

or services which shall be equivalent to or superior to the Element for which Sprint is unable to obtain such license or agreement.

- 8.3.3 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party for actual infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed to the extent that such claim or action arises from the actions of the respective Parties, or failure to act, as required pursuant to this Agreement.
- 8.3.4 SWBT makes no warranties, express or implied, concerning Sprint's (or any third party's) rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with Sprint's rights to interconnect with SWBT's network and to Unbundled Network Elements and/or combine SWBT's network elements (including combining with Sprint's Unbundled Network Elements) such interconnection or unbundling and/or combining of Elements (including combining with components of Sprint's network) in SWBT's network. Section 8 applies solely to this Agreement. Nothing in this Section will be deemed to supersede or replace any other agreements, if any, between the Parties with respect to Sprint's intellectual property or contract rights.

8.4 Obligation to Defend; Notice; Cooperation

Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property

Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also will be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

8.5 OSHA Statement

Sprint, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to Sprint's activities concerning Collocated Space, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result solely of Sprint's failure to comply with any of the foregoing. SWBT, in its status as an employer, will comply with all federal, state and local laws, safety and health standards and regulations with respect to all other portions of the Premises, and agrees to indemnify and hold Sprint harmless for any judgments, citations, fines or other penalties which are assessed against Sprint as a result solely of SWBT's failure to comply with any of the foregoing.

9.0 Payment of Rates and Charges

Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of the bill date or 20 days from receipt of bill, whichever is longer. Except as otherwise specifically provided in this Agreement interest on overdue invoices will apply at the six (6) month Commercial Paper Rate applicable on the first business day of each calendar year. Until such time as the Parties have implemented a mutually agreeable Bill Certification process, should either Party discover significant billing problems, the Parties shall promptly address such problems ("such billing dispute resolution process"). During such billing dispute

resolution process SWBT may not terminate service or assess late payment charges for lack of payment of such disputed amounts during such dispute resolution process. The Parties agree to work cooperatively to implement a mutually agreeable Bill Certification process no later than twelve (12) months from the date of this Agreement. Upon implementation of this Bill Certification process, this Agreement will require payment in full including disputed amounts.

10.0 **Dispute Resolution**

10.1 **Finality of Disputes**

Except as otherwise specifically provided in this Agreement, no claims will be brought for disputes arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

10.2 **Alternative to Litigation**

The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

10.3 **Informal Resolution of Disputes**

In the case of any dispute and at the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. Unless otherwise provided herein, or upon the Parties'

agreement, either Party may invoke formal dispute resolution procedures including arbitration or other procedures as appropriate, not earlier than sixty (60) days after the date of the letter initiating dispute resolution under this paragraph.

10.4 **Billing Disputes**

If the procedures (Informal Resolution of Disputes) in 10.3 are unsuccessful, the Parties agree that all unresolved billing disputes which involve amounts which represent one (1) percent or less of the amounts charged to Sprint by SWBT under this Agreement during the Contract Year in which the dispute arises will be submitted to binding arbitration pursuant to the provisions of Section 10.6 (Arbitration). During the first Contract Year the Parties will annualize the initial months up to one year.

- 10.4.1 The Parties agree that if they are unable to resolve billing disputes which involve amounts which represent more than one (1) percent of the amounts charged to Sprint by SWBT under this Agreement during the Contract Year in which the dispute arises, then either party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration pursuant to Section 10.6 (Arbitration). During the first Contract Year the Parties will annualize the initial months up to one year.
- 10.4.2 The Parties agree that all bills, including bills disputed in whole or in part, are to be paid when due, that interest applies to all overdue invoices as set forth in Section 9.0 (Payment of Rates and Charges) to this Agreement, and that no other late payment fee or charge applies to overdue invoices. The Parties further agree that if any billing dispute is resolved in favor of the disputing Party the disputing Party will receive, by crediting or otherwise, interest applied to the disputed amount as set forth in Section 9.0 (Payment of Rates and Charges).
- 10.4.3 To the extent that any other portions of this Agreement provide for a bill closure process between the parties, or if such a process is mutually agreed to by the Parties, the procedures involved in such processes will not be deemed to place a particular billing item in dispute for purposes of this Section.
- 10.4.4 Each Party agrees to notify the other Party of a billing dispute and may invoke the informal dispute resolution process described in Section 10.3. The parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear, or, if the charges have been subject to the bill closure process described in Section 10.4.3, above, within sixty (60) calendar days of the closure of the billing period covered by such bill closure process.

