GEP during the entire term of this Agreement is a material obligation under this Agreement for purposes of Section 16.5 of this Agreement, and the parties expressly acknowledge and agree that the failure of Contractor to implement the GEP during any time during the entire term of this Agreement shall entitle Customer to reductions to the Net Regional Monthly Aggregate Porting Charge (as defined in Section 35.1 of this Agreement) in the Service Area, in accordance with Section 32.5(f) of this Agreement.

Notwithstanding the foregoing, the parties expressly acknowledge and agree that the GEP does not obligate Contractor to perform any of the GEP Elements specified under this Article 32, and the “Failure” of any GEP Element, in whole or in part, will not constitute a failure by Contractor to perform a “material obligation” under Section 16.5 hereof, unless the events that constitute such “Failure,” under provisions other than Article 32, would give rise to rights or remedies under other provisions of this Agreement. The parties also expressly acknowledge and agree that the only right or remedy available to Customer for the failure of Contractor to perform any of the GEP Elements under this Article 32 or the “Failure” of any GEP Element, in whole or in part, is the applicability of the Monthly GEP Porting Charge Adjustment in accordance with the terms of this Article 32, unless the events that constitute such “Failure,” under provisions other than Article 32, would give rise to rights or remedies under other provisions of this Agreement.

**32.2 Gateway Elements Overview****CONFIDENTIAL**

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Each GEP Audit shall consist of the measurement of the Contractor's satisfaction of the following GEP Elements:

## a. Service Performance Elements:

- (1) Element No. 1: Service Availability satisfaction, consisting of the following sub-elements
  - (a) Element No. 1a: SLR-1 satisfaction pursuant to Section 32.6(a) of this Agreement.
  - (b) Element No. 1b: SLR-7 satisfaction pursuant to Section 32.6(b) of this Agreement.
- (2) Element No. 2: Report satisfaction, pursuant to Section 32.6(c) of this Agreement.
- (3) Element No. 3: Scheduled Service Unavailability satisfaction, pursuant to Section 32.6(d) of this Agreement.
- (4) Element No. 4: Benchmarking satisfaction, pursuant to Section 32.6(e) of this Agreement.

## b. Customer-Oriented Elements

- (5) Element No. 5: Root Cause Analysis and Reporting satisfaction, pursuant to Section 32.6(f) of this Agreement.
- (6) Element No. 6: Problem Escalation satisfaction, pursuant to Section 32.6(g) of this Agreement.
- (7) Element No. 7: Billing satisfaction, consisting of the following sub-elements:
  - (a) Element No. 7a: Timeliness of Delivery Satisfaction, pursuant to Section 32.6(h) of this Agreement.
  - (b) Element No. 7b: Accuracy satisfaction, pursuant to Section 32.6(i) of this Agreement.

**32.3 Frequency**

The first Evaluation Period (the "First EP") will commence on the first day of the calendar month that is six months after the SOW Effective Date of that certain SOW 25NE (the "First EP Commencement Date"). A GEP Audit will be initiated after the commencement of each EP, commencing with the first GEP Audit (the "First GEP Audit") for the First EP. Thereafter, a GEP Audit will commence on the date which is 12 calendar months after the date of the commencement of the immediately preceding EP. The commencement date of each EP and each GEP Audit shall be the same date for all Service Areas within the United States.

**32.4 GEP Audit Mechanics**

Prior to the commencement of the First GEP Audit, Contractor and Customer will consult to determine definitively those aspects of the GEP set forth in this Section 32.4. The GEP Audit mechanics will include the following elements:

(a) Selection of a GEP Auditor. Subject to the limitations and terms set forth herein, the qualifications of the GEP Auditor shall be determined jointly by Contractor and Customer, and a GEP Auditor (and any successor GEP Auditor if the originally selected GEP Auditor fails to act for any reason, including but not limited to termination of such GEP Auditor's contract, as set forth below) shall be selected jointly by Contractor and Customer. The compensation paid to and expense of the GEP Auditor shall be solely negotiated and paid for by the Contractor. The GEP Auditor shall be an independent, neutral third party, which is an affiliate of neither the Contractor nor the Customer.

Contractor shall enter into a contract with the GEP Auditor for the provision of services to perform the GEP Audit, which contract shall clearly state and provide that the Customer shall not be liable for any costs or expenses incurred by the GEP Auditor or for any compensation or other payments of any nature to the GEP Auditor, and which contract further (1) shall specify that Customer shall make the final determination with

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respect to all issues for which Customer and the Contractor cannot agree and (2) shall specify certain criteria, the failure of which shall require termination of the contract by the Contractor ("**Automatic Termination Criteria**").

The qualifications of the GEP Auditor, the scope of the services to be provided by the GEP Auditor and the Automatic Termination Criteria shall be determined jointly by Contractor and Customer. If Contractor and the Customer cannot agree upon the qualifications of the GEP Auditor, upon the scope of the services to be provided by the GEP Auditor or upon the Automatic Termination Criteria on or before the date which is 4 months before the commencement date for the First EP, the Customer shall make the relevant determination with respect to which the Customer and Contractor could not agree, and Contractor shall be required to enter into a contract one month prior to the commencement of the first EP with the GEP Auditor which shall include the provisions set forth above. In making any such determination upon the failure of the Contractor and the Customer to agree within the time period set forth above, Customer shall be bound by the requirements of Section 32.4(f) below.

(b) **Audit Metrics**. The specific criteria, metrics and methods and techniques for obtaining data (including, but not limited to, the determination of comprehensive data collection or specific statistical sampling techniques), and the required contents of the GEP audit report ("**GEP Audit Report**") to be issued by the GEP Auditor for the purpose of measuring Contractor's satisfaction of each GEP Element ("**Audit Metrics**") shall be determined jointly by Contractor and Customer, in consultation with the GEP Auditor. If Contractor and Customer cannot agree on any aspect of the Audit Metrics on or before the date which is 3 months before the commencement date for the First EP, the Customer alone shall make such determination. In making any such determination upon the failure of the Contractor and the Customer to agree within the time period set forth above, Customer shall be bound by the requirements of Section 32.4(f) below.

(c) **Audit Plan**. The specific plan and schedule for the accomplishment of the required GEP Audit and incorporating the Audit Metrics, including, but not limited to, collection of data, consideration of data, evaluation of results, initial validation process and the preparation of a GEP Audit Report (collectively referred to as the "**Audit Plan**") shall be determined jointly by Customer and Contractor in consultation with the potential GEP Auditor(s). If the Contractor and the Customer cannot agree on any aspect of the Audit Plan before the date which is 2 months before the commencement date for the First EP, the Customer alone shall make such determination, and Contractor shall be required to adhere to and to incorporate such determination, into the Audit Plan and to issue the Audit Plan on or before the date which is 1 month and 2 weeks before the commencement date for the First EP. In making any such determination upon the failure of the Contractor and the Customer to agree within the time period set forth above, Customer shall be bound by the requirements of Section 32.4(f) below.

(d) **Validation Process**. A trial sampling and collection of data to validate the Audit Plan (the "**Validation Process**") shall be commenced on or before the date which is 1 month prior to the commencement date for the First EP. During the Validation Process, the GEP

Auditor(s) shall perform a trial audit and produce a trial report within two months after the commencement of the first EP.

