

Party offers to another LEC or ILEC at the same rates, terms and conditions provided to such other LEC or ILEC or (ii) at the rates and on the terms and conditions set forth in applicable tariffs or in an order of the FCC or the Commission that is generally applicable to such other Party.

## **8.0 GROOMING PLAN; INSTALLATION MAINTENANCE, TESTING AND REPAIR AND SERVICE INTERVAL PARITY**

**8.1 Grooming Plan.** On or before November 1, 1996, Brooks Fiber and Ameritech shall jointly develop a grooming plan (the "Grooming Plan") which shall define and detail, inter alia,

- (a) standards to ensure that Interconnection trunk groups experience a grade of service, availability and quality in accord with all appropriate relevant industry-accepted quality, reliability and availability standards;
- (b) the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the Interconnections specified in Section 4.0 and the trunk groups, including but not limited to standards and procedures for notification and discoveries of trunk disconnects and the designation of certain traffic volume thresholds for establishing new direct trunk groups to End Offices, where applicable;
- (c) disaster recovery provision escalations and expedite procedures; and
- (d) such other matters as the Parties may agree.

**8.2 Operation and Maintenance.** Each Party shall be solely responsible for the installation, operation and maintenance of equipment and facilities provided by it for Interconnection, subject to compatibility and cooperative testing and monitoring and the specific operation and maintenance provisions for equipment and facilities used to provide Interconnection. Operation and maintenance of equipment in Virtual Collocation shall be governed by applicable tariff.

**8.3 Installation, Maintenance, Testing and Repair.** Ameritech's standard intervals for Feature Group D Exchange Access Services will be used for Interconnection as specified in the Ameritech Dedicated and Switched Common Service Switched Access and Exchange Interval Guide, AM-TR-MKT-000066. Brooks Fiber shall meet the same intervals for comparable installations, maintenance, joint testing, and repair of its facilities and services associated with or used in conjunction with Interconnection or shall notify Ameritech of its inability to do so and will negotiate such intervals in good faith.

**8.4 Service Interval Parity.** Services provided to Brooks Fiber by Ameritech under this Agreement that are comparable to services provided by Ameritech to its retail Customers (i.e., new retail installations requiring field dispatch work as compared to installation of unbundled Loops) shall be provided in a non-discriminatory manner.

## **9.0 UNBUNDLED ACCESS — SECTION 251(c)(3)**

Ameritech shall provide non-discriminatory access to Network Elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory in accordance with the terms and conditions of this Agreement and Sections 251(c)(3) and 252 of the Act.

Any request for access to a Network Element that is not already available at the time of such request or expressly contemplated by this Agreement shall be governed by Section 9.5.

### **9.1 Local Loop Transmission Types**

Subject to Section 9.4, Ameritech shall allow Brooks Fiber to access the following Loop types (in addition to those Loops available under applicable tariffs) unbundled from local switching and local transport in accordance with the terms and conditions set forth in Section 9.0.

9.1.1 "2-Wire Analog Voice Grade Loop" or "Analog 2W," which supports analog transmission of 300-3000 Hz, repeat loop start, loop reverse battery, or ground start seizure and disconnect in one direction (toward the End Office Switch), and repeat ringing in the other direction (toward the Customer). Analog 2W includes Loops sufficient for the provision of PBX trunks, pay telephone lines and electronic key system lines. Analog 2W will be provided in accordance with the specifications, interfaces, and parameters described in Technical Reference AM-TR-TMO-000122, Ameritech Unbundled Analog Loops.

9.1.2 "4-Wire Analog Voice Grade Loop" or "Analog 4W," which supports transmission of voice grade signals using separate transmit and receive paths and terminates in a 4-wire electrical interface. Analog 4W will be provided in accordance with the specifications, interfaces, and parameters described in Technical Reference AM-TR-TMO-000122, Ameritech Unbundled Analog Loops.

9.1.3 "2-Wire ISDN Digital Grade Link" or "BRI-ISDN," which supports digital transmission of two 64 kbps bearer channels and one 16 kbps data channel. BRI-ISDN is a 2B+D Basic Rate Interface-Integrated Services Digital Network (BRI-ISDN) Loop which will meet national ISDN standards and conform to Technical Reference AM-TR-TMO-000123, Ameritech Unbundled Digital Loops (including ISDN).

9.1.4 "2-Wire ADSL-Compatible Loop" or "ADSL 2W" is a transmission path which facilitates the transmission of up to a 6 Mbps digital signal downstream (toward the Customer) and up to a 640 kbps digital signal upstream (away from the Customer) while simultaneously carrying an analog voice signal. An ADSL-2W is provided over a 2-Wire non-loaded twisted copper pair provisioned using revised resistance design guidelines and meeting ANSI Standard T1.413-1995-007R2. An ADSL-2W terminates in a 2-wire electrical interface at the Customer premises and at the Ameritech Central Office frame. ADSL technology can only be deployed over Loops which extend less than 18 Kft. from Ameritech's Central Office. ADSL compatible Loops are only available where existing copper facilities can meet the ANSI T1.413-1995-007R2 specifications.

