

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A MAINTENANCE SERVICE AGREEMENT WITH AMERITECH FOR THE 9-1-1 SYSTEM AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of Richfield, State of Ohio:

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into a Maintenance Service Agreement with Ameritech for the 9-1-1 System, a copy of which is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to provide for the safety of the residents of the Village of Richfield; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: September 1, 1998

Michael J. Lyons  
President of Council

Donald B. Larsen  
Mayor

Dated: 9/3/98

ATTEST:  
Carole Gibson  
Clerk of Council



CONTRACT NUMBER  
70028550

EXHIBIT "A"

### AMERITECH MAINTENANCE SERVICE AGREEMENT

Business Unit: ENHANCED BUSINESS SERVICES Customer Name: VILLAGE OF RICHFIELD  
 Address: 50 W. BOWERY STREET Customer Billing Address: 4410 W. STREETSBORO ROAD  
ROOM 470  
AKRON, OH 44308 RICHFIELD, OH 44286

Date of Submission: 05/02/98  
 Account Representative: P. EMCH Number of Supplemental Attachment Pages: 1

Location of Equipment: POLICE  
4410 W. STREETSBORO ROAD  
RICHFIELD, OH 44286

#### SELECTION OF MAINTENANCE COVERAGE PLAN

Initial Term: 60 Mo From: 5/11/98 TO 5/10/03  
 Service Name: UltraSERV Monthly Price: \$ 397.17

#### MAINTENANCE PAYMENT TERMS (place an X in front of option selected)

Prepayment  Semi-Annual  
 Monthly  Annual  
 Quarterly  N/A Financing Company Name \_\_\_\_\_

#### EQUIPMENT COVERED UNDER MAINTENANCE AGREEMENT

1 POSITRON E9-1-1 SYSTEM

\* ALL ASSOCIATED COMPONENTS ARE ALSO COVERED

Contract Number: 7002855

Customer : VILLAGE OF RICHFIELD

**EQUIPMENT NOT COVERED UNDER MAINTENANCE PLAN:**

BATTERY BACK-UP UNIT, MOSCOM, AND ALL PERISHBLE/CONSUMABLE COMMODITIES (ie PRINTER RIBBONS, PRINTER CARTRIDGES, BATTERIES, HEADSETS, ETC.) ARE **NOT** COVERED UNDER AMERITECH'S MAINTENANCE PLANS.

**SPECIAL TERMS AND CONDITIONS:**

THERE ARE SIGNIFICANT ADDITIONAL TERMS AND CONDITIONS, INCLUDING WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS, CONTAINED IN THE GENERAL TERMS AND CONDITIONS AND ATTACHMENT(S) THAT ARE PART OF THIS MAINTENANCE SERVICE AGREEMENT. DO NOT SIGN THIS AGREEMENT BEFORE YOU HAVE READ ALL ITS PROVISIONS, INCLUDING THE ATTACHMENTS AND THE TERMS AND CONDITIONS. YOUR SIGNATURE BELOW INDICATES THAT YOU HAVE READ THE ENTIRE AGREEMENT AND AGREE TO ABIDE BY ITS PROVISIONS.

THIS MAINTENANCE SERVICE AGREEMENT MAY BE WITHDRAWN BY AMERITECH IF NOT SIGNED AND RETURNED BY THE CUSTOMER WITHIN NINETY (90) DAYS FROM THE DATE OF SUBMISSION REFERRED TO ABOVE.

**AGREED AND ACCEPTED:**

**CUSTOMER:**

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**AMERITECH:** v/h 5/2/98 OH/renew

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## Ameritech Maintenance Service Agreement

As used herein, "Ameritech" means Ameritech Information Systems, Inc., a Delaware corporation and its divisions. The following standard terms and conditions shall apply to this Maintenance Agreement, any attachments and any Customer purchase order that is accepted by Ameritech for the servicing of customer premises equipment (the "Product"). These standard terms and conditions, together with any attachments and any order(s) form one agreement between Ameritech and Customer, and collectively are referred to as "the Agreement".

