

CTCNet  
**Exhibit 3-B**

# Chicago, IL

**CTCNet Reply to Opposition**

**Exhibit 3-B**

**Nextel Sprint Lease Summary Detail: Case Studies**

<u>SPRINT MAJOR MARKET AREAS</u>	<u>Channels</u>	<u>Call Sign</u>	<u>Licensee Name</u>	<u>Sprint Licensed?</u>	<u>Sprint Leased?</u>	<u>Lease Expiration</u>	<u>Exclusive Negs.?</u>	<u>ROFR?</u>	<u>ROFR Length</u>
CHICAGO, IL	BTA RANK: 3	BTA NUMBER: 78							
Chicago, IL	MDS1	WOF49	Chicagoland Microwave Licensee, Inc.	No	Yes	Uncertain	Uncertain	Uncertain	Uncertain
Chicago, IL	MDS2	WHT562	Broadcast Data Corporation	No	Yes	Some time in 2012	No	No	N/A
Chicago, IL	A1,A2,A3,A4	KGZ66	Board of Education of Township High School	No	Yes	6/28/2012	No	Yes	Time period is redacted
Chicago, IL	B1,B2	WHM934	Triton College	No	Yes	Uncertain	Uncertain	Uncertain	
Chicago, IL	B3,B4	WHR498	Board of Trustees/Community College District 535	No	Yes	3/27/2018	Yes	Yes	Time period is redacted
Chicago, IL	C1,C2,C3,C4	WAC262	Catholic Bishop Of Chicago	No	Yes	6/14/2017	Yes	Yes	Time period is redacted
Chicago, IL	D1,D3	WLX630	Chicago Instructional Technology Foundation	No	Yes	10/18/2005	No	Yes	10 months
Chicago, IL	D2,D4	WNC263	Chicago Instructional Technology Foundation	No	Yes	10/18/2005	No	Yes	10 months
Chicago, IL	E1,E2,E3,E4	WBM648	Illinois Institute of Technology	No	Yes	11/8/2006	No	Yes	2 Yrs.
Chicago, IL	F1,F2,F3,F4	WHK999	Sprint Communications Company, L.P.	Yes	No				
Chicago, IL	G1,G2,G3,G4	WHG269	Illinois Institute of Technology	No	Yes	11/30/2008	No	Yes	2 Yrs.
Chicago, IL	H1	WMX255	Sprint Communications Company, L.P.	Yes	No				
Chicago, IL	H2	WNEL393	American Communication Services, Inc.	No	Yes	11/1/2015	No	No	N/A
Chicago, IL	H3	WNET334	Sprint Communications Company, L.P.	Yes	No				

**Chicago, IL**

**MDS 1**

**-**

**WOF49**

**SIDLEY & AUSTIN**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO  
DALLAS  
LOS ANGELES

1722 EYE STREET, N.W.  
WASHINGTON, D.C. 20006  
TELEPHONE 202 736 8000  
FACSIMILE 202 736 8711

FOUNDED 1866

NEW YORK  
LONDON  
SINGAPORE  
TOKYO  
WRITER'S E-MAIL ADDRESS  
rwadlow@sidley.com

(202) 736-8215

WRITER'S DIRECT NUMBER

April 2, 2001

**VIA COURIER TO MELLON BANK**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, S.W.  
Washington DC 20554

**RECEIPT**

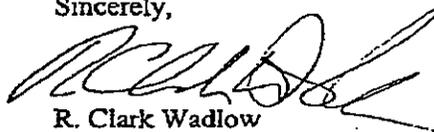
Re: WOF49, Chicago, Illinois  
ChicagoLand Microwave Licensee, Inc.  
Application for Renewal of License

Dear Ms. Salas:

Transmitted herewith on behalf of ChicagoLand Microwave Licensee, Inc, licensee of MDS license WOF49, Chicago, Illinois, are an original and one copy of an application for Renewal of Radio Station License on FCC Form 405. A signed FCC Form 159 and a check in the amount of \$210, the required filing fee, are also enclosed.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

  
R. Clark Wadlow

Enclosures

RECEIVED

FEB 03 2001

RECEIVED

FCC 405

Federal Communications Commission  
Washington, DC 20554

Approved by OMB  
3060-0093  
See instructions for  
burden statement.

JSE ONLY

APPLICATION FOR RENEWAL OF RADIO STATION LICENSE  
IN SPECIFIED SERVICES (47 CFR Parts 5, 21, 22, 23, 25 and 101)

READ INSTRUCTIONS AND NOTICE ON REVERSE BEFORE COMPLETING

1. Name of Applicant (must be identical with that shown on current authorization)

ChicagoLand Microwave Licensee, Inc.

Mailing Street Address, P. O. Box, City, State and ZIP Code of Applicant

2000 South York Road, Suite 114, Oak Brook, IL 60523

Internet Address

(Area Code) Telephone Number

(630) 368-4000

Call Sign or Other FCC Identifier

WOF49

Identify Rulepart under which this  
filing is made:

Part 21

2. FEE DATA (Refer to 47 CFR Section 1.1105 or to appropriate Fee Filing Guide for information)

(a) Fee Type Code

(b) Fee Multiple

(c) Fee Due for Fee Type Code in 2(a)

FOR FCC USE ONLY

CJM

1

\$210.00

3. Application is for renewal of license in exact conformity with the existing license as specified below:

(a) File Number

9905378

(b) Date Issued

01/03/00

(c) Call Sign

WOF49

(d) Location

Chicago, IL

(e) Nature of Service

MMDS

(f) Class of Station

FX

(g) Expiration Date

May 1, 2001

4. Note any changes which have been made since the last application covering this station was filed (i.e. discontinuance of use of a frequency, type of emission, transmitter, etc.)

None

5. Items 5(a) and (b) apply to Part 21 and Part 101 licensees only.

5.(a) Has there been removal of equipment or alteration of facilities so as to render the station not operational? If "YES", indicate when:

YES

NO

(b) if this is a Multipoint Distribution Service (MDS) station, is there an ownership interest in, control by, affiliation with, or leasing arrangement with a cable television company?

YES

NO

See Exhibit 1

6. Applicant represents that there has been no change in applicant's organization and no transfer of control or changes in the applicant's relation to the station or financial responsibility; that the applicant's most recent application or report embodying this information, as identified below, is to be considered as a part of this application, and the truth statements therein contained is hereby reaffirmed. Note here any further exceptions not already covered in questions 4 and 5.

File Number: FCC Form 430

Date: 04/02/01

7. CERTIFICATION

- Neither the applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance.
- The applicant hereby waives any claim to the use of any particular frequency or electromagnetic spectrum as against the regulatory power of the United States because of the previous use of same, whether by license or otherwise, and requests authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)
- The applicant acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in this application; undersigned certifies that all statements in this application are true, complete and correct to the best of his/her knowledge and belief and are made in good faith.
- Applicant certifies that construction of the station would NOT be an action which is likely to have a significant environmental effect. See the Commission's Rules, 47 CFR 1.1301-1.1319.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Name of Applicant (must correspond with Item 1)

ChicagoLand Microwave Licensee, Inc.

Title of Applicant

Assistant Secretary

SIGNATURE

DATE

3/29/01

Designate appropriate classification:

Individual

Member of Partnership

Officer & Member of Applicant's Association

Authorized Rep. of Corporation

Official of Government Entity

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE

Approved by OMB 3060-0589 Page No 1 of 1

(1) LOCKBOX #

358155

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Sidley & Austin

(3) TOTAL AMOUNT PAID (U.S. Dollars and

\$210.00

(4) STREET ADDRESS LINE NO. 1

c/o R. Clark Wadlow

RECEIPT

(5) STREET ADDRESS LINE NO. 2

1722 Eye Street, N.W.

(6) CITY

Washington

(7) STATE

(8) ZIP CODE

DC

20006

(9) DAYTIME TELEPHONE NUMBER (include area code)

202-736-8215

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

(12) PAYER (TIN)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

ChicagoLand Microwave Licensee, Inc.

(14) STREET ADDRESS LINE NO. 1

2000 South York Road, Suite 114

(15) STREET ADDRESS LINE NO. 2

(16) CITY

Oak Brook

(17) STATE

(18) ZIP CODE

IL

60523

(19) DAYTIME TELEPHONE NUMBER (include area code)

630-368-4000

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

(22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

WOF49

(24A) PAYMENT TYPE CODE

CJM

(25A) QUANTITY

1

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

\$210.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

Mark Hianik

I, Mark Hianik, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE

DATE 3/29/01

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION

MASTERCARD

VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE

DATE

**No Prohibited Cable Cross-Ownership Interest**

ChicagoLand Microwave Licensee, Inc., licensee of MDS station WOF49, Chicago, IL ("the Station"), does not have an ownership interest in a cable television company. ChicagoLand Microwave Licensee, Inc. leases the Station to Preferred Entertainment, Inc. ("Preferred"), a wholly-owned subsidiary of Sprint Corporation ("Sprint").

Preferred has represented to ChicagoLand Microwave Licensee, Inc. that it does not operate a cable television system. Certain wholly-owned subsidiaries of Sprint Corporation ("Sprint"), parent corporation of Preferred, operate hard wire cable systems to augment the distribution to subscribers of the programming of their wireless cable systems over MDS and TTFS channels.

American Telecasting of Cincinnati, Inc. ("ATC") is a wholly-owned subsidiary of Sprint. In June 1996, ATC acquired certain SMATV facilities in Cincinnati, Ohio. By letters dated October 17, 1996; April 18, 1997; and October 22, 1998, the Chief, Video Services Division determined that such facilities constitute cable systems but granted a "Blackstone" waiver which, *inter alia*, permitted the acquisition of and operation by ATC of the SMATV facilities. The latest request extended the waiver until March 23, 2000. An extension request was filed on March 20, 2000 and is currently pending.

In addition, the following wholly-owned subsidiaries of Sprint operate cable systems:

- (1) American Telecasting of North Dakota, Inc.;
- (2) American Telecasting of Minnesota, Inc.;
- (3) American Telecasting of Green Bay, Inc.; and
- (4) American Telecasting of Nebraska, Inc.

In each of these cases, the cable and wireless cable operations complied with the Commission's pertinent cross-ownership rules until the Commission's enlargement in 1995 of the MDS protected service area from 15 to 35 miles. Thus, petitions for special relief seeking permanent waiver of those rules were filed with the Commission on May 31, 1996 pursuant to the procedures outlined in the Commission's *Second Order on Reconsideration* in Gen. Docket Nos. 90-54 and 80-113, 10 FCC Rcd 7074 (1995). Those petitions remain pending before the Commission.

**Chicago, IL**

**MDS 2**

**-**

**WHT562**

AIRTIME LEASE AGREEMENT

THIS AIRTIME LEASE AGREEMENT (the "Agreement"), entered into this day of \_\_\_\_\_, 1992, between Chicago MDS Company ("Lessor"), a *Illinois* ~~Borden~~ *Borden* Partnership, having its principal place of business at 189 ~~Borden~~ *Borden* Suite 247, Wayne, New Jersey, and Specchio Developers Investment Corp. ("Lessee"), an Illinois Corporation having its principal place of business at 233 North Garrard, Rantoul, Illinois. *JEJ*

W I T N E S S E T H:

WHEREAS, Lessor has received a License (Call Sign: WHT 562) (the "Authorization") from the Federal Communications Commission ("FCC") to operate a facility (the "Facility") in the Multipoint Distribution Service (the "Service") operating on Channel MDS-2 (the "Channel"), to serve Chicago, Il., and the surrounding area (the "Market Area"); and

WHEREAS, Lessee desires to lease the capacity of the Channel from Lessor for use in a system providing "wireless cable service" in the Market Area over frequencies in several services licensed by the FCC, including the Service (the "Wireless Cable System"); and

WHEREAS, Lessor is willing to lease the Channel airtime to Lessee pursuant to the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and mutual representations, warranties, covenants and promises herein contained, the parties hereto agree as follows:

1) USE OF THE CHANNEL

(a) Airtime. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, on the terms and conditions set forth herein for the entire term of this Agreement, all of the channel capacity on the Channel, 24 hours per day, 7 days per week for a period commencing on January 1, 1992, (hereinafter the "Start Date").

(b) Scope of Use. The Airtime is provided to Lessee hereunder for the delivery of services of every kind and description including but not limited to the transmission of Lessee-provided subscription television programming in an omni-directional pattern from the Facility throughout the Market Area to reception points selected by Lessee. There shall be no restriction on the substance, format or type of information or signal to be transmitted thereover (unless required to comply with the provisions applicable by law including, without limitation, the Communications Act of 1934, as amended, and the Rules and Regulations of the FCC promulgated pursuant thereto). Lessor expressly disclaims any control over the content of Lessee subscription television transmissions over the Channel except to the extent such control may be required to comply with the

*JEJ*

provisions of applicable law.

(c) Obligation to Transmit. Nothing in this Agreement shall be construed to obligate or create a duty on the part of Lessee to actually transmit any minimum number of hours of programming.

2) TERM

(a) Initial Term. Subject to the provisions for earlier termination contained in Paragraph 10 hereof, the term of this Agreement shall commence upon the date hereof and shall continue in full force and effect for a period of five (5) years from the Start Date as defined in Paragraph 1(a) hereof. Said period is hereinafter referred to as the "Initial Term".

(b) Renewal Term. Subject to the provisions for earlier termination contained in Paragraph 11 hereof, this Agreement shall automatically and without further notice be renewed for up to two (2) successive additional terms (each such additional term is hereinafter referred to as a "Renewal Term") of five (5) years each, unless Lessee shall have served written notice on Lessor at least one hundred eighty (180) days prior to the expiration date of the Initial Term or any Renewal Term (hereinafter referred to as the "Expiration Date"), as the case may be, that it elects not to renew this Agreement for any Renewal Term. The terms under any Renewal Term shall be the same as provided for in the Initial Term.

3) FACILITIES

(a) Transmission Equipment. In consideration of the obligations of Lessee herein, Lessor shall, and does hereby, lease to Lessee Lessor's transmission equipment listed on Exhibit A attached hereto (the "Lessor Equipment") for the Initial Term and any Renewal Term of this Agreement. The Lessor Equipment shall include all ancillaries thereto that are presently installed as a part of the Facility such as combiner, wave guide, antenna, mounts, racks or other such equipment. LESSOR, NOT BEING THE MANUFACTURER OR SUPPLIER OF ANY OF THE EQUIPMENT NOR A DEALER IN SIMILAR EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, DURABILITY, FITNESS FOR USE, SUITABILITY OR MERCHANTABILITY OF THE EQUIPMENT IN ANY RESPECT, AND AS BETWEEN LESSOR AND LESSEE, ALL EQUIPMENT IS HEREBY ACCEPTED AND LEASED BY LESSEE "WHERE IS", "AS IS" AND "WITH ALL FAULTS", AND LESSOR SHALL NOT BE RESPONSIBLE FOR ANY PATENT OR LATENT DEFECTS THEREIN. LESSEE AGREES TO SETTLE SUCH CLAIMS DIRECTLY WITH THE SUPPLIERS AND WILL NOT ASSERT ANY SUCH CLAIMS AGAINST LESSOR. All of the equipment used in the operation of the Facility, including Lessor Equipment and non-Lessor Equipment is hereinafter referred to as "Transmission Equipment".

(b) Provision of Additional Equipment. Lessee, at its

own expense, may install an amplifier or scrambling or addressable equipment or any other addition, replacement or upgrade to the Transmission Equipment as may be required by the exigencies of its business, provided that (i) the use of such additional equipment does not violate any FCC Rules or Regulations; (ii) does not violate any site lease conditions or restrictions; (iii) FCC authorizations, if required, have been obtained; and (iv) if required by the FCC, installation of such additional equipment is made subject to Lessor's approval and under Lessor's supervision. Lessor shall use its best efforts to obtain any required FCC authorization at the expense of Lessee. Lessee shall own such additional equipment, shall be responsible for the operation, maintenance and repair of all additional equipment provided by Lessee and shall indemnify Lessor against and shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses, associated with any alterations or attachments to the Transmission Equipment pursuant to this Paragraph 4(b).

(c) Reception Equipment. Lessor has no responsibility hereunder to provide any reception antennas, down converters, decoders, descramblers, related power supplies or any associated equipment ("Reception Equipment") required to display signals transmitted over the Channel on a television set or other receiver. Lessee may, in its sole discretion and on terms and conditions of its choosing, install or cause to be installed such Reception Equipment, provided and selected by Lessee, as may be required, from time to time, in order for Lessee's subscribers to view the programs to be transmitted over the Channel. Title to all Reception Equipment provided by Lessee hereunder shall vest in Lessee or its designee. Lessee shall be required to install Reception Equipment only at particular locations selected by it, with the exception of a monitoring point at a location to be selected by Lessor. Reception Equipment shall be installed, maintained, operated and controlled by Lessor to the extent required by the FCC Rules and Regulations.

(d) Site Acquisition or Lease; Lease or Sublease. If an application to relocate the facility is filed at the FCC pursuant to paragraph 6(b) herein, Lessee shall obtain (and bear all costs of obtaining) the right to locate the Facility at the new location. Such right shall consist of the purchase or lease of the Facility and all towers and other appurtenances required to construct and maintain the Facility in accordance with the Authorization and applicable FCC Rules. If such site acquisition for the relocated Facility is by lease, then such lease shall be solely the obligation of Lessee, shall expressly allow the sublet of the leased space, shall expressly waive any and all landlord's liens upon the Transmission Equipment, shall extend for at least the full Initial Term, and shall require the landlord to provide Lessor with thirty (30) days prior notice of lease termination. Lessee shall sublease or lease (if Lessee owns the Facility) the space and facilities at the Facility to Lessor for no additional consideration by agreement in form and substance reasonably

acceptable to Lessor. Any such lease shall provide that Lessor may assume the part of the lease as to the Transmission Equipment in the event of a termination under Paragraph 10 below.

(e) Risk of Loss. It is hereby agreed that Lessee shall at all times relieve, indemnify, protect and save harmless, Lessor and its officers, shareholders and employees from any and all claims and liability for the death of, or injury to persons, or damage to property that may in whole or in part arise from, or be caused by the operation, maintenance, use or occupation of the aforesaid Facility by Lessee or agents of Lessee under the provisions of this Agreement. Lessee shall at all times maintain a standard "all risk" property insurance policy which shall name Lessor as additional named insured. Such policy shall insure the Facility against loss or damage by fire and against loss or damage by other risks now or hereafter included in the standard form of all-risk insurance policy, in an amount equal to the full replacement cost thereof. All proceeds from such insurance shall be used for the repair or replacement of such Transmission Equipment. In addition, Lessee shall maintain a Comprehensive General Liability policy including all those coverages normally provided by the "Extended Liability Endorsement". Such policy of General Liability Insurance shall name Lessor as additional named insured and shall specify a minimum insurance amount of One Million Dollars (\$1,000,000).

#### 4) OPERATION OF THE CHANNEL

(a) Operation of the Transmission Equipment. Lessee shall supply, at its sole cost and expense, personnel to operate and maintain the Transmission Equipment. Said personnel shall insure that the Transmission Equipment shall at all times meet the technical operating requirements set forth in the Rules and Regulations of the FCC. Such maintenance shall include the replacement, at Lessee sole expense, of any or all defective or broken parts of the Transmission Equipment. All operations and maintenance activities shall be undertaken at such times as are consistent with the operating requirements of Lessee business. Lessor and Lessee shall cooperate to ensure that each of them at all times is fully aware of any and all operational, maintenance and repair activities on the Transmission Equipment. All maintenance personnel shall be under the technical direction, supervision and control of Lessor but shall be contracted for and shall be supervised on a day-to-day basis by Lessee at Lessee sole expense. All repairs shall be completed as soon as reasonably possible following notification by Lessee to Lessor of the need therefore. Lessee shall have access to the Facility at all times for any of the foregoing activities subject to the terms of the site lease. Lessor shall have unencumbered access, at all times, to the Facility. In the event that Lessor determines that the operation of the Facility is not in accordance with the

Authorization or applicable FCC Rules, or Lessor is required by FCC Rules or order to cease the operation of the Facility, then immediately on notice to Lessee, Lessee shall turn off the Facility until the condition requiring the cessation of operations is removed. In such case, Lessee is entitled to applicable proration of fees.

(b) Program Origination and Delivery. Lessee, shall be solely responsible for the origination of all programming to be transmitted over the Channel and the delivery of such programming to the Facility. Lessee shall bear all costs and expenses of purchasing, installing, operating and maintaining those facilities. Any personnel required to install, operate and maintain any program origination and/or delivery facilities shall be provided by PCTV, at its sole cost and expense, and such personnel shall be under Lessee's exclusive control, unless such is provided by Lessor pursuant to Paragraph 4(e) hereof. Lessor will provide Lessee with unrestricted access to the Transmission Point subject to Lessor's supervision.

(c) Point-to-Point Microwave Channel. If so requested by Lessee, Lessor shall apply to the FCC for authority to operate a point-to-point microwave channel ("Point-to-Point Channel") for Lessee's use in delivering signals to the Facility and upon FCC grant of such Point-to-Point Channel, Lessor shall make such service available to Lessee. Lessor's obligation to provide Point-to-Point Channel hereunder is conditioned upon (a) the availability of frequencies, (b) the receipt of all necessary governmental approval, (c) space and power being available as required at both ends of the requested signal path, (d) the existence of a clear path for transmission of signals between the requested point of the Point-to-Point Channel and the Facility, (e) the provision of such Point-to-Point Channel not violating any law, ordinance, rule or other regulation of any body having jurisdiction, and (f) payment by Lessee of all direct engineering, equipment, construction, installation, operation, maintenance and other expenses associated with the provision of such Point-to-Point Channel, whether governmental approval is granted or not.

(d) Operating Expenses. Lessee shall be solely responsible for and shall indemnify and hold Lessor harmless from the operating expenses resulting from the provision of service over the Channel, including rent of leased space, taxes (excluding Lessor's corporate income taxes), engineering charges, replacement parts, insurance and utilities. Any operating costs incurred by Lessor shall be passed through each month on a dollar-for-dollar basis to Lessee, and shall be due and payable as provided in Paragraph 5 hereof.

(e) Cooperation of Lessor and Lessee. Lessor shall use, operate and maintain the Transmission Equipment and/or Point-to-Point Channel equipment, if any, in such a way as not to unreasonably interfere with Lessee or cause damage to Lessee's

facilities or equipment. Lessee shall use, operate and maintain the equipment (including any attachments to the Transmission Equipment installed by Lessee) in such a way as not to unreasonably interfere with Lessor.

(f) Channel Expansion. Lessee shall have the right to require Lessor to apply to the FCC for the authorization necessary to enable Lessee to employ any Channel expansion technology Lessee may wish to implement with respect to the Channel. Lessee shall pay all application fees as well as all legal and engineering expenses and fees incurred in obtaining and implementing any channel expansion technology.

5) CHARGES.

(a) Airtime Charges. Beginning on the Start Date and continuing thereafter during the Initial Term and Renewal Term, if any, Lessee shall pay a "Connection Fee" of \$.10 per subscriber, in accordance with Paragraph 5(c) hereof provided, however, that the minimum monthly Connection Fee shall be \$ 2,500.00. The per subscriber Connection Fee shall be adjusted on the fifth anniversary of the Start Date by multiplying the monthly rate by the fraction having as its denominator the National Consumer Price Index for the month immediately preceding the month including the Start Date and as its numerator that index for the month immediately preceding the month including the fifth anniversary of the Start Date. Such adjustment shall be made every year thereafter by multiplying the monthly rate in effect immediately prior to the adjustment date by the fraction having as a numerator such index for the month preceding the adjustment date and as the denominator such index for the month preceding the last adjustment date. In no event, however, shall the Connection Fee be adjusted downward. The minimum monthly Connection Fee shall be adjusted on each anniversary of the Start Date by multiplying the minimum monthly connection fee by the fraction having as its denominator the National Consumer Price Index for the month immediately preceding the month including the Start Date and as its numerator that index for the month immediately preceding the month including the anniversary of the Start Date. Such adjustment shall be made every year thereafter by multiplying the minimum monthly Connection Fee in effect immediately prior to the adjustment date by the fraction having as a numerator such index for the month preceding the adjustment date and as the denominator such index for the month preceding the last adjustment date. In no event, however, shall the minimum monthly Connection Fee be adjusted downward.

(b) Computation of Number of Subscriber. For the purposes of computing the Connection Fee due hereunder for any month, the term "Subscribers" shall be deemed to mean the total number of subscribers receiving Lessee programming on any one or more channel in the Wireless Cable System as of the last day of the prior month, plus the total number of Subscribers as of the end of

Subscribers"). Subscribers shall be calculated on the basis of a residential unit or commercial establishment that receives service under a contract with Lessee or under rights granted by Lessee and providing for cash or other consideration for such service. In calculating the number of Subscribers, each single family residence receiving service, each residential unit in a multi-unit dwelling receiving service on a discrete service basis and each commercial establishment receiving discrete service shall be counted as one Subscriber. In determining total effective basic ("EBS") subscribers in multi-unit dwellings, hotels/motels, hospitals or other commercial and/or residential facilities which receive Lessee programming on a bulk service basis, the total number of bulk service units in each facility shall be multiplied by the bulk rate per unit and that number shall be divided by the then current retail charge made by Lessee for equivalent service to residential, non-bulk service customers.

(c) Proration of Fees. In the event that this Agreement is terminated (other than for a default by Lessee) on a date other than the last day of a calendar month, then (i) the Connection Fee which would be due and payable to Lessor for such month shall be determined by multiplying (X) (the quotient obtained by dividing by the number two (2) the sum of the number of Subscribers served on the first day of such month and on the date of termination), by (Y) (the product obtained by multiplying \$.10 by the fraction having as its numerator the number of days elapsed in such month to and including the date of termination and as its denominator the number thirty (30)).

(d) Point to Point Service. Service provided on a Point-to-Point Channel, if any, shall be at the monthly rate of \$200.00 dollars from the date of installation and operation of the Point-to-Point Channel equipment ("Point-to-Point Start Date"), through the end of the Initial Term, or if this Agreement is subject to one or more Renewal Terms, then through the final Renewal Term. The monthly rate shall be adjusted on the second anniversary of the Point-to-Point Start Date by multiplying the monthly rate by the fraction having as its denominator the National Consumer Price Index for the month immediately preceding the month including the Point-to-Point Start Date and as its numerator that index for the month immediately preceding the month including the second anniversary of the Point-to-Point Start Date. Such adjustment shall be made annually thereafter by multiplying the monthly rate in effect immediately prior to the adjustment date by the fraction having as a numerator such index for the month preceding the adjustment date and as the denominator such index for the month preceding the last adjustment date. In no event, however, shall the monthly rate be adjusted downward.

(e) Payment Due Dates; Interest. All monthly payments of Connection Fees shall be due and payable on the tenth (10th) day of the second month following the month for which payment is due. All monthly payments for service provided on a Point-to-Point

Channel shall be due and payable on the tenth (10th) day of the month following the month for which payment is due. In the event that the whole or any part of any monthly payment is not paid by such date, then such delinquent whole or part shall bear interest from the day after such due date and until paid in full calculated daily in arrears at a monthly rate of one and one-half (1.5%) percent of the outstanding amount.

(f) Certificate and Right to Audit. Lessee shall provide to Lessor with each monthly payment, a certificate (the "Certificate") signed by Lessee's Chief Financial Officer, setting forth (i) the number of Subscribers for the subject month calculated in accordance with Paragraph 5(d). Lessor, or its agents, shall have the right, upon twenty (20) days written notice, to inspect or audit Lessee's records with respect to the accuracy of said Certificate. It is understood by Lessor that such information is to be held in confidence and not disclosed to any third parties without the prior consent of Lessee.

(g) Subscriber Contracts. Lessor shall not interfere with the right of Lessee or its designee to lawfully modify, waive, rescind, terminate, in whole or in part, or cancel any and all services or contracts with Subscribers. In case any such services or contracts are rescinded, terminated, or canceled, Lessor shall not be entitled to any participation in revenues or claims whatsoever with respect to the unperformed portion of any such contract, provided, however, that Lessor shall be entitled to payment as provided above up through the date of such rescission, termination or cancellation of a Subscriber contract.

6) AUTHORIZATIONS AND LICENSES, FURTHER EFFORTS.

(a) Maintenance of License and Modification of Channel. Throughout the Initial Term and any Renewal Term, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required or desired for Lessee use of the Channel and the Point-to-Point Channel, if used. Where requested to do so by Lessee, Lessor shall apply for, and use its best efforts to obtain, those reasonable modifications in its licenses, permits and authorizations which would help Lessee in its business, including those modifications described in Paragraph 6(b) and 6(c). Lessee shall be responsible for all costs, including legal, engineering, equipment, construction, installation, and other expenses, associated with any said modifications for use of the Channel initiated by Lessor at Lessee request.

(b) Relocation of Facility. Should Lessee notify Lessor in writing that Lessee wishes the Facility to be relocated to a site of its choice, and subject to the prior receipt of all authorizations required by FCC Regulations, Lessee shall apply for, and use its best efforts to obtain, the relocation of the Facility. All costs of such relocation shall be borne solely by Lessee, including but not limited to, legal, engineering,

construction, installation, filing fees, and other expenses.

(c) Power Increase. If Lessee so requests, Lessor will file an application with the FCC seeking authority to increase the output power of the Channel to a higher level requested by Lessee, provided that such higher level is in accordance with FCC Rules and Regulations. In the event that said authorization is obtained, Lessee shall install appropriate amplifiers in order to effect said power increase and such amplifiers shall thereupon become part of the Transmission Equipment and the Lessor Equipment. Lessee shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses associated with said application and power increase, regardless of whether the application is granted or not.

(d) Unauthorized Reception Over Channel. Lessor, if requested by Lessee and to the extent requested, shall use its best efforts to prevent any unauthorized individual or entity from receiving the signals transmitted over the Channel. Lessee shall be responsible for and shall reimburse Lessor for all costs, including legal, engineering, equipment, construction, installation and other expenses associated with any prevention efforts regarding unauthorized reception over the Channel initiated by Lessor on Lessee behalf and at Lessee request.

#### 7) LIMITATION OF LIABILITY

(a) Force Majeure. In no event shall either Lessor or Lessee have any liability for any failure to comply with this Agreement, if such failure results from the occurrence of any contingency beyond the reasonable control of the party, including, without limitation, strike or other labor disturbance, riot, any act of God, war, national emergency, interference by any government or governmental agency, embargo, seizure, or enactment of any law, statute, ordinance, rule or regulation.

(b) Indemnification. Each party hereto shall forever protect, save, defend and keep the other party harmless and indemnify said other party against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses (including reasonable attorney's fees incurred in defense of an indemnified claim) and liabilities of any kind or nature whatsoever arising directly or indirectly out of the acts, omissions, negligence or willful misconduct of the indemnifying party, its employees or agents in connection with the indemnifying party's performance of its obligations under this Agreement. Moreover, Lessee shall forever protect, save, defend and keep Lessor and its owners, officers, employees and agents harmless and indemnify them against (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses (including reasonable attorney's fees incurred in defense of an indemnified claim) and liabilities resulting from claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or claim that the content of

any program transmitted over the Channel violates any pornography, obscenity laws, or infringes privacy rights or any other claimed harm or unlawfulness arising from the transmission of any programming; and (ii) against claims for infringement of patents arising from Lessee use of the Transmission Equipment in connection with apparatus or systems of Lessee. Where such indemnification is sought by a party (the "Claiming Party") (a) it shall notify the other party (the "Indemnifying Party") promptly of any claim or litigation or threatened claim to which the indemnification relates, (b) upon the Indemnifying Party's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party shall afford the Indemnifying Party the opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party shall not effect any such compromise or settlement without prior written consent of the Indemnifying Party) and (c) the Claiming Party shall cooperate with the reasonable requests of the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation.

8) REPRESENTATIONS AND WARRANTIES OF LESSOR. Lessor represents and warrants to Lessee as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the state in which it was organized and has all requisite corporate power and authority to own, operate and lease its properties, to carry on its business as now being conducted, and to enter into this Agreement.

(b) The execution and delivery of this Agreement by it has been duly and validly authorized and approved by all necessary corporate action and this Agreement is valid and binding upon it in accordance with its terms, except as limited by insolvency laws and general principles of equity.

(c) The execution and carrying out of this Agreement and compliance with the provisions hereof by it will not violate any provision of law and will not, with or without the giving of notice and/or the passage of time, conflict with or result in any breach of any of the terms or conditions of, or constitute a default under, its Articles of Incorporation or By-Laws or any indenture, mortgage, agreement, or other instrument to which it is a party or by which it is bound.

(d) No consent, approval or authorization of, designation, declaration or filing with any person is required in connection with the execution, delivery, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby,

(e) The Authorization is a valid authorization granted to Lessor by the FCC and is in full force and effect.

9) REPRESENTATIONS AND WARRANTIES OF LESSEE. Lessee represents and warrants to Lessor as follows:

(a) It is a general partnership duly organized, validly existing and in good standing under the laws of Illinois and has all requisite power and authority to own, operate and lease its properties, to carry on its business as now being conducted, and to enter into this Agreement and perform its obligations hereunder.

(b) The execution and delivery of this Agreement by it has been duly and validly authorized and approved by all necessary action of the Partnership and this Agreement is valid and binding upon it in accordance with its terms, except as limited by insolvency laws and general principles of equity.

(c) The execution and carrying out of this Agreement and compliance with the provisions hereof by it will not violate any provision of law and will not, with or without the giving of notice and/or the passage of time, conflict with or result in any breach of any of the terms or conditions of, or constitute a default under, its Articles of Incorporation or By-Laws or any indenture, mortgage, agreement, or other instrument to which it is a party or by which it is bound.

(d) No consent, approval or authorization of, designation, declaration or filing with any person is required in connection with the execution, delivery, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

10) TERMINATION

(a) Termination of FCC Authorization. This Agreement shall be terminated without further liability to Lessor in the event that Lessor authority to operate the Channel in accordance with the terms of this Agreement is terminated by the FCC or other governmental authority. If termination shall occur pursuant to this Paragraph 11(a), such termination shall extinguish and cancel this Agreement and its effect absolutely without further liability on the part of either party to the other; except that Lessee shall remain obligated to pay all Connection Fees and other payments required by this Agreement through the date of such termination and such termination shall not affect or diminish the rights, claims or remedies available in equity or at law to Lessee, in the event that termination results from Lessor's failure to comply with Paragraph 6(a) of this Agreement.

(b) Termination by Reason of Default or Nonperformance. At the option of a nondefaulting party, this Agreement may be terminated upon a material breach or default by the other party of its duties and obligations hereunder if such breach or default shall continue for a period of twenty (20)

consecutive days after such party's receipt of notice thereof from the nondefaulting party; if, however said breach or default cannot be reasonably corrected within said twenty (20) days and Lessee initiates corrective action within twenty (20) days and completes the corrective action a reasonable period of time, no default shall occur. Failure to make any payment of the monthly Connection Fees if such failure continues for a period of twenty (20) days after corrective action within twenty (20) days and complete said notice thereof to Lessee, shall constitute a material breach of this Agreement by Lessee. A material breach of this Agreement also shall be deemed to exist upon (i) the filing of a petition in bankruptcy, either voluntary or involuntary, under any federal or state insolvency law, or any answer consenting to or acquiescing in any such petition when such petition is not vacated or set aside within sixty (60) days of its filing; or the making of an assignment for the benefit of creditors; or the inability to pay debts when they become due; or (ii) the liquidation of Lessee. In the event of a material default of this Agreement by Lessee, pursuant to the procedures above, Lessor may elect to cancel and terminate this Agreement, and Lessee shall remain obligated to pay all Transmission Fees, Connection Fees and other payments required by this Agreement through the date of such termination (including interest under Paragraph 5(e) on all over-due amounts which shall continue to accrue until paid. Such termination shall not affect or diminish the rights, claims or remedies available in equity or at law to the nondefaulting party arising by reason of such breach or default.

(c) Technical Interference. If, following the Start Date, technical interference should occur on the Channel which is beyond the control of Lessee or Lessor and if, following the best efforts of Lessor and Lessee to reduce or remove such interference, such interference shall render such Channel unusable for the business purposes provided in Paragraph 1(b) hereof, Lessee as its sole remedy may terminate this Agreement, provided, however, that Lessee shall first give written notice to Lessor of its intent to terminate said Agreement and provide therein complete information concerning the origin, nature and duration of such interference.

#### 11) MISCELLANEOUS

(a) Dealings with Third Parties. Neither party is, nor shall either party hold itself out to be, vested with any power or right to contractually bind, or act on behalf of the other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for in the name of the other party, or making any contractually binding representations as to the other party which shall be deemed representations contractually binding to such party. In particular, Lessee shall not be identified as the FCC licensee of the Channel and Lessor shall not be held out as the programmer of the Channel.

(b) Assignment of Rights and Obligations. Either party may assign this Agreement, or its rights and obligations hereunder to another person or entity, upon notice to the other party.

(c) Laws and Rules. Lessor obligations hereunder are conditioned on Lessee using the Airtime in accordance with all applicable laws, FCC Rules and Regulations, and compliance by Lessee with the terms of this Agreement. Lessee obligations hereunder are conditioned on Lessor operating the Channel in accordance with all applicable laws and FCC Rules and Regulations, and compliance by Lessor with the terms of this Agreement.

(d) Notice. Any notice or communication given pursuant to this Agreement by a party to the other party shall be effective only if in writing and delivered by hand, or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Lessor:

Chicago MDS Company  
189 Bernden Ave. Suite 247  
Wayne, N.J. 07470  
Attn: James E. Lindstrom

If to Lessee:

Specchio Developers Investment Corp.  
233 N. Garrard  
Rantoul, Illinois 61866  
Attn: Michael J. Specchio

(e) Arbitration. Any claim, dispute or other matter in question between any of the parties arising out of or in connection with this Agreement, and the rights and obligations of any party hereunder, may at the election of either party, be submitted to binding arbitration for decision at Washington, D.C. in accordance with the rules of the American Arbitration Association as they may then be in effect. A judgment upon any award in such arbitration may be entered in any Court of competent jurisdiction.

(f) Severability of Provisions. If any provision hereof is held invalid, the remainder of this Agreement shall not be affected thereby.

(g) Survival. All representations, warranties, covenants and agreements made by the parties hereto shall survive the execution and delivery hereof.

(h) Governing Law. This Agreement shall be governed by the laws of the State of Illinois applicable to contracts executed

and to be performed entirely within that State.

(i) Further Assurances. The parties shall perform such further acts and execute such additional documents as may reasonably be required to effectuate the arrangement contemplated by this Agreement.

(j) Benefit. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and, to the extent permissible hereunder, assigns. Nothing in this Agreement, expressed or implied, is intended to or shall (a) confer on any person other than the parties hereto or their respective heirs, legal representatives, successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, or (b) constitute the parties hereto partners or participants in a joint venture.

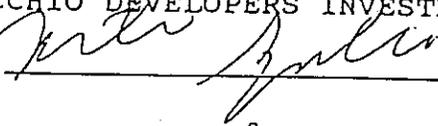
(k) Headings. The headings, captions, and arrangements of the provisions herein are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Agreement, not to affect the meaning thereof.

(l) Entire Agreement. This Agreement contains the entire agreement between and among the parties, and supersedes any prior understandings with respect to the subject matter hereof. This Agreement, or any portion thereof, shall not be changed, waived, released or discharged except by a writing signed by each party or authorized representative thereof.

(m) Counterparts. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

SPECCHIO DEVELOPERS INVESTMENT CORP.

BY: 

Name: Michael Specchio

Its: President

CHICAGO MDS COMPANY

BY: 

Name: James E. Lindstrom

Its: President, Managing Partner

OFSBDCHI.CGO



**Chicago, IL**  
**A Group**  
**-**  
**KGZ66**

KGZ66

Re: ITFS Station KGZ66; Chicago, IL; Facility ID No. 4189  
ITFS Station WND289; University Park, IL; Facility ID No. 81051  
FCC Registration No. 0002835155  
Board of Education of Township High School District #203

**RECEIVED**

SEP 10 2002

New Trier  
Chicago/University Park  
A Groups

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY



**AMENDED AND RESTATED  
ITFS EXCESS CAPACITY LEASE AGREEMENT**

between

**Board of Education of Township High School District #203**

and

**New Trier Technology Cooperative**

collectively, as Lessor,

and

**People's Choice TV Corp.**

and

**Preferred Entertainment, Inc.**

collectively, as Lessee

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AMENDED AND RESTATED

ITFS EXCESS CAPACITY LEASE AGREEMENT

THIS AMENDED AND RESTATED ITFS EXCESS CAPACITY LEASE AGREEMENT ("Amended Agreement") is made as of June 28, 2002 ("Effective Date") among Board of Education of Township High School District #203 ("District #203") and New Trier Technology Cooperative ("NTTC") (collectively, NTTC and District #203 are hereinafter referred to as "New Trier") as the lessor, and People's Choice TV Corporation, a Delaware corporation ("People's Choice"), and Preferred Entertainment, Inc., a Delaware corporation ("Preferred") (People's Choice and Preferred are wholly-owned subsidiaries of Sprint Corporation and are hereinafter referred collectively to as "Sprint"), as the lessee.

WHEREAS, New Trier is the licensee of Instructional Television Fixed Service ("ITFS") station call sign KGZ66 in Chicago, Illinois, which is authorized to transmit from a site located at 41 degrees 52 minutes 44 seconds latitude North, 87 degrees 38 minutes 10 seconds longitude West ("Chicago Transmit Site") utilizing the four 6 MHz channels at 2500-2506 MHz (A1), 2512-2518 MHz (A2), 2524-2530 MHz (A3) and 2536-2542 MHz (A4) (each, a "Chicago Channel" and collectively, the "Chicago Channels") pursuant to a license issued by the Federal Communications Commission ("FCC");

WHEREAS, New Trier is the licensee of ITFS station call sign WND289 in University Park, Illinois, which is authorized to transmit from a site located at 41 degrees 27 minutes 15 seconds latitude North, 87 degrees 43 minutes 22 seconds longitude West ("University Park Transmit Site") utilizing the four 6 MHz channels at 2500-2506 MHz (A1), 2512-2518 MHz (A2), 2524-2530 MHz (A3) and 2536-2542 MHz (A4) (each, a "University Park Channel" and collectively, the "University Park Channels") pursuant to a license issued by the FCC;

WHEREAS, the University Park Channels and the Chicago Channels are individually referred to herein as a "Channel" and collectively as the "Channels";

WHEREAS, the Chicago Transmit Site and the University Park Transmit Site are sometimes individually referred to herein as a "Transmit Site" and collectively as the "Transmit Sites";

WHEREAS, Sprint operates a wireless communications system in the Chicago, Illinois (the "Chicago Market") and University Park, Illinois (the "University Park Market") metropolitan areas (individually, each sometimes referred to as a "Market" and collectively as the "Markets") that utilizes multiple ITFS and Multipoint Distribution Service ("MDS") channels that are licensed by the FCC either to Sprint or to others who lease capacity to Sprint to provide telecommunications services (such wireless system, the "Sprint System");

WHEREAS, Sprint, as successor in interest to People's Choice TV Partners, and New Trier are parties to that certain ITFS Airtime Lease Agreement dated June 20, 1990 (the

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"Existing Agreement"), that certain first amendment to the Existing Agreement dated May 19, 1993, that certain Letter Agreement concerning the University Park A Group dated October 10, 1995, and that certain Letter Agreement concerning a proposed second amendment to the Existing Agreement dated September 3, 1996, pursuant to which Sprint leases from New Trier certain excess capacity on New Trier's ITFS facilities for commercial use;

WHEREAS, Sprint and New Trier have entered into a Letter Agreement dated March 1, 2002, concerning proposed terms for this Amended Agreement; and

WHEREAS, New Trier and Sprint desire to enter into this Amended Agreement to take advantage of the flexibility afforded under the FCC's rules and policies and to promote the efficient use of MDS and ITFS spectrum for the distribution of digital, two-way broadband video, voice, data and other possible services, and to provide for the ability of New Trier to transmit New Trier's educational and instructional programming from the Transmit Sites during and following the term of this Amended Agreement.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein, New Trier and Sprint agree as follows:

**SECTION 1. Effect on Existing Agreement.** As of the Effective Date, this Amended Agreement supersedes and replaces the Existing Agreement in its entirety, except that Sprint will be obligated to pay to New Trier all periodic leasing fees due under Section 6 of the Existing Agreement for Sprint's use of the Channels through the conclusion of the month in which the Effective Date occurs. Furthermore, as of the Effective Date, this Amended Agreement supersedes and replaces that certain first amendment to the Existing Agreement dated May 19, 1993, that certain Letter Agreement concerning the University Park A Group dated October 10, 1995, that certain Letter Agreement concerning a proposed second amendment to the Existing Agreement dated September 3, 1996, and that certain Letter Agreement dated March 1, 2002, concerning proposed terms for this Amended Agreement.

**SECTION 2. Term of Agreement.** Subject to the provisions for earlier termination contained in Sections 10, 11.A., 11.E. and 11.M. hereof, this Amended Agreement will extend for: (a) an initial term of five (5) years from the Effective Date (the "Initial Term"); and (b) two additional terms of five (5) years each (each a "Renewal Term" and collectively, the "Renewal Terms") unless Sprint notifies New Trier at least twelve (12) months before the end of the Initial Term or the first Renewal Term, as the case may be, that Sprint elects not to extend this Amended Agreement for the upcoming Renewal Term. The Initial Term and any Renewal Term that goes into effect will herein be referred to collectively as the "Term." If Sprint elects not to renew this Amended Agreement at the conclusion of the Initial Term or the first Renewal Term, Sprint shall pay to New Trier a one time early termination fee equal to

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**SECTION 3. System Licensing and Deployment.** New Trier acknowledges that, although the Channels are currently operating from the Transmit Sites utilizing analog modulation, Sprint is entering into this Amended Agreement in contemplation of the use of the Channels in the deployment of a complex two-way broadband wireless system utilizing MDS and ITFS spectrum licensed to multiple entities and that, in the design of this system, Sprint may employ, among other techniques, digitization, cellularization, sectorization, subchannelization and/or superchannelization of some or all of the MDS and ITFS spectrum in order to increase spectral efficiency and minimize intra-system and inter-system interference. In furtherance of their objectives, the parties agree, subject to the other terms and conditions of this Amended Agreement (including, without limitation, the reimbursement by Sprint of the reasonable expenses incurred by New Trier pursuant to Sections 3.A. through 3.E., both inclusive, and Sections 3.G. and 3.H.) as follows:

**A. Applications for New or Modified Facilities and Channel Swaps.**

i. Provided that the facilities proposed in such applications will not be predicted to cause the quality of New Trier's Services (as defined in Section 5.C.i.) at the ITFS Receive Sites (as such term is defined in Section 4.B.) to drop below the Minimum Acceptable Quality of Service (as such term is defined in Section 3.L.) and subject to the provisions of Sections 3.D. and 11.C.ii., New Trier will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications for new response station hubs, for new high-power boosters, for any modification to facilities utilizing the Channels (including changes in location, power, polarization, antenna system design or coverage, or modulation) or for the addition of the I channels associated with the Channels (in which case such I channels shall be considered Channels for purposes of this Amended Agreement) as Sprint requests from time to time during the Term.

ii. Provided that it will not be predicted to cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service, or when considered in their combined effect, will not substantially diminish the rights and/or privileges conferred by New Trier's licenses, and subject to the provisions of Sections 3.D. and 11.C.ii., New Trier will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications as Sprint may request to effectuate an exchange of one or more of the Channels for the same number of other ITFS or MDS channels (except MDS Channel 1, 2 or 2A) licensed in the same general geographic area as the Channels, and will thereafter consummate such exchange. Effective upon consummation of such exchange, any Channel(s) assigned by New Trier will no longer be considered as Channel(s) for purposes of this Amended Agreement, and any channel(s) assigned to New Trier will be considered as Channel(s) for purposes of this Amended Agreement. Notwithstanding anything to the contrary contained herein, swapping a Channel(s) for a channel(s) which is cellularized

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and/or sectorized, in and of itself, shall not be deemed to substantially diminish the rights and/or privileges conferred by New Trier's licenses.

iii. Sprint will provide New Trier with a draft, in substantially final form, including the engineering portion thereof, of any application to be completed, submitted and prosecuted pursuant to this Section 3.A. at least forty-five (45) days in advance of the filing date specified by Sprint. New Trier will have thirty (30) days to review such application. If, upon reviewing the application, New Trier believes that such application is inaccurate, unlawful or violates the standards set forth in Sections 3.A.i. or 3.A.ii. above (as applicable), New Trier will provide Sprint written notice stating with particularity any good faith objections, the reasons therefore and any possible suggestions to modify the application as to comply with the standards set forth in Sections 3.A.i. or 3.A.ii. above (as applicable). Sprint will, in absolute good faith, respond in writing to each of New Trier's concerns and/or objections and use commercially reasonable efforts in light of the parties' obligations hereunder to alleviate any concerns that New Trier may have with respect to the application. It is agreed that each party has an affirmative duty to amicably resolve any disputes arising pursuant to their respective obligations under this Section. If the parties are unable to reach amicable agreement within forty-five (45) days from the date on which Sprint provides New Trier with an application pursuant to this Section, New Trier will nonetheless file and prosecute the application with the FCC subject to resolution of the dispute as further set forth in Section 11.C.ii. below.

#### B. Coordination With Other Licensees.

i. Provided that the facilities contemplated by such document will not be predicted to cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service, or when considered in their combined effect, will not substantially diminish the rights and/or privileges conferred by New Trier's licenses, and subject to the provisions of Sections 3.D. and 11.C.ii., New Trier agrees, upon request of Sprint, to execute and promptly return to Sprint any market coordination agreement, interference consent or similar document consenting to facilities of another licensee that would not otherwise be permitted under the FCC's rules and policies (a "Coordination Document"). Notwithstanding anything to the contrary contained herein, the cellularization and/or sectorization of the Channels, in and of itself, shall not be deemed to substantially diminish the rights and/or privileges conferred by New Trier's licenses.

ii. Sprint will provide New Trier with a draft of any Coordination Document submitted pursuant to this Section and New Trier will have thirty (30) days to review such Coordination Document. If upon such review New Trier reasonably believes that such Coordination Document violates the standards set forth in Section 3.B.i. above, New Trier will provide Sprint written notice stating with particularity any reasonable good faith objections, the reasons

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therefore and any possible suggestions to modify the Coordination Document as to comply with the standards set forth in Section 3.B.i. Sprint will, in absolute good faith, respond in writing to each of New Trier's concerns and or objections stated therein and use commercially reasonable efforts in light of the parties' obligations hereunder to alleviate any concerns that New Trier may have with respect to such Coordination Document. It is agreed that each party has an affirmative duty to amicably resolve any disputes arising pursuant to their respective obligations under this Section. If the parties are unable to reach an amicable agreement within forty-five (45) days from the date on which Sprint provides New Trier with a Coordination Document pursuant to this Section, New Trier will nonetheless execute and deliver the Coordination Document to Sprint, subject to resolution of the dispute as further set forth in Section 11.C.ii. it being understood and agreed that any Coordination Document so executed and delivered shall be contingent upon the resolution of such dispute in favor of Sprint; provided further that, any party in whose favor such Coordination Document extends shall have agreed in writing to be bound by the determination of the dispute resolution process as set forth in Section 11.C. Sprint will, at its sole cost and expense, as against any such third party, enforce New Trier's rights with respect to facilities contemplated by a Coordination Document which is subject of a dispute resolution process as set forth in Section 11.C.

**C. Prosecution of Applications.** Sprint will prepare and provide New Trier with a draft in substantially final form of any documentation submitted to New Trier pursuant to this Section 3.C. and New Trier will have thirty (30) days to review such documentation. Thereafter, New Trier will promptly and diligently complete, file and prosecute all necessary application amendments, briefs, pleadings, petitions for reconsideration, applications for review, waiver requests, documents and supporting data, and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate to expedite the grant of the applications filed under this Amended Agreement without conditions materially adverse to New Trier and Sprint. If any person petitions the FCC to deny one or more of the FCC applications filed under this Amended Agreement or otherwise opposes one or more of such applications before the FCC, or if the FCC enters an order granting one or more of such applications and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then if requested to do so by Sprint, New Trier must oppose such petition before the FCC or defend such order of the FCC diligently and in absolute good faith, to the end that the objectives contemplated by this Amended Agreement may be achieved. If the FCC denies one or more of the applications submitted under this Amended Agreement or grants one or more of such applications with conditions materially adverse to New Trier and/or Sprint, then if requested to do so by Sprint, New Trier must seek reconsideration or review of such action diligently and in absolute good faith, to the end that the objectives contemplated by this Amended Agreement may be achieved.

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**D. Withdrawal of Application, Cancellation of Authorization or Delay in Construction.** New Trier acknowledges that due to the complexities inherent in designing two-way digital broadband systems consistent with the FCC's rules and policies and coordinating such designs among multiple MDS and ITFS licensees or for other reasons, Sprint may, in its sole discretion, elect not to construct or operate facilities authorized to New Trier by the FCC in granting an application submitted pursuant to Section 3.A.i. Upon request of Sprint, New Trier agrees that it will withdraw any pending application submitted pursuant to Section 3.A., return to the FCC for cancellation any authorization secured by grant of an application submitted pursuant to Section 3.A., or withdraw any filing submitted pursuant to Section 3.C. In addition, if requested to do so by Sprint, New Trier must complete, submit to the FCC on such date as requested by Sprint and prosecute an application for additional time to construct any facility authorized by grant of an application submitted pursuant to Section 3.A.i. or to consummate any channel swap authorized pursuant to an application submitted pursuant to Section 3.A.ii.

**E. Permissible Modifications, Low-Power Boosters, Etc.** Provided that the facilities will not be predicted to cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service and that the facilities will not cause New Trier to violate the terms of any Coordination Document, Sprint may install facilities (including low-power boosters) or make facility modifications that are permitted under the FCC's rules without prior FCC authorization. Sprint will provide New Trier with the engineering portion of any notice or notification to be completed, submitted to the FCC and prosecuted pursuant to this Section at least forty-five (45) days in advance of the installation or modification. Upon notice by Sprint of such installation or modification and subject to Section 11.C.ii., New Trier will complete, submit to the FCC on such date as requested by Sprint and prosecute such notices or notifications as are required under the FCC's rules.

**F. Reimbursement of Reasonable Expenses.** Sprint agrees to promptly reimburse New Trier's reasonable engineering and legal costs incurred as a consequence of New Trier's efforts to comply with its obligations under Sections 3.A. through 3.E., both inclusive, and Sections 3.G. and 3.H., provided that, if requested in writing by Sprint, New Trier has given Sprint a good faith written estimate of such costs prior to incurring them and, if Sprint objects within a reasonable time in writing to such estimate as excessive, New Trier has made a good faith effort to address Sprint's concerns.

**G. Amelioration of Adverse Effect.** If facilities operated as the result of either (i) the grant of any application submitted by New Trier pursuant to Section 3.A., (ii) the submission to the FCC of any Coordination Document executed by New Trier pursuant to Section 3.B., (iii) any notification submitted by New Trier pursuant to Section 3.E., (iv) any response station installation regardless whether notice of such installation has been given or not been given to New Trier pursuant to Section 3.H., or (v) any other change in the facilities or operation of the Sprint System within the

control of Sprint actually causes the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service, Sprint will, at its own expense, promptly take all steps, including but not limited to, upgrading such ITFS Receive Site(s), to restore the Minimum Acceptable Quality of Service. Sprint shall respond in a timely manner to resolve any and all system maintenance or operational issues affecting the transmission and/or receipt of New Trier's Services, so as to restore New Trier's ability to provide New Trier's Services at the Minimum Acceptable Quality of Service to the affected ITFS Receive Site. Sprint's response and resolution of such issues shall be at Sprint's sole cost and expense, except where the problem arises from negligent or wrongful actions by New Trier. New Trier will fully cooperate with Sprint's efforts pursuant to this Section 3.G.

**H. Notification Zones.** New Trier agrees that neither Sprint nor any FCC licensee providing MDS or ITFS capacity to New Trier will be required either to provide advance notice to New Trier prior to any response station installation, or to professionally install any response station. If the quality of New Trier's Services at the ITFS Receive Sites drops below the Minimum Acceptable Quality of Service due to block downconverter overload or any other technical problem arising from the proximity, frequency, power, directionality and/or any other transmission characteristic of any response station operated in connection with the Sprint System, Sprint will be obligated to ameliorate such adverse effect as specified in Section 3.G. New Trier shall fully cooperate with Sprint's efforts to cure such interference.

**I. Transmission Equipment.**

**i. Provision of Transmission Equipment.** Throughout the Term, Sprint will provide New Trier, at no cost, with the use of such transmitters, combiners, waveguide or coaxial cable, transmission or response station hub antennas and associated combiners, jumpers and connectors (some or all of which may be shared with other licensees) as is required to construct the transmission facilities currently authorized by the FCC for the Channels or subsequently authorized pursuant to Section 3.A. (unless such authorization is returned to the FCC by New Trier for cancellation pursuant to Section 3.D.) or for which a notification is submitted pursuant to Section 3.E. (collectively, the "Provided Transmission Equipment"). A list of the Provided Transmission Equipment is included on Exhibit A hereto. If Sprint elects to digitally compress the Program Tracks (as such term is defined in Section 5.A.) pursuant to Section 5.A., prior to commencing digital transmissions, Sprint will provide New Trier at no cost with shared use of the appropriate number of digital controllers and with use of the appropriate number of digital encoders, which Sprint may, at its sole discretion, install either at New Trier's program origination facility or at the Transmit Sites (in which case Sprint will provide space for such encoder at no cost). Such controller and encoder shall become Provided Transmission Equipment. Subject to the provisions of Section 3.K.iii., Sprint will retain title to the Provided Transmission Equipment and will be responsible for the payment of all ad

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valorem taxes and other charges assessed against the Provided Transmission Equipment during the Term. Sprint, at its own cost and expense, may make such alterations of or attachments to the Provided Transmission Equipment as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments may not cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service or violate any FCC rule.

ii. **STL Equipment.** No later than ninety (90) days following the Effective Date, Sprint will petition the FCC for authority and consent to the assignment of Sprint's FCC authorization, call sign WMP211 (the "STL License"), utilized as of the Effective Date to transmit New Trier's Services from New Trier's existing studio production facilities to the Chicago Transmit Site. Within thirty (30) days of the FCC's consent to such assignment, Sprint shall consummate assignment of the STL License and transfer title to all existing transmission and reception equipment used in connection therewith to New Trier (such equipment, the "STL Equipment") free and clear of all liens, security interests and/or encumbrances created by, through or in respect of Sprint or any Sprint Affiliate (as such term is defined in Section 5.D.) or in respect of Sprint's ownership of such equipment. Except as otherwise expressly set forth herein, the STL Equipment will be transferred to New Trier AS IS, WHERE IS, and without any warranties, express or implied. Notwithstanding the preceding sentence, Sprint will provide such equipment in good operating condition and properly installed. Furthermore, after the transfer of title to the STL Equipment, ~~Sprint will continue to be responsible for the repair and maintenance of the of the STL Equipment provided that New Trier will be responsible for all ad valorem taxes and other charges assessed against the STL Equipment after such date of transfer.~~ A list of the STL Equipment is included on Exhibit A.

iii. **Operation and Maintenance.** Sprint will, at its sole expense (but subject to New Trier's right to supervise the maintenance and operation of the equipment operating under its FCC authorizations), maintain and operate the Provided Transmission Equipment during the Term in good working order in compliance with the FCC's rules and sound engineering practices. New Trier will promptly provide written notice to Sprint if any of the Provided Transmission Equipment is not maintained in compliance with the foregoing sentence. The Provided Transmission Equipment may be replaced or repaired, at Sprint's sole discretion, from time to time for maintenance purposes, to complete construction of subsequently authorized facilities, or for other purposes and Exhibit A will be deemed automatically amended accordingly without any action by either party. Sprint will have no liability to New Trier for any losses or damages New Trier may suffer due to any malfunction of the Provided Transmission Equipment, the STL Equipment or any other equipment utilized by Sprint to deliver New Trier's Services to the ITFS Receive Sites from the Transmit Sites, unless such losses or damages result directly from any willful act or gross negligence of Sprint or any

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of its employees or agents. However, regardless of the cause of any malfunction, Sprint will use best efforts to restore service at the earliest possible time.

**J. Site Availability.** During the Term, Sprint will be responsible, at its sole cost and expense, for securing the rooftop, transmission tower, and equipment room space necessary for the installation of the transmission facilities authorized to New Trier for the Channels pursuant to this Amended Agreement. In addition, during the Term Sprint will provide space at the Transmit Sites for the installation of the reception portion of the STL Equipment and, should Sprint elect pursuant to Section 3.I.i. to digitally compress the Program Tracks during the Term, Sprint will provide space at each Transmit Site for the installation of digital encoders.

**K. Post-Agreement Considerations.**

i. **License at Transmit Sites.** Upon expiration of the Term or the termination of this Amended Agreement pursuant to Sections 10, 11.A., 11.E. or 11.M. Sprint will immediately cease use of the Channels. Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10.A., 11.A., 11.E. or 11.M. unless New Trier holds an FCC authorization for one 6 MHz channel at each Transmit Site that can serve the ITFS Receive Sites located in the Serviceable Area attributable to each such Transmit Site, Sprint will arrange at no cost to New Trier such channel swaps as are necessary for New Trier to thereafter hold an FCC authorization for one 6 MHz channel at each Transmit Site capable of transmitting a signal which will provide for reception of New Trier's Services at the Minimum Acceptable Quality of Service at the ITFS Receive Sites located within the Serviceable Area (as such term is defined in Section 4.A.) attributable to such Transmit Site. Pending the consummation of any such channel swap, Sprint will at no cost provide New Trier (through channel loading and/or channel shifting, at Sprint's sole discretion) sufficient capacity to deliver New Trier's Services to the ITFS Receive Sites from the Transmit Sites.

ii. **Continued Operation At Transmit Site.** Upon expiration or termination of this Amended Agreement (other than termination by Sprint pursuant to Section 10.A.), for so long as Sprint, in its sole discretion, utilizes space at the Transmit Sites for other MDS or ITFS facilities leased or owned by it, Sprint will permit New Trier shared access to any MDS/ITFS-combiner, waveguide or transmission antenna at the Transmit Sites owned by Sprint, and space for one ITFS transmitter, the reception portion of the STL Equipment and, should Sprint have elected pursuant to Section 3.I.i. to install digital encoders at the Transmit Sites, such digital encoders, provided: (a) New Trier reimburses Sprint for its pro rata share (calculated based on the ratio of 6 MHz to the total amount of spectrum licensed to the other MDS and ITFS facilities sharing such equipment) of the "use" value of the shared equipment and of the ongoing costs of owning or leasing such space (including lease fees, utility expenses, taxes, costs of maintenance and repair of the shared equipment or space, any tower or building on which the equipment is mounted or in which the equipment is stored, and the

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systems for lighting, heating, ventilating, and cooling the space); (b) that such use by New Trier does not have a material adverse effect by virtue of interruption, interference or similar causes upon Sprint or its business or any other MDS or ITFS licensee sharing the equipment or space; and (c) any lease pursuant to which Sprint is operating at such Transmit Site permits Sprint to allow New Trier occupancy, which permission Sprint will use commercially reasonable efforts (both during the Term and, if necessary, after its conclusion) to secure. Notwithstanding anything to the contrary contained in this Section 3.K.ii., so long as New Trier has not leased any of the capacity of the Channels to a third party, for a one time payment of [REDACTED] Sprint will provide New Trier with access and unrestricted use of all equipment and facilities required to transmit New Trier's Services as provided during the Term, without interruption, or degradation in quality of service, for a period of twelve (12) months (the "Access Period") following expiration or termination of this Amended Agreement. If during the Access Period New Trier leases or otherwise permits a third party to use any of the capacity of the Channels for commercial purposes, then the Access Period shall automatically terminate at the earlier of a date 90 days following commencement of such use or the natural conclusion of the Access Period; provided that in such event New Trier will pay Sprint the fair market value for use of such facilities for the period of time extending from the commencement of commercial operations on any of the Channels until the termination of the Access Period.

iii. Option to Purchase Equipment.

(a) Upon expiration of the Term or the termination of this Amended Agreement pursuant to Sections 10, 11.A., 11.E., or 11.M., New Trier will have the option to purchase the transmitters being utilized at the Transmit Sites to transmit New Trier's Services and any encoders utilized in connection with the digital compression of New Trier's programming (if any), or, at Sprint's sole discretion, immediately available comparable equipment. Such option may be exercised by giving written notice to Sprint within sixty (60) days following the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10. The parties will use commercially reasonable efforts to consummate the transaction as soon as practicable or, if a channel swap pursuant to Section 3.K.i. is required, upon the consummation of such channel swap. The purchase price for such encoders (if any) and transmitters set forth in this Section 3.K.iii.(a) will be [REDACTED].

(b) Upon expiration of the Term or the termination of this Amended Agreement pursuant to Sections 10, 11.A., 11.E., or 11.M., New Trier will have the option to purchase the ITFS combiner, waveguide or transmission antenna being utilized at the Transmit Sites to transmit New Trier's Services or, at Sprint's sole discretion, immediately available

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comparable equipment. Such option may be exercised by giving written notice to Sprint within sixty (60) days following the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10. The parties will use commercially reasonable efforts to consummate the transaction as soon as practicable or, if a channel swap pursuant to Section 3.K.i. is required, upon the consummation of such channel swap. If this Amended Agreement expires, is terminated by Sprint pursuant to Section 10.A., or is terminated pursuant to Section 10.B., the purchase price for the equipment made available pursuant to this Section will be [REDACTED]. If this Amended Agreement is terminated by New Trier pursuant to Section 10.A., the purchase price for any or all of such equipment or comparable equipment will be [REDACTED].

(c) Upon expiration of the Term or the termination of this Amended Agreement pursuant to Sections 10, 11.A., 11.E., or 11.M., New Trier will have the option to purchase any Provided Transmission Equipment not otherwise subject to a New Trier purchase option pursuant to Sections 3.K.iii.(a) and 3.K.iii.(b) as such exists at the time, or, at Sprint's sole discretion, immediately available equipment comparable to such equipment. Such option may be exercised by giving written notice to Sprint within sixty (60) days following the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10 and the parties will use commercially reasonable efforts to consummate the transaction as soon thereafter as practicable. The purchase price for such equipment set forth in this Section 3.K.iii.(c) will be [REDACTED].