9.1.5 "2-Wire HDSL-Compatible Loop" or "HDSL 2W" is a transmission path which facilitates the transmission of a 768 kbps digital signal over a 2-Wire non-loaded twisted copper pair meeting the specifications in ANSI T1E1 Committee Technical Report Number 28. HDSL compatible Loops are available only where existing copper facilities can meet the T1E1 Technical Report Number 28 specifications.

9.1.6 "4-Wire HDSL-Compatible Loop" or "HDSL 4W" is a transmission path which facilitates the transmission of a 1.544 Mbps digital signal over two 2-Wire non-loaded twisted copper pairs meeting the specifications in ANSI T1E1 Committee Technical Report Number 28. HDSL compatible Loops are available only where existing copper facilities can meet the T1E1 Technical Report Number 28 specifications.

9.1.7 Brooks Fiber may procure Loops from Ameritech either (i) at the rates set forth in the Pricing Schedule and on the terms and conditions specified herein, (ii) in Other Agreements as provided in Section 28.15 or (iii) at the rates and on the terms and conditions set forth in applicable tariffs or in an order of the FCC or the Commission that is generally applicable to such other Party.

## **9.2 Port Types**

Ameritech shall make available to Brooks Fiber unbundled Ports in accordance with the terms and conditions of and at the rates specified in applicable state tariffs.

## **9.3 Private Lines and Special Access**

Ameritech shall make available to Brooks Fiber private lines and special access services in accordance with the terms and conditions of and at the rates specified in applicable tariffs.

## **9.4 Limitations on Unbundled Access**

9.4.1 Brooks Fiber may not cross-connect an Ameritech-provided Loop to an Ameritech-provided Port, but instead shall purchase a network access line under applicable tariffs.

9.4.2 Ameritech shall only be required to make available Loops and Ports where such Loops and Ports are available.

9.4.3 Brooks Fiber may access Ameritech's unbundled Network Elements either (i) through Collocation in accordance with Section 12.0 at the Ameritech Wire Center where those elements exist and each Loop or Port shall be delivered to Brooks Fiber's Collocation by means of a Cross Connection which, in the case of Loops, is included in the rates set forth in the Pricing Schedule, (ii) in accordance with applicable tariffs, laws, rules or regulations or (iii) through such other method as agreed upon by the Parties or made available to Brooks Fiber by its Network Element Bona Fide Request.

9.4.4 Ameritech shall provide Brooks Fiber access to its unbundled Loops at each of Ameritech's Wire Centers. In addition, if Brooks Fiber requests one or more Loops serviced by Integrated Digital Loop Carrier or Remote Switching technology deployed as a Loop concentrator, Ameritech shall, where available, move the requested Loop(s) to a spare, existing physical Loop at no charge to Brooks Fiber. If, however, no spare physical Loop is available, Ameritech shall within forty-eight (48) hours of Brooks Fiber's request notify Brooks Fiber of the lack of available facilities. Brooks Fiber may then at its discretion make a Network Element Bona Fide Request for Ameritech to provide the unbundled Loop through the demultiplexing of the integrated digitized Loop(s). Brooks Fiber may also make a Network Element Bona Fide Request for access to unbundled Loops at the Loop concentration site point. Notwithstanding anything to the contrary in this Agreement, the provisioning intervals set forth in Section 9.6 and the Performance Interval Dates and Performance Criteria set forth in Section 26.1.3 shall not apply to unbundled Loops provided under this Section 9.4.4.

9.4.5 If Brooks Fiber orders a Loop type and the distance requested on such Loop exceeds the transmission characteristics as referenced in the corresponding Technical Reference specified below, distance extensions may be required and additional rates and charges shall apply as set forth on the Pricing Schedule.

Loop Type	Technical Reference/Limitation
Electronic Key Line	2.5 miles
ISDN	Bellcore TA-NWT-000393
HDSL 2W	T1E1 Technical Report Number 28
HDSL 4W	T1E1 Technical Report Number 28
ADSL 2W	ANSI T1.413-1995 Specification

## 9.5 Availability of Other Network Elements on an Unbundled Basis

9.5.1 Ameritech shall, upon request of Brooks Fiber, and to the extent technically feasible, provide to Brooks Fiber access to its Network Elements for the provision of Brooks Fiber's Telecommunications Service. Any request by Brooks Fiber for access to an Ameritech Network Element that is not already offered shall be treated as a Network Element Bona Fide Request. Brooks Fiber shall provide Ameritech access to its Network Elements as mutually agreed by the Parties or as required by the Commission or the FCC.

9.5.2 A Network Element obtained by one Party from the other Party under this Section 9.5 may be used in combination with the facilities of the requesting Party only to provide a Telecommunications Service, including the billing, collection, transmission and routing of such Telecommunications Service.

9.5.3 Notwithstanding anything to the contrary in this Section 9.5, a Party shall not be required to provide a Network Element that is proprietary in nature to the other Party under this Section 9.5 except as required by the Commission or the FCC.

## 9.6 Provisioning of Unbundled Loops

9.6.1 Brooks Fiber shall request unbundled Loops from Ameritech by delivering to Ameritech a valid electronic transmittal Service Order (a "Service Order") using the Ameritech electronic ordering system (as defined in the Unbundling Product Guide) or another mutually agreed upon system. Within forty-eight (48) hours of Ameritech's receipt of a Service Order, Ameritech shall provide Brooks Fiber the firm order commitment ("FOC") date according to the applicable Performance Interval Dates set forth in Section 26.1.3 by which the Loop(s) covered by such Service Order will be installed.