Based upon the results of the Validation Process, aspects of the Audit Plan may be changed to more accurately measure compliance with the GEP Elements. If Contractor and Customer cannot agree on any aspect of the revised Audit Plan before the date which is 1 month after the delivery of the trial report by the GEP Auditor, the Customer shall make such determination. In making any such determination upon the failure of the Contractor and the Customer to agree within the time period set forth above, Customer shall be bound by the requirements of Section 32.4(f) below.

(e) **GEP Audit Report**. The GEP Auditor will prepare and issue a GEP Audit Report to the Contractor and to the Customer for the applicable EP within 30 days following the conclusion of the EP for which the GEP Audit

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Report covers. In the event the GEP Auditor requires more than such thirty day period to issue the GEP Audit Report, such period shall be extended by the amount requested by the GEP Auditor, provided that the GEP Auditor has requested such extension in writing and has provided the reasons therefor, and Customer has, subject to the requirements of Section 32.4(f) hereof, agreed to such extension. Such GEP Audit Report shall include, at a minimum, the following: (1) a determination for each GEP Element whether Contractor has "Failed" or "Missed" such GEP Element and (2) adequate substantiation in support of the preceding determinations.

(f) Customer's Standard. In exercising its power to make any determination under this Section 32.4 upon the failure of the Customer and the Contractor to agree within the applicable time period set forth therein, Customer shall be required to make such determination in good faith and in the exercise of commercial reasonableness for similar industries and for similar purposes (measured with respect to attempting to fulfill the purposes of the GEP as set forth in this Article 32) and shall deliver the result of such determination in writing to Contractor. Notwithstanding anything to the contrary in this Agreement, in the event Customer has not delivered any determination to be made by Customer under Article 32 hereof within three business days after the applicable date that Customer had the right to make the relevant determination because of the failure of the Customer and Contractor to agree, Contractor shall have the right to make such determination.

If Contractor disputes any determination made by Customer upon the failure of the Customer and the Contractor to agree within an applicable time period set forth in this Section 32.4, Contractor may seek resolution of the dispute in accordance with Article 26 of this Agreement, but all parties agree that pending a final and binding determination regarding whether Customer improperly exercised its power to make such determination under this Section 32.4, Contractor shall be bound by such determination of Customer and shall proceed with the GEP based upon such determination.

**32.5 Monthly GEP Porting Charge Adjustment**

The Net Regional Monthly Aggregate Porting Charge in the Service Area shall be reduced by the Monthly GEP Porting Charge Adjustment, as set forth in Section 32.5(b) and Section 32.5(f), in order to derive the Aggregate Porting Charge in the Service Area (as defined in Section 6.2(b)(ii)) in accordance with Attachment 1 to Exhibit E. Reductions from the Net Regional Monthly Aggregate Porting Charge in the Service Area under Section 32.5(b) will be based upon the number and identification of "Failures" or "Misses" of the GEP Elements reported for an applicable EP in the GEP Audit Report. Reductions from the Net Regional Monthly Aggregate Porting Charge in the Service Area under Section 32.5(f) will be based upon Contractor's failure to implement the GEP at any time during the term of this Agreement in accordance with the terms and conditions of Section 32.5(f). The parties expressly agree and acknowledge that any Monthly GEP Porting Charge Adjustment shall be determined and applied only with respect to the Service Area which is the subject of this Agreement, based upon the GEP Audit Report for such particular Service Area.

(a) Period for Reduction and Defined Terms. The Monthly GEP Porting Charge Adjustment, as computed pursuant to Section 32.5(b), if any, shall apply to the 12 successive calendar month period ("**Applicable Reduction Period**") commencing with the first day of the first full month following the month in which the GEP Audit Report was issued and which measured satisfaction of the GEP Elements for the immediately preceding EP (the "**Associated EP**"). Any Monthly GEP Porting Charge Adjustment in accordance with 32.5(b) and as set forth under Section 32.5(e)(1) associated with that Applicable Reduction Period resulting from "Failures" or "Misses" of the GEP Elements for the Associated EP will be referred to as the "**GEP Reductions.**" Any Monthly GEP Porting Charge Adjustment in accordance with 32.5(b) and as set forth under Section 32.5(e)(2) associated with that Applicable Reduction Period resulting from "Failures" or "Misses" of the GEP Elements for the Associated EP and preceding Associated EPs will be referred to as the "**Carryover GEP Failure Reductions.**" The first Applicable Reduction Period associated with the GEP Audit results for the first Associated EP will be referred to as the "**First Applicable Reduction Period,**" even if no Monthly GEP Porting Charge Adjustment results from the GEP Audit for the first Associated EP. Successive

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Applicable Reduction Periods will be referred to successively as the “**Second Applicable Reduction Period**,” the “**Third Applicable Reduction Period**” and so on.

(b) Computation of Monthly GEP Porting Charge Adjustment. Subject to the limitations set forth in Section 32.5(d) below, the Monthly GEP Porting Charge Adjustment for the Applicable Reduction Period will be equal to the amount computed monthly in accordance with the following formula:

- (1) the product of (A) the GEP Reduction for all GEP Elements resulting from the Associated EP (as computed in Section 32.5(e)(1) **TIMES** (B) the Net Regional Monthly Porting Fee (as defined below) for the Associated EP

**PLUS**

- (2) the product of (A) the Carryover GEP Failure Reduction for all GEP Elements (as computed in Section 32.5(e)(2) for the applicable Associated EP and the preceding Associated EPs) **TIMES** the Net Regional Monthly Porting Fee for the Associated EP.

For purposes of the foregoing formula, the “**Net Regional Monthly Porting Fee**” in the Service Area shall be computed for the Applicable Month of each Applicable Year during the Initial Term of the Agreement, and shall equal the product of (a) the Net National Monthly Porting Fee and (b) the fraction having a numerator equal to the average monthly number of TN Porting Events that occurred in this Service Area in (i) the Applicable Month and in (ii) the 11 calendar months immediately preceding the Applicable Month and the denominator equal to the average monthly number of cumulative TN Porting Events that occurred in all United States Service Areas in which Contractor provides NPAC/SMS Services under the Master Agreements with Customer or the Subscribing Customers in (i) the Applicable Month and in the (ii) 11 calendar months immediately preceding the Applicable Month.

(c) Pricing Following any Termination Event or Non-Renewal. The parties expressly agree that after the occurrence of any Termination Event or Non-Renewal (as defined in this Agreement), if the Customer elects to extend the term of the Agreement to receive Services thereunder, the Net Regional Monthly Aggregate Porting Charge for such Services and during the period under which the term of this Agreement has been extended upon such election shall be subject to the Monthly GEP Porting Charge Adjustment for the duration of such extension if the extension begins within an Applicable Reduction Period.

(d) Limitations on Reductions. Notwithstanding anything to the contrary in this Agreement, including, without limitation, the results of any computation of the Monthly GEP Porting Charge Adjustment for any Applicable Reduction Period set forth in Section 32.5(b) or Section 32.5(f) resulting from the failure of Contractor to implement the GEP any time during the term of this Agreement, under no circumstances shall (1) the cumulative amount of the Monthly GEP Porting Charge Adjustment during any month during an Applicable Adjustment Period exceed ten and forty-sevenths percent (10.47%) of the Net Regional Monthly Porting Fee.