10.5 **Other Disputes**

10.5.1 **Dispute Resolution Procedure (DPR) 1** - Except as otherwise specifically set forth in the Agreement, the Parties agree that for all other disputes which arise under this Agreement, the dispute will be submitted to binding arbitration under Section 10.6 (Arbitration) of this Agreement if the matter which is in dispute represents one (1) percent or less of the amounts charged to Sprint by SWBT under this Agreement during the Contract Year in which the matter which is disputed arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute. During the first Contract Year the Parties will annualize the initial months up to one year.

10.5.2 **Dispute Resolution Procedure (DPR) 2** - Except as otherwise specifically set forth in the Agreement, for all other disputes involving matters which represent more than one (1) percent of the amounts charged to Sprint by SWBT under this Agreement during the Contract Year in which the dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute, or matters not specifically addressed elsewhere in this Agreement which require renegotiation or modification of this Agreement, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided that upon mutual agreement of the Parties, the dispute may be submitted to binding arbitration under Section 10.6 (Arbitration). During the first Contract Year the Parties will annualize the initial months up to one year.

10.5.3 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

10.6 **Arbitration**

Disputes subject to binding arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each separate arbitration will be held will alternate between Kansas City, Missouri, and St. Louis, Missouri. The arbitration hearing will be requested to commence within sixty (60) days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will

request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

11.0 Termination of Service to Sprint

- 11.1 Failure of Sprint to pay charges may be grounds for termination of this Agreement. If Sprint fails to pay when due, any and all charges billed to them under this Agreement, (Unpaid Charges) in accordance with Section 9.0 (Payment of Rates and Charges), and any portion of such charges remain unpaid more than fifteen (15) calendar days after the due date of such Unpaid Charges, SWBT will notify Sprint in writing, with return receipt requested, that in order to avoid having service disconnected, Sprint must remit all Unpaid Charges, whether disputed or undisputed, to SWBT within fifteen (15) calendar days after receipt of said notice. SWBT must provide Sprint an opportunity to cure and work cooperatively with Sprint to do so. Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 10 of this Agreement.
- 11.2 If any Sprint charges remain unpaid at the conclusion of the time period as set forth in Section 11.1 above (30 calendar days from the due date of such unpaid charges), SWBT will notify Sprint with return receipt requested, the appropriate commission(s) and the end user's IXC(s) of Record in writing, that unless all charges are paid within fifteen (15) calendar days, Sprint's service will be disconnected and Sprint's end users may be switched to SWBT local service. SWBT will also suspend order acceptance at this time.
- 11.3 If any Sprint charges remain unpaid or undisputed thirty (30) calendar days past the due date of the unpaid charges as described in Section 11.2 above, Sprint will, at its sole expense, notify its end users, the Commission and the end user's of Record that their service may be disconnected for Sprint failure to pay Unpaid Charges, and that its end users must select a new local service provider within fifteen (15) calendar days. The notice will also advise the end user that SWBT will assume the end user's account at the end of the fifteen (15) calendar day period should the end user fail to select a new local service provider.
- 11.4 If any Sprint charges remain unpaid or undisputed forty-five (45) calendar days past the due date, SWBT will disconnect Sprint and transfer all Sprint's end users

who have not selected another local service provider directly to SWBT's service. These end users will receive the same services provided through Sprint at the time of transfer. SWBT will inform the Commission and the end user's IXC(s) of Record of the names of all end users transferred through this process. Applicable service establishment charges for switching end users from Sprint to SWBT will be assessed to Sprint.

- 11.5 Within five (5) calendar days of the transfer (50 calendar days past Sprint's due date), SWBT will notify all affected end users that because of a Sprint's failure to pay, their service is now being provided by SWBT. SWBT will also notify the end user that they have thirty (30) calendar days to select a local service provider. If the end user does not select an LSP within 30 calendar days the customer will remain a SWBT local customer.
- 11.6 SWBT may discontinue service to Sprint upon failure to pay charges as provided in this Agreement, and will have no liability to Sprint in the event of such disconnection.
- 11.8 After disconnect procedures have begun, SWBT will not accept service orders from Sprint until all unpaid charges are paid. SWBT will have the right to require a deposit equal to one month's charges (based on the highest previous month of service from SWBT) prior to resuming service to Sprint after disconnect for nonpayment.
- 11.9 Beyond the specifically set out limitations in this section, nothing herein will be interpreted to obligate SWBT to continue to provide service to any such end users or to limit any and all disconnection rights SWBT may have with regard to such end users.
- 12.0 **Notices**
- 12.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent by mail and are deemed to have been given on the date received. Notice may also be effected by personal delivery or by overnight courier, and will be effective upon receipt. Notice may also be provided by facsimile, which will be effective on the next business day following the date of transmission; provided, however, notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:
- 12.2 If to Sprint:

Vice President - National Integrated Services
Sprint
7301 College Boulevard,
Overland Park, Kansas 66210
913/534-6302 (FAX); 913/534-6106 (voice contact)

and

General Attorney - National Integrated Services
Sprint
7301 College Boulevard
Overland Park, Kansas 66210
913/534-6303 (FAX); 913/534-6104 (voice contact)

and

Director - Local Market Development - SWBT
Sprint
7301 College Boulevard
Overland Park, Kansas 66210
913/534-6304 (FAX); 913/534-6165 (voice contact)

12.3 If to SWBT:

Vice President -General Manager
(Special Markets)
Southwestern Bell Telephone Company
Room 4110
One Bell Center
St. Louis, Missouri 63101
314/235-2609 (FAX) ; 314/235-7483 (voice contact)

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

13.0 **Taxes**

13.1 Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted by applicable law 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 until such time as the purchasing Party presents a valid certificate.

13.2 With respect to any purchase of services, facilities or other arrangements, if any Tax is required or permitted by applicable law to be collected from the purchasing Party by the providing Party, then (i) the providing Party shall bill the purchasing Party for such Tax, (ii) the purchasing Party shall remit such Tax to the providing

Party and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority.

- 13.3 With respect to any purchase hereunder of services, facilities or arrangements that are resold to a third party, if any Tax is imposed by applicable law on the end user in connection with any such purchase, then (i) the purchasing Party shall be required to impose and/or collect such Tax from the end user and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party on an after-tax basis for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 13.4 If the providing Party fails to collect any Tax as required herein, then, as between the providing Party and the purchasing Party, (i) the purchasing Party shall remain liable for such uncollected Tax and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the taxes, penalty and interest.
- 13.5 If the purchasing Party fails to impose and/or collect any Tax from end users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from end users, the purchasing Party agrees to indemnify and hold harmless the providing Party on an after-tax basis for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 13.6 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section, will be made in writing and will be delivered by certified mail, and sent to the addresses stated in this Section and to the following:

To SWBT: Executive Director - Tax
Southwestern Bell - Room 34/L/1
One Bell Center
St. Louis, Missouri 63101

To Sprint: Vice President - Finance NIS
Sprint
7301 College Boulevard
Overland Park, KS 66210

Either Party may from time-to-time designate another address or addressee by giving notice in accordance with the terms of this Section.

Any notice or other communication will be deemed to be given when received.

14.0 **Force Majeure**

Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will give prompt notice to the other Party, and upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

15.0 **Publicity**

15.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.

15.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

16.0 **Network Maintenance and Management**

- 16.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.
- 16.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they will work cooperatively to ensure that all such events will attempt to be conducted in such a manner as to avoid disruption or loss of service to other end users. Each party will maintain the capability of respectively implementing basic protective controls such as "Cancel To" or "Call Gap."
- 16.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers or to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

17.0 **Law Enforcement and Civil Process**

17.1 **Intercept Devices**

- 17.1.2 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a customer of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request, to the extent the receiving party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided.

17.2 **Subpoenas**

- 17.2.1 If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the

receiving party is able to do so; if response requires the assistance of the other party such assistance will be provided.

17.3 Law Enforcement Emergencies

17.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

18.0 Changes in Subscriber Carrier Selection

18.1 With respect to Resale services and Unbundled Network Elements provided to end users, each Party must obtain end user authorization prior to requesting a change in the end users' provider of local exchange service (including ordering end user specific Unbundled Network Elements) and must retain such authorizations for twelve (12) months. The authorization must conform with state rules regarding changes of local exchange service providers..

18.2 Only an end user can initiate a challenge to a change in its local exchange service provider. In connection with such challenges each Party will follow procedures which conform with federal rules regarding challenges to changes of presubscribed interexchange carriers until such time as there are federal or state rules applicable to challenges to changes of Local Exchange Service Providers. Thereafter, the procedures each Party will follow concerning challenges to changes of local exchange service providers will comply with such rule. The parties agree that upon request, they shall provide proof of end user authorization to facilitate investigation of slamming.