(d) Any equipment transferred pursuant to this Section 3.K. shall be transferred free and clear of all liens, security interests and/or encumbrances created by, through or in respect of Sprint or any Sprint Affiliate or in respect of Sprint's ownership of such equipment.

iv. End of Term Licensing. During the Term and upon its expiration, the Channels shall constitute 24 MHz of spectrum in each Market, subject to any FCC rule change with respect to the number, bandwidth, or location of the Channels on the spectral band or any Final Order (as such term is defined in Section 11.R.) which alters the number, bandwidth, or location of the Channels on the spectral band, provided that such Final Order is not issued as a consequence of any application filed pursuant to Sections 3.A. (other than for addition of I channels), 3.B. or 3.C. Upon expiration of the Term or termination of this Agreement pursuant to Sections 10.A., 11.A., 11.E., or 11.M., New Trier shall continue to be the exclusive licensee of, and shall have unfettered use of, the Channels as required pursuant to FCC rules as the same exist as of the Effective Date. Upon the request of New Trier, Sprint will, upon expiration of the Term or termination of this Agreement pursuant to Sections 10 A., 11.A., 11.E., or 11.M.,

use commercially reasonable efforts to facilitate channels swaps which will result in New Trier being the exclusive licensee following expiration of the Term for the same ITFS channels in each Market, including the same downstream ITFS channel at each Transmit Site. Sprint shall be responsible for all costs incurred in connection with the obligations set forth in the preceding sentence. Furthermore, Sprint agrees that it shall not, nor cause any ITFS or MDS licensee under lease with Sprint or a Sprint Affiliate (or to the extent that Sprint or a Sprint Affiliate may contractually prevent any MDS or ITFS licensee from taking or refraining to take actions, will use commercially reasonable efforts so as to not permit the licensee), to unreasonably impede or oppose any application or interference consent sought by New Trier in its efforts to relicense the Channels upon expiration of the Term, provided, however, that Sprint's obligation pursuant to this sentence shall not require Sprint to consent to any facilities, applications or other changes to the Channels which would have a material adverse effect upon Sprint's use or planned use of the channels in the Sprint System or any adjacent Market. Any reasonable out-of-pocket expenses which Sprint incurs in connection with complying with the preceding sentence shall be promptly reimbursed by New Trier.

**L. Determination of Minimum Acceptable Quality of Service.** As used throughout this Amended Agreement, the determination of whether any facility or modification contemplated herein will be predicted to have, or actually causes the picture or audio quality of New Trier's video programming at an ITFS Receive Site to drop below the "Minimum Acceptable Quality of Service" shall be based upon a comparison of the quality of service provided to Sprint's standard commercial customers and the picture or audio quality received at such ITFS Receive Site. Furthermore, for purposes of this Amended Agreement, new or modified facilities will conclusively be deemed to not cause the picture or audio quality of New Trier's video programming at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service if such facilities are predicted to result in desired signal-to-undesired signal ratios equal to or superior to that which exist at the time the modification is proposed. The parties recognize that this Section contemplates that picture and audio quality may be maintained in spite of desired signal-to-undesired signal ratios being below the conclusive standard set forth in the immediately preceding sentence.

**M. Legal Compliance.** Nothing in this Section 3 will require New Trier to violate any law or regulation, including, but not limited to, any rule or policy of the FCC or any court. If the parties disagree as to whether any action required under this Section 3 by New Trier would result in any such violation, the parties will resolve their dispute promptly in accordance with the process set forth in Section 11.C.iv. below.

#### **SECTION 4. ITFS Receive Sites.**

**A. Current ITFS Receive Sites.** Attached to this Amended Agreement as Exhibit B is a list of locations designated as the "Chicago Receive Sites" which, as of the Effective Date, have operable and active reception equipment which

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enable such sites to receive service from the Chicago Transmit Site (the "Chicago Current ITFS Receive Sites"), and that are within (i) New Trier's FCC-defined protected service area for the Chicago Channels, (ii) a circle centered at the Chicago Transmit Site and having a 35-mile radius, and, (iii) North of 41 degrees, 27 minutes, 15 seconds latitude North (the "Chicago Serviceable Area"). Attached to this Amended Agreement as Exhibit B is a list of locations designated as the "University Park Receive Sites" which, as of the Effective Date, have operable and active reception equipment which enables such sites to receive service from the University Park Transmit Site (the "University Park Current ITFS Receive Sites"), and that are within (i) New Trier's FCC-defined protected service area for the University Park Channels (ii) a circle centered at the University Park Transmit Site and having a 35-mile radius and, (iv) South of 41 degrees, 27 minutes, 15 seconds latitude North (the "University Park Serviceable Area"). The Chicago Serviceable Area and University Park Serviceable Area are sometimes individually referred to herein as a "Serviceable Area" and collectively as the "Serviceable Areas". The University Park Current ITFS Receive Sites and Chicago Current ITFS Receive Sites are collectively referred to herein as the "Current ITFS Receive Sites". If during the Term New Trier ceases to utilize New Trier's Services from either Transmit Site at a Current ITFS Receive Site, such location shall no longer be considered as a Current ITFS Receive Site and New Trier will so notify Sprint. New Trier shall then be permitted to specify a replacement Current ITFS Receive Site for the purposes of this Amended Agreement, provided, however that New Trier shall be responsible for any costs associated with the installation of such replacement Current ITFS Receive Site. Title to any equipment owned by Sprint being utilized as of the Effective Date by New Trier to receive transmissions over the Channels located at a Current ITFS Receive Site shall be transferred by Sprint to New Trier within thirty (30) days of the Effective Date and hereinafter referred to as the "Current ITFS Receive Site Equipment". Such transferred equipment shall be free and clear of any liens, encumbrances and/or other security interests granted by Sprint or resulting from Sprint's ownership of such equipment. Sprint will, at its sole cost and expense, repair, maintain and replace, as needed, the Current ITFS Receive Site Equipment from the reception antenna up to the Demark Point (as hereinafter defined), provided, however, that Sprint's obligations to maintain the Current ITFS Receive Site Equipment will be subject to New Trier arranging access for Sprint to the Current ITFS Receive Sites.

**B. Additional ITFS Receive Sites.** At any time during the Term, New Trier may designate to serve as additional ITFS receive sites locations that are within the Serviceable Area attributable to a Transmit Site, that will utilize New Trier's Services, that will not suffer interference from previously licensed or proposed facilities to an extent that makes such additional sites incapable of obtaining a usable signal from the Transmit Site attributable to the Service Area in which such proposed site is located, and that can receive transmissions from such Transmit Site either with a Standard ITFS Installation (as defined below) or with enhanced installations provided by and at the expense of New Trier (as specified below) (the "Additional ITFS Receive Sites"). Sprint will make a Standard ITFS Installation at the first [REDACTED] Additional ITFS Receive Sites at no cost to New Trier and shall thereafter make a Standard ITFS Installation at any

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further Additional ITFS Receive Sites subject to reimbursement by New Trier for Sprint's actual costs without markup or profit. New Trier must obtain and coordinate any required approvals or permits prior to the making of a Standard ITFS Installation at any Additional ITFS Receive Site. Sprint will install the equipment comprising a Standard ITFS Installation within ninety (90) days after the date New Trier certifies to Sprint and provides such other evidence as Sprint reasonably requests that New Trier has obtained all required approvals or permits for the making of the Standard ITFS Installation at the Additional ITFS Receive Site. Each "Standard ITFS Installation" shall consist of the installation of one antenna commonly installed for video services within the Sprint System (however, in no event an antenna with a gain of more than 36 db, a largest dimension greater than one meter and on a mast greater than thirty (30) feet in height), a downconverter, up to one hundred fifty (150) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls, one decoder (if necessary), and such other miscellaneous equipment as is required to connect such equipment to a single television set or to the central signal input for an internal distribution system (the "Additional ITFS Receive Site Equipment"), such point of connection being herein referred to as the "Demark Point". Upon installation, the Additional ITFS Receive Site Equipment will become the property of New Trier. New Trier may also, in its discretion and at its own expense, but with the reasonable cooperation of Sprint, provide enhanced installations (including but not limited to taller receive site towers or masts, antennas with greater gain and/or beambenders) as it deems appropriate to supplement the Standard ITFS Installation at any Additional ITFS Receive Site so as to enable such site to receive a usable signal; provided, however, that any Additional ITFS Receive Site which receives New Trier's Services from the either Transmit Site by virtue of such enhanced installations, shall not be considered an ITFS Receive Site for purposes of Sections 3.A., 3.B., 3.E. or 3.H. Sprint will perform all repairs, maintenance and replacement of the Additional ITFS Receive Site Equipment up to the Demark Point provided, however, that Sprint's obligations to maintain the Additional ITFS Receive Site Equipment will be subject to New Trier arranging access for Sprint to the Additional ITFS Receive Sites. For those Additional ITFS Receive Sites installed at Sprint's expense, such repair, maintenance and replacement work will be at the expense of Sprint. For those Additional ITFS Receive Sites installed at New Trier's expense, the actual cost of any such repair, maintenance and replacement work performed by or at the direction of Sprint, without markup or profit, will be reimbursed by New Trier to Sprint within forty-five (45) days after New Trier's receipt of an invoice therefore. If New Trier, during the Term, permanently ceases to utilize New Trier's Services from either Transmit Site at an Additional ITFS Receive Site, such location will no longer be considered as an Additional ITFS Receive Site and New Trier will so notify Sprint. At any given time, the Current ITFS Receive Sites and the Additional ITFS Receive Sites then in existence will collectively be referred to as the "ITFS Receive Sites" and the Current ITFS Receive Site Equipment and the Additional ITFS Receive Site Equipment then installed at the ITFS Receive Sites (including any equipment installed pursuant to Section 4.C.) will be referred to as the "ITFS Receive Site Equipment." Notwithstanding the foregoing, New Trier acknowledges that locations within a Serviceable Area may overlap with the FCC-defined protected service area of a

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co-channel or adjacent channel licensee. In such event, New Trier agrees that for purposes of Sections 3.A., 3.B., 3.E., and 3.H., ITFS Receive Sites will not include any receive site that is located in the half of the overlap area that is farthest away from a Transmit Site, the halves of the overlap area being created by bisecting the overlap area with a line beginning and ending at the two points where the circles intersect. In addition, New Trier acknowledges that ITFS transmissions require an unobstructed transmission path between a Transmit Site and any ITFS Receive Site and that events beyond the control of Sprint, such as the construction of new buildings or the growth of trees, may block the path between a Transmit Site and an ITFS Receive Site. If such a blockage occurs such that an ITFS Receive Site can no longer receive a usable signal from the applicable Transmit Site, unless such blockage can be overcome by minor relocations or enhanced installations as specified above, such ITFS Receive Site shall no longer be considered an ITFS Receive Site for purposes of this Amended Agreement; provided, however, that Sprint will use commercially reasonable efforts to ensure that such ITFS Receive Site continues to receive a usable signal.

**C. Upgrading of ITFS Receive Sites.**

i. If Sprint exercises its right pursuant to Section 5.A. to digitally compress the Program Tracks specified for New Trier under this Amended Agreement, prior to commencing digital transmissions Sprint will install at no cost to New Trier one digital converter/decoder at each of the ITFS Receive Sites. Thereafter, Sprint will install additional digital converter/decoders at future ITFS Receive Sites as are necessary, subject to reimbursement by New Trier of Sprint's actual costs without markup or profit. Prior to commencing digital transmissions, Sprint will also upgrade, at no cost to New Trier, the reception antenna, downconverter, and the internal wiring system leading to a single television or the central signal input for an internal distribution system at any ITFS Receive Site to the extent necessary to avoid the quality of New Trier's Services at such ITFS Receive Site dropping below the Minimum Acceptable Quality of Service by virtue of the digital compression. Subject to Section 4.C.iii., any equipment provided by Sprint at no cost to New Trier pursuant to this Section 4.C.i. (the "Provided New Receive Site Equipment") shall remain the property of Sprint during the Term and Sprint shall maintain such equipment from the reception antenna up to the Demark Point at its sole cost and expense. Any equipment provided by Sprint subject to reimbursement by New Trier pursuant to this Section 4.C.i. shall be the property of New Trier, provided, however, that Sprint shall repair, maintain and replace such equipment from the reception antenna up to the Demark Point, subject to reimbursement by New Trier for Sprint's actual cost for labor and materials within forty-five (45) days after New Trier's receipt of an invoice therefore.

ii. Subject to appropriate legal, regulatory, health and safety concerns and limitations, New Trier will cooperate with Sprint in the making of technical modifications (including the installation of a new or modified decoder

or the replacement of the antenna, downconverter or transceiver with a superior model) to any ITFS Receive Site should any such modification be required in order to avoid having facilities that are either proposed in an application submitted pursuant to Section 3.A., contemplated by a Coordination Document submitted pursuant to Section 3.B., installed pursuant to Section 3.E., or installed by any other entity leasing capacity to Sprint that would cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service at such ITFS Receive Site. Sprint will complete such ITFS Receive Site modifications at its sole cost and expense prior to the operation of such facilities.

iii. Upon expiration of the Term or the termination of this Amended Agreement pursuant to Sections 10, 11.A., 11.E., or 11.M., New Trier will have the option to purchase the Provided New Receive Site Equipment for [REDACTED]. Such option may be exercised by giving written notice to Sprint within sixty (60) days following the expiration of the Term or the termination of this Amended Agreement. Title to such equipment shall be free and clear of any liens, encumbrances and/or other security interests granted by Sprint or resulting from Sprint's ownership of such equipment. Notwithstanding anything to the contrary contained herein, if this Amended Agreement is terminated by Sprint pursuant to Section 10.A. as a result of a default by New Trier, the purchase price for the Provided New Receive Site Equipment will be [REDACTED].

**D. Alternative Distribution.** Sprint may utilize alternative distribution mechanisms to satisfy its obligation to deliver New Trier's Services to the ITFS Receive Sites from the Transmit Sites, provided that such use of alternative transport mechanisms (i) does not cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service and (ii) does not prevent New Trier's satisfaction of the ITFS minimum transmission requirements for the Channels under FCC rules or otherwise violate FCC rules. Notwithstanding anything to the contrary contained in this Amended Agreement, if as a result of a modification made pursuant to Section 3 hereof, Sprint has elected to provide alternative distribution pursuant to this Section, such locations served by alternative distribution will be deemed ITFS Receive Sites for purposes of Section 3.K.i.

**E. Complementary Internet Access Sites.** Sprint will make a Standard Internet Access Installation (as such term is defined below), at no cost to New Trier, and thereafter during the Term provide entry level two-way high-speed Internet access service at a data rate and at a quality level of no less than that provided to Sprint's commercial customers at [REDACTED] locations designated by New Trier (the "Internet Access Receive Sites") which, subject to Section 4.B., are within the Serviceable Areas and that can receive and transmit the two-way high speed Internet access service in accordance with the FCC's rules and regulations with a Standard Internet Access Installation (as defined below). New Trier acknowledges that Sprint is under no

obligation to utilize the Sprint System for the provision of a two-way high-speed Internet access service and that New Trier has no rights under this Section 4.E. unless Sprint chooses, in its sole discretion, at any given time to continue to provide such a service. New Trier must obtain and coordinate any required approvals or permits prior to the making of a Standard Internet Access Installation at any Internet Access Receive Site. Sprint will install the equipment comprising a Standard Internet Access Installation within ninety (90) days after the date New Trier certifies to Sprint and provides such other evidence as Sprint reasonably requests that New Trier has obtained all required approvals or permits for the making of the Standard Internet Access Installation at the Internet Access Receive Site. To the extent such equipment is necessary to receive service, each "Standard Internet Access Installation" will consist of the installation of one antenna commonly installed within the Sprint System (however, in no event an antenna with a gain of more than 36 db, a largest dimension greater than one meter and on a mast greater than thirty (30) feet in height), a transceiver, a cable modem, up to one hundred fifty (150) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls, and/or such other miscellaneous equipment as is required (the "Internet Access Receive Site Equipment"). Upon installation, the Internet Access Receive Site Equipment will become the property of New Trier, provided, however Sprint shall be solely responsible for all repairs, maintenance and replacement of the Internet Access Receive Site Equipment from the reception/transmission antenna up to the Demark Point.

#### SECTION 5. Allocation and Use of Airtime.

A. **New Trier's Capacity.** During such time as New Trier's Services are transmitted using analog technology, New Trier shall reserve for its use: (i) one (1) full-time six (6) MHz channel on which to transmit New Trier's Services in the format of an NTSC formatted television signal (comprising a primary video and audio signal along with subcarriers, secondary audio channels, vertical blanking intervals and other signal components normally utilized in the transmission of NTSC formatted television signals) (a "Program Track") from each Transmit Site and (ii) one six (6) MHz channel on which to transmit a Program Track to the ITFS Receive Sites during each day that New Trier's classes are in session (Monday through Friday between the hours of 7:00 a.m. and 4:00 p.m.) from each Transmit Site. Such capacity reserved or provided by Sprint to New Trier pursuant to this Amended Agreement shall herein be referred to as "New Trier's Capacity". New Trier acknowledges that transmitting New Trier's educational and instructional video programming as set forth herein utilizing analog technology will fully utilize all of New Trier's minimum use and recapture time under the FCC's rules applicable to analog ITFS facilities, provided, however, that to the extent such transmissions do not satisfy FCC rules, New Trier may recapture such additional capacity to meet such minimum requirements. New Trier recognizes that the shifting of its video programming onto another channel within the Sprint System and/or the digital compression of that programming would improve the spectral efficiency of the system. Therefore New Trier agrees that, subject to compliance by Sprint with Section 4.C.i., throughout the Term Sprint may, at its sole discretion, digitally compress New Trier's

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Services and/or channel shift or channel load the transmission of New Trier's Services onto any MDS or ITFS channels, provided such digital compression and/or shifting or loading will not cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service and furthermore Sprint provides New Trier with thirty (30) days advance notice of any shifting, loading or digital compression. Upon digital compression of New Trier's Services at a Transmit Site as permitted pursuant to this Section, New Trier's Capacity applicable to the Market serviced by such Transmit Site shall equal the greater of the capacity sufficient to transmit the equivalent of one (1) full-time NTSC-formatted television signal (or such other prevailing national standard utilized for the transmission of ITFS/MDS video programming) and one (1) part time NTSC-formatted television signal (or such other prevailing national standard utilized for the transmission of ITFS/MDS video programming) during each day that New Trier's classes are in session (Monday through Friday between the hours of 7:00 a.m. and 4:00 p.m.) from such Transmit Site (each a "Digital Program Track") or five percent (5%) of the capacity of the Channels. From time to time, New Trier may request use of additional capacity for special programming. Provided that use of such additional capacity will not interfere with Sprint's operations or require Sprint to incur more than de minimis expense, New Trier may use such additional capacity, provided however, that if such increase in New Trier's Capacity is for a duration longer than two (2) months, the Monthly Fees set forth in Section 6 shall be reduced for the entire duration of such use in proportion to the decrease in the Leased Excess Capacity (as defined below). Should such additional use prohibit Sprint from using such capacity even though New Trier does not transmit full time, for purposes of this Section the Leased Excess Capacity shall be deemed to be reduced by the amount of capacity that Sprint is unable to use.

**B. Leased Excess Capacity.** Except for New Trier's Capacity, the remaining capacity of the Channels will be reserved for the exclusive use of Sprint (the "Leased Excess Capacity").

**C. Use of New Trier's Capacity.**

i. New Trier's Capacity will be used for the transmission of video and other material which, at a minimum, satisfies the FCC's minimum educational usage requirements for ITFS licensees engaged in the leasing of excess capacity. The transmissions made by New Trier to the ITFS Receive Sites will be referred to as "New Trier's Services" for purposes of this Amended Agreement.

ii. In addition to the Digital Program Tracks provided pursuant to Section 5.A. New Trier may, at its sole discretion, transmit one or more additional Digital Program Tracks (the "Additional Program Tracks") from each Transmit Site, provided that: (a) it reduces the compression ratio utilized to digitally compress such Digital Program Tracks such that the Additional Program Track and the Digital Program Tracks combined do not utilize more than five percent (5%) of the capacity of the Channels; (b) it bears all costs and expenses

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associated with the delivery of the Additional Program Tracks to the applicable Transmit Site and transmission of the Additional Program Tracks, reimbursing Sprint for all additional costs Sprint incurs; (c) New Trier coordinates with any other MDS or ITFS licensee transmitting from such Transmit Site to assure that the transmission of Additional Program Tracks will not adversely impact their use of the Sprint System, recognizing that technical limitations currently exist which require certain uniformity among all video programming that is transmitted in digitally compressed format over a single channel; (d) New Trier provides Sprint no less than twelve (12) months advance notice of its desire to transmit Additional Program Tracks; and (e) Sprint reasonably determines that New Trier's proposal will not have a material adverse effect upon Sprint or its business, such determination not to be unreasonably conditioned, delayed or withheld.

iii. Subject to the prior written consent of New Trier, Sprint will have the right to integrate New Trier's Services into the overall communications service offered to Sprint's subscribers. Nothing contained herein shall be construed as to prohibit New Trier from charging Sprint for the fair value for the use of New Trier's Services by Sprint as set forth in this Section 5.C.iii. or refusing to provide consent on the ground that such integration of services would violate any law or copyright restrictions.

D. Use of Leased Excess Capacity. Sprint may, without the prior consent of New Trier, sublease any portion of the Leased Excess Capacity, provided that the sublessee agrees in writing to be bound by the restrictions of this Section 5.D. Sprint may, without the prior consent of New Trier, permit any entity that is owned by Sprint, owns Sprint or is owned in common with Sprint (a "Sprint Affiliate") to utilize any portion of the Leased Excess Capacity, provided that the Sprint Affiliate agrees in writing to be bound by the restrictions of this Section 5.D. Nothing in this Amended Agreement shall be construed to create a duty on the part of Sprint to actually transmit any minimum number of hours of programming, except as required by FCC rules and regulations to, among other things, preserve New Trier's authorizations for the Channels, or to obligate Sprint to obtain or furnish substitute or alternative programming in cases where programming is deemed prohibited by this Section 5.D. Except as provided herein, the Leased Excess Capacity may be used by Sprint for any now or hereafter legal purpose (including, but not limited to, the transmission of one-way or two-way voice, video and/or data services in fixed, portable or mobile format), without any restriction on the substance, format or type of information or signal to be transmitted. To the extent that Sprint elects to use Leased Excess Capacity to transmit a video programming service, it will only select for transmission over the Channels video programming of a sort which would not materially damage the reputation of New Trier in the community, provided, however that in no event will bona fide news programming be deemed to materially damage New Trier's reputation in the community. Furthermore, Sprint will not transmit "Adult Content" video programming over the Channels. "Adult Content" shall include any motion picture which is rated "R", "X" or "NC-17" by the Motion Picture Association of America or which does not carry an MPAA rating and would reasonably

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be considered "adult" in nature. New Trier acknowledges that Sprint may not exercise control over the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems and that Sprint will not be restricted by this Section in providing Internet, data, video streaming or voice services or otherwise be liable to New Trier for the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems transmitted over the Channels; provided that Sprint will comply with all applicable laws. Neither party shall make any representation to any third party that it has control over, or relationship to, the programming transmitted by the other party.

**SECTION 6. Fees.**

A. **Incentive Payments.** Sprint will pay to New Trier as "Incentive Payments" the aggregate amount of [REDACTED] payable as follows: (i) [REDACTED] within thirty (30) days of the Effective Date, (ii) [REDACTED] upon the earlier of the filing of applications requested by Sprint for two-way use of the Channels or twelve (12) months from the Effective Date, and (iii) [REDACTED] upon the earlier of the grant of the first application requested by Sprint for two-way use of the Channels or twelve (12) months from the Effective Date. Furthermore, provided that New Trier shall have executed and delivered this Amended Agreement to Sprint no later than July 3, 2002, Sprint shall pay New Trier an additional [REDACTED] within thirty (30) days of the Effective Date.

B. **Monthly Fee.** Commencing on the first full calendar month following the Effective Date, Sprint will pay to New Trier a "Monthly Fee" equal to [REDACTED] per month. Upon each anniversary date of the first day of the first full calendar month following the Effective Date, the then current Monthly Fee shall be increased by an amount equal to the greater of [REDACTED]

C. **Payments.** The Monthly Fee for a given month must be sent to New Trier at such address as New Trier designates from time to time by first-class, United States Postal Service mail, no later than thirty (30) days after the last day of the month in question. Incentive Payments must be sent to New Trier at such address by first-class, United States Postal Service mail when due.

D. **Proration.** If the Term ends on a date other than the last day of a calendar month, then the Monthly Fee for that partial month will be paid on a proportionate basis.

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E. Reimbursements. Where one party is required pursuant to this Amended Agreement to reimburse the other party for costs incurred, such payment will be sent to such address as the party to receive such reimbursement designates from time to time by first-class, United States Postal Service mail, no later than forty-five (45) days following receipt of an invoice and such supporting documentation as the party paying the reimbursement reasonably requests.

## SECTION 7. Additional Covenants.

### A. Maintenance of FCC Authorizations.

i. Preservation of Authorizations. During the Term, New Trier will preserve the authorizations to use the Channels and permit Sprint to use capacity thereon pursuant to the terms and conditions of this Amended Agreement. New Trier will maintain in force the licenses with respect to the use of the Channels pursuant to this Amended Agreement. New Trier acknowledges that Sprint is leasing excess capacity on the specific frequencies assigned to the Channels and that Sprint would suffer a material adverse effect were it denied the ability to utilize those frequencies as provided for herein. Except as set forth in Section 7.A.ii., New Trier will (i) take all necessary steps to renew the licenses for the Channels prior to their expiration; and (ii) avoid any act or activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the licenses for one or more of the Channels. Each of the parties hereto must take all reasonable steps to comply with the Communications Act of 1934, as amended, and the rules and policies of the FCC, and must timely file all reports, schedules and/or forms required by the FCC to be filed by it. Upon the request of New Trier, Sprint shall prepare for New Trier's review and subsequent filing any regulatory materials necessary to comply with the FCC's rules and policies. New Trier will not be deemed to be in default under this Section 7.A. if New Trier's failure to preserve or maintain any license, permit or authorization is due in part to Sprint's advice or other conduct or to Sprint's neglect.

ii. Cancellation or Non-Renewal. During the Term of this Amended Agreement, New Trier may return any authorization for the Channels to the FCC for cancellation or elect not to renew any such authorization, provided that it gives one hundred eighty (180) days prior written notice to Sprint of its intent to do so. Upon written request of Sprint, New Trier will assign at no cost such authorizations to such eligible entity as Sprint designates during such one hundred eighty (180) day period that is willing to assume all remaining obligations and benefits of such authorizations, subject to FCC consent. New Trier will promptly and diligently prepare and file, and expeditiously prosecute any necessary assignment application and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate in any effort to expedite the authorization of such assignment. Until such time as the FCC issues a Final Order disposing of the assignment application, New Trier will

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not take any action that would jeopardize Sprint's rights under this Amended Agreement. If any person petitions the FCC to deny the assignment application or otherwise opposes the assignment application before the FCC, or if the FCC enters an order granting the assignment application and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then New Trier will oppose such petition before the FCC or defend such order of the FCC diligently and in absolute good faith, to the end that the assignment contemplated by this Section 7.A.ii. may be finally consummated.

iii. Assignment of Authorizations. Subject to the receipt of all necessary consents, including the consent of the FCC, New Trier may assign all of its authorizations for the Channels on terms and conditions of its choosing to a third party eligible to hold such authorizations provided that prior to such assignment New Trier agrees in writing to assign all of its rights and obligations under this Amended Agreement and such third party agrees in writing to assume all of New Trier's rights and obligations under this Amended Agreement. Such written assignment and assumption must be provided to Sprint no less than sixty (60) days prior to the consummation of the proposed authorization assignment(s) and must be in form reasonably satisfactory to Sprint.

iv. Reimbursement. Sprint will reimburse New Trier for all reasonable expenses that New Trier incurs as a consequence of its efforts to comply with its obligations (as opposed to New Trier's efforts to exercise its rights) pursuant to this Section 7.A.

B. Coordination Documents. New Trier acknowledges that the ability of the facilities utilizing the Channels to withstand interference, the design of those facilities and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.B., during the Term New Trier will not execute or otherwise become a party to any Coordination Document. Notwithstanding the foregoing, New Trier may execute or become a party to a Coordination Document during the last year of the Term, provided that (i) such Coordination Document explicitly states that it is revocable, by New Trier or any subsequent holder of the Channels, at any time prior to the expiration of the Right of First Refusal Period (as such term is defined in Section 11.O.), (ii) New Trier has provided Sprint a true and correct copy of such Coordination Document and Sprint shall have consented to such Coordination Document, such consent to not be unreasonably withheld, conditioned or delayed, (iii) such Coordination Document or the facilities contemplated by such Coordination Document will not have a material adverse effect upon Sprint's use or planned use of the Channels or other channels in the Sprint System during the Term or Sprint's planned use of other channels in the Sprint System after the Term, as determined by Sprint in its reasonable discretion, and (iv) such Coordination Document will not be effective, nor shall any facilities contemplated by such

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Coordination Document or any application filed in conjunction therewith be implemented, until after the expiration of the Right of First Refusal Period.

**C. Modification of Facilities.** New Trier acknowledges that the use of the specific frequencies assigned to the Channels, the design of the facilities utilizing the Channels and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.A. and except as hereinafter provided, New Trier will not apply to the FCC for authority to add new facilities that utilize or interfere with the Channels or to modify any facilities that utilize or interfere with the Channels without obtaining the prior written consent from Sprint, which will not be unreasonably withheld, conditioned or delayed. Anything hereinbefore to the contrary notwithstanding, New Trier will not be required to obtain Sprint's prior written consent to any such applications to the FCC during the last twelve (12) months of the second Renewal Term, or if Sprint has not elected to renew the Term as provided in Section 2 hereof, during the last twelve (12) months of the Initial Term or first Renewal Term, as the case may be. However, any additions or modifications to the facilities that utilize the Channels authorized by the FCC with respect to any such applications will not be implemented or otherwise put into operation by New Trier until after the later of the expiration of the Term or the expiration of the Right of First Refusal Period (as defined in Section 11.O.). Nothing contained in this Section 7.C. shall obligate Sprint to consent to any facility modification, swap or other action which would have a material adverse effect upon Sprint's use or planned use of the Channels or other channels in the Sprint System during the Term or Sprint's planned use of other channels in the Sprint System after the Term.

**D. Confidentiality.** New Trier acknowledges that Confidential Information (as such term is defined below) may be made available to it pursuant to this Amended Agreement, and that such Confidential Information has been and will be developed by Sprint at considerable effort and expense and represents special, unique and valuable proprietary assets of Sprint, the value of which may be destroyed by unauthorized dissemination. Accordingly, except as may be required for the performance and/or enforcement in an arbitration proceeding or court action under or relating to this Amended Agreement, or compliance with any applicable law, rule, or regulation during the Term and for a period of five (5) years thereafter neither New Trier nor any of its employees, representatives, agents or affiliates will disseminate or in any way disclose any Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof. New Trier must exercise reasonable care to protect the Confidential Information and will disclose Confidential Information only to those of its employees, representatives, agents or affiliates who need to know such information. New Trier may disclose Confidential Information if required by any judicial or governmental request, requirement or order, provided that New Trier will take reasonable steps to give Sprint sufficient prior notice in order to contest such request, requirement or order by notifying Sprint of such request, if New Trier is legally

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permitted to do so. As used herein, the term "Confidential Information" means information or material that has been created, discovered, developed or otherwise become known to Sprint (including, without limitation, information created, discovered, developed or made known to Sprint by third parties) which has commercial value in the telecommunications business and is designated by Sprint as confidential, including any engineering design, manufacturing processes or source code, non-public financial information regarding Sprint, information relating to Sprint and Sprint Affiliate research and development, new product pricing and marketing plans of Sprint and Sprint Affiliates, and non-public information relating to Sprint's and Sprint Affiliates' operations, revenues, trade secrets or management practices. Notwithstanding the foregoing, non-public information relating to Sprint's negotiations and relations with New Trier, Sprint Corporation's Asynchronous Transfer Mode or Digital Subscriber Line systems, and wireless access systems will be considered Confidential Information. Confidential Information does not include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized disclosure by New Trier or any of its employees, representatives, agents or affiliates, (ii) was available to New Trier on a non-confidential basis prior to its disclosure to New Trier, or (iii) becomes available to New Trier on a non-confidential basis from a source other than Sprint, provided that such source is not bound by a confidentiality agreement with Sprint relating to the disclosure of such information or is not otherwise prohibited from transmitting the information to New Trier.

**E. Cooperation.** Sprint and New Trier will each, within ten (10) business days of receipt, provide the other with copies of all correspondence, authorizations, forms or other documentation of any sort received from the FCC or any third party relating to the Channels or New Trier's status as an FCC licensee and all correspondence, forms, applications or other submissions by New Trier or Sprint to the FCC and relating to the Channels, date-stamped by the FCC to evidence receipt; provided, however, that this Section will not require New Trier to disclose any correspondence or other documentation of any sort prepared by New Trier or New Trier's employees, representatives, agents, affiliates or, if Sprint has notified New Trier of its intent not to renew the Term pursuant to Section 2 hereof, any third party that is negotiating with New Trier to use the Channels after the end of the Term. New Trier and Sprint must promptly notify each other of any event of which it has knowledge that may affect any of the authorizations relating to the Channels or New Trier's status as an FCC licensee.

**F. Further Efforts.** The parties must utilize their best efforts to take such further action and execute such further applications, documents, assurances and certificates as either party may reasonably request of the other, consistent with the parties' rights and obligations under this Amended Agreement, in order to effectuate the purpose of this Amended Agreement. In addition, each party agrees that it will not take any action not otherwise authorized by this Amended Agreement which would adversely affect the rights granted by it to the other party hereunder. Sprint will reimburse New

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Trier for any reasonable consultants' and attorneys' fees and other reasonable costs that New Trier incurs as a consequence of complying with this Section.

**G. Insurance.**

i. **Policies Required.** At its expense, Sprint will secure and maintain with financially reputable insurers not less than the following insurance: (a) "All Risk" property insurance covering the Provided Transmission Equipment for its full replacement value, (b) Commercial General Liability insurance covering liability resulting from Sprint's operation of the Provided Transmission Equipment with limits of not less than [REDACTED] combined single limit per occurrence for bodily injury and property damage liability and [REDACTED] annual aggregate, and (c) Workers' Compensation, Business Auto liability and other insurance as required by law or customarily maintained by operators of IIFS excess capacity such as Sprint. Sprint is not obligated to provide the foregoing coverages with respect to the STL Equipment.

ii. **Insurance Policy Forms.** New Trier must be named as an additional insured or loss payee, as appropriate, on the above-referenced insurance (except Workers' Compensation). Such insurance must be primary to any coverage which New Trier carries

iii. **Proof of Insurance.** A certificate of insurance must be promptly delivered to New Trier evidencing that the above coverage is in effect and will not be canceled or materially altered without first giving New Trier thirty (30) days' prior written notice. Renewal certificates must be delivered prior to the expiration of the then-current term of the relevant insurance.

iv. **Waiver of Subrogation.** Anything in this Amended Agreement to the contrary notwithstanding, neither New Trier nor Sprint will be liable to the other or to any insurance company insuring the other party (by way of subrogation or otherwise) for any loss or damage to any structure, building, equipment or other tangible property, or any resulting loss of income, even though such damage or loss might have been occasioned by the negligence of New Trier or Sprint or any of their agents or employees, if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage, or was required of such party to be covered by insurance pursuant to this Amended Agreement, but only to the extent such loss is or should have been covered by such insurance. This waiver does not cover deductibles, i.e., the party causing or responsible for a loss will be liable for any and all deductibles under the insurance policies of either party and it will not be entitled to any payment or reimbursement thereof.

**H. Prevention of Unauthorized Reception.** Upon the request of Sprint, New Trier will take such actions as Sprint reasonably requests to assist Sprint in preventing the unauthorized reception of transmissions over the Channels. Sprint will

reimburse New Trier for all costs reasonably incurred in connection with New Trier's efforts to comply with this Section.

**I. Covenant Not To Compete.** New Trier recognizes that, during the term of this Amended Agreement, New Trier's cooperation with Sprint is essential to the success of Sprint's commercial venture, and that such cooperation may be impaired by conflicts of interest. New Trier also recognizes that, during the Term of this Amended Agreement, New Trier will become privy to Confidential Information concerning Sprint's business practices, technology, subscriber growth rates, business plans and other information which, if revealed to a competitor, could be used in a manner harmful to Sprint. Therefore, during the Term New Trier will not, directly or indirectly, acting alone, through an affiliate, or as a member of a partnership or association, or other business entity (i) offer, provide or deliver, utilizing the Channels or any other MDS or ITFS channels, any commercial telecommunications, video, voice, data or internet service within one hundred miles of the Chicago Transmit Site other than services which qualify as ITFS uses under Section 74.931 of the FCC's Rules as the same exist as of the Effective Date (a "Competing Service") or (ii) lease or license any part of New Trier's Capacity to a third party that offers, provides or delivers a Competing Service.

**SECTION 8. Representations and Warranties.**

**A. Of Sprint.** Sprint hereby represents and warrants to New Trier that:

i. **Organization.** Both People's Choice and Preferred are duly organized, validly existing and in good standing under the laws of the state or commonwealth of their respective formation, and each has full power and authority to carry out all of its respective obligations contemplated by this Amended Agreement.

ii. **Authorization; Valid and Binding Agreement.** People's Choice and Preferred have taken all action necessary to authorize the execution and delivery of this Amended Agreement. The person or entity signing this Amended Agreement on behalf of People's Choice and Preferred is duly authorized to execute and deliver this Amended Agreement and to legally bind People's Choice and Preferred to all of the terms, covenants and conditions contained in this Amended Agreement. Upon execution and delivery, this Amended Agreement will constitute a valid and binding agreement of People's Choice and Preferred, enforceable in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Amended Agreement nor the consummation of the transactions contemplated hereby, will constitute or be conducted in such a manner as to be a violation of, be in conflict with, or constitute a default under,

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any term or provision of any agreement governing either People's Choice or Preferred's formation or other governing instruments, or any agreement or commitment to which either such party is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC and state regulatory authorities, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Amended Agreement or with the performance of the transactions contemplated hereby.

iv. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of Sprint, threatened against either People's Choice or Preferred before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Amended Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Amended Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon either People's Choice or Preferred. There is no action, proceeding or investigation pending or, to the best knowledge of either People's Choice or Preferred, threatened against either People's Choice or Preferred which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Amended Agreement.

B. **Of New Trier.** New Trier hereby represents and warrants to Sprint that:

i. **Organization.** Both District #203 and NTTC are duly organized, validly existing and in good standing as non-profit entities under the laws of the state or commonwealth of their formation, and each has full power and authority to carry out all of the transactions contemplated by this Amended Agreement.

ii. **Authorization. Valid and Binding Agreement.** District #203 and NTTC each have taken all action necessary to authorize the execution and delivery of this Amended Agreement. The persons signing this Amended Agreement on behalf of NTTC and District #203 are duly authorized to execute and deliver this Amended Agreement and to legally bind NTTC and District #203 to all of the terms, covenants and conditions contained in this Amended Agreement. Upon execution and delivery, this Amended Agreement will constitute a valid and binding agreement of NTTC and District #203, enforceable in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws.

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iii. No Violation. Except as disclosed herein, neither the execution and delivery of this Amended Agreement nor the consummation of the transactions contemplated hereby will constitute or be conducted in such a manner as to be a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing either NTTC's or District #203's formation or other governing instruments, or any agreement or commitment to which either of such parties is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Amended Agreement or with the performance of the transactions contemplated hereby.

iv. FCC Authorizations. Set forth as Exhibit C is a true, correct and complete copy of each currently outstanding (as of the Effective Date) authorization that the FCC has issued to New Trier to construct and/or to operate ITFS facilities utilizing the Channels (each an "FCC Authorization" and collectively, the "FCC Authorizations"). No application is presently pending before the FCC proposing any modification to any FCC Authorization. Except as provided in this Section, each FCC Authorization is issued pursuant to a Final Order and is unimpaired by any act or omission by New Trier. There is no complaint, inquiry, investigation or proceeding pending before the FCC or, to the best knowledge of New Trier, threatened which could result in the revocation, modification, restriction, cancellation, termination or non-renewal of or other action adversely affecting, any FCC Authorization and New Trier knows of no facts that, if brought to the attention of the FCC, could result in the revocation, modification, restriction, cancellation, termination, non-renewal of, or other action adversely affecting, any FCC Authorization. Except as described in Section 1, New Trier has not entered into any agreement to permit any third party to utilize, whether or not for compensation, any portion of the capacity of the Channels. Notwithstanding anything to the contrary contained herein, New Trier does not represent and warrant as to the status of FCC authority for the construction of new facilities for KGZ66 covered by FCC Authorization File No. BMPLIF-19950914GQ and the parties agree that construction of the facilities authorized therein may or may not be permitted by the FCC.

v. Interference Issues. No FCC Authorization was issued based upon the consent of any other party to the proposed facilities, and no facility authorized under an FCC Authorization is required to utilize or comply with any particular technical parameters (including to utilize carrier offset) as a result of any agreement with any third party. Except for agreements to which Sprint is a party, New Trier has not entered into any agreement which requires or could require any current or future facilities that operate on the Channels to utilize or comply with any particular technical parameters, to cease operation, to limit the hours of operation, or to accept interference. Except for Coordination Documents

to which Sprint is a party, New Trier has not provided any Coordination Document to any third party or the FCC pursuant to which New Trier agreed to accept any interference from any other party.

vi. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of New Trier, threatened against New Trier before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Amended Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Amended Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon New Trier. There is no action, proceeding or investigation pending or, to the best knowledge of New Trier, threatened against New Trier which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Amended Agreement.

**C. Survival of Representations and Warranties.** The representations and warranties contained in this Amended Agreement will be deemed to be continuing during the Term of this Amended Agreement, and each party has the duty promptly to notify the other of any event or circumstance which might reasonably be deemed to constitute a breach of or lead to a breach of its warranties or representations.

#### **SECTION 9. Indemnification.**

**A. By New Trier.** To the extent permitted by law, New Trier hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Sprint, its directors, officers, shareholders, employees and agents (the "Sprint Indemnitees") from and against and shall reimburse any Sprint Indemnitee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitations, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the Sprint Indemnitees may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of any third party claim against any Sprint Indemnitee based on or alleging (a) any breach or default by New Trier of any of its covenants, agreements, duties or obligations hereunder, (b) any breach or default of, or inaccuracy or omission in, any representation or warranty of New Trier contained herein, or (c) any negligence or willful misconduct of New Trier, its officers, employees or agents in connection with the performance of this Amended Agreement. Moreover, New Trier will forever protect, save, defend and keep the Sprint Indemnitees harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from third party claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and/or transmission of any programming by New Trier; (ii) third party claims arising as a result of selection and/or transmission by New Trier of programming or other material

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that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmit Sites are located.

**B. By Sprint Subsidiary.** To the extent permitted by law, Sprint hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless New Trier, its board members, officers, employees and agents (the "ITFS Indemnitees") from and against and will reimburse any ITFS Indemnitee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitations, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the ITFS Indemnitees may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of any third party claim against any ITFS Indemnitee based on or alleging (a) any breach or default by Sprint or any Sprint Affiliate of any of its respective covenants, agreements, duties or obligations hereunder, (b) any breach or default of, or inaccuracy or omission in, any representation or warranty of Sprint contained herein, or (c) any negligence or willful misconduct of Sprint or any Sprint Affiliate, its officers, directors, stockholders, employees or agents in connection with the performance of this Amended Agreement or its offering of communications services over the Sprint System. Moreover, Sprint will forever protect, save, defend and keep the ITFS Indemnitees harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from third party claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and/or transmission of any information by Sprint; (ii) third party claims arising as a result of any selection and/or transmission by Sprint of programming or other material that is obscene, indecent, profane; or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmission Site is located.

**C. Claims for Indemnification.** Where indemnification under this Section is sought by a party (the "Claiming Party"): (a) it must notify in writing the other party (the "Indemnifying Party") promptly of any claim or litigation or threatened claim to which the indemnification relates; (b) upon the Indemnifying Party's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party will afford the Indemnifying Party an opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party may not effect any such compromise or settlement without prior written consent of the Indemnifying Party); provided, however that neither may the Indemnifying Party compromise or settle any claim or litigation without the prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) of the Claiming Party, or consent to the entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by claimant to the Claiming Party a

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release from all liability with respect to the claim; and (c) the Claiming Party will cooperate with the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation. If the Indemnifying Party does not so acknowledge its indemnification responsibility, the Claiming Party may proceed directly to enforce its indemnification rights.

**D. Survival.** The agreements of indemnification set forth in this Section will remain in full force and effect for a period of one (1) year following the termination or expiration of the Term unless, during such one (1) year period, a Claiming Party makes a claim against an Indemnifying Party pursuant to Section 9.C., in which event such claim will continue to be governed by the provisions of this Section 9 until a resolution of such claim has been completed with all applicable appeal periods having expired.

#### **SECTION 10. Termination or Expiration.**

**A. Termination by Reason of Default.** A party may terminate this Amended Agreement upon ninety (90) days written notice to the other party if the other party is in default and fails within such ninety (90) day period to cure such default; provided, however, if such default is not reasonably capable of being cured within such ninety (90) day period, this Amended Agreement may not be terminated so long as the party in default commences action to cure such default within said ninety (90) day period and thereafter diligently pursues such cure to completion. A party will be deemed to be in default under this Amended Agreement if it fails to comply with any material obligation, term or covenant of this Amended Agreement, if it breaches any material representation or warranty, or if it enters into bankruptcy (voluntary or involuntary).

**B. Termination of FCC Authorization.** This Amended Agreement will terminate upon the issuance by the FCC of a Final Order terminating New Trier's authority to utilize or lease the Channels.

**C. Effect of Termination.** Except as otherwise specifically provided in this Amended Agreement, and except with respect to Sections 1, 6.E., 7.D., and 11.O., upon expiration of the Term or in the event of the termination of this Amended Agreement, this Amended Agreement will no longer have any effect in establishing the rights and obligations of the parties hereto. Termination of this Amended Agreement pursuant to Section 10.A. will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of any default leading to such termination. Termination pursuant to Section 10.B. will be without liability to either New Trier or Sprint, unless such termination results from a default by a party under this Amended Agreement, in which case such termination will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of such default.

**SECTION 11. Miscellaneous.**

**A. Assignment of Agreement.** Either party may assign this Amended Agreement to an entity controlled by, in control of, or otherwise affiliated with either party by providing a written notice to the other party of its intent to assign its rights and obligations, provided that (i) the assignor is in full compliance with this Amended Agreement, (ii) the proposed assignee agrees to be bound by and to assume all of the assignor's rights and obligations under this Amended Agreement, (iii) the assignor has made a good faith determination that the assignee is financially and otherwise capable of assuming such rights and obligations, and (iv) in the case of an assignment by New Trier, the proposed assignee acquires New Trier's authorizations for the Channels and the provisions of Section 7.A.iii. are complied with. If the proposed assignee is not an entity controlled by, in control of, or otherwise affiliated with either party, assignment of this Amended Agreement will require the written consent of the non-assigning party, such consent not to be unreasonably withheld, conditioned or delayed. In determining whether to consent to an assignment to an assignee not affiliated with Sprint, New Trier may consider the overall character, integrity and/or reputation of the proposed assignee, in addition to any financial, technical or legal considerations. Notwithstanding anything to the contrary contained herein, Sprint may assign, pledge, hypothecate or grant a security interest in its rights under this Amended Agreement as collateral or security for any financing arrangements it makes. Sprint may also grant a security interest in any of the Provided Transmission Equipment as collateral or security for any financing arrangement it makes; provided, however, that any security interest in any of the Provided Transmission Equipment shall be made subject to all of the rights of New Trier pursuant to the provisions of this Amended Agreement, including, but not limited to Sections 3.K. and 4.C. If, without the consent of New Trier, control of either of the parties identified herein as "Sprint" transfers to an entity that is not affiliated with Sprint Corporation and which is in a line of business or has a reputation that would reasonably be considered to cause New Trier's reputation in the community to be impaired by such affiliation, New Trier shall have the unilateral right to terminate this Amended Agreement upon ninety (90) days written notice. In any dispute involving New Trier's objection to such transfer of control based upon detriment to New Trier's reputation as provided herein, New Trier shall have the burden of establishing that such objection is reasonable, made in good faith, without pretext, and that such affiliation would reasonably be considered to impair New Trier's reputation in the community based upon the reasonable judgment of the mainstream community.

**B. Counterparts.** This Amended Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

**C. Dispute Resolution Through Arbitration.**

**i. Dispute Resolution.** The parties must utilize good faith efforts to resolve any disputes arising out of or relating to the negotiation, execution, interpretation, performance or nonperformance of this Amended

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Agreement through amicable settlement discussions to be commenced by the giving of a written notice of dispute by the party claiming to be aggrieved. The notice of dispute must state with specificity the matters in dispute, the position of the party giving the notice of dispute and the rationale for that position. Except as provided for in Section 11.C.ii. below, if the parties fail to resolve the dispute by amicable settlement within five (5) business days from the date the notice of dispute is given, either party may then request the final settlement of such dispute through arbitration in the city and state in which the Chicago Transmit Site is located, under the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA") by notifying the other party and the AAA in accordance with the Rules. The arbitration will be conducted by three (3) arbitrators appointed in accordance with the Rules and will be conducted pursuant to expedited and accelerated procedures. The arbitrators must decide the issues submitted to them in accordance with the provisions and commercial and educational purposes of this Amended Agreement.

ii. Preservation of Status Quo. The parties must utilize commercially reasonable efforts to preserve the status quo between written notice of dispute and the earlier of a settlement of the dispute or the issuance of a final decision by the arbitrators. However, New Trier acknowledges the complexity of the system development Sprint intends to undertake, the practical necessity of coordinating among numerous MDS and ITFS licensees the execution and filing of applications and Coordination Documents, and the potential adverse impact under the FCC's rules and policies should the filing of such documents be delayed. In light of these and other considerations, the parties agree that time is of the essence with respect to requests by Sprint for New Trier to complete and file any application submitted to it pursuant to Section 3.A., to execute any Coordination Document submitted to it pursuant to Section 3.B., or to complete and file any notice or notification submitted to it pursuant to Section 3.E. If New Trier believes that grant of an application submitted by Sprint pursuant to Section 3.A., or that facilities contemplated by any Coordination Document submitted to it pursuant to Section 3.B., or that facilities installed or modified pursuant to Section 3.E. would cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service, New Trier's sole remedy (other than the coordination obligations of the parties pursuant to Sections 3.A.iii. and 3.B.ii.) is to give a written notice of dispute pursuant to Section 11.C.i. within thirty (30) days of Sprint's submission to it and, if the parties are unable to settle the dispute amicably within fifteen (15) days, either may require that the matter be submitted for resolution by arbitration. In order to assure New Trier ample opportunity to review any application, Coordination Document, notification or other document submitted to it by Sprint, the execution by New Trier of an application, Coordination Document, notification or other document submitted by Sprint pursuant to Section 3.A., 3.B., or 3.E. prior to the expiration of such thirty (30) day period will be without prejudice to New Trier's right to give a written notice of dispute and commence a dispute resolution

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procedure within the deadlines set forth in this Section as to whether the facilities in issue would cause the quality of New Trier's Services at the ITFS Receive Sites to drop below the Minimum Acceptable Quality of Service. Notwithstanding the first sentence of Section 11.C.ii., while any such dispute is pending, (a) New Trier must (except as otherwise provided in Section 11.C.iv. below, if it has not already done so, complete and file the application, execute the Coordination Document, or complete and submit the notice or notification, as the case may be, as requested by Sprint; and (b) New Trier must (except as otherwise provided in Section 11.C.iv. below) refrain from withdrawing or failing to prosecute any application or renouncing any Coordination Document or otherwise jeopardizing the FCC authorization of the contemplated facilities, and must utilize good faith efforts to prosecute the application to grant. In order to assure that New Trier will not suffer any material adverse effect during the pendency of any dispute resolution procedure, (i) should any facilities contemplated by any application or Coordination Document be authorized by the FCC while any dispute is pending, Sprint agrees that any such facilities will not be placed into operation unless and until the dispute is resolved favorably to Sprint; (ii) Sprint will not place into operation any facilities that are permitted by the FCC without prior authorization if Sprint receives the notice of dispute prior to doing so; (iii) Sprint will take all steps necessary to enforce New Trier's rights with respect to a Coordination Document as specified in Section 3.B.ii., (iv) New Trier will not be required to consummate any disputed channel swap unless and until the dispute is resolved favorably to Sprint; and (v) Sprint will cease utilizing facilities installed pursuant to Section 3.E. or will return facilities modified pursuant to such Section to their prior configuration if the dispute is resolved unfavorably to Sprint.

iii. Finality of Arbitration Award. The parties agree that the award of the arbitrators under Section 11.C.i or Section 11.C.ii will be final and waive any right to trial by jury or to challenge the arbitrators' award. However, any party aggrieved by a default by the other may seek immediate injunctive relief pursuant to Section 11.P. before any court of competent jurisdiction set forth in Section 11.I. and agree that such relief will not be sought to avoid or stay the arbitration. Judgment on the award of the arbitrators may be entered in any court having jurisdiction over the party against whom enforcement of the award is being sought. In their final award, the arbitrators may apportion costs between the parties as the arbitrators deem appropriate. Anything in this Amended Agreement to the contrary notwithstanding, in no event may the arbitrators award consequential damages unless the arbitrators determine that such damages were the result of bad faith, malicious and willful misconduct of the losing party. Furthermore, New Trier shall not be held liable in tort for any loss to any real or personal property unless such damage is caused as a result of New Trier's own gross negligence or willful misconduct.

iv. Non-Conformance and Inaccuracy Objections.

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(a) If New Trier in good faith reasonably believes that (a) the mere act of filing any application submitted to it pursuant to Section 3.A. or prosecuting such application pursuant to Section 3.C.; or (b) that the execution and delivery of any Coordination Document submitted to it pursuant to Section 3.B., based upon the advice of competent legal counsel familiar with the rules and policies of the FCC applicable to ITFS, would cause New Trier to be in violation of FCC rules or policies which would serve as the basis for the FCC to terminate New Trier's authorizations to operate the Channels or impose administrative sanctions on New Trier, New Trier will, within thirty (30) days from the date on which Sprint submits to New Trier the requested application or Coordination Document, provide Sprint with written notice setting forth with particularity the basis for such objection (a "Non-Conformance Objection"). Sprint will in absolute good faith respond in writing to each of New Trier's concerns set forth in any Non-Conformance Objection. If the parties are not able to reach amicable agreement as to a resolution of the issues raised in the Non-Conformance Objection within fifteen (15) days of Sprint's receipt of the Non-Conformance Objection, Sprint, in its sole discretion, may submit the matter to the Chief of the Branch of the FCC responsible for ITFS licensing issues ("FCC Chief") for an informal decision. Upon such election by Sprint, New Trier and Sprint will promptly arrange to jointly meet with FCC Chief and request an informal opinion as to whether the requested action which is the basis for the Non-Conformance Objection would be a violation of FCC rules or policies. New Trier and Sprint agree to be bound by the determination of the FCC Chief's informal opinion, provided, however, that if an informal ruling is not available, Sprint may elect to submit the matter to the FCC for a formal advisory ruling and in such event the parties agree to be bound by the determination of the FCC formal advisory ruling. Notwithstanding anything to the contrary contained in this Amended Agreement, New Trier will not be obligated to file or prosecute an application or execute and deliver any Coordination Document which is the subject of a Non-Conformance Objection until the parties either reach amicable agreement as to the issues set forth therein or the FCC Chief issues an informal opinion, or if such informal opinion is unavailable, the FCC issues a formal advisory ruling, resolving the issue in favor of Sprint.

(b) If New Trier in good faith reasonably believes, based upon the advice of FCC counsel familiar with FCC rules and policies applicable to ITFS, that any application (or pleading relating thereto) submitted to it pursuant to Section 3.A. or 3.C. or that any Coordination Document submitted to it pursuant to Section 3.B. is factually inaccurate to the extent that the requested action would be in violation of FCC rules or policies which would serve as the basis for the FCC to terminate New Trier's authorizations to operate the Channels or impose administrative

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sanctions on New Trier, New Trier will, within thirty (30) days from the date on which Sprint submits to New Trier the requested application, pleading, or Coordination Document, provide Sprint with written notice setting forth with particularity the basis for such objection (an "Inaccuracy Objection"). Sprint will in absolute good faith respond in writing to each of New Trier's concerns set forth in any Inaccuracy Objection within 15 days of Sprint's receipt of the Inaccuracy Objection. If the parties are unable to reach amicable agreement as to the issues set forth in any Inaccuracy Objection, Sprint may, in its sole discretion, elect to submit the matter to the dispute resolution procedure set forth in Section 11.C.ii., provided, however that New Trier will not be obligated to file any application or pleading or execute and deliver any Coordination Document which is the subject of an Inaccuracy Objection until such time as the matter is resolved amicably or resolved in favor of Sprint pursuant to the dispute resolution procedure set forth in Section 11.C.ii.

(c) This Section 11.C.iv. will not be construed as permitting New Trier to refuse to file an application or pleading submitted to it pursuant to Sections 3.A. or 3.C. or to refuse to execute a Coordination Document submitted to it pursuant to Section 3.B. based upon the theory that the mere act of complying with the obligations set forth in Sections 3.A., 3.B., or 3.C. would abrogate licensee control and is therefore in violation of FCC rules or policies.

v. Cooperation. The parties must facilitate the arbitration by (i) making available to one another and to the arbitrators for examination, inspection and extraction, all documents, books, records and personnel under their control if determined by the arbitrators to be relevant to the dispute and not otherwise privileged from disclosure, subject to written agreement by the arbitrators to hold all Confidential Information so disclosed in confidence, and (ii) observing strictly the time periods established by the rules or by the arbitrators for submission of evidence or briefs. The parties acknowledge and agree that time is of the essence in resolving any dispute submitted to the dispute resolution processes set forth herein.

D. Entire Agreement. This Amended Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written contracts or agreements of any kind. The parties further agree that this Amended Agreement may only be modified by a written agreement signed by both parties.

E. Force Majeure. If by reason of act of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivision thereof which are not the result of a breach of or default under this Amended Agreement, orders of any military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other similar cause or event not reasonably within the control of the adversely affected party, either party is unable in

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whole or in part to perform its obligations hereunder, such party so unable to perform will not be deemed in violation or default of this Amended Agreement during the period of such inability and the other party shall be excused from performance of its obligations hereunder during such period of inability. If the period of inability extends beyond one hundred eighty (180) days, the party that is able to perform its obligations may terminate this Amended Agreement without liability by providing thirty (30) days written notice to the other party at any time following the expiration of such one hundred eighty (180) day period.

F. **Headings.** The headings contained in this Amended Agreement are for convenience of reference only and do not affect in any way the meaning or interpretations of this Amended Agreement.

G. **Governing Law.** This Amended Agreement is governed by and is to be construed and enforced in accordance with the Communications Act of 1934, as amended, the FCC's rules and policies, and the laws of the State of Illinois and, with respect to arbitration, the Federal Arbitration Act.

H. **Interpretation.** If this Amended Agreement requires interpretation or construction, this Amended Agreement will not be interpreted or construed more strictly against any one party by reason of any rule of interpretation or construction under which a document is to be construed more strictly against the drafting party.

I. **Jurisdiction and Venue.** Subject to the provisions of Section 11.C., any suit brought with respect to this Amended Agreement must be brought in the state court district, or the Federal court district, situated in Cook County, Illinois. For any and all such purposes, the parties hereto hereby irrevocably submit to the jurisdiction of such courts, waive all objections thereto (on the grounds of improper venue, forum non conveniens or otherwise), and agree that service of process upon each as provided in Section 11.K. will be effective to establish personal jurisdiction over it in such courts.

J. **Licensee Control.** Notwithstanding any other provisions of this Amended Agreement, New Trier will at all times retain such ultimate and exclusive responsibility for the operation and control of the facilities licensed to it as is required by the FCC's rules.

K. **Notice.** Except for payments pursuant to Sections 6.C. and 6.E., all notices given or made pursuant to this Amended Agreement must be in writing and will be deemed received as of the first weekday (excluding Federal holidays) after being sent for next-day delivery by United States Postal Service Express Mail, return receipt requested, or by Federal Express or other reputable overnight courier, signature required, to the other party at the following address:

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i. **If to New Trier:**

Steven M. Baule, Ph.D., Ed.D.  
Asst. Superintendent for Information Technology  
New Trier High School District 203  
385 Winnetka Ave.  
Winnetka, Illinois 60093  
Phone: (847) 784-2360  
Fax: (847) 501-6488

with a copies to:

Paul Millichap, Esq.  
Franzeck & Sullivan  
300 South Wacker  
Chicago, Illinois 60606-6785  
Phone: (312) 786-6101  
Fax: (312) 986-9192

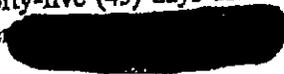
Jeffrey H. Olson, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison  
1615 L Street, NW, Suite 1300  
Washington, DC 20036  
Phone: (202) 223-7300  
Fax: (202) 223-7420

ii. **If to Sprint:**

People's Choice TV Corporation /  
Preferred Entertainment, Inc.  
Attn: Contract Administration Manager  
6360 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPHE0310-3A522

with a copy to:

Sprint Corporation  
Attn: Vice President, Spectrum Management  
6360 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPHE0306-3B775

L. **Payment of Expenses.** Not later than forty-five (45) days after receipt of any invoice from New Trier, Sprint shall pay New Trier 

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and to provide assistance to Sprint in licensing and other matters in connection with the performance of this Amended Agreement reasonably requested by Sprint from time to time during the Term. Sprint shall also pay all taxes, assessments and fees due from Sprint or New Trier as a result of the use of the Channels (including any taxes or assessments imposed on equipment) for the provision by Sprint or any other party of communications services, including but not limited to any required contributions of New Trier to the Universal Service Fund under the Communications Act of 1934, as amended, and the FCC's rules and policies. Furthermore, subject to reasonable documentation, Sprint will reimburse New Trier up to [REDACTED]

[REDACTED]

Except as otherwise provided, New Trier and Sprint will each pay its own costs and expenses incident to negotiating and fulfilling its obligations under this Amended Agreement. However, in any arbitration, enforcement proceeding based on an arbitration award, or other litigation between the parties arising out of or related to this Amended Agreement, the substantially prevailing party therein is entitled to have its attorney's fees, reasonable expenses, related costs and costs of suit (if any) paid by the non-prevailing party to the extent determined by the merits of the matter. In the case of arbitration, the arbitrators will make such award; in any litigation, the court hearing the dispute will make such determination.

**M. Reformation and Severability.** If any provision of this Amended Agreement is determined by any court, the FCC or any other governmental authority to be invalid, illegal or incapable of being enforced, all other provisions will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon any determination that any provision is invalid, illegal or incapable of being enforced, or should Congress, the FCC or any other government authority adopt any new or modified law, rule or public policy such that any provision of this Amended Agreement would be invalid, illegal, incapable of being enforced, or incapable of being performed without a substantial and material adverse effect upon the party responsible for such performance, the parties hereto will negotiate expeditiously and in good faith to modify this Amended Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the maximum extent possible. If the parties are unable to negotiate a modification of this Amended Agreement under such circumstances, this Amended Agreement may be terminated by the party that would suffer a material adverse effect as a result.

**N. Relationship of the Parties.** New Trier and Sprint acknowledge and agree that by the provisions of this Amended Agreement they are entering into an airtime lease relationship and not a joint venture. Neither party will present itself as the

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other party, nor as having any relationship with one another other than that set forth under the terms of this Amended Agreement. The parties hereto agree that any and all contracts entered into between Sprint and its customers or any other entity shall be for the sole benefit of the parties thereto and shall not be interpreted or construed in any manner as obligating New Trier to perform for the benefit of such customers, nor shall such contracts be interpreted or construed as creating in New Trier any rights as a third party beneficiary or as otherwise entitling New Trier to the benefits of such contracts. New Trier shall not be liable to Sprint's customers by virtue of leasing excess capacity under this Amended Agreement and, except as otherwise expressly stated herein, New Trier shall have no claim to any revenues derived from such customer's use of the Sprint System or from Sprint's contracts or other relationships with such customers or any other entity.

**O. Right of First Refusal.** Except during any period after which Sprint, pursuant to Section 2, has given notice to New Trier of its election not to extend this Amended Agreement for a Renewal Term or following the termination of this Amended Agreement by New Trier pursuant to Section 10.A., New Trier will not during the Term entertain offers from, negotiate with, or enter into any agreement with a third party pertaining to the lease or use for purposes other than ITFS uses as set forth in Section 74.931 of the FCC's Rules as the same exist as of the Effective Date by such third party of any or all of the capacity of the Channels, provided, however, that subject to Sprint's Right of First Refusal (as defined below), New Trier may entertain offers and negotiate with third parties for the lease of the Channels during the last 90 days of the Term. Unless Sprint has elected not to renew this Amended Agreement for either Renewal Term or New Trier has terminated this Amended Agreement pursuant to Section 10.A., Sprint will have the exclusive right (the "Right of First Refusal") to match the material terms and conditions of any bona fide offer to lease or otherwise use after the Term any or all of the capacity of the Channels, provided such offer is received by New Trier during the Term

(i) If New Trier commences any negotiations with any third person to enter into an agreement to lease or otherwise use any or all of the capacity of the Channels for non-ITFS purposes within the Right of First Refusal Period, New Trier must provide written notice to the third party advising such third party of the Right of First Refusal. If New Trier receives any offer from any third person to enter into an agreement to lease or otherwise use any or all of the capacity of the Channels for non-ITFS purposes within the Right of First Refusal Period, New Trier must provide written notice to the third party advising such third party of the Right of First Refusal as well as written notice to Sprint advising that an offer has been made, whether or not New Trier intends to accept such offer.