(e) Definitions of GEP Reductions and Carryover GEP Failure Reductions

(1) GEP Reductions. For the purpose of calculating the Monthly GEP Porting Charge Adjustment for the Applicable Reduction Period under Section 32.5(b), the GEP Reduction for each “Failure” or “Miss” (as such terms explicitly are defined in Section 32.6 for each respective GEP Element) reported on the GEP Audit Report to have occurred for an Associated EP shall be the amount shown on the chart below, entitled “GEP Reduction Chart.” The amount shown in the column under the GEP Reduction is the maximum reduction per GEP Element of the Net Regional Monthly Aggregate Porting Charge, which will be applied as a percentage against the Net Regional Monthly Porting Fee, that will be given effect for each of the applicable GEP Element for the Associated EP. The

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parties expressly acknowledge and agree that the application of a GEP Reduction constitutes liquidated damages and not a penalty.

**GEP Reduction Chart**

<u>GEP Element</u>	<u>GEP Reduction</u>
Element No. 1a: SLR-1 "Failure"	1.310%
Element No. 1b: SLR-7 "Failure"	1.310%
Element No. 2: Report "Failure"	0.655%
Element No. 3: Scheduled Service Unavailability "Failure"	2.620%
Element No. 4: Benchmarking "Failure"	0.655%
	Multiple "Misses" can result in multiple GEP Reductions for this GEP Element.
	For each "Miss" of this GEP Element, a GEP Reduction of 0.655% shall apply.
Element No. 5: Root Cause Analysis and Reporting "Miss"	Notwithstanding the foregoing, no matter how many "Misses" occur with respect to this GEP Element, the maximum GEP Reduction that can apply as a result of "Misses" of this GEP Element during a single EP is 2.620%.
	Multiple "Misses" can result in multiple GEP Reductions for this GEP Element.
	For each "Miss" of this GEP Element, a GEP Reduction of 0.3275% shall apply.
	Notwithstanding the foregoing, no matter how many "Misses" occur with respect to this GEP Element, the maximum GEP Reduction that can apply as a result of "Misses" of this GEP Element during a single EP is 1.310%.
Element No. 6: Problem Escalation "Miss"	
Element No. 7a: Billing Timeliness of Delivery "Failure"	1.310%
Element No. 7b: Billing Accuracy "Failure"	1.310%

(2) **Carryover GEP Failure Reductions.** For the purpose of calculating the Monthly GEP Porting Charge Adjustment for the Applicable Reduction Period under Section 32.5(b), the "**Carryover GEP Failure Reduction**" for a particular GEP Element reported on the GEP Audit Report to have occurred for an Associated EP shall be an amount equal to either (i) zero, if there was no "Failure" for the GEP Element for the Associated EP or (ii) if there was a "Failure" for the GEP Element (for which a Carryover GEP Failure Reduction is permitted) for the Associated EP, then the sum of the GEP Reductions for consecutive "Failures" of the same GEP Element reported on previous GEP Audit Reports starting with the immediately preceding Associated EP.

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(f) GEP Reductions Upon Contractor's Failure to Implement the GEP. In the event that Contractor fails to implement the GEP at any time during the term of this Agreement, Customer may elect with respect to such specific failure to implement the GEP (and without waiver of or prejudice to any other remedies and rights that may be available as a result of prior or subsequent specific failures of Contractor to implement the GEP) the specific remedy of the Porting Charge Reduction set forth in, and subject to the following terms and conditions of, this Section 32.5(f) as liquidated damages therefor.

(1) RESERVED

(2) Contractor's Failure to Implement GEP Other Than Commencement of First GEP. If Contractor fails to implement the GEP during any time during the term of this Agreement, other than by reason of Contractor's failure to commence the First GEP on or before the date which is 30 days after the First EP Commencement Date, upon written notice of such failure by Customer identifying in reasonably adequate and sufficient detail the failures that require cure, Customer and Contractor shall meet to discuss such failure identified in the notice and if such failure is not cured within thirty (30) days of such notice Contractor shall, from the date of such notice until Contractor cures such failure, (without further demand or notice from Customer) reduce the Net Regional Monthly Aggregate Porting Charge by applying a GEP Reduction equal to 10.47% of the Net Monthly Regional Porting Fee for any time commencing on or after the commencement of the Fourth Applicable Reduction Period; provided, however, that for administrative convenience (i) Contractor shall not be required to reduce the Net Regional Monthly Aggregate Porting Charge as set forth above until the first day of the first full calendar month following delivery of notice by Customer of such failure, and (ii) following such failure by Contractor to implement the GEP as set forth above, if Contractor subsequently cures such failure, for administrative convenience, Contractor shall nonetheless continue to give effect to any reduction to the Net Regional Monthly Aggregate Porting Charge then in effect pursuant to this Section 32.5(f) until the first day of the first full calendar month following such cure.

(3) Relationship with GEP Reduction For Different Causes. Because there exists the possibility during the term of this Agreement that both (a) the provisions of Section 32.5(b) regarding the computation of the GEP Reduction for an Applicable Reduction Period and (b) the provisions of Section 32.5(f)(2) regarding the computation of the GEP Reduction due to Contractor's failure to implement the GEP, may apply as a result of the time period during which Contractor has failed to implement the GEP and has not cured such failure is contained within an Applicable Reduction Period, the parties expressly agree and acknowledge each of the following:

(A) Notwithstanding anything to the contrary in this Agreement, under no circumstances, and at no time during the term of this Agreement shall the cumulative GEP Reductions applied to compute the Monthly GEP Porting Charge Adjustment required under this Agreement, including reductions in the Net Regional Monthly Aggregate Porting Charge made as a result of the application of Section 32.5(b) or Section 32.3(f)(2), for any instant in time, exceed ten percent (10.47%) of the Net Regional Monthly Porting Fee.

(B) Notwithstanding anything to the contrary in this Agreement, if for any instant in time, both (a) the provisions of Section 32.5(b) regarding the computation of the GEP Reduction for an Applicable Reduction Period and (b) the provisions of Section 32.5(f)(2) regarding the reduction to the Net Regional Monthly Aggregate Porting Charge due to Contractor's failure to implement the GEP, apply, then that provision which results in the greatest reduction to the Net Regional Monthly Aggregate Porting Charge shall govern and be applicable with respect to that instant in time.

(C) Notwithstanding anything to the contrary in this Agreement, if Contractor cures any failure to implement the GEP which had caused the reduction to the Net Regional Monthly Aggregate Porting Charge under preceding provisions of this Agreement to apply, upon the elimination of any such reduction to the Net Regional Monthly Aggregate Porting Charge in accordance with the provisions of 32.5(f)(2), upon the first day of the first full calendar month following such cure, the Net Regional Monthly Aggregate Porting

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Charge shall nonetheless continue to remain subject to any other reductions set forth in this Section 32.5, including, the computation of the Monthly GEP Porting Charge Adjustment for the remaining balance of any Applicable Reduction Period.