9.6.2 In the event that circumstances should require an FOC date earlier than required by Section 9.6.1, Brooks Fiber may request that a Service Order be expedited, and Ameritech shall exercise its best efforts to provide Brooks Fiber with the earliest possible FOC date as soon as possible.

9.6.3 For conversions of "live" Telephone Exchange Services to unbundled Network Elements, Ameritech agrees to coordinate with Brooks Fiber at least forty-eight hours prior to the due date a scheduled conversion date and time (the "Scheduled Conversion Time") in the "A.M." (12:00 midnight to 12:00 noon) or "P.M." (12:00 noon to 12:00 midnight) (as applicable, the "Conversion Window").

9.6.4 For "live" conversions, not less than one hour prior to the Scheduled Conversion Time, either Party may contact the other Party and unilaterally designate a new Scheduled Conversion Time (the "New Conversion Time"). If the New Conversion Time is within the Conversion Window, no charges shall be assessed on or waived by either Party. If,

however, the New Conversion Time is outside of the Conversion Window, the Party requesting such New Conversion Time shall be subject to the following:

If Ameritech requests the New Conversion Time, the applicable Line Connection Charge shall be waived; and

If Brooks Fiber requests the New Conversion Time, Brooks Fiber shall be assessed a Line Connection Charge in addition to the Line Connection Charge that will be incurred for the New Conversion Time.

9.6.5 Ameritech shall test for Brooks Fiber dial-tone ("Dial Tone Test") on Brooks Fiber's Virtual Collocated-digital Loop carrier during a window not greater than forty-eight (48) hours but not less than eight (8) hours prior to the Scheduled Conversion Time (or New Scheduled Time as applicable). Ameritech shall perform the Dial Tone Test on Brooks Fiber's Virtual Collocated-digital Loop carrier at no charge until June 1, 1997. Thereafter, Brooks Fiber may request Ameritech to perform such Dial Tone Test on a time and materials basis at Ameritech's then current rates. Ameritech shall not perform any Dial Tone Test on any Brooks Fiber Physically Collocated digital Loop carrier.

9.6.6 Except as otherwise agreed by the Parties for a specific conversion, Ameritech shall use its best efforts to minimize the time interval from disconnection of "live" Telephone Exchange Service to the connection of an unbundled Network Element at the Brooks Fiber Collocation interface point, but in any event shall accomplish the connection within sixty (60) minutes or less. If a conversion interval exceeds sixty (60) minutes and such delay is caused solely by Ameritech (and not by a contributing Delaying Event (as defined in Section 26.4)), Ameritech shall waive the applicable Line Connection Charge for such element. If Brooks Fiber has ordered INP with the installation of a Loop, Ameritech will coordinate the implementation of INP with the Loop conversion during the sixty (60) minute interval at no additional charge.

9.6.7 If Brooks Fiber requests or approves an Ameritech technician to perform services in excess of or not otherwise contemplated by the Line Connection Service, Ameritech may charge Brooks Fiber for any additional and reasonable labor charges to perform such services.

9.6.8 Ameritech shall provide Brooks Fiber with electronic ordering interfaces as described in the Unbundling Product Guide of Ameritech.

9.6.9 At Brooks Fiber's request, Ameritech shall provide Brooks Fiber with loop design and transmission parameters through a design layout record ("DLR") according to established industry standards.

9.6.10 Ameritech shall charge Brooks Fiber the non-recurring and monthly recurring rates for unbundled elements (including but not limited to the monthly recurring rates for these specific Network Elements, service coordination fee, and cross-connect charges) as specified in the Pricing Schedule or in applicable tariffs.

#### **9.7 Maintenance of Unbundled Network Elements**

If (i) Brooks Fiber reports to Ameritech a Customer trouble, (ii) Brooks Fiber requests a dispatch, (iii) Ameritech dispatches a technician, and (iv) such trouble was not caused by Ameritech's facilities or equipment, then Brooks Fiber shall pay Ameritech a trip charge of \$45.00 per trouble dispatch and time charges of \$18.00 per quarter hour. Ameritech agrees to provide equal priority in responding to Brooks Fiber Customer trouble reports and service calls as it does to other such trouble reports and service calls.

#### **10.0 RESALE — SECTIONS 251(c)(4) and 251(b)(1)**

##### **10.1 Availability of Wholesale Rates for Resale**

Ameritech shall offer to Brooks Fiber for resale at wholesale rates its Telecommunications Services, as described in Section 251(c)(4) of the Act, pursuant to the terms and conditions of the Local Exchange Telecommunications Services Resale Agreement to be executed by and between Brooks Fiber and Ameritech, and/or applicable tariffs, subject to Section 28.15.

##### **10.2 Availability of Retail Rates for Resale**

Each Party shall make available its Telecommunications Services for resale at retail rates to the other Party in accordance with Section 251(b)(1) of the Act, subject to Section 28.15.