18.3 When an end user changes or withdraws authorization, each Party will release customer specific facilities in accordance with the end user's directions.

19.0 Amendments or Waivers

19.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or

condition. By entering into this Agreement, the Parties do not waive any right granted to them pursuant to the Act; however, the Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

20.0 **Authority**

20.1 Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

21.0 **Binding Effect**

21.1 This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

22.0 **Consent**

22.1 Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.

23.0 **Expenses**

23.1 Except as specifically set out in this Agreement, each party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

24.0 **Headings**

24.1 The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

25.0 **Relationship of Parties**

25.1 This Agreement will not establish, be interpreted as establishing, or be used by either party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party will have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement will be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the

Parties. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

26.0 **Conflict of Interest**

26.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

27.0 **Multiple Counterparts**

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

28.0 **Third Party Beneficiaries**

28.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and will not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

29.0 **Regulatory Approval**

29.1 Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval. During the term of this Agreement, each Party agrees to continue to cooperate with each other and any regulatory agency so that the benefits of this Agreement may be achieved.

30.0 **Trademarks and Trade Names**

30.1 Except as specifically set out in this Agreement, nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent written consent of the other Party.

31.0 **Regulatory Authority**

31.1 SWBT will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. Sprint will be responsible

for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to Sprint Customers contemplated by this Agreement. Sprint will reasonably cooperate with SWBT in obtaining and maintaining any required approvals for which SWBT is responsible, and SWBT will reasonably cooperate with Sprint in obtaining and maintaining any required approvals for which Sprint is responsible.

- 31.2 SWBT will provide 90 days advance notice to Sprint before the effective date of new products and services and changes to existing products and services that are available for resale. SWBT will provide a minimum of 45 days notice to Sprint before the effective date of pricing changes for services that are available for resale. Provided however, Sprint will not offer any new resold product or service before SWBT is permitted to offer such product or service. SWBT will incur no liability to Sprint if such new services or products are not ultimately offered by SWBT or approved by the commission.
- 31.3 In the event that SWBT is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, SWBT will provide Sprint notice of the same as set forth in Section 31.2 above.
- 31.4 If any tariff referred to in Section 31.3 becomes ineffective by operation of law, through deregulation or otherwise, the terms and conditions of such tariffs, as of the date on which the tariffs became ineffective, will be deemed incorporated if not inconsistent with this Agreement.

32.0 **Effect of Other Agreements**

- 32.1 If, at any time while this Agreement is in effect, SWBT provides arrangements similar to those described herein to a third party, pursuant to an approved interconnection agreement or tariff, on terms different from those available under this Agreement, then Sprint may opt to adopt any rates, terms, and conditions offered to the third party in place of specific rates, terms, and conditions otherwise applicable under this Agreement for its own arrangements with SWBT¹, if Sprint is similarly situated. Evidence of not being similarly situated would include cost based volume discounts, term discounts, significant differences in operational support interfaces, technical, sequential support feasibility, geographic deaveraging and location by state.

¹Provided, however, a blended rate cannot be used in place of an individual tandem or end office rate.

32.2 In addition, if SWBT entered in an agreement (the "Other Agreement") approved by the Commission pursuant to Section 251 and/or Section 252 of the Act, and/or is subject to Order of the Commission, which provides for the provision of an interconnection, service, or unbundled element to another authorized carrier, SWBT shall make available to Sprint such interconnection, service or unbundled element on an element-by-element or service-by-service basis, to the extent Sprint is similarly situated².

33.0 **Verification Reviews**

33.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of the other Party's billing and invoicing. The Parties may employ other persons or firms for this purpose. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.

33.2 Each Party will promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the other Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in Section 10.0 of this Agreement.

33.3 Each Party will cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the Party's bills.

33.4 Either Party may audit the other Party's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least two percent (2%) of the amounts payable by Sprint for Resale services, Unbundled Network Elements provided during the period covered by the audit.

33.5 Audits will be at the auditing Party's expense.

²For example, offerings such as White Pages, Operator Services and Directory Assistance are considered services.