(ii) If New Trier desires to accept any offer to lease or otherwise allow the use for non-ITFS purposes by a third party of any or all of the

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capacity of the Channels, New Trier must first provide written notice to Sprint, identifying the person with whom the proposed agreement is to be made, describing all of the material terms and conditions of the proposed agreement, and representing its intent to accept the offer if Sprint does not elect to match the offer on substantially the same material terms and conditions as those contained in the notice (the "Lease Offer Notice"). Sprint will have a period of thirty (30) days after its receipt of a Lease Offer Notice from New Trier in which to elect, by giving written notice (the "Lease Offer Acceptance") to New Trier, to enter into an agreement on the same terms and conditions (except as provided in Section 11.O.iv.) as contained in the Lease Offer Notice. If Sprint does not give a Lease Offer Acceptance within the requisite thirty (30) day period, New Trier may enter into an agreement with such third party upon the terms and conditions set forth in the Lease Offer Notice. In connection with the foregoing, New Trier agrees that it may not accept any offer, including but not limited to, an offer to refrain from leasing excess capacity on the Channels, that includes terms and conditions that have the purpose or effect of preventing Sprint from exercising its Right of First Refusal. Furthermore, the parties agree that the filing by New Trier of any application for modification of the Channels pursuant to any agreement with, or at the request of, any third party commercial operator shall violate the terms of the preceding sentence.

(iii) If Sprint does not exercise its Right of First Refusal with respect to any offer, and any material term of such offer is subsequently changed, before accepting such changed offer New Trier must follow the procedures specified in the foregoing subsections, providing Sprint with notice regarding the revised offer and giving Sprint the opportunity to exercise its Right of First Refusal with regard thereto during the Right of First Refusal Period.

(iv) If the Lease Offer Notice provides that any consideration is to be paid by the third person in whole or in part in a form other than cash, Sprint may substitute, in whole or in part, for such non-cash consideration an amount in cash fairly equivalent to the fair market value of the non-cash consideration payable by the third person. The Lease Offer Acceptance must specify the amount of any such substitute cash consideration and the non-cash consideration for which it is intended to substitute. If New Trier disputes that the substitute cash consideration specified by Sprint is in an amount fairly equivalent to the fair value of the non-cash consideration payable by the third person, New Trier must within five (5) days after receipt of the Lease Offer Acceptance provide Sprint with a written notice specifying the amount it considers to be fairly equivalent to the fair value of the non-cash consideration payable by the third person (the "Lease Counter-Offer"). The question of the fair value of the non-cash consideration will be referred to the American Arbitration Association pursuant to Section 11.C. unless Sprint gives New Trier written notice within five (5) days after its receipt of the Lease Counter-Offer that it agrees to enter into an agreement containing the fair value set forth in the Lease Counter-Offer. If the

question of the fair value of the non-cash consideration is referred to the American Arbitration Association, New Trier will not enter into any agreement with the third party until five (5) days after determination by the arbitrator. Upon such determination, Sprint will have the option of agreeing to enter into an agreement containing the fair value determined by the arbitrator by giving written notice of such election to New Trier within five (5) days of the arbitrator's determination.

**P. Specific Performance.** Each of the parties acknowledges and agrees that the rights reserved to the other are of a special, unique, unusual and extraordinary character, which gives them peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law and the breach by either party of any of the provisions hereof (other than provisions calling for the payment of money) will cause the other irreparable damage and injury. In such event, subject to Section 11.C. of this Amended Agreement, the non-defaulting party will be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts, services and undertakings required under this Amended Agreement, including the obtaining of all requisite authorizations to execute or perform this Amended Agreement and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions hereof. Neither this provision nor any exercise by any party of rights to equitable relief or a specific performance herein granted will constitute a waiver of any other rights which the non-defaulting party may have to damages or otherwise.

**Q. Waiver.** No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or covenant or other obligation herein. The express or implied waiver by either party of any breach of any representation or warranty or any failure to fulfill any covenant or other obligation under this Amended Agreement will not constitute a waiver of any other representation or warranty or of any other failure in the future or in the past by the other party to fulfill such representation, warranty, covenant, or obligation hereunder.

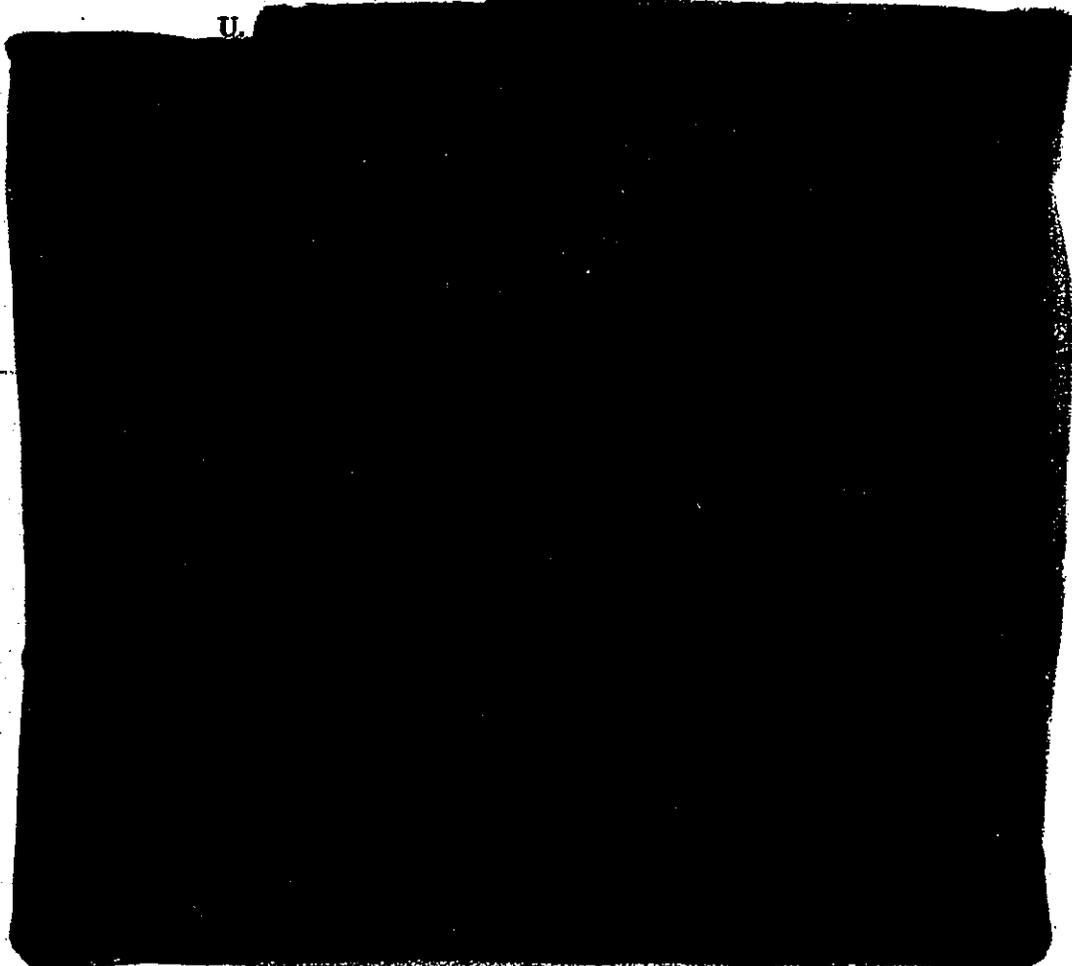
**R. Word Meanings.** As used in this Amended Agreement, the term "including" is deemed to mean "including, without limiting the generality of the foregoing." A "Final Order" means an order of the FCC which is effective, which is not subject to any petition for reconsideration, petition to deny or informal objection, application for review, notice of appeal, petition for writ of certiorari or request for stay and the time for any party to seek such relief or for the FCC to grant such relief sua sponte has expired. All pronouns and any variations therefore are deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

**S. Survival of Obligations.** All obligations of Sprint or New Trier which by their nature involve performance, in any particular, after the end of the Term, or which cannot be ascertained to have been fully performed until after the end of the Term, will survive the expiration or sooner termination of the Term.

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**T. No Publicity Without Consent.** Neither party will issue or permit the issuance of any press release or publicity regarding the other or this Amended Agreement without prior coordination with and advance written approval by the other party, which may be granted or withheld at the other party's sole discretion.

U.



**V. Construction Requirements.** For all work performed by Sprint on New Trier's behalf at New Trier's facilities pursuant to the terms of this Amended Agreement, Sprint will comply with any applicable bonding and insurance requirement generally required for the construction of public works. Furthermore, to the extent that such construction work is performed by entities which are not Sprint Affiliates, Sprint will require such contractors or subcontractors to pay prevailing wages. To the extent required by law and at the request of New Trier, Sprint will place any contract for work at New Trier's campus facilities up for public bid and such contract will be awarded to the lowest responsible bidder who complies with Sprint's requirements.

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SPRINT PROPRIETARY INFORMATION

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W. **Compliance with FCC Rules.** Sprint will not place New Trier in jeopardy of violating any FCC rules or policies concerning cable cross ownership including, but not limited to, Section 74.931(i) of the FCC's rules. Furthermore, to the extent applicable, Sprint shall comply with the FCC's rules and policies concerning Equal Employment Opportunity, including, but not limited to, Part 76, Subparts E and U of the FCC's rules. Additionally, in its use of the Channels pursuant to the terms of this Amended Agreement, Sprint will comply with the Communications Act of 1934, as amended, and the rules and regulations of the FCC.

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SPRINT PROPRIETARY INFORMATION

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IN WITNESS WHEREOF, the parties hereto have caused this Amended Agreement to be executed by their duly authorized officers as of the Effective Date.

BOARD OF EDUCATION OF  
TOWNSHIP HIGH SCHOOL  
DISTRICT #203

NEW TRIER TECHNOLOGY  
COOPERATIVE

By: Onnie Scheyer  
Name: Onnie Scheyer  
Title: President  
Date: 6/24/02

By: [Signature]  
Name: Stuart M. B. [unclear]  
Title: Asst. Supt.  
Date: 6/24/02

PREFERRED ENTERTAINMENT, INC.,  
a Delaware corporation

PEOPLE'S CHOICE TV CORPORATION,  
a Delaware corporation

By: [Signature]  
Name: Todd A. Rowley  
Title: Vice President  
Date: 6/28/02

By: [Signature]  
Name: Todd A. Rowley  
Title: Vice President  
Date: 6/28/02

**EXHIBITS A - C — REDACTED**

Chicago, IL

B1, B2

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WHM934

*Lease Status Confirmed on  
FCC ULS*

**Chicago, IL**

**B3, B4**

**-**

**WHR498**

WHR 498

FCC REGISTRATION NO:  
0002-8505-92

**AMENDED AND RESTATED  
ITFS EXCESS CAPACITY LEASE AGREEMENT**

**between**

**Board of Trustees, Community College District No. 535  
a/k/a Oakton Community College**

**as ITFS Licensee,**

**and**

**Preferred Entertainment, Inc.,**

**as Sprint Subsidiary**

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EXHIBIT F: The Sprint System

EXHIBIT G: FCC Authorizations

AMENDED AND RESTATED

ITFS EXCESS CAPACITY LEASE AGREEMENT

THIS AMENDED AND RESTATED ITFS EXCESS CAPACITY LEASE AGREEMENT (the "Amended Agreement") is made as of March 27th 2003 (the "Effective Date") by and between Board of Trustees, Community College District No. 535 a/k/a Oakton Community College ("Oakton"), a subdivision of the State of Illinois, and Preferred Entertainment, Inc., a Delaware corporation, and a wholly-owned subsidiary of Sprint Corporation (such wholly-owned subsidiary hereinafter "Sprint").

WHEREAS, FCC Rules and policies contemplate that ITFS frequencies, including the Channels, are to be used for the primary purpose of education while allowing ITFS licensees, in their discretion, to lease excess capacity on their systems subject to terms and conditions adopted by the FCC; and

WHEREAS, Oakton operates Instructional Television Fixed Service ("ITFS") call sign WHR498 in Chicago, Illinois from a site located at 41 degrees 52 minutes 44 seconds latitude North, 87 degrees 38 minutes 10 seconds longitude West (the "Transmit Site"), utilizing the two 6 MHz channels at 2536-2542 MHz (B3) and 2548-2554 MHz (B4) (subject to the provisions of Section 10.B.ii., each, a "Channel" and collectively, the "Channels") pursuant to a license issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Sprint operates a wireless communications system in the Chicago, Illinois area that utilizes multiple Multichannel Multipoint Distribution Service, Multipoint Distribution Service (collectively "MDS") and ITFS channels that are licensed by the FCC either to Sprint or to others who lease capacity to Sprint to provide video and/or data services; and

WHEREAS, Specchio Developers Investment Corp. and Oakton entered into that certain ITFS Channel Lease Agreement dated July 1, 1992, as the same was amended pursuant to that certain Amendment to Lease Agreement dated December 15, 1992 (collectively, the "Existing Agreement") which was assigned to Sprint pursuant to that certain Assignment and Assumption Agreement dated December 5, 1997, under the terms of which Sprint has leased from Oakton certain excess capacity on Oakton's ITFS facilities for commercial use; and

WHEREAS, Oakton and Sprint desire to enter into this Amended Agreement to provide for the ability of Oakton to transmit Oakton's educational and instructional programming from the Transmit Site during and following the term of this Amended Agreement while also taking advantage of the flexibility afforded under the FCC's rules and policies and promoting the efficient use of MDS and ITFS spectrum for the distribution of digital, two-way broadband video, voice, data and other possible services.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein, Oakton and Sprint agree as follows:

**SECTION 1. Effect on Existing Agreement.** As of the Effective Date, this Amended Agreement shall be deemed to supercede and replace the Existing Agreement in its entirety, except that Sprint will be obligated to pay to Oakton all periodic leasing fees due under Section 8 of the Existing Agreement for Sprint's use of the Channels through the conclusion of the month in which the Effective Date occurs.

**SECTION 2. Term of Agreement.** Subject to the provisions for earlier termination contained in Sections 10, 11.E. and 11.M. hereof, this Amended Agreement will extend for: (a) an initial term of five (5) years from the Effective Date (the "Initial Term"); and (b) two additional terms of five (5) years each (each a "Renewal Term" and collectively, the "Renewal Terms") unless Sprint notifies Oakton at least [REDACTED] days before the end of the Initial Term or the first Renewal Term, as the case may be, that Sprint elects not to extend this Amended Agreement for the upcoming Renewal Term. The Initial Term and any Renewal Term that goes into effect will herein be referred to collectively as the "Term." If Sprint elects not to renew this Amended Agreement at the conclusion of the Initial Term or the first Renewal Term, as the case may be, Sprint will pay to Oakton a one-time, early termination fee equal to the aggregate of all [REDACTED] (as defined in Section 6) paid to Oakton during the [REDACTED] months immediately preceding such date of termination.

**SECTION 3. System Licensing and Deployment.** Oakton acknowledges that, although the Channels are currently operating from the Transmit Site utilizing analog modulation, Sprint is entering into this Amended Agreement in contemplation of the use of the Channels in the deployment of a complex two-way, broadband wireless system utilizing MDS and ITFS spectrum licensed to multiple parties and that, in the design of this system, Sprint may employ, among other techniques, digitization, cellularization, sectorization, subchannelization and/or superchannelization of some or all of the MDS and ITFS spectrum in order to increase spectral efficiency and minimize intra-system and inter-system interference. In furtherance of these objectives, the parties agree, subject to the other terms and conditions of this Amended Agreement (including, without limitation, the prompt reimbursement by Sprint of the reasonable expenses incurred by Oakton pursuant to Sections 3.A. through 3.E., inclusive) as follows:

**A. Applications for New or Modified Facilities and Channel Swaps.**

i. Provided that the facilities proposed in such applications will not be predicted to have a material adverse effect upon the delivery or reception of Oakton's Services (as such term is defined in Section 5.C.i.) to the ITFS Receive Sites (as such term is defined in Section 4.B.), and subject to the provisions of this Amended Agreement including, but not limited to, Sections 3.D. and 11.C., Oakton will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications for new response station hubs, for new high-power boosters, for modifications to facilities utilizing the Channels (including changes in location, power, polarization, antenna system design or coverage, or modulation) or for the addition of the I channels associated with the Channels (in which case such I channels will be considered Channels for

purposes of this Amended Agreement) as Sprint requests from time to time during the Term.

ii. Provided that it will not be predicted to have a material adverse effect upon the delivery or reception of Oakton's Services to the ITFS Receive Sites and subject to the provisions of this Amended Agreement including, but not limited to, Sections 3.D. and 11.C., Oakton will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications as Sprint may request to effectuate an exchange of one or more of the Channels for the same number of other ITFS or MDS channels (except MDS Channel 1, 2 or 2A) licensed in the same general geographic area as the Channels, and will thereafter consummate such exchange. Effective upon consummation of such exchange, any Channel(s) assigned by Oakton will no longer be considered as Channel(s) for purposes of this Amended Agreement, and any channel(s) assigned to Oakton will be considered Channel(s) for purposes of this Amended Agreement.

iii. Sprint will provide Oakton with a draft, in substantially final form, including the engineering portion thereof, of any application to be completed, submitted and prosecuted pursuant to Section 3.A hereof at least [REDACTED] days in advance of the filing date specified by Sprint. Oakton will have [REDACTED] days to review such application. If, upon reviewing the application, Oakton believes that such application is inaccurate, unlawful or contrary to the standards set forth in Sections 3.A.i. or 3.A.ii. above (as applicable), Oakton will provide Sprint written notice stating with particularity any good faith objections, the reasons therefor and any possible suggestions to modify the application so as to comply with the standards set forth in Sections 3.A.i. or 3.A.ii. above. Sprint will, in absolute good faith, respond in writing to each of Oakton's concerns and/or objections and use commercially reasonable efforts in light of the parties' obligations hereunder to remedy any concerns that Oakton may have with respect to the application. It is agreed that each party has an affirmative duty to cooperate in efforts to amicably resolve any disputes arising pursuant to their respective obligations under this Section. If the parties are unable to reach amicable agreement within [REDACTED] days from the date on which Sprint initially provides Oakton with a particular application pursuant to this Section, subject to Section 11.C.iv., Oakton will nonetheless file and prosecute the application (as may have been modified by agreement of the parties) with the FCC subject to resolution of the dispute as further set forth in Section 11.C.ii. below.

#### **B. Coordination With Other Licensees.**

i. Provided that the facilities contemplated by a document referenced in this Section 3.B. are not predicted to have a material adverse effect upon the delivery or reception of Oakton's Services to the ITFS Receive Sites and subject to the provisions of this Amended Agreement including, but not limited to Sections 3.D. and 11.C., Oakton agrees, upon request of Sprint, to execute and

promptly return to Sprint any market coordination agreement, interference consent or similar document consenting to facilities of another licensee that would not otherwise be permitted under the FCC's rules and policies (a "Coordination Document").

ii. Sprint will provide Oakton with a draft of any Coordination Document submitted pursuant to this Section and Oakton will have [REDACTED] days to review such Coordination Document. If upon such review Oakton reasonably believes that such Coordination Document is contrary to the standards set forth in Section 3.B.i. above, Oakton will provide Sprint written notice stating with particularity any reasonable good faith objections, the reasons therefor and any possible suggestions to modify the Coordination Document so as to comply with the standards set forth in Section 3.B. Sprint will, in absolute good faith, respond in writing to each of Oakton's such concerns and or objections and use commercially reasonable efforts in light of the parties' obligations hereunder to remedy any concerns that Oakton may have with respect to such Coordination Document. It is agreed that each party has an affirmative duty to cooperate in efforts to amicably resolve any disputes arising pursuant to their respective obligations under this Section. If the parties are unable to reach an amicable agreement within [REDACTED] days from the date on which Sprint initially provides Oakton with a particular Coordination Document, but subject to Section 11.C.iv., Oakton will nonetheless execute and deliver such Coordination Document (as may have been modified by agreement of the parties thereto) to Sprint, subject to resolution of the dispute as further set forth in Section 11.C.ii., it being understood and agreed that any Coordination Document so executed and delivered will be contingent upon the resolution of such dispute in favor of Sprint. Furthermore, any party in whose favor such Coordination Document extends, will have agreed in a writing reasonably satisfactory to Oakton to be bound by the determination of the dispute resolution process as set forth herein. Sprint will, at its sole cost and expense, as against any such third party, enforce Oakton's rights with respect to facilities contemplated by a Coordination Document entered into at the request of Sprint and otherwise hold Oakton harmless as provided in Section 9.B.

**C. Prosecution of Applications.** Subject to Section 3.F., Oakton will promptly and diligently prepare, file and prosecute all necessary application amendments, briefs, pleadings, petitions for reconsideration, applications for review, waiver requests, documents and supporting data, and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate to expedite the grant of the applications filed under this Amended Agreement without conditions materially adverse to Oakton and/or Sprint. If any person petitions the FCC to deny one or more of the FCC applications filed under this Amended Agreement or otherwise opposes one or more of such applications before the FCC; or if the FCC enters an order granting one or more of such applications and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then if requested to do so by Sprint and at its expense, Oakton will oppose such petition before the FCC or defend such

order of the FCC diligently and in absolute good faith, to the end that the objectives contemplated by this Amended Agreement may be achieved. If the FCC denies one or more of the applications submitted under this Amended Agreement or grants one or more of such applications with conditions materially adverse to Oakton and/or Sprint, then if requested to do so by Sprint, Oakton will seek reconsideration or review of such action diligently and in absolute good faith, to the end that the objectives contemplated by this Amended Agreement may be achieved.

**D. Withdrawal of Application, Cancellation of Authorization or Delay in Construction.** Oakton acknowledges that because of the complexities inherent in designing two-way digital broadband systems consistent with the FCC's rules and policies and coordinating such designs among multiple MDS and ITFS licensees or for other reasons, Sprint may, in its sole discretion, elect not to construct or operate facilities authorized to Oakton by the FCC in granting an application submitted pursuant to Section 3.A. Provided there is no material adverse effect on the delivery to, or reception by, the ITFS Receive Sites of Oakton's Services, and upon request of Sprint, Oakton agrees that it will withdraw any pending application submitted pursuant to Section 3.A., return to the FCC for cancellation any authorization secured by grant of an application submitted pursuant to Section 3.A., withdraw any filing submitted pursuant to Section 3.C; and complete, submit to the FCC on such date as requested by Sprint and prosecute an application for additional time to construct any facility authorized by grant of an application submitted pursuant to Section 3.A. or to consummate any channel swap authorized pursuant to an application submitted pursuant to Section 3.A.ii.

**E. Permissible Modifications, Low-Power Boosters, Etc.** Provided that the facilities will not be predicted to have a material adverse effect upon the delivery or reception of Oakton's Services to the ITFS Receive Sites, Sprint may install facilities (including low-power boosters) or make facility modifications that are now or hereafter permitted under the FCC's rules without prior FCC authorization. Sprint will provide Oakton with the engineering portion of any notice or notification to be completed, submitted to the FCC and prosecuted pursuant to this Section at least [REDACTED] days in advance of the installation or modification. Upon notice by Sprint of such installation or modification and subject to Section 11.C.ii., Oakton will complete, submit to the FCC on such date as requested by Sprint and prosecute such notices or notifications as are required under the FCC's rules.

**F. Reimbursement of Reasonable Expenses.** Notwithstanding anything else herein, [REDACTED] to review any Coordination Document submitted pursuant to Section 3.B., or to review and complete any submission requested pursuant to Section 3.D. or Section 3.E., provided that, if requested in writing by Sprint, Oakton has given Sprint a good faith written estimate of such costs prior to incurring them and, if Sprint objects within a reasonable time in writing to such estimate as excessive, Oakton has made a good faith effort to address Sprint's concerns; provided further, however, that, if Sprint raises such an objection, in the absence of a prior written

commitment from Sprint for such reimbursement, Oakton will not be required to file any application to be submitted pursuant to Section 3.A., to execute any Coordination Document requested pursuant to Section 3.B., or to submit any item requested pursuant to Section 3.D. or Section 3.E. Should Sprint raise an objection to any good faith written estimate of expenses pursuant to this Section 3.F., Oakton agrees to use commercially reasonable efforts to find alternative engineering and legal assistance and obtain a good faith written estimate from such alternative sources. Such commercially reasonable efforts will include consideration of using legal and engineering firms recommended by Sprint.

**G. Amelioration of Adverse Effects.**

i. **At the ITFS Receive Sites.** If facilities operated as the result of either (i) the grant of any application submitted by Oakton pursuant to Section 3.A., (ii) the submission to the FCC of any Coordination Document executed by Oakton pursuant to Section 3.B., (iii) any notification submitted by Oakton pursuant to Section 3.E., (iv) any response station installed by Sprint or a Sprint Affiliate (as defined in Section 5.D.) or operated in connection with the Sprint System, regardless whether notice of such installation has been given or not been given to Oakton pursuant to Section 3.H., or (v) any other change in the facilities or operation of the Sprint System (as defined in Section 6.B.ii.(b) below) within the control of Sprint, actually has a material adverse effect upon the delivery or reception of Oakton's Services to the ITFS Receive Sites, Sprint will, at its own expense, promptly take all steps, including but not limited to, upgrading such ITFS Receive Site(s) to eliminate or reduce any such adverse effect. Sprint will respond in a timely manner to resolve any and all system maintenance or operational issues affecting the transmission and/or reception of Oakton's Services, so as to restore Oakton's ability to provide Oakton's Services unimpaired to the affected ITFS Receive Site. Sprint's response and resolution of such issues will be at Sprint's expense, except where the problem arises from negligent or wrongful actions by Oakton. Oakton will reasonably cooperate with Sprint's efforts pursuant to this Section 3.G.i.

ii. **At the Campus Sites.** Notwithstanding Section 3.G.i., the parties acknowledge that those ITFS Receive Sites located at Oakton's campuses at 1600 E. Golf Road, Des Plaines, Illinois and 7701 N. Lincoln Avenue, Skokie, Illinois (each, a "Campus Site") are used to receive and deliver Oakton's Services to cable headends and other sites through which Oakton's Services are delivered to students for instructional purposes. Therefore, if facilities operated as the result of either (i) the grant of any application submitted by Oakton pursuant to Section 3.A., (ii) the submission to the FCC of any Coordination Document executed by Oakton pursuant to Section 3.B., (iii) any notification submitted by Oakton pursuant to Section 3.E., (iv) any response station installed by Sprint or a Sprint Affiliate or operated in connection with the Sprint System, regardless whether notice of such installation has been given or not been given to Oakton pursuant to Section 3.H., or (v) any other change in the facilities or operation of

the Sprint System within the control of Sprint, actually has a material adverse effect upon the delivery or reception of Oakton's Services to either Campus Site, Sprint will, at its own expense, respond and commence actions to eliminate such material adverse effect within [REDACTED] hours of notice from Oakton and, in any event, eliminate such material adverse effect at either Campus Site within [REDACTED] days of such notice. In conjunction with the preceding sentence, Sprint will use its commercially reasonable best efforts to eliminate or reduce any such material adverse effect at any Campus Site as quickly as possible. Furthermore, Sprint will respond in a timely manner to resolve any and all system maintenance or operational issues affecting the transmission and/or reception of Oakton's Services at any Campus Site. If any such material adverse effect at any Campus Site is not so eliminated or reduced to non-objectionable levels, as reasonably determined by Oakton, within such aforementioned time periods, Sprint will immediately terminate operation of the offending facility or immediately provide for alternative distribution of Oakton's Services to the affected Campus Site. Oakton will reasonably cooperate with Sprint's efforts pursuant to this Section 3.G.ii.

**H. Notification Zones.** Oakton agrees that neither Sprint nor any FCC licensee providing MDS or ITFS capacity to Oakton will be required either to provide advance notice to Oakton prior to any response station installation, or to professionally install any response station. If Oakton experiences any material adverse effect upon the delivery of Oakton's Services at an ITFS Receive Site which is the result of block downconverter overload or any other technical problem arising from the proximity, frequency, power and/or directionality of any response station operated in connection with the Sprint System, Sprint will be obligated to rectify the situation as specified in Section 3.G. Oakton will reasonably cooperate with Sprint's efforts to cure such interference.

## I. Transmission Equipment.

i. **Provision of Transmission Equipment.** Throughout the Term, Sprint will provide Oakton, at no cost, with the use of such transmitters, combiners, waveguide or coaxial cable, transmission or response station hub antennas and associated combiners, jumpers and connectors (some or all of which may be shared with other licensees) as is required to construct the transmission facilities currently authorized by the FCC for the Channels or subsequently authorized pursuant to Section 3.A. (unless such authorization is returned to the FCC by Oakton for cancellation pursuant to Section 3.D.) or for which a notification is submitted pursuant to Section 3.E. (collectively, the "Provided Transmission Equipment"). A list of the Provided Transmission Equipment is included on Exhibit A hereto. If Sprint elects to digitally compress Oakton's Services pursuant to Section 5.A., prior to commencing digital transmissions, Sprint will provide Oakton at no cost with shared use of a digital controller and with use of two digital encoders, which Sprint may, at its sole discretion, install either at Oakton's program origination facility or at the Transmit Site (in which case Sprint will provide space for such encoders at no cost). Such controller and encoders will become Provided Transmission Equipment. Subject to the provisions of Section 3.K.iii., Sprint will retain title to the Provided Transmission Equipment and will be responsible for the payment of all *ad valorem* taxes and other charges assessed against the Provided Transmission Equipment during the Term. Sprint, at its own cost and expense, may make such alterations of, or attachments to, the Provided Transmission Equipment as may be reasonably required from time to time by the nature of its business; provided, however, that such alterations or attachments will not result in a material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites or contravene any FCC rule or policy.

ii. **STL Equipment.** Throughout the Term, Sprint will provide Oakton, at no cost, with the use of such transmission and reception equipment as is required to transport Oakton's Services from Oakton's now existing studio production facilities to the Transmit Site (the "STL Equipment") or Sprint may provide for transport of Oakton's Services via a fiber line leased from a third party (a "Fiber STL"). A list of the current STL Equipment is included on Exhibit A. Sprint will pay all costs and expenses of preparing and filing the application(s) for the STL(s), including the engineering, legal and administrative costs for the application and any additional necessary and appropriate equipment for the transmission of Oakton's Services as provided herein to the Transmit Site. Subject to the provisions of Section 3.K.iii., Sprint will retain title to the STL Equipment and will be responsible for the payment of all *ad valorem* taxes and other charges assessed against the STL Equipment during the Term. Sprint will be responsible during the Term for all costs associated with the use of the Fiber STL, if applicable.

iii. **Operation and Maintenance.** Sprint will, at its sole expense (but subject to Oakton's right to supervise the maintenance and operation of the equipment operating under its FCC authorizations), maintain and operate the Provided Transmission Equipment and the STL Equipment during the Term in good working order in compliance with the FCC's rules and sound engineering practices. Oakton will promptly provide written notice to Sprint if any of the Provided Transmission Equipment or the STL Equipment malfunctions or is not maintained in compliance with the foregoing sentence. The Provided Transmission Equipment and the STL Equipment may be replaced or repaired, at Sprint's sole discretion, from time to time for maintenance purposes, to complete construction of subsequently authorized facilities, or for other purposes and Exhibit A will be deemed amended accordingly; provided, however, that any such replacement or repair is undertaken so as to minimize interruption of the delivery or reception of Oakton's Services. Sprint will have no liability to Oakton for any losses or damages Oakton may suffer due to any malfunction of the Provided Transmission Equipment, the STL Equipment or any other equipment utilized by Sprint to deliver Oakton's Service to the ITFS Receive Sites from the Transmit Site, unless such losses or damages result directly from the negligence of Sprint or wrongful action or any of its employees or agents. However, regardless of the cause of any malfunction, Sprint will use best efforts to restore service at the earliest possible time.

J. **Site Availability.** During the Term, Sprint will be responsible, at its sole cost and expense, for securing the rooftop, transmission tower, and equipment room space necessary for installation of the transmission facilities authorized to Oakton for the Channels pursuant to this Amended Agreement. In addition, during the Term Sprint will provide space at the Transmit Site for the installation of the reception portion of the STL Equipment.

K. **Post-Agreement Considerations.**

i. **License at Transmit Site.** Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10, Sprint will immediately cease use of the Channels. Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10.A., 11.E., or 11.M., unless Oakton already then holds such FCC authorization, Sprint will arrange at no cost to Oakton such channel swaps as are necessary for Oakton to thereafter hold an FCC authorization for such ITFS channel(s) at the Transmit Site which will enable Oakton to continue delivering Oakton's Services to the ITFS Receive Sites with a received signal quality as good or better than that which Oakton has enjoyed during the Term. Pending the consummation of any such channel swap, Sprint will at no cost provide Oakton (through channel loading and/or channel shifting, at Sprint's sole discretion) sufficient capacity in its system to deliver Oakton's Services to the ITFS Receive Sites.

ii. **Continued Operation At Transmit Site.** Upon expiration or termination of this Amended Agreement (other than termination by Sprint pursuant to Section 10.A.), for so long as Sprint, in its sole discretion, utilizes space at the Transmit Site for other MDS or ITFS facilities leased or owned by it, Sprint will permit Oakton shared access to any MDS/ITFS combiner, waveguide or transmission antenna at the Transmit Site owned by Sprint, and space for two ITFS transmitters, the reception portion of the STL Equipment and, should Sprint have elected pursuant to Section 3.I.i. to install digital encoders at the Transmit Site, such digital encoders, provided: (a) Oakton reimburses Sprint for its *pro rata* share (calculated based on the ratio of the spectrum used by Oakton to transmit Oakton's Services to the total amount of spectrum licensed to other MDS and ITFS licensees sharing such equipment) of the value of the shared equipment, and of the ongoing costs of owning or leasing such space (including lease fees, utility expenses, taxes, costs of maintenance and repair of the shared equipment or space, any tower or building on which the equipment is mounted or in which the equipment is stored, and the systems for lighting, heating, ventilating, and cooling the space); (b) that such use by Oakton does not have a material adverse effect by way of interruption, interference or similar causes upon Sprint or its business or any other MDS or ITFS licensee sharing the equipment or space; and (c) any lease pursuant to which Sprint is operating at the Transmit Site permits Sprint to allow Oakton occupancy, which permission Sprint will use commercially reasonable efforts (both during the Term and, if necessary, at its conclusion) to secure. Furthermore, Sprint has negotiated a provision in its lease of space at the Transmit Site (the "Transmit Site Lease") to allow Oakton, or a group of licensees of which Oakton is a member, to assume the Transmit Site Lease if such lease is terminated or if Sprint intends to dispose of the Transmit Site Lease. In such case, Sprint will use commercially reasonable efforts to assist Oakton with the assumption of its proportionate share of the Transmit Site Lease.

iii. **Option to Purchase Equipment.**

(a) Upon expiration of the Term or the termination of this Amended Agreement (other than termination of this Amended Agreement pursuant to Section 10.B.i. as a result of Oakton's loss of the FCC authorizations for the Channels), Oakton will have the option to purchase the STL Equipment (if any), the transmitters being utilized at the Transmit Site to transmit Oakton's Services and any encoders utilized in connection with the digital compression of Oakton's Services (if any), or, at Sprint's sole discretion, immediately available equipment of equal or better quality. Such option may be exercised by giving written notice to Sprint within [REDACTED] days of the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10. The parties will use commercially reasonable efforts to consummate the transaction as soon as practicable or, if a channel swap pursuant to Section 3.K.i. is required, upon the consummation of such channel swap. The purchase price for such encoders (if any), the transmitters and STL

Equipment (if any) will be [REDACTED] unless this Amended Agreement has been terminated by Sprint pursuant to Section 10.A., in which case it will be the greater of the replacement cost or fair market value. If a Fiber STL is being used to transport Oakton's Services to the Transmit Site, upon expiration of the Term or termination of this Amended Agreement (other than termination of this Amended Agreement pursuant to Section 10.B.i. as a result of Oakton's loss of the FCC authorizations for the Channels), Oakton will have the option of assuming the lease for the Fiber STL.

(b) Upon expiration of the Term or the termination of this Amended Agreement (other than termination of this Amended Agreement pursuant to Section 10.B.i. as a result of Oakton's loss of the FCC authorizations for the Channels), Oakton will have the option to purchase a proportionate interest (in proportion to the number of other ITFS licensees using such equipment) in the ITFS combiner, waveguide or transmission antenna being utilized at the Transmit Site to transmit Oakton's Service or, at Sprint's sole discretion, immediately available equipment of equal or better quality. Such option may be exercised by giving written notice to Sprint within [REDACTED] days of the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10. The parties will use commercially reasonable efforts to consummate the transaction as soon as practicable or, if a channel swap pursuant to Section 3.K.i. is required, upon the consummation of such channel swap. The purchase price for the equipment made available pursuant to this Section 3.K.iii.(b) or the equal or better equipment will be \$1.00, unless this Agreement is terminated by Sprint pursuant to Section 10.A., in which case it will be the greater of its replacement cost or fair market value.

(c) Upon expiration of the Term or the termination of this Amended Agreement (other than termination of this Amended Agreement pursuant to Section 10.B.i. as a result of Oakton's loss of the FCC authorizations for the Channels), Oakton will have the option to purchase any Provided Transmission Equipment not otherwise subject to an Oakton purchase option pursuant to Sections 3.K.iii.(a) and 3.K.iii.(b) as such exists at the time, or, at Sprint's sole discretion, immediately available equipment comparable to such equipment and of equal or better quality. Such option may be exercised by giving written notice to Sprint within [REDACTED] days of the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10 and the parties will use commercially reasonable efforts to consummate the transaction as soon thereafter as practicable. The purchase price for such equipment will be the greater of its replacement cost or fair market value.

iv. **Alternative Delivery.** Notwithstanding anything else in this Section 3.K, if this Amended Agreement is terminated by Oakton pursuant to Section 10.A., Sprint will provide such equipment, in addition to the equipment which Oakton has an option to purchase pursuant to Sections 3.K.iii.(a) and 3.K.iii.(b), as is necessary for Oakton to continue to deliver Oakton's Services to the ITFS Receive Sites with a received signal quality as good or better than that which Oakton has enjoyed during the Term. If necessary in order to provide Oakton with the ability to deliver Oakton's Services to the ITFS Receive Sites with a received signal quality as good or better than that which Oakton has enjoyed during the Term, Sprint will, in addition, provide an alternative method of distribution for such period of time equal to the duration of the Term of this Amended Agreement had it not been terminated by Oakton.

**L. Determination of Material Adverse Effect.**

i. **At ITFS Receive Sites.** Sprint shall endeavor at all times to provide picture quality at each ITFS Receive Site at the TASO 2 level or better (as described in Exhibit B). However, as used throughout this Amended Agreement and except as provided in Section 3.L.ii., the determination of whether any facility or modification contemplated herein will be predicted to cause, or does cause a "material adverse effect upon the delivery or reception of Oakton's Services to the ITFS Receive Sites" shall be based upon a comparison of the picture and sound quality of Oakton's Services received at an ITFS Receive Site immediately prior to such modification and subsequent to such modification, and, subject to the provisions of Section 3.L.ii., if there is a reduction in picture quality to a level below the TASO 3 standard described in Exhibit B at an ITFS Receive Site it shall be a material adverse effect. For a digital signal, a "material adverse effect upon the delivery or reception of Oakton's Services to the ITFS Receive Sites" may include short-term or intermittent degradation in picture or sound quality provided, however, no specific number or duration of impaired reception occurrences of a digital signal shall necessarily constitute a material adverse effect. Rather it is the intent of the parties to ensure the overall suitability of program content not being degraded. For a digital signal, Oakton may videotape any intermittent adverse effect, should it occur, as evidence of a problem. Quality of service for an ITFS Receive Site shall be determined at the output of the addressable decoder (set-top box, location to be determined by Oakton); provided, however, that for any ITFS Receive Site utilizing more than one hundred fifty (150) feet of coaxial cable between the antenna and the addressable decoder, quality of service will be determined as close to the 150 foot point in the cable run as is reasonably accessible. The parties recognize that picture quality may be maintained in spite of desired-to-undesired signal ratios being below the standards set forth in the FCC's rules as long as picture quality is maintained at or above the [REDACTED] level. The standards set forth in this Section 3.L. expressly recognize that during the Term, Sprint may satisfy its obligations hereunder to deliver Oakton's Services to the ITFS Receive Sites using any channels within the Sprint System.

ii. **At Campus Sites.** Notwithstanding anything to the contrary contained in Section 3.L.i. above, if any facility or modification contemplated pursuant to Section 3 will be predicted to cause, or does cause a reduction in picture quality to a level below the TASO 2 standard described in Exhibit B at any Campus Site, it shall be deemed a “material adverse effect upon the delivery or reception of Oakton’s Services” for purposes of this Agreement.

#### **SECTION 4. ITFS Receive Sites.**

**A. Current ITFS Receive Sites.** Attached to this Amended Agreement as Exhibit C is a list, as of the Effective Date, of the locations that are within both Oakton’s FCC-defined protected service area and a circle centered at the Transmit Site and having a [REDACTED] mile radius (the “Serviceable Area”) and which have operable and active reception equipment which enable such sites to receive Oakton’s Services from the Transmit Site (the “Current ITFS Receive Sites”) with a picture quality level of TASO 3 or better and a list of the Campus Sites for which the picture quality level is TASO 2 or better. By executing this Amended Agreement, Oakton certifies that each Current ITFS Receive Site listed on Exhibit C meets the qualifications set forth in the immediately preceding sentence. Except where this Amended Agreement clearly provides otherwise, Current ITFS Receive Sites shall be deemed to include the Campus Sites. If Oakton, during the Term, permanently ceases to utilize Oakton’s Services from the Transmit Site at a Current ITFS Receive Site, such location will no longer be considered as a Current ITFS Receive Site and Oakton will so notify Sprint. Oakton will then be permitted to specify a replacement Current ITFS Receive Site for the purposes of this Amended Agreement; provided, however that Oakton will be responsible for any costs associated with the installation of such replacement Current ITFS Receive Site. Any equipment being utilized as of the Effective Date by Oakton to receive transmissions over the Channels located at a Current ITFS Receive Site will be owned by Oakton and hereinafter referred to as the “Current ITFS Receive Site Equipment”. Sprint will, at its sole cost and expense, repair, maintain and replace, as needed, the Current ITFS Site Equipment from the reception antenna up to the Demarc Point (as hereinafter defined), provided, however, that Sprint’s obligations to maintain the Current ITFS Receive Site Equipment will be subject to Oakton arranging access for Sprint to the Current ITFS Receive Sites.

**B. Additional ITFS Receive Sites.** At any time during the Term, Oakton may designate additional ITFS receive sites locations within the Serviceable Area that will utilize Oakton’s Services, that will not suffer interference from previously licensed or proposed facilities to an extent that makes such additional sites incapable of obtaining a usable signal from the Transmit Site, and that can receive transmissions from the Transmit Site either with a Standard ITFS Installation (as defined below) or with enhanced installations provided by and at the expense of Oakton (as specified below) (the “Additional ITFS Receive Sites”). Sprint will make a Standard ITFS Installation at such Additional ITFS Receive Sites subject to reimbursement by Oakton for Sprint’s actual and reasonable costs without markup or profit. Oakton will obtain and coordinate any required approvals or permits prior to the making of a Standard ITFS Installation at any

Additional ITFS Receive Site. Sprint will install the equipment comprising a Standard ITFS Installation within [REDACTED] days after the date Oakton certifies to Sprint and provides such other evidence as Sprint reasonably requests that Oakton has obtained all required approvals or permits for the making of the Standard ITFS Installation at the Additional ITFS Receive Site. Each "Standard ITFS Installation" will consist of the installation of one antenna commonly installed for video services within the Sprint System (however, in no event will an antenna with a gain of more than 26 dBi, a dimension greater than four feet, and placement on a mast greater than thirty (30) feet in height, be required), a downconverter, up to one hundred fifty (150) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls, one decoder (if necessary), and such other miscellaneous equipment as is required to connect such equipment to a single television set or to the central signal input for an internal distribution system (the "Additional ITFS Receive Site Equipment"), such point of connection being herein referred to as the "Demarc Point". Upon installation, the Additional ITFS Receive Site Equipment will become the property of Oakton. Oakton may also, in its discretion and at its own expense, but with the reasonable cooperation of Sprint, provide enhanced installations (including but not limited to taller receive site towers or masts, antennas with greater gain and/or beambenders) as it deems appropriate to supplement the Standard ITFS Installation at any Additional ITFS Receive Site so as to enable such site to receive a usable signal; provided, however, that any Additional ITFS Receive Site which receives Oakton's Services from the Transmit Site by virtue of such enhanced installations, will not be considered an ITFS Receive Site (as defined below) for purposes of Sections 3.A., 3.B., 3.E., 3.G., or 3.H. Notwithstanding the preceding sentence, Sprint will reimburse Oakton for the cost of any non-standard installation otherwise permitted pursuant to this Amended Agreement; provided, however, that the aggregate of such reimbursements shall not exceed the sum [REDACTED].

[REDACTED] Sprint will perform all repairs, maintenance and replacement of the Additional ITFS Receive Site Equipment up to the Demarc Point; provided, however, that Sprint's obligations to maintain the Additional ITFS Receive Site Equipment will be subject to Oakton arranging access for Sprint to the Additional ITFS Receive Sites. For those Additional ITFS Receive Sites installed at Sprint's expense, such repair, maintenance and replacement work will be at the expense of Sprint. For those Additional ITFS Receive Sites installed at Oakton's expense, the actual and reasonable cost of any such repair, maintenance and replacement work performed by or at the direction of Sprint, without markup or profit, will be reimbursed by Oakton to Sprint within [REDACTED] days after Oakton's receipt of an invoice therefor. If Oakton, during the Term, permanently ceases to utilize Oakton's Services from the Transmit Site at an Additional ITFS Receive Site, such location will no longer be considered as an Additional ITFS Receive Site and Oakton will so notify Sprint. At any given time, the Current ITFS Receive Sites and the Additional ITFS Receive Sites then in existence will collectively be referred to as the "ITFS Receive Sites" and the Current ITFS Receive Site Equipment and the Additional ITFS Receive Site Equipment then installed at the ITFS Receive Sites (including any equipment installed pursuant to Section 4.C.) will be referred to as the "ITFS Receive Site Equipment." Notwithstanding the foregoing, Oakton acknowledges that locations within the Serviceable Area may overlap with the

FCC-defined protected service area of a co-channel or adjacent channel licensee. In such event, Oakton agrees that for purposes of Sections 3.A., 3.B., 3.E., 3.G., and 3.H., ITFS Receive Sites will not include any receive site that is located in the half of the overlap area that is furthest away from the Transmit Site, the halves of the overlap area being created by bisecting the overlap area with a line beginning and ending at the two points where the circles intersect. In addition, Oakton acknowledges that ITFS transmissions require an unobstructed transmission path between the Transmit Site and any ITFS Receive Site and that events beyond the control of Sprint, such as the construction of new buildings or the growth of trees, may block the path between the Transmit Site and an ITFS Receive Site. If such a blockage occurs such that an ITFS Receive Site can no longer receive a usable signal from the Transmit Site, unless such blockage can be overcome by minor relocations or enhanced installations as specified above, such ITFS Receive Site will no longer be considered an ITFS Receive Site for purposes of this Amended Agreement.

### C. Upgrading of ITFS Receive Sites.

i. If Sprint exercises its right pursuant to Section 5.A. to digitally compress Oakton's Services, prior to commencing digital transmissions Sprint will install at no cost to Oakton one digital converter/decoder at each of the ITFS Receive Sites. Thereafter, Sprint will install additional digital converter/decoders at future ITFS Receive Sites as are necessary, subject to reimbursement by Oakton of Sprint's actual and reasonable costs without markup or profit. Prior to commencing digital transmissions, Sprint will also upgrade the reception antenna, downconverter, and the internal wiring system leading to a single television or the central signal input for an internal distribution system at any ITFS Receive Site to the extent necessary to avoid any material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites by virtue of the digital compression. Any equipment provided by Sprint at no cost to Oakton pursuant to this Section 4.C.i. will remain the property of Sprint and Sprint will maintain such equipment from the reception antenna up to the Demarc Point at its sole cost and expense. Any equipment provided by Sprint subject to reimbursement by Oakton pursuant to this Section 4.C.i. will be the property of Oakton; provided, however, that Sprint will repair, maintain and replace such equipment from the reception antenna up to the Demarc Point at its sole cost and expense, subject to reimbursement by Oakton for Sprint's actual and reasonable cost for labor and materials without markup or profit within [REDACTED] days after Oakton's receipt of an invoice therefor.

ii. Subject to appropriate legal, regulatory, health, safety and aesthetic concerns and limitations, and its educational mission, Oakton will cooperate with Sprint in the making of technical modifications (including the installation of a new or modified decoder or the replacement of the antenna, downconverter or transceiver with a superior model) to any ITFS Receive Site should any such modification be required in order to avoid having facilities that are either proposed in an application submitted pursuant to Section 3.A.,

contemplated by a Coordination Document submitted pursuant to Section 3.B., installed pursuant to Section 3.E., or installed by any other entity leasing capacity to Sprint, that would have a material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites. Sprint will complete such ITFS Receive Site modifications at its sole cost and expense prior to the operation of such facilities.

**D. Alternative Distribution.** Sprint may utilize alternative distribution mechanisms to satisfy its obligation to deliver Oakton's Services to the ITFS Receive Sites from the Transmit Site, provided that such use of alternative transport mechanisms (i) does not have a material adverse effect upon the delivery or reception of Oakton's Services to either Campus Site or the ITFS Receive Sites and (ii) does not prevent Oakton's satisfaction of the ITFS minimum transmission requirements for the Channels under FCC rules. Notwithstanding anything to the contrary contained in this Amended Agreement, if Sprint has elected to provide alternative distribution pursuant to this Section, such locations served by alternative distribution will be deemed ITFS Receive Sites for purposes of Section 3.K..

**E. Complementary Internet Access Sites.** If Sprint or a Sprint Affiliate (as defined in Section 5.D.) commences actively marketing a high speed Internet access service which utilizes the Sprint System (as such term is defined in Section 6.B.ii.), Sprint, at no cost to Oakton, will make a Standard Internet Access Installation (as such term is defined below) and thereafter during the Term provide entry level two-way high-speed Internet access service at a data rate of no less than that provided to Sprint's small business customers at [REDACTED] locations that are designated by Oakton (the "Internet Access Receive Sites"). Oakton acknowledges that Sprint is under no obligation to utilize the Sprint System for the provision of a two-way high-speed Internet access service and that Oakton has no rights under this Section 4.E. unless Sprint chooses, in its sole discretion, at any given time to provide such a service. Sprint will notify Oakton within [REDACTED] days of the date it commences actively marketing commercially available two-way high-speed Internet access service utilizing the Sprint System. At any time thereafter during the Term, provided that Sprint is still then offering such services, Oakton may designate up to [REDACTED] locations to serve as Internet Access Receive Sites, provided that each such site is, subject to Section 4.B., within the Serviceable Area and that each such site can receive and transmit the two-way high-speed Internet access service in accordance with FCC rules and regulations with a Standard Internet Access Installation. Oakton will obtain and coordinate any required approvals or permits prior to the making of a Standard Internet Access Installation at any Internet Access Receive Site. Sprint will install the equipment comprising a Standard Internet Access Installation within [REDACTED] days after the date Oakton certifies to Sprint and provides such other evidence as Sprint reasonably requests that Oakton has obtained all required approvals or permits for the making of the Standard Internet Access Installation at the Internet Access Receive Site. Each "Standard Internet Access Installation" will consist of the installation of one antenna commonly installed within the Sprint System (however, in no event an antenna with a gain of more than 26 dBi, a dimension greater than four feet and on a mast greater than [REDACTED] feet in height), a

transceiver, a cable modem, up to one hundred fifty (150) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls, and such other miscellaneous equipment as is required (the "Internet Access Receive Site Equipment"). Upon installation, the Internet Access Receive Site Equipment will become the property of Oakton; provided, however, Sprint will be solely responsible for all repairs, maintenance and replacement of the Internet Access Receive Site Equipment from the reception/transmission antenna up to the Demarc Point.

## **SECTION 5. Allocation and Use of Airtime.**

**A. Oakton's Capacity.** Prior to digital compression of Oakton's Services as set forth below, Oakton will reserve for its use [REDACTED] full-time NTSC-formatted television signal (comprising a primary video and audio signal along with subcarriers, secondary audio channels, vertical blanking intervals and other signal components normally utilized in the transmission of NTSC formatted television signals) (a "Program Track") and one part-time Program Track consisting of 60 hours per week over which to transmit Oakton's Services to the ITFS Receive Sites. Attached hereto as Exhibit D is a schedule setting forth those times which Oakton has scheduled for transmission of Oakton's Services on the part time Program Track over Oakton's Capacity. Exhibit D may be amended from time to time; provided, however, that any changes in the schedule of use of the part-time Program Track will require Oakton to provide at least [REDACTED] days advance written notice of Oakton's proposed revisions and Sprint's consent which may not be unreasonably withheld, conditioned or delayed. Oakton acknowledges that transmitting Oakton's educational and instructional video programming as set forth herein utilizing analog technology will fully utilize all of Oakton's minimum use and recapture time under the FCC's rules applicable to analog ITFS facilities. Oakton recognizes that the shifting of that programming onto another channel within Sprint's system and/or the digital compression of that programming would improve the spectral efficiency of the system. Therefore Oakton agrees that, subject to compliance by Sprint with Section 4.C.i., throughout the Term Sprint may, at its sole discretion, digitally compress Oakton's Services and/or channel shift or channel load the transmission of Oakton's Services onto any MDS or ITFS channels, provided such digital compression and/or shifting or loading will not have a material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites. Upon digital compression as permitted pursuant to this Section, Oakton's Capacity will equal the greater of the capacity sufficient to transmit the visual equivalent of [REDACTED] full-time NTSC-formatted television signals (each a "Digital Program Track") (including, if available, VBI and Closed Captioning components associated with video signals), or 1.2 MHz (*i.e.*, [REDACTED] of the capacity of the Channels).

**B. Leased Excess Capacity.** Except for Oakton's Capacity, the remaining capacity of the Channels will be reserved for the exclusive use of Sprint (the "Leased Excess Capacity").

**C. Use of Oakton's Capacity.**

i. Oakton's Capacity will be used for the transmission of video and other material which, at a minimum, satisfies the FCC's minimum educational usage requirements for ITFS licensees engaged in the leasing of excess capacity. The transmissions made by Oakton to the ITFS Receive Sites will be referred to as "Oakton's Services" for purposes of this Amended Agreement.

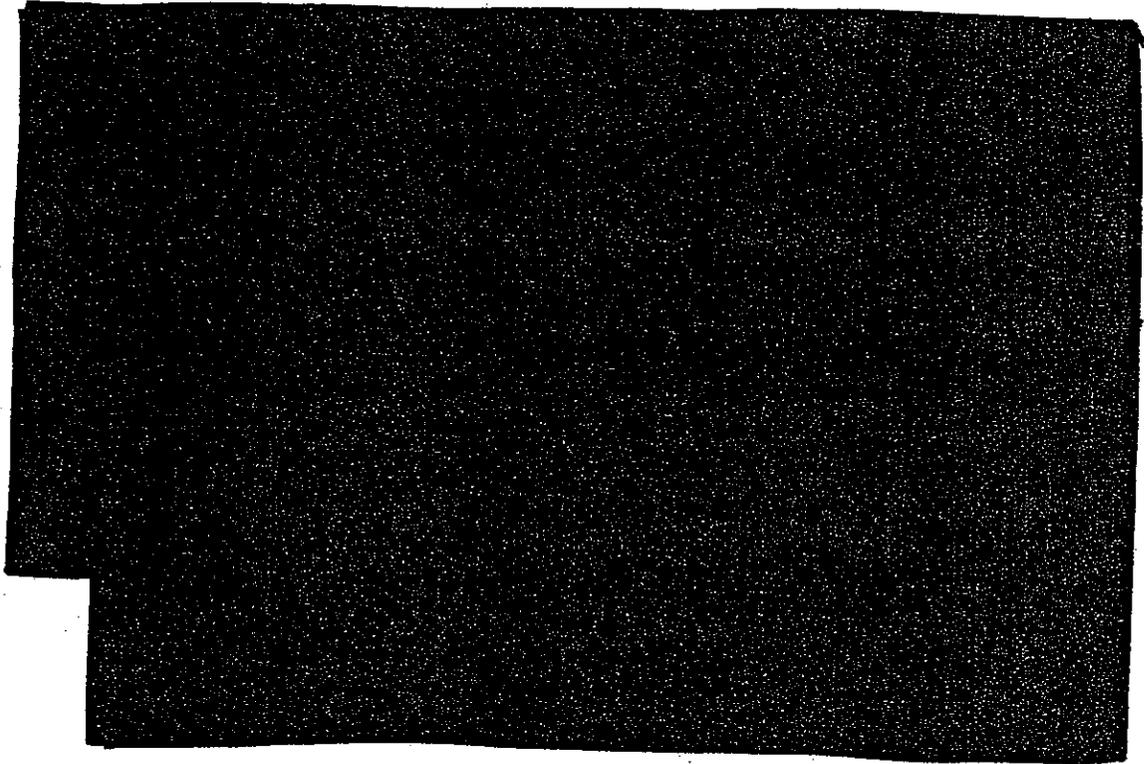
ii. In addition to the Digital Program Track provided pursuant to Section 5.A. Oakton may, at its sole discretion, transmit one or more additional Digital Program Tracks (the "Additional Program Tracks") from the Transmit Site, provided that: (a) it reduces the compression ratio utilized to digitally compress the Digital Program Track such that the Additional Program Track and the Digital Program Track combined do not utilize more than [REDACTED] of the capacity of the Channels; (b) it bears all costs and expenses associated with the delivery of the Additional Program Tracks to the Transmit Site and transmission of the Additional Program Tracks, reimbursing Sprint for additional actual and reasonable costs Sprint incurs without mark-up or profit; (c) Oakton coordinates with any other MDS or ITFS licensee transmitting from the Transmit Site to assure that the transmission of Additional Program Tracks will not adversely impact their use of the Sprint system, recognizing that technical limitations currently exist which require certain uniformity among all video programming that is transmitted in digitally compressed format over a single channel; (d) Oakton provides Sprint no less than [REDACTED] months advance notice of its desire to transmit Additional Program Tracks; and (e) Sprint reasonably determines that Oakton's proposal will not have a material adverse effect upon Sprint or its business, such determination not to be unreasonably conditioned, delayed or withheld.

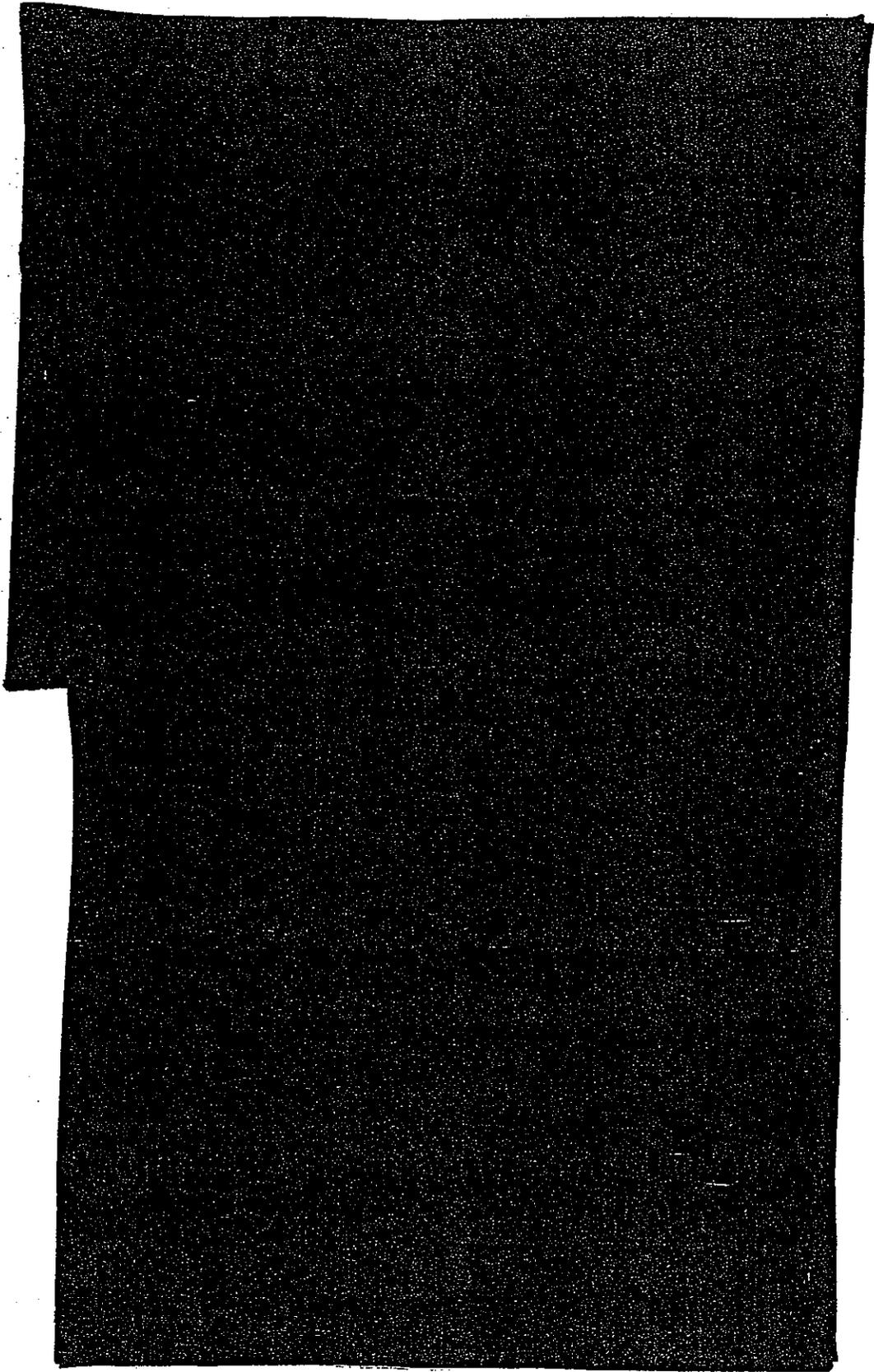
iii. Subject to the prior written consent of Oakton, Sprint will have the right to integrate Oakton's Services into the overall communications service offered to Sprint's subscribers. Nothing contained herein will be construed as to prohibit Oakton from charging Sprint fair value for the use of Oakton's Services by Sprint as set forth in this Section 5.C.iii.