(4) Resolution of Disputes Regarding Failure to Implement and Cure. The parties expressly agree that if Customer and Contractor disagree on the existence of any failure to implement the GEP or of any cure of such failure, then the Customer's determination shall govern, and Contractor shall be required to reduce the Net Regional Monthly Aggregate Porting Charge as set forth in this Section 32.5(f). Notwithstanding the foregoing, in exercising its power to make any determination under this Section 32.5(f), Customer shall be required to make such determination in good faith and in the exercise of commercial reasonableness for similar industries and for similar purposes (measured with respect to attempting to fulfill the purposes of the GEP as set forth in this Article 32). If Contractor disputes any determination made by Customer upon the failure of the Customer and the Contractor to agree as set forth in this Section 32.5(f), Contractor may seek resolution of the dispute in accordance with Article 26 of this Agreement, and Contractor shall be entitled to all rights and remedies available in arbitration, including, but not limited to, if appropriate, the retroactive repricing of the Aggregate Porting Charge to the pricing that would have otherwise been in effect had the reduction to the Net Regional Monthly Aggregate Porting Charge under Section 32.5(f) not been applied. Notwithstanding the foregoing, all parties agree that pending a final and binding determination regarding whether Customer improperly exercised its power to make such determination under this Section 32.5(f), Contractor shall be bound by such determination of Customer and shall proceed with the GEP, including but not limited to, proceeding to apply any reductions to the Net Regional Monthly Aggregate Porting Charge based upon such determination.

**32.6 Specific GEP Elements and Determination of Failure for Each GEP Element****(a) GEP Element No. 1a: SLR-1 Satisfaction**

(1) GEP Element Description. This GEP Element measures satisfaction of the Service Commitment Level associated with SLR-1 set forth on Exhibit G to this Agreement for the Service Area.

(2) Definition of Failure. A "Failure" of this GEP Element as reported on a GEP Audit Report shall be considered to occur when the monthly measurement of Service Availability (as defined in Exhibit G to this Agreement) during the Associated EP fails to satisfy the Service Commitment Level associated with SLR-1 set forth on Exhibit G for either: (a) any 2 consecutive months in the Associated EP, or (b) any 3 or more months (even if not consecutive) during the Associated EP. Only one "Failure" of this GEP Element shall be given effect for any one EP.

**(b) GEP Element No. 1b: SLR-7 Satisfaction**

(1) GEP Element Description. This GEP Element measures satisfaction of the Service Commitment Level for all Interfaces associated with SLR-7 set forth on Exhibit G to this Agreement for the Service Area.

(2) Definition of Failure. A "Failure" of this GEP Element as reported on a GEP Audit Report shall be considered to occur when the monthly measurement of Interface Availability (as defined in Exhibit G to this Agreement) for each of the months comprising the Associated EP for more than 5% of all Users' mechanized interfaces fail to satisfy the Service Commitment Level associated with SLR-7 set forth on Exhibit G either: (a) any 2 consecutive months in the Associated EP, or (b) any 3 or more months (even if not consecutive) during the Associated EP. Only one "Failure" of this GEP Element shall be given effect for any one EP.

**(c) GEP Element No. 2: Report Satisfaction**

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(1) GEP Element Description. This GEP Element measures satisfaction of the following two requirements for those specific reports listed on Exhibit H (referred to for purposes of this GEP Element as “**Periodic Reports**”):

- “On-Time Delivery” Requirement; and
- “Accuracy” Requirement

For purposes of the foregoing, “**On-Time Delivery**” shall be measured as the actual delivery of each specific Periodic Report specified on Exhibit H on the date specified for delivery of that specific Periodic Report. For the purposes of the foregoing, the “**Key**” included on Exhibit H to the Agreement shall provide the schedule for the delivery of all Periodic Reports.

For purposes of the foregoing, “**Accuracy**” or “**Accurate**” shall be defined as the absence of the need to make corrections to report data for any such Periodic Report; provided, however, that recalculations-based changes agreed to by Customer and Contractor in previously believed correct calculations methods and/or formulae shall not affect “**Accuracy**” for purposes of this GEP Element.

(2) Definition of Failure. A “**Failure**” of this GEP Element as reported in the GEP Audit Report shall be considered to occur if any Periodic Report obtains one “**Failure**” of either the “**On-Time Delivery**” Requirement or the “**Accuracy**” Requirement during the Associated EP, as such “**Failure**” is defined below. Only one “**Failure**” of this GEP Element shall be given effect for any one EP.

- “**On-Time Delivery**” Requirement Failure: A “**Failure**” of the “**On-Time Delivery**” Requirement shall be considered to have occurred if any Periodic Report during the Associated EP fails to be delivered on or before the date and on or before the time scheduled for delivery of the specific Periodic Report either (a) any 2 consecutive months in the EP, or (b) any 3 or more months (even if not consecutive) during the Associated EP.
- “**Accuracy**” Requirement Failure: A “**Failure**” of the “**Accuracy**” Requirement shall be considered to have occurred if a Periodic Report is not Accurate either (a) any 2 consecutive months in the Associated EP, or (b) any 3 or more months (even if not consecutive) during the Associated EP.

**(d) GEP Element No. 3: Scheduled Service Unavailability Satisfaction**

(1) GEP Element Description. This GEP Element measures satisfaction of the monthly Service Commitment Level associated with SLR-2 set forth on Exhibit G to this Agreement for the Service Area which is the subject of this Agreement, as such Service Commitment Level may be amended or otherwise changed or as such measurement for purposes of this GEP Element may be amended or changed by agreement of the parties in accordance with this Agreement.

(2) Definition of Failure. A “**Failure**” of this GEP Element as reported in the GEP Audit Report shall be considered to occur when Scheduled Service Unavailability for any month during the Associated EP exceeds the time period set forth in the Service Commitment Level for SLR-2 either (a) any 2 consecutive months in the applicable EP, or (b) any 3 or more months (even if not consecutive) during the applicable EP. Only one “**Failure**” of this GEP Element shall be given effect for any one EP.

**(e) GEP Element No. 4: Benchmarking Satisfaction**

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(1) GEP Element Description. GEP Element No. 4 is separate and distinct from the requirements for a Benchmarking under Article 7 of this Agreement. The parties agree and acknowledge that the Benchmarking under this GEP Element No. 4 (“**EP Benchmarking**”) is solely with respect to determining whether a “Failure” occurred during an Associated EP for a specific EP Benchmarking Plan (defined below) and is for the purpose of ensuring that Contractor provides “technology and service level standards equal to or greater than other organizations receiving similar services.”

(2) Phases of EP Benchmarking. EP Benchmarking consists of the following “**Phases**,” the purpose of which is to identify measurable tasks from which to determine whether or not a “Failure” of this GEP Element has occurred during an EP:

- Phase 1: EP Benchmarking Plan Development Phase
- Phase 2: Benchmarking Data Collection and Report Phase
- Phase 3: Benchmarking Evaluation Phase
- Phase 4: Benchmark Implementation Phase

There shall be no requirement that for every EP all Phases must either be commenced or concluded; instead, the parties agree and acknowledge that the EP Benchmarking Plan will specify and determine when each Phase begins and ends and which Phases, the beginning or ending of which, shall be required in any EP to avoid a determination of a “Failure” of this GEP Element No. 4. Unless Contractor and Customer otherwise agree, no Implementation Phase shall be commenced before the completion of all prior Implementation Phases. Unless Contractor and Customer otherwise agree, no new EP Benchmarking may be commenced until a previously commenced EP Benchmarking has completed Phase 3; provided, however, that Customer may initiate a new EP Benchmarking (the “**Priority EP Benchmarking**”) prior to the completion of Phase 3 of an EP Benchmarking that is already in progress. In such event, Contractor shall have the right to temporarily stop the activities relating to the EP Benchmarking that is already in progress, and the time frames set forth herein under which the Phases for the EP Benchmarking were required to be completed shall be tolled, until the Priority EP Benchmarking has completed Phase 3.