#### **11.0 NOTICE OF CHANGES — SECTION 251(c)(5)**

If a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

#### **12.0 COLLOCATION — SECTION 251(c)(6)**

12.1 Ameritech shall provide to Brooks Fiber Physical Collocation of equipment necessary for Interconnection (pursuant to Section 4.0) or for access to unbundled Network Elements (pursuant to Section 9.0), except that Ameritech may provide for Virtual Collocation of such equipment if Ameritech demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act. Ameritech shall provide such Collocation only for the purpose of Interconnection

or access to unbundled Network Elements, except as otherwise mutually agreed to in writing by the Parties or as required by the FCC or the appropriate Commission subject to applicable federal and state tariffs.

12.2 Although not required to do so by Section 251(c)(6) of the Act, by this Agreement, Brooks Fiber may, at its discretion, provide to Ameritech upon Ameritech's Network Element Bona Fide Request, Collocation (at Brooks Fiber's option either Physical or Virtual) of equipment for purposes of Interconnection (pursuant to Section 4.0) on a non-discriminatory basis and on the rates, terms and conditions provided in Brooks Fiber's applicable tariffs. Brooks Fiber shall provide such Collocation subject to applicable tariffs or contracts.

12.3 Where Brooks Fiber is Virtually Collocated on the Effective Date in a premises that was initially prepared for Physical Collocation, Brooks Fiber may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to current procedures and applicable tariffs, or (ii) revert to Physical Collocation, in which case Brooks Fiber shall coordinate with Ameritech for rearrangement of its equipment (transmission and IDLC) and circuits, for which Ameritech shall impose no conversion charge. All applicable Physical Collocation recurring charges shall apply.

12.4 Where Brooks Fiber is Virtually Collocated in a premises which was initially prepared for Virtual Collocation, Brooks Fiber may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to current procedures and applicable tariffs, or (ii) unless it is not practical for technical reasons or because of space limitations, convert its Virtual Collocation to Physical Collocation at such premises in which case Brooks Fiber shall coordinate the construction and rearrangement with Ameritech of its equipment (transmission and IDLC) and circuits for which Brooks Fiber shall pay Ameritech at applicable tariff rates. In addition, all applicable Physical Collocation recurring charges shall apply.

12.5 For both Physical Collocation and Virtual Collocation, the Collocating Party shall provide its own or third-party leased transport facilities and terminate those transport facilities in equipment located in its Physical Collocation space at the Housing Party's premises as described in applicable tariffs or contracts and purchase Cross Connection to services or facilities as described in applicable tariffs or contracts.

## **SECTION 251(b) PROVISIONS**

### **13.0 NUMBER PORTABILITY — SECTION 251(b)(2)**

#### **13.1 Scope**

13.1.1 The Parties shall provide Number Portability on a reciprocal basis to each other in accordance with rules and regulations as from time to time prescribed by the FCC and/or the Commission.

13.1.2 Until Number Portability is implemented by the industry pursuant to regulations issued by the FCC or the Commission, the Parties agree to provide Interim Telecommunications Number Portability to each other in accordance with Section 271(c)(2)(B)(xi) of the Act through remote call forwarding, direct inward dialing trunks and NXX migration.

13.1.3 Ameritech shall provide to Brooks Fiber its Interim Number Portability offering until such time as the FCC or the Commission provides for an orderly transition process to Number Portability. Upon implementation of Number Portability pursuant to FCC regulation, both Parties agree to conform and provide such Number Portability offering.

#### **13.2 Procedures for Providing INP Through Remote Call Forwarding.**

Brooks Fiber and Ameritech will provide INP through remote call forwarding as follows:

13.2.1 A Customer of one Party ("Party A") elects to become a Customer of the other Party ("Party B"). The Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Telephone Exchange Service(s) it will now receive from Party B. Upon receipt of a signed letter of agency from the Customer (and an associated service order) assigning the number to Party B, Party A will implement an arrangement whereby all calls to the original telephone number(s) will be forwarded to a new telephone number(s) designated by Party B. Party A will route the forwarded traffic to Party B over the appropriate Local/IntraLATA Trunks as if the call had originated on Party A's network.

13.2.2 Party B will become the customer of record for the original Party A telephone numbers subject to the INP arrangements. Party A shall use its reasonable efforts to consolidate into as few billing statements as possible for all collect, calling card, and 3rd-number billed calls associated with those numbers, with sub-account detail by retained number. At Party B's sole discretion, such billing statement shall be delivered to Party B in an agreed-upon format via either electronic file transfer, daily magnetic tape, or monthly magnetic tape.

13.2.3 Party A will update its Line Information Database ("LIDB") listings for retained numbers, and restrict or cancel calling cards associated with those forwarded numbers as directed by Party B.

13.2.4 A Customer's termination of service with Party B shall be handled by Party A in the same manner provided for commencement of service in Section 13.2.1.

### **13.3 Procedures for Providing INP Through Direct Inward Dial Trunks.**

Upon request, Ameritech shall provide to Brooks Fiber INP via direct inward dial trunks pursuant to applicable tariffs or as provided in the Telecommunications Services Trial Agreement dated June 12, 1996 by and between Ameritech and Brooks Fiber Properties, Inc.

### **13.4 Procedures for Providing INP Through NXX Migration.**

Where either Party has activated an entire NXX for a single Customer, or activated a substantial portion of an NXX for a single Customer with the remaining numbers in that NXX either reserved for future use or otherwise unused, if such Customer chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead-times for movements of NXXs from one switch to another.