- 33.6 Upon (i) the discovery by either Party of overcharges not previously reimbursed to the other Party or (ii) the resolution of disputed audits, the affected Party will promptly reimburse the other Party the amount of any overpayment times the commercial paper rate applicable on the last day of the month preceding the month of discovery or resolution as above. In no event, however, will interest be assessed on any previously assessed or accrued late payment charges.
- 33.7.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, each Party may inspect (the other Party's) books, records and other documents related to verification that to the Resale services and Unbundled Network Elements are being provided or utilized in compliance with the terms and conditions of this Agreement. This audit right is in addition to the financial audit rights provided above. The Parties may employ other persons or firms for this purpose, so long as said Parties are bound by this Agreement as are the principles the Parties will bear the reasonable expenses associated with this inspection. Subsequent audits will be scheduled when and if cause is shown.
- 33.8 Information obtained or received by Sprint in conducting the inspections described in this Section will be subject to the confidentiality provisions of Section 7.0 of this Agreement.
- 34.0 **Complete Terms**
- 34.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.
- 34.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.
- 35.0 **Cooperation on Preventing End User Fraud**
- 35.1 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 35.2 In cases of suspected fraudulent activity by an end user, at a minimum, the cooperation referenced in the above paragraph will include providing to the other Party, upon request, information concerning end users who terminate services to

that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the end user's permission to obtain such information.

36.0 Notice of Network Changes

SWBT agrees to provide Sprint reasonable notice consistent with applicable FCC rules of changes in the information necessary for the transmission and routing of services using SWBT's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit SWBT's ability to upgrade its network through the incorporation of new equipment, new software or otherwise so long as such upgrades are not inconsistent with SWBT's obligations to Sprint under the terms of this Agreement.

37.0 Good Faith Performance

37.1 In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

38.0 Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by

applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

39.0 Transmission of Traffic to Third Parties

Sprint will not send to SWBT local traffic that is destined for the network of a third party unless Sprint has the authority to exchange traffic with that third party.

40.0 Governmental Compliance

40.1 Sprint and SWBT each will comply at its own expense with all applicable law that related to i) its obligations under or activities in connection with this Agreement; of ii) its activities undertaken at, in connection with or relating to Work Locations. Sprint and SWBT each agree to indemnify, defend, (at the other party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from i) its failure or the failure of its contractors or agents to so comply or ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. SWBT, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for SWBT to provide the Unbundled Network Elements and Resale services pursuant to this Agreement.

41.0 Responsibility for Environmental Contamination

41.1 Sprint will in no event be liable to SWBT for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that Sprint did not introduce to the affected Work Location. SWBT will indemnify, defend (at Sprint's request) and hold harmless Sprint, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that SWBT, its contractors or agents introduce to the Work locations or (ii) the presence or Release of any Environmental Hazard for which SWBT is responsible under applicable law.

41.2 SWBT will in no event be liable to Sprint for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that SWBT did not introduce to the affected Work Location. Sprint will indemnify, defend (at SWBT's request) and hold harmless SWBT, each of its officers, directors and

employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from i) any Environmental Hazard that Sprint, its contractors or agents introduce to the Work Locations or ii) the presence or Release of any Environmental Hazard for which Sprint is responsible under applicable law.

42.0 **Subcontracting**

42.1 If any obligation is performed through a subcontractor, each party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either party performs through subcontractors, and each party will be solely responsible for payments due the party's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third party in connection with the provision of Resale services or Unbundled Network Elements hereunder will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor will be deemed a third party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to CPNI or Confidential Information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or Confidential Information to the same extent the subcontracting Party is required to protect the same under the terms of this Agreement.

43.0 **Referenced Documents**

43.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, Sprint Practice, SWBT Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Sprint Practice, SWBT Practice, or publication of industry standards.

44.0 **Severability**

44.1 If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement will be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each party will be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties will promptly negotiate a replacement provision or provisions. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 10.0.

45.0 **Survival of Obligations**

45.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

46.0 **Governing Law**

46.1 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State of Missouri other than as to conflicts of laws, except insofar as federal law or state regulatory law may control any aspect of this Agreement, in which case such law will govern. The Parties submit to personal jurisdiction in Missouri, and waive any and all objections to a Missouri venue.

47.0 **Performance Criteria**

47.1 Specific provisions governing failure to meet Performance Criteria are contained in Attachment 17: Failure to meet Performance Criteria.

48.0 **Other Obligations of Sprint**

48.1 For the purposes of establishing service and providing efficient and consolidated billing to Sprint, Sprint is required to provide SWBT its authorized and nationally recognized Operating Company Number (OCN).

49.0 Dialing Parity; Interim Number Portability

49.1 SWBT will ensure that all Sprint Customers experience the same dialing parity as similarly-situated customers of SWBT services, such that, for all call types: (i) a Sprint Customer is not required to dial any greater number of digits than a similarly-situated SWBT customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by a Sprint Customer is at least equal in quality to that experienced by a similarly-situated SWBT customer; and (iii) the Sprint Customer may retain its local telephone number. SWBT further agrees to provide Interim Number Portability in accordance with the requirements of the Act. Specific requirements concerning Interim Number Portability are set forth in Attachment 14: Interim Number Portability.