**(2) Description of Phases****(A) EP Benchmarking Plan Development Phase**

Overview. This Phase includes development of a plan identifying those particular items identified solely by Customer that will be evaluated, what similar industries or companies will be used as a comparison, the specific criteria, metrics and methods and techniques for obtaining data (including, but not limited to, the determination of comprehensive data collection or specific statistical sampling techniques), the required contents of the EP Benchmarking Report and the specific timeframes for data collection and evaluation. The parties agree and acknowledge that it is anticipated and expected that an EP Benchmarking Plan may, but need not, include those items listed on Attachment 4, attached hereto and made a part hereof.

EP Benchmarking Plan Development Requirements. For the purpose of specifying discrete and identifiable tasks toward completion of the EP Benchmarking Plan Development Phase, the following steps are established:

(1) Commencement. The EP Benchmarking Plan Development Phase is deemed to commence with Contractor’s attendance at a meeting with Customer’s representatives on or before 14 days following delivery by Customer of written notification that Customer wishes Contractor to initiate EP Benchmarking under this Section 32.6(e). All notifications by Customer must comply with Article 29 of the Agreement. This initial meeting shall be on the date, at a time and at a place determined by Customer, and may

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SOW:  No  
 Yes

be changed by Customer in its discretion if Customer notifies Contractor in writing at least 14 days prior to the scheduled date of an irreconcilable conflict.

(2) Follow-Through. Within 20 days after the Customer delivers written notification to the Contractor identifying those items that Customer wishes to be evaluated and included in the EP Benchmarking Plan, Contractor shall attend a meeting with Customer's representatives for the purpose of jointly discussing and developing the details of the EP Benchmarking Plan, and Contractor shall attend additional meetings with Customer's representatives as reasonably requested by Customer at the initial meeting. Each of these meetings shall be on a date, at a time and at a place determined by Customer, and may be changed by Customer in its discretion if Customer notifies Contractor in writing at least 14 days prior to the scheduled date of an irreconcilable conflict.

(3) Task Completion. After either (i) joint agreement between Customer and Contractor or (ii) Customer's determination of the contents of the EP Benchmarking Plan with respect to those items for which joint agreement was not reached, within 20 days following written notification by Customer that it desires Contractor to prepare an initial draft EP Benchmarking Plan, Contractor shall deliver such initial draft to Customer. The parties anticipate and expect that an EP Benchmarking Plan may, but need not, include those items listed on Attachment 4, attached hereto and made a part hereof. Within 20 days following delivery of the draft EP Benchmarking Plan, Contractor shall be required to attend a meeting with Customer's representatives for the purpose of jointly discussing revisions or comments to the draft EP Benchmarking Plan. If Contractor and the Customer cannot agree on any aspect of the EP Benchmarking Plan within 30 days following delivery of the initial draft of the EP Benchmarking Plan (or 30 days following the date such initial draft should have been delivered even if it was not delivered on such date), the Customer shall make all such determinations with respect to the EP Benchmarking Plan, and Contractor shall be required to adhere to and to incorporate such determination into the final EP Benchmarking Plan and to issue the final EP Benchmarking Plan within 30 days after notification by the Customer of such final determinations. In making any such determination upon the failure of the Contractor and the Customer to agree within the time period set forth above, Customer shall be bound by the requirements of Section 32.4(f) below.

The EP Benchmarking Plan Development Phase is deemed to be complete upon issuance of the final EP Benchmarking Plan as set forth in paragraph (3) above.

(B) Benchmarking Data Collection and Report Phase. This Phase commences immediately upon completion of the EP Benchmarking Plan Development Phase and involves the collection and analysis of data. The Benchmarking Data Collection and Report Phase is completed upon the issuance of an EP Benchmarking Report, which must be issued on or before the date set forth in the respective EP Benchmarking Plan and in accordance with the requirements of the respective EP Benchmarking Plan.

(C) Benchmarking Evaluation Phase

For the purpose of specifying discrete and identifiable tasks toward the completion of the EP Benchmarking Evaluation Phase, the following steps are established:

(1) Commencement and Initial Evaluation Report. The Benchmarking Evaluation Phase is deemed to commence immediately following issuance by Contractor of the EP Benchmarking Report (or upon the date such EP Benchmarking Report should have been issued, even if not issued on such date). Within 30 days thereafter, Contractor shall prepare and deliver to Customer an Evaluation Report setting forth recommendations regarding whether corrective action is needed, and if needed, whether the corrective action can be implemented via the Statement Of Work process set forth in Article 13 or via an Action Plan (as defined below) without a Statement Of Work, and otherwise satisfying the requirements for an Evaluation Report set forth in the EP Benchmarking Plan.

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SOW:  No  
 Yes

(2) Consultation and Discussion. Within 20 days after the delivery of the Evaluation Report (or upon the date such EP Benchmarking Report should have been issued, even if not issued on such date), Contractor shall be required to attend a meeting with Customer's representatives for the purpose of jointly discussing the Evaluation Report and the recommendations for corrective action, if any, and Contractor shall further be required to attend additional meetings with Customer's representatives as reasonably requested by Customer. Each of these meetings shall be on a date, at a time and at a place determined by Customer, and may be changed by Customer in its discretion if Customer notifies Contractor in writing at least 14 days prior to the scheduled date of an irreconcilable conflict.

(3) Determination of System Change. If Contractor and the Customer cannot agree within 20 days following delivery of the Evaluation Report on any aspect thereof, the Customer shall make all such determinations with respect to those items for which Customer and Contractor cannot agree. Thereafter, within 90 days following agreement of Contractor and Customer with respect to the corrective action required, or in the absence of such agreement, upon written notice by the Customer to Contractor of its determination of the correction action required, Contractor shall deliver a proposed Statement of Work pursuant to the requirements of Article 13 of this Agreement, or if no Statement of Work is required, Contractor shall deliver a proposed action plan, providing for the implementation of the corrective action required ("**Action Plan**"). In making any such determination upon the failure of the Contractor and the Customer to agree within the time period set forth above, Customer shall be bound by the requirements of Section 32.4(f) below.

(4) Completion. The Benchmarking Evaluation Phase is deemed to be completed upon delivery of a proposed Statement of Work, or proposed Action Plan, as the case may be.

(D) Implementation Phase. The Implementation Phase shall commence upon execution of a Statement of Work or agreement on the terms of an Action Plan if no Statement of Work is determined to be required. The Implementation Phase ends in accordance with the timeline and schedule of the project plan set forth in the Statement Of Work, if a Statement Of Work is required, or otherwise in accordance with the timeline and schedule established by the parties in the Action Plan, if a Statement Of Work is not required. Notwithstanding the foregoing, unless Contractor and Customer agree, no Implementation Phase for any EP shall be commenced before the completion of all prior Implementation Phases.

(E) Customer's Standard. In exercising its power to make any determination under this Section 32.6(e) upon the failure of the Customer and the Contractor to agree within the applicable time period set forth therein, Customer shall be required to make such determination in good faith and in the exercise of commercial reasonableness for similar industries and for similar purposes (measured with respect to attempting to fulfill the purposes of the GEP as set forth in this Article 32.6(e)).

If Contractor disputes any determination made by Customer upon the failure of the Customer and the Contractor to agree within an applicable time period set forth in this Section 32.6(e), Contractor may seek resolution of the dispute in accordance with Article 26 of this Agreement, but all parties agree that pending a final and binding determination regarding whether Customer improperly exercised its power to make such determination under this Section 32.6(e), Contractor shall be bound by such determination of Customer and shall proceed with the GEP, including but not limited to, proceeding to apply any Reduced TN Porting Price for an Applicable Reduction Period (as those terms are defined in Section 32.5(a), based upon such determination.