1. (a) **Ameritech UltraSERV<sup>SM</sup> Maintenance Description.** (i) Ameritech shall provide maintenance services, including parts, for Customer's Products as well as any intra-building distribution cables provided by Ameritech in connection with the Products listed herein, which may include wire, terminals, protectors or connectors.
  - (ii) Ameritech's maintenance services shall include preventive and remedial maintenance, as required by the Products' manufacturer's specifications or by Ameritech. Replacement parts and products may be new or equivalent to new in performance. Such parts and products will be furnished on an exchange basis and the returned parts and Products will become the property of Ameritech.
  - (iii) Customer may request maintenance service twenty-four (24) hours a day, seven (7) days a week by calling Ameritech. If Customer's problem is an Emergency, Ameritech shall, within two (2) hours after Customer's Emergency notification is logged in by Ameritech's National Customer Service Center ("ANCSC"), either: (i) commence repair or replacement from a remote location; or (ii) dispatch service personnel to the site of the Emergency. An "Emergency" shall be defined herein as (i) Product which is inoperative and the inability to use such Product materially impacts Customer's operations; and/or (ii) as Customer and Ameritech have defined herein. In the event Ameritech does not respond within two (2) hours to Customer's Emergency, as defined herein, Ameritech shall provide Customer with a "Thirty Minute Free Moves, Adds and Changes ("MAC") Coupon." (The provision of such free MAC services shall be subject to and governed by the Terms and Conditions of the Maintenance Service Agreement.) In the event the problem is a non-emergency, Ameritech shall use reasonable efforts, within eight (8) business hours after Customer's problem is logged in by the ANCSC, to either: (i) commence repair or replacement from a remote location; or (ii) dispatch service personnel to Customer's site.
  - (iv) The periodic charges specified herein include all the foregoing maintenance services, performed at any time in connection with any Emergencies and any non-Emergencies performed during Ameritech's Normal Business Day. A "Normal Business Day" is defined as: Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding Ameritech's holidays. Services performed for non-emergencies outside of the Normal Business Day or outside the scope of this Agreement will be charged on a per occurrence basis for a minimum of two (2) hours at Ameritech's then prevailing discounted hourly or premium hourly rate including travel time to and from Customer's site. Customer shall also be responsible for travel and living expenses, when required. Any services performed outside of the Normal Business Day shall be performed within mutually agreed to time periods.
- (b) **Ameritech EssentialSERV<sup>SM</sup> Maintenance Description.** (i) Ameritech shall provide maintenance services, including parts, for Customer's Products, as well as any intra-building distribution cables, provided by Ameritech in connection with the Products listed herein, which may include wire, terminals, protectors or connectors.
  - (ii) Ameritech's maintenance services shall include preventive and remedial maintenance, as required by the Products' manufacturer's specifications or by Ameritech. Replacement parts and products may be new or equivalent to new in performance. Such parts and products will be furnished on an exchange basis and the returned parts and Products will become the property of Ameritech.
  - (iii) Customer may request maintenance service twenty-four (24) hours a day, seven (7) days a week by calling Ameritech. If Customer's problem is an Emergency, Ameritech shall, within two (2) business hours after Customer's Emergency notification is logged in by Ameritech's National Customer Service Center ("ANCSC"), either: (i) commence repair or replacement from a remote location; or (ii) dispatch service personnel to the site of the Emergency. An "Emergency" shall be defined herein as (i) Product which is inoperative and the inability to use such Product materially impacts Customer's operations; and/or (ii) as Customer and Ameritech have defined herein. In the event Ameritech does not respond within two (2) business hours to Customer's Emergency, as defined herein, Ameritech shall provide Customer with a "Thirty Minute Free Moves, Adds and Changes ("MAC") Coupon." (The provision of such free MAC services shall be subject to and governed by the Terms and Conditions of this Maintenance Service Agreement.) In the event the problem is a non-emergency, Ameritech shall use reasonable efforts, within eight (8) business hours after Customer's problem is logged in by the ANCSC, to either: (i) commence repair or replacement from a remote location; or (ii) dispatch service personnel to Customer's site.
  - (iv) The periodic charges specified herein include all the foregoing maintenance services, performed during Ameritech's Normal Business Day. A "Normal Business Day" is defined as: Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding Ameritech's holidays. Services performed outside of the Normal Business Day or outside the scope of this Agreement will be charged on a per occurrence basis for a minimum of two (2) hours at Ameritech's then prevailing discounted hourly or premium hourly rate including travel time to and from Customer's site. Customer shall also be responsible for travel and living expenses, when required. Any services performed outside of the Normal Business Day shall be performed within mutually agreed to time periods.
- (c) **Ameritech PrioritySERV<sup>SM</sup> Maintenance Description.** (i) Ameritech shall provide replacement parts for Customer's Products, which may include wire, terminals, protectors or connectors if provided by Ameritech in connection with the Products listed herein.
  - (ii) Customer must self maintain or utilize Ameritech technicians (at Ameritech's then prevailing discounted rates) to maintain the Products set forth herein.
  - (iii) Replacement parts and products may be new or equivalent to new in performance. Such parts and products will be furnished on an exchange basis and the returned parts and Products will become the property of Ameritech.