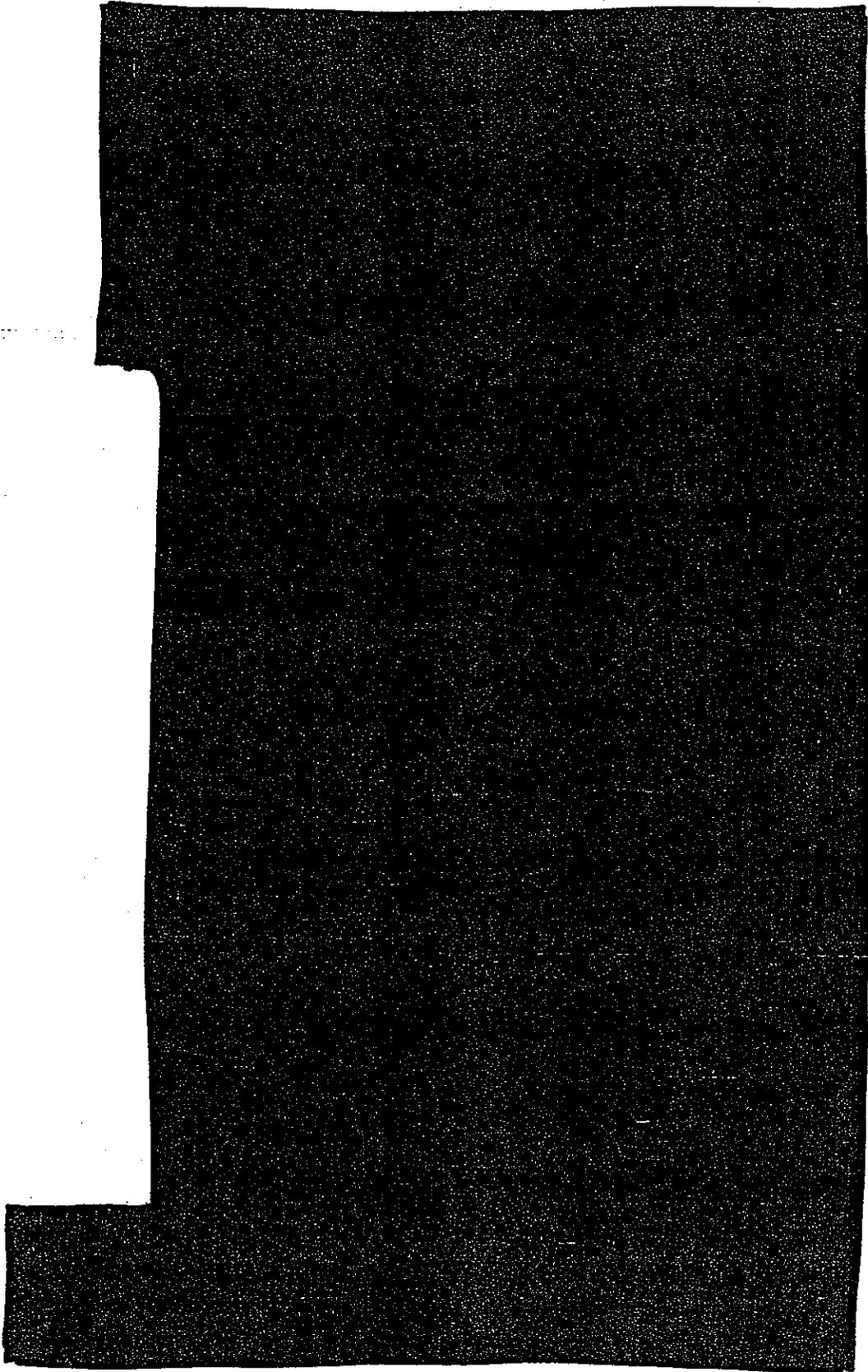
**D. Use of Leased Excess Capacity.** Sprint may, without the prior consent of Oakton, sublease any portion of the Leased Excess Capacity, provided that (i) the sublessee agrees in writing to be bound by the restrictions of this Section 5.D., (ii) any amounts paid by sublessee to Sprint in consideration of the sublease will be included in System Adjusted Gross Revenue for purposes of calculating fees pursuant to Section 6, and (iii) Sprint remains primarily liable for performance of all obligations under this Amended Agreement. Sprint may, without the prior consent of Oakton, permit any entity that is owned by Sprint, owns Sprint or is owned in common with Sprint (a "Sprint Affiliate") to utilize any portion of the Leased Excess Capacity, provided that the Sprint Affiliate agrees in writing to be bound by the restrictions of this Section 5.D. and any amounts paid to the Sprint Affiliate will be considered as if paid to Sprint for purposes of calculating System Adjusted Gross Revenue and fees pursuant to Section 6. Nothing in

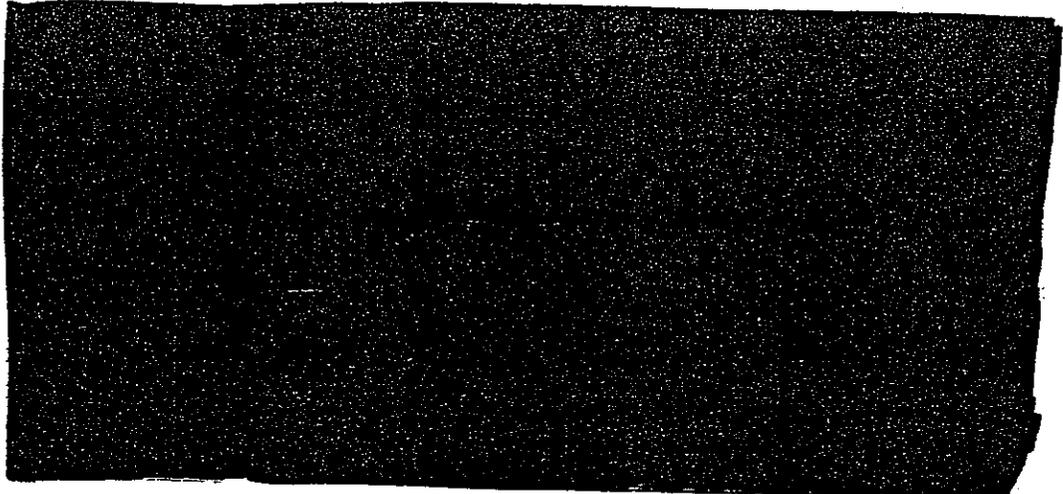
this Amended Agreement will be construed to create a duty on the part of Sprint to actually transmit any minimum number of hours of programming, except as required by FCC rules and regulations to, among other things, preserve Oakton's authorization for the Channels, or to obligate Sprint to obtain or furnish substitute or alternative programming in cases where programming is deemed prohibited by this Section 5.D. Except as provided herein, the Leased Excess Capacity may be used by Sprint for any legal purpose (including, but not limited to, the transmission of one-way or two-way voice, video and/or data services), without any restriction on the substance, format or type of information or signal to be transmitted. To the extent that Sprint elects to use Leased Excess Capacity to transmit a video programming service, it will only select for transmission over the Channels video programming of a sort which would not serve to place Oakton's reputation in the community in jeopardy and will not transmit "Adult Content" video programming over the Channels. "Adult Content" will include any motion picture which is rated "R", "X" or "NC-17" by the Motion Picture Association of America or which does not carry an MPAA rating and would reasonably be considered "adult" in nature. Oakton acknowledges that Sprint may not exercise control over the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems and that Sprint will not be restricted by this Section in providing Internet, data, video streaming or voice services or otherwise be liable to Oakton for the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems transmitted over the Channels.

**SECTION 6. Fees.**









**C. Payments.** The Monthly Fee for a given month will be sent to Oakton at such address as Oakton designates from time to time by first-class, United States Postal Service mail, no later than [REDACTED] days after the last day of the month in question. Each payment of the Monthly Fee will be accompanied by a report accurately specifying the calculation of the Monthly Fee due for the month in question, including at least the System Adjusted Gross Revenue, the calculation of the Monthly Royalty Fee and the Minimum Monthly Payment amount. Incentive Payments and the Renewal Fee will be sent to Oakton at such address by first-class, United States Postal Service mail when due.

**D. Proration.** If the Term ends on a date other than the last day of a calendar month, then the Monthly Fee for that partial month will be paid on a proportionate basis.

**E. Right to Audit.**

i. Sprint will at all times during the Term and for [REDACTED] years thereafter keep, maintain and preserve complete and accurate records and accounts in accordance with generally accepted accounting principles consistently applied pertaining to its financial obligations hereunder for at least the preceding [REDACTED] month period; provided, however, that in the event of any inquiry or dispute pertaining to Sprint's financial obligations, Sprint shall preserve all such records for the period of resolution of the inquiry or dispute. Sprint will also cause any Sprint Affiliate to which it has assigned, subleased or otherwise allowed to use the capacity of the Sprint System to keep, maintain and preserve such records and accounts in the same manner relating to such assignment, sublease or use.

ii. Within [REDACTED] months of the date on which the Monthly Royalty Fee first exceeds the Monthly Minimum Payment, Sprint will provide a report issued in conformity with Statement of Accounting Standard No. 70 "Reports on the Processing of Transactions by Service Organizations". Such

report will be prepared by independent accountants and will provide an opinion on the controls placed in operation and tests of operating effectiveness of those controls in effect at Sprint and Sprint Affiliates with respect to the collection of revenues and the computation of System Adjusted Gross Revenue. If such report indicates that Sprint's practices are not in compliance with the provisions set forth in Section 6, Sprint will make payment to Oakton of all amounts due from prior periods plus interest accruing on such past due amounts at the rate of nine percent (9%) per annum.

iii. The books, records, and corporate accounts of Sprint and any Sprint Affiliates to which Sprint has assigned, subleased or otherwise allowed to use the capacity of the Sprint System pertaining to the Monthly Fees due to Oakton will be available for inspection and audit at Sprint's corporate offices at any time during the term of this Amended Agreement or within [REDACTED] year thereafter, during reasonable business hours, by Oakton or its designated certified independent auditors. Except as specified below, only one audit or inspection will be conducted of Sprint's records and accounts during any calendar year and the audit or inspection will be limited to the records and accounts of Sprint relevant to the calculation of the Monthly Fee for the fiscal year just ended, unless an inspection reveals discrepancies which Oakton determines, in its reasonable discretion, requires an audit to be conducted, in which case an audit may also be conducted for the fiscal year just ended. Additionally, if any audit reveals an error of [REDACTED] or more of the total amounts payable during such period, Sprint's books, records, and accounts for the immediately preceding [REDACTED] years may be audited. All information obtained by Oakton during any audit or inspection herein will be maintained by Oakton in strict confidence as if such were Confidential Information (as such term is defined in Section 7.D.), except as reasonably necessary for Oakton to enforce its rights under this Amended Agreement in any arbitration proceeding or court action as provided herein. If an audit reveals an error in the calculation of the Monthly Fees, then Oakton will provide a written report specifying the error to Sprint and Sprint will have [REDACTED] days from the date of receipt of the report to verify the discrepancy. Any monies owed to Oakton as a result of the audit will be paid in full along with interest accrued thereon for the period audited and thereafter until paid at the rate of [REDACTED] per annum, such payment to be made by Sprint within [REDACTED] days of verification by Sprint of the discrepancy. If Sprint disputes that any monies are due and owing to Oakton, Sprint may submit the matter to arbitration pursuant to Section 11.C. If it is determined that Oakton was underpaid by [REDACTED] percent or more for the period(s) in question, Sprint shall pay the cost of said audit and any pre-audit inspection.

F. **Reimbursements.** Where one party is required pursuant to this Amended Agreement to reimburse the other party for costs incurred, such payment will be sent to such address as the party to receive such reimbursement designates from time to time by first-class, United States Postal Service mail, no later than [REDACTED].

calendar days following receipt of an invoice and such supporting documentation as the party paying the reimbursement reasonably requests.

## SECTION 7. Additional Covenants.

### A. Maintenance of FCC Authorizations.

i. **Preservation of Authorizations.** During the Term, Oakton will take all necessary steps to secure and preserve the authorizations to use the Channels and to permit Sprint to use capacity thereon pursuant to the terms and conditions of this Amended Agreement. Oakton will obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the Channels pursuant to this Amended Agreement. Oakton acknowledges that Sprint is leasing excess capacity on the specific frequencies assigned to the Channels and that Sprint would suffer a material adverse effect were it denied the ability to utilize those frequencies as provided for herein. Except as set forth in Section 7.A.ii., Oakton will (i) take all necessary steps to renew the licenses for the Channels prior to their expiration; and (ii) avoid any act or activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the licenses for one or more of the Channels. Each of the parties hereto will take all reasonable steps to comply with the Communications Act of 1934, as amended, and the rules and regulations of the FCC, and will timely file all reports, schedules and/or forms required by the FCC to be filed by it. The obligations of Oakton under this Section 7.A.i. include the obligation to provide Sprint with written notice of any issue, problem or other circumstance peculiar to Oakton or the Channels which is reasonably likely to prevent Oakton from maintaining the authorizations to use the Channels.

ii. **Cancellation or Non-Renewal.** During the Term of this Amended Agreement, Oakton may return any authorization for the Channels to the FCC for cancellation or elect not to renew any such authorization, provided that it gives [REDACTED]'s prior written notice to Sprint of its intent to do so. Upon written request of Sprint, Oakton will assign at no cost such authorizations to such eligible entity as Sprint designates during such [REDACTED] day period that is willing to assume all remaining obligations and benefits of such authorizations, subject to FCC consent. Oakton will promptly and diligently prepare and file, and expeditiously prosecute any necessary assignment application and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate in any effort to expedite the authorization of such assignment, all at Sprint's expense. Until such time as the FCC issues a Final Order (as such term is defined in Section 11.R.) disposing of the assignment application, Oakton will not take any action that would jeopardize Sprint's rights under this Amended Agreement. If any person petitions the FCC to deny the assignment application or otherwise opposes the assignment application before the FCC, or if the FCC enters an order granting the assignment application and any person petitions for reconsideration or review of such order before the FCC, or appeals or applies for

review in any judicial proceeding, then Oakton will oppose such petition before the FCC or defend such order of the FCC diligently and in absolute good faith, at Sprint's reasonable cost and expense, to the end that the assignment contemplated by this Section 7.A.ii. may be finally consummated.

iii. **Assignment of Authorizations.** Subject to the receipt of all necessary consents, including the consent of the FCC, Oakton may assign all of its authorizations for the Channels on terms and conditions of its choosing to a third party eligible to hold such authorizations provided that prior to such assignment Oakton agrees in writing to assign all of its rights and obligations under this Amended Agreement and such third party agrees in writing to assume all of Oakton's rights and obligations under this Amended Agreement. Such written assignment and assumption will be provided to Sprint no less than [REDACTED] days prior to the consummation of the proposed authorization assignment(s) and will be in form reasonably satisfactory to Sprint. Upon consummation of the assignment and discharge of any obligations under this Amended Agreement accrued prior to the date of the consummation of the assignment, Oakton will be relieved of all further liabilities under this Amended Agreement and will have no further rights under this Amended Agreement.

B. **Coordination Documents.** Oakton acknowledges that the ability of the facilities utilizing the Channels to withstand interference, the design of those facilities and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.B., Oakton will not execute or otherwise become a party to any Coordination Document; provided, however, that nothing in this Section 7.B shall be deemed to supercede Oakton's right to determine that its execution of, or becoming a party to, a Coordination Document is required as a matter of law or governmental rule or policy; provided further, however, that Oakton will provide Sprint with at least [REDACTED] days advance notice of any such Coordination Document it believes is required as a matter of law or governmental rule or policy. If Sprint disputes such necessity, the matter will be resolved pursuant to the alternative dispute resolution procedures set forth in Section 11.C.

C. **Modification of Facilities.** Oakton acknowledges that the use of the specific frequencies assigned to the Channels, the design of the facilities utilizing the Channels and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.A., Oakton will not apply to the FCC for authority to add new facilities or to modify any facilities that utilize the Channels without obtaining prior written consent from Sprint, which will not be unreasonably withheld, conditioned or delayed.

D. **Confidentiality.** Oakton acknowledges that Confidential Information (as such term is defined below) may be made available to it pursuant to this Amended Agreement, and that such Confidential Information has been and will be

developed by Sprint at considerable effort and expense and represents special, unique and valuable proprietary assets of Sprint, the value of which may be destroyed by unauthorized dissemination. Accordingly, except as may be required for the performance and/or enforcement in an arbitration proceeding or court action under or relating to this Amended Agreement, or compliance with any applicable law, during the Term and for a period of [REDACTED] years thereafter neither Oakton nor any of its employees, representatives, agents or affiliates will make use of, disseminate, or in any way disclose any Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof. Oakton will exercise reasonable care to protect the Confidential Information and will disclose Confidential Information only to those of its employees, representatives, agents or affiliates who need to know such information. Oakton may disclose Confidential Information if required by any judicial or governmental request, requirement or order, provided that Oakton will take reasonable steps to give Sprint sufficient prior notice in order to contest such request, requirement or order by notifying Sprint of such request. As used herein, the term "Confidential Information" means information or material that has been created, discovered, developed or otherwise become known to Sprint (including, without limitation, information created, discovered, developed or made known to Sprint by third parties) which has commercial value in the telecommunications business and is designated by Sprint as confidential, including any engineering design, manufacturing processes or source code, non-public financial information regarding Sprint, information relating to Sprint and Sprint Affiliate research and development, new product pricing and marketing plans of Sprint and Sprint Affiliates, and non-public information relating to Sprint's and Sprint Affiliates' operations, revenues, trade secrets or management practices. Notwithstanding the foregoing, non-public information relating to Sprint's negotiations and relations with Oakton, the Sprint Corporation's ATM or DSL systems, and wireless access systems will be considered Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized disclosure by Oakton or any of its employees, representatives, agents or affiliates, (ii) was available to Oakton on a non-confidential basis prior to its disclosure to Oakton, or (iii) becomes available to Oakton on a non-confidential basis from a source other than Sprint, provided that such source is not bound by a confidentiality agreement with Sprint or is not otherwise prohibited from transmitting the information to Oakton.

**E. Cooperation.** Sprint and Oakton will each, within ten (10) business days of receipt, provide the other with copies of all correspondence, authorizations, forms or other documentation of any sort received from the FCC or any third party relating to the Channels or Oakton's status as an ITFS licensee and all correspondence, forms, applications or other submissions by Oakton or Sprint to the FCC and relating to the Channels, date-stamped by the FCC to evidence receipt. Except with respect to matters of general industry-wide applicability, Oakton and Sprint will promptly notify each other of any event of which it has knowledge reasonably likely to materially adversely affect any of the authorizations relating to the Channels or Oakton's status as an ITFS licensee.

**F. Further Efforts.** The parties will utilize their best efforts to take such further action and execute such further applications, documents, assurances and certificates as either party may reasonably request of the other, consistent with the parties' rights and obligations under this Amended Agreement, in order to effectuate the purpose of this Amended Agreement. In addition, each party agrees that it will not take any action not otherwise authorized by this Amended Agreement which would adversely affect the rights granted by it to the other party hereunder.

**G. Insurance.**

i. **Policies Required.** At its expense, Sprint will secure and maintain with financially reputable insurers not less than the following insurance: (a) "All Risk" property insurance covering the Provided Transmission Equipment and STL Equipment for its full replacement value, (b) Commercial General Liability insurance covering liability resulting from Sprint's operation, maintenance, and repair of the Provided Transmission Equipment, ITFS Receive Site Equipment and STL Equipment with limits of not less than [REDACTED] combined single limit per occurrence for bodily injury and property damage liability and [REDACTED] annual aggregate, and (c) Workers' Compensation, Business Auto liability and other insurance as required by law.

ii. **Insurance Policy Forms.** Oakton will be named as an additional insured or loss payee, as appropriate, on the above referenced insurance (except Workers' Compensation). Such insurance will be primary to any coverage which Oakton carries.

iii. **Proof of Insurance.** A certificate of insurance will be delivered to Oakton evidencing that the above coverage is in effect and will not be canceled or materially altered without first giving Oakton [REDACTED] days' prior written notice. Renewal certificates will be delivered prior to the expiration of the term thereof.

iv. **Waiver of Subrogation.** Anything in this Amended Agreement to the contrary notwithstanding, neither Oakton nor Sprint will be liable to the other or to any insurance company insuring the other party (by way of subrogation or otherwise) for any loss or damage to any structure, building, equipment or other tangible property, or any resulting loss of income, even though such damage or loss might have been occasioned by the negligence of Oakton or Sprint or any of their agents or employees, if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage, or was required of such party to be covered by insurance pursuant to this Amended Agreement, but only to the extent such loss is or should have been covered by such insurance. This waiver does not cover deductibles, *i.e.*, the party causing or responsible for a loss will be liable for any and all deductibles under the insurance policies of either party and it will not be entitled to any payment or reimbursement thereof.

**H. Prevention of Unauthorized Reception.** Upon the request of Sprint, Oakton will take such actions as Sprint reasonably requests to assist Sprint in preventing the unauthorized reception of transmissions over the Channels. Sprint will reimburse Oakton for all costs reasonably incurred in connection with Oakton's satisfaction of its obligations under this Section.

**I. Covenant Not To Compete.** Oakton recognizes that, during the term of this Amended Agreement, Oakton's cooperation with Sprint is essential to the success of Sprint's commercial venture, and that such cooperation may be impaired by conflicts of interest. Oakton also recognizes that, during the Term of this Amended Agreement, Oakton will become privy to Confidential Information concerning Sprint's business practices, technology, subscriber growth rates, business plans and other information which, if revealed to a competitor, could be used in a manner harmful to Sprint. Therefore, during the Term Oakton will not, directly or indirectly, acting alone, through an affiliate, or as a member of a partnership or association, or other business entity (i) offer, provide or deliver, utilizing the Channels or any other MDS or ITFS channels, any commercial telecommunications, video, voice, data or Internet service within one hundred miles of the Transmit Site other than services which are provided by Oakton to its students or to other educational institutions (a "Competing Service") or (ii) lease or license any part of Oakton's Capacity to a third party that offers, provides or delivers a Competing Service.

## **SECTION 8. Representations and Warranties.**

**A. Of Sprint.** Sprint hereby represents and warrants to Oakton that:

i. **Organization.** Sprint is duly organized, validly existing and in good standing under the laws of the state or commonwealth of its formation, and has full power and authority to carry out all of the transactions contemplated by this Amended Agreement.

ii. **Authorization; Valid and Binding Agreement.** Sprint has taken all action necessary to authorize the execution and delivery of this Amended Agreement. The person or entity signing this Amended Agreement on behalf of Sprint is duly authorized to execute and deliver this Amended Agreement and to legally bind Sprint to all of the terms, covenants and conditions contained in this Amended Agreement. Upon execution and delivery, this Amended Agreement will constitute a valid and binding agreement of Sprint, enforceable in accordance with its terms.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Amended Agreement nor the consummation of the transactions contemplated hereby, will constitute or be conducted in such a manner as to be a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing Sprint's formation or other governing instruments, or any agreement or commitment to which Sprint is

bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC and state regulatory authorities, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Amended Agreement or with the performance of the transactions contemplated hereby.

iv. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of Sprint, threatened against Sprint before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Amended Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Amended Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon Sprint. There is no action, proceeding or investigation pending or, to the best knowledge of Sprint, threatened against Sprint which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Amended Agreement.

B. **Of Oakton.** Oakton hereby represents and warrants to Sprint that:

i. **Organization.** Oakton is duly organized, validly existing and in good standing as a non-profit entity under the laws of the state or commonwealth of its formation, and has full power and authority to carry out all of the transactions contemplated by this Amended Agreement.

ii. **Authorization; Valid and Binding Agreement.** Oakton has taken all action necessary to authorize the execution and delivery of this Amended Agreement. The person or entity signing this Amended Agreement on behalf of Oakton is duly authorized to execute and deliver this Amended Agreement and to legally bind Oakton to all of the terms, covenants and conditions contained in this Amended Agreement. Upon execution and delivery, this Amended Agreement will constitute a valid and binding agreement of Oakton, enforceable in accordance with its terms.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Amended Agreement nor the consummation of the transactions contemplated hereby will constitute or be conducted in such a manner as to be a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing Oakton's formation or other governing instruments, or any agreement or commitment to which Oakton is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC, no consent of any federal, state or local authority is required in connection with the

execution and delivery of this Amended Agreement or with the performance of the transactions contemplated hereby.

iv. **FCC Authorizations.** Set forth as Exhibit G is a true, correct and complete copy of each currently outstanding (as of the Effective Date) authorization that the FCC has issued to Oakton to construct and/or to operate ITFS facilities utilizing the Channels (each an "FCC Authorization" and collectively, the "FCC Authorizations"). No application is presently pending before the FCC proposing any modification to any FCC Authorization. Each FCC Authorization is issued pursuant to a Final Order and is unimpaired by any act or omission by Oakton. There is no complaint, inquiry, investigation or proceeding pending before the FCC or, to the best knowledge of Oakton, threatened which could result in the revocation, modification, restriction, cancellation, termination or non-renewal of or other action adversely affecting, any FCC Authorization and Oakton knows of no facts that, if brought to the attention of the FCC, could result in the revocation, modification, restriction, cancellation, termination, non-renewal of, or other action adversely affecting, any FCC Authorization. Oakton has not entered into any agreement to permit any third party to utilize, whether or not for compensation, any portion of the capacity of the Channels.

v. **Interference Issues.** No FCC Authorization was issued based upon the consent of any other party to the proposed facilities, and no facility authorized under an FCC Authorization is required to utilize or comply with any particular technical parameters (including to utilize carrier offset) as a result of any agreement with any third party. Except for agreements to which Sprint is a party, Oakton has not entered into any agreement which requires or could require any current or future facilities that operate on the Channels to utilize or comply with any particular technical parameters, to cease operation, to limit the hours of operation, or to accept interference. Except for Coordination Documents to which Sprint is a party, Oakton has not provided any Coordination Document to any third party or the FCC pursuant to which Oakton agreed to accept any interference from any other party.

vi. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of Oakton, threatened against Oakton before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Amended Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Amended Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon Oakton. There is no action, proceeding or investigation pending or, to the best knowledge of Oakton, threatened against Oakton which questions or challenges

the validity of or otherwise seeks to prevent the consummation or performance of this Amended Agreement.

**C. Survival of Representations and Warranties.** Except as to any claim for indemnification timely made pursuant to Section 9.D. and except as to Sprint's representations, warranties and covenants relating to the calculation, certification, and audit of System Adjusted Gross Revenues, the Monthly Subscriber Fees, and Monthly Royalty Fees, and maintenance of the books and records relating thereto, all of which representations, warranties and covenants shall survive the termination hereof for a period of [REDACTED] year, the representations and warranties contained in this Amended Agreement will be deemed to be continuing only during the Term of this Amended Agreement, and each party has the duty promptly to notify the other of any event or circumstance which might reasonably be deemed to constitute a breach of or lead to a breach of its warranties or representations.

## **SECTION 9. Indemnification.**

**A. By Oakton.** To the extent permitted by law, Oakton hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Sprint, its directors, officers, shareholders, employees and agents (the "Sprint Indemnitees") from and against and will reimburse any Sprint Indemnitee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitation, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the Sprint Indemnitees may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of any third party claim against any Sprint Indemnitee based on or alleging (i) any breach or default by Oakton of any of its covenants, agreements, duties or obligations hereunder, (ii) any breach or default of, or inaccuracy or omission in, any representation or warranty of Oakton contained herein, or (iii) any negligence or willful misconduct of Oakton, its officers, employees or agents in connection with the performance of this Amended Agreement. Moreover, Oakton will forever protect, save, defend and keep the Sprint Indemnitees harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from third party claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and/or transmission of any programming by Oakton; (ii) third party claims arising as a result of selection and/or transmission by Oakton of any programming or other material that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmit Site is located.

**B. By Sprint.** To the extent permitted by law, Sprint hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Oakton, its officers, employees and agents (the "ITFS Indemnitees") from and against and will reimburse any ITFS Indemnitee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitation, reasonable court

costs and attorneys' fees) of whatsoever kind or nature, which any of the ITFS Indemnitees may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of any third party claim against any ITFS Indemnitee based on or alleging (i) any breach or default by Sprint or any Sprint Affiliate of any of its respective covenants, agreements, duties or obligations hereunder, (ii) any breach or default of, or inaccuracy or omission in, any representation or warranty of Sprint contained herein, or (iii) any negligence or willful misconduct of Sprint or any Sprint Affiliate, its officers, directors, stockholders, employees or agents in connection with the performance of this Amended Agreement or its offering of communications services over the Sprint System. Moreover, Sprint will forever protect, save, defend and keep the ITFS Indemnitees harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from third party claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and/or transmission of any material or information by Sprint; (ii) third party claims arising as a result of any selection and/or transmission by Sprint of programming or other material that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmission Site is located; and (iii) third party claims arising under, as a result of, or in connection with any Coordination Document.

**C. Claims for Indemnification.** Where indemnification under this Section is sought by a party (the "Claiming Party"): (a) it will notify in writing the other party (the "Indemnifying Party") promptly of any claim or litigation or threatened claim to which the indemnification relates; (b) upon the Indemnifying Party's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party will afford the Indemnifying Party an opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party may not effect any such compromise or settlement without prior written consent of the Indemnifying Party); provided, however, that neither may the Indemnifying Party compromise or settle any claim or litigation without the prior written consent (which consent will not be unreasonably withheld, conditioned or delayed) of the Claiming Party, or consent to the entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by claimant to the Claiming Party of a release from all liability with respect to the claim; and (c) the Claiming Party will cooperate with the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation. If the Indemnifying Party does not so acknowledge its indemnification responsibility, the Claiming Party may proceed directly to enforce its indemnification rights.

**D. Survival.** The agreements of indemnification set forth in this Section will remain in full force and effect for a period of [REDACTED] year following the termination or expiration of the Term unless, during such [REDACTED] year period, a Claiming Party makes a claim against an Indemnifying Party pursuant to Section 9.C., in which event such claim will

continue to be governed by the provisions of this Section 9 until a resolution of such claim has been completed with all applicable appeal periods having expired.

## **SECTION 10. Termination or Expiration.**

**A. Termination by Reason of Default.** A party may terminate this Amended Agreement upon thirty (30) days written notice to the other party if the other party is in default and fails within such thirty (30) day period to cure such default; provided, however, if such default is not reasonably capable of being cured within such thirty (30) day period, this Amended Agreement may not be terminated so long as the party in default commences action to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period of time considering the circumstances; provided further, however, that, except as stated below, neither party shall be entitled to declare a default if the matter in dispute has been referred to arbitration, the engineering consultant, or the FCC, and, then, only in the event that the non-prevailing party fails to timely comply with the arbitrator's award, the engineer's determination, or the FCC's ruling, as the case may be. Subject to the foregoing sentence, a party will be deemed to be in default under this Amended Agreement if it fails to comply with any material obligation, term or covenant of this Amended Agreement or if it breaches any material representation or warranty; provided, however, that notwithstanding anything else in this Amended Agreement, a failure by Sprint to timely make any payment due Oakton under the terms hereof shall be deemed a material default, and Oakton shall be entitled to terminate this Amended Agreement if such default is not cured by Sprint within thirty (30) days written notice thereof by Oakton.

### **B. Termination of FCC Authorization.**

**i. Termination.** Except as specified in Section 10.B.ii. below, this Amended Agreement will terminate upon the issuance by the FCC of a Final Order terminating Oakton's authority to utilize or lease the Channels.

**ii. Modification.** If the FCC issues a Final Order that modifies which specific frequencies are authorized to Oakton and defined as Channels herein, Sprint may, in its sole discretion, terminate this Agreement unless (i) following such modification Oakton remains as the licensee for at least the same amount of spectrum in the 2500-2690 MHz band as that represented by the Channels as of the Effective Date, and (ii) such relocated spectrum is configured in such a manner which permits Sprint to use such relocated spectrum for the provision of services as contemplated by this Agreement, as determined by Sprint in its sole discretion. Upon such relocation, the term "Channel" herein shall mean to include a unit of such relocated spectrum and the term "Channels" shall mean collectively all such units of relocated spectrum.

**C. Effect of Termination.** Except as otherwise specifically provided in this Amended Agreement, and except with respect to Sections 1, 6., 7.D., 9 and 11.O.,

upon expiration of the Term or in the event of the termination of this Amended Agreement, this Amended Agreement will no longer have any effect in establishing the rights and obligations of the parties hereto. Termination of this Amended Agreement pursuant to Section 10.A. will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of any default leading to such termination. Termination pursuant to Section 10.B. will be without liability to either Oakton or Sprint, unless such termination results from a default by a party under this Amended Agreement, in which case such termination will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of such default.

## **SECTION 11. Miscellaneous.**

**A. Assignment of Agreement.** Sprint and Oakton each has the absolute right to assign its rights and obligations under this Amended Agreement, provided that the party making the assignment gives written notice to the other party, that the assignee agrees in writing to assume all of the duties and obligations of the assignor under this Amended Agreement, and that, in the case of an assignment by Oakton, the proposed assignee acquires Oakton's authorizations for the Channels and the provisions of Section 7.A.iii. are complied with. Sprint may assign, pledge, hypothecate or grant a security interest in its rights under this Amended Agreement as collateral or security for any financing arrangements it makes. Sprint may also grant a security interest in any of the Provided Transmission Equipment and STL Equipment as collateral or security for any financing arrangement it makes. In order to secure Oakton's option to purchase such equipment pursuant to Section 3.K.iii., Sprint hereby grants Oakton a priority security interest in the Provided Transmission Equipment which is used to transmit Oakton's Services and the STL Equipment, which security interest may be evidenced by duly-filed UCC Form 1s. Sprint agrees to execute any UCC Form 1 necessary in order to perfect such interest.

**B. Counterparts.** This Amended Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

### **C. Dispute Resolution Through Arbitration.**

**i. Dispute Resolution.** The parties will utilize good faith efforts to resolve any disputes arising out of or relating to the negotiation, execution, interpretation, performance or nonperformance of this Amended Agreement through amicable settlement discussions to be commenced by the giving of a written notice of dispute by the party claiming to be aggrieved. The notice of dispute will state with specificity the matters in dispute, the position of the party giving the notice of dispute and the rationale for that position. Except as provided for in Section 11.C.ii. below, if the parties fail to resolve the dispute by amicable settlement within [REDACTED] business days from the date the notice of dispute is given, either party may then request the final settlement of such dispute

through arbitration in the city and state in which the Transmit Site is located, under the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA") by notifying the other party and the AAA in accordance with the Rules. The arbitration will be conducted [REDACTED] [REDACTED] appointed in accordance with the Rules and will be conducted pursuant to expedited and accelerated procedures. The arbitrator will decide the issues submitted to him or her in accordance with the provisions of this Amended Agreement as well as the educational and commercial purposes of this Amended Agreement.

ii. **Preservation of Status Quo.** Except as to complaints of existing interference, which situations are addressed elsewhere herein, the parties will utilize commercially reasonable efforts to preserve the *status quo* between a written notice of dispute and the earlier of a settlement of the dispute or the issuance of a final decision by the arbitrators. However, Oakton acknowledges the complexity of the system development Sprint intends to undertake, the practical necessity of coordinating among numerous MDS and ITFS licensees the execution and filing of applications and Coordination Documents, and the potential adverse impact under the FCC's rules and policies should the filing of such documents be delayed. In light of these and other considerations, and notwithstanding anything else herein, the parties agree that time is of the essence with respect to requests by Sprint for Oakton to complete and file any application submitted to it pursuant to Section 3.A., to execute any Coordination Document submitted to it pursuant to Section 3.B., or to complete and file any notice or notification submitted to it pursuant to Section 3.E., and with respect to requests by Oakton for Sprint to correct any interference caused by facilities comprising part of the Sprint System. If Oakton determines that grant of an application submitted by Sprint pursuant to Section 3.A., or that facilities contemplated by any Coordination Document submitted to it pursuant to Section 3.B., or that facilities installed or modified pursuant to Section 3.E. would have a material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites, Oakton's sole remedy (other than the coordination obligations of the parties pursuant to Sections 3.A.iii. and 3.B.ii.) is to give a written notice of dispute pursuant to Section 11.C.i. within [REDACTED] days of Sprint's submission to it and, if the parties are unable to settle the dispute amicably within [REDACTED] days, either may require that the matter be submitted for resolution by a mutually agreeable independent qualified industry engineering consultant to resolve any dispute as to the technical aspects of such document submitted to Oakton, the costs of whom will be shared equally by the parties. In order to assure Oakton ample opportunity to review any application, Coordination Document, notification or other document submitted to it by Sprint, the execution by Oakton of an application, Coordination Document, notification or other document submitted by Sprint pursuant to Section 3.A., 3.B., or 3.E. prior to the expiration of such [REDACTED] day period will be without prejudice to Oakton's right to give a written notice of dispute and commence a dispute resolution procedure within the deadlines set forth in this Section as to whether the facilities in issue would have a

material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites. Notwithstanding the first sentence of Section 11.C.ii., while any such dispute is pending, (i) Oakton will, if it has not already done so, complete and file the application, execute the Coordination Document, or complete and submit the notice or notification, as the case may be, as requested by Sprint; and (ii) Oakton will refrain from withdrawing or failing to prosecute any application or renouncing any Coordination Document or otherwise jeopardizing FCC authorization of the contemplated facilities, and will utilize good faith efforts to prosecute the application to grant. In order to assure that Oakton not suffer any material adverse effect during the pendency of any dispute resolution procedure, (i) should any facilities contemplated by any application or Coordination Document be authorized by the FCC while any dispute is pending, Sprint agrees that any such facilities will not be placed into operation unless and until the dispute is resolved favorably to Sprint; (ii) Sprint will not place into operation any facilities that are permitted by the FCC without prior authorization if Sprint receives the notice of dispute prior to doing so; (iii) Sprint will take all steps necessary to enforce Oakton's rights with respect to a Coordination Document as specified in Section 3.B.ii., (iv) Oakton will not be required to consummate any disputed channel swap unless and until the dispute is resolved favorably to Sprint; and (v) Sprint will cease utilizing facilities installed pursuant to Section 3.E. or will return facilities modified pursuant to such Section to their prior configuration if the dispute is resolved unfavorably to Sprint. Notwithstanding anything to the contrary contained herein, if a dispute relating to an application, Coordination Document, notification or other document submitted by Sprint pursuant to Section 3.A., 3.B., or 3.E. involves the interpretation or construction (as opposed to a technical determination of whether a proposed action would be predicted to have a material adverse effect on the delivery or reception of Oakton's Services to the ITFS Receive Sites) of this Amended Agreement, the matter will be submitted to arbitration in lieu of the engineer, provided, however that the other provisions of this Section 11.C.ii. will remain in operation.

**iii. Finality of Arbitration Award or Engineer's Decision.**

The parties agree that the award of the arbitrator under Section 11.C.i or the engineer's decision under Section 11.C.ii will be final and waive any right to trial by jury or to otherwise challenge the arbitrator's award or engineer's decision. However, any party aggrieved by a default by the other may seek immediate preliminary injunctive relief pursuant to Section 11.P. before any court of competent jurisdiction and agree that such relief will not be sought to avoid or stay the arbitration or engineer's decision. Judgment on the award of the arbitrator or enforcement of the engineer's decision may be entered in any court having jurisdiction over the party against whom enforcement of the award is being sought, and in aid of any such enforcement (but only for such purpose) a party shall be entitled to those remedies available at law or in equity. In their final award, the arbitrator may apportion the costs of the arbitration between the parties as the arbitrator deems appropriate. Anything in this Amended Agreement

to the contrary notwithstanding, in no event may the arbitrator award consequential damages unless the arbitrator determines that such damages were the result of the bad faith, malicious and willful misconduct of the losing party.

**iv. Non-Conformance and Inaccuracy Objections.**

(a) Notwithstanding anything else herein: If Oakton in good faith reasonably believes that (a) the mere act of filing any application submitted to it pursuant to Section 3.A.; or (b) execution and delivery of any Coordination Document submitted to it pursuant to Section 3.B., based upon the advice of competent legal counsel familiar with the rules and policies of the FCC applicable to ITFS, would place Oakton in a position which is contrary to the FCC rules or policies to the extent that it would serve as a basis for the FCC to terminate Oakton's authorizations to operate the Channels or otherwise would serve as the basis for the FCC impose administrative sanctions on Oakton, Oakton will, within [REDACTED] days from the date on which Sprint submits to Oakton the requested application or Coordination Document, provide Sprint with written notice setting forth with particularity the basis for such objection (a "Non-Conformance Objection"). Sprint will in absolute good faith respond in writing to each of Oakton's concerns set forth in any Non-Conformance Objection. If the parties are not able to reach amicable agreement as to a resolution of the issues raised in the Non-Conformance Objection within [REDACTED] days of Sprint's receipt of the Non-Conformance Objection, Sprint, in its sole discretion, may elect to submit the matter to the Chief of the Division of the FCC responsible for ITFS licensing matters ("FCC Chief") for an informal decision. Upon such election by Sprint, Oakton and Sprint will promptly arrange to jointly submit to, and meet with, the FCC Chief and request an informal opinion as to whether the requested action which is the basis for the Non-Conformance Objection would be contrary to FCC rules or policies. Oakton and Sprint agree to be bound by the FCC Chief's informal opinion; provided, however, that if an informal ruling is not forthcoming, Sprint may elect to submit the matter to FCC for a formal advisory ruling and in such event the parties agree to be bound by the determination of the FCC formal advisory ruling. Notwithstanding anything to the contrary contained in this Amended Agreement, Oakton will not be obligated to file an application or execute and deliver any Coordination Document which is the subject of a Non-Conformance Objection until the parties either reach amicable agreement as to the issues set forth therein or the FCC Chief

issues an informal opinion or, if such informal opinion is unavailable, the FCC issues a formal advisory ruling, resolving the issue in favor of Sprint.

(b) If Oakton in good faith reasonably believes, based upon the advice of FCC counsel familiar with FCC rules and policies applicable to ITFS, that an application submitted to it pursuant to Section 3.A. or that any Coordination Document submitted to it pursuant to Section 3.B. is inaccurate to the extent that the requested action would place Oakton in a position which is contrary to the FCC rules or policies to the extent that it would serve as a basis for the FCC to terminate Oakton's authorizations to operate the Channels or otherwise would serve as a basis for the FCC to impose administrative sanctions on Oakton, Oakton will, within [REDACTED] days from the date on which Sprint submits to Oakton the requested application or Coordination Document, provide Sprint with written notice setting forth with particularity the basis for such objection (an "Inaccuracy Objection"). Sprint will in absolute good faith respond in writing to each of Oakton's concerns set forth in any Inaccuracy Objection within 15 days of Sprint's receipt of the Inaccuracy Objection. If the parties are unable to reach amicable agreement as to the issues set forth in any Inaccuracy Objection, Sprint may, in its sole discretion, elect to submit the matter to the dispute resolution procedure set forth in Section 11.C.ii.; provided, however, that Oakton will not be obligated to file any application or execute and deliver any Coordination Document which is the subject of an Inaccuracy Objection until such time as the matter is resolved amicably or resolved in favor of Sprint pursuant to the dispute resolution procedure set forth in Section 11.C.ii.

(c) Nothing in this Section 11.C.iv. is intended to limit Oakton's obligations to file an application or execute a Coordination Document pending resolution of the dispute as set forth herein. Furthermore, Oakton agrees that it will not challenge the provisions of this Section 11 upon the theory that filing an application or executing a Coordination Document subject to the dispute resolution procedure provided herein is an abrogation of licensee control.

v. **Cooperation.** The parties will facilitate the arbitration by (i) making available to one another and to the arbitrator or engineer (as applicable) for examination, inspection and extraction, all documents, books, records and personnel under their control if determined by the arbitrator or engineer (as applicable) to be relevant to the dispute and not otherwise privileged

from disclosure, subject to written agreement by the arbitrator or engineer (as applicable) to hold all Confidential Information so disclosed in confidence, and (ii) observing strictly the time periods established by the rules or by the arbitrator or engineer (as applicable) for submission of evidence or briefs. The parties acknowledge and agree that time is of the essence in resolving any dispute submitted to the dispute resolution processes set forth herein.

**D. Entire Agreement.** This Amended Agreement constitutes the entire agreement between the parties and supercedes all prior oral or written contracts or agreements of any kind. The parties further agree that this Amended Agreement may only be modified by a written agreement signed by both parties.

**E. Force Majeure.** If by reason of act of God, acts of public enemies, orders of any branch of the government of the United States of America, any State or any political subdivision thereof which are not the result of a breach of or default under this Amended Agreement, orders of any military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other similar cause or event not reasonably within the control of the adversely affected party, either party is unable in whole or in part to perform its obligations hereunder, such party shall not be deemed in violation or default of this Amended Agreement during the period of such inability and the other party will be excused from performance of its obligations hereunder during such period of inability. If the period of inability extends beyond [REDACTED] days, the party that is able to perform its obligations may terminate this Amended Agreement without liability by providing [REDACTED] days written notice to the other party at any time following the expiration of such [REDACTED] day period.

**F. Headings.** The headings contained in this Amended Agreement are for convenience of reference only and do not affect in any way the meaning or interpretations of this Amended Agreement.

**G. Governing Law.** This Amended Agreement is governed by and is to be construed and enforced in accordance with the Communications Act of 1934, as amended, the FCC's rules, and the laws of the State of Illinois and, with respect to arbitration, the Federal Arbitration Act.

**H. Interpretation.** Any rule of interpretation or construction under which a document is to be interpreted or construed more strictly against the drafting party shall be given full effect in the event this Amended Agreement requires interpretation or construction.

**I. Jurisdiction and Venue.** Subject to the provisions of Section 11.C., any suit brought with respect to this Amended Agreement will be brought in the county or other applicable state court district, or the Federal court district, in which the Transmit Site is located. For any and all such purposes, the parties hereto hereby irrevocably submit to the jurisdiction of such courts, waive all objections thereto (on the grounds of improper venue,

forum non conveniens or otherwise), and agree that service of process upon each as provided in Section 11.K. will be effective to establish personal jurisdiction over it in such courts.

**J. Licensee Control.** Notwithstanding any other provisions of this Amended Agreement to the contrary, Oakton will at all times retain such ultimate and exclusive responsibility for the operation and control of the facilities licensed to it as is required by the FCC's rules.

**K. Notice.** Except for payments pursuant to Section 6, all notices and other communications given or made pursuant to this Amended Agreement will be in writing and will be deemed received as of the first weekday (excluding Federal holidays) after being sent for next-day delivery by United States Postal Service Express Mail, return receipt requested, or by Federal Express or other reputable overnight courier, signature required, to the other party at the following address:

i. If to Oakton:

Gary R. Newhouse  
Dean of Library & Media Services  
Oakton Community College  
1600 E. Golf Road  
Des Plaines, IL 60016

with a copy to (which shall not constitute notice):

William K. Keane  
Arter & Hadden LLP  
1801 K Street, N.W., Suite 300L  
Washington, D.C. 20006

ii. If to Sprint:

Preferred Entertainment, Inc.  
Attn: Contract Administration Manager  
6360 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPHE0310-3A522

with a copy to:

Preferred Entertainment, Inc.  
Attn: Vice President, Spectrum Management  
6360 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPH0306-3B775

**L. Payment of Expenses.** Not later than [REDACTED] calendar days after receipt of any invoice from Oakton, Sprint will pay Oakton an amount equal to all reasonable legal and consulting engineering expenses in connection with efforts by Oakton to obtain, renew, and continue in full force the authorizations for the Channels and to provide assistance to Sprint in licensing and other matters in connection with the performance of this Amended Agreement reasonably requested by Sprint from time to time during the Term. Sprint will also pay all taxes, assessments and fees due from Sprint or Oakton as a result of the use of the Channels for the provision by Sprint or any other party of communications services, including but not limited to any required contributions of Oakton to the Universal Service Fund under the Telecommunications Act of 1996 and the FCC's rules and policies. Except as otherwise provided, Oakton and Sprint will each pay its own costs and expenses incident to negotiating and fulfilling its obligations under this Amended Agreement. However, in any arbitration, enforcement proceeding based on an arbitration award, or other litigation between the parties arising out of or related to this Amended Agreement, the substantially prevailing party therein is entitled to have its attorney's fees, reasonable expenses, related costs and costs of suit (if any) paid by the non-prevailing party to the extent determined in accordance with resolution of the merits of the matter. In the case of arbitration, the arbitrator will make such award; in any litigation, the court hearing the dispute will make such determination.

**M. Reformation and Severability.** If any provision of this Amended Agreement is determined by any court, the FCC or any other governmental authority to be invalid, illegal or incapable of being enforced, all other provisions will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to a party. Upon any determination that a provision is invalid, illegal or incapable of being enforced, or should Congress, the FCC or any other government authority adopt any new or modified law, rule or public policy such that any provision of this Amended Agreement would be invalid, illegal, incapable of being enforced, or incapable of being performed without a material adverse effect upon the party responsible for such performance, the parties hereto will negotiate expeditiously and in good faith to modify this Amended Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the maximum extent possible. If the parties are unable to negotiate a modification of this Amended Agreement under such circumstances, this Amended Agreement may be terminated by the party that would suffer a material adverse effect as a result.

**N. Relationship of the Parties.** Oakton and Sprint acknowledge and agree that by the provisions of this Amended Agreement they are entering into an airtime lease relationship and not a joint venture. Neither party will present itself as the other party, nor as having any relationship with one another other than that set forth under the terms of this Amended Agreement. The parties hereto agree that any and all contracts entered into between Sprint and its customers, or between Sprint and any other entity, will be for the sole benefit of the parties thereto and will not be interpreted or construed in any manner as obligating Oakton to perform for the benefit of such customers, nor will

such contracts be interpreted or construed as creating in Oakton any rights as a third party beneficiary or as otherwise entitling Oakton to the benefits of such contracts except as otherwise expressly set forth in Section 6. Oakton will not be liable to Sprint's customers by virtue of leasing excess capacity under this Amended Agreement and, except as otherwise expressly provided in Section 6, Oakton will have no claim to revenues derived from such customer's use of the Sprint System or from Sprint's contracts or other relationships with such customers or any other entity.

**O. Right of First Refusal.** Except following Sprint's notice pursuant to Section 2 of its election not to extend this Amended Agreement for a Renewal Term or during the last [REDACTED] months of the second Renewal Term, Oakton will not, during the Term, entertain offers from, negotiate with, or enter into any agreement with a third party pertaining to the lease or use for purposes other than non-commercial services, by such third party of any or all of the capacity of the Channels. Unless this Amended Agreement is not extended by Sprint pursuant to Section 2 or is terminated by Oakton pursuant to Section 10.A., Sprint will have the exclusive right (the "Right of First Refusal") to match the material terms and conditions of any bona fide offer to lease or otherwise use after the Term any or all of the capacity of the Channels, provided such offer is received by Oakton during the Term or within [REDACTED] months of the expiration of the Term (the "Right of First Refusal Period").

i. If Oakton receives any offer or otherwise commences any negotiations with any third person to enter into an agreement to lease or otherwise use any or all of the capacity of the Channels for non-ITFS purposes within the Right of First Refusal Period, Oakton will provide written notice to the third party advising such third party of the Right of First Refusal.

ii. If Oakton desires to accept any offer to lease or otherwise allow the use for non-ITFS purposes by a third party of any or all of the capacity of the Channels, Oakton will first provide written notice to Sprint, identifying the person with whom the proposed agreement is to be made, describing all of the material terms and conditions of the proposed agreement, and representing its intent to accept the offer if Sprint does not elect to match the offer on substantially the same material terms and conditions as those contained in the notice (the "Lease Offer Notice"). Sprint will have a period of [REDACTED] days after its receipt of a Lease Offer Notice from Oakton in which to elect, by giving written notice (the "Lease Offer Acceptance") to Oakton, to enter into an agreement on the same terms and conditions [except as provided in Section 11.O.iv.] as contained in the Lease Offer Notice. If Sprint does not give a Lease Offer Acceptance within the requisite [REDACTED] day period, Oakton may enter into an agreement with such third party upon the same material terms and conditions set forth in the Lease Offer Notice. In connection with the foregoing, Oakton agrees that it may not accept any offer, including but not limited to, an offer to refrain from leasing excess capacity on the Channels, which prevents Sprint from exercising its Right of First Refusal, it being understood, however, that an offer to lease on financial

or other terms deemed unreasonable or unattractive to Sprint will not be deemed as preventing Sprint from exercising its Right of First Refusal.

iii. If Sprint does not exercise its Right of First Refusal with respect to any offer, and any material term of such offer is subsequently materially changed, before accepting such changed offer Oakton will follow the procedures specified in the foregoing subsections, providing Sprint with notice regarding the revised offer and giving Sprint the opportunity to exercise its Right of First Refusal with regard thereto.

iv. If the Lease Offer Notice provides that any consideration is to be paid by the third person in whole or in part in a form other than cash, if Sprint is able to provide or procure comparable non-cash consideration, Sprint will so provide or procure. If Sprint is unable to provide or procure comparable non-cash consideration, Sprint may substitute, in whole or in part, for such non-cash consideration an amount in cash fairly equivalent to the fair market value of the non-cash consideration payable by the third person. The Lease Offer Acceptance will specify the amount of any such substitute cash consideration and the non-cash consideration for which it is intended to substitute. If Oakton disputes that the substitute cash consideration specified by Sprint is in an amount fairly equivalent to the fair value of the non-cash consideration payable by the third person, Oakton will within [REDACTED] days after receipt of the Lease Offer Acceptance provide Sprint with a written notice specifying the amount it considers to be fairly equivalent to the fair value of the non-cash consideration payable by the third person (the "Lease Counter-Offer"). The question of the fair value of the non-cash consideration will be referred to the American Arbitration Association pursuant to Section 11.C. unless Sprint gives Oakton written notice within [REDACTED] days after its receipt of the Lease Counter-Offer that it agrees to enter into an agreement containing the fair value set forth in the Lease Counter-Offer. If the question of the fair value of the non-cash consideration is referred to the American Arbitration Association, Oakton will not enter into any agreement with the third party until [REDACTED] days after determination by the arbitrator. Upon such determination, Sprint will have the option of agreeing to enter into an agreement containing the fair value determined by the arbitrator by giving written notice of such election to Oakton within [REDACTED] days of the arbitrator's determination. In any such arbitration, time shall be deemed of the essence.

**P. Specific Performance.** Each of the parties acknowledges and agrees that the rights reserved to the other are of a special, unique, unusual and extraordinary character, which gives them peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law and the breach by either party of any of the provisions hereof (other than provisions calling for the payment of money) will cause the other irreparable damage and injury. In such event, but only in furtherance of enforcement of an arbitrator's or engineer's determination under Section 11.C., the non-defaulting party will be entitled, as a matter of right, without further default notice, to require of the other party specific performance of all of

the acts, services and undertakings required under this Amended Agreement, including the obtaining of all requisite authorizations to execute or perform this Amended Agreement and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions hereof. Neither this provision nor any exercise by any party of rights to equitable relief or a specific performance herein granted will constitute a waiver of any other rights which the non-defaulting party may have to damages or otherwise.

**Q. Waiver.** No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or covenant or other obligation herein. The express or implied waiver by either party of any breach of any representation or warranty or any failure to fulfill any covenant or other obligation under this Amended Agreement will not constitute a waiver of any other representation or warranty or of any other failure in the future or in the past by the other party to fulfill such representation, warranty, covenant, or obligation hereunder.

**R. Word Meanings.** As used in this Amended Agreement, the term "including" is deemed to mean "including, without limiting the generality of the foregoing." A "Final Order" means an order of the FCC which is effective, which is not subject to any petition for reconsideration, petition to deny or informal objection, application for review, notice of appeal, petition for writ of *certiorari* or request for stay and the time for any party to seek such relief or for the FCC to grant such relief *sua sponte* has expired. All pronouns and any variations therefor are deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

**S. Survival of Obligations.** All obligations of Sprint or Oakton which by their nature involve performance, in any particular, after the end of the Term, or which cannot be ascertained to have been fully performed until after the end of the Term, will survive the expiration or sooner termination of the Term.

**T. No Publicity Without Consent.** Neither party will issue or permit the issuance of any press release or publicity regarding the other or this Amended Agreement without prior coordination with and advance written approval by the other party, which may be granted or withheld at the other party's sole discretion.

**U. Bankruptcy or Business Termination.** If either party shall cease doing business as a going concern and, without assigning its obligations hereunder pursuant to Section 11.A, make an assignment for the benefit of creditors, admit in writing an inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudicated bankrupt or insolvent, file a petition seeking for itself any reorganization, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute or regulation, or file an answer admitting the material allegations of a petition filed against it in any such proceeding, or consent to or acquiesce in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, or if it shall take any action designed to obtain

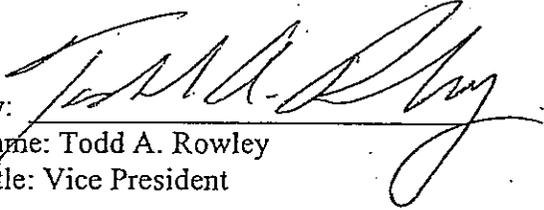
its dissolution or liquidation, or within [REDACTED] days after the commencement of any proceedings against it seeking reorganization, readjustment, liquidation, dissolution or similar relief under any present or future statute or regulation, fail to have such proceeding dismissed, or if within [REDACTED] days after the appointment, without the party's consent or acquiescence, of any trustee, receiver or liquidator of it or of all or any substantial part of its assets or properties such appointment shall not vacate, the other party may terminate this Agreement upon [REDACTED] days' written notice thereof to the defaulting party. Any act or event entitling one party to terminate this Agreement under this Section shall, for all purposes of this Agreement, constitute a default in and failure by the other party to perform its obligations within the meaning of Section 10.A.

V. **Timeline for Execution.** Sprint's offer to enter into this Agreement, as evidenced by Sprint's delivery of [REDACTED] executed copies of this Agreement to Oakton, will expire if Oakton has not accepted this Agreement by signing and delivering [REDACTED] fully executed copies of this Agreement to Sprint on or before such date as Sprint provides Oakton with written notice of its election to withdraw its offer, provided, however, that Sprint will not withdraw such offer prior to April 20, 2003. Furthermore, effectiveness of this Agreement is subject to Oakton delivering, along with two fully executed copies of this Agreement, a certificate, in a form reasonably acceptable to Sprint, signed by the Secretary of the Board of Trustees of Oakton, certifying that the person signing this document has the authority to do so.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amended Agreement to be executed by their duly authorized representatives as of the Effective Date.

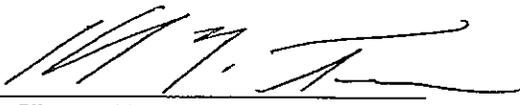
PREFERRED ENTERTAINMENT, INC.

By: 

Name: Todd A. Rowley

Title: Vice President

BOARD OF TRUSTEES, COMMUNITY COLLEGE DISTRICT  
NO. 535 A/K/A OAKTON COMMUNITY COLLEGE

By: 

Name: Howard M. Tennes

Title: Chairman, Board of Trustees

REC'D & INSPECTED

JUL 29 2003

FCC-GBG MAILROOM

**EXHIBIT A  
PROVIDED TRANSMISSION AND STL EQUIPMENT**

<u>Equipment</u>	<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Location</u>
STL RX	Microwave Radio	FLR6ARX	R2409	SEARS
STL RX	Microwave Radio	FLR6ARX	R2411	SEARS NEW
STL TX	Microwave Radio	FLR6ARX	R2410	TRIER NEW
STL TX	Radio	FLR6ARX	R2412	TRIER
Hardline	Andrew	63661	n/a	SEARS
Hardline	Andrew	EW 63	A9340	SEARS
Antenna	Andrew	HE4-180	4ft	OAKTON
FLEXGUIDE	Andrew	845512		OAKTON
Transmitter	Comwave	SB050B	3954	SEARS
Transmitter	Comwave	SB050B	3940	SEARS
Modulator	Comwave	TVM-102	3939	SEARS
Modulator	Comwave	TVM-102	3940	SEARS
Tower	Rohn	ssv series	140ft.	OAKTON
STL TX	Microwave Radio	ML 318 NT21		OAKTON
STL TX	Microwave Radio	ML 318 NT21		OAKTON NEW
STL RCVR	Microwave Radio	ML 318 NT21		TRIER NEW
STL RCVR	Microwave Radio	ML 318 NT21		TRIER
Antenna	Andrew	UHX6-59 H L	T3M12C	SEARS NEW
Antenna	Andrew	UHX10-59		TRIER

**Chicago, IL**  
**C Group**  
**-**  
**WAC262**



65501

401 9<sup>th</sup> Street, NW  
Suite 400  
Washington, DC 20004

July 31, 2002

*Via Federal Express*

Federal Communications Commission  
Wireless Telecommunications Bureau  
Rear Entrance, 35 York Street  
Gettysburg, PA 17325  
ATTN: ITFS/MDS/MMDS APPLICATIONS PROCESSING

Re: Instructional Television Fixed Service Stations WAC262 (Chicago, IL) and  
WND546 (University Park, IL) Licensed to The Catholic Bishop of Chicago –  
ITFS Excess Capacity Lease Agreement (FCC Registration No. 0006-1166-85)

Dear Sir or Madam:

Enclosed, on behalf of The Catholic Bishop of Chicago (the "Archdiocese"), are two copies of the ITFS Excess Capacity Lease Agreement between the Archdiocese and Preferred Entertainment, Inc. ("Preferred"). Information relating to the financial terms of this agreement and the business development plans of Preferred has been redacted.

Should you have any questions or require additional information, please contact counsel for the Archdiocese, Edwin N. Lavergne, Esq., Shook, Hardy & Bacon, LLP, 600 14<sup>th</sup> Street, N.W., Suite 800, Washington, DC 20005, 202-639-5603.

Respectfully submitted,

Jay C. Keithley  
Vice President, Regulatory Affairs

Enclosures  
cc: Edwin Lavergne, Esq.

REC'D & INSPECTED

AUG 02 2002

FCC-GBG MAILROOM

FCC REGISTRATION NO:  
0006-1166-85

**ITFS EXCESS CAPACITY LEASE AGREEMENT**

Between

**The Catholic Bishop of Chicago**

**as Archdiocese**

and

**Preferred Entertainment, Inc.,**

**as Sprint**

**REC'D & INSPECTED**

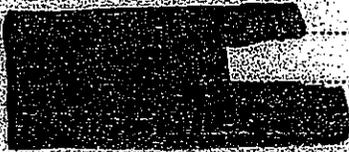
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**FCC-GBG MAILROOM**

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**EXHIBIT A: Letter Agreement Terminating Existing Obligations**

**EXHIBIT B: Provided Transmission Equipment**

**EXHIBIT C: Bill of Sale**

**EXHIBIT D: TASO Standard**

**EXHIBIT E: Revenue Share Option, System Adjusted Gross Revenue and Sprint System**

**EXHIBIT F: FCC Authorizations**

**EXHIBIT G: Disclosures Concerning FCC Authorizations and Interference Issues**

**EXHIBIT H: Litigation**

**EXHIBIT I: Serviceable Area Maps**

**EXHIBIT J: Definitions**

## ITFS EXCESS CAPACITY LEASE AGREEMENT

**THIS ITFS EXCESS CAPACITY LEASE AGREEMENT** (the "Agreement") is made as of June 14, 2002 (the "Effective Date") by and between The Catholic Bishop of Chicago ("Archdiocese") and Preferred Entertainment, Inc., a wholly owned subsidiary of Sprint Corporation (such wholly owned subsidiary hereinafter referred to as "Sprint").

**WHEREAS**, Archdiocese operates Instructional Television Fixed Service ("ITFS") station WAC262 in Chicago, Illinois from a site located at 41 degrees 52 minutes 44 seconds latitude North, 87 degrees 38 minutes 10 seconds longitude West (the "Chicago Transmit Site"), utilizing the four 6 MHz channels at 2548-2554 MHz (C1), 2560-2566 MHz (C2), 2572-2578 MHz (C3), and 2584-2590 MHz (C4) (each, a "Chicago Channel" and collectively, the "Chicago Channels") pursuant to a license issued by the Federal Communications Commission (the "FCC");

**WHEREAS**, Archdiocese holds an FCC authorization to construct and operate ITFS station WND546 in University Park, Illinois from a site located at 41 degrees 27 minutes 15 seconds latitude North, 87 degrees 43 minutes 22 seconds longitude West ("University Park Transmit Site") utilizing the four 6 MHz channels at 2548-2554 MHz (C1), 2560-2566 MHz (C2), 2572-2578 MHz (C3) and 2584-2590 MHz (C4) (each, a "University Park Channel" and collectively, the "University Park Channels") pursuant to a license issued by the FCC;

**WHEREAS**, the University Park Channels and the Chicago Channels are sometimes individually referred to herein as a "Channel" and collectively as the "Channels";

**WHEREAS**, the Chicago Transmit Site and the University Park Transmit Site are sometimes individually referred to herein as a "Transmit Site" and collectively as the "Transmit Sites";

**WHEREAS**, Sprint operates a wireless communications system in the Chicago, Illinois (the "Chicago Market") and University Park, Illinois ("University Park Market") metropolitan areas (individually, each sometimes is referred to herein as a "Market" and collectively as the "Markets") that utilizes multiple Multichannel Multipoint Distribution Service and Multipoint Distribution Service (collectively "MDS") and ITFS channels that are licensed by the FCC either to Sprint or to others who lease capacity to Sprint to provide video, voice, data and other services; and

**WHEREAS**, Archdiocese and Sprint desire to enter into this Agreement to take advantage of the flexibility afforded under the FCC's rules and policies for ITFS licensees to lease their excess capacity to commercial operators, to promote the efficient use of MDS and ITFS spectrum for the distribution of digital, two-way broadband video, voice, data and other possible services, and to provide an effective way for Archdiocese to distribute its services during and following the term of this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein, Archdiocese and Sprint agree as follows:

**SECTION 1. Effect on Existing Agreements.** As of the Effective Date that certain Letter Agreement dated October 19, 1995, with respect to the University Park Channels has been terminated in its entirety as evidenced by that certain letter agreement by and between Archdiocese and People's Choice TV Corporation, a copy of which is attached hereto as Exhibit A. Furthermore, the parties acknowledge that certain Airtime Lease Agreement dated September 29, 1989, by and between Archdiocese and People's Choice TV Partners, (predecessor to People's Choice TV Corporation), expired no later than November 30, 2000, and to the extent that there are any remaining obligations with respect to such agreement, the letter agreement attached as Exhibit A terminates such obligations.

**SECTION 2. Term of Agreement.** Subject to the provisions for earlier termination contained in Section 11 hereof, this Agreement will extend for: (a) an initial term of five (5) years from the Effective Date (the "Initial Term"); and (b) two additional terms of five (5) years each (each a "Renewal Term" and collectively, the "Renewal Terms") unless Sprint notifies Archdiocese at least [REDACTED] months before the end of the Initial Term or the first Renewal Term, as the case may be.

[REDACTED]

**SECTION 3. System Licensing and Deployment.** Archdiocese acknowledges that, although the Chicago Channels are currently operating from the Chicago Transmit Site and that the University Park Channels, upon completion of construction, will operate from the University Park Transmit Site, utilizing analog modulation, Sprint is entering into this Agreement in contemplation of the use of the Channels in the deployment of a complex two-way broadband wireless system utilizing MDS and ITFS spectrum licensed to multiple parties and that, in the design of this system, Sprint may employ, among other techniques, digitization, cellularization, sectorization, subchannelization and/or superchannelization of some or all of the MDS and ITFS spectrum in order to increase spectral efficiency and minimize intra-system and inter-system interference. Sprint acknowledges that Archdiocese serves, among other areas in the Markets, Cook County and Lake County Illinois, and is entering into this Agreement to provide for the most efficient use of the Channels and to deliver Archdiocese's Services to as large an area as possible within the boundaries of Cook County and Lake County, Illinois. Sprint further acknowledges that, notwithstanding the provisions in this Agreement that grant Sprint significant flexibility to use the Channels for the deployment of commercial services in the Markets, the Channels are an extremely valuable asset of significant long-term importance to Archdiocese as an educational resource. In furtherance of their objectives, the parties agree, subject to the other terms and conditions of this Agreement as follows:

**A. Applications for New or Modified Facilities and Channel Swaps.**

i. **New or Modified Facilities.** Provided that the facilities proposed in such applications will not be predicted to cause an Impairment of Service (as such term is defined in Section 3.M.) at the ITFS Receive Sites (as such term is defined in Section 4.E.) and subject to the provisions of Sections 3.D., 4.A., 12.C.ii and 12.C.iii, Archdiocese will complete, submit to the

FCC on such date as requested by Sprint, and prosecute such applications for new response station hubs, for new high-power boosters, for any modification to facilities utilizing the Channels (including changes in location, power, polarization, antenna system design or coverage, or modulation) or for the addition of the I channels associated with the Channels (in which case such I channels shall be considered Channels for purposes of this Agreement) as Sprint requests from time to time during the Term. All such applications shall be prepared in the name of Archdiocese, and Archdiocese shall at all times be the licensee of any new or modified authorizations issued by the FCC for the Channels.

ii. **Channel Swaps.** Provided that it will not be predicted to cause an Impairment of Service at the ITFS Receive Sites and subject to the provisions of Sections 3.D., 3.N., 4.A., 12.C.ii. and 12.C.iii., Archdiocese will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications as Sprint may request to effectuate an exchange of one or more of the Channels for the same number of other ITFS or MDS channels (except ITFS channels B1 and B2, and MDS channels 1, 2 or 2A) licensed in the same general geographic area as the Channels, and will thereafter consummate such exchange. Effective upon consummation of such exchange, any Channel(s) assigned by Archdiocese will no longer be considered as Channel(s) for purposes of this Agreement, and any channel(s) assigned to Archdiocese will be considered as Channel(s) for purposes of this Agreement. This Section will not be construed to require Archdiocese to complete any channel swap which will result in Archdiocese not being the licensee of at least one Channel in each Market that can provide at least a [REDACTED] level of service to the ITFS Receive Sites.

iii. **Preparation and Review of Applications.** Sprint will provide Archdiocese with a draft, in substantially final form, including the engineering portion thereof, of any application to be completed, submitted and prosecuted pursuant to this Section 3.A. (along with any other materials reasonably necessary for Archdiocese to evaluate such application) at [REDACTED] days in advance of the filing date specified by Sprint. Archdiocese will have thirty (30) days to review such application. If, upon reviewing the application, Archdiocese believes that such application violates the standards set forth in Sections 3.A.i. or 3.A.ii. above (as applicable), Archdiocese will provide notice to Sprint on or before the expiration of the thirty (30) day review period, stating with particularity any good faith objections, the reasons therefor and any possible suggestions to modify the application as to comply with the standards set forth in Sections 3.A.i. or 3.A.ii. above (as applicable). Sprint will, in good faith, respond in writing to each of Archdiocese's concerns and objections set forth in such notice within [REDACTED] calendar days, and use commercially reasonable efforts in light of the parties' obligations hereunder to alleviate any concerns that Archdiocese may have with respect to the application. It is agreed that each party has an affirmative duty to amicably resolve any disputes arising pursuant to their respective obligations under this Section 3.A. If the parties are unable to reach

amicable agreement within [REDACTED] days from the date on which Sprint provides Archdiocese with an application pursuant to this Section 3.A., Archdiocese will nonetheless file and prosecute the application with the FCC subject to resolution of the dispute as further set forth in Section 12.C.ii. below.