### **13.5 Receipt of Terminating Compensation on Traffic to INP'ed Numbers**

The Parties agree that, under INP, terminating compensation on calls to INP'ed numbers should be received by each Customer's chosen LEC as if each call to the Customer had been originally addressed by the caller to a telephone number bearing an NPA-NXX directly assigned to the Customer's chosen LEC. In order to accomplish this objective where INP is employed, the Parties shall utilize the process set forth in this Section 13.5 whereby terminating compensation on calls subject to INP will be passed from the Party (the "Performing Party") which performs the INP to the other Party (the "Receiving Party") for whose Customer the INP is provided.

13.5.1 The Parties shall individually and collectively track and quantify INP traffic between their networks based on the CPN of each call by identifying CPNs which are INP'ed numbers. The Receiving Party shall charge the Performing Party for each minute of INP traffic at the INP Traffic Rate specified in Section 13.5.3 in lieu of any other compensation charges for terminating such traffic.

13.5.2 By the Interconnection Activation Date in each LATA, the Parties shall jointly estimate for the prospective year, based on historic data of all traffic in the LATA, the percentages of such traffic that if dialed to telephone numbers bearing NPA-NXXs directly assigned to a Receiving Party (as opposed to the INP'ed number) would have been subject to (i) Reciprocal Compensation ("Recip Traffic"), (ii) intrastate FGD charges ("Intra Traffic") or (iii) interstate FGD charges ("Inter Traffic"). On the date which is six (6) months after the Interconnection Activation Date, and thereafter on each succeeding six (6) month anniversary of such Interconnection Activation Date, the Parties shall establish new INP traffic percentages to be applied in the prospective six (6)-month period, based on actual INP traffic percentages from the preceding six (6)-month period. The Parties may agree to adopt a different methodology to calculate INP traffic percentages, including identifying components different from or in addition to those set forth in this Section 13.5.2.

13.5.3 The INP Traffic Rate shall be equal to the sum of:

(Recip Traffic percentage times the Reciprocal Compensation Rate set forth in the Pricing Schedule) plus (Intra Traffic percentage times Ameritech's effective intrastate FGD rates) plus (Inter Traffic percentage times Ameritech's effective interstate FGD rates).

Interstate and intrastate FGD rates shall be calculated utilizing the effective interstate and intrastate carrier common line (CCL) rates, residual interconnection charge (RIC) rate elements, local switching (LS) rate elements, one-half the local transport termination (LTT) rate elements, and one-half the local transport facility (LTF) rate elements (assuming a five (5)-mile LTF).

### **13.6 Pricing For Interim Number Portability**

Each Party shall comply with the methodology (including recordkeeping) established by the FCC or the Commission with respect to such Party's recovery in a competitively neutral manner of its costs to provide Interim Number Portability. To the extent permitted by the FCC or the Commission, such costs shall include a Party's costs to deliver calls between the other Party's Customers via Number Portability.

### **14.0 DIALING PARITY – SECTION 251(b)(3)**

The Parties shall provide Local Dialing Parity to each other as required under Section 251(b)(3) of the Act, except as may be limited by Section 271(e)(2)(B) of the Act.

### **15.0 ACCESS TO RIGHTS-OF-WAY – SECTION 251(b)(4)**

Each Party shall provide the other Party access to the poles, ducts, rights-of-way and conduits it owns or controls on terms, conditions and prices comparable to those offered to any other Telecommunications Carrier pursuant to each Party's applicable tariffs and/or standard

agreements and in accordance with Section 224 of the Act and Section 361 of the Michigan Telecommunications Act.

## **16.0 DATABASE ACCESS**

In accordance with Section 271(c)(2)(B)(x) of the Act, Ameritech shall provide Brooks Fiber with interfaces to access Ameritech's databases and associated signaling necessary for the routing and completion of Brooks Fiber's traffic. Access to such databases, and the appropriate interfaces, shall be made available to Brooks Fiber via a Network Element Bona Fide Request.

## **17.0 REFERRAL ANNOUNCEMENT**

When a Customer changes its service provider from Ameritech to Brooks Fiber, or from Brooks Fiber to Ameritech, and does not retain its original telephone number, the Party formerly providing service to such Customer shall provide a referral announcement ("Referral Announcement") on the abandoned telephone number which provides details on the Customer's new number. Referral Announcements shall be provided reciprocally, free of charge to either the other Party or the Customer, for the period specified in Michigan Administrative Rule 484.34. However, if either Party provides Referral Announcements for a period longer than the above respective periods when its Customers change their telephone numbers, such Party shall provide the same level of service to Customers of the other Party.

## **18.0 OTHER SERVICES**

Brooks Fiber and Ameritech provide other services to each other as required under the Act pursuant to the following Agreements:

- (a) Agreement by and between Brooks Fiber Communications and Ameritech for Enhanced 9-1-1 Service dated May 1, 1996;
- (b) White Pages Listing and Directory Services Agreement for Grand Rapids dated September 1, 1995 by and between Ameritech Advertising Services and Brooks Fiber;
- (c) White Pages Listing and Directory Services Agreement for Holland dated March 20, 1996 by and between Ameritech Advertising Services and Brooks Fiber;
- (d) Operator Toll and Assist Services Agreement dated May 17, 1996 by and between Ameritech and Brooks Fiber; and
- (e) Calling Name Delivery Service Agreement dated June 25, 1996 by and between Ameritech and Brooks Fiber.

