



be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.

- 10.3 ~~CESTC~~ The Parties shall make all payments to the other Party AT&T-OHIO via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by that Party AT&T-OHIO. Remittance information will be communicated together with the funds transfer via the ACH network. ~~AT&T-OHIO~~ must use the CCD+ or the CTX transaction set. ~~AT&T-OHIO~~ and AT&T-OHIO will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by the other Party AT&T-OHIO no later than the Bill Due Date of each bill or Late Payment Charges will apply. Neither Party AT&T-OHIO is ~~not~~ liable for any delays in receipt of funds or errors in entries caused by ~~AT&T-OHIO~~ the other Party or Third Parties, including ~~AT&T-OHIO~~ a Party's financial institution. ~~CESTC~~ Each Party is responsible for its own banking fees.

10.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. ~~CESTC~~ Each Party is responsible for any Late Payment Charges resulting from ~~CESTC~~ the Party's failure to use electronic funds credit transfers through the ACH network.

- 10.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item listed in Section 12.4.1. The Disputing Party should utilize any existing and preferred form provided by the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts [other than disputed charges arising from Appendix Intercarrier Compensation] into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties.

- 10.5 ~~Intentionally Omitted. Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 10.1.5.~~

- 10.6 Requirements to Establish Escrow Accounts.

10.6.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:

- 10.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 10.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 10.6.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.

10.6.2 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:

- 10.6.2.1 The escrow account must be an interest bearing account;
- 10.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
- 10.6.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
- 10.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and

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10.6.2.5 disbursements from the escrow account will be limited to those:

- 10.6.2.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or
- 10.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 12.7; or
- 10.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 12.7.

10.6.3 Intentionally Omitted. Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 10.1.6.

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10.6.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 12.

10.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:

10.7.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;

10.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;

10.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and

10.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 10.1.5.

10.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 10.7.1.1 and Section 10.7.1.3 are completed within the times specified therein.

10.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 10.7 shall be grounds for termination of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.

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10.9 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

10.10 Exchange of Billing Message Information

10.10.1 AT&T-STATE will provide AT&T-STATE a specific Daily Usage File ("DUF" or "Usage Extract") for Resale Services provided hereunder ("Customer Usage Data"). Such Customer Usage Data will be provided by AT&T-STATE in accordance with Exchange Message Interface (EMI) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation requirements documentation for each AT&T-owned ILEC. The DUF will include (i) specific daily usage, including both Local Traffic (if and where applicable) and ILEC-carried Intra-ATA Toll Traffic, in EMI format for usage sensitive services

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furnished in connection with each Resale Service to the extent that similar usage sensitive information is provided to retail End Users of **AT&T-STATE** within that state, (ii) with sufficient detail to enable **AT&T-STATE** to bill its End Users for usage sensitive services furnished by **AT&T-STATE** in connection with Resale Service provided by **AT&T-STATE**. Procedures and processes for implementing the interfaces with **AT&T-STATE** will be included in implementation requirements documentation.

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10.10.2 To establish file transmission for the Daily Usage File, **AT&T-STATE** must provide to **AT&T-STATE** a separate written request for each state no less than sixty (60) calendar days prior to the desired first transmission date for each file.

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10.10.3 Call detail for LEC-carried calls that are alternately billed to **AT&T-STATE** End Users' lines provided by **AT&T-STATE** through Resale will be forwarded to **AT&T-STATE** as rated call detail on the DUF.

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10.10.4 **AT&T-TEXAS** will provide **AT&T-TEXAS** with call detail on the DUF.

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10.10.5 Interexchange call detail on Resale Services that is forwarded to **AT&T-STATE** for billing, which would otherwise be processed by **AT&T-STATE** for its retail End Users, will be returned to the IXC and will not be passed through to **AT&T-STATE**. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for information Services and other ancillary services traffic on Resale Services will be passed through when **AT&T-STATE** records the message.

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10.11 When **AT&T-STATE** serves its **AT&T-STATE** End User via switch-based service, both Parties will settle tariffed ABT charges for calls accepted by each Party's End Users, except in AT&T Connecticut. The originating Party will pay the Party that has the billable End User a Billing and Collection (B&C) fee per billed message as set forth in the pricing schedule.

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## 11. NONPAYMENT AND PROCEDURES FOR DISCONNECTION

11.1 If a Party is furnished Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 11.1 through 11.7, inclusive, shall be applied separately for each such state.

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11.2 Failure to pay charges shall be grounds for disconnection of Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay any charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges ("Unpaid Charges"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

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11.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:

11.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("Disputed Amounts") and the specific details listed in Section 12.4.1 of this Agreement, together with the reasons for its dispute; and

11.3.2 pay all undisputed Unpaid Charges to the Billing Party; and

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- 11.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Inter-carrier Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 10.6; and
- 11.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 10.6 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Inter-carrier Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Inter-carrier Compensation] has been deposited into an escrow account that complies with Section 10.6 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 12.
- 11.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 12.