**B. Coordination With Other Licensees.**

i. **Interference Consents and Market Coordination Agreements.** Provided that the facilities contemplated by such document will not be predicted to cause an Impairment of Service at the TTFS Receive Sites and subject to the provisions of Sections 3.D., 4.A., 12.C.ii. and 12.C.iii., Archdiocese agrees, upon request of Sprint, to execute and promptly return to Sprint any market coordination agreement, interference consent or similar document consenting to facilities of another licensee that would not otherwise be permitted under the FCC's rules and policies (a "Coordination Document").

ii. **Preparation and Review of Coordination Documents.** Sprint will provide Archdiocese with a draft of any Coordination Document submitted pursuant to this Section 3.B. (along with any other materials reasonably necessary for Archdiocese to evaluate such Coordination Document) and Archdiocese will have thirty (30) days to review such Coordination Document. If upon such review Archdiocese reasonably believes that such Coordination Document violates the standards set forth in Section 3.B.i. above, Archdiocese will provide notice to Sprint on or before the expiration of the thirty (30) day review period, stating with particularity any reasonable good faith objections, the reasons therefor and any possible suggestions to modify the Coordination Document as to comply with the standards set forth in Section 3.B.i. Sprint will, in good faith, respond in writing within ten (10) calendar days to each of Archdiocese's concerns and or objections set forth in such notice and use commercially reasonable efforts in light of the parties' obligations hereunder to alleviate any concerns that Archdiocese may have with respect to such Coordination Document. It is agreed that each party has an affirmative duty to amicably resolve any disputes arising pursuant to their respective obligations under this Section 3.B. If the parties are unable to reach an amicable agreement within fifty (50) days from the date on which Sprint provides Archdiocese with a Coordination Document pursuant to this Section 3.B., Archdiocese will nonetheless execute and deliver the Coordination Document to Sprint, subject to resolution of the dispute as further set forth in Section 12.C.ii., it being understood and agreed that any Coordination Document so executed and delivered shall be contingent upon the resolution of such dispute in favor of Sprint. Furthermore, any other party entitled to enforce such Coordination Document shall agree in writing to be bound by the determination of the dispute resolution process as set forth herein. Sprint will, at its sole cost and expense, as against any other party, enforce Archdiocese's rights with respect to facilities contemplated by a Coordination Document which is subject of a dispute resolution process as set forth herein.

**C. Prosecution of Applications.** Subject to the provisions of Section 12.C.iii, Archdiocese will promptly complete, file and diligently prosecute all necessary application amendments, briefs, pleadings, petitions for reconsideration, applications for review, waiver requests, documents and supporting data, and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate to expedite the grant of the applications filed under this Agreement without conditions materially adverse to Archdiocese or Sprint. If any person petitions the FCC to deny one or more of the FCC applications filed under this Agreement or otherwise opposes one or more of such applications before the FCC, or if the FCC enters an order granting one or more of such applications and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then if requested to do so by Sprint, Archdiocese will oppose such petition before the FCC or defend such order of the FCC diligently and in good faith, to the end that the objectives contemplated by this Agreement may be achieved. If the FCC denies one or more of the applications submitted under this Agreement or grants one or more of such applications with conditions materially adverse to Archdiocese or Sprint, then if requested to do so by Sprint, Archdiocese will seek reconsideration or review of such action diligently and in good faith, to the end that the objectives contemplated by this Agreement may be achieved. If Archdiocese believes (i) that any third party petition, application or motion before the FCC, that if granted and implemented, would cause an Impairment of Service, or (ii) the FCC's grant of any such petition, application or motion contains conditions materially adverse to Archdiocese, then Archdiocese shall, within a reasonable period, advise Sprint of its concerns, stating with particularity Archdiocese's good faith objections and the reasons therefor. Sprint will, in good faith, respond in writing to each of Archdiocese's concerns and/or objections. The parties shall, in good faith, cooperate with each other in efforts to prevent any Impairment of Service by virtue of any such third party petition, application, or motion before the FCC, including seeking reconsideration of any order of the FCC which would cause an Impairment of Service or which contains conditions materially adverse to Archdiocese. Nothing in this Agreement shall be interpreted to obligate Archdiocese to participate in any proceeding of general applicability to the wireless telecommunications industry or the MDS/ITFS industry (e.g., Notice of Inquiry, Notice of Proposed Rulemaking, Petition For Rulemaking, etc.). Similarly, nothing in this Agreement shall be interpreted to prevent the Archdiocese from participating in any proceeding of general applicability to the wireless telecommunications industry or the MDS/ITFS industry.

**D. Withdrawal of Application, Cancellation of Authorization or Delay in Construction.** Archdiocese acknowledges that due to the complexities inherent in designing two-way digital broadband systems consistent with the FCC's rules and policies and coordinating such designs among multiple MDS and ITFS licensees or for other reasons, Sprint may, in its sole discretion, elect not to construct or operate facilities authorized to Archdiocese by the FCC in granting an application submitted pursuant to Section 3.A. Upon request of Sprint, Archdiocese agrees that it will withdraw any pending application submitted pursuant to Section 3.A., return to the FCC for cancellation any authorization secured by grant of an application submitted pursuant to Section 3.A., or withdraw any filing submitted pursuant to Section 3.C. In addition, if

requested to do so by Sprint, Archdiocese will complete, submit to the FCC on such date as requested by Sprint and prosecute an application for additional time to construct any facility authorized by grant of an application submitted pursuant to Section 3.A.i. or to consummate any channel swap authorized pursuant to an application submitted pursuant to Section 3.A.ii.

**E. Permissible Modifications, Low-Power Boosters, Etc.** Provided that the facilities will not be predicted to cause Impairment of Service at the ITFS Receive Sites, Sprint may install facilities (including low-power boosters) or make facility modifications that are now or hereafter permitted under the FCC's rules without prior FCC authorization. Sprint will provide Archdiocese with the engineering portion of any notice or notification to be completed, submitted to the FCC and prosecuted pursuant to this Section at least thirty (30) days in advance of the installation or modification. Upon notice by Sprint of such installation or modification and subject to Sections 12.C.ii, and 12.C.iii., Archdiocese will complete, submit to the FCC on such date as requested by Sprint and prosecute such notices or notifications as are required under the FCC's rules.

**F. Reimbursement of Reasonable Expenses.** Within thirty (30) days of receipt of an invoice from Archdiocese (including such supporting documentation as Sprint may reasonably request), Sprint shall reimburse Archdiocese's reasonable engineering, legal and consulting costs to (a) review, complete and prosecute any application or other document submitted to the FCC relating to the Channels, including, but not limited to, applications to obtain, renew, and continue in full force the authorizations for the Channels, (b) review, complete and prosecute any application submitted pursuant to Sections 3.A. or 3.C., Coordination Document or other document requested by Sprint, (c) track any FCC deadlines associated with the Channels or any filings made by the Archdiocese under this Agreement, and (d) provide assistance to Sprint in licensing and other matters in connection with the performance of this Agreement reasonably requested by Sprint from time to time during the Term. If requested in writing by Sprint, Archdiocese shall give Sprint a good faith written estimate of such costs prior to incurring them and, if Sprint objects within a reasonable time in writing to such estimate as excessive, Archdiocese shall make a good faith effort to address Sprint's concerns.

**G. Amelioration of Adverse Effect.** If the facilities operated as the result of either (i) the grant of any application submitted by Archdiocese pursuant to Section 3.A., (ii) the submission to the FCC of any Coordination Document executed by Archdiocese pursuant to Section 3.B., (iii) any notification submitted by Archdiocese pursuant to Section 3.E., (iv) any response station installation regardless whether notice of such installation has been given or not been given to Archdiocese pursuant to Section 3.H., or (v) any other change in the facilities or operation of the Sprint System (as defined in Exhibit E) within the control of Sprint actually causes Impairment of Service at the ITFS Receive Sites, Sprint will, at its sole cost, promptly take all steps, including but not limited to, upgrading such ITFS Receive Site(s), to eliminate such Impairment of Service. Sprint shall respond in a timely manner to resolve any and all system maintenance or operational issues affecting the transmission or receipt of Archdiocese's

Services, so as to restore Archdiocese's ability to provide Archdiocese's Services to the affected ITFS Receive Site(s). Sprint's response and resolution of such issues shall be at Sprint's sole cost, except where a problem arises from any willful act or gross negligence by Archdiocese. Archdiocese will fully cooperate with Sprint's efforts pursuant to this Section 3.G. If Sprint fails to respond in a timely manner to eliminate Impairment of Service or to resolve any system maintenance or operational issues affecting the transmission or receipt of Archdiocese's Services, Archdiocese may attempt to resolve such matters independently or hire a third party to resolve such matters, provided that any such efforts by Archdiocese or third party do not adversely affect Sprint's use of the Channels as permitted herein or Sprint's use of other channels within the Sprint System. If Sprint fails to take action to resolve such issues within a timely manner and Archdiocese takes action pursuant to the preceding sentence, Sprint shall promptly reimburse Archdiocese's reasonable costs associated with taking such corrective actions.

**H. Notification Zones.** Archdiocese agrees that neither Sprint nor any FCC licensee providing MDS or ITFS capacity to Archdiocese will be required either to provide advance notice to Archdiocese prior to any response station installation, or to professionally install any response station. If Archdiocese experiences any Impairment of Service at an ITFS Receive Site due to block downconverter overload or any other technical problem arising from the proximity, frequency, power or directionality of any response station operated in connection with the Sprint System, Sprint will be obligated to ameliorate such adverse effect as specified in Section 3.G. Archdiocese shall fully cooperate with Sprint's efforts to cure such interference, provided that Sprint shall reimburse Archdiocese's reasonable engineering, legal, and consulting fees incurred by Archdiocese in its efforts to cooperate with Sprint.

**I. Transmission Equipment.**

**i. Provided Transmission Equipment.** Throughout the Term, Sprint will provide Archdiocese, at no cost, with the use of such transmitters, combiners, waveguide or coaxial cable, transmission or response station hub antennas and associated combiners, jumpers and connectors, and all other equipment (some or all of which may be shared with other licensees) as is required to construct the transmission facilities currently authorized by the FCC for the Channels or subsequently authorized pursuant to Section 3.A. (unless such authorization is returned to the FCC by Archdiocese for cancellation pursuant to Section 3.D.) or for which a notification is submitted pursuant to Section 3.E. (collectively, the "Provided Transmission Equipment"). A list of the Provided Transmission Equipment is included as Exhibit B. Notwithstanding anything to the contrary set forth in this Section 3.I, within thirty (30) days of the Effective Date,

Upon such payment, Archdiocese shall execute and deliver the bill of sale attached as Exhibit C ("Bill of Sale") transferring all equipment owned by Archdiocese, as specifically set forth in the Bill of Sale. Upon delivery of the Bill of Sale such equipment used in the operation of the Channels and specified in the Bill of Sale as Provided Transmission Equipment

shall thereafter be considered Provided Transmission Equipment for purposes of this Agreement.

ii. **Addition of Digital Controllers and Encoders.** If Sprint elects to digitally compress Archdiocese's Services transmitted from either or both Transmit Sites pursuant to Section 5.B., prior to commencing digital transmissions, Sprint will provide Archdiocese at no cost with shared use of such number of digital controllers and digital encoders necessary to transmit [REDACTED] Digital Program Tracks (as defined in Section 5.B.) from either or both Transmit Sites from which the digitally compressed signal will be transmitted. Sprint may, at its sole discretion, install such encoders and controllers either at Archdiocese's program origination facility or at the Transmit Site(s) [REDACTED]. Upon installation, such controllers and encoders shall become Provided Transmission Equipment.

iii. **Title To Provided Transmission Equipment.** Subject to the provisions of Section 3.L.iii., Sprint will retain title to the Provided Transmission Equipment and will be responsible for the payment of all taxes, assessments, fees and other charges assessed against the Provided Transmission Equipment during the Term. Sprint, at its own cost and expense, may make such alterations of or attachments to the Provided Transmission Equipment as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments must not result in Impairment of Service at the ITFS Receive Sites or violate any FCC rule.

iv. **Operation and Maintenance of Provided Transmission Equipment.** Sprint will, at its sole cost (but subject to Archdiocese's right to supervise the maintenance and operation of the equipment operating under its FCC authorizations), maintain and operate the Provided Transmission Equipment during the Term in good working order in compliance with the FCC's rules and sound engineering practices. Archdiocese will promptly notify Sprint if Archdiocese believes that any of the Provided Transmission Equipment is not being maintained in compliance with the foregoing sentence. If Sprint receives such notice from Archdiocese, Sprint shall promptly take action to correct any maintenance problems. The Provided Transmission Equipment may be replaced or repaired, at Sprint's sole discretion, from time to time for maintenance purposes, to complete construction of subsequently authorized facilities, or for other purposes.

v. **Duty To Update Exhibit B.** At the conclusion of the Initial Term, first Renewal Term and Term, and upon the written request of Archdiocese, Sprint will provide an updated Exhibit B which will reflect the Provided Transmission Equipment as it then exists. If no changes have been made to the Provided Transmission Equipment since the Effective Date, or the last updated Exhibit B provided by Sprint, Sprint will notify Archdiocese of that fact in lieu of providing an updated Exhibit B.

**J. Sprint Liability For Equipment Malfunctions.** Sprint will have no liability to Archdiocese for any losses or damages Archdiocese may suffer due to any malfunction of the Provided Transmission Equipment, the STL, the Additional STL, or any other equipment utilized by Sprint to deliver Archdiocese's Services to the ITFS Receive Sites from the Transmit Sites, unless such losses or damages result directly from any willful act or gross negligence of Sprint, a Sprint Affiliate, or any of their officers, directors, employees, representatives or agents. However, regardless of the cause of any malfunction, Sprint will use commercially reasonable efforts to restore service at the earliest possible time. If Sprint fails to respond in a timely manner to resolve an equipment malfunction, Archdiocese may attempt to resolve such matters independently or hire a third party to resolve such matters, provided that such efforts by Archdiocese or third party do not adversely affect Sprint's use of the Channels as permitted herein or Sprint's use of other channels within the Sprint System. If Sprint fails to take action in a timely manner and Archdiocese takes action pursuant to the preceding sentence, Sprint shall promptly reimburse Archdiocese's reasonable costs associated with taking such corrective actions.

**K. Site Availability.** During the Term, Sprint will be responsible, at its sole cost, for (i) securing the rooftop, transmission tower, equipment room and any other space necessary for the installation, maintenance and operation of the Provided Transmission Equipment; (ii) paying all costs associated with such space including, but not limited to lease fees, utility expenses, maintenance and repair costs, taxes and assessments; (iii) paying all costs associated with the right to transmit from the Transmit Sites; and (iv) providing space at the Chicago Transmit Site for the reception portion of the STL and the Additional STL, if applicable. Should Sprint, pursuant to Section 3.I., install digital encoders at the Transmit Sites, Sprint will, at its sole cost, provide space at the Transmit Sites for such digital encoders. Subject to Sprint's obligation to reimburse Archdiocese as set forth in the last sentence of this Section 3.K. unless Sprint requests otherwise, Archdiocese will, during the Term, use commercially reasonable efforts to maintain its lease of space

[REDACTED] During the Term, and to the extent permitted by the Sears Lease, Archdiocese will provide Sprint with access to, and use of, the Sears Suite, and will further grant Sprint any and all rights Archdiocese has as a lessee/licensee with respect to the Sears Suite and Sears Lease. During the Term, Sprint shall be responsible for reimbursing Archdiocese for all costs associated with the Sears Suite and the Sears Lease, including, but not limited to, monthly rental fees, license fees, and utility expenses; provided, however, that if Sprint requests that Archdiocese terminate the Sears Lease, or a portion thereof, and Archdiocese elects, in its sole discretion, to maintain the Sears Lease, or portion thereof, Sprint shall not be obligated to reimburse Archdiocese from the date on which the Sears Lease would have been terminated but for Archdiocese's election.

## L. Post-Agreement Considerations.

i. **Archdiocese's License at Transmit Sites.** Upon expiration of the Term or the termination of this Agreement pursuant to Section 11, Sprint will immediately cease use of the Channels. Upon expiration of the Term or the termination of this Agreement pursuant to Section 11, upon the written request of Archdiocese and subject to FCC approval and commercially reasonable time constraints, Sprint will (a) use commercially reasonable efforts to facilitate appropriate channel swaps to enable Archdiocese to preserve the value and effective use of the Channels, (b) arrange at no cost to Archdiocese such channel swaps as are necessary for Archdiocese to thereafter hold, among Archdiocese's authorizations for the Channels, an FCC authorization for one 6 MHz channel (i.e. 6 MHz of contiguous spectrum) at the Chicago Transmit Site capable of transmitting a signal which will provide for the comparable level of service to that provided during the Term at the ITFS Receive Sites located in the Chicago Serviceable Area (as such term is defined in Section 4.B.), and (c) arrange at no cost to Archdiocese such channel swaps as are necessary for Archdiocese to thereafter hold, among Archdiocese's authorizations for the Channels, an FCC authorization for one 6 MHz channel (i.e. 6 MHz of contiguous spectrum) at the University Park Transmit Site capable of transmitting a signal which will provide for the comparable level of service to that provided during the Term at the ITFS Receive Sites located in the University Park Serviceable Area (as such term is defined in Section 4.B.). Pending the consummation of any such channel swaps, Sprint will provide Archdiocese (through channel loading and/or channel shifting, at Sprint's sole discretion) sufficient capacity in its system to deliver Archdiocese's Services to the ITFS Receive Sites from the Transmit Sites. Upon Archdiocese's request made no sooner than one hundred eighty (180) days prior to the expiration of the Term, Sprint will provide to Archdiocese its plan for completing any necessary channel swaps as well as schedule for transitioning responsibility for transmission of Archdiocese's Services to Archdiocese. The parties shall coordinate based upon such plan and schedule and use good faith efforts to facilitate a transition of responsibility for the transmission of Archdiocese's Services, provided, however that such obligation shall not require any action by Sprint which would result in a materially adverse effect to Sprint's business operations in the Markets.

ii. **Archdiocese's Continued Operation At Transmit Sites.** Upon expiration or termination of this Agreement (other than termination by Sprint pursuant to Sections 11.A. or 11.B.), for so long as Sprint, in its sole discretion, utilizes space at the Transmit Sites for other MDS or ITFS facilities leased or owned by it, Sprint will permit Archdiocese shared access to suitable space at each Transmit Site for such equipment as necessary to transmit Archdiocese's Services, provided, that: (a) Archdiocese reimburses Sprint for the pro rata cost of owning or leasing such space needed to operate such equipment (including lease fees, utility expenses, taxes, costs of maintenance and repair of the shared equipment or space, any fees associated with any tower or building on

which the equipment is mounted or in which the equipment is stored, and the systems for lighting, heating, ventilating, and cooling the space); (b) that such use by Archdiocese does not have a material adverse effect by virtue of interruption, interference or similar causes upon Sprint's operations or any other MDS or ITFS licensee sharing the equipment or space; (c) any leases pursuant to which Sprint is operating at the Transmit Sites permit Sprint to allow Archdiocese occupancy, which permission Sprint will use commercially reasonable efforts (both during the Term and, if necessary, at its conclusion) to secure; and (d) Sprint has no obligation to provide more space than was used for the Provided Transmission Equipment used to transmit Archdiocese's Services as it existed as of the last day of the Term. Alternatively, should Archdiocese elect to exercise its purchase option pursuant to Sections 3.L.iii.(a) and 3.L.iii.(b), until such time as the sale of such equipment is consummated (and any relocation to other space is completed), Archdiocese will have the use of the Provided Transmission Equipment which was utilized as of the last day of the Term to transmit Archdiocese's Services. Such use will be without charge, provided, however, Archdiocese will be obligated to reimburse Sprint for the pro rata cost of owning or leasing the space necessary to operate such equipment (including lease fees, utility expenses, taxes, costs of maintenance and repair of the shared equipment or space, any fees associated with any tower or building on which the equipment is mounted or in which the equipment is stored, and the systems for lighting, heating, ventilating, and cooling the space). Once the sale of the equipment referenced in Sections 3.L.iii.(a) and 3.L.iii.(b) is consummated, if Sprint cannot continue providing the space as described in the preceding sentence, or if Archdiocese requests different space, Sprint will arrange for Archdiocese's lease of other suitable shared or dedicated space (at Archdiocese's option) in order to continue transmitting Archdiocese's Services from either or both of the Transmit Sites. If the Provided Transmission Equipment used to transmit Archdiocese's Services to the ITFS Receive Sites is moved, Sprint shall pay all costs associated with such move, including equipment installation and site preparation costs (including air conditioning and availability of other utilities) so that the equipment is in good working order at the new location. Sprint's obligations set forth in the preceding sentence shall not be construed to extend beyond such point in time as the transition of responsibility for transmitting Archdiocese's Services from Sprint to Archdiocese is complete.

**iii. Archdiocese's Option to Purchase Equipment.**

**(a) Dedicated Equipment Used To Distribute Archdiocese's Services.** Upon expiration of the Term or the termination of this Agreement pursuant to Section 11, Archdiocese will have the option to purchase the STL and the Additional STL (but only if microwave), the transmitters and any other equipment not subject to a purchase option subject to Section 3.L.iii.(b) and utilized at the Transmit Sites to transmit Archdiocese's Services to the ITFS Receive Sites and any encoders utilized in connection with the digital compression of

Archdiocese's programming (if any), or, at Sprint's sole discretion, immediately available comparable equipment. Such option may be exercised by giving notice to Sprint within sixty (60) days of the expiration of the Term or the termination of this Agreement pursuant to Section 11. The parties will use commercially reasonable efforts to consummate the transactions contemplated by this Section 3.L.iii.(a) as soon as practicable or, if any channel swaps pursuant to Section 3.L.i. are required, upon the consummation of such channel swaps. The purchase price for the equipment purchased by Archdiocese pursuant to this Section 3.L.iii.(a) will be [REDACTED] unless this Agreement has been terminated by Sprint pursuant to Sections 11.A. or 11.B., in which case it will be the greater of the replacement cost or fair market value. This purchase option shall not extend to the STL or the Additional STL if those facilities are (i) fiber, (ii) other type of transmission medium operated on a common carrier basis, or (iii) otherwise leased from an entity which is not a Sprint Affiliate. However, in such case, Sprint will use commercially reasonable efforts to assign the rights to such facilities to Archdiocese on the most advantageous terms possible.

(b) **Shared Equipment Used To Distribute Archdiocese's Services.** Upon expiration of the Term or the termination of this Agreement pursuant to Section 11, Archdiocese will have the option to purchase the combiners, waveguide, transmission antennas, and any other shared equipment being utilized at the Transmit Sites to transmit Archdiocese's Services to the TFS Receive Sites, or at Sprint's sole discretion, immediately available comparable equipment. Such option may be exercised by giving notice to Sprint within sixty (60) days of the expiration of the Term or the termination of this Agreement pursuant to Section 11A. The parties will use commercially reasonable efforts to consummate the transactions contemplated by this Section 3.L.iii. as soon as practicable or, if any channel swaps pursuant to Section 3.L.i. are required, upon the consummation of such channel swaps. The purchase price for the equipment made available pursuant to this Section 3.L.iii.(b), will be [REDACTED] this Agreement has been terminated by Sprint pursuant to Sections 11.A. or 11.B., in which case the purchase price will be the greater of the replacement cost or fair market value.

(c) **Other Equipment Used By Sprint on the Channels.** Upon expiration of the Term or the termination of this Agreement pursuant to Section 11, Archdiocese will have the option to purchase any Provided Transmission Equipment as such exists at the time and not otherwise subject to an Archdiocese purchase option pursuant to Sections 3.L.iii.(a) and 3.L.iii.(b), or, at Sprint's sole discretion, immediately available comparable equipment. Such option may be exercised by giving notice to Sprint within sixty (60) days of the expiration of the Term or the termination of this Agreement pursuant to

Section 11 and the parties will use commercially reasonable efforts to consummate the transactions contemplated by this Section 3.L.iii.(c) as soon thereafter as practicable. The purchase price for such equipment will be the greater of its replacement cost or fair market value.

(d) **Upgraded Receive Site Equipment.** Upon expiration of the Term or the termination of this Agreement pursuant to Section 11, Archdiocese will have the option to purchase any upgraded receive site equipment provided by Sprint at no cost to the Archdiocese pursuant to Section 4.H. hereof. Such option may be exercised by giving notice to Sprint within sixty (60) days of the expiration of the Term or the termination of this Agreement pursuant to Section 11. The parties will use commercially reasonable efforts to consummate the transactions contemplated by this Section 3.L.iii.(d) as soon as practicable. The purchase price for all equipment purchased by Archdiocese pursuant to this Section 3.L.iii.(d) will be [REDACTED] unless this Agreement has been terminated by Sprint pursuant to Sections 11.A. or 11B., in which case it will be the greater of the replacement cost or fair market value.

(e) **Condition of Equipment.** Any equipment that Archdiocese elects to purchase pursuant to this Section 3.L.iii. shall be in good working order, free and clear of any liens, encumbrances and claims of any kind and delivered in such manner as reasonably requested by Archdiocese.

**M. Determination of Impairment of Service.** Sprint shall endeavor at all times to provide picture quality at each ITFS Receive Site at the [REDACTED] or better (as described in Exhibit D). However, as used throughout this Agreement, the determination of whether any facility or modification contemplated herein will be predicted to cause, or does cause an "Impairment of Service" shall be based upon a comparison of the picture and sound quality of Archdiocese's Services received at an ITFS Receive Site immediately prior to such modification and subsequent to such modification, and if there is a reduction in picture quality to a level below the [REDACTED] standard described in Exhibit D at an ITFS Receive Site it shall be an Impairment of Service. For a digital signal, Impairment of Service may include short-term or intermittent degradation in picture or sound quality provided, however, no specific number or duration of impaired reception occurrences of a digital signal shall necessarily constitute an Impairment of Service. Rather, it is the intent of the parties to ensure the overall suitability of program content not be degraded. For a digital signal, Archdiocese may videotape any intermittent Impairment of Service, should it occur, as evidence of a problem. Quality of service for an ITFS Receive Site shall be determined at the output of the addressable decoder (set-top box, location to be determined by Archdiocese); provided, however, that for any ITFS Receive Site utilizing more than three hundred (300) feet of coaxial cable between the antenna and the addressable decoder, quality of service will be determined as close to the 300 foot point in the cable run as is reasonably accessible. The parties recognize that picture quality may be maintained in spite of

desired-to-undesired signal ratios being below the standards set forth in the FCC's rules as long as picture quality is maintained at or above the TASO 3 level. The standards set forth in this Section 3.M. expressly recognize that during the Term, Sprint may satisfy its obligations hereunder to deliver Archdiocese's Services to the ITFS Receive Sites using any channels within the Sprint System.

**N. Reconfiguration of Channels.** Sprint acknowledges that during the Term Archdiocese may desire to effectuate channel swaps which Archdiocese reasonably deems desirable in preparation for Archdiocese's post-Term use of the Channels. If during the Term Archdiocese desires such a channel swap, it will notify Sprint of the particulars of the desired channel swap. Sprint will, in good faith, cooperate with Archdiocese in effectuating such channel swap, provided, that such a channel swap does not have a material adverse impact Sprint's use, or planned use, of the Channels as permitted herein or Sprint use, or planned use, of other channels within the Sprint System. Furthermore, Sprint acknowledges the desirability of certain channel configurations at the end of the Term and shall, in good faith, cooperate with Archdiocese in arranging channel swaps to accommodate such channel configurations, provided that such channel configurations, or the operation of such channel configurations by Archdiocese or a third party, does not adversely affect Sprint's use, or planned use, of other channels in the Sprint System. Such channel configurations may include Archdiocese being licensed on 6 MHz at each Transmit Site in a point-to-multiple point downstream configuration and 18 MHz of contiguous spectrum (which may be cellularized or sectorized) in each of the Markets. Except for the costs associated with any swap involving the channel used, or planned to be used by Archdiocese after the Term, to transmit Archdiocese's Services (such costs to be the responsibility of Sprint), Archdiocese will be responsible for the costs of effectuating any channel swaps made at its request, including any equipment costs incurred by Sprint as a result of such swap.

#### **SECTION 4. ITFS Receive Sites.**

**A. Identification of Initial ITFS Receive Sites.** After the Effective Date, Archdiocese will identify [REDACTED] locations to which it wishes to distribute Archdiocese's Services that are (i) within either Serviceable Area, and (ii) are able to receive a signal from the Transmit Site attributable to such Serviceable Area with the then existing facilities of the Sprint System that will provide for a picture quality equal to or better than TASO 3 with a Standard ITFS Installation ("Initial ITFS Receive Sites"). In order to permit sufficient time for the Archdiocese to plan for the deployment of the Initial ITFS Receive Sites, Sprint agrees that for a period of at least ten (10) months from the Effective Date, Sprint will take no action (and will not ask the Archdiocese to take any action) that would result in (i) a modification of the Serviceable Areas shown in Exhibit I, (ii) a modification of the FCC-defined protected service areas shown in Exhibit I for the Channel or channel over which Archdiocese's Services are transmitted, (iii) a modification of the overlap areas of the FCC-defined protected service areas of other licensees shown in Exhibit I, or (iv) the authorization of any new facilities that would preclude any Initial ITFS Receive Site from being classified as ITFS Receive Sites entitled to protection under Sections 3.A., 3.B., 3.E., 3.G., 3.H., 3.I.iii., 3.M., 4.I., 6.D. or

6.E. Archdiocese acknowledges that if any of the [REDACTED] locations identified are not within either the Chicago Serviceable Area or University Park Serviceable Area (as defined in Section 4.B. below), such locations (i) may not be capable of receiving a signal from the Chicago Transmit Site or the University Park Transmit Site, as applicable, which will provide for TASO 3 or better picture quality and (ii) will not be considered as ITFS Receive Sites for purposes of Sections 3.A., 3.B., 3.C., 3.E., 3.G., 3.H., 3.I.iii., 3.M., 4.I., 6.D. or 6.E. Notwithstanding the foregoing, Archdiocese may select locations to serve as Initial ITFS Receive Sites that do not otherwise satisfy the requirements set forth in the first sentence of this Section 4.A., provided, however, that such locations will not be considered ITFS Receive Sites for purposes of Sections 3.A., 3.B., 3.C., 3.E., 3.G., 3.H., 3.I.iii., 3.M., 4.I., 6.D. or 6.E. If technically feasible, during the Term, Sprint will use commercially reasonable efforts to assist the Archdiocese in providing some level of acceptable service to all of the locations identified by the Archdiocese pursuant to this Section 4.A.

**B. Serviceable Areas.** As used in this Agreement, the "Chicago Serviceable Area" shall initially mean that geographic area within both Archdiocese's FCC-defined protected service area for the Chicago Channels and a circle centered at the Chicago Transmit Site and having a 35-mile radius. Upon construction of the University Park Transmit Site and commencement of transmission of Archdiocese's Services from the University Park Transmit Site in accordance with Section 6.D. hereof, the "Chicago Serviceable Area" shall mean that geographic area within (i) Archdiocese's FCC-defined protected service area for the Chicago Channels, (ii) a circle centered at the Chicago Transmit Site and having a 35-mile radius, (iii) north of 41 degrees, 27 minutes, 15 seconds latitude, and (iv) less that portion of the protected service area for the Chicago Channels which is located in the half of the overlap area that is farther away from the Chicago Transmit Site, the halves of the overlap being created by bisecting the overlap of the Chicago Channels protected service area and the protected service area of ITFS Station WND-427 licensed in the St. Joseph, Michigan market area. The "University Park Serviceable Area" shall mean that geographic area within (i) Archdiocese's FCC-defined protected service area for the University Park Channels, (ii) a circle centered at the University Park Transmit Site and having a 35-mile radius, (iii) south of 41 degrees, 27 minutes, 15 seconds latitude, and (iv) less that portion of the protected service area for the University Park Channels which is located in the half of the overlap area that is farthest away from the University Park Transmit Site, the halves of the overlap being created by bisecting the overlap of the University Park Channels protected service area and the protected service area of ITFS Station WND-417 licensed in the Ottawa, Illinois market area. The Chicago Serviceable Area and the University Park Serviceable Area are sometimes individually referred to herein as a "Serviceable Area" and collectively as the "Serviceable Areas". Maps that show the existing Serviceable Areas and the FCC defined protected service area for the Chicago Channels and the University Park Channels as well as overlapping protected service areas of ITFS Stations in St. Joseph, Michigan and Ottawa, Illinois, both before and after construction of the University Park Transmit Site are attached hereto as Exhibit I.

**C. Installation of Initial ITFS Receive Sites.** After Archdiocese identifies the Initial ITFS Receive Sites, Sprint will make a Standard ITFS Installation (as defined in Section 4.F. below) at each of the locations identified by the Archdiocese (or at such alternate locations as the parties may agree upon) at no cost to Archdiocese. Sprint acknowledges that Archdiocese desires to install the Initial ITFS Receive Sites as soon as possible, and Sprint agrees to use commercially reasonable efforts to accommodate Archdiocese's timetable for installation. Archdiocese may, in its discretion and at its own expense, but with the reasonable cooperation of Sprint, provide enhanced installations (including, but not limited to, taller receive site towers or masts, antennas with greater gain and/or beambenders) as it deems appropriate to supplement the Standard ITFS Installation at any Initial ITFS Receive Site so as to enable such site to receive a usable signal ("Enhanced Installation"); provided, however, that any Initial ITFS Receive Site which receives Archdiocese's Services from a Transmit Site by virtue of an Enhanced Installation, shall not be considered an ITFS Receive Site for purposes of Sections 3.A., 3.B., 3.C. 3.E., 3.G., 3.H., 3.I.iii, 3.M., 4.I., 6.D. or 6.E. Upon request of Archdiocese, and subject to availability, Sprint will provide such Enhanced Installation equipment, subject to reimbursement for Sprint's actual cost thereof, plus [REDACTED]. Sprint's actual cost shall be defined as Sprint's actual out of pocket costs for materials and labor ("Actual Cost").

**D. Installation of Additional ITFS Receive Sites.** At any time during the Term, Archdiocese may designate to serve as additional ITFS receive sites locations that are within the Serviceable Areas, that will utilize Archdiocese's Services, that will not suffer interference from previously licensed or proposed facilities to an extent that makes such additional sites incapable of obtaining a usable signal from either Transmit Site, and that can receive transmissions from the Transmit Site attributable to the Serviceable Area in which such proposed site is located that will provide for picture quality of at least [REDACTED] with a Standard ITFS Installation (the "Additional ITFS Receive Sites"). Sprint will make a Standard ITFS Installation at any Additional ITFS Receive Sites subject to reimbursement of Sprint's Actual Cost plus [REDACTED]. Archdiocese must obtain and coordinate any required approvals or permits prior to the making of a Standard ITFS Installation at any Additional ITFS Receive Site. Sprint will install the equipment comprising a Standard ITFS Installation within ninety (90) days after the date Archdiocese certifies to Sprint and provides such other evidence as Sprint reasonably requests that Archdiocese has obtained all required approvals or permits for the making of the Standard ITFS Installation at the Additional ITFS Receive Site. Archdiocese may also, in its discretion and at its own expense, but with the reasonable cooperation of Sprint, provide Enhanced Installations as it deems appropriate to supplement the Standard ITFS Installation at any Additional ITFS Receive Site so as to enable such site to receive a usable signal; provided, however, that any Additional ITFS Receive Site which receives Archdiocese's Services from a Transmit Site by virtue of such Enhanced Installations shall not be considered an ITFS Receive Site for purposes of Sections 3.A., 3.B., 3.C. 3.E., 3.G., 3.H., 3.I.iii, 3.M., 4.I., 6.D. or 6.E. Upon request of Archdiocese, and subject to availability, Sprint will provide such Enhanced Installation equipment, subject to reimbursement for Sprint's Actual Cost thereof, plus [REDACTED].

**E. Definition of ITFS Receive Sites.** At any given time, the Initial ITFS Receive Sites and the Additional ITFS Receive Sites then in existence will collectively be referred to herein as the "ITFS Receive Sites". Archdiocese acknowledges that ITFS transmissions require an unobstructed transmission path between a Transmit Site and an ITFS Receive Site and that events beyond the control of Sprint, such as the construction of new buildings or the growth of trees, may block the path between a Transmit Site and an ITFS Receive Site. If such a blockage occurs such that an ITFS Receive Site can no longer receive a signal from the applicable Transmit Site that can provide for at least a TASO 3 picture quality, unless such blockage can be overcome by minor relocations, such ITFS Receive Site shall no longer be considered an ITFS Receive Site for purposes of Sections 3.A., 3.B., 3.C. 3.E., 3.G., 3.H., 3.I.iii., 3.M., 4.I., 6.D. or 6.E. If during the Term, Archdiocese permanently removes or disables ITFS Receive Site Equipment (as defined in Section 4.F. herein) at an ITFS Receive Site location, such location will no longer be considered as an ITFS Receive Site and Archdiocese will so notify Sprint.

**F. Standard ITFS Installation.** Each "Standard ITFS Installation" shall consist of the installation of one antenna commonly installed for video services within the Sprint System (however, in no event an antenna with a gain of more than 36 dBi or an antenna size greater than one meter or on a mast taller than thirty (30) feet in height above the roof or structure upon which it is mounted, provided that such structure is not on a roof), a downconverter, up to three hundred (300) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls (with appropriate care taken to accommodate safety and aesthetics considerations), one decoder or integrated receiver-decoder, (as appropriate and if necessary), an addressable decoder (set top box) with multiple outputs for both RF and baseband video (although not simultaneous), and such other miscellaneous equipment as is required to connect such equipment to a single television set or to the central signal input for an internal distribution system (the "ITFS Receive Site Equipment"), such point of connection being herein referred to as the "Demark Point". Sprint acknowledges and agrees that a Standard ITFS Installation shall not be classified as an Enhanced Installation simply because Archdiocese elects to install more than three hundred (300) feet of connecting coaxial cable at any particular location.

**G. Maintenance and Ownership of ITFS Receive Site Equipment.** Upon installation, the ITFS Receive Site Equipment will become the property of Archdiocese. Sprint will perform all repairs, maintenance and replacement of the ITFS Receive Site Equipment up to the Demark Point provided, however, that Sprint's obligations to maintain the ITFS Receive Site Equipment will be subject to Archdiocese arranging access for Sprint to the ITFS Receive Sites.

**H. Upgrading of ITFS Receive Sites.** If Sprint exercises its right pursuant to Section 5.B. to digitally compress Archdiocese's Services transmitted from either or both Transmit Sites, prior to commencing digital transmissions Sprint will, at its sole cost, (i) install such number of digital converters/decoders at each of the ITFS

Receive Sites in the Serviceable Area(s) being digitally compressed to enable such sites to receive [REDACTED] Digital Program Tracks, and (ii) upgrade any equipment at each of the ITFS Receive Sites to the extent necessary to avoid any Impairment of Service at such sites by virtue of digital compression. Thereafter, Sprint will install additional digital converter/decoders and other necessary equipment at future ITFS Receive Sites located in either or both Serviceable Area(s) which have been digitally compressed, subject to reimbursement by Archdiocese of Sprint's Actual Costs without markup or profit. Any equipment provided by Sprint at no cost to Archdiocese pursuant to this Section 4.H. shall remain the property of Sprint and Sprint shall maintain such equipment from the reception antenna up to the Demark Point at its sole cost and expense. Any equipment provided by Sprint subject to reimbursement by Archdiocese pursuant to this Section 4.H. shall be the property of Archdiocese, provided, however, that Sprint shall repair, maintain and replace such equipment from the reception antenna up to the Demark Point at Sprint's sole cost and expense.

**I. Modifications to ITFS Receive Sites.** Subject to appropriate legal, regulatory, health and safety concerns and limitations, Archdiocese will cooperate with Sprint in the making of technical modifications (including the installation of a new or modified decoder or the replacement of the antenna, downconverter or transceiver with a superior model) to any ITFS Receive Site should any such modification be required in order to avoid having facilities that are either proposed in an application submitted pursuant to Section 3.A., contemplated by a Coordination Document submitted pursuant to Section 3.B., installed pursuant to Section 3.E., or installed by any other entity leasing capacity to Sprint, which result in an Impairment of Service at such ITFS Receive Site. Sprint will complete such ITFS Receive Site modifications at its sole cost prior to the operation of such facilities.

**J. Alternative Distribution.** Sprint may utilize alternative distribution mechanisms to satisfy its obligation to deliver Archdiocese's Services to any ITFS Receive Site from the Transmit Sites, provided that such use of alternative transport mechanisms (i) is scheduled in coordination with Archdiocese to minimize any disruption in the delivery of Archdiocese's Services; (ii) does not result in an Impairment of Service at the ITFS Receive Site, and (iii) does not prevent Archdiocese's satisfaction of the ITFS minimum transmission requirements for the Channels under FCC rules. Notwithstanding anything to the contrary contained in this Agreement, if as a result of a modification made pursuant to Section 3 hereof, Sprint has elected to provide alternative distribution pursuant to this Section, such locations served by alternative distribution will be deemed ITFS Receive Sites for purposes of Section 3.L.i.

## **SECTION 5: Allocation and Use of Capacity.**

**A. Archdiocese's Capacity Before Digital Conversion.** Until such time as Sprint or Archdiocese elects to digitally compress Archdiocese's Services, Archdiocese shall retain for its own exclusive full-time use [REDACTED] Channel at each Transmit Site (including a primary video and audio signal along with subcarriers, secondary audio channels, vertical blanking intervals and other signal components

normally utilized in the transmission of NTSC-formatted television signals) (a "Program Track"). Such retained capacity shall be referred to as "Archdiocese's Capacity". Archdiocese acknowledges that transmitting Archdiocese's Services full time over one 6 MHz channel at each Transmit Site to the ITFS Receive Sites will fully utilize all of Archdiocese's minimum use and recapture time under the FCC's current rules applicable to analog ITFS facilities. Notwithstanding the foregoing, with the prior written consent of Archdiocese, Sprint may deliver Archdiocese's Services to the ITFS Receive Sites from locations or facilities other than the Transmit Sites. Archdiocese recognizes that the shifting of Archdiocese's Services onto other channels within the Sprint System would improve the spectral efficiency of the Sprint System. Therefore, Archdiocese agrees that throughout the Term, Sprint may, at its sole discretion, channel shift or channel load the transmission of Archdiocese's Services onto any MDS or ITFS channels, provided that such shifting or loading (i) is scheduled in coordination with Archdiocese to minimize any disruption in the delivery of Archdiocese's Services, (ii) does not cause an Impairment of Service at the ITFS Receive Sites, and (iii) Sprint provides Archdiocese with at least thirty (30) days advance notice of its intent to take such action.

**B. Sprint's Right To Digitally Compress and Archdiocese's Capacity Thereafter.** Archdiocese recognizes that the digital compression of Archdiocese's Services will improve the spectral efficiency of the Sprint System. Therefore Archdiocese agrees that, subject to compliance by Sprint with Section 4.H., throughout the Term Sprint may, at its sole discretion, digitally compress Archdiocese's Services delivered from either or both Transmit Sites, provided such digital compression will not cause Impairment of Service at the ITFS Receive Sites. Upon digital compression of Archdiocese's Services delivered from the Chicago Transmit Site, Archdiocese's Capacity with respect to the Chicago Market shall equal the greater of: (i) the visual equivalent of two (2) full time NTSC-formatted television signals (each a "Digital Program Track") or (ii) five percent (5%) of the capacity of the Chicago Channels (i.e. 1.2 MHz). Upon digital compression of Archdiocese's Services delivered from the University Park Transmit Site, Archdiocese's Capacity with respect to the University Park Market shall equal the greater of: (i) two (2) full time Digital Program Tracks or (ii) five percent (5%) of the capacity of the University Park Channels (i.e. 1.2 MHz).

**C. Use of Archdiocese's Capacity.** Archdiocese's Capacity may be used for the distribution of any legally permissible religious, educational, instructional, or informational programming services ("Archdiocese's Services"), provided that Archdiocese satisfies the FCC's requirements applicable for ITFS licensees engaged in the leasing of excess capacity.

**D. Use of Excess Capacity.** Except for Archdiocese's Capacity, the remaining capacity of the Channels will be reserved for the exclusive use of Sprint (the "Leased Excess Capacity").

**i. Sublease By Sprint.** Sprint may, without the prior consent of Archdiocese, sublease any portion of the Leased Excess Capacity, provided that the sublessee agrees in writing to be bound by the content restrictions of

Section 5.D.iii. In addition, Sprint may, without the prior consent of Archdiocese, permit any entity that is owned by Sprint, owns Sprint or is owned in common with Sprint (a "Sprint Affiliate") to utilize any portion of the Leased Excess Capacity, provided that the Sprint Affiliate agrees in writing to be bound by the content restrictions of Section 5.D.iii.

ii. **Programming Requirements.** Nothing in this Agreement shall be construed to create a duty on the part of Sprint to actually transmit any minimum number of hours of programming, except as required by FCC rules and regulations to, among other things, preserve Archdiocese's authorization for the Channels, or to obligate Sprint to obtain or furnish substitute or alternative programming in cases where programming is deemed prohibited by Section 5.D.iii.

iii. **Content Restrictions.** Except as provided herein, the Leased Excess Capacity may be used by Sprint for any now or hereafter legal purpose (including, but not limited to, the transmission of one-way or two-way voice, video and/or data services, in mobile, portable or fixed configuration), without any restriction on the substance, format or type of information or signal to be transmitted. Notwithstanding the foregoing, Sprint acknowledges that it must use commercially reasonable efforts to ensure that material is not transmitted over the Channels that would be offensive to the faith and morals of the Roman Catholic Church or which would hold Archdiocese or the Roman Catholic Church up to public scorn or ridicule. Thus, to the extent that Sprint elects to use the Leased Excess Capacity to transmit a video programming service, or any other service over which Sprint or a Sprint Affiliate has control over the content of material distributed over the Channels, it will only select for transmission over the Channels programming of a sort which would not serve to place Archdiocese's reputation in the community in jeopardy and will not transmit "Adult Content" programming over the Channels. "Adult Content" shall include any motion picture which is rated "R", "X" or "NC-17" by the Motion Picture Association of America or which does not carry an MPAA rating and would reasonably be considered "adult" in nature. Archdiocese acknowledges that Sprint may not exercise control over the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems and that Sprint will not be restricted by this Section 5.D.iii. in providing Internet, data, video streaming or voice services or otherwise be liable to Archdiocese for the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems transmitted over the Channels.

iv. **Integration of Services.** Subject to the prior written consent of Archdiocese, Sprint may integrate Archdiocese's Services into the overall communications service offered to Sprint's subscribers. Nothing contained herein shall be construed to prohibit Archdiocese from charging Sprint for the fair value for the use of Archdiocese's Services.

**E. Option To Convert To Two-Way Services.** Sprint will provide Archdiocese notice upon Sprint or a Sprint Affiliate launching a mobile or a next-generation broadband wireless two-way data service using the Sprint System. Archdiocese will, at anytime during a two (2) year period thereafter, have the option of giving Sprint notice of Archdiocese's desire to convert its video operations to two-way services, provided that such two-way use satisfies the FCC's minimum educational use requirements for ITFS licensees engaged in the leasing of excess capacity. Upon notice of Archdiocese's intent to convert its video operations to two-way services, the parties shall negotiate in good faith to determine the nature and extent of such two-way services which Sprint will provide to Archdiocese, provided, however that such use by Archdiocese may not exceed [REDACTED] of the capacity of the Channels unless the parties mutually agree upon a revised compensation scheme to permit the Archdiocese to use such additional capacity. Nothing contained herein shall be construed as permitting Archdiocese a right to terminate this Agreement based upon a failure to reach agreement with respect to the nature and extent of such two-way services provided by Sprint to Archdiocese. Archdiocese's election to convert to two-way services shall not be the basis of an increase in the compensation set forth herein, provided, however that to the extent such two-way use involves additional costs to Sprint which are above and beyond those contemplated in this Agreement, the compensation set forth herein may be reduced accordingly. Furthermore, it is recognized that any such transition will be subject to the parties reaching agreement upon amending certain portions of this Agreement which contemplate Archdiocese's use of video services in satisfaction of the FCC's minimum use requirements. If Archdiocese elects to convert to two-way services, Archdiocese may not later elect to convert to video services other than those video services which may be offered over the two-way system (i.e. video streaming). At any time after the notice provided by Sprint pursuant to this Section and upon the request of Archdiocese, Sprint will provide Archdiocese with [REDACTED]. The location and other parameters governing the use and placement of such sites shall be in accordance with those standards applicable to Sprint's regularly paying subscribers.

**F. Digital Compression Options.** The following digital compression options shall be available to the parties during the Term of this Agreement.

**i. Archdiocese's Right To Compress.** If Sprint has not digitally compressed Archdiocese's Services pursuant to Section 5.B. above, Archdiocese may, at its sole discretion, digitally compress Archdiocese's Services, and in lieu of [REDACTED] Program Track from each Transmit Site, Archdiocese will be entitled to transmit up to [REDACTED] Digital Program Tracks from each Transmit Site, provided that: (a) such Digital Program Tracks combined do not utilize more than one 6 MHz channel; (b) Archdiocese bears any additional costs and expenses associated with the delivery of the Digital Program Tracks to the Transmit Sites and transmission of such Digital Program Tracks, reimbursing Sprint for all additional costs Sprint incurs; (c) Archdiocese coordinates with any other MDS or ITFS licensee transmitting from the Transmit Sites to assure that the transmission of such Digital Program Tracks will not adversely impact their use of the Sprint System, recognizing that technical limitations currently exist which require certain uniformity among all video

programming that is transmitted in digitally compressed format over a single channel; (d) Archdiocese provides Sprint no less than twelve (12) months advance notice of its desire to transmit such Digital Program Tracks; and (e) Sprint reasonably determines that Archdiocese's proposal will not have a material adverse effect upon Sprint's use of the Channels as permitted herein, Sprint's use of other channels in the Sprint System or upon Sprint's business, such determination not to be unreasonably conditioned, delayed or withheld. If Archdiocese elects to digitally compress Archdiocese's Services pursuant to this Section 5.F.i., then subject to the provisions of Section 5.B., Sprint may elect, at its sole discretion, to further digitally compress such Digital Program Tracks, provided that such further digital compression does not cause an Impairment of Service at the ITFS Receive Sites. In implementing such further digital compression, Sprint may either install additional equipment to the Archdiocese's equipment or replace the Archdiocese's digital compression equipment, in which case Sprint will remove and deliver such digital compression equipment to Archdiocese.

ii. **Archdiocese's Right To Further Compress.** If Sprint has digitally compressed Archdiocese's Services pursuant to Section 5.B. above, then in addition to the Digital Program Tracks provided pursuant to Section 5.B., Archdiocese may, at its sole discretion, transmit one or more additional Digital Program Tracks (the "Additional Program Tracks") from each of the Transmit Sites, provided that: (a) Archdiocese reduces the compression ratio utilized to digitally compress the Digital Program Tracks (if necessary) such that the Additional Program Tracks and the Digital Program Tracks combined do not utilize more than [REDACTED] of the capacity of the Channels; (b) Archdiocese bears all costs and expenses associated with the delivery of the Additional Program Tracks to the Transmit Sites and transmission of the Additional Program Tracks, reimbursing Sprint for all additional costs Sprint incurs; (c) Archdiocese coordinates with any other MDS or ITFS licensee transmitting from the Transmit Sites to assure that the transmission of Additional Program Tracks will not adversely impact their use of the Sprint system, recognizing that technical limitations currently exist which require certain uniformity among all video programming that is transmitted in digitally compressed format over a single channel; (d) Archdiocese provides Sprint no less than twelve (12) months advance notice of its desire to transmit Additional Program Tracks; and (e) Sprint reasonably determines that Archdiocese's proposal will not have a material adverse effect upon Sprint's use of the Channels as permitted herein, Sprint's use of other channels in the Sprint System or upon Sprint's business, such determination not to be unreasonably conditioned, delayed or withheld.

## **SECTION 6. Delivery and Distribution of Archdiocese's Services.**

**A. Construction and Operation of STL.** Promptly after Archdiocese identifies the Origination Point (as defined below), and throughout the

Term, Sprint will provide Archdiocese, at no cost, with a point-to-point link (which may be fiber, microwave, or another mutually agreed upon medium) to transport [REDACTED] Program Track to the Chicago Transmit Site from a point of origination in the Chicago Market to be determined by Archdiocese (the "Origination Point"). Such point-to-point link is hereinafter referred to as the "STL". Any microwave STL (including an Additional STL as defined below) must have a calculated path reliability (rain + multipath) as mutually agreed upon by the parties after consultation with each other and their respective engineers (if desired). No unlicensed devices such as those regulated under Part 15 of the FCC's rules may be used as an STL or an Additional STL without the Archdiocese's consent.

**B. STL Costs.** Unless specifically stated otherwise below, Sprint shall pay all costs associated with the STL and the Additional STL (as defined below), including, but not limited to, equipment costs, application fees, engineering fees, legal fees, administrative costs, and recurring charges.

i. **Title and Taxes.** Subject to the provisions of Section 3.L.iii., Sprint will retain title to any STL and Additional STL equipment and will be responsible for the payment of all taxes, assessments, fees and other charges assessed against any such equipment during the Term.

ii. **Relocation of Origination Point By Archdiocese.** If Archdiocese elects to relocate the Origination Point, Sprint will contribute up to [REDACTED] towards the cost of such relocation, provided, however, that Archdiocese will be responsible for any and all relocation costs in excess of such contribution as well as any other costs (including, but not limited to, recurring charges) which are in excess of those costs previously incurred by Sprint in delivering Archdiocese's Services to the Chicago Transmit Site via the STL. The expense of any further relocation of the Origination Point after such initial relocation shall be the sole responsibility of Archdiocese, including, without limitation, all relocation expenses and any costs in excess of that which Sprint is then incurring with respect to the STL.

iii. **Digital Compression By Sprint.** If Sprint elects to digitally compress Archdiocese's Services pursuant to Section 5.B., Sprint will pay all costs associated with converting the STL from a point-to-point link which is capable of delivering [REDACTED] Program Track from the Origination Point to the Chicago Transmit Site to a point-to-point link which is capable of delivering [REDACTED] Digital Program Tracks from the Origination Point to the Chicago Transmit Site. Alternatively, upon request of Archdiocese and at Archdiocese's sole option, Sprint will pay all costs associated with (a) converting (and subsequently maintaining and operating) the STL from a point-to-point link which is capable of delivering [REDACTED] Program Track from the Origination Point to the Chicago Transmit Site to a point-to-point link which is capable of delivering [REDACTED] Digital Program Track from the Origination Point to the Chicago Transmit Site, and (b) establishing an additional STL ("Additional STL") which is capable of

delivering [REDACTED] Digital Program Track from another location within the Chicago Market to be determined by Archdiocese ("Additional Origination Point") to the Chicago Transmit Site.

iv. **Digital Compression By Archdiocese.** If Archdiocese elects to digitally compress Archdiocese's Services pursuant to Section 5.F.i., Archdiocese shall be solely responsible for any and all costs associated with modifying the STL or adding additional STLs.

**C. Delivery of Archdiocese's Services To The Origination Point.** Archdiocese shall be responsible for delivering Archdiocese's Services to the Origination Point (and any Additional Origination Point, if applicable) in the form of an NTSC-formatted analog television signal or such other format as mutually agreed upon by the parties.

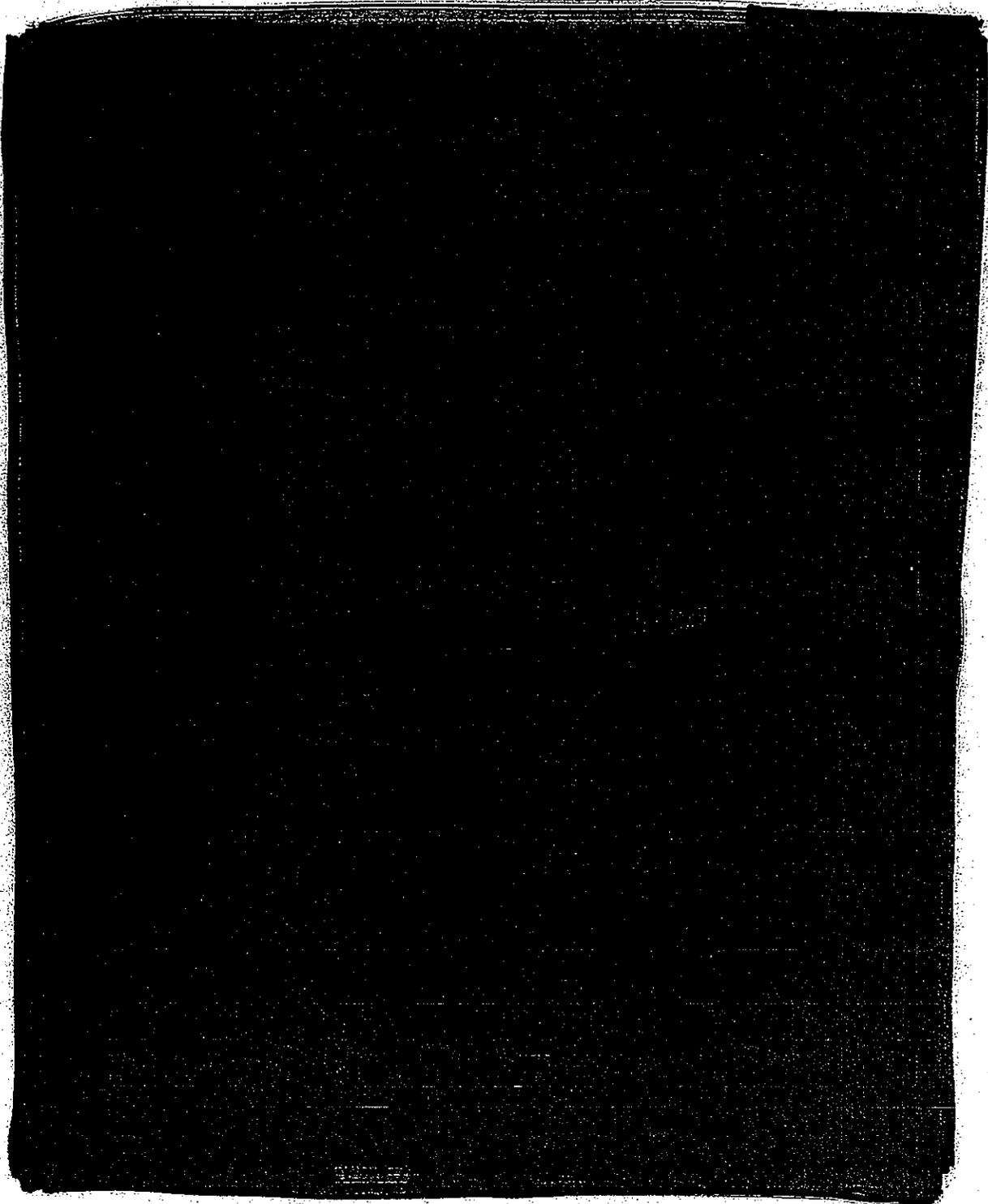
**D. Distribution of Archdiocese's Services Within The Chicago Market.** Upon delivery of Archdiocese's Services to the Origination Point (and any Additional Origination Point, if applicable), Sprint shall be responsible for, and pay all costs associated with, transmitting Archdiocese's Services, without Impairment of Service, from the Origination Point (and any Additional Origination Point, if applicable) to the ITFS Receive Sites within the Chicago Serviceable Area. Sprint shall not edit or alter Archdiocese's Services in any way other than as required to encode, compress, and modulate Archdiocese's signal.

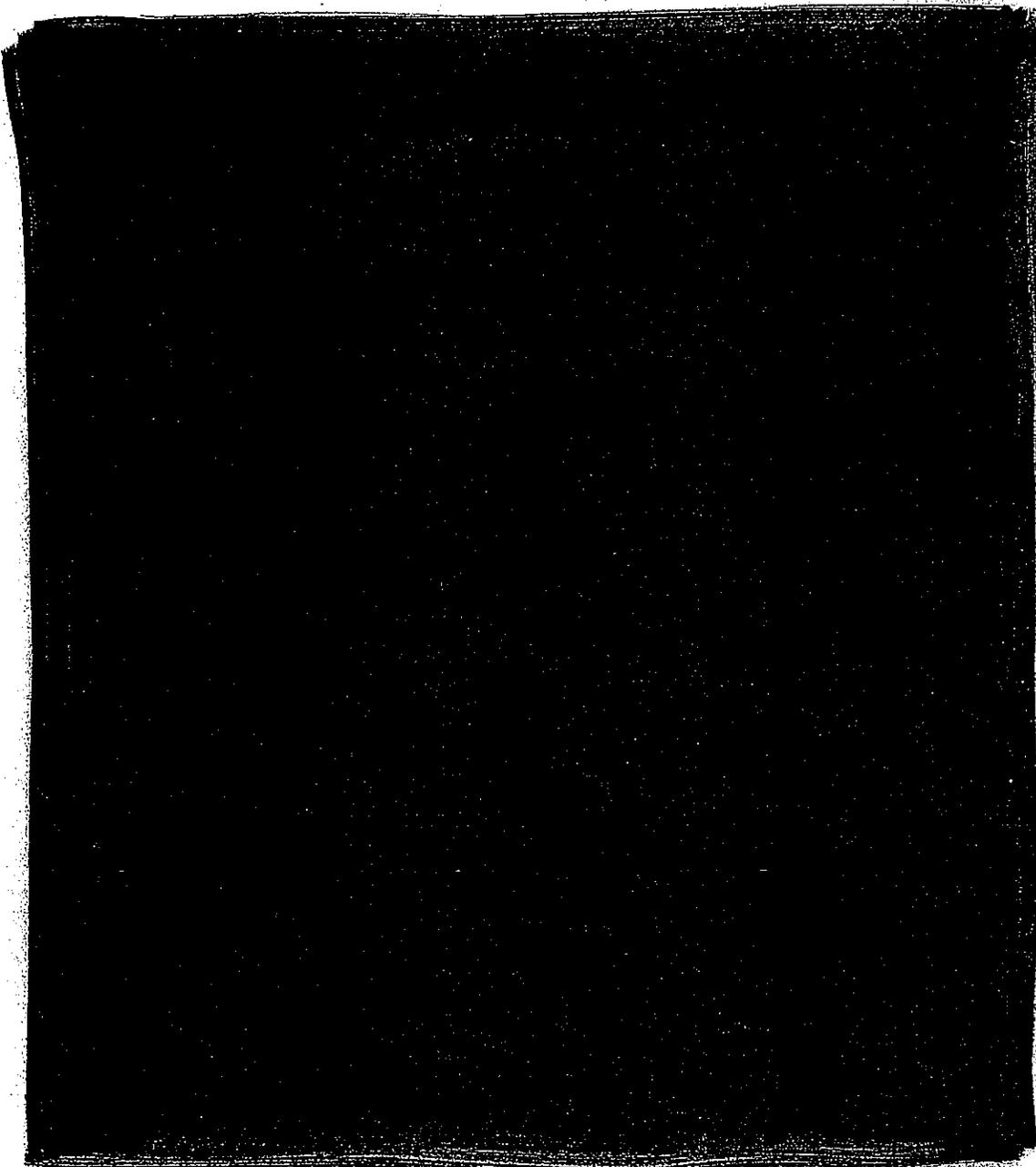
**E. Distribution of Archdiocese's Services Within the University Park Market.** Upon construction of the University Park Transmit Site, Sprint shall be responsible for, and pay all costs associated with, transmitting Archdiocese's Services, without Impairment of Service, from the Origination Point (and any Additional Origination Point, if applicable) to the ITFS Receive Sites within the University Park Serviceable Area. Sprint shall not edit or alter Archdiocese's Services in any way other than as required to encode, compress, and modulate Archdiocese's signal.

**F. Signal Quality.** Between the Origination Point (and any Additional Origination Point, if applicable) and each ITFS Receive Site, Sprint shall be responsible for maintaining the quality and continuity of Archdiocese's signal. If Sprint fails to respond in a timely manner to resolve any disruption or degradation in signal quality which causes an Impairment of Service, Archdiocese may attempt to resolve such matters independently or hire a third party to resolve such matters, provided that such efforts do not adversely affect Sprint's use of the Channels as permitted herein or Sprint's use of other channels in the Sprint System. In such event, Sprint shall promptly reimburse Archdiocese's reasonable costs associated with taking such actions. The parties acknowledge that in determining whether a TASO 3 level of service is being provided at the ITFS Receive Sites in accordance with this Agreement, the television signal delivered at the Origination Point and/or Additional Origination Point must be of suitably high quality. Therefore, it shall not be deemed an Impairment of Service if poor

picture quality is the result of a substandard television signal delivered by Archdiocese at the Origination Point and/or Additional Origination Point.