## **GENERAL PROVISIONS**

### **19.0 GENERAL RESPONSIBILITIES OF THE PARTIES**

**19.1** Each of Ameritech and Brooks Fiber shall use its best efforts to comply with the Implementation Schedule.

**19.2** The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all Customers in their respective designated service areas. Brooks Fiber, for the purpose of ubiquitous connectivity, network diversity and alternate routing, shall connect to at least one Tandem Office Switch for the receipt/completion of traffic to any Ameritech End Office Switches.

**19.3** Thirty (30) days after the Effective Date and each month during the term of this Agreement, each Party shall provide the other Party with a rolling, six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services and Network Elements provided under this Agreement in the form and in such detail as agreed by the Parties. Upon the request of a Party, the Parties shall meet to discuss whether to provide for a different interval in which non-binding forecasts should be exchanged between the Parties or to address any additional forecasting requirements a Party may have. Notwithstanding Section 28.7.1, the Parties agree that each forecast provided under this Section 19.3 shall be deemed "Proprietary Information" under Section 28.7.

**19.4** In addition to and not in lieu of the non-binding forecasts required by Section 19.3, a Party that is required pursuant to this Agreement to provide a forecast (the "Forecast Provider") or a Party that is entitled pursuant to this Agreement to receive a forecast (the "Forecast Recipient") with respect to traffic and volume requirements for the services and Network Elements provided under this Agreement may request that the other Party enter into negotiations to establish a forecast (a "Binding Forecast") that commits such Forecast Provider to purchase, and such Forecast Recipient to provide, a specified volume to be utilized as set forth in such Binding Forecast. The Forecast Provider and Forecast Recipient shall negotiate the terms of such Binding Forecast in good faith and shall include in such Binding Forecast provisions regarding price, quantity, liability for failure to perform under a Binding Forecast and any other terms desired by such Forecast Provider and Forecast Recipient. Notwithstanding Section 28.7.1, the Parties agree that each forecast provided under this Section 19.4 shall be deemed "Proprietary Information" under Section 28.7.

**19.5** Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with Ameritech's network and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon

the description and forecasts provided under Sections 19.2 and 19.3. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

## 19.6

19.6.1 Each Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward the other Party's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

19.6.2 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.

19.6.3 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, to prevent or mitigate the impact of these events on the public switched network.

19.6.4 Neither Party shall use any service related to or using any of the services provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, a Party shall provide the other Party notice, if practicable, at the earliest time.

19.7 Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.

19.8 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

19.9 Each Party is responsible for administering NXX codes assigned to it.

19.10 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches.

19.11 Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

**19.12** Each Party shall program and update its own Central Office Switches and End Office Switches and network systems to recognize and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities.

**19.13** At all times during the term of this Agreement, each Party shall keep and maintain in force at such Party's expense all insurance required by law, general liability insurance and workers' compensation insurance. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance).

**19.14** Each Party shall provide, in its tariffs and contracts with its Customers that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, and (ii) any Consequential Damages (as defined in Section 25.3 below).

**19.15** Except as otherwise agreed upon by the Parties, on a mutually agreed upon day and time once a month during the Term, the Parties shall designate representatives to discuss the performance of the Parties under this Agreement. At each such monthly meeting the Parties will discuss: (i) Ameritech's compliance with the Performance Criteria as set forth in Section 26.1.3 and any areas in which such performance may be improved; (ii) the Parties' provisioning of Loops and the compliance with the standards set forth in Section 9.6; (iii) the administration and maintenance of the Interconnections and trunk groups provisioned under this Agreement; (iv) any problems that were encountered during the preceding month or anticipated in the upcoming month; and (v) the reason underlying any such problem and the effect, if any, that such problem had, has or may have on the performance of Ameritech; (vi) the specific steps taken or proposed to be taken to remedy such problem. In addition to the foregoing, the Parties through their respective appropriate representatives will meet to discuss any matters that relate to the performance of this Agreement, as may be requested from time to time by either of the Parties.

## **20.0 TERM AND TERMINATION**

**20.1** The initial term of this Agreement shall be three (3) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 20.3.

**20.2** Subject to Section 28.19, either Party may terminate this Agreement if the other Party (i) fails to pay any amount when due hereunder (excluding Disputed Amounts pursuant to Section 28.12) and fails to cure such nonpayment within sixty (60) days after receipt of written notice thereof; or (ii) fails to perform any other material obligation required to be performed by it pursuant to this Agreement and fails to cure such material nonperformance within forty-five (45) days after written notice thereof.

**20.3** If pursuant to Section 20.1 this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement ninety (90) days after delivering written notice to the other Party of its intention to terminate this Agreement. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 20.3 other than to pay to the other Party any amounts owed under this Agreement.

**20.4** Upon termination or expiration of this Agreement in accordance with this Section 20.0:

(a) each Party shall comply immediately with its obligations set forth in Section 28.7.3;

(b) each Party shall continue to perform its obligations and provide the services as described herein until such time as a successor agreement between the Parties is entered into; provided, however, that the Parties shall renegotiate the rates, fees and charges contained herein; and

(c) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement.