11.5 **AT&T-STATE/ILLINOIS**

11.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 11.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 10.6 within the time specified in Section 11.3, (c) timely furnish any assurance of payment requested in accordance with Section 9 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:

11.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, **Resale Services, Lawful Unbundled Network Elements**, Collocation, functions, facilities, products or services under this Agreement; and/or

11.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, **Resale Services, Lawful Unbundled Network Elements**, Collocation, functions, facilities, products or services under this Agreement.

11.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 11.5.1, Section 11.5.1.1 and Section 11.5.1.2:

11.5.2.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

11.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

11.6 **INTRADO COMMUNICATIONS, AT&T-STATE/ILLINOIS only**

11.6.1 if the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 11.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

11.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, **Lawful Unbundled Network Elements**, Collocation, functions, facilities, products or services under this Agreement; and

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11.8 Intentionally Omitted.

11.9 Limitation on Back-billing and Credit Claims:

11.9.1 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to

11.9.1.1 Back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount. The Parties agree that the twelve (12) month limitation on back-billing and credit claims set forth in the preceding sentence shall be applied prospectively only after the Effective Date of this Agreement, meaning that the twelve month period for any back-billing or credit claims may only include billing periods that fall entirely after the Effective Date of this Agreement and will not include any portion of any billing period that began prior to the Effective Date of this Agreement.

11.9.1.2 Back-billing and credit claims, as limited above, will apply to all Interconnection, Resale Services, Unbundled Network Elements, Collocation, facilities, functions, product and services purchased under this Agreement. Intercarrier Compensation is specifically excluded from this Section and is addressed separately in the Intercarrier Compensation Attachment.

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## 12. DISPUTE RESOLUTION

### 12.1 Finality of Disputes

12.1.1 Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

12.1.2 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

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12.2 Alternative to Litigation

12.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

12.3 Commencing Dispute Resolution

12.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

12.3.1.1 Service Center ~~AT&T-STATE OHIO~~ or Collocation Service Center (CSC);

12.3.1.2 Informal Dispute Resolution; and

12.3.1.3 Formal Dispute Resolution, each of which is described below.

12.4 Service Center or CSC Dispute Resolution - the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written notice sent to AT&T-STATE OHIO for Disputed Amounts must be made on the "13 Billing Claims Dispute Form".

12.4.1 If the written notice given pursuant to Section 12.3 discloses that a ~~dispute~~ dispute relates to billing, then the procedures set forth in this Section 12.4 shall be used and the dispute shall first be referred to the appropriate ~~AT&T-STATE OHIO~~ ILLINOIS Service Center ~~AT&T-STATE OHIO~~ for resolution. In order to resolve a billing dispute, ~~AT&T-STATE OHIO~~ shall furnish AT&T-STATE OHIO written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that ~~CSTC CLEC~~ CSTC CLEC disputes the billed amount. To be deemed a "dispute" under this Section 12.4, ~~AT&T-STATE OHIO~~ must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 10.6 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Lawful Unbundled Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 12.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute ~~AT&T-STATE OHIO's~~ irrevocable and full waiver of its right to dispute the subject charges.

12.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on AT&T-STATE OHIO's current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided ~~AT&T-STATE OHIO~~ furnishes all requisite information and evidence under Section 12.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, AT&T-STATE OHIO will notify ~~AT&T-STATE OHIO~~ of the status of the dispute and the expected resolution date.

12.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that ~~AT&T-STATE OHIO~~ furnishes all requisite information and evidence under Section 12.4.1), AT&T-STATE OHIO will notify ~~AT&T-STATE OHIO~~ of the status of the dispute and the expected resolution date.

12.4.4 Any notice of Disputed Amounts given by AT&T-STATE OHIO to ~~AT&T-STATE OHIO~~ pursuant to Section 12.3 shall furnish ~~AT&T-STATE OHIO~~ written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in question, (iv) any USOC (or other descriptive information)

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questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that **AT&T-STATE OHIO** disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided **AT&T-STATE OHIO**, furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, **AT&T-STATE OHIO** will notify **AT&T-STATE OHIO** of the status of the dispute and the expected resolution date.

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12.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 12.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 12.5 of this Agreement.

#### 12.5 Informal Resolution of Disputes

12.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 12.3 or Section 12.4.5, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

#### 12.6 Formal Dispute Resolution

12.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 12.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 12.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 12.3.

12.6.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 12.7 below:

12.6.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 12.3. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 12.3, the Parties will annualize the actual number of months billed.