**SECTION 7. Fees.**





**D. Payments.** The Monthly Fee payment obligation commences immediately upon the Effective Date. The Monthly Fee for each month must be paid by Sprint to Archdiocese no later than forty-five (45) days following the first day of such month by electronic funds transfer in accordance with Archdiocese's instructions, or by other means mutually agreed upon by the parties designed to constitute immediately available funds. If Archdiocese elects the Revenue Share Option, each payment of the Monthly Subscriber Royalty Fee or Minimum Monthly Subscriber Royalty Fee shall be paid by Sprint to Archdiocese by electronic funds transfer in accordance with Archdiocese's instructions, or by other means mutually agreed upon by the parties

designed to constitute immediately available funds, no later than forty-five (45) days after the last day of that month, and will be accompanied by a report specifying the System Adjusted Gross Revenues and the calculation of the Monthly Subscriber Royalty Fee. If the Term commences on a date other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the fee for such month(s) shall be paid on a prorated basis.

**E. Late Payments.** If Sprint fails to make timely payment of any fee due under this Section 7, such unpaid amount shall begin to accrue interest (commencing on the date the payment was due) at the rate of [REDACTED] per month compounded daily or, if such rate is greater than the maximum interest rate allowable under applicable law, then interest shall accrue at the maximum legally permissible rate until such unpaid amount is paid by Sprint.

**F. Reimbursements.** Where one party is required pursuant to this Agreement to reimburse the other party for costs incurred, such payment will be sent to such address as the party to receive such reimbursement designates from time to time by first class United States Postal Service mail, or other method mutually agreed to by the parties, no later than forty-five (45) days following receipt of an invoice and such supporting documentation as the party paying the reimbursement reasonably requests.

## **SECTION 8. Additional Covenants.**

### **A. Maintenance of FCC Authorizations.**

**i. Preservation of Authorizations.** During the Term, Archdiocese will maintain and preserve the authorizations to use the Channels and to permit Sprint to use capacity thereon pursuant to the terms and conditions of this Agreement. Archdiocese will maintain in force all licenses, permits and authorizations required or desired in connection with the use of the Channels pursuant to this Agreement. Archdiocese acknowledges that Sprint is leasing excess capacity on the Channels and that Sprint would suffer a material adverse effect were it denied the ability to utilize the Channels as provided for herein. Except as set forth in Section 8.A.ii., Archdiocese will take all necessary steps to renew the licenses for the Channels prior to their expiration; and (ii) avoid any act or activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the licenses for one or more of the Channels. Each of the parties hereto must take all commercially reasonable steps to comply with the Communications Act of 1934, as amended, and the rules and regulations of the FCC, and must timely file all reports, schedules and/or forms required by the FCC to be filed by it.

**ii. Cancellation or Non-Renewal.** During the Term of this Agreement, Archdiocese may return any authorization for the Channels to the FCC for cancellation or elect not to renew any such authorization, provided that it gives one hundred eighty (180) days prior notice to Sprint of its intent to do so. Upon

written request of Sprint, Archdiocese will assign at no cost such authorizations to such eligible entity as Sprint designates during such one hundred eighty (180) day period that is willing to assume all remaining obligations and benefits of such authorizations, subject to FCC consent. Archdiocese will promptly and diligently prepare and file, and expeditiously prosecute any necessary assignment application and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate in any effort to expedite the authorization of such assignment. Until such time as the FCC issues a Final Order (as such term is defined in Section 12.R.) disposing of the assignment application, Archdiocese will not take any action that would jeopardize Sprint's rights under this Agreement. If any person petitions the FCC to deny the assignment application or otherwise opposes the assignment application before the FCC, or if the FCC enters an order granting the assignment application and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then Archdiocese will oppose such petition before the FCC or defend such order of the FCC diligently and in good faith, at Sprint's reasonable cost and expense, to the end that the assignment contemplated by this Section 8.A.ii. may be finally consummated.

iii. **Assignment of Authorizations.** Subject to the receipt of all necessary consents, including the consent of the FCC, Archdiocese may assign all of its authorizations for the Channels on terms and conditions of its choosing to a third party eligible to hold such authorizations provided that prior to such assignment Archdiocese agrees in writing to assign all of its rights and obligations under this Agreement and such third party agrees in writing to assume all of Archdiocese's rights and obligations under this Agreement. Such written assignment and assumption must be provided to Sprint no less than sixty (60) days prior to the consummation of the proposed authorization assignment(s) and must be in form reasonably satisfactory to Sprint.

**B. Coordination Documents.** Archdiocese acknowledges that the ability of the facilities utilizing the Channels to withstand interference, the design of those facilities and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.B., Archdiocese will not execute or otherwise become a party to any Coordination Document.

**C. Modification of Facilities.** Archdiocese acknowledges that the use of the specific frequencies assigned to the Channels, the design of the facilities utilizing the Channels and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.A., Archdiocese will not apply to the FCC for authority to add new facilities or to modify any facilities that utilize the Channels without obtaining the prior written consent from Sprint, which will not be unreasonably withheld, conditioned or delayed.

**D. Confidentiality.** Each of the parties acknowledges that Confidential Information (as such term is defined below) may be made available to it pursuant to this Agreement, and Archdiocese acknowledges that such Confidential Information has been and will be developed by Sprint at considerable effort and expense and represents special, unique and valuable proprietary assets of Sprint, the value of which may be destroyed by unauthorized dissemination. Accordingly, except as may be required for the administration, performance and/or enforcement of this Agreement, or compliance with any applicable law, during the Term and for a period of five (5) years thereafter no party receiving Confidential Information ("Receiving Party") nor any of its employees, representatives, agents or affiliates will make use of, for purposes other than the administration and enforcement of this Agreement, disseminate, or in any way disclose any Confidential Information disclosed to it by the other party (the "Disclosing Party") to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof. Receiving Party must exercise reasonable care to protect the Confidential Information and to disclose Confidential Information only to those of its employees, representatives, agents or affiliates that need to know such information. Receiving Party may disclose Confidential Information if required by any judicial or governmental request, requirement or order, provided that Receiving Party will take reasonable steps to give Disclosing Party sufficient prior notice in order to contest such request, requirement or order. As used herein, the term "Confidential Information" means with respect to Sprint, information or material that has been created, discovered, developed or otherwise become known to Sprint including, without limiting the applicability of the foregoing, information created, discovered, developed or made known to it by third parties which has commercial value in the telecommunications business and is designated by Sprint as confidential, including any engineering design, manufacturing processes or source code, non-public financial information regarding Sprint, information relating to Sprint and Sprint Affiliate research and development, new product pricing and marketing plans of Sprint and Sprint Affiliates, and non-public information relating to Sprint's and Sprint Affiliates' operations, revenues, trade secrets or management practices. As used herein, the term "Confidential Information" means with respect to Archdiocese, Archdiocese's financial information, including, without limitation, payments made pursuant to this Agreement and any other information identified by Archdiocese as confidential. Notwithstanding the foregoing, non-public information relating to the parties' negotiations and relations, Sprint Corporation's ATM or DSL systems and wireless systems shall be Confidential Information. Confidential Information does not include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized disclosure by the Receiving Party or any of its employees, representatives, agents or affiliates, (ii) was available to the Receiving Party on a non-confidential basis prior to its disclosure under this Agreement, or (iii) becomes available to Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not bound by a confidentiality agreement with the Disclosing party or is not otherwise prohibited from transmitting the information to the Receiving Party.

**E. Cooperation.** Sprint and Archdiocese will each, within ten (10) business days of receipt, provide the other with copies of all correspondence,

authorizations, forms or other documentation of any sort received from the FCC or any third party relating to the Channels or Archdiocese's status as an ITFS licensee and all correspondence, forms, applications or other submissions by Archdiocese or Sprint to the FCC and relating to the Channels, date-stamped by the FCC to evidence receipt. Archdiocese and Sprint must promptly notify each other of any event of which it has knowledge that may affect any of the authorizations relating to the Channels or Archdiocese's status as an ITFS licensee.

**F. Further Efforts.** The parties must utilize best efforts to take such further action and execute such further applications, documents, assurances and certificates as either party may reasonably request of the other, consistent with the parties' rights and obligations under this Agreement, in order to effectuate the purpose of this Agreement. In addition, each party agrees that it will not take any action not otherwise authorized by this Agreement that would adversely affect the rights granted by it to the other party hereunder.

**G. Insurance.**

**i. Policies Required.** At its expense, Sprint will secure and maintain with financially reputable insurers (A.M. Best ratings of A-:VIII or better, or the equivalent thereof) not less than the following insurance: (a) "All Risk" property insurance covering the Provided Transmission Equipment for its full replacement value, (b) Commercial General Liability insurance covering liability resulting from Sprint's operation of the Provided Transmission Equipment with limits of not less than [REDACTED] combined single limit per occurrence for bodily injury and property damage liability and [REDACTED] annual aggregate, and (c) Workers' Compensation/Employers' Liability, Business Auto liability and other insurance as required by law.

**ii. Insurance Policy Forms.** Archdiocese must be named as an additional insured or loss payee, as appropriate, under the name Catholic Bishop of Chicago, a corporation sole, on the above referenced insurance (except Workers' Compensation/Employers' Liability). Such insurance must be primary to any coverage that Archdiocese carries.

**iii. Proof of Insurance.** A certificate of insurance must be delivered to Archdiocese evidencing that the above coverage is in effect and will not be canceled or materially altered without first giving Archdiocese thirty (30) days' prior notice. Renewal certificates must be delivered prior to the expiration of the term thereof.

**iv. Waiver of Subrogation.** Anything in this Agreement to the contrary notwithstanding, neither Archdiocese nor Sprint will be liable to the other or to any insurance company insuring the other party (by way of subrogation or otherwise) for any loss or damage to any structure, building, equipment or other tangible property, or any resulting loss of income, even though

such damage or loss might have been occasioned by the negligence of Archdiocese or Sprint or any of their agents or employees, if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage, or was required of such party to be covered by insurance pursuant to this Agreement, but only to the extent such loss is or should have been covered by such insurance. This waiver does not cover deductibles, *i.e.*, the party causing or responsible for a loss will be liable for any and all deductibles under the insurance policies of either party and it will not be entitled to any payment or reimbursement thereof.

**H. Prevention of Unauthorized Reception.** Upon the request of Sprint, Archdiocese will take such actions as Sprint reasonably requests to assist Sprint in preventing the unauthorized reception of transmissions over the Channels. Sprint will reimburse Archdiocese for all costs reasonably incurred in connection with Archdiocese's satisfaction of its obligations under this Section.

**I. Covenant Not To Compete.** Archdiocese recognizes that, during the term of this Agreement, Archdiocese's cooperation with Sprint is essential to the success of Sprint's commercial venture, and that such cooperation may be impaired by conflicts of interest. Archdiocese also recognizes that, during the Term of this Agreement, Archdiocese will become privy to Confidential Information concerning Sprint's business practices, technology, subscriber growth rates, business plans and other information which, if revealed to a competitor, could be used in a manner harmful to Sprint. Therefore, during the Term Archdiocese will not, directly or indirectly, acting alone, through an affiliate, or as a member of a partnership or other business entity (i) offer, provide or deliver, utilizing the Channels or any other MDS or ITFS channels, any commercial telecommunications, video, voice, data or internet service within one hundred miles of the Chicago Transmit Site (a "Competing Service") or (ii) lease or license any part of Archdiocese's Capacity to a third party that offers, provides or delivers a Competing Service. Nothing in this Section 8.I shall be interpreted as (i) preventing Archdiocese from distributing as part of Archdiocese's Services video programming supplied by commercial entities; (ii) preventing Archdiocese from collecting fees from any school (elementary, secondary, or post-secondary) or parish, students or teachers thereof, or any employees of Archdiocese or its affiliates who use Archdiocese's Services on any accredited basis or as part of any bona fide religious, educational, instructional or information service offered by Archdiocese over the Channels or other ITFS or MDS channels on the Sprint System; or (iii) holding Archdiocese responsible or liable for any business arrangement of activity of any other archdiocese, diocese, order, or religious or lay organization of the Catholic Church not part of the hierarchy of Archdiocese.

## SECTION 9. Representations and Warranties.

**A. Of Sprint.** Sprint hereby represents and warrants to Archdiocese that:

i. **Organization.** Sprint is duly organized, validly existing and in good standing under the laws of the state or commonwealth of its formation, qualified to do business in Illinois, and has full power and authority to carry out all of the transactions contemplated by this Agreement.

ii. **Authorization; Valid and Binding Agreement.** Sprint has taken all action necessary to authorize the execution and delivery of this Agreement, and any other agreements, certificates, or instruments being executed and delivered in connection herewith. The person or entity signing this Agreement on behalf of Sprint is duly authorized to execute and deliver this Agreement and to legally bind Sprint to all of the terms, covenants and conditions contained in this Agreement. Upon execution and delivery, this Agreement and any other agreements, certificates, or instruments being executed and delivered in connection herewith will constitute valid and binding agreements of Sprint, enforceable in accordance with their respective terms.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, will constitute or be conducted in such a manner as to be a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing Sprint's formation or other governing instruments, or any agreement or commitment to which Sprint is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Agreement or any of the other agreements, certificates, or instruments being executed and delivered in connection herewith, or with the performance of the transactions contemplated hereby.

iv. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of Sprint, threatened against Sprint before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon Sprint. There is no action, proceeding or investigation pending or, to the best knowledge of Sprint, threatened against Sprint, which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Agreement.

**B. Of Archdiocese.** Archdiocese hereby represents and warrants to Sprint that:

i. **Organization.** Archdiocese is duly organized, validly existing and in good standing as a corporation sole under the laws of the state of Illinois, and has full power and authority to carry out all of the transactions contemplated by this Agreement.

ii. **Authorization; Valid and Binding Agreement.** Archdiocese has taken all action necessary to authorize the execution and delivery of this Agreement, and any other agreements, certificates, or instruments being executed and delivered in connection herewith. The person or entity signing this Agreement on behalf of Archdiocese is duly authorized to execute and deliver this Agreement and to legally bind Archdiocese to all of the terms, covenants and conditions contained in this Agreement. Upon execution and delivery, this Agreement and any other agreements, certificates, or instruments being executed and delivered in connection herewith will constitute valid and binding agreements of Archdiocese, enforceable in accordance with their respective terms.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute or be conducted in such a manner as to be a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing Archdiocese's formation or other governing instruments, or any agreement or commitment to which Archdiocese is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Agreement or any of the other agreements, certificates, or instruments being executed and delivered in connection herewith, or with the performance of the transactions contemplated hereby.

iv. **FCC Authorizations.** Set forth as Exhibit F is a true, correct and complete copy of each currently outstanding (as of the Effective Date) authorization that the FCC has issued to Archdiocese to construct and/or to operate ITFS facilities utilizing the Channels (each an "FCC Authorization" and collectively, the "FCC Authorizations"). Except as set forth in Exhibit F, no application is presently pending before the FCC proposing any modification to any FCC Authorization. Except as set forth in Exhibit F, each FCC Authorization is issued pursuant to a Final Order and is unimpaired by any act or omission by Archdiocese. Except as set forth in Exhibit F, there is no complaint, inquiry, investigation or proceeding pending or threatened before the FCC specifically related to Archdiocese which could result in the revocation, modification, restriction, cancellation, termination or non-renewal of or other action adversely affecting, any FCC Authorization and Archdiocese knows of no facts that, if brought to the attention of the FCC, could result in the revocation, modification, restriction, cancellation, termination, non-renewal of, or other action adversely affecting, any FCC Authorization. Archdiocese has not entered into any

agreement that currently or in the future permits any third party to utilize, whether or not for compensation, any portion of the capacity of the Channels.

v. **Interference Issues.** Except as set forth in Exhibit G and Exhibit F-3, no FCC Authorization was issued based upon the consent of any other party to the proposed facilities, and no facility authorized under an FCC Authorization is required to utilize or comply with any particular technical parameters (including to utilize carrier offset) as a result of any agreement with any third party. Except as set forth in Exhibit G and Exhibit F-3, and except for agreements to which Sprint is a party, Archdiocese has not entered into any agreement, which requires or could require any current or future facilities that operate on the Channels to utilize or comply with any particular technical parameters, to cease operation, to limit the hours of operation, or to accept interference. Except as set forth in Exhibit G and except for Coordination Documents to which Sprint is a party, Archdiocese has not provided any Coordination Document to any third party or the FCC pursuant to which Archdiocese is required to accept, currently or in the future, any interference from any other party.

vi. **Litigation.** Except as disclosed in Exhibit H, there is no action, suit, proceeding or investigation pending or, to the actual knowledge of Archdiocese, threatened against Archdiocese before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon Archdiocese. There is no action, proceeding or investigation pending or, to the best knowledge of Archdiocese, threatened against Archdiocese, which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Agreement.

**C. Duty to Report Changes Relating to Representations and Warranties.** Throughout the Term of this Agreement, each party has the duty promptly to notify the other of any event or circumstance which would reasonably be deemed to have constituted a breach of, or have led to a breach of, any of the warranties or representations in this Section 9 had such event or circumstance occurred at or prior to the time of execution of this Agreement.

## **SECTION 10. Indemnification.**

**A. By Archdiocese.** To the extent permitted by law, Archdiocese hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Sprint, its directors, officers, shareholders, employees and agents (the "Sprint Indemnitees") from and against and shall reimburse any Sprint Indemnitee on demand for any and all

liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitations, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the Sprint Indemnitees may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of any third party claim against any Sprint Indemnatee based on or alleging (i) any breach or default by Archdiocese of any of its covenants, agreements, duties or obligations hereunder, (ii) any breach or default of, or inaccuracy or omission in, any representation or warranty of Archdiocese contained herein, or (iii) any negligence or willful misconduct of Archdiocese, its officers, employees or agents in connection with the performance of this Agreement. Moreover, Archdiocese will forever protect, save, defend and keep the Sprint Indemnitees harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from third party claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and/or transmission of any programming by Archdiocese; or (ii) third party claims arising as a result of selection and/or transmission by Archdiocese of programming or other material that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Chicago Transmit Site is located.

**B. By Sprint.** To the extent permitted by law, Sprint hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Archdiocese, its officers, employees and agents (the "ITFS Indemnitees") from and against and will reimburse any ITFS Indemnatee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitations, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the ITFS Indemnitees may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of any third party claim against any ITFS Indemnatee based on or alleging (i) any breach or default by Sprint or any Sprint Affiliate of any of its respective covenants, agreements, duties or obligations hereunder, (ii) any breach or default of, or inaccuracy or omission in, any representation or warranty of Sprint contained herein, or (iii) any negligence or willful misconduct of Sprint or any Sprint Affiliate, its officers, directors, stockholders, employees or agents in connection with the performance of this Agreement or its offering of services over the Sprint System. Moreover, Sprint will forever protect, save, defend and keep the ITFS Indemnitees harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from third party claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and/or transmission of any service by Sprint; or (ii) third party claims arising as a result of any selection and/or transmission by Sprint of programming or other material that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmission Site is located.

**C. Claims for Indemnification.** Where indemnification under this Section is sought by a party (the "Claiming Party"): (a) it must notify the other party (the "Indemnifying Party") promptly in writing of any claim or litigation or threatened claim to which the indemnification relates; (b) upon the Indemnifying Party's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party will afford the Indemnifying Party an opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party may not effect any such compromise or settlement without prior written consent of the Indemnifying Party); provided, however that neither may the Indemnifying Party compromise or settle any claim or litigation without the prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) of the Claiming Party, or consent to the entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by claimant to the Claiming Party a release from all liability with respect to the claim; and (c) the Claiming Party will cooperate with the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation. If the Indemnifying Party does not so acknowledge its indemnification responsibility, the Claiming Party may proceed directly to enforce its indemnification rights.

**D. Survival.** The agreements of indemnification set forth in this Section will remain in full force and effect for a period of one (1) year following the termination or expiration of the Term unless, during such one (1) year period, a Claiming Party makes a claim against an Indemnifying Party pursuant to Section 8.C., in which event such claim will continue to be governed by the provisions of this Section 8 until a resolution of such claim has been completed with all applicable appeal periods having expired.

**SECTION 11. Termination or Expiration.** This Agreement shall terminate upon expiration of the Term, or upon the occurrence of any of the events set forth below:

**A. Termination By Reason of Non-Payment.** Either party may terminate this Agreement immediately upon notice to the other party if that other party has failed to make any payment pursuant to this Agreement and such breach remains uncured for thirty (30) days after delivery of notice of the breach to the breaching party.

**B. Termination by Reason of Other Defaults.** A party may terminate this Agreement upon thirty (30) days notice to the other party if the other party is in default of any term, obligation or covenant of the Agreement other than non-payment, and fails within such thirty (30) day period to cure such default; provided, however, that if such default is not reasonably capable of being cured within such thirty (30) day period, this Agreement may not be terminated so long as the party in default commences action to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period of time considering the circumstances. A party will be deemed to be in default under this Section 11.B. if it breaches any material obligation, term or covenant of this Agreement or if it materially breaches any representation or warranty. Notwithstanding the foregoing,

Sprint may not terminate this Agreement as a result of any failure to disclose the existence of any condition or matter required to be disclosed pursuant to Section 9.B.iv. or 9.B.v. of which Archdiocese did not have knowledge if such matter or condition does not have a materially adverse effect upon Sprint's desired use of the Channels or other channels in the Sprint System. As used in this Section 11.B., Archdiocese's "knowledge" of the matters set forth in Sections 9.B.iv. or 9.B.v. is based solely upon a review of (1) Archdiocese's files held by Shook, Hardy & Bacon L.L.P. at its Washington, D.C. office as of May 7, 2002 and (2) the FCC's station files available in the Public Reference Room in Washington, D.C. on May 7, 2002.

**C. Delay in Termination for Dispute Resolution.** If a dispute exists between the parties on a matter that one party claims allows termination of the Agreement pursuant to Sections 11.A. or 11.B., and the alleged breaching party has given a notice of dispute pursuant to Section 12.C., the Agreement may not be terminated, unless the dispute resolution is resolved against the alleged breaching party or the dispute ceases to be pursued under the dispute resolution procedure in Section 12.C.

**D. Termination of FCC Authorization.** This Agreement will terminate upon the issuance by the FCC of a Final Order terminating Archdiocese's authority to utilize or lease the Channels.

**E. Effect of Termination.** Except as otherwise specifically provided in this Agreement, and except with respect to Sections 1 and 8.D., upon expiration of the Term or in the event of the termination of this Agreement, this Agreement will no longer have any effect in establishing the rights and obligations of the parties hereto. Termination of this Agreement pursuant to Sections 11.A. or 11.B. will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of any default leading to such termination. Termination pursuant to Section 11.D. will be without liability to either Archdiocese or Sprint, unless such termination results from a default by a party under this Agreement, in which case such termination will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of such default.

## **SECTION 12. Miscellaneous.**

**A. Assignment of Agreement.** Sprint and Archdiocese each has the right to assign its rights and obligations under this Agreement, provided that the party making the assignment gives notice to the other party, that the assignee agrees in writing to assume all of the duties and obligations of the assignor under this Agreement, and that, in the case of an assignment by Archdiocese, the proposed assignee acquires Archdiocese's authorizations for the Channels and the provisions of Section 8.A.iii. are complied with. Sprint may assign, pledge, hypothecate or grant a security interest in its rights under this Agreement as collateral or security for any financing arrangements it makes. Sprint may also grant a security interest in any of the Provided Transmission Equipment as collateral or security for any financing arrangement it makes; provided, however, that any security interest in any of the Provided Transmission Equipment shall

be made subject to the priority rights of Archdiocese pursuant to the provisions of this Agreement, including, but not limited to Section 3.L.

**B. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

**C. Dispute Resolution Through Arbitration.**

i. **Notice of Dispute, Selection of Arbitrator, and Arbitration Procedures.** The parties will utilize good faith efforts to resolve any disputes arising out of or relating to the negotiation, execution, interpretation, performance or nonperformance of this Agreement through amicable settlement discussions to be commenced by the giving of a notice of dispute by the party claiming to be aggrieved. The notice of dispute must state with specificity the matters in dispute, the position of the party giving the notice of dispute and the rationale for that position. Except as provided for in Section 12.C.ii. below, if the parties fail to resolve the dispute by amicable settlement within five (5) business days from the date the notice of dispute is given, either party may then request the final settlement of such dispute through arbitration in Chicago, Illinois under the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA") conducted pursuant to expedited and accelerated procedures by notifying the other party and the AAA in accordance with the Rules. Arbitration shall be conducted by a single neutral arbitrator, who may be selected by mutual agreement of the parties, or if not so selected by the parties within fifteen (15) days after notification of the dispute to the AAA, shall be selected from a list of [REDACTED] qualified neutral arbitrators provided by the AAA. The arbitrator shall then be selected by a process of each party alternately striking names (the first strike to be determined by lot) until one name remains. Prior to commencement of the arbitration each party shall be entitled to take limited discovery, including the right to request a reasonable number of documents, to serve no more than [REDACTED] and to take no more than [REDACTED]. Any disputes concerning this limited discovery shall be decided by the arbitrator. The arbitrator shall, as soon as practicable, conduct an arbitration hearing on the merits of the dispute and thereafter shall issue a written decision. The arbitrator shall decide the issue in accordance with the objectives and purposes of this Agreement. Anything in this Agreement to the contrary notwithstanding, in no event may the arbitrator award consequential damages unless the arbitrator determines that such damages were the result of willful misconduct of the losing party. The fees and expenses arising out of any arbitration (including, without limitation, the fees and costs of the arbitrator, and attorneys' fees) shall be paid by the losing party, or in the event the arbitrator's decision partially favors each party, shall be paid as determined by the arbitrator. Other than in connection with enforcing its rights (i) in Confidential Information, (ii) for specific performance, or (iii) to enforce an arbitration decision under this Section 12.C., each party hereby waives any and all rights to and hereby

covenants not to, bring any lawsuit, arbitration or other proceeding in any jurisdiction, judicial body or forum arising under or relating to this Agreement, or its subject matter other than through a proceeding under the dispute resolution set forth in this Section 12.C.

ii. **Required FCC Filings During Dispute Resolution.** The parties will utilize commercially reasonable efforts to preserve the *status quo* between notice of dispute and the earlier of a settlement of the dispute or the issuance of a final decision by the arbitrator. However, Archdiocese acknowledges the complexity of the system development Sprint intends to undertake, the practical necessity of coordinating among numerous MDS and ITFS licensees the execution and filing of applications and Coordination Documents, and the potential adverse impact under the FCC's rules and policies should the filing of such documents be delayed. In light of these and other considerations, the parties agree that time is of the essence with respect to requests by Sprint for Archdiocese to complete and file any application submitted to it pursuant to Section 3.A., to execute any Coordination Document submitted to it pursuant to Section 3.B., or to complete and file any notice or notification submitted to it pursuant to Section 3.E. If Archdiocese believes that grant of an application submitted by Sprint pursuant to Section 3.A., or that facilities contemplated by any Coordination Document submitted to it pursuant to Section 3.B., or that facilities installed or modified pursuant to Section 3.E. would cause an Impairment of Service at the ITFS Receive Sites, Archdiocese's sole remedy (other than the coordination obligations of the parties pursuant to Sections 3.A.iii. and 3.B.ii.) is to give notice of a dispute pursuant to Section 12.C.i. within the time periods specified in Sections 3.A.iii. and 3.B.ii. and, if the parties are unable to settle the dispute amicably within the time periods specified in Sections 3.A.iii. and 3.B.ii., either may require that the matter be submitted for resolution by arbitration. In order to assure Archdiocese ample opportunity to review any application, Coordination Document, notification or other document submitted to it by Sprint, the execution by Archdiocese of an application, Coordination Document, notification or other document submitted by Sprint pursuant to Section 3.A., 3.B., or 3.E. prior to the expiration of the applicable time period specified in Sections 3.A.iii. and 3.B.ii. will be without prejudice to Archdiocese's right to give notice of a dispute and commence a dispute resolution procedure within the deadlines set forth in this Section as to whether the facilities in issue would cause an Impairment of Service at the ITFS Receive Sites. Notwithstanding the first sentence of Section 12.C.ii., and subject to Section 12.C.iii. while any such dispute is pending, (i) Archdiocese must, if it has not already done so, complete and file the application, execute the Coordination Document, or complete and submit the notice or notification, as the case may be, as requested by Sprint; and (ii) Archdiocese must refrain from withdrawing or failing to prosecute any application or renouncing any Coordination Document or otherwise jeopardizing FCC authorization of the contemplated facilities, and must utilize good faith efforts to prosecute the application to grant. In order to assure that Archdiocese not suffer any material adverse effect during the pendency of any dispute resolution procedure, (i) should any facilities contemplated by any

application or Coordination Document which are the subject of the dispute be authorized by the FCC while such dispute is pending, Sprint agrees that any such facilities will not be placed into operation unless and until the dispute is resolved favorably to Sprint; (ii) Sprint will not place into operation any facilities that are permitted by the FCC without prior authorization if Sprint receives a timely notice of dispute from Archdiocese; (iii) Sprint will take all steps necessary to enforce Archdiocese's rights with respect to a Coordination Document as specified in Section 3.B.ii., (iv) Archdiocese will not be required to consummate any disputed channel swap unless and until the dispute is resolved favorably to Sprint; and (v) Sprint will promptly cease utilizing facilities installed pursuant to Section 3.E. or will return facilities modified pursuant to such Section to their prior configuration if the dispute is resolved unfavorably to Sprint. Notwithstanding anything to the contrary set forth herein, if Sprint has elected to construct facilities which are the subject of a dispute hereunder, it shall be impermissible for Sprint to argue or present evidence, and for the arbitrator to consider that such facilities have already been constructed when determining whether such facilities are authorized pursuant to this Agreement. The parties agree that the award of the arbitrators under this Section 12.C. will be final and waive any right to trial by jury or to challenge the arbitrator's award. However, any party aggrieved by a default by the other may seek immediate injunctive relief pursuant to Section 12.P. before any court of competent jurisdiction set forth in Section 12.I. and agree that such relief will not be sought to avoid or stay the arbitration. Judgment on the award of the arbitrators may be entered in any court having jurisdiction over the party against whom enforcement of the award is being sought.

iii. **Archdiocese's Right To Object To Filings.** Sprint acknowledges that as the FCC licensee of the Channels, Archdiocese ultimately is responsible for control of the Channels. Thus, notwithstanding anything to the contrary contained in this Agreement, and subject to the procedures set forth in this Section 12.C.iii.a. and 12.C.iii.b., Archdiocese shall not be required to submit or prosecute before the FCC (or any other government agency) any application, consent, filing or other document (collectively referred to herein as a "Document") that, in the reasonable good faith judgment of Archdiocese, based upon the advice of competent legal counsel, contains any material misrepresentations or is otherwise in material violation of FCC rules or policies.

(a) **Violation of FCC Rules or Policies.** If Archdiocese has an objection to a Document because the Archdiocese has a reasonable good faith belief, based on the advice of competent legal counsel, that submission or prosecution of the Document would materially violate FCC rules or policies, Archdiocese will, within thirty (30) days from the date on which Sprint submits to Archdiocese the requested Document, provide Sprint with written notice setting forth with particularity the basis for such objection (a "Non-Conformance Objection"). Sprint will in good faith respond in writing to each of Archdiocese's concerns set forth in any Non-Conformance Objection within fifteen (15) days of Sprint's receipt of the Non-Conformance

Objection. If the parties are not able to reach amicable agreement as to a resolution of the issues raised in the Non-Conformance Objection within fifteen (15) days of Sprint's receipt of the Non-Conformance Objection, Sprint, in its sole discretion, may submit the matter to the Chief of the Branch of the FCC responsible for issues in dispute ("FCC Chief") for an informal decision. Upon such election by Sprint, Archdiocese and Sprint will promptly arrange to jointly meet with FCC Chief and request an informal opinion as to whether the requested action which is the basis for the Non-Conformance Objection would be a violation of FCC rules or policies. Archdiocese and Sprint agree to be bound by the determination of the FCC Chief's informal opinion, provided, however, that if an informal ruling is not available, Sprint may elect to submit the matter to FCC for a formal advisory ruling and in such event the parties agree to be bound by the determination of the FCC's formal advisory ruling. With respect to a Non-Conformance Objection, until such time as the parties either reach amicable agreement as to the issues set forth therein or the FCC Chief issues an informal opinion, or if such informal opinion is unavailable, the FCC issues a formal advisory ruling, resolving the issue in favor of Sprint, Archdiocese will not be obligated to execute or file the Document which is the subject of a Non-Conformance Objection. This Section 12.C.iii.a. shall not be construed as permitting Archdiocese to refuse to file a Document based upon the theory that it would abrogate licensee control and is therefore in violation of FCC rules or policies.

(b) **Misrepresentations.** If Archdiocese has an objection to a Document because the Archdiocese has a reasonable good faith belief based on the advice of competent legal counsel, that the Document contains a material misrepresentation such that the submission or prosecution of the Document would be in violation of FCC rules or policies, Archdiocese will, within thirty (30) days from the date on which Sprint submits to Archdiocese the requested Document, provide Sprint with written notice setting forth with particularity the basis for such objection (an "Inaccuracy Objection"). Sprint will in good faith respond in writing to each of Archdiocese's concerns set forth in any Inaccuracy Objection within fifteen (15) days of Sprint's receipt of the Inaccuracy Objection. In the event that the parties are unable to reach amicable agreement as to the issues set forth in any Inaccuracy Objection within fifteen (15) days of Sprint's receipt of the Inaccuracy Objection, Sprint may, in its sole discretion, elect to submit the matter to the dispute resolution procedure set forth in Section 12.C., provided, however that Archdiocese will not be obligated to execute or file the Document which is the subject of an Inaccuracy Objection until such time as the matter is resolved amicably or resolved in favor of Sprint pursuant to the dispute resolution procedure set forth in Section 12.C.

**D. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written contracts or

agreements of any kind. The parties further agree that this Agreement may only be modified by a written agreement signed by both parties.

**E. Force Majeure.** If by reason of act of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivision thereof which are not the result of a breach of or default under this Agreement, orders of any military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other similar cause or event not reasonably within the control of the adversely affected party, either party is unable in whole or in part to perform its obligations hereunder, such party so unable to perform will not be deemed in violation or default of this Agreement during the period of such inability and the other party shall be excused from performance of its obligations hereunder during such period of inability. If the period of inability extends beyond one hundred eighty (180) days, the party that is able to perform its obligations may terminate this Agreement without liability by providing thirty (30) days notice to the other party at any time following the expiration of such one hundred eighty (180) day period.

**F. Headings.** The headings contained in this Agreement are for convenience of reference only and do not affect in any way the meaning or interpretations of this Agreement.

**G. Governing Law.** This Agreement is governed by and is to be construed and enforced in accordance with the Communications Act of 1934, as amended, the FCC's rules, and the laws of the State of Illinois and, with respect to arbitration, the Federal Arbitration Act.

**H. Interpretation.** If this Agreement requires interpretation or construction, this Agreement will not be interpreted or construed more strictly against any one party by reason of any rule of interpretation or construction under which a document is to be construed more strictly against the drafting party.

**I. Jurisdiction and Venue.** Subject to the provisions of Section 12.C., any suit brought with respect to this Agreement must be brought in the county or other applicable state court district, or the Federal court district, in Chicago, Illinois. For any and all such purposes, the parties hereto hereby irrevocably submit to the jurisdiction of such courts, waive all objections thereto (on the grounds of improper venue, forum non conveniens or otherwise), and agree that service of process upon each as provided in Section 12.K. will be effective to establish personal jurisdiction over it in such courts.

**J. Licensee Control.** Notwithstanding any other provisions of this Agreement, Archdiocese will at all times retain such ultimate and exclusive responsibility for the operation and control of the facilities licensed to it as is required by the FCC's rules.

**K. Notice.** Except for payments pursuant to Section 7.F., all notices and other communications given or made pursuant to this Agreement must be in writing

and will be deemed received as of the first weekday (excluding Federal holidays) after being sent for next-day delivery by United States Postal Service Express Mail, return receipt requested, or by Federal Express or other reputable overnight courier, signature required, to the other party at the following address:

i. If to Archdiocese:

ATTENTION:  
James Vodak  
Director, Communications and Public Relations  
Archdiocese of Chicago  
155 East Superior  
Chicago, IL 60611

with a copy to:

Edwin N. Lavergne, Esq.  
Shook, Hardy and Bacon, LLP  
600 14<sup>th</sup> Street, N.W.  
Suite 800  
Washington, D.C. 20005

Office of Legal Services  
Archdiocese of Chicago  
ATTENTION: Maureen A. Murphy  
Archdiocese of Chicago  
155 East Superior  
Chicago, IL 60611

ii. If to Sprint:

Preferred Entertainment, Inc.  
Attn: Contract Administration Manager  
6360 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPHE0310-3A522

with a copy to:

Sprint Corporation  
Attn: Vice President, Spectrum Management  
6360 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPH0306-3B775

**L. Payment of Expenses.** Sprint shall promptly pay all taxes, assessments, fees and other charges due from Sprint or Archdiocese as a result of the use of the Channels by Sprint under this Agreement or incurred as a result of any channel swap requested by Sprint, including, but not limited to [REDACTED]

[REDACTED] Except as otherwise provided, Archdiocese and Sprint will each pay its own costs and expenses incident to negotiating and fulfilling its obligations under this Agreement.

**M. Reformation and Severability.** If any provision of this Agreement is determined by any court, the FCC or any other governmental authority to be invalid, illegal or incapable of being enforced, all other provisions will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon any determination that any provision is invalid, illegal or incapable of being enforced, or should Congress, the FCC or any other government authority adopt any new or modified law, rule or public policy such that any provision of this Agreement would be invalid, illegal, incapable of being enforced, or incapable of being performed without a material adverse effect upon the party responsible for such performance, the parties hereto will negotiate expeditiously and in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the maximum extent possible. If the parties are unable to negotiate a modification of this Agreement under such circumstances, this Agreement may be terminated by the party that would suffer a material adverse effect as a result. No termination of the Agreement shall require any refund or reimbursement for payments, services or other benefits already provided under the Agreement, provided however, that this sentence shall not be construed to limit any remedies including but not limited to damages, Sprint may have resulting from Archdiocese's breach of this Agreement. Notwithstanding the foregoing, Sprint may not terminate this Agreement if any provision of Section 12.C. is found to be invalid, illegal or incapable of being enforced.

**N. Relationship of the Parties.** Archdiocese and Sprint acknowledge and agree that by the provisions of this Agreement they are entering into an airtime lease relationship and not a joint venture. Neither party will present itself as the other party, nor as having any relationship with one another other than that set forth under the terms of this Agreement. The parties hereto agree that any and all contracts entered into between Sprint and its customers or any other entity shall be for the sole benefit of the parties thereto and shall not be interpreted or construed in any manner as obligating Archdiocese to perform for the benefit of such customers, nor shall such contracts be interpreted or construed as creating in Archdiocese any rights as a third party beneficiary or as otherwise entitling Archdiocese to the benefits of such contracts. Archdiocese shall not be liable to Sprint's customers by virtue of leasing excess capacity under this Agreement and, except as otherwise expressly stated herein, Archdiocese shall have no claim to any revenues derived from such customer's use of the Sprint System or from Sprint's contracts or other relationships with such customers or any other entity.

**O. Right of First Refusal.** Archdiocese will not during the Term entertain offers from, negotiate with, or enter into any agreement with a third party pertaining to the lease or use for purposes other than the uses set forth in Sections 5.C. and 8.I. hereof, by any party of any or all of the capacity of the Channels, except as specified below:

i. **No Exclusivity.** If Sprint has given notice to Archdiocese pursuant to Section 2 hereof at least [REDACTED] months before the end of the Initial Term or the first Renewal Term that Sprint elects not to extend the Agreement, there shall be no exclusive negotiating period for the remainder of the Term, and subject to the Right of First Refusal (defined below) Archdiocese may solicit or entertain offers from, negotiate with, or enter into any agreement with, any party for any lease, transfer or sale of the Channels or the capacity of the Channels.

ii. **Exclusive Six-Month Negotiating Period.** If the Agreement has been renewed for the Renewal Terms, then commencing no later than [REDACTED] prior to the expiration of the second Renewal Term, Archdiocese and Sprint shall negotiate exclusively and in good faith with each other regarding the terms of a new ITFS lease agreement ("Replacement Agreement"). If a Replacement Agreement has not been executed by the parties by [REDACTED] prior to expiration of the second Renewal Term, subject to the Right of First Refusal Archdiocese may solicit or entertain offers from, negotiate with, or enter into any agreement with, any party for any lease, transfer or sale of the Channels or the capacity of the Channels.

iii. **Duration of Sprint's Rights.** Sprint will have the exclusive right (the "Right of First Refusal") to match the material terms and conditions of any bona fide offer to lease or otherwise use after the Term any or all of the capacity of the Channels, or to acquire the authorizations for the Channels (if Sprint is then eligible to hold such authorizations) provided such offer is received by Archdiocese during the Term or within [REDACTED] of the expiration of the Term, whether at the conclusion of the Initial Term, First Renewal Term or second Renewal Term (the "Right of First Refusal Period").

iv. **Notice.** If Archdiocese receives any offer or otherwise commences any negotiations with any third person to enter into an agreement to use any or all of the capacity of the Channels within the Right of First Refusal Period, Archdiocese must provide written notice to the third party advising such third party of the Right of First Refusal. If Archdiocese desires to accept an offer from, or otherwise allow the use for non-ITFS purposes by, a third party of any or all of the capacity of the Channels, or an offer to acquire the authorizations for the Channels (if Sprint is then eligible to hold such authorizations), Archdiocese must first provide notice to Sprint, identifying the person with whom the proposed agreement is to be made, describing all of the material terms and conditions of the

proposed agreement, and representing its intent to accept the offer. If Sprint does elect to match the offer on substantially the same material terms and conditions as those contained in the notice (the "Offer Notice"), Sprint will have a period of thirty (30) days after its receipt of an Offer Notice from Archdiocese in which to elect, by giving notice (the "Offer Acceptance") to Archdiocese, to enter into an agreement on substantially the same terms and conditions (except as provided in Section 12.O.vi.) as contained in the Offer Notice. If Sprint does not give an Offer Acceptance within the requisite thirty (30) day period, Archdiocese may enter into an agreement with such third party upon the terms and conditions set forth in the Offer Notice. In connection with the foregoing, Archdiocese agrees that it may not accept any offer, including but not limited to an offer to refrain from leasing excess capacity on the Channels, that includes terms and conditions that have the purpose or design of preventing Sprint from exercising its Right of First Refusal, it being understood and agreed, however, that an offer to lease on financial or other terms deemed unattractive to Sprint will not be deemed as preventing Sprint from exercising its Right of First Refusal.

v. **Changes To Offer.** If Sprint does not exercise its Right of First Refusal with respect to any offer, and any material term of such offer is subsequently changed, before accepting such changed offer Archdiocese must follow the procedures specified in the foregoing subsections, providing Sprint with notice regarding the revised offer and giving Sprint the opportunity to exercise its Right of First Refusal with regard thereto.

vi. **Non-Cash Consideration.** If the Offer Notice provides that any consideration is to be paid by the third person in whole or in part in a form other than cash, Sprint may substitute, in whole or in part, for such non-cash consideration an amount in cash fairly equivalent to the fair market value of the non-cash consideration payable by the third person. The Offer Acceptance must specify the amount of any such substitute cash consideration and the non-cash consideration for which it is intended to substitute. If Archdiocese disputes that the substitute cash consideration specified by Sprint is in an amount fairly equivalent to the fair value of the non-cash consideration payable by the third person, Archdiocese must within five (5) days after receipt of the Offer Acceptance provide Sprint with a notice specifying the amount it considers to be fairly equivalent to the fair value of the non-cash consideration payable by the third person (the "Counter-Offer"). The question of the fair value of the non-cash consideration will be referred to arbitration pursuant to Section 12.C. unless Sprint gives Archdiocese notice within five (5) days after its receipt of the Counter-Offer that it agrees to enter into an agreement containing the fair value set forth in the Counter-Offer. If the question of the fair value of the non-cash consideration is referred to arbitration, Archdiocese will not enter into any agreement with the third party until five (5) days after determination by the arbitrator. Upon such determination, Sprint will have the option of entering into an agreement containing the fair value determined by the arbitrator (the "Deemed Fair Value") by giving notice of such election to Archdiocese within five (5) days

of the arbitrator's determination. If the Deemed Fair Value is closer to the value proposed by Archdiocese in the Counter Offer, then Sprint shall be obligated to reimburse Archdiocese for the reasonable fees and expenses incurred in such arbitration, (including, without limitation, the fees and costs of the arbitrator and attorneys' fees). If the Deemed Fair Value is closer to the value proposed by Sprint in the Offer Acceptance, then Archdiocese shall be obligated to reimburse Sprint for the reasonable fees and expenses incurred in such arbitration, (including, without limitation, the fees and costs of the arbitrator and attorneys' fees).

**P. Specific Performance.** Each of the parties acknowledges and agrees that the rights reserved to the other are of a special, unique, unusual and extraordinary character, which gives them peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law and the breach by either party of any of the provisions hereof (other than provisions calling for the payment of money) will cause the other irreparable damage and injury. In such event, the non-defaulting party will be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts, services and undertakings required under this Agreement, including the obtaining of all requisite authorizations to execute or perform this Agreement and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions hereof. Neither this provision nor any exercise by any party of rights to equitable relief or a specific performance herein granted will constitute a waiver of any other rights which the non-defaulting party may have to damages or otherwise.

**Q. Waiver.** No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or covenant or other obligation herein. The express or implied waiver by either party of any breach of any representation or warranty or any failure to fulfill any covenant or other obligation under this Agreement will not constitute a waiver of any other representation or warranty or of any other failure in the future or in the past by the other party to fulfill such representation, warranty, covenant, or obligation hereunder.

**R. Word Meanings.** As used in this Agreement, the term "including" is deemed to mean "including, without limiting the generality of the foregoing." A "Final Order" means an order of the FCC which is effective, which is not subject to any petition for reconsideration, petition to deny or informal objection, application for review, notice of appeal, petition for writ of *certiorari* or request for stay and the time for any party to seek such relief or for the FCC to grant such relief *sua sponte* has expired. All pronouns and any variations therefor are deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

**S. Survival of Obligations.** All obligations of Sprint or Archdiocese which by their nature involve performance, in any particular, after the end of the Term, or

which cannot be ascertained to have been fully performed until after the end of the Term, will survive the expiration or sooner termination of the Term.

**T. No Publicity Without Consent.** Neither party will issue or permit the issuance of any press release or publicity regarding the other or this Agreement without prior coordination with and advance written approval by the other party, which may be granted or withheld at the other party's sole discretion.

**U. Payment Bond.** During the Initial Term, Sprint will maintain a payment bond (the "Bond") in favor of Archdiocese from a surety with an A.M. Best rating of A-:VIII or better (or the equivalent thereof) [REDACTED]

[REDACTED] Such Bond shall be delivered to Archdiocese within thirty (30) days of the Effective Date and any replacement Bond must be delivered to Archdiocese prior to the expiration of the then existing Bond. The condition of such Bond shall be that if Sprint defaults in its performance of such obligations, then upon termination of the notice and cure period set forth in Sections 11A and 11B, Archdiocese may demand and receive payment under the Bond. [REDACTED]

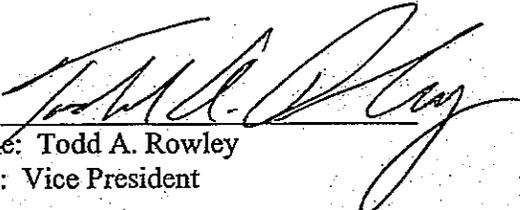
**V. Further Relationships.** Archdiocese and Sprint acknowledge that each of them possesses unique attributes that may be helpful or beneficial to the other in the conduct of their respective missions in the Markets. The parties further agree that they will look for opportunities to cooperate and to work with each other with respect to other relationships, exchange or bartering arrangements and other activities of an appropriate nature in order to take advantage of such attributes for their common good.

**W. Definitions.** Solely for the convenience of the parties and for no other purpose, attached hereto as Exhibit J is a list of defined terms set forth herein. Nothing contained in Exhibit J shall be construed as altering any definition of any term or phrase set forth in the text of this Agreement.

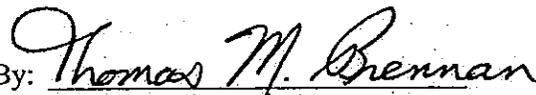
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Preferred Entertainment, Inc.

By:   
Name: Todd A. Rowley  
Title: Vice President

The Catholic Bishop of Chicago

By:   
Name: Thomas M. Brennan  
Title: Director of Finance

**Chicago, IL**

**D1, D3**

**-**

**WLX630**

**INSTRUCTIONAL TELEVISION FIXED SERVICE  
EXCESS CAPACITY LEASE AGREEMENT**

THIS INSTRUCTIONAL TELEVISION FIXED SERVICE EXCESS CAPACITY LEASE AGREEMENT (herein, the "Agreement") is made this 3rd day of August, 1993, by CHICAGO INSTRUCTIONAL TECHNOLOGY FOUNDATION, INC., (hereinafter referred to as "Lessor") having its principal place of business at 1813 W. Cortland, Chicago, Illinois, 60622 and PREFERRED ENTERTAINMENT, INC. a Delaware corporation, (hereinafter referred to as "Lessee") having a principal place of business at 233 N. Garrard, Rantoul, Illinois, 61866.

WHEREAS, Lessor has been conditionally licensed by the Federal Communications Commission ("FCC") to construct Instructional Television Fixed Service ("ITFS") Station WLX-630 utilizing the two channels designated as D-1 and D-3 in the Chicago, Illinois Metropolitan Area; and

WHEREAS, Lessor is an applicant for authorization to construct a second ITFS Station to operate on channels D-2 and D-4 in the Chicago area; (all four of these channels are referred to herein as the "Channels"); and

WHEREAS, Lessee is developing a wireless pay television system to provide subscription television programming to paying subscribers within the Chicago, Illinois Metropolitan Area (the "Metropolitan Area") and has entered into agreements securing to it the right to utilize stations in the ITFS, Operational Fixed Service ("OFS"), Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") that Lessee intends to locate at its transmission facility. The Channels

thus created shall hereinafter be described as "Lessee's System";  
and

**WHEREAS**, Lessee desires to lease excess capacity on the  
Channels; and

**WHEREAS**, the FCC has authorized ITFS licensees to lease  
excess capacity on their systems for non-ITFS purposes and Lessor  
has determined that after satisfaction of its educational  
requirements there will be excess capacity available on the  
Channels; and

**WHEREAS**, the parties acknowledge and agree that the rights  
reserved to them under this Agreement are of a special, unique,  
and unusual character with a peculiar value; and

**WHEREAS**, the dissemination of educational programming will  
be significantly increased as a result of integrating the  
Channels into Lessee's System.

**NOW THEREFORE**, in consideration of the mutual promises,  
undertakings, covenants and conditions set forth herein the  
Lessor and Lessee do hereby agree and warrant as follows:

**1) TERM OF AGREEMENT.**

a) **Initial Term.** The term of this Agreement shall  
commence upon the Start Date and shall extend for an initial term  
of ten (10) years from the Start Date as defined in Paragraph 11  
hereof. Said period is hereinafter referred to as the "Initial  
Term".

b) **No Rights Beyond Term of Licenses.** Lessor and Lessee  
agree that this Agreement shall not give rise to any rights or  
remedies beyond the expiration of any FCC license necessary for

the continued operation of the Channels, whether such expiration occurs during the Initial Term, or any Renewal Term. Provided, however, that while this Agreement is in effect, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the channels. Lessor shall take all necessary steps to renew the licenses for the Channels and shall not commit any act or engage in any activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the ITFS licenses. Lessor shall take all reasonable steps to comply with the Communications Act of 1934 as amended and the rules and regulations of the FCC, and shall timely file all material reports, schedules and/or forms required by the FCC to be filed by Lessor.

c) **Additional Renewals/Right of First Refusal.** If Lessee delivers to Lessor no later than ninety (90) days prior to the end of the Initial Term a written offer for a new lease agreement, Lessor may accept or reject said offer. If Lessor rejects said offer, Lessor grants Lessee a right of first refusal on any competing proposals for lease agreements of any part of the channels received by Lessor within ten (10) months after the expiration of the Initial Term. If any acceptable bonafide offer to lease the channels for commercial use is made to Lessor, Lessor shall give written notice to Lessee describing the fees, charges, rental or other consideration to be received for the lease, the terms thereof and generally the relevant other terms and conditions of the lease. Lessee shall have a

period of thirty (30) days after its receipt of such notice from the Lessor in which to elect, by giving written notice to Lessor, to lease any or all of leased channels for the same fees, charges, rental or other consideration for which Lessor proposed to lease the channel or channels to the third party.

If the fees, charges, rental consideration to be paid by the third person was to be in whole or in part in form other than cash, the consideration to be paid by Lessee shall be in cash in an amount fairly equivalent to the fair market value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

If Lessor does not believe Lessee's stated offer is in an amount equivalent to the fair value of the consideration payable by the third person and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to so lease, Lessee may elect within five (5) days after its receipt of such notice from Lessor to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Said arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of

the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The costs and fees of the Arbitration shall be allocated between the parties as provided for in Paragraph 20.

This arbitration shall take place in Chicago, Illinois.

In the event Lessee shall elect to exercise its said right of first refusal, the lease agreement shall be consummated on the fifteenth (15) day following the day on which Lessor received notice of Lessee's election to exercise the right of first refusal or the day upon which any question required to be determined by the arbitrator hereunder has been determined, or at such other time as may be mutually agreed. The right of first refusal is terminated either by the lease to Lessee as provided herein or by notice to Lessee of the Lessor's proposal to lease or transfer the Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bonafide offer pursuant to the times and procedures as set forth above, provided that such proposed lease is consummated at the same fees, charges, rental or other consideration upon the same terms as to which said right of first refusal applied, within ninety (90) days after Lessee's right of first refusal had expired or has been specifically waived by written notice given to Lessor by Lessee.

**2) ALLOCATION OF AIRTIME.**

Lessor shall lease excess capacity airtime to Lessee upon the Channels upon terms and conditions provided for in Subparagraphs (a) - (j) below:

a) **Excess Capacity Airtime.** To the extent allowed by the FCC rules and regulations and any amendments thereof, Lessor agrees to lease to Lessee the exclusive use of excess capacity airtime on Lessor's Channels as more fully set forth herein. As used in this Agreement the phrase "Excess Capacity Airtime" means all airtime on Channels not used by Lessor to transmit instructional programming.

b) **Lessor's Primary Airtime.** Lessor reserves for each Channel licensed, a minimum of twenty (20) hours of airtime each week to be used for its ITFS scheduled programs aired between the hours of 7:00 a.m. and 10:00 p.m. This airtime is described as "Lessor's Primary Airtime".

c) **Lessor's Ready Recapture Airtime.** Lessor also preserves for any current or expanded ITFS program scheduling needs, an additional twenty (20) hours of airtime each week for each licensed Channel (Monday through Sunday) between the hours of 7:00 a.m. and 6:59 a.m. This airtime shall be known as "Lessor's Ready Recapture Airtime".

d) **Schedule of Airtime.** Attached hereto and made a part of Exhibit A, is the schedule which depicts the agreement of the parties as to the use of Lessor's primary channels. This schedule reflects among other things, the hours reserved by Lessor for its Primary Airtime and Ready Recapture Airtime.

e) **Change of Schedule.** There shall be no economic or operational detriment borne by Lessor arising from its use of Lessor's Ready Recapture Airtime. Lessor agrees to provide Lessee with one-hundred eighty days notice of any intended

modification of its use of scheduled airtime. No change of schedule shall affect the maximum number of Channels upon which Lessor may simultaneously broadcast, as provided for in the Schedule of airtime attached as a part of Exhibit A.

f) **Use of Vertical Blanking Intervals.** Lessee reserves for its exclusive use all of the vertical blanking intervals, associated subcarriers and the response channel time that are a part of Lessor's licensed ITFS spectrum, provided that Lessee's use thereof does not interfere with Lessor's distribution of its educational programming.

g) **Lessor's Increase in Scheduling.** Lessor acknowledges that a significant amount of capital expenditure is to be made by Lessee for the mutual benefit of the parties to this Agreement. Lessor expressly agrees to take no action not authorized by this Agreement which would jeopardize the ability of Lessee to fully recover its investment through its provision of services contemplated by this Agreement. In this regard, it is acknowledged that Lessor's primary purpose for airtime use is to provide accredited educational programming. In the event that Lessor seeks to broadcast programming other than during Lessor's Primary Airtime or Lessor's Ready Recapture Airtime, thereby reducing Lessee's Excess Capacity Airtime to less than 128 hours per Channel per week, then Lessor shall provide Lessee with one year's notice of this intent. Any such attempt to reduce Lessee's Excess Capacity Airtime shall hereinafter be referred to as a "Significant Reduction in Lessee's Airtime".

h) **Significant Reduction in Lessee's Airtime.** In the event Lessor seeks a Significant Reduction in Lessee's Airtime, the parties hereto shall negotiate in good faith toward permitting Lessor to recapture time pursuant to its request. Before such recapture is allowed, the negotiations must result in mutually acceptable terms. In no event, however, shall Lessee be obligated to permit a Significant Reduction in Lessee's Airtime if after negotiating in good faith, the parties are unable to reach an agreement.

i) **Lessor's Isolated Use of Lessee's Airtime.** Lessor and Lessee acknowledge that under unique conditions, Lessor may need to transmit programming during Lessee's Airtime. Lessor shall have the right upon circumstances to preempt Lessee's programming on one Channel for a period of not more than two consecutive hours in any day, up to three times in any calendar year. Such isolated occurrences shall not be considered a Significant Reduction in Lessee's Airtime. In no event shall Lessee be required to permit the use of Lessee Airtime for such isolated broadcasts if in Lessee's reasonable business judgement, its business will be negatively impacted by Lessor's preemption.

j) **Lessor's Use of Channels.** Lessor recognizes the mutual benefits and technological advantages of the use of encoding methods for program security, equipment signaling and individual addressability control over unauthorized equipment use. Lessor agrees to employ its best efforts to see that its program services and airtime use will not harm or interfere with Lessee's current or future signal paths utilized within Lessee's System

for program encryption, pilot carrier signaling and other technical needs utilized for the operation of such services provided by Lessee's Wireless Cable Service. During the term of this Agreement, Lessor shall not operate a Wireless Cable Service in the Chicago metropolitan area, or lease airtime to others for the purpose of operating a Wireless Cable Service. For the purposes of this Agreement the provision of instructional programming for charge shall not be considered operating a Wireless Cable Service.

k) **Lessee's Use of Channels.** Lessee shall use the Channels, including but not limited to the vertical blanking intervals, associated subcarriers and the response channel time for the purpose of operating a Wireless Cable Service in the Chicago Metropolitan area. For the purposes of this Agreement, Wireless Cable Service shall mean service using 2.5 GHz ITFS and/or MMDS, and/or other microwave frequencies to deliver data, video and audio signals to customers paying cash or other consideration for such service. Lessee shall use reasonable business efforts to promptly develop and preserve its Wireless Cable Service in the Chicago area.

l) **Conformity With Law.** Lessee shall use the Channels in conformity with all applicable laws, rules, and regulations.

m) **Channel Expansion.** At its expense, Lessee shall have the right purchase the equipment necessary to incorporate a Channel expansion or multiplex technology, thereby increasing the capacity of the Channels used pursuant to this Agreement. Lessee shall carry out its channel expansion program in a method

permitted by the FCC. Any additional capacity created by such Channel expansion or multiplex technology shall be leased to Lessee at no additional fee, except that Lessee shall provide to Lessor one-twelfth of the additional capacity created by the Channel expansion technology.

**3) TRANSMISSION SITE AND FACILITIES.**

a) **Transmission Site.** The John Hancock Tower, Chicago, shall hereinafter be described as the "Transmission Site." Lessee agrees to contract for a lease of space atop the Transmission Site under terms consistent with the provisions of this Agreement. To the degree that it has not already done so, Lessor shall file appropriate application(s) with the FCC to secure authorization to operate the Channels from the Transmission Site.

b) **Lessor's Sublease.** Lessee shall execute with the owner of the Transmission Site a lease whereby each of the ITFS of the licensees leasing Channels to Lessee will have the right to continue to use the transmission facilities at the Transmission Site under reasonable terms and conditions in the event of the termination or expiration of this Agreement. Lessor shall provide Lessee with a copy of such lease as soon as practicable. When this Agreement is terminated or expires, Lessor shall have the option of availing itself of the right to continue to use the Transmission Site upon sharing in the Transmission Site lease obligations which share shall be based on the number of main channels built by Lessee at the Transmission Site just before termination of Lessee's rights in said lease.

c) **Channel Construction.** Lessee shall within a reasonable period of time, but in any event within 180 days of FCC authorization to operate from the Transmission Site, complete construction of new transmission facilities for the Channels at the Transmission Site. At its expense, Lessee shall purchase and install four 10 watt solid state ITFS transmitters, the equipment necessary to uplink signals from Lessee's signal origination facility to the Transmission Site, and in addition, transmission line combiners, modulators, antennas, and other equipment as required to operate the Channels from the Transmission Site in accordance with the provision of said authorization and this Agreement. Any equipment thereafter used exclusively for the operation of the Channels, shall be leased to Lessor pursuant to Paragraph 5 hereof. (Said equipment, together with any such equipment which is replaced during the term of this Agreement, the equipment specified in Exhibit B hereof, and the receiving equipment described in Paragraph 4 hereof, are collectively hereinafter referred to as the "Leased Equipment"). Lessee further agrees throughout the term of this Agreement to provide Lessor with space for the equipment listed in this Paragraph 3 (c) at the Transmission Site, and uplink equipment at another location if necessary. Lessee shall retain title to the Leased Equipment subject to the rights of Lessor set forth in Paragraphs 5 (a) and 15 of this Agreement.

d) **Maintenance and Taxes.** Throughout the term of this Agreement, Lessee shall provide at its sole expense such personnel and services as necessary to maintain the Leased

Equipment in good working order, and shall respond to all engineering, technical, and mechanical problems as may arise in a prompt and diligent fashion. Should any of the Leased Equipment require replacement during the term of this Agreement, Lessee shall replace it at Lessee's expense. Should any technical problem remain unabated for more than 24 hours, Lessor, in its discretion, may intervene and remedy and such problem at Lessee's expense. Lessee shall pay all ad valorem taxes assessed against the Leased Equipment.

e) **Access.** Throughout the term of this Agreement, Lessee shall provide, and/or cause others to provide, Lessor reasonable access to all equipment and facilities used in Lessor's operations.

f) **Interference.** Lessee shall operate the Leased Equipment so that such operation does not create or increase interference with electronic transmission of any other FCC licensees entitled to protection under FCC rules and regulations. If Lessee's operation of the Leased Equipment does so create or increase interference, Lessee shall pay all of the engineering and legal fees necessary to resolve the interference problem so created.

g) **Alterations and Attachments.** Lessee, at its own expense, may make alterations of or attachments to the Leased Equipment and the equipment that is not exclusive to Lessor's use (the "Common Equipment") such as encoding and/or addressing equipment or other equipment as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments do not interfere with

Lessor's signal or ongoing operations or violate any FCC rules or regulations; and provided further that FCC authorization, if required, is obtained in advance of any such alteration or attachment at the sole cost of Lessee. To the extent any FCC authorization pertaining to the Leased Equipment is required, Lessor agrees to use its best efforts to obtain such authorization. Lessee shall obtain Lessor's prior written consent prior to making alterations or attachments to the Common Equipment, which consent shall not be unreasonably withheld.

**h) Changes in Transmission Facilities.** Lessee may request that Lessor make reasonable changes in Lessor's transmission facilities. Such changes may include, but are not limited to changes in: transmitting power, transmitting antenna pattern, polarization, and Transmission Site. Lessee shall have the absolute right to require Lessor to use its best efforts to relocate the Transmission Site to the Sears Tower. Lessor agrees to approve other such requests (i) if they do not materially adversely affect Lessor's ability to provide instructional service, (ii) any required FCC approval is obtained, and (iii) Lessee pays the full cost of effecting such changes, including but not limited to the cost of gaining necessary regulatory approvals. As an interim measure, prior to the Start Date, Lessee may construct Lessor's transmission facilities at the Sears Tower if Lessor then possesses valid FCC authorization to operate from the Sears Tower.

**i) Licensee Control and Liability.** Nothing herein shall derogate from such licensee control of operations of the Channels

that Lessor, as a FCC licensee, shall be required to maintain and Lessee acknowledges the reservation by Lessor of such control.

4) LESSOR'S RECEIVE SITES.

a) Receive Site Equipment. At Lessee's cost, Lessee shall make a Standard Installation of reception equipment at not more than 50 Receive Sites to be designated by Lessor. As used herein, the phrase "Standard Installation" shall mean an installation consisting of the placement of the ITFS/MMDS receiving antenna at an elevation not to exceed ten feet above the base mounting location, the coupling thereto of a block down converter and not more than 100 feet of transmission line (coaxial cable). It shall also include installation of one set top converter for each such installation which shall be addressable and capable of decoding Lessor's transmissions. If any of these Receive Sites discontinue their receiving transmissions then, unless Lessor relocates the reception to another receive site, the equipment shall be returned to Lessee. If as a result of the relocation of the Transmission Site the equipment at any of Lessor's Receive Sites must be reoriented, modified, or upgraded Lessee shall pay the cost of same. Also, if any of Lessor's 50 receive sites wish more than standard reception equipment, Lessee shall supply it at a cost of ten percent more than Lessee's out-of-pocket cost for same.

b) Additional Receive Sites. Lessee shall install and maintain reception equipment at such additional receive sites as may be requested by Lessor with its personnel at a cost of ten percent more than Lessee's out-of-pocket cost for same.

c) **Transmission of Lessor's Programming.** At the Start Date, Lessor shall determine whether Lessor's programming is to be delivered to Lessee's Receive Sites in scrambled or unscrambled form. Lessee shall provide such equipment and services that Lessor's Receive Sites can receive instructional programming with high technical quality despite the fact that the Channels are transmitting encoded and/or multiplexed signals. Lessor shall have the right to direct Lessee to transmit programs to Lessor's Receive Sites in scrambled form and/or unscrambled form and Lessee shall honor Lessor's requests. However:

(i) Lessor shall pay Lessee for all decoders in excess of fifty for Lessor's Receive Sites at a price which is ten percent higher than Lessee's cost for same; and

(ii) Lessee shall provide the scrambling service at no charge for no more than the first 10 events of scrambling change requested by Lessor in any month on a non-cumulative basis.