(F) Attendance of Personnel. For all purposes of this Section 32.6(e), if attendance is required at meetings between Contractor and Customer, appropriate personnel from each party must attend.

(4) Definition of Failure. A "**Failure**" of this GEP Element as reported on a GEP Audit Report shall be considered to occur whenever during an Associated EP Contractor does not complete any of the following Phases by issuance of the required deliverable within the required time frame set forth in this Section 32.6(e):

Ø EP Benchmarking Plan Development Phase:

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 Yes

- Issuance of final EP Benchmarking Plan

Ø Benchmarking Data Collection and Report Phase:

- Issuance of the EP Benchmarking Report

Ø Benchmarking Evaluation Phase

- Issuance of proposed SOW or Action Plan, as case may be.

Ø Implementation Phase

- Completion of SOW or Action Plan

(f) GEP Element No. 5: Root Cause Analysis and Reporting Satisfaction

(1) GEP Element Description. This GEP Element measures satisfaction during an EP of the Contractor's obligation to prepare and to deliver the Root Cause Reports in accordance with the requirements of Section 10.3 of the Agreement.

(2) Definition of "Miss" and "Failure"

(A) "Miss". A **"Miss"** of this GEP Element as reported in a GEP Audit Report shall be considered to occur for purposes of determining a GEP Reduction if for any single Outage that occurs within the Associated EP, any one or more of the Root Cause Reports (satisfying the requirements of Section 10.3 of the Agreement) for that specific Outage is not delivered within the specific time period for its delivery under Section 10.3 of this Agreement. For purposes of the foregoing, only one "Miss" shall be given effect and considered to have occurred with respect to any single Outage no matter how many Root Cause Reports with respect to that Outage were not delivered within the specific time periods specified for their delivery.

(B) "Failure". Notwithstanding the foregoing, a **"Failure"** of this GEP Element No. 5 as reported in a GEP Audit Report for purposes of determining the Carryover GEP Failure Reduction shall be considered to occur if for any two or more Outages that occurred within the Associated EP, any one or more of the Root Cause Reports (satisfying the requirements of Section 10.3 of the Agreement) for those specific Outages were not delivered within the specific time periods for their delivery under Section 10.3 of this Agreement.

(g) GEP Element No. 6: Problem Escalation Satisfaction

(1) GEP Element Description. This GEP Element measures satisfaction during an EP of the Contractor's obligation for all Outages that occur during an EP to escalate management and supervisory responsibility to resolve the Outage through the appropriate management hierarchy and within the time periods established for such escalation until resolution of the Outage in accordance with the requirements of Section 10.4 of the Agreement.

(2) Definition of "Miss" and "Failure"

(A) "Miss". A **"Miss"** of this GEP Element as reported in the GEP Audit Report shall be considered to occur for purposes of determining a GEP Reduction if for any single Outage that occurred within the Associated EP management and supervisory responsibility for resolving the Outage is not escalated through the appropriate management hierarchy or within the required time periods under Section 10.4 of this Agreement. For purposes of the foregoing, only one "Miss" shall be given effect and considered to have occurred with respect to any single Outage no matter how times during such Outage Contractor did not escalate the matter to the appropriate personnel or within the specific time periods specified.

(B) "Failure". A **"Failure"** of this GEP Element No. 6 as reported in a GEP Audit Report for purposes of determining the Carryover GEP Failure Reduction shall be considered to occur if for any two or more Outages that occurred within the Associated EP the specific requirements of Section 10.4 of this Agreement are not satisfied.

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SOW:  No  
 Yes

**(h) GEP Element No. 7a: Billing Timeliness of Delivery Satisfaction**

(1) GEP Element Description. This GEP Element measures whether Contractor has mailed all monthly invoices required pursuant to Section 6.6(c) of this Agreement (for purposes of this GEP Element, "Monthly Invoices") on or before the 11th business day following the last day of Billing Cycle (the "Mailing Due Date").

(2) Definition of Failure. A "Failure" of this GEP Element as reported in the GEP Audit Report shall be considered to occur if any Monthly Invoice for any User is not mailed during the Associated EP on or before the Mailing Due Date either: (a) any 2 consecutive months in the Associated EP, or (b) any 3 or more months (even if not consecutive) during the Associated EP.

**(i) GEP Element No. 7b: Billing Accuracy Satisfaction**

(1) GEP Element Description. This GEP Element measures satisfaction of an element for purposes of the GEP which is intended to constitute the minimum requirements of "accuracy" of Monthly Invoices. For purposes of this GEP Element No. 7b, "accuracy" of Monthly Invoices shall be based upon the GEP Auditor's determination of the elements that constitute measurable accuracy.

(2) Definition of Failure. A "Failure" of this GEP Element as reported in the GEP Audit Report shall be considered to occur when based upon a measurement technique determined by the GEP Auditor as set forth in the Audit Plan to fairly measure Accuracy, including statistical sampling, on a monthly basis, fewer than that percentage of Monthly Invoices listed below for the applicable Associated EP are accurate:

98%

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SOW:  No  
 Yes

**ATTACHMENT 3  
TO  
AMENDMENT NO. 70  
Update to Exhibit I**

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**Amendment No. 70 (NE)**

SOW:  No  
 Yes

**EXHIBIT I  
KEY PERSONNEL**

1. INTRODUCTION. This Exhibit I sets forth the Project Executives and Project Managers, as required under Section 11 of the Contractor Services Agreement for NPAC/SMS.

2. PROJECT EXECUTIVES. The following are identified as the Project Executives:

- **NeuStar Inc.**

Contractor's Project Executive

Name: Stephen Addicks

Phone: (571) 434-5499

e-mail: Stephen.Addicks@NeuStar.biz

- **North American Portability Management LLC**

Customer's Project Executive

Name: Gary Sacra

Phone: (410) 393-0843

e-mail: gary.m.sacra@verizon.com

Name: Paula Jordan

Phone: (925) 325-3325

e-mail: paula.jordan@t-mobile.com

Name: Ron Steen

Phone: (205) 988-6615

e-mail: ron.steen@att.com

3. PROJECT MANAGERS: As the initial implementation of the NPAC/SMS has been completed, Project Managers are no longer identified in this Exhibit I, but may be set forth by the parties in a Statement of Work or elsewhere, in accordance with Section 11.2 of the Contractor Services Agreement.

THE ABOVE PROJECT EXECUTIVES ARE SUBJECT TO CHANGE FROM TIME TO TIME AS SET FORTH IN SECTION 11.1 OF THE CONTRACTOR SERVICES AGREEMENT FOR NPAC/SMS. THE PROJECT EXECUTIVES AT THE TIME OF EXECUTION OF AN NPAC/SMS USER AGREEMENT SHALL BE AS IDENTIFIED IN ATTACHMENT D OF THAT NPAC/SMS USER AGREEMENT.