12.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 12.7 if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

12.6.4 Claims Not Subject to Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

12.6.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

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- 12.6.4.2 Actions to compel compliance with the Dispute Resolution process.
- 12.6.4.3 All claims arising under federal or state statute(s), including antitrust claims.

12.7 Arbitration

12.7.1 Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in ~~Chicago, Illinois~~ Chicago, Illinois ~~unless the Parties agree otherwise.~~ unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. Notwithstanding any rule of the AAA Commercial Arbitration Rules to the contrary, the Parties agree that the arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

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13. **AUDITS – APPLICABLE IN AT&T-STATE OHIO**

13.1 Subject to the restrictions set forth in Section 22 "Confidentiality" and except as may be otherwise expressly provided in this Agreement, a Party (the "Auditing Party") may audit the other Party's (the "Audited Party") books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement ("service start date") for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

13.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit.

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- 13.1.2 Such audit shall be conducted by an independent auditor acceptable to both Parties. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
- 13.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party information that reveals the identity of **customers or** End Users of Audited Party.
- 13.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 13.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 10.1 for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.
- 13.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.
- 13.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 13.1. Any additional audit shall be at the requesting Party's expense.

13.2 Intentionally Omitted.

#### 14. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 14.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, **RESALE SERVICES, LAWFUL UNBUNDLED NETWORK ELEMENTS,** FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

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## 15. LIMITATION OF LIABILITY

15.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount **AT&T-STATEOHIO** or **INTRADO** has charged or would have charged to the other Party for the affected Interconnection, **Lawful Unbundled Network Elements**, Collocation, or functions, facilities, products and service(s) that were not performed or provided or were improperly performed or provided.

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15.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

15.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its **customers**, End Users or Third Parties that relate to any Interconnection, **Resale Services**, **Lawful Unbundled Network Elements**, functions, facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such **customer**, End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the **customer**, End User or Third Party for the Interconnection, **Resale Services**, **Lawful Unbundled Network Elements**, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section.

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15.4 Neither **INTRADO** nor **AT&T-STATEOHIO** shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 16 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 15.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's **customer** or End User in connection with any affected Interconnection, **Resale Services**, **Lawful Unbundled Network Elements**, Collocation, functions, facilities, products and services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's **customer** or End User.

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15.5 **AT&T-STATEOHIO** shall not be liable for damages to a **customer's** or an End User's premises resulting from the furnishing of any Interconnection, **Resale Services**, **Lawful Unbundled Network Elements**, functions, facilities, products or services, including, if applicable, the installation and removal of equipment and associated wiring, and Collocation Equipment unless the damage is caused by **AT&T-STATEOHIO**'s gross negligence or willful misconduct. **AT&T-STATEOHIO** does not guarantee

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or make any warranty with respect to Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products or services when used in an explosive atmosphere.

15.6 [REDACTED] hereby releases **AT&T-STATE** from any and all liability for damages due to errors or omissions in [REDACTED] End User listing information as provided by [REDACTED] to **AT&T-STATE** under this Agreement, including any errors or omissions occurring in [REDACTED] End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.

15.7 **AT&T-STATE OHIO** shall not be liable to [REDACTED], its **customer**, End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service **unless attributable to AT&T-STATE OHIO**.

15.8 This Section 15 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.

## 16. INDEMNITY

16.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.

16.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, **its customers**, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Resale Services, Lawful Unbundled Network Elements, Collocation, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

16.3 In the case of any Loss alleged or claimed by a **customer or** End User of either Party, the Party whose **customer or** End User alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims or Losses by its **customer or** End User regardless of whether the underlying Interconnection, Resale Service, Lawful Unbundled Network Element, Collocation, function, facility, product or service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.

16.4 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any Claim or Loss arising from the Indemnifying Party's use of

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Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, Collocation, functions, facilities, products and services provided under this Agreement involving:

16.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, Collocation, functions, facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its **customer's or End User's** use.

16.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any **customer or End User**-specific information associated with either the originating or terminating numbers used to provision Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, Collocation, functions, facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the **customer or End User** in the course of using any Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, functions, facilities, products or services provided pursuant to this Agreement.

16.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's **customer's or End User's** use of Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, Collocation, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

16.4.1.2.1 where an Indemnified Party or its **customer or End User** modifies Interconnection, ~~Resale Services, Lawful Unbundled Network Elements~~, Collocation, functions, facilities, products or services; provided under this Agreement; and

16.4.1.2.2 no infringement would have occurred without such modification.

16.4.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA, as applicable to the Indemnifying Party's obligation's under this Agreement.

16.5 ~~AT&T-ILLINOIS~~ acknowledges that its right under this Agreement to Interconnect with **AT&T-ILLINOIS**'s network and to **unbundle and/or combine** ~~AT&T-ILLINOIS~~'s ~~Lawful Unbundled Network Elements~~ (including combining with ~~AT&T-ILLINOIS~~'s ~~Lawful Unbundled Network Elements~~) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.