**5) LEASE OF EQUIPMENT, SERVICES.**

a) **Lease of Equipment.** Lessee shall Lease to Lessor the Leased Equipment during the term of this Agreement. Lessor shall have no responsibility for the loss of or damage to the Leased Equipment during the term of this Agreement and Lessee shall bear all such responsibility, provided however, that Lessor be liable for any loss or damage to the Leased Equipment caused by any intentional or grossly negligent act of Lessor, its agents, affiliates, representatives or invitees. To secure Lessor's rights in the Leased Equipment, Lessee hereby grants Lessor a first security interest in the Leased Equipment. If

Lessee's action or inaction creates an Event of Default as defined in Paragraph 9 (b) hereof, then Lessor shall have all of the rights of Secured Party with respect to the Leased Equipment under the provisions of Article 9 of the Uniform Commercial Code. Lessee shall execute one or more financing statements to perfect this security interest.

b) **Additional Services.** Throughout the term of this Agreement, Lessee will provide the additional services for the benefit of Lessor described on Exhibit B attached hereto.

6) **FEES AND OTHER FINANCIAL CONSIDERATIONS**

a) **Subscriber Fees.** Beginning on the Start Date and continuing thereafter during the Initial Term of this Agreement Lessee shall pay the monthly Subscriber Fees of \$.10 per Subscriber per Channel licensed to Lessor for the first 70,000 Subscribers and \$.05 per Subscriber per Channel licensed for all Subscribers in excess of 70,000. In no event shall the Subscriber Fees be computed using fewer subscribers than those indicated for the time periods indicated in the following chart:

Months After Start Date	Minimum number of Subscribers	
1. 1 - 24	10,000	4,000
2. 25 - 48	70,000	28,000
3. 49 - 60	90,000	+4,000 = 32,000
4. 61 - 72	120,000	+6,000 = 38,000
5. 73 - 84	140,000	+4,000 = 42,000
6. 85 - 96	160,000	+4,000 = 46,000
7. 97 - 108	200,000	+8,000 = 54,000
8. 109 - 120	240,000	+8,000 = 62,000

In no event shall the Subscriber Fees ever be less than \$3,500 per month beginning on the Start Date.

b) **Computation of Number of Subscribers.** For the purposes of computing the transmission fee due for any month, the term "Subscribers" shall be deemed to mean the total number of subscribers receiving Lessee's programming on any one or more channels in Lessee's Wireless Cable Service as of the last day of the prior month, plus the total number of Subscribers as of the end of the current month, divided by two ("Average Number of Subscribers"). Basic Subscribers shall be deemed to be those Subscribers receiving Lessee's entry level programming services. Subscribers shall be calculated on the basis of a residential unit or commercial establishment that receives service under a contract with Lessee or under rights granted by Lessee and providing for cash or other consideration for such service. In calculating the number of Subscribers, each single family residence receiving service, each residential unit in a multi-unit dwelling receiving service on a discrete service basis and each commercial establishment receiving discrete service at Standard Fees shall be counted as one Subscriber. As used herein, "Standard Fees" shall mean those fees charged by Lessee for typical single family residences for the basic or entry level service package.

c) **Bulk Unit Fees.** In addition to Subscriber Fees payable pursuant to Paragraphs 6(a) and (b), Lessee shall pay fees for service to multi-unit dwellings, hotels/motels, hospitals and other commercial or residential facilities which (i) receive

Lessee's programming on a non-discrete service basis or, (ii) receive Lessee's programming on a discrete service basis but at other than Standard Fees, ( herein, "Bulk Units") which shall be the greater of (x) 1.1% of the regular recurring monthly revenues from such Bulk Units; or (y) Subscriber Fees as computed in Section 6(b). In determining total effective basic subscribers in Bulk Units the total monthly charge for each such facility shall be divided by \$30.00 to establish the number of Subscribers for that facility.

d) Refund of SDIC Funds; Concurrently with the execution and delivery of this Agreement, Lessor shall refund to Lessee the \$30,000 paid to Lessor by Specchio Developers Investment Corp. pursuant to an Amended Technical Coordination Agreement.

e) Lease Acquisition Fee; IPO Fee. Concurrently with the execution and delivery of this Agreement, Lessee shall pay to Lessor the sum of \$50,000 as a Lease Acquisition Fee. Within ten days after consummating the public offering ("IPO") now on file with the Securities and Exchange Commission or October 31, 1993 whichever first occurs, and Lessor's providing Lessee with reasonably satisfactory evidence that Lessor is authorized to build two of the Channels at the Sears Tower or the Transmission Site, Lessee shall pay to Lessor the sum of \$80,000.

If on or before October 31, 1993 or within ten days after the closing of the IPO, whichever first occurs, Lessee does not pay the \$80,000 IPO Fee to Lessor, then Lessor may terminate this Agreement.

**f) Reduction of Fees if Only Two Channels Licensed.**

If (i) the FCC authorizes another party to construct Channels D-2 and D-4 at Chicago, Illinois, or (ii) Lessor has not been licensed on all four of the Channels within sixty months after the Start Date, then upon the earlier of (i) or (ii) to occur, but in no event earlier than 25 months after the Start Date, Lessor may reduce by twenty-five percent the Subscriber Fees payable thereafter by Lessee until Lessee has thereby received a credit of fifty percent of the \$130,000 paid by Lessee pursuant to Paragraphs 6(d) and (e). Also, for so long as Lessor is licensed on only two of the Channels, the percentage of revenues payable by Lessee pursuant to Paragraph 6(d)(i) shall be .55% instead of 1.1%.

**g) Proration of Fees.** In the event that this

Agreement is terminated (other than for a default by Lessee) on a date other than the last day of a calendar month, then (i) the fees which would be due and payable to Lessor for such month shall be determined by dividing the fees then applying, by the fraction having as its numerator the number of days elapsed in such month to and including the date of termination as its denominator the number 30.

**h) Time for Payment and Accounting.** Lessee's payment of Subscriber Fees and Bulk Unit Fees shall be made monthly.

Lessee shall make each monthly payment not later than twenty-five days after the end of each month. Each payment shall be accompanied by a certificate from Lessee, executed by an authorized representative of Lessee certifying for the payment which is being made the following information:

- (i) The number of single family residences receiving service;
- (ii) The number of residential units in multi-unit dwellings receiving service on a discrete basis;
- (iii) The number of commercial establishments receiving discrete service at Standard Fees;
- (iv) The number of Bulk Units receiving service;
- (v) The total amount of monthly recurring revenue received from Bulk Units.

i) **Late Charges.** In the event that Lessee fails to make a payment within the time period required herein, Lessee shall also owe Lessor a Late Charge in the amount of four percent of the amount of the past due payment.

**7) PROGRAMMING**

**a) Control Over Lessee's Programming.**

Lessee intends that only programming of a sort which would not serve to place Lessor's reputation in the community in jeopardy will be transmitted by Lessee on the Channels. In an attempt to minimize disputes, recognizing the difficulties, inherent in specifying exact standards herein, it is agreed that

Lessee shall have the right to market the programming provided by the networks and services listed on Exhibit C. If Lessee proposes to transmit the programming of any new programming service on the Channels, then Lessee shall notify Lessor in writing specifying in detail the nature of the new programming service and Lessor shall have the right, upon written notice served upon Lessee within thirty (30) days after Lessor's receipt of any such notice from Lessee, to deny to Lessee the right to transmit any programming service on the Channels if said programming is obscene and/or contradicts local, state and/or federal laws or otherwise violates any federal, state or local laws or regulations, or policies of Lessor. If no such denial notice is received by Lessee within said thirty (30) days Lessee shall be authorized to transmit all such services on the Channels for which no denial notice is received. Notwithstanding any prior approval of any programming service, Lessor shall have the right to prohibit Lessee from transmitting any program which is obscene (as defined by the laws of the United States) or otherwise violates the laws of the states and/or other governmental units where the programming is received. No reduction of Subscriber Fees shall result from the prohibition of programming.

b) **Lessor's Programming.** Lessee shall use reasonable business efforts to secure for Lessor the right to transmit satellite-fed educational programming to Lessor's receive sites. If Lessee is able to secure such programming, Lessor will use reasonable efforts to inform its receive sites of the

availability of this programming and encourage the inclusion of that programming in their educational curriculum.

**8) PROSECUTION OF PETITIONS, AUTHORIZATIONS AND LICENSES.**

**a) Best Efforts to Secure Approval of This Agreement.**

The parties recognize that certain approvals will be required from the FCC in order to effectuate this Agreement. Both parties shall use their best efforts to prepare, file and prosecute before the FCC all petitions, waivers, applications and other documents necessary to secure any FCC approval required to effectuate this Agreement. Lessor also agrees to cooperate at Lessee's sole expense with Lessee's efforts to cause other ITFS, MMDS, MDS and OFS operators to locate at the Transmission Site. Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties have reviewed such filing and consented in writing to its submission and prosecution before the FCC.

**b) Fees and Expenses.** In each instance in which this Agreement provides for the Lessor to take action at the FCC with respect to the Channels, the FCC licenses held by Lessor, or this Agreement, Lessee shall pay all costs associated with any such action, including reasonable attorney's and engineering fees and expenses. Lessor agrees that Lessee shall be permitted to use the engineers and attorneys it retains for its FCC work to do the work this Agreement requires be done before the FCC.

**c) Further Efforts.** Throughout the Initial Term and any Renewal Term of this Agreement, Lessor shall use its best

efforts to obtain and maintain in force all licenses, permits and authorizations required for Lessee and Lessor to use the Channels as contemplated by this Agreement. Lessor also shall consider filing, at Lessee's sole expense, such reasonable protests, comments or other petitions to deny any other ITFS, MMDS, MDS and or OFS applications or amendments as may be requested by Lessee in the mutual best interests of the parties and the public. Lessor and Lessee shall promptly notify each other of any event of which it has knowledge that may affect any of the licenses, permits or authorizations affecting the Channels.

**9) TERMINATION.**

a) **Termination of FCC Authorization.** This Agreement may be terminated by Lessee in the event that for any reason Lessor shall not be licensed on any of the Channels or the FCC amends Lessor's authority so that Lessor is unable to lease **excess airtime on at least two** of the Channels in accordance with the material terms of this Agreement. Lessor acknowledges that a **material** reduction of the term of the Agreement or a **material** reduction of the airtime afforded Lessee under Lessee's Airtime would constitute an inability to lease the Channels in accordance with the material terms of this Agreement, if such **reduction led to a termination prior to August 12, 2002.** This Agreement may be terminated by Lessor if the FCC takes any action that deprives Lessor of any material consideration it receives pursuant to the terms of this Agreement.

b) **Termination by Reason of Default or Nonperformance.**

**Events of Default.** As used herein, any one of the following acts and omissions shall constitute an Event of

Default:

- (i) Failure of Lessee to make any payment, or provide any other consideration required under the terms of this Agreement;
- (ii) Failure of Lessee to maintain the uninterrupted use of the Transmission Site;
- (iii) Failure of Lessor to maintain the FCC authorization necessary to operate at least two of the Channels;
- (iv) Lessee's unauthorized assignment or subleasing of the leased channel capacity as set forth in Paragraph 10 hereof;
- (v) The transmission of objectionable programming by Lessee, in disregard of Lessor's refusal to transmit as provided in Paragraph 7(a) hereof;
- (vi) The filing of a petition in bankruptcy, either voluntary or involuntary, under any federal or state insolvency law, or any answer consenting to or acquiescing in any such petition when such petition is not vacated or set aside within sixty (60) days of its filing; or the making of an assignment for the benefit of creditors; or the inability to pay debts when they become due.
- (vii) Lessee's failure to provide any of the facilities and/or services in consideration of which Lessor pays a Monthly Service Fee as set forth in Exhibit B hereof.

**c) Material Breach; Right to Cure.** If any Event of Default by any party shall continue for a period of thirty (30) consecutive days after the defaulting party's receipt of notice thereof from the non-defaulting party, then, at the option of the non-defaulting party, the Agreement may be terminated.

d) **Remedies to Continue.** In the event of termination of this Agreement pursuant to (a) or (b), such termination shall not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of a breach or default of this Agreement. Furthermore, if an Event of Default is not cured, after notice, the non-defaulting party may elect against termination and pursue all other remedies as permitted by law.

**10) TRANSFER OF RIGHTS AND OBLIGATIONS.**

Lessee shall have the right to assign its rights under this lease as collateral for any financing arrangements it makes. Lessee shall also have the right to pledge the Leased Equipment as collateral or security for any loans it makes, provided, however that any pledge of the Leased Equipment shall be made subject to the provisions of this Agreement and the security interest granted to Lessor. Lessee shall provide Lessor with a subordination agreement from any such Lender affirming that such Lender shall be bound by the rights and obligations of Lessee in this Agreement. Lessee shall further have the right to subcontract any portion of its obligations under this Agreement to any partnership, joint venture, corporation or entity which Lessee may choose, provided that Lessee gives Lessor notice of any proposed subcontracting and, provided further, that no such subcontracting shall release Lessee from fulfilling all of its obligations under this Agreement. Lessee shall have the right to assign this Agreement to entities that are Affiliates of Lessee. As used herein, Affiliate of Lessee is any entity in which Lessee

Lessee retains an equity interest of not less than twenty-five percent. Apart from the foregoing, neither party may assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Lessee shall not sublease Lessee's Airtime without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Neither party may as a condition to the granting of its consent require any consideration be paid.

**11) START DATE**

For purposes of this Agreement, the Start Date shall be the earliest of the following: a) six months after Lessee has completed construction of at least two of the Channels at the Sears Tower; b) 30 days after Lessor is authorized by the FCC to construct two of the Channels from the Transmission Site; or c) use of any of the Channels by Lessee.

**12) INDEMNIFICATION**

Lessor shall forever protect, save and keep Lessee and its permitted successors and assigns harmless and indemnify Lessee against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys fees, arising directly or indirectly out of (i) the gross negligence or willful misconduct of Lessor, its agents or employees in connection with the performance of this Agreement of (ii) any programming transmitted by Lessor during any of Lessor's Airtime.

Lessee shall forever protect, save and keep Lessor and its permitted successors and assigns harmless and indemnify Lessor against and from any and all claims, demands, losses, costs, damages, suits, judgment, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys fees, which arise directly and indirectly out of (i) the gross negligence or willful misconduct of Lessee, its agents or employees, in connection with the performance of this Agreement, (ii) any programming transmitted by Lessee pursuant to this Agreement, (iii) any and all dealing by with the public, third parties and subscribers to the Lessee's programming service or (iv) any maintenance, installation or other work performed by Lessee or any authorized agent or subcontractor under this Agreement.

Each party shall notify the other of any such claim promptly upon receipt of same. Either party (hereinafter referred to as the "indemnatee") shall have the option to defend, at its own expense, any claims arising under this Paragraph. If Indemnitor assumes the defense of any such claim, Indemnatee shall delegate complete and sole authority to the Indemnitor in the defense thereof.

**13. INSURANCE.**

a) **Policies Required.** At its expense, Lessee shall secure and maintain with financially reputable insurers, authorized to do business within the State of Illinois, one or more policies of insurance insuring the Leased Equipment and Lessee's utilization of the Channels against casualty and other

losses of the kinds customarily insured against by firms of established reputations engaged in the same or similar line of business, of such types and in such amounts as are customarily carried under similar circumstances by such firms, including, without limitations: (i) "All risk" property insurance covering the Leased Equipment and the Common Equipment to the extent of one hundred percent (100%) of its full replacement value without deduction for depreciation; (ii) comprehensive general public liability insurance (including broadcasters' or cablecaster's errors and omissions coverage or comparable coverage) covering liability resulting from Lessee's operation of the Leased Equipment on an occurrence basis having minimum limits of liability in an amount of not less than one million dollars (\$1,000,000.00) for bodily injury, personal injury or death to any person or persons in any one occurrence, and not less than two million dollars (\$2,000,000.00) in the aggregate for all such losses during each policy year, and not less than one million dollars (\$1,000,000.00) with respect to damage to property; (iii) all workers compensation, automobile liability and similar insurance required by law.

b) **Insurance Policy Forms.** All policies of insurance required by this paragraph shall, where appropriate, designate Lessor as either the insured party or as a named additional insured, shall be written as primary policies, not contributory with and not in excess of any coverage which Lessor shall carry, and shall contain a provision that the issuer shall give to Lessor thirty (30) days prior written notice of any cancellation

or lapse of such insurance or of any change in the coverage thereof.

c) **Proof of Insurance.** Executed copies of the policies of insurance required under this section or certificate thereof shall be delivered to Lessor not later than ten (10) days prior to the Start Date. Lessee shall furnish Lessor evidence of renewal of each such policy not later than thirty (30) days prior to the expiration of the term thereof.

**14) RELATIONSHIP OF PARTIES.**

Lessor and Lessee by the provisions of this Agreement intend to enter an Airtime Lease relationship and not a joint venture. They will carry out this Agreement to preserve that intent. Neither party shall represent itself as the other party, nor as having any relationship with one another, except as Lessor and Lessee under the terms of this Agreement.

**15) PURCHASE OPTIONS.**

a) **Lessor's Option - No Default.** In the event that this Agreement expires or is terminated by reason other than by default by Lessor or Lessee, Lessor shall have the option to purchase the Leased Equipment used exclusively for Lessor's ITFS operation. Any equipment which is used in a shared fashion (such as transmit antenna, decoders, combiners) ("Common Equipment") in providing signals other than Lessor's signals are excluded from this option to purchase. The purchase price shall be the then book value (depreciated cost of assets) of said equipment as noted above. Lessor shall also have the right to lease the Common Equipment in common with other Licensees for a period of no less

than two years for \$10.00 per year should Lessee's rights under this Agreement be terminated.

b) **Lessor's Default.** If this Agreement is terminated by reason of Lessor's default, Lessor shall have the same option to purchase the Leased Equipment described in Paragraph 15 (a) except that the price to be paid shall be the greater of (i) the initial cost of all equipment purchased by Lessee for said equipment, or (ii) the cost to replace the equipment at the time of the exercise of the option.

c) **Lessee's Default.** If this Agreement is terminated due to Lessee's default, Lessor shall have the same option to purchase the Leased Equipment described in Paragraph 15 (a) and lease the Common Equipment except the purchase price shall be \$1. Ownership of the Leased Equipment sold by Lessee to Lessor pursuant to this Paragraph 15(a), (b) and (c) shall be transferred by bill of sale, and the Leased Equipment shall be delivered to Lessor free of liens and encumbrances. The intent of the purchase option provided for in Paragraphs 15 (a), (b) and (c) is to provide Lessor with the capability to continue to perform pursuant to Lessor's ITFS license.

**16) NON-DISCLOSURE.**

Lessor acknowledges that there may be made available to it pursuant to this Agreement proprietary information and certain business and marketing techniques, services of Lessee and matters relating to the encoding and/or decoding system associated with the equipment for the Channels and its patented processes, including, but not limited to, improvements, innovations,

adaptations, inventions, results or experimentation, processes and methods, whether or not deemed patentable, (all herein referred to as "Confidential Information"). Lessor acknowledges that this Confidential Information has been developed by Lessee at considerable effort and expense and represents special, unique and valuable proprietary assets of Lessee, the value of which may be destroyed by unauthorized dissemination. Lessee shall clearly identify in writing at the time of delivery to Lessor all information that Lessee considers "Confidential Information." Confidential Information shall no include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized disclosure by Lessor or any of its employees, representatives or agents, (ii) was available to the Lessor on a non-confidential basis prior to its disclosure to Lessor, or (iii) becomes available to the Lessor on a non-confidential basis from a source other than Lessee or Lessee's representatives, provided that such source is not bound by a confidentiality agreement with Lessee or is not otherwise prohibited from transmitting the information to Lessor. Accordingly, Lessor covenants and agrees that, except as may be required for the performance of this Agreement, or compliance with any applicable law, neither it nor any of its employees, representatives, agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof.

17) **FORCE MAJEURE.**

Neither party shall be liable to the other for failure to perform any obligation under this Agreement if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders, requirements, or emergency acts of civil or military authorities, acts of God or other contingencies beyond the reasonable control of such party. All requirements as to notice and other performance required hereunder within a specified period (except Agreement term) shall be automatically extended to accommodate the period of pendency of any such contingency to the extent that it interferes with such performance.

18) **NOTICE.**

Any notice required or permitted to be given under any provision of this Agreement shall be delivered personally or by certified mail to the address of the recipient first written above or such other address as shall be designated by the party on three day's notice. All notices shall be effective upon receipt. All notices to Lessee shall be directed to the attention of its President. All notices to Lessor should be directed to the attention of the President. A copy of any Notice to Lessee (which shall not constitute official notice) shall be sent to:

Mr. William R. Scott  
Allen & Korkowski & Assoc.  
123-125 N. Garrard Street  
Rantoul, Illinois, 61866

A copy of any notice to Lessor (which shall not constitute

notice) shall be sent to:

Mr. James Kirkland  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo  
701 Pennsylvania Ave., NW, #900  
Washington D.C. 20004

**19) SEVERABILITY.**

If upon reviewing this Agreement the FCC directs the first parties to amend the terms and conditions of this Agreement, in order to bring the application within compliance with FCC regulations and guidelines, the parties shall promptly execute an amendment making the necessary changes; provided however, that this Paragraph 19 shall not affect the termination rights of the parties pursuant to Paragraph 9(A). Thereafter should any court or agency determine that any provision of this Agreement is invalid, the remainder of the Agreement shall remain in effect. However, if such a determination materially reduces consideration provided one party to this agreement, then at that party's election, upon notice to the other party, this Agreement may be terminated.

**20) ARBITRATION.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. Arbitration shall take place in Chicago, Illinois. The costs of arbitration (including attorney's fees) shall be paid by the losing party, or, in the event of a decision which partially favors each party, as determined by the arbitrator(s). The cost of enforcing the

decision of the arbitrator(s), including attorneys' fees, shall be paid by the party against whom enforcement is sought.

Where Lessor has permitted Lessee to assign the Agreement pursuant to Paragraph 10 hereof, instead of arbitrating a dispute arising with any assignee, Lessor, at its option, may enforce its rights under this Agreement against such assignee by suit in a court of law.

21) **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and all actions shall be brought in the courts or that jurisdiction.

22) **PAYMENT OF EXPENSES.** Except as otherwise specifically provided in this Agreement, Lessor and Lessee shall pay their respective expenses incident to the preparation and implementation of this Agreement, including all fees and expenses of their respective legal counsel.

23) **AUDIT.** Lessor shall have the right at its own expense, upon prior reasonable notice, to cause a representative of its choice to inspect the records of Lessee no more than twice each year to audit the accuracy of Subscriber computations, and Subscriber Fee payments. Lessee shall maintain complete and accurate records, accounts, invoices, and ledgers for eighteen (18) months after their creation, except for information on ownership and voting control, which it shall retain for the full term of this Agreement.

24) **CORPORATION ACTION.** Each party represents and warrants that the execution, delivery and performance of this Agreement

have been duly and validly authorized by all necessary corporate action. Lessor warrants that attached hereto as Exhibit D, is a true and correct copy of Lessor's Conditional License for Station WLX-630, which Lessor warrants is still in good standing.

25) **SECTION AND OTHER HEADINGS.** The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

26) **AMENDMENTS.** The terms of this Agreement may not be amended, modified or eliminated except by a writing signed by Lessor and Lessee.

27) **RELATED DOCUMENT.**

a) The parties to this Agreement agree that Lessee is the successor to Specchio Developers Investment Corporation (SDIC) under the terms and conditions of the Amended Technical Coordination Agreement between Lessor and SDIC a copy of which is attached hereto as Exhibit E. Lessee shall fulfill all obligations of SDIC under the terms and conditions of such Amended Technical Coordination Agreement.

b) To the extent that any term or condition of the Technical Coordination Agreement is in conflict with those of this Agreement, the terms of this Agreement shall prevail.

c) SDIC is hereby released from its obligations under the Amended Technical Coordination Agreement.

28) **COUNTERPARTS.**

This Agreement may be executed in counterparts each of which shall be deemed an original, and both of which shall constitute

one and the same instrument, and shall be effective when each of the parties hereto shall have delivered to the other a duly executed copy of this Agreement, or a facsimile thereof.

**29) ENTIRE AGREEMENT.**

Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior representations, negotiations, and writings with respect to the subject matter hereof.

**30) EXECUTORY CONTRACT.** This Agreement is and shall be deemed to be an executory contract throughout the term of this Agreement.

**31) SURVIVAL OF OBLIGATIONS.** As provided for in this Agreement, certain obligations of Lessee shall precede the Start Date and/or survive the termination or expiration of this Agreement.

**32) PARTIES DEFINED.** The parties to this Agreement shall include the parties identified at the head of this Agreement, or any corporation or other entity into or with which either of them may be incorporated, merged or consolidated, or any corporation or entity which shall succeed to or acquire all of the business and/or assets of Lessor or Lessee as the case may be. The foregoing sentence shall not be construed to allow any assignment and/or sublease of rights or obligations under this Agreement which shall be in controvention of the applicable provisions of Paragraph 10 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

Chicago Instructional Technology Foundation, Inc.

Preferred Entertainment, Inc.

By: John B. Smith

By: Michael J. Lewis

Specchio Developers Investment Corp. ("SDIC") executes this Agreement solely for the purpose of acknowledging that Preferred Entertainment, Inc. has assumed SDIC's rights and obligations under the Amended Technical Coordination Agreement described in Paragraph 27 above, to acquiesce in the modification of the Amended Technical Coordination Agreement as provided for in this Agreement, and to agree to the release of SDIC under the Amended Technical Coordination Agreement.

Specchio Developers Investment Corp.

By: Michael J. Lewis

**Chicago, IL**

**D2, D4**

**-**

**WNC263**

**INSTRUCTIONAL TELEVISION FIXED SERVICE  
EXCESS CAPACITY LEASE AGREEMENT**

THIS INSTRUCTIONAL TELEVISION FIXED SERVICE EXCESS CAPACITY LEASE AGREEMENT (herein, the "Agreement") is made this 3rd day of August, 1993, by CHICAGO INSTRUCTIONAL TECHNOLOGY FOUNDATION, INC., (hereinafter referred to as "Lessor") having its principal place of business at 1813 W. Cortland, Chicago, Illinois, 60622 and PREFERRED ENTERTAINMENT, INC. a Delaware corporation, (hereinafter referred to as "Lessee") having a principal place of business at 233 N. Garrard, Rantoul, Illinois, 61866.

WHEREAS, Lessor has been conditionally licensed by the Federal Communications Commission ("FCC") to construct Instructional Television Fixed Service ("ITFS") Station WLX-630 utilizing the two channels designated as D-1 and D-3 in the Chicago, Illinois Metropolitan Area; and

WHEREAS, Lessor is an applicant for authorization to construct a second ITFS Station to operate on channels D-2 and D-4 in the Chicago area; (all four of these channels are referred to herein as the "Channels"); and

WHEREAS, Lessee is developing a wireless pay television system to provide subscription television programming to paying subscribers within the Chicago, Illinois Metropolitan Area (the "Metropolitan Area") and has entered into agreements securing to it the right to utilize stations in the ITFS, Operational Fixed Service ("OFS"), Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") that Lessee intends to locate at its transmission facility. The Channels

thus created shall hereinafter be described as "Lessee's System";  
and

**WHEREAS**, Lessee desires to lease excess capacity on the  
Channels; and

**WHEREAS**, the FCC has authorized ITFS licensees to lease  
excess capacity on their systems for non-ITFS purposes and Lessor  
has determined that after satisfaction of its educational  
requirements there will be excess capacity available on the  
Channels; and

**WHEREAS**, the parties acknowledge and agree that the rights  
reserved to them under this Agreement are of a special, unique,  
and unusual character with a peculiar value; and

**WHEREAS**, the dissemination of educational programming will  
be significantly increased as a result of integrating the  
Channels into Lessee's System.

**NOW THEREFORE**, in consideration of the mutual promises,  
undertakings, covenants and conditions set forth herein the  
Lessor and Lessee do hereby agree and warrant as follows:

**1) TERM OF AGREEMENT.**

a) **Initial Term.** The term of this Agreement shall  
commence upon the Start Date and shall extend for an initial term  
of ten (10) years from the Start Date as defined in Paragraph 11  
hereof. Said period is hereinafter referred to as the "Initial  
Term".

b) **No Rights Beyond Term of Licenses.** Lessor and Lessee  
agree that this Agreement shall not give rise to any rights or  
remedies beyond the expiration of any FCC license necessary for

the continued operation of the Channels, whether such expiration occurs during the Initial Term, or any Renewal Term. Provided, however, that while this Agreement is in effect, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the channels. Lessor shall take all necessary steps to renew the licenses for the Channels and shall not commit any act or engage in any activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the ITFS licenses. Lessor shall take all reasonable steps to comply with the Communications Act of 1934 as amended and the rules and regulations of the FCC, and shall timely file all material reports, schedules and/or forms required by the FCC to be filed by Lessor.

c) **Additional Renewals/Right of First Refusal.** If Lessee delivers to Lessor no later than ninety (90) days prior to the end of the Initial Term a written offer for a new lease agreement, Lessor may accept or reject said offer. If Lessor rejects said offer, Lessor grants Lessee a right of first refusal on any competing proposals for lease agreements of any part of the channels received by Lessor within ten (10) months after the expiration of the Initial Term. If any acceptable bonafide offer to lease the channels for commercial use is made to Lessor, Lessor shall give written notice to Lessee describing the fees, charges, rental or other consideration to be received for the lease, the terms thereof and generally the relevant other terms and conditions of the lease. Lessee shall have a

period of thirty (30) days after its receipt of such notice from the Lessor in which to elect, by giving written notice to Lessor, to lease any or all of leased channels for the same fees, charges, rental or other consideration for which Lessor proposed to lease the channel or channels to the third party.

If the fees, charges, rental consideration to be paid by the third person was to be in whole or in part in form other than cash, the consideration to be paid by Lessee shall be in cash in an amount fairly equivalent to the fair market value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

If Lessor does not believe Lessee's stated offer is in an amount equivalent to the fair value of the consideration payable by the third person and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to so lease, Lessee may elect within five (5) days after its receipt of such notice from Lessor to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Said arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of

the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The costs and fees of the Arbitration shall be allocated between the parties as provided for in Paragraph 20.

This arbitration shall take place in Chicago, Illinois.

In the event Lessee shall elect to exercise its said right of first refusal, the lease agreement shall be consummated on the fifteenth (15) day following the day on which Lessor received notice of Lessee's election to exercise the right of first refusal or the day upon which any question required to be determined by the arbitrator hereunder has been determined, or at such other time as may be mutually agreed. The right of first refusal is terminated either by the lease to Lessee as provided herein or by notice to Lessee of the Lessor's proposal to lease or transfer the Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bonafide offer pursuant to the times and procedures as set forth above, provided that such proposed lease is consummated at the same fees, charges, rental or other consideration upon the same terms as to which said right of first refusal applied, within ninety (90) days after Lessee's right of first refusal had expired or has been specifically waived by written notice given to Lessor by Lessee.

**2) ALLOCATION OF AIRTIME.**

Lessor shall lease excess capacity airtime to Lessee upon the Channels upon terms and conditions provided for in Subparagraphs (a) - (j) below:

a) **Excess Capacity Airtime.** To the extent allowed by the FCC rules and regulations and any amendments thereof, Lessor agrees to lease to Lessee the exclusive use of excess capacity airtime on Lessor's Channels as more fully set forth herein. As used in this Agreement the phrase "Excess Capacity Airtime" means all airtime on Channels not used by Lessor to transmit instructional programming.

b) **Lessor's Primary Airtime.** Lessor reserves for each Channel licensed, a minimum of twenty (20) hours of airtime each week to be used for its ITFS scheduled programs aired between the hours of 7:00 a.m. and 10:00 p.m. This airtime is described as "Lessor's Primary Airtime".

c) **Lessor's Ready Recapture Airtime.** Lessor also preserves for any current or expanded ITFS program scheduling needs, an additional twenty (20) hours of airtime each week for each licensed Channel (Monday through Sunday) between the hours of 7:00 a.m. and 6:59 a.m. This airtime shall be known as "Lessor's Ready Recapture Airtime".

d) **Schedule of Airtime.** Attached hereto and made a part of Exhibit A, is the schedule which depicts the agreement of the parties as to the use of Lessor's primary channels. This schedule reflects among other things, the hours reserved by Lessor for its Primary Airtime and Ready Recapture Airtime.

e) **Change of Schedule.** There shall be no economic or operational detriment borne by Lessor arising from its use of Lessor's Ready Recapture Airtime. Lessor agrees to provide Lessee with one-hundred eighty days notice of any intended

modification of its use of scheduled airtime. No change of schedule shall affect the maximum number of Channels upon which Lessor may simultaneously broadcast, as provided for in the Schedule of airtime attached as a part of Exhibit A.

f) **Use of Vertical Blanking Intervals.** Lessee reserves for its exclusive use all of the vertical blanking intervals, associated subcarriers and the response channel time that are a part of Lessor's licensed ITFS spectrum, provided that Lessee's use thereof does not interfere with Lessor's distribution of its educational programming.

g) **Lessor's Increase in Scheduling.** Lessor acknowledges that a significant amount of capital expenditure is to be made by Lessee for the mutual benefit of the parties to this Agreement. Lessor expressly agrees to take no action not authorized by this Agreement which would jeopardize the ability of Lessee to fully recover its investment through its provision of services contemplated by this Agreement. In this regard, it is acknowledged that Lessor's primary purpose for airtime use is to provide accredited educational programming. In the event that Lessor seeks to broadcast programming other than during Lessor's Primary Airtime or Lessor's Ready Recapture Airtime, thereby reducing Lessee's Excess Capacity Airtime to less than 128 hours per Channel per week, then Lessor shall provide Lessee with one year's notice of this intent. Any such attempt to reduce Lessee's Excess Capacity Airtime shall hereinafter be referred to as a "Significant Reduction in Lessee's Airtime".

h) **Significant Reduction in Lessee's Airtime.** In the event Lessor seeks a Significant Reduction in Lessee's Airtime, the parties hereto shall negotiate in good faith toward permitting Lessor to recapture time pursuant to its request. Before such recapture is allowed, the negotiations must result in mutually acceptable terms. In no event, however, shall Lessee be obligated to permit a Significant Reduction in Lessee's Airtime if after negotiating in good faith, the parties are unable to reach an agreement.

i) **Lessor's Isolated Use of Lessee's Airtime.** Lessor and Lessee acknowledge that under unique conditions, Lessor may need to transmit programming during Lessee's Airtime. Lessor shall have the right upon circumstances to preempt Lessee's programming on one Channel for a period of not more than two consecutive hours in any day, up to three times in any calendar year. Such isolated occurrences shall not be considered a Significant Reduction in Lessee's Airtime. In no event shall Lessee be required to permit the use of Lessee Airtime for such isolated broadcasts if in Lessee's reasonable business judgement, its business will be negatively impacted by Lessor's preemption.

j) **Lessor's Use of Channels.** Lessor recognizes the mutual benefits and technological advantages of the use of encoding methods for program security, equipment signaling and individual addressability control over unauthorized equipment use. Lessor agrees to employ its best efforts to see that its program services and airtime use will not harm or interfere with Lessee's current or future signal paths utilized within Lessee's System

for program encryption, pilot carrier signaling and other technical needs utilized for the operation of such services provided by Lessee's Wireless Cable Service. During the term of this Agreement, Lessor shall not operate a Wireless Cable Service in the Chicago metropolitan area, or lease airtime to others for the purpose of operating a Wireless Cable Service. For the purposes of this Agreement the provision of instructional programming for charge shall not be considered operating a Wireless Cable Service.

k) **Lessee's Use of Channels.** Lessee shall use the Channels, including but not limited to the vertical blanking intervals, associated subcarriers and the response channel time for the purpose of operating a Wireless Cable Service in the Chicago Metropolitan area. For the purposes of this Agreement, Wireless Cable Service shall mean service using 2.5 GHz ITFS and/or MMDS, and/or other microwave frequencies to deliver data, video and audio signals to customers paying cash or other consideration for such service. Lessee shall use reasonable business efforts to promptly develop and preserve its Wireless Cable Service in the Chicago area.

l) **Conformity With Law.** Lessee shall use the Channels in conformity with all applicable laws, rules, and regulations.

m) **Channel Expansion.** At its expense, Lessee shall have the right purchase the equipment necessary to incorporate a Channel expansion or multiplex technology, thereby increasing the capacity of the Channels used pursuant to this Agreement. Lessee shall carry out its channel expansion program in a method

permitted by the FCC. Any additional capacity created by such Channel expansion or multiplex technology shall be leased to Lessee at no additional fee, except that Lessee shall provide to Lessor one-twelfth of the additional capacity created by the Channel expansion technology.

**3) TRANSMISSION SITE AND FACILITIES.**

a) **Transmission Site.** The John Hancock Tower, Chicago, shall hereinafter be described as the "Transmission Site." Lessee agrees to contract for a lease of space atop the Transmission Site under terms consistent with the provisions of this Agreement. To the degree that it has not already done so, Lessor shall file appropriate application(s) with the FCC to secure authorization to operate the Channels from the Transmission Site.

b) **Lessor's Sublease.** Lessee shall execute with the owner of the Transmission Site a lease whereby each of the ITFS of the licensees leasing Channels to Lessee will have the right to continue to use the transmission facilities at the Transmission Site under reasonable terms and conditions in the event of the termination or expiration of this Agreement. Lessor shall provide Lessee with a copy of such lease as soon as practicable. When this Agreement is terminated or expires, Lessor shall have the option of availing itself of the right to continue to use the Transmission Site upon sharing in the Transmission Site lease obligations which share shall be based on the number of main channels built by Lessee at the Transmission Site just before termination of Lessee's rights in said lease.

c) **Channel Construction.** Lessee shall within a reasonable period of time, but in any event within 180 days of FCC authorization to operate from the Transmission Site, complete construction of new transmission facilities for the Channels at the Transmission Site. At its expense, Lessee shall purchase and install four 10 watt solid state ITFS transmitters, the equipment necessary to uplink signals from Lessee's signal origination facility to the Transmission Site, and in addition, transmission line combiners, modulators, antennas, and other equipment as required to operate the Channels from the Transmission Site in accordance with the provision of said authorization and this Agreement. Any equipment thereafter used exclusively for the operation of the Channels, shall be leased to Lessor pursuant to Paragraph 5 hereof. (Said equipment, together with any such equipment which is replaced during the term of this Agreement, the equipment specified in Exhibit B hereof, and the receiving equipment described in Paragraph 4 hereof, are collectively hereinafter referred to as the "Leased Equipment"). Lessee further agrees throughout the term of this Agreement to provide Lessor with space for the equipment listed in this Paragraph 3 (c) at the Transmission Site, and uplink equipment at another location if necessary. Lessee shall retain title to the Leased Equipment subject to the rights of Lessor set forth in Paragraphs 5 (a) and 15 of this Agreement.

d) **Maintenance and Taxes.** Throughout the term of this Agreement, Lessee shall provide at its sole expense such personnel and services as necessary to maintain the Leased

Equipment in good working order, and shall respond to all engineering, technical, and mechanical problems as may arise in a prompt and diligent fashion. Should any of the Leased Equipment require replacement during the term of this Agreement, Lessee shall replace it at Lessee's expense. Should any technical problem remain unabated for more than 24 hours, Lessor, in its discretion, may intervene and remedy such problem at Lessee's expense. Lessee shall pay all ad valorem taxes assessed against the Leased Equipment.

e) **Access.** Throughout the term of this Agreement, Lessee shall provide, and/or cause others to provide, Lessor reasonable access to all equipment and facilities used in Lessor's operations.

f) **Interference.** Lessee shall operate the Leased Equipment so that such operation does not create or increase interference with electronic transmission of any other FCC licensees entitled to protection under FCC rules and regulations. If Lessee's operation of the Leased Equipment does so create or increase interference, Lessee shall pay all of the engineering and legal fees necessary to resolve the interference problem so created.

g) **Alterations and Attachments.** Lessee, at its own expense, may make alterations of or attachments to the Leased Equipment and the equipment that is not exclusive to Lessor's use (the "Common Equipment") such as encoding and/or addressing equipment or other equipment as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments do not interfere with

Lessor's signal or ongoing operations or violate any FCC rules or regulations; and provided further that FCC authorization, if required, is obtained in advance of any such alteration or attachment at the sole cost of Lessee. To the extent any FCC authorization pertaining to the Leased Equipment is required, Lessor agrees to use its best efforts to obtain such authorization. Lessee shall obtain Lessor's prior written consent prior to making alterations or attachments to the Common Equipment, which consent shall not be unreasonably withheld.

**h) Changes in Transmission Facilities.** Lessee may request that Lessor make reasonable changes in Lessor's transmission facilities. Such changes may include, but are not limited to changes in: transmitting power, transmitting antenna pattern, polarization, and Transmission Site. Lessee shall have the absolute right to require Lessor to use its best efforts to relocate the Transmission Site to the Sears Tower. Lessor agrees to approve other such requests (i) if they do not materially adversely affect Lessor's ability to provide instructional service, (ii) any required FCC approval is obtained, and (iii) Lessee pays the full cost of effecting such changes, including but not limited to the cost of gaining necessary regulatory approvals. As an interim measure, prior to the Start Date, Lessee may construct Lessor's transmission facilities at the Sears Tower if Lessor then possesses valid FCC authorization to operate from the Sears Tower.

**i) Licensee Control and Liability.** Nothing herein shall derogate from such licensee control of operations of the Channels

that Lessor, as a FCC licensee, shall be required to maintain and Lessee acknowledges the reservation by Lessor of such control.

4) LESSOR'S RECEIVE SITES.

a) Receive Site Equipment. At Lessee's cost, Lessee shall make a Standard Installation of reception equipment at not more than 50 Receive Sites to be designated by Lessor. As used herein, the phrase "Standard Installation" shall mean an installation consisting of the placement of the ITFS/MMDS receiving antenna at an elevation not to exceed ten feet above the base mounting location, the coupling thereto of a block down converter and not more than 100 feet of transmission line (coaxial cable). It shall also include installation of one set top converter for each such installation which shall be addressable and capable of decoding Lessor's transmissions. If any of these Receive Sites discontinue their receiving transmissions then, unless Lessor relocates the reception to another receive site, the equipment shall be returned to Lessee. If as a result of the relocation of the Transmission Site the equipment at any of Lessor's Receive Sites must be reoriented, modified, or upgraded Lessee shall pay the cost of same. Also, if any of Lessor's 50 receive sites wish more than standard reception equipment, Lessee shall supply it at a cost of ten percent more than Lessee's out-of-pocket cost for same.

b) Additional Receive Sites. Lessee shall install and maintain reception equipment at such additional receive sites as may be requested by Lessor with its personnel at a cost of ten percent more than Lessee's out-of-pocket cost for same.

c) **Transmission of Lessor's Programming.** At the Start Date, Lessor shall determine whether Lessor's programming is to be delivered to Lessee's Receive Sites in scrambled or unscrambled form. Lessee shall provide such equipment and services that Lessor's Receive Sites can receive instructional programming with high technical quality despite the fact that the Channels are transmitting encoded and/or multiplexed signals. Lessor shall have the right to direct Lessee to transmit programs to Lessor's Receive Sites in scrambled form and/or unscrambled form and Lessee shall honor Lessor's requests. However:

(i) Lessor shall pay Lessee for all decoders in excess of fifty for Lessor's Receive Sites at a price which is ten percent higher than Lessee's cost for same; and

(ii) Lessee shall provide the scrambling service at no charge for no more than the first 10 events of scrambling change requested by Lessor in any month on a non-cumulative basis.

**5) LEASE OF EQUIPMENT, SERVICES.**

a) **Lease of Equipment.** Lessee shall Lease to Lessor the Leased Equipment during the term of this Agreement. Lessor shall have no responsibility for the loss of or damage to the Leased Equipment during the term of this Agreement and Lessee shall bear all such responsibility, provided however, that Lessor be liable for any loss or damage to the Leased Equipment caused by any intentional or grossly negligent act of Lessor, its agents, affiliates, representatives or invitees. To secure Lessor's rights in the Leased Equipment, Lessee hereby grants Lessor a first security interest in the Leased Equipment. If

Lessee's action or inaction creates an Event of Default as defined in Paragraph 9 (b) hereof, then Lessor shall have all of the rights of Secured Party with respect to the Leased Equipment under the provisions of Article 9 of the Uniform Commercial Code. Lessee shall execute one or more financing statements to perfect this security interest.

b) **Additional Services.** Throughout the term of this Agreement, Lessee will provide the additional services for the benefit of Lessor described on Exhibit B attached hereto.

6) **FEES AND OTHER FINANCIAL CONSIDERATIONS**

a) **Subscriber Fees.** Beginning on the Start Date and continuing thereafter during the Initial Term of this Agreement Lessee shall pay the monthly Subscriber Fees of \$.10 per Subscriber per Channel licensed to Lessor for the first 70,000 Subscribers and \$.05 per Subscriber per Channel licensed for all Subscribers in excess of 70,000. In no event shall the Subscriber Fees be computed using fewer subscribers than those indicated for the time periods indicated in the following chart:

Months After Start Date	Minimum number of Subscribers	
1. 1 - 24	10,000	4,000
2. 25 - 48	70,000	28,000
3. 49 - 60	90,000	+4,000 = 32,000
4. 61 - 72	120,000	+6,000 = 38,000
5. 73 - 84	140,000	+4,000 = 42,000
6. 85 - 96	160,000	+4,000 = 46,000
7. 97 - 108	200,000	+8,000 = 54,000
8. 109 - 120	240,000	+8,000 = 62,000

In no event shall the Subscriber Fees ever be less than \$3,500 per month beginning on the Start Date.

b) **Computation of Number of Subscribers.** For the purposes of computing the transmission fee due for any month, the term "Subscribers" shall be deemed to mean the total number of subscribers receiving Lessee's programming on any one or more channels in Lessee's Wireless Cable Service as of the last day of the prior month, plus the total number of Subscribers as of the end of the current month, divided by two ("Average Number of Subscribers"). Basic Subscribers shall be deemed to be those Subscribers receiving Lessee's entry level programming services. Subscribers shall be calculated on the basis of a residential unit or commercial establishment that receives service under a contract with Lessee or under rights granted by Lessee and providing for cash or other consideration for such service. In calculating the number of Subscribers, each single family residence receiving service, each residential unit in a multi-unit dwelling receiving service on a discrete service basis and each commercial establishment receiving discrete service at Standard Fees shall be counted as one Subscriber. As used herein, "Standard Fees" shall mean those fees charged by Lessee for typical single family residences for the basic or entry level service package.

c) **Bulk Unit Fees.** In addition to Subscriber Fees payable pursuant to Paragraphs 6(a) and (b), Lessee shall pay fees for service to multi-unit dwellings, hotels/motels, hospitals and other commercial or residential facilities which (i) receive

Lessee's programming on a non-discrete service basis or, (ii) receive Lessee's programming on a discrete service basis but at other than Standard Fees, ( herein, "Bulk Units") which shall be the greater of (x) 1.1% of the regular recurring monthly revenues from such Bulk Units; or (y) Subscriber Fees as computed in Section 6(b). In determining total effective basic subscribers in Bulk Units the total monthly charge for each such facility shall be divided by \$30.00 to establish the number of Subscribers for that facility.

d) Refund of SDIC Funds; Concurrently with the execution and delivery of this Agreement, Lessor shall refund to Lessee the \$30,000 paid to Lessor by Specchio Developers Investment Corp. pursuant to an Amended Technical Coordination Agreement.

e) Lease Acquisition Fee; IPO Fee. Concurrently with the execution and delivery of this Agreement, Lessee shall pay to Lessor the sum of \$50,000 as a Lease Acquisition Fee. Within ten days after consummating the public offering ("IPO") now on file with the Securities and Exchange Commission or October 31, 1993 whichever first occurs, and Lessor's providing Lessee with reasonably satisfactory evidence that Lessor is authorized to build two of the Channels at the Sears Tower or the Transmission Site, Lessee shall pay to Lessor the sum of \$80,000.

If on or before October 31, 1993 or within ten days after the closing of the IPO, whichever first occurs, Lessee does not pay the \$80,000 IPO Fee to Lessor, then Lessor may terminate this Agreement.

**f) Reduction of Fees if Only Two Channels Licensed.**

If (i) the FCC authorizes another party to construct Channels D-2 and D-4 at Chicago, Illinois, or (ii) Lessor has not been licensed on all four of the Channels within sixty months after the Start Date, then upon the earlier of (i) or (ii) to occur, but in no event earlier than 25 months after the Start Date, Lessor may reduce by twenty-five percent the Subscriber Fees payable thereafter by Lessee until Lessee has thereby received a credit of fifty percent of the \$130,000 paid by Lessee pursuant to Paragraphs 6(d) and (e). Also, for so long as Lessor is licensed on only two of the Channels, the percentage of revenues payable by Lessee pursuant to Paragraph 6(d)(i) shall be .55% instead of 1.1%.

**g) Proration of Fees.** In the event that this

Agreement is terminated (other than for a default by Lessee) on a date other than the last day of a calendar month, then (i) the fees which would be due and payable to Lessor for such month shall be determined by dividing the fees then applying, by the fraction having as its numerator the number of days elapsed in such month to and including the date of termination as its denominator the number 30.

**h) Time for Payment and Accounting.** Lessee's payment of Subscriber Fees and Bulk Unit Fees shall be made monthly.

Lessee shall make each monthly payment not later than twenty-five days after the end of each month. Each payment shall be accompanied by a certificate from Lessee, executed by an authorized representative of Lessee certifying for the payment which is being made the following information:

- (i) The number of single family residences receiving service;
- (ii) The number of residential units in multi-unit dwellings receiving service on a discrete basis;
- (iii) The number of commercial establishments receiving discrete service at Standard Fees;
- (iv) The number of Bulk Units receiving service;
- (v) The total amount of monthly recurring revenue received from Bulk Units.

i) **Late Charges.** In the event that Lessee fails to make a payment within the time period required herein, Lessee shall also owe Lessor a Late Charge in the amount of four percent of the amount of the past due payment.

**7) PROGRAMMING**

**a) Control Over Lessee's Programming.**

Lessee intends that only programming of a sort which would not serve to place Lessor's reputation in the community in jeopardy will be transmitted by Lessee on the Channels. In an attempt to minimize disputes, recognizing the difficulties, inherent in specifying exact standards herein, it is agreed that

Lessee shall have the right to market the programming provided by the networks and services listed on Exhibit C. If Lessee proposes to transmit the programming of any new programming service on the Channels, then Lessee shall notify Lessor in writing specifying in detail the nature of the new programming service and Lessor shall have the right, upon written notice served upon Lessee within thirty (30) days after Lessor's receipt of any such notice from Lessee, to deny to Lessee the right to transmit any programming service on the Channels if said programming is obscene and/or contradicts local, state and/or federal laws or otherwise violates any federal, state or local laws or regulations, or policies of Lessor. If no such denial notice is received by Lessee within said thirty (30) days Lessee shall be authorized to transmit all such services on the Channels for which no denial notice is received. Notwithstanding any prior approval of any programming service, Lessor shall have the right to prohibit Lessee from transmitting any program which is obscene (as defined by the laws of the United States) or otherwise violates the laws of the states and/or other governmental units where the programming is received. No reduction of Subscriber Fees shall result from the prohibition of programming.

b) **Lessor's Programming.** Lessee shall use reasonable business efforts to secure for Lessor the right to transmit satellite-fed educational programming to Lessor's receive sites. If Lessee is able to secure such programming, Lessor will use reasonable efforts to inform its receive sites of the

availability of this programming and encourage the inclusion of that programming in their educational curriculum.

**8) PROSECUTION OF PETITIONS, AUTHORIZATIONS AND LICENSES.**

**a) Best Efforts to Secure Approval of This Agreement.**

The parties recognize that certain approvals will be required from the FCC in order to effectuate this Agreement. Both parties shall use their best efforts to prepare, file and prosecute before the FCC all petitions, waivers, applications and other documents necessary to secure any FCC approval required to effectuate this Agreement. Lessor also agrees to cooperate at Lessee's sole expense with Lessee's efforts to cause other ITFS, MMDS, MDS and OFS operators to locate at the Transmission Site. Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties have reviewed such filing and consented in writing to its submission and prosecution before the FCC.

**b) Fees and Expenses.** In each instance in which this Agreement provides for the Lessor to take action at the FCC with respect to the Channels, the FCC licenses held by Lessor, or this Agreement, Lessee shall pay all costs associated with any such action, including reasonable attorney's and engineering fees and expenses. Lessor agrees that Lessee shall be permitted to use the engineers and attorneys it retains for its FCC work to do the work this Agreement requires be done before the FCC.

**c) Further Efforts.** Throughout the Initial Term and any Renewal Term of this Agreement, Lessor shall use its best

efforts to obtain and maintain in force all licenses, permits and authorizations required for Lessee and Lessor to use the Channels as contemplated by this Agreement. Lessor also shall consider filing, at Lessee's sole expense, such reasonable protests, comments or other petitions to deny any other ITFS, MMDS, MDS and or OFS applications or amendments as may be requested by Lessee in the mutual best interests of the parties and the public. Lessor and Lessee shall promptly notify each other of any event of which it has knowledge that may affect any of the licenses, permits or authorizations affecting the Channels.

**9) TERMINATION.**

a) **Termination of FCC Authorization.** This Agreement may be terminated by Lessee in the event that for any reason Lessor shall not be licensed on any of the Channels or the FCC amends Lessor's authority so that Lessor is unable to lease **excess airtime on at least two** of the Channels in accordance with the material terms of this Agreement. Lessor acknowledges that a **material** reduction of the term of the Agreement or a **material** reduction of the airtime afforded Lessee under Lessee's Airtime would constitute an inability to lease the Channels in accordance with the material terms of this Agreement, if such **reduction led to a termination prior to August 12, 2002.** This Agreement may be terminated by Lessor if the FCC takes any action that deprives Lessor of any material consideration it receives pursuant to the terms of this Agreement.

**b) Termination by Reason of Default or Nonperformance.**

**Events of Default.** As used herein, any one of the following acts and omissions shall constitute an Event of

Default:

- (i) Failure of Lessee to make any payment, or provide any other consideration required under the terms of this Agreement;
- (ii) Failure of Lessee to maintain the uninterrupted use of the Transmission Site;
- (iii) Failure of Lessor to maintain the FCC authorization necessary to operate at least two of the Channels;
- (iv) Lessee's unauthorized assignment or subleasing of the leased channel capacity as set forth in Paragraph 10 hereof;
- (v) The transmission of objectionable programming by Lessee, in disregard of Lessor's refusal to transmit as provided in Paragraph 7(a) hereof;
- (vi) The filing of a petition in bankruptcy, either voluntary or involuntary, under any federal or state insolvency law, or any answer consenting to or acquiescing in any such petition when such petition is not vacated or set aside within sixty (60) days of its filing; or the making of an assignment for the benefit of creditors; or the inability to pay debts when they become due.
- (vii) Lessee's failure to provide any of the facilities and/or services in consideration of which Lessor pays a Monthly Service Fee as set forth in Exhibit B hereof.

**c) Material Breach; Right to Cure.** If any Event of Default by any party shall continue for a period of thirty (30) consecutive days after the defaulting party's receipt of notice thereof from the non-defaulting party, then, at the option of the non-defaulting party, the Agreement may be terminated.

d) **Remedies to Continue.** In the event of termination of this Agreement pursuant to (a) or (b), such termination shall not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of a breach or default of this Agreement. Furthermore, if an Event of Default is not cured, after notice, the non-defaulting party may elect against termination and pursue all other remedies as permitted by law.

**10) TRANSFER OF RIGHTS AND OBLIGATIONS.**

Lessee shall have the right to assign its rights under this lease as collateral for any financing arrangements it makes. Lessee shall also have the right to pledge the Leased Equipment as collateral or security for any loans it makes, provided, however that any pledge of the Leased Equipment shall be made subject to the provisions of this Agreement and the security interest granted to Lessor. Lessee shall provide Lessor with a subordination agreement from any such Lender affirming that such Lender shall be bound by the rights and obligations of Lessee in this Agreement. Lessee shall further have the right to subcontract any portion of its obligations under this Agreement to any partnership, joint venture, corporation or entity which Lessee may choose, provided that Lessee gives Lessor notice of any proposed subcontracting and, provided further, that no such subcontracting shall release Lessee from fulfilling all of its obligations under this Agreement. Lessee shall have the right to assign this Agreement to entities that are Affiliates of Lessee. As used herein, Affiliate of Lessee is any entity in which Lessee

Lessee retains an equity interest of not less than twenty-five percent. Apart from the foregoing, neither party may assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Lessee shall not sublease Lessee's Airtime without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Neither party may as a condition to the granting of its consent require any consideration be paid.

**11) START DATE**

For purposes of this Agreement, the Start Date shall be the earliest of the following: a) six months after Lessee has completed construction of at least two of the Channels at the Sears Tower; b) 30 days after Lessor is authorized by the FCC to construct two of the Channels from the Transmission Site; or c) use of any of the Channels by Lessee.

**12) INDEMNIFICATION**

Lessor shall forever protect, save and keep Lessee and its permitted successors and assigns harmless and indemnify Lessee against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys fees, arising directly or indirectly out of (i) the gross negligence or willful misconduct of Lessor, its agents or employees in connection with the performance of this Agreement of (ii) any programming transmitted by Lessor during any of Lessor's Airtime.

Lessee shall forever protect, save and keep Lessor and its permitted successors and assigns harmless and indemnify Lessor against and from any and all claims, demands, losses, costs, damages, suits, judgment, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys fees, which arise directly and indirectly out of (i) the gross negligence or willful misconduct of Lessee, its agents or employees, in connection with the performance of this Agreement, (ii) any programming transmitted by Lessee pursuant to this Agreement, (iii) any and all dealing by with the public, third parties and subscribers to the Lessee's programming service or (iv) any maintenance, installation or other work performed by Lessee or any authorized agent or subcontractor under this Agreement.

Each party shall notify the other of any such claim promptly upon receipt of same. Either party (hereinafter referred to as the "indemnatee") shall have the option to defend, at its own expense, any claims arising under this Paragraph. If Indemnitor assumes the defense of any such claim, Indemnatee shall delegate complete and sole authority to the Indemnitor in the defense thereof.

**13. INSURANCE.**

a) **Policies Required.** At its expense, Lessee shall secure and maintain with financially reputable insurers, authorized to do business within the State of Illinois, one or more policies of insurance insuring the Leased Equipment and Lessee's utilization of the Channels against casualty and other

losses of the kinds customarily insured against by firms of established reputations engaged in the same or similar line of business, of such types and in such amounts as are customarily carried under similar circumstances by such firms, including, without limitations: (i) "All risk" property insurance covering the Leased Equipment and the Common Equipment to the extent of one hundred percent (100%) of its full replacement value without deduction for depreciation; (ii) comprehensive general public liability insurance (including broadcasters' or cablecaster's errors and omissions coverage or comparable coverage) covering liability resulting from Lessee's operation of the Leased Equipment on an occurrence basis having minimum limits of liability in an amount of not less than one million dollars (\$1,000,000.00) for bodily injury, personal injury or death to any person or persons in any one occurrence, and not less than two million dollars (\$2,000,000.00) in the aggregate for all such losses during each policy year, and not less than one million dollars (\$1,000,000.00) with respect to damage to property; (iii) all workers compensation, automobile liability and similar insurance required by law.

b) **Insurance Policy Forms.** All policies of insurance required by this paragraph shall, where appropriate, designate Lessor as either the insured party or as a named additional insured, shall be written as primary policies, not contributory with and not in excess of any coverage which Lessor shall carry, and shall contain a provision that the issuer shall give to Lessor thirty (30) days prior written notice of any cancellation

or lapse of such insurance or of any change in the coverage thereof.

c) **Proof of Insurance.** Executed copies of the policies of insurance required under this section or certificate thereof shall be delivered to Lessor not later than ten (10) days prior to the Start Date. Lessee shall furnish Lessor evidence of renewal of each such policy not later than thirty (30) days prior to the expiration of the term thereof.

**14) RELATIONSHIP OF PARTIES.**

Lessor and Lessee by the provisions of this Agreement intend to enter an Airtime Lease relationship and not a joint venture. They will carry out this Agreement to preserve that intent. Neither party shall represent itself as the other party, nor as having any relationship with one another, except as Lessor and Lessee under the terms of this Agreement.

**15) PURCHASE OPTIONS.**

a) **Lessor's Option - No Default.** In the event that this Agreement expires or is terminated by reason other than by default by Lessor or Lessee, Lessor shall have the option to purchase the Leased Equipment used exclusively for Lessor's ITFS operation. Any equipment which is used in a shared fashion (such as transmit antenna, decoders, combiners) ("Common Equipment") in providing signals other than Lessor's signals are excluded from this option to purchase. The purchase price shall be the then book value (depreciated cost of assets) of said equipment as noted above. Lessor shall also have the right to lease the Common Equipment in common with other Licensees for a period of no less

than two years for \$10.00 per year should Lessee's rights under this Agreement be terminated.

b) **Lessor's Default.** If this Agreement is terminated by reason of Lessor's default, Lessor shall have the same option to purchase the Leased Equipment described in Paragraph 15 (a) except that the price to be paid shall be the greater of (i) the initial cost of all equipment purchased by Lessee for said equipment, or (ii) the cost to replace the equipment at the time of the exercise of the option.

c) **Lessee's Default.** If this Agreement is terminated due to Lessee's default, Lessor shall have the same option to purchase the Leased Equipment described in Paragraph 15 (a) and lease the Common Equipment except the purchase price shall be \$1. Ownership of the Leased Equipment sold by Lessee to Lessor pursuant to this Paragraph 15(a), (b) and (c) shall be transferred by bill of sale, and the Leased Equipment shall be delivered to Lessor free of liens and encumbrances. The intent of the purchase option provided for in Paragraphs 15 (a), (b) and (c) is to provide Lessor with the capability to continue to perform pursuant to Lessor's ITFS license.

**16) NON-DISCLOSURE.**

Lessor acknowledges that there may be made available to it pursuant to this Agreement proprietary information and certain business and marketing techniques, services of Lessee and matters relating to the encoding and/or decoding system associated with the equipment for the Channels and its patented processes, including, but not limited to, improvements, innovations,

adaptations, inventions, results or experimentation, processes and methods, whether or not deemed patentable, (all herein referred to as "Confidential Information"). Lessor acknowledges that this Confidential Information has been developed by Lessee at considerable effort and expense and represents special, unique and valuable proprietary assets of Lessee, the value of which may be destroyed by unauthorized dissemination. Lessee shall clearly identify in writing at the time of delivery to Lessor all information that Lessee considers "Confidential Information." Confidential Information shall no include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized disclosure by Lessor or any of its employees, representatives or agents, (ii) was available to the Lessor on a non-confidential basis prior to its disclosure to Lessor, or (iii) becomes available to the Lessor on a non-confidential basis from a source other than Lessee or Lessee's representatives, provided that such source is not bound by a confidentiality agreement with Lessee or is not otherwise prohibited from transmitting the information to Lessor. Accordingly, Lessor covenants and agrees that, except as may be required for the performance of this Agreement, or compliance with any applicable law, neither it nor any of its employees, representatives, agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof.

17) **FORCE MAJEURE.**

Neither party shall be liable to the other for failure to perform any obligation under this Agreement if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders, requirements, or emergency acts of civil or military authorities, acts of God or other contingencies beyond the reasonable control of such party. All requirements as to notice and other performance required hereunder within a specified period (except Agreement term) shall be automatically extended to accommodate the period of pendency of any such contingency to the extent that it interferes with such performance.

18) **NOTICE.**

Any notice required or permitted to be given under any provision of this Agreement shall be delivered personally or by certified mail to the address of the recipient first written above or such other address as shall be designated by the party on three day's notice. All notices shall be effective upon receipt. All notices to Lessee shall be directed to the attention of its President. All notices to Lessor should be directed to the attention of the President. A copy of any Notice to Lessee (which shall not constitute official notice) shall be sent to:

Mr. William R. Scott  
Allen & Korkowski & Assoc.  
123-125 N. Garrard Street  
Rantoul, Illinois, 61866

A copy of any notice to Lessor (which shall not constitute

notice) shall be sent to:

Mr. James Kirkland  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo  
701 Pennsylvania Ave., NW, #900  
Washington D.C. 20004

**19) SEVERABILITY.**

If upon reviewing this Agreement the FCC directs the first parties to amend the terms and conditions of this Agreement, in order to bring the application within compliance with FCC regulations and guidelines, the parties shall promptly execute an amendment making the necessary changes; provided however, that this Paragraph 19 shall not affect the termination rights of the parties pursuant to Paragraph 9(A). Thereafter should any court or agency determine that any provision of this Agreement is invalid, the remainder of the Agreement shall remain in effect. However, if such a determination materially reduces consideration provided one party to this agreement, then at that party's election, upon notice to the other party, this Agreement may be terminated.

**20) ARBITRATION.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. Arbitration shall take place in Chicago, Illinois. The costs of arbitration (including attorney's fees) shall be paid by the losing party, or, in the event of a decision which partially favors each party, as determined by the arbitrator(s). The cost of enforcing the

decision of the arbitrator(s), including attorneys' fees, shall be paid by the party against whom enforcement is sought.

Where Lessor has permitted Lessee to assign the Agreement pursuant to Paragraph 10 hereof, instead of arbitrating a dispute arising with any assignee, Lessor, at its option, may enforce its rights under this Agreement against such assignee by suit in a court of law.

21) **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and all actions shall be brought in the courts or that jurisdiction.