50.0 SWBT Interface With Sprint Customers

50.1 In those instances where SWBT personnel interface directly with Sprint Customers, either orally in person or by telephone, or in writing, such personnel will identify themselves as acting on behalf of the customer's "local service provider". All forms, business cards or other business materials furnished by SWBT to Sprint Customers will be subject to Sprint's prior review, and will bear no corporate name, logo, trademark or trade name. In no event will SWBT personnel acting on behalf of Sprint pursuant to this Agreement initiate the provision of information to Sprint customers about SWBT products or services.

51.0 Customer Inquiries

51.1 Each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

51.2 Each Party will ensure that all of their representatives who receive inquiries regarding the other Party's services: (i) provide the numbers described in this Section to callers who inquire about the other Party's services or products; and (ii) do not in any way disparage or discriminate against the other Party or its products or services.

52.0 Disclaimer of Warranties

52.1 TO THE EXTENT CONSISTENT WITH ITS OBLIGATIONS UNDER THE ACT, SWBT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED

OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED
HEREUNDER.

53.0 **Definitions and Acronyms**

53.1 For purposes of this Agreement, certain terms have been defined in Attachment 26 Definitions and elsewhere in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act. For convenience of reference only, Attachment 27 Acronyms provides a list of acronyms used throughout this Agreement.

54.0 **Resale**

54.1 At the request of Sprint, and pursuant to the requirements of the Act, any telecommunications service that SWBT currently provides or hereafter offers to any customer in the geographic area where SWBT is the incumbent LEC will be made available to Sprint by SWBT for Resale in accordance with the terms, conditions and prices set forth in this Agreement. Specific provisions concerning Resale are addressed in Attachment 1: Resale, and other applicable Attachments.

55.0 **Unbundled Network Elements**

55.1 At the request of Sprint and pursuant to the requirements of the Act, SWBT will offer in the geographic area where SWBT is the incumbent LEC Unbundled Network Elements to Sprint on an unbundled basis on rates, terms and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory. Specific Provisions concerning Unbundled Network Elements are addressed in Attachment 6: Unbundled Network Elements, and other applicable Attachments.

56.0 **Ordering and Provisioning and Ordering, Maintenance, Connectivity Billing and Recording, and Provision of Customer Usage Data**

56.1 In connection with its Resale of services to Sprint, SWBT agrees to provide to Sprint Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of Customer Usage Data services pursuant to the terms specified in Attachments 2, 3, 4 and 5, respectively.

56.2 In connection with its furnishing Unbundled Networks Elements to Sprint, SWBT agrees to provide to Sprint Ordering and Provisioning Services, Maintenance services, Billing - Other, Provision of Customer Usage Data, and Recording services, pursuant to the terms specified in Attachments 7, 8, 9, 10, and 24 respectively.

57.0 **Network Interconnection Architecture**

57.1 Where the Parties interconnect their networks, for purposes of exchanging traffic between their networks, the Parties agree to utilize the interconnection methods specified in Attachment 11: Network Interconnection Architecture. SWBT expressly recognizes that this provision and said Attachment are in no way intended to impair in any way Sprint's right to interconnect with Unbundled Network Elements furnished by SWBT at any technically feasible point within SWBT's network, as provided in the Act.

58.0 **Compensation for Delivery of Traffic**

58.1 The Parties agree to compensate each other for the transport and termination of traffic as provided in Attachment 12: Compensation for Delivery of Traffic.

59.0 **Ancillary Functions**

59.1 Ancillary Functions may include, but are not limited to, Collocation, Rights-of-Way, Conduit and Pole Attachments. SWBT agrees to provide Ancillary Functions to Sprint as set forth in Attachment 13: Ancillary Functions, except that Collocation, Rights-of-Way, and Conduit and Pole Attachments will be provided under non-discriminatory terms and conditions at the time of Sprint's request.

60.0 **Other Requirements and Attachments**

60.1 This Agreement incorporates a number of listed Attachments which, together with their associated Appendices, Exhibits, and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under the following broad headings: Resale; Unbundled Network Elements; Network Interconnection Architecture; Ancillary Functions; and Other Requirements. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability which any particular Attachment may otherwise have.