**20.5** Except as set forth in Section 26.5, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

## **21.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT OR ANY APPLICABLE TARIFF, IF ANY, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER THOSE CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE.

## **22.0 CANCELLATION CHARGES**

Except as provided in Sections 9.6.4 and 19.4 and pursuant to a Network Element Bona Fide Request, or as otherwise provided in any applicable tariff or contract referenced herein, cancellation charges shall not be imposed upon, or payable by, either Party.

## **23.0 NON-SEVERABILITY**

**23.1** The services, arrangements, Interconnection, Network Elements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable, subject only to Sections 27.0 and 28.15.

**23.2** Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

## **24.0 INDEMNIFICATION**

**24.1** Except as otherwise provided in Section 24.4 and to the extent not otherwise prohibited by applicable law, each Party (the "Indemnifying Party") shall defend and indemnify the other Party, its officers, directors, employees and permitted assignees (collectively, the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a third party arising out of the negligence or willful misconduct by such Indemnifying Party, its agents, its Customers, contractors, or others retained by such parties, in connection with its provision of services or functions under this Agreement.

**24.2** Each Party ("Indemnified Party") shall be indemnified, defended and held harmless by the other Party ("Indemnifying Party") against any Loss arising from such Indemnifying Party's use of services offered under this Agreement, involving:

(1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's Customers; or

(2) Claims for patent, trademark, copyright infringement or other infringement of intellectual property rights, arising from the Indemnifying Party's acts combining or using the service furnished by the Indemnified Party in connection with facilities or equipment furnished by the Indemnifying Party or its Customers, agents, subcontractors or others retained by such parties.

**24.3** Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for any noncompliance with the Communications Assistance to Law Enforcement Act of 1994 ("CALEA") and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

**24.4** In the case of any Loss alleged or made by a Customer of either Party, the Party ("Indemnifying Party") whose Customer alleged or made such Loss shall defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any or all of such Loss alleged by each and every Customer.

**24.5** The Indemnifying Party agrees to defend any suit brought against the Indemnified Party for any Loss identified in this Section 24.0. The Indemnified Party agrees to notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand for which such Indemnifying Party is or may be responsible and of which the Indemnified Party has knowledge and to cooperate in every reasonable way to facilitate defense or settlement of claims. The Indemnifying Party shall have the exclusive right to control and conduct the defense and settlement of any such actions or claims subject to consultation with the Indemnified Party. The Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

## **25.0 LIMITATION OF LIABILITY**

**25.1** Each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the services and facilities provided by the other Party, its agents, subcontractors, or others retained by such parties.

**25.2** Except for indemnity obligations under Section 24.0, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

**25.3** In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 24.1 to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party.

**25.4** The limitations of liability set forth in this Section 25.0 shall not apply to any damages imposed as a result of any violation of applicable federal or state regulatory or antitrust laws, rules, regulations or orders.

## **26.0 LIQUIDATED DAMAGES FOR SPECIFIED ACTIVITIES**

**26.1 Certain Definitions.** When used in this Section 26.0, the following terms shall have the meanings indicated:

**26.1.1 "Specified Performance Breach"** means the failure by Ameritech to meet the Performance Criteria for any Specified Activity for a period of three (3) consecutive calendar months.

**26.1.2 "Specified Activity"** means any of the following activities:

- (i) the installation by Ameritech of unbundled Loops for Brooks Fiber ("Unbundled Loop Installation");
- (ii) Ameritech's provision of Interim Telecommunications Number Portability ("INP Provisioning"); or
- (iii) the repair of out of service problems for Brooks Fiber ("Out of Service Repairs").

**26.1.3 "Performance Criteria"** means, with respect to each calendar month during the term of this Agreement, the performance by Ameritech during such month of each Specified Activity shown below within the time interval shown in at least ninety percent (90%) of the covered instances:

SPECIFIED ACTIVITY	PERFORMANCE INTERVAL DATE
(i) <u>Unbundled Loop Installation</u>  1-10 Loops per Service Order	5 days from Ameritech's Receipt of valid Service Order
11-20 Loops per Service Order	10 days from Ameritech's Receipt of valid Service Order
21+ Loops per Service Order	to be Negotiated
(ii) <u>INP Provisioning</u>  1-10 Numbers per Service Order	5 days from Ameritech's Receipt of valid Service Order
11-20 Numbers per Service Order	10 days from Ameritech's Receipt of valid Service Order
21+ Numbers per Service Order	to be Negotiated
(iii) <u>Out-of-Service Repairs</u>	Less than 24 hours from Ameritech's Receipt of Notification of Out-of-Service Condition

The Parties acknowledge that they have established the interim Performance Criteria percentage of ninety percent (90%) to address, in part, certain provisioning and service quality issues between the Parties that were raised in the Settlement Agreement and related proceedings. Accordingly, if no Specified Performance Breach shall occur for a period of twenty-four (24) consecutive calendar months, the applicable Performance Criteria percentage shall be eighty percent (80%) instead of ninety percent (90%) during the remainder of the Term of this Agreement.