16.5.1 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), In the Matter of Petition of MCI for Declaratory Ruling. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decision and any remand thereof, including its right to seek legal review or a stay pending appeal of such decision.

16.5.1.1 ~~intrado~~ ~~agrees~~ ~~to use its best efforts to obtain for~~ ~~each Lawful UNE necessary for~~ ~~to use such Lawful UNE in the same manner as~~ **AT&T** agrees to use its best efforts to obtain for ~~each Lawful UNE necessary for~~ ~~to use such Lawful UNE in the same manner as~~ ~~AT&T~~ under commercially reasonable terms, Intellectual Property rights to each Lawful UNE necessary for ~~to use such Lawful UNE in the same manner as~~ ~~AT&T~~ to use such Lawful UNE in the same manner as ~~AT&T~~.

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- 16.5.1.2 **AT&T-STATE OHIO** shall have no obligation to attempt to obtain for **CELESTIS** any Intellectual Property right(s) that would permit **CELESTIS** to use any Lawful UNE in a different manner than used by **AT&T-STATE OHIO**. Formatted ... [201]
- 16.5.1.3 **CELESTIS**. To the extent not prohibited by a contract with the vendor of the network element sought by **CELESTIS** that contains Intellectual Property licenses, **AT&T-STATE OHIO** shall reveal to **CELESTIS** the name of the vendor, the Intellectual Property rights licensed to **AT&T-STATE OHIO** under the vendor contract and the terms of the contract (excluding cost terms). **AT&T-STATE OHIO** shall, at **CELESTIS**' request, contact the vendor to attempt to obtain permission to reveal additional contract details to **CELESTIS**. Formatted ... [202]
- 16.5.1.4 **CELESTIS**. All costs associated with the extension of Intellectual Property rights to **CELESTIS** pursuant to Section 18.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the Lawful UNE to which the Intellectual Property rights relate and apportioned to all requesting carriers using that Lawful UNE including **AT&T-STATE OHIO**. Formatted ... [203]
- 16.5.2 **AT&T-STATE OHIO** hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning **CELESTIS**'s (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of Lawful Unbundled Network Elements (including combining with **CELESTIS**' Network Elements) in **AT&T-STATE OHIO**'s network or **CELESTIS**'s use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with Lawful UNEs are vendor licenses and warranties and are a part of the Intellectual Property rights **AT&T-STATE OHIO** agrees in Section 16.5.1.1 to use its best efforts to obtain. Formatted ... [204]
- 16.5.3 **AT&T-STATE OHIO** does not and shall not indemnify, defend or hold **CELESTIS** harmless, nor be responsible for indemnifying or defending, or holding **CELESTIS** harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to **CELESTIS**' Interconnection with **AT&T-STATE OHIO**'s network and unbundling and/or combining **AT&T-STATE OHIO**'s Lawful Unbundled Network Elements (including combining with **CELESTIS**' Network Elements) or **CELESTIS**'s use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with Lawful UNEs shall be vendor's indemnities and are a part of the Intellectual Property rights **AT&T-STATE OHIO** agrees in Section 16.5.1.1 to use its best efforts to obtain. Formatted ... [205]
- 16.6 **CELESTIS** shall reimburse **AT&T-STATE OHIO** for damages to **AT&T-STATE OHIO**'s facilities utilized to provide Collocation, or Interconnection or Lawful UNEs hereunder caused by the negligence or willful act of **CELESTIS**, its agents or subcontractors or **CELESTIS**'s End User or resulting from **CELESTIS**'s improper use of **AT&T-STATE OHIO**'s facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than **AT&T-STATE OHIO**. Upon reimbursement for damages, **AT&T-STATE OHIO** will cooperate with **CELESTIS** in prosecuting a claim against the person causing such damage. **CELESTIS** shall be subrogated to the right of recovery by **AT&T-STATE OHIO** for the damages to the extent of such payment. Formatted ... [206]
- 16.7 Notwithstanding any other provision in this Agreement, each Party agrees that should it cause any non-standard digital subscriber line ("xDSL") technologies (as that term is defined in the applicable Appendix DSL and/or the applicable commission-ordered tariff, as appropriate) to be deployed or used in

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connection with or on **AT&T-ILLINOIS & AT&T-TEXAS** facilities, that Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other Telecommunications Service degradation, or damage to the other Party's ("Indemnitee's") facilities.

16.8 Indemnification Procedures

- 16.8.1 Whenever a claim shall arise for indemnification under this Section 16, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 16.8.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 16.8.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 16.8.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 16.8.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 16.8.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 16.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
- 16.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.
- 16.8.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 22.

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