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SOW:  No

Yes

ATTACHMENT 4

TO

AMENDMENT NO. 70

New Article 37 to Master Agreement

ARTICLE 37— TRIGGERED CHARGE ADJUSTMENTS

37.1 Monthly Upward Event Triggered Charge Adjustment

*(a) Calculation and Application of Upward Event Triggered Charge Adjustment*

Notwithstanding anything herein to the contrary, upon the occurrence of any Customer Modification Event (as defined in Section 37.1(b) below) under any of the Master Agreements between Contractor and Customer on behalf of the Subscribing Customers of such Master Agreements, and after written notice to Customer, the Net National Monthly Porting Fee set forth in Section 35.1 for calculating the monthly Aggregate Porting Charge for the Service Area shall be adjusted (such adjustment the “**Monthly Upward Event Triggered Charge Adjustment**”) by increasing the Net National Monthly Porting Fee by ten percent (10%), regardless of whether one or more Customer Modification Events have occurred. The Monthly Upward Event Triggered Charge Adjustment shall be effective beginning in the month in which the Customer Modification Event occurred, for any Customer Modification Event occurring at any time during the Initial Term, and shall continue to apply each month thereafter to and including December 31, 2011.

*(b) Customer Modification Events*

For purposes of this Section 37.1, a “**Customer Modification Event**” shall mean, subject to Section 37.1(c) below, any Official Customer Action with respect to the following events that occurs on or after the Amendment Effective Date, but before January 1, 2012, where “**Official Customer Action**” means either

(A) any act by Customer, or any of the Subscribing Customers, or their respective members in their duly authorized, official capacity as members of Customer or Subscribing Customer, or otherwise duly authorized to act on behalf of Customer or Subscribing Customer seeking, or otherwise attempting, to renegotiate a lower charge, rate or fee for TN Porting Events, or the calculation method for deriving such charges, rates or fees for TN Porting Events that results in a lower charge, rate or fee for TN Porting Events under the Master Agreements with Contractor, or the introduction of any terms or conditions under the Master Agreement that could reduce the charges, rates or fees for TN Porting Events, or the calculation method for deriving charges, rates or fees for TN Porting Events

or (B) any public statement or public announcement of the Customer, or any of

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SOW:  No  
 Yes

the Subscribing Customers expressing an intent to seek or otherwise to attempt renegotiation of, or to seek or otherwise renegotiate, a lower charge, rate or fee for TN Porting Events, or the calculation method for deriving such charges, rates or fees for TN Porting Events, or the introduction of any terms or conditions under the Master Agreements with Contractor that could reduce the charges, rates or fees per TN Porting Event, or the calculation method for deriving charges, rates or fees for TN Porting Events.

Contractor and Customer agree that for the avoidance of doubt, an Official Customer Action in issuing or making a public statement or public announcement expressing an intent to issue or otherwise to issue a request for information (RFI), a request for quotation (RFQ), a request for proposals (RFP) or other similar request for the provision of NPAC/SMS-type services in any United States Service Area, shall not constitute a Customer Modification Event, provided that any such RFI, RFQ or RFP is issued not only to NeuStar.

Contractor and Customer agree and acknowledge that nothing in this Section 37.1 prohibits Customer from engaging in any Customer Modification Event, provided that upon the occurrence of any Customer Modification Event, the prevailing charge for TN Porting Events (or the Effective Rate, if it applies) is subject to the Monthly Upward Event Triggered Charge Adjustment, as set forth in this Section 37.1.

For the avoidance of doubt, Section 37.1(b)(A) and Section 37.1(b)(B) above shall not apply with respect to any action concerning an adjustment under the Gateway Evaluation Process of Article 32 of the Master Agreement, including requests to negotiate or to waive the application of thereof.

For the avoidance of doubt, the application or non-application of a Monthly Upward Event Triggered Charge Adjustment under this Section 8.3, shall not in any way affect the rescissions set forth in Section 8.2 of Amendment No. 57.

*(c) Exceptions to Customer Modification Events*

An event otherwise qualifying as a Customer Modification Event shall not be considered a Customer Modification Event for purposes of this Section 37.1 under any of the following circumstances (such event under that circumstance an “**Excluded Customer Modification Event**”):

- (i) beginning on January 1, 2008, if the Customer Modification Event occurred after the actual cumulative TN Porting Event volume for all United States Service Areas in which Contractor provides Services exceeds Seven Hundred Million (700,000,000) TN Porting Events in the immediately preceding twelve (12) calendar month period (i.e., trailing twelve calendar months); or
- (ii) if a federal rule, regulation or order, (collectively, a “**Regulatory Act**”) of any regulatory body and its components (a “**Regulatory Entity**”) having jurisdiction or delegated authority over Contractor, Customer, its member and

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SOW:  No  
 Yes

the Users, and the NPAC/SMS specifically and expressly requires the Customer to perform any Customer Modification Event, and Customer does perform such Customer Modification Event; provided, however, that the Regulatory Entity issuing the Regulatory Act has the legal authority to issue the Regulatory Act, and does so in accordance with all applicable requirements to the Regulatory Entity, and provided further that Customer, or Subscribing Customer, including its co-chairs and members in their duly authorized, official capacity as members or otherwise duly authorized to act on behalf of Customer or Subscribing Customer, did not advocate, endorse, lobby, orchestrate, whether directly or indirectly, the Regulatory Entity with respect to the Regulatory Act that is a specific and express requirement for Customer to perform a Customer Modification Event.

Notwithstanding anything herein to the contrary, if the date of an Official Customer Action identified under Section 37.1(b) above occurs prior to the date of the occurrence of a related Excluded Customer Modification Event, then the Monthly Upward Event Triggered Charge Adjustment shall nevertheless apply.

For the avoidance of doubt, the measurement of a cumulative TN Porting Event volume set forth in Paragraph (i) of Section 37.1(c) above concerns actual TN Porting Events.

**37.2 Monthly Downward Event Triggered Charge Adjustment***(a) Calculation and Application of Downward Event Triggered Charge Adjustment*

Notwithstanding anything herein to the contrary, upon the occurrence of a Contractor Modification Event (as defined in Section 37.2 below) under any of the Master Agreements between Contractor and Customer on behalf of the Subscribing Customers, and after written notice to Customer, the Net National Monthly Porting Fee set forth in Section 35.1 for calculating the monthly Aggregate Porting Charge for the Service Area shall be adjusted (such adjustment the “**Monthly Downward Event Triggered Charge Adjustment**”) by decreasing the Net National Monthly Porting Fee by ten percent (10%), regardless of whether one or more Customer Modification Events have occurred. The Monthly Downward Event Triggered Charge Adjustment shall be effective in the month in which the Contractor Modification Event occurred, for any Contractor Modification Event occurring at any time during Initial Term, and shall continue to apply each month thereafter to and including December 31, 2011.

*(b) Contractor Modification Events*

For purposes of this Section 37.2, a “**Contractor Modification Event**” shall mean, subject to Section 37.2(c) below, any Official Contractor Action with respect to the following events that occurs during the Initial Term, but before January 1, 2012, where “**Official Contractor Action**”

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SOW:  No  
 Yes

means a written request by Contractor executed by a duly authorized representative of the Contractor, or otherwise duly authorized to act on behalf of Contractor, acting on behalf of the Contractor, and directed at the Customer, and not its members, concerning an unsolicited request to renegotiate a higher charge, rate or fee for TN Porting Events, or the calculation method for deriving such charge, rates or fees for TN Porting Event that results in a higher charge, rate or fee for TN Porting Events, or the introduction of any terms or conditions under the Master Agreement that could increase the charges, rates or fees per TN Porting Event, or the calculation method for deriving charges, rates or fees per TN Porting Event.