**26.2 Specified Performance Breach.** In recognition of the (1) loss of Customer opportunities, revenues and goodwill which Brooks Fiber might sustain in the event of a Specified Performance Breach; (2) the uncertainty, in the event of such a Specified Performance Breach, of Brooks Fiber having available to it customer opportunities similar to those opportunities currently available to Brooks Fiber; and (3) the difficulty of accurately ascertaining the amount of damages Brooks Fiber would sustain in the event of such a Specified Performance Breach, Ameritech agrees to pay Brooks Fiber, subject to Section 26.4, damages as set forth in Section 26.3 in the event of the occurrence of a Specified Performance Breach.

**26.3 Liquidated Damages.** The damages payable by Ameritech to Brooks Fiber as a result of a Specified Performance Breach shall be \$75,000 for each Specified Performance Breach (collectively, the "Liquidated Damages"). Brooks Fiber and Ameritech agree and acknowledge that (a) the Liquidated Damages are not a penalty and have been determined based

upon the facts and circumstances of Brooks Fiber and Ameritech at the time of the negotiation and entering into of this Agreement, with due regard given to the performance expectations of each Party; (b) the Liquidated Damages constitute a reasonable approximation of the damages Brooks Fiber would sustain if its damages were readily ascertainable; and (c) Brooks Fiber shall not be required to provide any proof of the Liquidated Damages.

**26.4 Limitations.** In no event shall Ameritech be liable to pay the Liquidated Damages if Ameritech's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means (a) a failure by Brooks Fiber to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule and the Grooming Plan), (b) any delay, act or failure to act by a Customer, agent or subcontractor of Brooks Fiber or (c) any Force Majeure Event. If a Delaying Event (i) prevents Ameritech from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of Ameritech's compliance with the Performance Criteria, or (ii) only suspends Ameritech's ability to timely perform the Specified Activity, the applicable time frame in which Ameritech's compliance with the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

**26.5 Sole Remedy.** The Liquidated Damages shall be the sole and exclusive remedy of Brooks Fiber under this Agreement for Ameritech's breach of the Performance Criteria and a Specified Performance Breach as described in this Section 26.0.

**26.6 Records.** Ameritech shall maintain complete and accurate records, on a monthly basis, of its performance under this Agreement of each Specified Activity and its compliance with the Performance Criteria. Ameritech shall provide to Brooks Fiber such records in a self-reporting format on a monthly basis. Notwithstanding Section 28.7.1, the Parties agree that such records shall be deemed "Proprietary Information" under Section 28.7.

## **27.0 REGULATORY APPROVAL**

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. The Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification. If the Commission or the FCC rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion; provided that such rejected portion shall not affect the validity of the remainder of this Agreement. The Parties acknowledge that nothing in this Agreement shall limit a Party's ability, independent of such Party's agreement to support and participate in the approval of this Agreement, to assert public policy issues relating to the Act.

## **28.0 MISCELLANEOUS**

### **28.1 Authorization.**

28.1.1 Ameritech Services, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Ameritech Information Industry Services, a division of Ameritech Services, Inc., has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder on behalf of Ameritech Michigan.

28.1.2 Brooks Fiber is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

28.2 Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

28.3 Designation of Affiliate. Each Party may without the consent of the other Party fulfill its obligations under this Agreement by itself or may cause its Affiliates to take such actions to fulfill such obligations; provided, however, that such designation shall not relieve the designating Party of its obligations as primary obligor hereunder.

28.4 Subcontracting. Either Party may subcontract the performance of its obligation under this Agreement without the prior written consent of the other Party; provided that the Party subcontracting such obligation shall remain fully responsible for the performance of such obligation and be solely responsible for payments due its subcontractors.

28.5 Independent Contractor. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties. Each Party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to their employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

28.6 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services or transportation facilities of third

parties or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event").

## **28.7 Confidentiality.**

**28.7.1** Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a "Disclosing Party") that is furnished or made available or otherwise disclosed to the other Party or any of such other Party's employees, contractors, agents or Affiliates (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be marked "Confidential" or "Proprietary" or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it (a) shall be held in confidence by each Receiving Party; (b) shall be disclosed to only those Representatives who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for such purposes; and (c) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law only in accordance with Section 28.7.2.

**28.7.2** If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Receiving Party's compliance with Section 28.7 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

**28.7.3** In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

**28.8 Governing Law.** For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Michigan without reference to conflict of law provisions.

**28.9 Taxes.** 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. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

**28.10 Non-Assignment.** Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

**28.11 Non-Waiver.** Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

**28.12 Disputed Amounts.**

**28.12.1** If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within sixty (60) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. Notwithstanding any Disputed Amounts, the Non-Paying Party shall pay when due all undisputed amounts to the Billing Party.

**28.12.2** If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored.

**28.12.3** If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 28.12.2, then either Party may file a complaint with the Commission or the FCC to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission or the FCC may direct payment of any or all Disputed Amounts (including any accrued interest thereon or additional amounts awarded), plus applicable late fees, to be paid to either Party.

**28.12.4** The Parties agree that all negotiations pursuant to this Section 28.12 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

**28.12.5** Any amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month and (ii) the highest rate of interest that may be charged under applicable law.

**28.13 Notices.** Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by express delivery service, (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (d) delivered by telecopy to the following addresses of the Parties:

To Brooks Fiber:

Brooks Fiber Properties, Inc.  
425 Woods Mill Road South  
Suite 300  
Town and Country, Missouri 63017  
Attn: President  
Facsimile: (314) 579-4660