22) **PAYMENT OF EXPENSES.** Except as otherwise specifically provided in this Agreement, Lessor and Lessee shall pay their respective expenses incident to the preparation and implementation of this Agreement, including all fees and expenses of their respective legal counsel.

23) **AUDIT.** Lessor shall have the right at its own expense, upon prior reasonable notice, to cause a representative of its choice to inspect the records of Lessee no more than twice each year to audit the accuracy of Subscriber computations, and Subscriber Fee payments. Lessee shall maintain complete and accurate records, accounts, invoices, and ledgers for eighteen (18) months after their creation, except for information on ownership and voting control, which it shall retain for the full term of this Agreement.

24) **CORPORATION ACTION.** Each party represents and warrants that the execution, delivery and performance of this Agreement

have been duly and validly authorized by all necessary corporate action. Lessor warrants that attached hereto as Exhibit D, is a true and correct copy of Lessor's Conditional License for Station WLX-630, which Lessor warrants is still in good standing.

25) **SECTION AND OTHER HEADINGS.** The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

26) **AMENDMENTS.** The terms of this Agreement may not be amended, modified or eliminated except by a writing signed by Lessor and Lessee.

27) **RELATED DOCUMENT.**

a) The parties to this Agreement agree that Lessee is the successor to Specchio Developers Investment Corporation (SDIC) under the terms and conditions of the Amended Technical Coordination Agreement between Lessor and SDIC a copy of which is attached hereto as Exhibit E. Lessee shall fulfill all obligations of SDIC under the terms and conditions of such Amended Technical Coordination Agreement.

b) To the extent that any term or condition of the Technical Coordination Agreement is in conflict with those of this Agreement, the terms of this Agreement shall prevail.

c) SDIC is hereby released from its obligations under the Amended Technical Coordination Agreement.

28) **COUNTERPARTS.**

This Agreement may be executed in counterparts each of which shall be deemed an original, and both of which shall constitute

one and the same instrument, and shall be effective when each of the parties hereto shall have delivered to the other a duly executed copy of this Agreement, or a facsimile thereof.

**29) ENTIRE AGREEMENT.**

Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior representations, negotiations, and writings with respect to the subject matter hereof.

**30) EXECUTORY CONTRACT.** This Agreement is and shall be deemed to be an executory contract throughout the term of this Agreement.

**31) SURVIVAL OF OBLIGATIONS.** As provided for in this Agreement, certain obligations of Lessee shall precede the Start Date and/or survive the termination or expiration of this Agreement.

**32) PARTIES DEFINED.** The parties to this Agreement shall include the parties identified at the head of this Agreement, or any corporation or other entity into or with which either of them may be incorporated, merged or consolidated, or any corporation or entity which shall succeed to or acquire all of the business and/or assets of Lessor or Lessee as the case may be. The foregoing sentence shall not be construed to allow any assignment and/or sublease of rights or obligations under this Agreement which shall be in controvention of the applicable provisions of Paragraph 10 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

Chicago Instructional Technology Foundation, Inc.

Preferred Entertainment, Inc.

By: John B. Smith

By: Michael J. Lewis

Specchio Developers Investment Corp. ("SDIC") executes this Agreement solely for the purpose of acknowledging that Preferred Entertainment, Inc. has assumed SDIC's rights and obligations under the Amended Technical Coordination Agreement described in Paragraph 27 above, to acquiesce in the modification of the Amended Technical Coordination Agreement as provided for in this Agreement, and to agree to the release of SDIC under the Amended Technical Coordination Agreement.

Specchio Developers Investment Corp.

By: Michael J. Lewis

**Chicago, IL**

**E Group**

**-**

**WBM648**

Chicago, IL

F Group

-

WHK999

*Licensed to Sprint Subsidiary  
- Alda Wireless Holdings,  
Inc.*

Chicago, IL  
G Group  
-  
WHG269

WMB648

28306

ITFS AIR TIME ROYALTY AGREEMENT

THIS AGREEMENT is made this 18th day of June, 1993, by Illinois Institute of Technology, an Illinois not for profit corporation, (hereinafter referred to as "Lessor") having its principal place of business at 10 West 33rd St. Chicago, IL, 60616 and Preferred Entertainment of Chicago, an Illinois general partnership, having a principal place of business at 233 N. Garrard, Rantoul, Illinois, 61866.

WHEREAS, Lessor has been licensed by the Federal Communications Commission ("FCC") to construct and operate Instructional Television Fixed Service ("ITFS") stations utilizing the channels designed as the E Group (Call Sign WBM-648) and the G Group (Call Sign WHG-269) in the Chicago, Illinois Metropolitan Area (herein, the Channels); and

WHEREAS, Lessee is developing a wireless pay television system to provide subscription television programming to paying subscribers within the Chicago, Illinois Metropolitan Area (the "Metropolitan Area") and has entered into agreements securing to it the right to utilize airtime stations in the ITFS, Operational Fixed Service ("OFS"), Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS"). The channels thus created shall hereinafter be described as "Lessee's System"; and

WHEREAS, Lessee desires to lease excess capacity on the Channels;

WHEREAS, the FCC has authorized ITFS licensees to lease excess capacity on their systems for non-ITFS purposes and Lessor has determined that after satisfaction of its educational requirements there may be excess capacity available on the Channels; and

WHEREAS, the parties acknowledge and agree that the rights reserved to them under this Agreement are of a special, unique, and unusual character with a peculiar value; and

WHEREAS, a potential for increasing the dissemination of educational programming may result from allowing use of the Channels in Lessee's System.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein the Lessor and Lessee do hereby agree and warrant as follows:

1) TERM OF AGREEMENT.

a) Initial Term. The term of this Agreement shall commence upon the date of its execution and shall extend for an initial term of five (5) years from the Start Date as defined in

Paragraph 11 hereof. Said period is hereinafter referred to as the "Initial Term".

b) **Renewal Term.** Provided Lessee's rights have not been terminated pursuant to Paragraphs 9(a) and 9(b), this Agreement shall automatically and without further notice be extended for one (1) additional term (such additional term is hereinafter referred to as the "Renewal Term") of five (5) years unless and until Lessee shall have served written notice on Lessor at least sixty (60) days prior to the expiration date of the Initial Term that it elects not to renew this Agreement for the Renewal Term. It is acknowledged and agreed that Lessee shall have the absolute right not to renew this Agreement notwithstanding any provisions hereof to the contrary. The Lease Fees shall be \$10,000 during the Renewal Term unless, prior to the beginning of the Renewal Term, the parties have otherwise agreed.

c) **Renewal/Right of First Refusal.** If Lessee delivers to Lessor no later than ninety (90) days prior to the end of the Renewal Term a written offer for a new lease agreement, Lessor may accept or reject said offer. If Lessor rejects said offer, Lessor grants Lessee a right of first refusal on any competing proposals for lease agreements of any part of the Channels received by Lessor within twenty four (24) months after the expiration of the Renewal Term. If any acceptable bonafide offer to lease the Channels for commercial use is made to Lessor, Lessor shall give written notice to Lessee describing the fees, charges, rental or other consideration to be received for the lease, and the other relevant terms and conditions of the lease. Lessee shall have a period of thirty (30) days after its receipt of such notice from the Lessor in which to elect, by giving written notice to Lessor, to lease the same number of the Channels proposed to be leased to the third party upon the same fees, charges, rental or other consideration for which Lessor proposed to lease the Channel or Channels to the third party.

If the fees, charges, rental consideration to be paid by the third party was to be in whole or in part in form other than cash, the consideration to be paid by Lessee shall be in cash in an amount fairly equivalent to the fair market value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

If Lessor does not believe Lessee's stated offer is in an amount equivalent to the fair value of the consideration payable by the third party and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to so lease, Lessee may elect within five (5) days after its receipt of such notice from Lessor to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Said arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such

question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The parties shall share equally in the costs and fees of the Arbitration.

This arbitration shall take place in Chicago, Illinois.

In the event Lessee shall elect to exercise its said right of first refusal the lease agreement shall be consummated on the fifteenth (15) day following the day on which Lessor received notice of Lessee's election to exercise the right of first refusal or the day upon which any question required to be determined by the arbitrator hereunder has been determined, or at such other time as may be mutually agreed. The right of first refusal shall be terminated either by the lease to Lessee as provided herein or by notice to Lessee of the Lessor's proposal to lease or transfer the Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bonafide offer pursuant to the times and procedures as set forth above, provided that such proposed lease is consummated at the same fees, charges, rental or other consideration as to which said right of first refusal applied, within ninety (90) days after Lessee's right of first refusal had expired or has been specifically waived by written notice given to Lessor by Lessee.

d) **No Rights Beyond Term of Licenses.** Lessor and Lessee agree that this Agreement shall not give rise to any rights or remedies beyond the expiration of any FCC license necessary for the continued operation of the Channels, whether such expiration occurs during the Initial Term, or the term of any Renewal. Provided, however, that while this Agreement is in effect, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the Channels. If Lessor decides to not renew its licenses for the Channels during any term of this lease, Lessor shall give Lessee at least 120 days notice of its intention to do so. Lessor shall not fail to renew its licenses for the Channels for the purpose of terminating Lessee's rights under this Agreement.

## 2) **ALLOCATION OF AIR-TIME.**

Lessor agrees to lease excess airtime capacity to Lessee on the Channels upon terms and conditions provided for in Subparagraphs (a) - (f) below:

a) **Excess Capacity Airtime.** To the extent allowed by the FCC rules and regulations and any amendments thereof, Lessor agrees to lease to Lessee the use of excess capacity air-time on

the Channels as more fully set forth herein. As used in this Agreement the phrase "Excess Capacity Air-Time" means all air time on Channels apart from "Lessor's Primary Air Time."

b) **Lessor's Primary Air-Time.** 30 days before the beginning of each semester, Lessor shall provide Lessee with a schedule reflecting Lessor's intended use of airtime for the upcoming semester. This airtime shall be referred to herein as "Lessor's Primary Airtime". The Parties contemplate that after Lessee's Channel Enhancement Plan as provided for in Paragraph 6(b), is implemented, the amount of Lessor's Primary Air-Time may be adjusted, but in no event shall Lessor's Primary Air-Time for each Channel licensed be less than a minimum of twenty (20) hours of air-time each week to be aired between the hours of 7:00 a.m. and 10:00 p.m.

c) **Lessor's Ready Recapture Air Time.** If after the implementation of Lessee's Channel Enhancement Plan, Lessor agrees to reduce its Primary Airtime to an amount that is less than forty hours per week for each Channel licensed, Lessor shall also preserve for any current or expanded accredited ITFS program scheduling needs, an additional amount of air-time each week for each licensed Channel which amount of airtime, when added to Lessor's Primary Air Time for each Channel licensed, shall total forty (40) hours of air-time each week. This air time shall be known as "Lessor's Ready Recapture Air Time".

d) **Change of Schedule.** There shall be no economic or operational detriment borne by Lessor arising from its use of Lessor's Ready Recapture Air Time.

e) **Use of Vertical Blanking Intervals.** Until Lessee's Channel Enhancement Plan is implemented, Lessor shall have the exclusive use all of the vertical blanking intervals, associated subcarriers and the response Channel time during Lessor's Primary Airtime that are a part of Lessor's licensed ITFS spectrum. Lessee shall have exclusive use of the vertical blanking intervals, associated subcarriers and the response channel time for all time periods except Lessor's Primary Airtime.

f) **Lessor's Use of Channels.** Lessor shall not, by its own action, or through a third party, during the term of this Agreement utilize any part of its licensed ITFS frequency spectrum to create or operate a service that is in competition with current, planned or future commercial services provided by Lessee's System. Also, Lessor shall not enter into any other lease arrangements for any airtime on the Channels or any part thereof, other than during Lessor's Primary Airtime.

### 3) TRANSMISSION SITE AND FACILITIES.

a) **Transmission Site.** Lessee shall use Lessor's existing transmission site at the Sears Tower as the Transmission Site for the provision of the services contemplated by this Agreement.

This site shall hereinafter be described as the "Transmission Site". At its expense, Lessee shall obtain all consents necessary to enable Lessee to provide services from the Transmission Site.

b) **AML Channel Construction.** Lessee has submitted a Technical Plan to Lessor, a copy of which is attached hereto as Exhibit A, which Technical Plan has been approved by Lessor. Upon the execution of this Agreement, if not already applied for, Lessor shall apply for one or more Amplitude Modulated Link (herein, "AML") licenses in the 18 GHz band in order to facilitate the replacement of Lessor's studio to transmit site links (herein "STLs") now used by Lessor to transmit its ITFS programming from its studio to the Sears Tower. Upon issuance by the FCC of the License(s) for the AMLs, Lessee shall, at its expense, purchase and install such transmitters, transmission line, modulators, antennas, and other equipment required to construct and operate the AMLs in accordance with the provision of the FCC license(s) and this Agreement. This equipment shall be installed at the direction of and under the supervision of Lessor. This equipment shall be purchased by Lessee within 30 days after the issuance of the license for the AML by the FCC. Within 60 days of the delivery of the AML transmission equipment, Lessee shall complete the installation of the AMLs. Lessee shall construct the AMLs so that there is no stoppage of transmission of Lessor's ITFS programming. This transmission equipment is more particularly described on Exhibit D attached herewith. This equipment shall be leased to Lessor pursuant to Paragraph 5 hereof. (Said equipment is hereinafter referred to as the "Leased Equipment"). Lessee shall retain title to the Leased Equipment except as provided by Paragraph 15 herein.

c) **Maintenance of Transmission Equipment.** Until such time as Lessee's Channel Enhancement Plan has been approved and implemented, Lessor's existing transmission equipment at the Transmission Site shall be maintained at Lessor's expense.

d) **Interference.** Lessee shall operate the Leased Equipment so that such operation does not create or increase interference with the electronic transmissions of any other FCC licensees entitled to protection under FCC rules and regulations. If Lessee's operation of the Leased Equipment does so create or increase interference, the parties shall work together to resolve interference problems. Any work to be done to resolve interference problems shall be done under the direction and control of Lessor. Lessee shall pay all of the engineering and legal fees necessary to resolve the interference problem so created.

e) **Licensee Control and Liability.** Nothing herein shall derogate from such licensee control of operations of the Channels that Lessor, as a FCC licensee, shall be required to maintain and Lessee acknowledges the reservation by Lessor of such control.

4) LESSOR'S RECEIVE SITES. Attached hereto as Exhibit B is a copy of FCC form 330, Section IV listing the receive sites designated by Lessor to receive its ITFS programming.

5) LEASE OF EQUIPMENT. Any transmission equipment provided by Lessee pursuant to Lessee's Channel Enhancement Plan shall become a part of the "Leased of Equipment". Lessee shall Lease to Lessor the Leased Equipment during the term of this Agreement. Lessor shall have no responsibility for the loss of or damage to the Leased Equipment during the term of this Agreement and Lessee shall bear all such responsibility, provided however, that Lessor be liable for any loss or damage to the Leased Equipment caused by any intentional or grossly negligent act of Lessor, its agents, affiliates, representatives or invitees. The Leased Equipment shall be leased to Lessor by Lessee at no charge during the term of this Agreement.

6) FEES AND OTHER FINANCIAL CONSIDERATIONS

a) Lease Fees. Beginning July 1, 1993, Lessee shall pay to Lessor monthly Lease Fees as provided below. The lease fee shall be payable on the first day of each month. Until Lessee has available to it excess capacity airtime equivalent to four full time ITFS frequencies and Lessee has begun digital compression or until Lessee has available to it excess capacity equivalent to six full time ITFS frequencies, Lessee shall pay to Lessor the sum of \$60,000.00 per year, payable in monthly payments of \$5,000.00. When Lessee has available to it the equivalent of four full time ITFS frequencies and Lessee has begun digital compression or Lessee has available excess capacity equivalent to six full time ITFS frequencies, the Lease Fees shall be \$90,000.00 per year, payable in monthly payments of \$7,500.00. When Lessee has available to it excess capacity equivalent to six full time ITFS frequencies and Lessee has begun digital compression, the Lease Fees shall be \$120,000.00 per year, payable in monthly payments of \$10,000.00. Except as provided in Paragraph 1(b), the Lease Fees shall be \$10,000 per month in the Renewal Term.

b) Lessee's Channel Enhancement Plan. Lessee's primary goal in entering into this Agreement is to avail itself of a significant portion of the capacity of the Channels. Lessor's Primary Airtime presently exhausts most all of the capacity of the Channels. Lessee therefore intends to propose a technical plan to Lessor whereby the capacity of the Channels shall be expanded and/or the use of the Channels by Lessor shall be made more efficient, thereby freeing up for use by Lessee a portion of the capacity of the Channels. For purposes of this Agreement, this plan is referred to as "Lessee's Channel Enhancement Plan". This plan may incorporate a Channel expansion or multiplex technology, thereby increasing the number of the channels available to be used pursuant to this Agreement. This plan may also provide for, among other things, the relocation of the transmission site, adjustment of the transmission power of the

Channels, the use of beam benders, the alteration of the transmission equipment, and the increase in the number of Lessor's Receive Sites. Lessee acknowledges that any Channel Enhancement Plan proposed by Lessee must not (i) interfere with Lessor's schedule of educational programming or (ii) result in any degradation of the signal transmitting Lessor's programming.

The parties shall negotiate in good faith toward the adoption of Lessee's Channel Enhancement Plan. If the parties are able to reach agreement for the adoption of Lessee's Channel Enhancement Plan, the parties shall amend this agreement in accordance with the plan. If, after negotiating in good faith, the parties are unable to reach an agreement for the adoption of Lessee's Channel Enhancement Plan within thirty (30) days of the date Lessee delivers to Lessor its Channel Enhancement Plan, then Lessee may, upon notice to Lessor, terminate this Agreement without further liability to Lessor under this Agreement. If Lessee terminates this Agreement as provided for in this Paragraph 6(b), then Lessee shall have a right of first refusal with respect to any proposal for the lease of excess capacity that Lessor wishes to accept for the ten year period ending April 14, 2003. The other terms of this right of first refusal shall be as provided in Paragraph 1 (c). If Lessee terminates this Agreement as provided for in this Paragraph 6(b), then Lessor shall have the right to lease the Leased Equipment upon commercially reasonable terms or to purchase the Leased Equipment as provided in Paragraph 15. If the parties are unable to reach agreement as to those terms the parties shall arbitrate said issues as provided in Paragraph 1 (c).

c) Past Due Interest. In the event that Lessee fails to make a payment within the time period required herein, such late payment shall bear interest on an annual basis commencing 30 days after the due date at the prime rate in effect at the Harris Trust and Savings Bank, Chicago, Illinois.

#### 7) CONTROL OVER PROGRAMMING.

a) Lessee's Programming. Lessee intends that only programming of a sort which would not serve to place Lessor's reputation in the community in jeopardy and which is consistent with Lessor's obligations as an FCC Licensee will be transmitted by Lessee on the Channels. In an attempt to minimize disputes, recognizing the difficulties inherent in specifying exact standards herein, it is agreed that Lessee shall have the right to market the programming provided by the networks and services listed on Exhibit C. If Lessee proposes to transmit the programming of any new programming service on the Channels, then Lessee shall notify Lessor in writing specifying in detail the nature of the new programming service and Lessor shall have the right, upon written notice served upon Lessee within thirty (30) days after Lessor's receipt of any such notice from Lessee, to deny to Lessee the right to transmit any programming service on the Channels if said programming is obscene and/or contradicts

local, state and/or federal laws or otherwise violates any federal, state or local laws or regulations, or policies of Lessor. If no such denial notice is received by Lessee within said thirty (30) days Lessee shall be authorized to transmit all such services on the Channels for which no denial notice is received. Notwithstanding the foregoing programming rights of Lessee, if Lessor determines that any of the programming transmitted by Lessee may (i) subject Lessor to sanction by the FCC or (ii) place Lessor's license for the Channels in jeopardy, then, upon notice to Lessee, Lessor may require Lessee to discontinue transmitting immediately said programming or to not transmit said programming.

b) **Miscellaneous Programming Matters.** By separate agreement, the parties shall agree on a plan for the expansion of the market for Lessor's educational programming, including the distribution of that programming into new markets.

8) **PROSECUTION OF PETITIONS, AUTHORIZATIONS AND LICENSES.**

a) **Best Efforts to Secure Approval of This Agreement.** The parties recognize that certain approvals will be required from the FCC in order to effectuate this Agreement. Both parties shall use their best efforts to prepare, file and prosecute before the FCC all petitions, waivers, applications and other documents necessary to secure any FCC approval required to effectuate this Agreement. Lessee shall assist in the preparation and prosecution of such applications. If upon reviewing Lessor's application the FCC directs Lessor to amend its application, including the terms and conditions of this Agreement, in order to bring the application within compliance with FCC regulations and guidelines for an application, modification or amendment for its license(s), the parties shall immediately negotiate in good faith toward the necessary revisions. Lessor shall file such agreed revisions to its FCC applications. If the parties hereto cannot agree upon such revisions, then this Agreement shall be terminated without further liability or obligation, except for Lessor's right to purchase or lease the Leased Equipment as provided for in paragraphs 6(b) and 15 and Lessee's right of first refusal as provided for in Paragraph 6(b).

Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to this Agreement by Lessor without first providing Lessee with a copy of the proposed filing at least two weeks before the date on which said filing is to be made unless the exigencies of the circumstances surrounding the filing prevent Lessor from giving that much notice.

b) **Further Efforts.** Throughout the Initial Term, and any renewals of this Agreement, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required for Lessee and Lessor to use the Channels

as contemplated by this Agreement. When mutually agreed by the parties, Lessor shall apply for, and use its best efforts to obtain those license modifications which would assist Lessee in its business. Lessor and Lessee shall promptly notify each other of any event of which it has knowledge that may affect any of the licenses, permits or authorizations affecting the Channels.

c) Fees and Expenses. In each instance where Lessor takes action at the FCC which benefits or facilitates Lessee's use of the Channels, Lessee shall pay all costs associated with any such action, including reasonable attorney's and engineering fees and expenses.

#### 9) TERMINATION.

a) Termination of FCC Authorization. This Agreement shall terminate in the event that for any reason (i) Lessor shall not be licensed on the Channels, (ii) the FCC shall terminate Lessor's authority to lease the Channels in accordance with the material terms of this Agreement, or (iii) the FCC modifies its rules to preclude Lessee from leasing the Channels.

b) Termination by Reason of Default or Nonperformance. At the option of the non-defaulting party, this Agreement may be terminated upon the material breach or default by the other party of its duties and obligation hereunder if such breach or default is not cured by such defaulting party and if such breach or default shall continue for a period of sixty (60) consecutive days after such defaulting party's receipt of notice thereof from the non-defaulting party (or in the case of a breach or default which is not capable of being cured in said sixty (60) day period, if (i) the party in breach or default does not, within such sixty (60) day period, commence and diligently pursue steps to cure such breach or default), and (ii) complete the cure within 180 days thereafter. It is understood and agreed that any failure on the part of Lessee to make any payment required under Paragraph 6 hereof shall be a material breach or default of its duties and obligations hereunder.

c) Remedies to Continue. In the event of termination of this Agreement pursuant to (a) or (b), such termination shall not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of a breach or default of this Agreement. Furthermore, in the event of a material breach or default which is not cured, the non-defaulting party may elect against termination and pursue all other remedies as permitted by law.

#### 10) TRANSFER OF RIGHTS AND OBLIGATIONS.

Lessee shall have the right to assign its rights under this lease as collateral for any financing arrangements it makes. Lessee shall also have the right to pledge the Leased Equipment as collateral or security for any loans it makes, provided,

however that any pledge of the Leased Equipment shall be made subject to the provisions of this Agreement. Lessee shall provide Lessor with a subordination agreement from any such Lender affirming that such Lender shall be bound by the rights and obligations of Lessee in this Agreement. Lessee shall have the right to assign this Agreement to any other entity that is an affiliate of Lessee including Preferred Entertainment, Inc., a Delaware Corporation organized by Lessee. Apart from the foregoing, neither party may assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

#### 11) START DATE

For purposes of this Agreement, the Start Date shall be when Lessee has completed the construction of the AML as provided for in paragraph 3.

#### 12) INDEMNIFICATION

To the extent permitted by state and federal law and its by-laws Lessor shall forever protect, save and keep Lessee and its permitted successors and assigns harmless and indemnify Lessee against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys fees, arising directly or indirectly out of (i) the gross negligence or willful misconduct of Lessor, its agents or employees in connection with the performance of this Agreement or (ii) any programming transmitted by Lessor during any of Lessor's Air-Time.

Lessee shall forever protect, save and keep Lessor and its permitted successors and assigns harmless and indemnify Lessor against and from any and all claims, demands, losses, costs, damages, suits, judgment, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys fees, which arise directly and indirectly out of (i) the negligence or willful misconduct of Lessee, its agents or employees, in connection with the performance of this Agreement, (ii) any programming transmitted by Lessee pursuant to this Agreement, (iii) any and all dealing by Lessee or any of its authorized agents or sub-contractors with the public, third parties and subscribers to the Lessee's programming service or (iv) any maintenance, installation or other work performed by Lessee or any authorized agent or subcontractor under this Agreement.

Each party shall notify the other of any such claim promptly upon receipt of same. Either party (hereinafter referred to as the "indemnitee") shall have the option to defend, at its own expense, any claims arising under this Paragraph. If Indemnitor assumes the defense of any such claim, Indemnitee shall delegate

complete and sole authority to the Indemnitor in the defense thereof.

13) INSURANCE.

a) Policies Required. At its expense, Lessee shall secure and maintain with financially reputable insurers, authorized to do business within the State of Illinois, one or more policies of insurance insuring the Leased Equipment and Lessee's utilization of the Channels against casualty and other losses of the kinds customarily insured against by firms of established reputations engaged in the same or similar line of business, of such types and in such amounts as are customarily carried under similar circumstances by such firms, including, without limitations: (i) "All risk" property insurance covering the Leased Equipment to the extent of one hundred percent (100%) of its full replacement value without deduction for depreciation; (ii) comprehensive general public liability insurance covering liability resulting from Lessee's operation of the Leased Equipment on an occurrence basis having minimum limits of liability in an amount of not less than one million dollars (\$1,000,000.00) for bodily injury, personal injury or death to any person or persons in any one occurrence, and not less than two million dollars (\$2,000,000.00) in the aggregate for all such losses during each policy year, and not less than one million dollars (\$1,000,000.00) with respect to damage to property; (iii) all workers compensation, automobile liability and similar insurance required by law.

b) Insurance Policy Forms. All policies of insurance required by this paragraph shall, where appropriate, designate Lessor as either the insured party or as a named additional insured, shall be written as primary policies, not contributory with and not in excess of any coverage which Lessor shall carry, and shall contain a provision that the issuer shall give to Lessor thirty (30) days prior written notice of any cancellation or lapse of such insurance or of any change in the coverage thereof.

c) Proof of Insurance. Executed copies of the policies of insurance required under this section or certificate thereof shall be delivered to Lessor not later than ten (10) days prior to the Start Date. Lessee shall furnish Lessor evidence of renewal of each such policy not later than thirty (30) days prior to the expiration of the term thereof.

14) RELATIONSHIP OF PARTIES.

Lessor and Lessee by the provisions of this Agreement intend to enter an Air-Time Lease relationship and not a joint venture. They will carry out this Agreement to preserve that intent. Neither party shall represent itself as the other party, nor as having any relationship with one another, except as Lessor and Lessee under the terms of this Agreement.

15) PURCHASE OPTIONS.

a) Lessor's Option - No Default. In the event that this Agreement is not renewed pursuant to Paragraph 1(b) or is terminated pursuant to paragraph 6(b) or paragraph 9 by reason of other than a default by Lessor or Lessee, Lessor shall have the option to purchase the Leased Equipment. The purchase price shall be the then book value (depreciated cost of assets) of said equipment as noted above.

b) Lessor's Default. If this Agreement is terminated by reason of Lessor's default, Lessor shall have the same option to purchase the Leased Equipment described in Paragraph 15 (a) except that the price to be paid shall be the lesser of (i) the initial cost of all equipment purchased by Lessee for said equipment, or (ii) the cost to replace the equipment at the time of the exercise of the option.

c) Lessee's Default. If this Agreement is terminated due to Lessee's default, Lessor shall have the same option to purchase the Leased Equipment described in Paragraph 15 (a) except the purchase price shall be \$1.

The intent of the purchase option provided for in Paragraphs 15 (a), (b) and (c) is to provide Lessor with the capability to continue to perform pursuant to Lessor's ITFS license.

d) Lessee's Option to Purchase Frequencies. If during any term of this Agreement the FCC modifies its rules so as to enable Lessee to be licensed to operate the ITFS frequencies, and if Lessor proposes to assign the Channels to a for-profit entity, Lessee shall have a right of first refusal to acquire the licenses for the Channels upon the same terms and conditions as are provided for in Paragraph 1 (c), subject to receiving the required FCC authorization.

16) NON-DISCLOSURE.

Lessor acknowledges that there may be made available to it pursuant to this Agreement proprietary information and certain business and marketing techniques, services of Lessee and matters relating to the encoding and/or decoding system associated with the equipment for the Channels and its patented processes, including, but not limited to, improvements, innovations, adaptations, inventions, results or experimentation, processes and methods, whether or not deemed patentable, (all herein referred to as "Confidential Information"). Lessor acknowledges that this Confidential Information has been developed by Lessee at considerable effort and expense and represents special, unique and valuable proprietary assets of Lessee, the value of which may be destroyed by unauthorized dissemination. Lessee shall clearly identify at the time of delivery to Lessor all information that Lessee considers "Confidential Information." Confidential Information shall not include information which (i) is or becomes

generally available to the public, other than as a result of an unauthorized disclosure by Lessor or any of its employees, representatives or agents, (ii) was available to the Lessor on a non-confidential basis prior to its disclosure to Lessor, or (iii) becomes available to the Lessor on a non-confidential basis from a source other than Lessee or Lessee's representatives, provided that such source is not bound by a confidentiality agreement with Lessee or is not otherwise prohibited from transmitting the information to Lessor. Accordingly, Lessor covenants and agrees that, except as may be required for the performance of this Agreement, or compliance with any applicable law, neither it nor any of its employees, representatives, agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof.

17) FORCE MAJEURE.

If by reason of force majeure either party is unable in whole or in part to perform its obligations hereunder, the party shall not be deemed in violation of default during the period of such inability; provided however that this Paragraph shall not excuse Lessee from paying any monthly Lease Fees required by Paragraph 6 of this Agreement. As used herein, the phrase "Force Majeure", shall mean the following: acts of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivisions, thereof which are not the result of a breach of the Agreement, orders of any or military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other cause or event not reasonably within the control of the adversely affected party.

18) NOTICE.

Any notice required or permitted to be given under any provision of this Agreement shall be delivered personally or by certified mail to the address of the recipient first written above or such other address as shall be designated by the party on three day's notice. All notices shall be effective upon receipt. Notices may be sent by facsimile transmission to the number authorized in writing by a party, with a confirming copy mailed to the recipient at the recipient's address for notice. All notices to Lessee shall be directed to the attention of its Chief Executive Officer. All notices to Lessor should be directed to the attention of the Provost. A copy of any Notice to Lessee (which shall not constitute official notice) shall be sent to:

Mr. William R. Scott  
ALLEN & KORKOWSKI & ASSOCIATES  
123-125 N. Garrard Street  
Rantoul, Illinois, 61866

A copy of any notice to Lessor (which shall not constitute notice) shall be sent to:

Ms. Mary Anne Smith  
Vice President and General Counsel  
Illinois Institute of Technology  
10 West 33rd Street  
Chicago, Illinois, 60616

19) SEVERABILITY.

Should any rule or regulation of the FCC or any final order or determination by any court or agency render any provision of this Agreement invalid, the remainder of the Agreement shall remain in effect.

20) VENUE AND INTERPRETATION.

Venue for any cause of action brought by or between Lessor or Lessee relating to this Agreement, shall be in Cook County, Illinois and all provisions of this Agreement shall be construed under the laws of the State of Illinois.

21) ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral or written provisions of any kind. The parties further agree that this Agreement may only be modified by written Agreement signed by both parties.

22) ANTENNA LEASE.

Within sixty (60) days of the date of this Agreement, Lessee shall cause the Archdiocese of Chicago, a corporation sole, to execute an Agreement of the form attached hereto as Exhibit "E" or, in the alternative, to secure for Lessor all of the benefits of said Agreement, upon terms no less favorable than as are provided on Exhibit "E".

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

ILLINOIS INSTITUTE OF TECHNOLOGY

By: D.T. Wilson

PREFERRED ENTERTAINMENT  
OF CHICAGO, An Illinois  
general partnership

SPECCHIO DEVELOPERS  
INVESTMENT CORP., general  
partner

By: Michael J. Specchio  
Michael J. Specchio,  
Its President

EXHIBIT A

TECHNICAL PLAN FOR ILLINOIS INSTITUTE OF TECHNOLOGY

(Prepared by Specchio Developers representing Preferred Entertainment)

USE OF ITFS E-GROUP AND G-GROUP

Illinois Institute of Technology (IIT) currently transmits from the top of the Sears building which is located at 233 S. Wacker, Chicago, Ill 60606. The wattage that IIT currently transmits at is 10 watts. The Instructional Television Fixed Service (ITFS) groups are E- and G-Group and the specific frequencies are as follows:

E-Group		G-Group	
E-1	2596-2602	G-1	2644-2650
E-2	2608-2614	G-2	2656-2662
E-3	2620-2626	G-3	2668-2674
E-4	2632-2638	G-4	2680-2686

The E- and G-Group's video source are fed from an IIT location at, 10 West 33rd Street, Chicago, Ill 60616, via studio transmitter link (STL) from the IIT studio. Those STL frequencies are:

Channel 1	12270.	Channel 5	12510.
Channel 2	12330.	Channel 6	12570.
Channel 3	12390.	Channel 7	12630.
Channel 4	12450.	Channel 8	12690.

The E- and G-Group's transmitted signals are received by approximately 52 sites in the Chicago area.

Preferred Entertainment (PR-EN) proposes to provide an alternative delivery system from the IIT location to the Sears. The first phase of the proposal, is anticipated to replace the IIT existing STL link from it's studio site to the Sears Building. The STL would be replaced with a new 18 GHZ Amplitude Modulated Link (AML). This AML has been designed through cooperative efforts between Specchio Developers (SD), Hughes Microwave engineering staff and the engineering staff of ComSearch which is an outside frequency search company. To date up to 72 channels of AML frequencies at 18 GHZ have been approved by ComSearch from IIT to the Sears location. It is anticipated that an application would be made for a minimum of 8 primary and 4 secondary of those channels. Larry Todd (IIT) is in possession of all the original engineering documents necessary to refile for this license in the name of IIT (copies attached herein). This new application would be governed under Part 94 of the FCC rules and regulations (a letter is enclosed relative to such). PR-EN agrees that any other licence that may be required for IIT's uplink to the Sears will be in the name of IIT. It is highly unlikely the IIT AML application will not

be approved as it has already passed the FCC scrutiny if the re-applications were made immediately. Should they not be approved, PR-EN would then suggest as a possible fall back position, the construction of a new STL link with new STL frequencies. However, SD has done no studies of such STL frequencies. The third and most undesirable alternative, would be to purchase new STL equipment for the existing frequencies listed above. There is potential of future interference on these frequencies.

The cost of utilizing the AML frequencies to replace the existing STL facilities will be approximately \$100,000.00. This includes all hardware equipment (modulators, demodulators, antennas, waveguide, transmitters, receivers, etc) as well as soft costs. The equipment manufacturer that PR-EN intends to use is Hughes Microwave Engineering. Hughes is a well known and established company that has produced satellites and other major microwave transmission equipment. The equipment model number that PR-EN intends on using is HOT-18121. PR-EN intends on Hughes being a vital source of engineering for this microwave path (Hughes AML brochures are attached). The existing STL transmit and receive locations will be outfitted for the new equipment, which will eliminate any need of additional space on the Sears building. There is a limited possibility that the current proposed receive antenna may need modification to accommodate the current space. SD and IIT engineers agree this can be resolved upon installation. Larry Todd is in possession of the complete material lists and everything required for the installation, with the exception of a proposal for a possible different type of demodulator, which will be identified in the new cost breakdown attached.

The next increment of this agreement would be to install a conduit from the PR-EN facility which is approximately 15 feet adjacent to the IIT facility, at the Sears building, so that PR-EN may bring it's programming from PR-EN's facility to the IIT facility. Once the conduit is in place the new signal source will have insertion into IIT base band in the IIT Catel modulator. Basically what PR-EN has to do is purchase from Catel and install a card that has a base band switching mechanism that looks for the video carrier of the first or second source, as PR-EN would determine the first source from IIT studio facility and the second source would be from PR-EN video room. The IIT video source will have priority and this would allow IIT, from the IIT studio, to control which signal is going across the transmitter. Every time IIT turns on a video source from IIT's studio it will automatically shut PR-EN's source off and turn IIT's on, and when IIT turns IIT's video source off, it will automatically turn PR-EN's source back on. The switching mechanism that PR-EN has just talked about is the most common used in many ITFS access agreements across the country. The use of this type of video switch would allow IIT the confidence that at any time IIT needs the frequency, IIT has the power within IIT facility to use IIT frequencies.

Chicago, IL

H1

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WMX255

*Licensed to Sprint Subsidiary  
- Alda Wireless Holdings,  
Inc.*

**Chicago, IL**

**H2**

**-**

**WNEL393**

OFS AIRTIME AGREEMENT

RM  
MS  
157

THIS AGREEMENT (the "Agreement"), is entered into this NOVEMBER day of OCTOBER, 1990 between American Communications Services, Inc. ("ACS"), a Delaware corporation, having its principal place of business at 333 W. Wacker Drive, Suite 700, Chicago, IL 60606 and People's Choice TV Partners ("PCTV") a Wisconsin Partnership, having its principal place of business at 233 N Garrard, Rantoul, Illinois 61866.

WITNESSETH:

WHEREAS, ACS holds a license ("License") issued by the Federal Communications Commission ("FCC") authorizing ACS to construct and operate a facility ("Facility") in the Private Operational Fixed Microwave Service ("OFS") operating on the H-2 Channel (Frequency 2665 MHz) (the "Channel"), to serve Chicago, Illinois and the surrounding area ("Market Area"); and

WHEREAS, PCTV intends to construct and operate a wireless cable system ("Wireless Cable System") employing one or more OFS, MDS, MMDS and/or ITFS channels to serve the Market Area and desires to lease the Channel airtime from ACS for use in a Wireless Cable System; and

WHEREAS, ACS is willing to lease use of the Channel to PCTV pursuant to the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and mutual representations, warranties, covenants and promises herein contained, the parties hereto agree as follows:

1. USE OF THE CHANNEL.

(a) Airtime. ACS agrees to lease to PCTV, and PCTV agrees to lease from ACS, on the terms and conditions set forth herein, all of the main-channel capacity ("Airtime"), 24 hours per-day, 7 days per-week for the entire term of this Agreement and any renewal hereof, plus use of one (1) audio subcarrier for the purpose of stereo transmission; provided that, so long as it does not adversely and materially affect PCTV's primary business described herein, ACS shall retain the right to use the Second Audio Program Channel ("SAP"), the Pro-Channel, the Vestegial Sideband, all response channels assigned with the License, and all lines in the Vertical Blanking Interval.

(b) Scope of Use. The Airtime is provided to PCTV hereunder for the delivery of PCTV-provided video-entertainment programming in an omni-directional pattern from the Transmission Point (as hereinafter defined) throughout the Market Area to reception points selected by PCTV. Subject to the provision of Section 8, and as otherwise set forth herein, there shall be no restriction on the substance, format or type of video-entertainment programming to be transmitted by PCTV unless required to comply with the provisions applicable by law including, without limitation, the Communications Act of 1934, as amended, and the Rules and Regulations of the FCC promulgated pursuant thereto. PCTV shall provide services over the channel not constituting video-entertainment (such as digital data

transmission services or two-way telecommunication services, etc.) only with the prior written approval of ACS and in return for consideration in addition to that set forth herein, to be agreed to by the parties at that time.

2. TERM.

(a) Initial Term. Subject to the provisions for earlier termination contained in Paragraph 11 hereof, the term of this Agreement shall commence upon the date hereof and shall continue in full force and effect for a period of five (5) years. Said period is hereinafter referred to as the "Initial Term."

(b) Renewal Term. Subject to the provisions for earlier termination contained in Paragraph 11 hereof, this Agreement shall automatically and without further notice be renewed for up to four (4) successive additional five (5) year terms (hereinafter referred to as a "Renewal Term") unless PCTV shall have served written notice on ACS at least one hundred and eighty days (180) prior to the expiration date of the Initial Term that it elects not to renew this Agreement for a Renewal Term or the immediate preceding Renewal Term.

3. FACILITIES.

(a) Transmission Point. ACS's license for the Channel specifies a Transmission Point located at 875 North Michigan Ave, Chicago, Illinois. PCTV shall, at its sole

expense, obtain from the owner of that property the right to operate at that location in accordance with the License and applicable FCC rules and the terms hereof.

(b) Relocation of Transmission Point. If so requested by PCTV, ACS shall use its best efforts to obtain all necessary FCC and other governmental approvals for any proposed relocation of the Transmission Point. Subject to the prior receipt of all authorizations required by FCC Regulations, PCTV may relocate the Transmission Point with the prior written consent of ACS (which consent shall not be unreasonably withheld). All costs of such relocation, including all costs associated with obtaining all necessary Governmental approvals, as well as all costs of any new equipment necessary for ACS and PCTV to maintain a fully operational Facility at the new location shall be borne solely by PCTV, including but not limited to PCTV providing a new antenna waveguide, and also all legal, engineering, construction, installation, filing fees and other expenses associated therewith.

(c) Lease of Transmission Equipment. During the term described in Paragraph 2, PCTV shall, and does hereby, lease to ACS the equipment specified in Exhibit A hereto (collectively referred to herein as the "Leased Equipment"). ACS shall pay to PCTV \$1.00 per year for the use of the Leased Equipment during the term hereof, it being understood by the Parties that ACS's provision of the airtime at the rates provided in this Agreement

is full consideration for PCTV's lease of the Leased Equipment to ACS. In addition to the obligation imposed upon PCTV pursuant to Paragraphs 4(f), 5(c) and 8 hereof, PCTV shall pay all taxes and other charges against and in connection with the ownership of the Leased Equipment, and shall be entitled to claim depreciation and tax credits thereunder for income tax purposes. Title to the Leased Equipment shall remain with PCTV during the term hereof. Subject to the provisions of Paragraph 3 (d) hereof, the Leased Equipment may be removed by PCTV upon the termination of this Agreement; provided that, in the event that this Agreement is not renewed by PCTV for any Renewal Term, or in the event PCTV defaults on the performance of its obligations hereunder, title to the Leased Equipment and other rights included with the Leased Equipment, including any lease rights for the station location or roofs of buildings, shall be transferred at no additional cost and deemed to exist in ACS, and said equipment may not be removed or cancelled by PCTV. PCTV shall assure that provisions sufficient to satisfy its obligations under this Paragraph shall be incorporated into any lease or similar appropriate agreement it enters into with third parties.

(d) ACS's Right to Purchase Leased Equipment

Absent a transfer of title to the Leased Equipment from PCTV to ACS as provided elsewhere in this Agreement, ACS shall have the right to purchase the Leased Equipment within sixty (60) days of the date of termination of this Agreement, at the fair market

value of that Equipment at that time as agreed to by the Parties or by an independent appraiser hired by the Parties.

(e) NO WARRANTY OR REPRESENTATION IS EXTENDED OR GRANTED BY ACS TO PCTV IN ANY FORM OR FASHION WITH REGARD TO THE LEASED EQUIPMENT. SPECIFICALLY, THERE ARE NO WARRANTIES BEING EXTENDED BY ACS WITH REGARD TO THE LEASED EQUIPMENT, WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL ACS BE HELD LIABLE TO PCTV FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS OF PROFIT, LOSS OF BUSINESS OR SIMILAR FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE IN PART OR IN WHOLE OF THE LEASED EQUIPMENT OR THE FACILITIES, WHETHER BASED IN BREACH OF WARRANTY, CONTRACT OR TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND INFRINGEMENT), STRICT LIABILITY OR OTHERWISE.

(f) Risk of Loss. It is hereby agreed that PCTV shall at all times relieve, indemnify, protect and save harmless, ACS and its officers, shareholders and employees from any and all claims and liability for the death of, or injury to persons, or damage to property that may in whole or in part arise from, or be caused by the operation, maintenance, use or occupation of the aforesaid Facility; Channel and Leased Equipment by PCTV or

agents of PCTV under the provisions of this Agreement. PCTV shall at all times maintain at its sole cost a standard "all risk" property insurance policy which shall name ACS as additional named insured. Such policy shall insure the Leased Equipment against loss or damage by fire and against loss or damage by other risks now or hereafter included in the standard form of all-risk insurance policy, in an amount equal to the full replacement cost thereof. All proceeds from such insurance shall be payable to ACS at PCTV's option, or used for the repair or replacement of such Leased Equipment to the extent necessary to restore Leased Equipment to its prior condition, with title of any replacement equipment vesting in ACS. In addition, PCTV shall maintain a Comprehensive General Liability policy in an amount of at least \$5 million including all coverage normally provided by an "Extended Liability Endorsement" with the proceeds of such insurance being payable to PCTV and ACS as their interests may appear. ACS shall not be responsible to repair or replace "Leased" or other Equipment other than as allowed through use of the proceeds of insurance policies covering such equipment.

4. OPERATION OF THE CHANNEL.

(a) Operation of the Transmission Equipment. PCTV shall be responsible for all costs and expenses associated with all equipment used in the operation of the Facility, including

but not limited to the Leased Equipment (the "Transmission Equipment") in accordance with the FCC and other governmental requirements and terms hereof, and for the cost of personnel needed to operate and maintain the Transmission Equipment. Said personnel shall ensure that the Transmission Equipment shall at all times meet the technical operating requirements set forth in the Rules and Regulations of the FCC. Such maintenance shall include the replacement of, at PCTV's sole expense, any or all defective or broken parts of the Transmission Equipment. All operations and maintenance activities shall be undertaken at such times as are consistent with the operating requirements of PCTV's business. ACS and PCTV shall cooperate to ensure that each of them at all times is fully aware of any and all operational, maintenance and repair activities on the Transmission Equipment. All maintenance personnel shall be under the technical direction, supervision and control of PCTV subject to ACS's ultimate power to control operation of the Facility. PCTV shall have access to the Transmission Point and Leased Equipment at all times for any of the foregoing activities subject to the terms of the lease.

(b) ACS Rights and Responsibilities. ACS shall have unrestricted access to the Leased Equipment. ACS shall give PCTV 24-hour notice prior to gaining access to the Leased Equipment. Notwithstanding the preceding sentence, in the event that ACS determines that the operation of the Channel is not in accordance with the License or applicable FCC Rules, or ACS is

required by FCC Rules or order to cease the operation of the Channel, then immediately on ACS's giving notice to PCTV, PCTV shall terminate transmissions by the Facility until the condition requiring the cessation of operations is removed, and ACS shall be entitled to undertake or enforce such cessation upon PCTV's failure to do so. In such event (unless the interruption in service results from a breach of PCTV's obligations of this Agreement), PCTV shall be entitled to applicable proration of fees.

(c) Reception Equipment. ACS has no responsibility hereunder to provide any equipment, including any reception antennas, down converters, decoders, descramblers, related power supplies or any associated equipment ("Reception Equipment") required to display signals transmitted over the Channel on a television set or other receiver. PCTV may, in its sole discretion and on terms and conditions of its choosing, install or cause to be installed such Reception Equipment, provided and selected by PCTV, as may be required, from time to time, in order for PCTV subscribers to view the programs to be transmitted over the Channel. Title to all Reception Equipment provided by PCTV hereunder shall vest in PCTV or its designee. PCTV shall be required to install reception Equipment only at particular locations selected by it. This Agreement does not give ACS any right to receive transmissions from the Facility for no charge or to retransmit such transmissions to any third party.

Reception Equipment shall be installed, maintained, operated and controlled by ACS only to the extent required by the FCC Rules and Regulations.

(d) Other Equipment. PCTV may, at its sole cost and expense, make equipment alterations or install equipment attachments at the Facility. Equipment alterations or attachments may be made provided that (a) they do not violate any FCC rules or regulations, and (b) any FCC authorization, if required, has been obtained, and (c) ACS's authorization has been obtained to the extent Leased Equipment will be modified or affected. ACS shall use its best efforts to obtain any required FCC authorization to use altered or additional equipment, provided that all legal, engineering and other costs and expenses in connection therewith are paid by PCTV. Any such equipment used or installed in making such modifications, alterations or attachments shall be provided at PCTV's sole cost and expense and with the exception of additions or modifications to, or replacements for Leased Equipment, title thereto shall vest in PCTV. PCTV shall be responsible for the maintenance and repair of all Transmission Equipment. Title to all equipment whether modifying, altering, or replacing Leased Equipment shall vest in PCTV and such equipment shall be treated in all respects as "Leased Equipment" hereunder.

(e) Program Origination and Delivery. PCTV shall be solely responsible for the origination of all programming to

be transmitted over the Channel and the delivery of such programming to the Transmission Point. PCTV shall bear all costs and expenses of purchasing, installing, operating and maintaining the equipment used in such transmissions. All personnel required to install, operate and maintain any program origination and/or delivery facilities shall be provided by PCTV, at its sole cost and expense, and such personnel shall be under PCTV's exclusive control except to the extent required by the FCC. ACS will provide PCTV with unrestricted access to the Transmission Point.

(f) Point-to-Point Microwave Channel. If so requested by PCTV, ACS shall apply to the FCC for authority to operate a point-to-point microwave channel ("Point-to-Point Channel") for PCTV's use in delivering signals to the Transmission Point and shall use its best efforts to obtain grant of such authority. PCTV's use of such Point-to-Point Channel licensed to ACS is conditioned upon (a) the availability of frequencies, (b) the receipt of all necessary governmental approval, (c) space and power being available as required at both ends of the requested signal path, (d) the existence of a clear path for transmission of signals between the requested point of the Point-to-Point Channel and the Transmission Point, (e) the provision of such Point-to-Point Channel not violating any law, ordinance, rule or other regulation of any body having jurisdiction, and (f) payment by PCTV to ACS of all direct and reasonably incurred costs, including legal, engineering,

equipment, construction, installation, operation, maintenance and other expenses associated with the efforts to obtain necessary governmental authorization and the provision of such Point-to-Point Channel, whether governmental approval is granted or not.

(g) Operational Expenses. PCTV shall be solely responsible for and shall indemnify and hold ACS harmless from the operating expenses resulting from the provision of service over the Channel, including rent of leased space, taxes assessed against and paid by ACS relative to the facility (excluding ACS's corporate income taxes), engineering charges, replacement parts, insurance and utilities. Any actual direct costs incurred by ACS in the operation of the Facility, if any, shall be passed through to and paid by PCTV as billed to or incurred by ACS.

5. CHARGES.

(a) Subscriber Fees. Beginning on the date hereof and for the first year of this Agreement PCTV shall pay to ACS on the first day of each month the sum of \$1,500 per month, <sup>10/1/90</sup> with such monthly payments to be increased on the first anniversary to \$2,000 per month for the second and third years of <sup>10/1/91</sup> the Initial Term, to \$3,000 per month for the fourth year of the <sup>10/1/92</sup> Initial Term, and to \$4,000 per month for the fifth year of the <sup>10/1/93</sup> Initial Term. Should this Agreement be renewed as provided for in accordance with Paragraph 2 (b) hereof, the monthly Subscriber Fee shall increase on each of the yearly anniversaries of this <sup>10/1/94</sup>

Agreement at the rate of the greater of, (a) the increase of the Consumer Price Index for the preceding year or, (b) five percent (5.0%) of said monthly rate, (i.e. to \$4,200 per month during the first year of the first Renewal Term; to \$4,410 per month during the second year of the first Renewal Term; etc.) throughout the length of the first and any succeeding Renewal Terms.

(b) Service Preparation Fee. Upon execution of this Agreement, PCTV shall pay to ACS \$55,000.00 (less the sum of \$5,000.00 paid prior hereto) to defray ACS expenses incurred in the negotiation of this Agreement. ACS shall secure \$10,000 of the Service Preparation Fee as security for the prompt and full payment of amounts specified herein. In the event of any default shall occur in the performance of any of the of obligations of PCTV herein, ACS shall have the right but not the obligation to apply said security deposit or a portion thereof to such default. Any such application by ACS shall not be a defense to any action by ACS out of said default, and upon demand by ACS against PCTV if the security deposit has been so applied, PCTV shall restore said security deposit to the full amount. ACS shall deposit the security deposit in a money market account or certificate of deposit with the interest being paid in regular installments, at least annually, to PCTV during the term of this Agreement. Upon termination of this Agreement, including but not limited to termination under Paragraph 11 (a) hereof, ACS will return any

remaining balance of said security deposit to PCTV provided PCTV has fully performed all of its obligations hereunder.

(c) Operational Expenses. PCTV shall pay directly any charge to ACS, or reimburse ACS for any direct expenses or charges incurred by ACS, in connection with PCTV's use of the Facility or use of the Point-to-Point Channel as such charges are billed to or incurred by ACS. ACS shall provide PCTV with written documentation of any such expenses or charges.

(d) Point to Point Service. Service provided on a Point-to-Point Channel, if any, shall be provided upon such terms and conditions as the parties hereto reasonably agree upon request for such service by PCTV.

(e) Payment Due Dates; Interest. All monthly payments of Subscriber Fees shall be due and payable on the twentieth (20th) day of the month following the month for which payment is due. In the event that the whole or any part of any monthly payment is not paid by such date, then such delinquent whole or part shall bear interest from the day after such due date and until paid in full calculated daily in arrears at an annual rate of eighteen percent (18%) of the outstanding amount.

6. AUTHORIZATIONS AND LICENSES, FURTHER EFFORTS.

(a) Maintenance of License and Modification of Channel. Except as provided herein, throughout the Initial Term and any Renewal Term, ACS shall obtain and maintain all licenses,

permits and authorizations required hereunder. If requested to do so by PCTV, ACS shall apply for, and use its best efforts at PCTV's sole cost to obtain, those modifications in its licenses permits and authorizations which would help PCTV in its business. PCTV shall be responsible for all costs, including legal, engineering, equipment, construction, installation, and other expenses, associated with any said modifications for use of the Channel initiated by ACS at PCTV's request, including the reasonable cost of any review by ACS's outside counsel or engineers of documents related to such actions. ACS shall provide PCTV with copies of all applications, reports, correspondence and other written submissions made to the FCC.

(b) Power Increase. If requested to do so by PCTV, and at PCTV's sole cost and expense, ACS shall apply for and use its best efforts to obtain FCC authority to increase the output power of the Channel to a higher level, provided that such higher level is not reasonably anticipated to cause harmful electrical interference to any other proposed or authorized radio transmission facility protected under FCC Rules and Regulations. In the event that said authorization is obtained, PCTV shall install at its sole cost and expense, appropriate equipment in order to effect said power increase and such equipment shall thereupon become part of the Leased Equipment. PCTV shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses associated with said application

and power increase, regardless of whether the application is granted or not.

7. LIMITATION OF LIABILITY. FORCE MAJEURE. In no event shall either ACS or PCTV have any liability for any failure to comply with this Agreement, if such failure results from the occurrence of any contingency beyond the reasonable control of the party, including, without limitation, strike or other labor disturbance, riot, any act of God, war, national emergency, interference by any government or governmental agency, embargo, seizure, or enactment of any law, statute, ordinance, rule or regulation.

8. INDEMNIFICATION.

(a) By Each Party. Except as set forth herein, each party hereto shall forever protect, save, defend and keep the other party harmless and indemnify said other party against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses (including reasonable attorney's fees incurred in defense of an indemnified claim) and liabilities of any kind or nature whatsoever arising directly or indirectly out of the acts, omissions, negligence or willful misconduct of the indemnifying party, its employees or agents in connection with the indemnifying party's performance under this Agreement.

(b) By PCTV. Notwithstanding the foregoing, PCTV shall forever protect, save, defend and keep ACS and its owners, officers, employees and agents harmless and indemnify them against (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses (including reasonable attorney's fees incurred in defense of an indemnified claim) and liabilities relating to any claim of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or from any claim that the content of any program transmitted over the Channel violates any pornography, obscenity laws, or infringes privacy rights or any other claimed harm or unlawfulness arising from the transmission of any programming; and (ii) claims for infringement of patents arising from PCTV's use of the Transmission Equipment in connection with apparatus or systems of PCTV.

(c) By ACS. Without limiting the generality of the foregoing, ACS shall forever protect, save, defend, and keep PCTV, its owners, officers, employees and agents harmless and indemnify them against any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses (including reasonable attorney's fees incurred in defense of an indemnification claim) and liabilities relating to any claim of The Microband Companies Incorporated, its creditors or to any

bankruptcy proceeding involving The Microband Companies Incorporated and its affiliates concerning PCTV's use or lease of the Facility, or any other activity arising under this Agreement.

(d) Procedure. Where such indemnification is sought by a party (the "Claiming Party") (a) it shall notify the other party (the "Indemnifying Party") promptly of any claim or litigation or threatened claim to which the indemnification relates, (b) upon the Indemnifying Party's written acknowledgement of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party shall afford the Indemnifying Party the opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party shall not effect any such compromise or settlement without prior written consent of the Indemnifying Party) and (c) the Claiming Party shall cooperate with the reasonable requests of the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation. Notwithstanding any provision herein to the contrary, the indemnification provided by this Paragraph 8 shall survive for no greater than thirty six (36) months, including the termination (for whatever reason) of this Agreement.

9. REPRESENTATIONS AND WARRANTIES OF ACS. ACS

represents and warrants to PCTV as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, operate and lease its properties, to carry on its business as it is now conducted, and to enter into this Agreement and perform its obligations hereunder.

(b) The execution and delivery of this Agreement by it has been duly and validly authorized and approved by all necessary corporate action. This Agreement is valid and binding upon it in accordance with its terms, except as limited by insolvency laws and general principles of equity.

(c) The execution and compliance with the provisions hereof by ACS will not, with or without the giving notice and/or the passage of time: i) to its knowledge, conflict with any material applicable law; or ii), conflict with or result in any breach of any of the terms or conditions of, or constitute a default under its Articles of Incorporation or By-Laws or any indenture, mortgage, agreement, or other instrument to which it is a party or by which it is bound.

(d) No consent, approval or authorization of, designation, declaration or filing with any person is required in connection with the execution, delivery, validity or

enforceability of this Agreement or the consummation of the transactions contemplated hereby.

(e) The ACS License has been validly issued by the FCC. ACS has delivered to PCTV a true and complete copy of the License as specified in Exhibit B hereto, including any and all amendments and/or other modifications thereto. The License is, and during the Initial and any Renewal Term, ACS shall exercise its best effort to maintain the license, in good standing and full force and effect. All material reports, forms and statements required to be filed by ACS with respect to the License and the Facility since the grant of the License have been and during the Initial and any Renewal Term will be filed and are and will be substantially complete and accurate in all material respects.

10. REPRESENTATIONS AND WARRANTIES OF PCTV. PCTV represents and warrants to ACS as follows:

(a) It is a Wisconsin partnership duly organized, validly existing and in good standing under the laws of its jurisdiction and has all requisite power and authority to own, operate and lease its properties, to carry on its business as it is now conducted, and to enter into this Agreement and perform its obligations hereunder.

(b) The execution and delivery of this Agreement by it has been duly and validly authorized and approved by all

necessary action and this Agreement is valid and binding upon it in accordance with its terms, except as limited by insolvency laws and general principles of equity.

(c) The execution and compliance with the provisions hereof by PCTV will not violate with or without the giving of notice and/or the passage of time, conflict with or result in any breach of any of the terms or conditions of, or constitute a default under, the partnership agreement or any indenture, mortgage, agreement, or other instrument to which it is a party or by which it is bound.

(d) No consent, approval or authorization of, designation, declaration or filing with any person is required in connection with the execution, delivery, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

11. TERMINATION.

(a) Termination of FCC Authorization. This Agreement shall be terminated without further liability to ACS in the event that ACS's authority to operate the Channel in accordance with the terms of this Agreement is terminated by the FCC or other governmental authority and except if such termination is the result of a breach by ACS of Paragraph 9(e), such termination shall extinguish and cancel this Agreement and its effect absolutely without further liability on the part of

either party to the other, except that PCTV shall be obligated to make any payments required by this Agreement through the date of such termination and such termination shall not affect or diminish the rights, claims or remedies available in equity or at law to the parties hereto.

(b) Termination by Reason of Default or Nonperformance. At the option of a non-defaulting party, this Agreement may be terminated upon a material breach or default by the other party of its representation, warranties, duties and obligations hereunder if such breach or default shall continue for a period of thirty (30) consecutive days after such party's receipt of notice thereof from the non-defaulting party. Failure to make any payment of the Security Deposit or Fees if such failure continues for a period of thirty (30) days after notice thereof to PCTV, shall constitute a material breach of this Agreement by PCTV. In such event, ACS may elect to temporarily suspend service, wholly terminate service to PCTV, or elect to terminate this Agreement. Such termination shall not affect or diminish the rights, claims or remedies available in equity or at law to the non-defaulting party arising by reason of such breach or default. In the event of termination due to PCTV's default, title to all Transmission Equipment shall vest in ACS.

(c) Termination Due to Bankruptcy, etc. This Agreement will automatically terminate if and when PCTV shall make an assignment of assets for the benefit of its creditors;

become insolvent or unable to pay its debts as they become due; if a trustee or receiver shall be appointed to control and manage the properties of PCTV; or if voluntary or involuntary bankruptcy, reorganization, arrangement or liquidation proceedings shall be instituted by or against PCTV.

(d) Termination by Reason of Technical Interference. If, following the date hereof, technical interference should occur on the Channel which is beyond the control of PCTV or ACS and if, following the best efforts of ACS and PCTV to reduce or remove such interference, such interference shall render such Channel unusable for the business purposes provided in Paragraph 1(b) hereof, PCTV as its sole remedy may terminate this Agreement, provided, however, that PCTV shall first give written notice to ACS of its intent to terminate said agreement and provide therein complete information concerning the origin, nature and duration of such interference.

## 12. REMEDIES.

(a) In the event of termination by reason of default or nonperformance as provided for in Paragraph 11(b), the remedies provided in this Agreement are not intended to be exclusive. In particular, the parties hereto acknowledge that the rights conferred herein are of a special and unique character which gives them a peculiar value, the loss of which cannot be adequately compensated in an action at law. In the event of a

material breach or default by either party of its obligations under this Agreement, the other party shall be entitled as a matter of right to require of the breaching party specific performance of all the acts, services and undertakings required of the breaching party and to obtain injunctive and other equitable relief in any competent court to prevent the violation of any of the provisions of this Agreement.

13. MISCELLANEOUS.

(a) Dealings with Third Parties. Neither party is, nor shall either party hold itself out to be, vested with any power or right to contractually bind, or act on behalf of the other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for in the name of the other party, or making any contractually binding representations as to the other party which shall be deemed representations contractually binding to such party. In particular, PCTV shall not be identified as the FCC licensee of the Channel and ACS shall not be held out as the programmer of the Channel.

(b) Assignment of Rights and Obligations.

PCTV shall have the right to assign its interest in this Agreement and all of the equipment except the Leased Equipment as security or collateral for any financing arrangements it makes. PCTV shall not transfer, hypothecate or otherwise cause

any right or obligation under this Agreement to be assigned to any other person or entity, directly or indirectly, without the prior written consent of ACS, which consent shall not be unreasonably withheld.

(c) Laws and Rules. ACS's obligations hereunder are conditioned on PCTV's use of the Airtime in accordance with all applicable laws FCC Rules and Regulations, and compliance by PCTV with the terms of this Agreement. PCTV's obligations hereunder are conditioned on ACS's compliance with all applicable laws and FCC Rules and Regulations, and compliance by ACS with the terms of this Agreement.

(d) Notice. Any notice or communication given pursuant to this Agreement by a party to the other party shall be effective only if in writing and delivered by hand, or mailed by registered or certified mail, postage prepaid, return receipt

If to ACS:

American Communications Services, Inc.  
333 W. Wacker Drive, Suite 700  
Chicago, Illinois 60606  
Attn: Paul Tatge

With a copy to:

Sidley & Austin  
One First National Plaza  
Chicago, IL 60603  
Attn: Larry A Barden

If to PCTV:

People's Choice TV Partners  
233 North Garrard  
Rantoul, Illinois 61866  
Attn: Todd Rowley

With a copy to:

Pepper & Corazzini  
1776 K. Street N.W. Suite 200  
Washington, DC 20006  
Attn: Robert Corazzini

(e) Severability of Provisions. With the exception of Paragraphs 1 and 5, if any provision hereof is held invalid, the remainder of this Agreement shall not be affected thereby.

(f) Survival. All representations, warranties, covenants and agreements made by the parties hereto shall survive the execution and delivery hereof.

(g) Governing Law. This Agreement shall be governed by the laws of the State without respect to conflict-of-laws provisions of Illinois applicable to contracts executed and to be performed entirely within that State.

(h) Further Assurances. The parties shall perform such further acts and execute such additional documents as may reasonably be required to effectuate the arrangement contemplated by this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but which together shall constitute a single instrument.

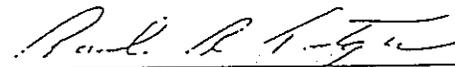
(j) Benefit. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and, to the extent permissible hereunder, assigns. Nothing in this Agreement, expressed or implied, is intended to or shall (a) confer on any person other than the parties hereto or their respective heirs, legal representatives, successors or assigns, any rights, remedies obligations or liabilities under or by reason of this Agreement, or (b) constitute the parties hereto as partners or participants in a joint venture.

(k) Headings. The headings, captions, and arrangements of the provisions herein are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Agreement, nor to affect the meaning thereof.

(l) Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes any prior understandings with respect to the subject matter hereof. This Agreement, or any portion thereof, shall not be changed, waived, released or discharged except by a writing signed by each party or authorized representative thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

AMERICAN COMMUNICATIONS SERVICES, INC.

By:   
Paul R. Tatge, President

PEOPLE'S CHOICE TV PARTNERS

By:   
Michael J. Specchio  
Chief Executive Officer

Chicago, IL

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Inc.*