Contractor and Customer agree and acknowledge that nothing in this Section 37.2 prohibits Contractor from engaging in a Contractor Modification Event, provided that upon the occurrence of any Contractor Modification Event, the prevailing charge for TN Porting Events (or Effective Rate, if it applies) is subject to the Monthly Downward Event Triggered Charge Adjustment, as set forth in this Section 37.2.

For the avoidance of doubt, this Section 37.2 (b) shall not apply with respect to any action concerning an adjustment under the Gateway Evaluation Process of Article 32 of the Master Agreement, including requests to negotiate or to waive the application of thereof.

For the avoidance of doubt, the application or non-application of a Monthly Downward Event Triggered Charge Adjustment under this Section 37.2, shall not in any way affect the rescissions set forth in Section 8.2 of Amendment No. 57.

For the avoidance of doubt, the measurement of a cumulative TN Porting Event volume set forth in Section 37.1(c)(i) above concerns actual TN Porting Events, and shall not be interpreted in any way to mean the "Annualized Volume" calculation under Attachment 1A to Exhibit E.

*(c) Exceptions to Contractor Modification Events*

An event otherwise qualifying as a Contractor Modification Event shall not be considered a Contractor Modification Event for purposes of this Section 37.2 under any of the following circumstances (such event under that circumstance an "**Excluded Contractor Modification Event**"):

- (i) If the Contractor Modification Event occurred after the actual cumulative TN Porting Event volume for all United States Service Areas in which Contractor provides Services falls below Two Hundred Fifty Million (250,000,000) TN Porting Events in any calendar year beginning on January 1, 2008 (i.e., when Rate Card No. 4 applies under Exhibit E of the Master Agreement); or
- (ii) If a Regulatory Act of a Regulatory Entity specifically and expressly requires the Contractor to perform any Contractor Modification Event, and Contractor does perform such Contractor Modification Event; provided, however, that the Regulatory Entity issuing the Regulatory Act has the legal authority to issue the Regulatory Act, and does so in accordance with all applicable

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SOW:  No  
 Yes

requirements to the Regulatory Entity, and provided further that Contractor, including a duly authorized representative of the Contractor, or otherwise duly authorized to act on behalf of Contractor, acting on behalf of the Company, did not advocate, endorse, lobby, orchestrate, whether directly or indirectly, the Regulatory Entity with respect to the Regulatory Act that is a specific and express requirement for Contractor to perform a Contractor Modification Event.

Notwithstanding anything herein to the contrary, if the date of an Official Contractor Action identified under Section 37.2(b) above occurs prior to the date of the occurrence of an Excluded Contractor Modification Event, then the Monthly Downward Triggered Charge Adjustment shall apply.

For the avoidance of doubt, the measurement of a cumulative TN Porting Event volume set forth in Paragraph (1) of Section 37.2(c) above concerns actual TN Porting Events.

**37.3 Special Dispute Resolution Procedures for Customer Modification Event**

If Contractor provides Customer with written notice that a Customer Modification Event has taken place, then the following procedures shall be followed:

- (a) Customer or the Subscribing Customer shall, within five (5) calendar days after receipt of notification from Contractor that a Customer Modification Event has taken place, respond to Contractor with written notification as to whether a Customer Modification Event did or did not occur, and reasonably substantiating the position set forth in the notification. Contractor may use that notification, and shall not be considered Confidential Information. Failure of Customer to provide written notification under this Paragraph (a) within such five (5) calendar days shall be deemed advising Contractor that a Customer Modification Event has occurred.
- (b) Within thirty (30) calendar days after receipt of the notification set forth in Paragraph (a) above to the effect that a Customer Modification Event did not occur, Contractor shall provide Customer with written notification advising Customer as to whether a Monthly Upward Event Triggered Charge Adjustment will be applied. A Monthly Upward Event Triggered Charge Adjustment will not be applied unless and until Contractor provides such notice to Customer. If Customer provides notice to Contractor to the effect that a Customer Modification Event did not occur, then failure of Contractor to provide written notification under this Paragraph (b) within such thirty (30) calendar days shall be deemed advising Customer that a Customer Modification Event has not occurred.
- (c) If Customer does not agree with the written notification provided by Contractor under Paragraph (b) above, then Customer shall within thirty (30) calendar days of such notice, advise Contractor of the disagreement in writing. If after sixty (60) days after such notice by Customer the matter has not been resolved, then it shall be deemed a

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SOW:  No  
 Yes

dispute and referred to binding arbitration in accordance with the provisions set forth in Section 26.2 of the Master Agreement, except that the place of arbitration shall be Baltimore, MD, and if there are any other disputes concerning the same asserted Customer Modification Event, then all such disputes shall be consolidated into one binding arbitration.

Nothing herein shall prohibit or limit the Parties rights to settle any dispute subject to this Section 37.3 prior to the issuance of an arbitrator's decision.

The Parties shall continue to honor their respective ongoing obligations, if any, including without limitation the application of a Monthly Upward Event Triggered Charge Adjustment, under the Master Agreement without interruption pending final resolution of a dispute regarding a Monthly Upward Event Triggered Adjustment pursuant to this Section 37.3.

**37.4 Special Dispute Resolution Procedures for Contractor Modification Event**

If Customer provides Contractor with written notice that a Contractor Modification Event has taken place, then the following procedures shall be followed:

- (a) Contractor shall, within five (5) calendar days after receipt of notification from Customer that a Contractor Modification Event has taken place, respond to Customer with written notification as to whether a Contractor Modification Event did or did not occur, and reasonably substantiating the position set forth in the notification. Customer may use that notification, and shall not be considered Confidential Information. Failure of Contractor to provide written notification under this Paragraph (a) within such five (5) calendar days shall be deemed advising Customer that a Customer Modification Event has occurred.
- (b) Within thirty (30) calendar days after receipt of the notification set forth in Paragraph (a) above to the effect that a Contractor Modification Event did not occur, Customer shall provide Contractor with written notification advising Contractor as to whether a Monthly Downward Event Triggered Charge Adjustment will be applied. A Monthly Downward Event Triggered Charge Adjustment shall not commence unless and until Customer provides such notice to Contractor. If Contractor provides notice to Customer to the effect that a Contractor Modification Event did not occur, then failure of Customer to provide written notification under this Paragraph (b) within such thirty (30) calendar days shall be deemed advising Contractor that a Customer Modification Event has not occurred.
- (c) If Contractor does not provide written notification accepting Customer's notification under Paragraph (b) above, Contractor shall within thirty (30) calendar days of such notice, advise Contractor of the disagreement in writing. If after sixty (60) days after such notice by Contractor the matter has not been resolved, then the matter shall be deemed a dispute and referred to binding arbitration in accordance with the provisions set forth in Section 26.2 of the Master Agreement, except that the place of arbitration

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shall be Baltimore, MD, and that if there are any other disputes concerning the same asserted Contractor Modification Event, then all such disputes shall be consolidated into one binding arbitration.

Nothing herein shall prohibit or limit the Parties rights to settle any dispute subject to this Section 37.4 prior to the issuance of an arbitrator's decision.

The Parties shall continue to honor their respective ongoing obligations under the Master Agreement, if any, including without limitation the application of a Monthly Downward Event Triggered Charge Adjustment, without interruption pending final resolution of a dispute regarding a Monthly Downward Event Triggered Adjustment pursuant to this Section 37.4.

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## Exhibit 2