(iv) Customer may request maintenance service twenty-four (24) hours a day, seven (7) days a week by calling Ameritech. If Customer's problem is an Emergency, Ameritech shall, within four (4) business hours after Customer's Emergency notification is logged in by Ameritech's National Customer Service Center ("ANCSC"): (i) commence repair or replacement from a remote location; (ii) dispatch service personnel to the site of the Emergency; or (iii) ship replacement Product, provided, however, Customer must return the defective Product within ten (10) days or Ameritech shall invoice Customer for the full replacement cost. An "Emergency" shall be defined herein as (i) Product which is inoperative and the inability to use such Product materially impacts Customer's operations; and/or (ii) as Customer and Ameritech have defined herein. In the event Ameritech does not respond within four (4) business hours to Customer's Emergency, as defined herein, Ameritech shall provide Customer with a "Thirty Minute Free Moves, Adds and Changes ("MAC") Coupon". The MAC Coupon only applies if Customer utilizes Ameritech for providing the maintenance services. (The provision of such free MAC services shall be subject to and governed by the Terms and Conditions of this Maintenance Service Agreement.) In the event the problem is a non-emergency, Ameritech shall use reasonable efforts, within eight (8) business hours after Customer's problem is logged in by the ANCSC to: (i) commence repair or replacement from a remote location; (ii) dispatch service personnel to Customer's site; or (iii) ship replacement Product, provided, however, Customer must return the defective Product within ten (10) days or Ameritech shall invoice Customer for the full replacement cost. Ameritech reserves the right to inspect all defective Product and Ameritech shall have final determination of the status of such Product.

(v) The periodic charges specified herein include all the foregoing maintenance services, performed during Ameritech's Normal Business Day. A "Normal Business Day" is defined as: Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding Ameritech's holidays. Services performed will be charged on a per occurrence basis for a minimum of two (2) hours at Ameritech's then prevailing discounted hourly or premium hourly rate including travel time to and from Customer's site. Customer shall also be responsible for travel and living expenses, when required. (Customer shall be responsible for Ameritech's labor rate when Ameritech provides repair or replacement service from a remote location and if Ameritech dispatches service personnel to Customer's site.) Any services performed outside of the Normal Business Day shall be performed within mutually agreed to time periods.

(vi) Customer may, upon the agreement of the parties, utilize Ameritech to provide the labor for Customer's maintenance services. Such labor shall be provided by Ameritech at Ameritech's then prevailing discounted time and material prices.

2. **Safe Work Environment.** (a) Customer shall provide a safe work environment for Ameritech's personnel. Customer's obligations include: (i) notifying Ameritech prior to commencement of any work under this Agreement of any known environmental hazards on Customer's property or at the work site, including the presence of friable asbestos; (ii) removing or abating, at its expense, risk posed by such environmental hazards on Customer's property or at the work site; and (iii) adopting, at its expense, any other work site safety measures required by law or deemed reasonably necessary by Ameritech.  
(b) Ameritech shall have the right to suspend performance immediately where the Customer fails to comply with this provisions. Customer shall pay any costs incurred as a result of this suspension of performance. Ameritech may terminate this Agreement when any such suspension lasts longer than thirty (30) days.
3. **Warranty and Warranty Exclusions.** (a) Ameritech warrants that all services shall be performed in a safe, good and workmanlike manner and that the services, including related materials, shall materially conform to the specifications furnished to Customer by Ameritech and shall be free from material defects.  
(b) THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND AMERITECH MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
4. **Price and Payment.** (a) Customer shall pay the fees set forth in this Agreement. The payment terms set forth herein are based upon Customer meeting Ameritech's financial requirements. Fees for subsequent Maintenance renewal terms will be at Ameritech's then prevailing rates. Ameritech shall invoice Customer as set forth herein. Customer shall pay the amounts due within ten (10) days of receipt of invoice. Ameritech may, at its option, assess a charge of one and one-half percent (1-1/2%) per month or the highest amount allowed by law, whichever is lower, on past due amounts.  
(b) Ameritech may only increase the price of the Maintenance provided herein at: (i) the expiration of the initial term; (ii) the commencement of any subsequent renewal term; or (iii) the time additional Products are added to this Agreement. Ameritech shall provide Customer with a thirty (30) day written notice of such increases.  
(c) In the event Customer fails to make any payment when it is due, Customer shall pay all of Ameritech's costs of collection, including Ameritech's attorneys' fees, in addition to the amounts due.
5. **Taxes.** Customer shall pay or otherwise be responsible for all taxes which arise under this Agreement, except for any tax on Ameritech's corporate existence, status or income, including, if applicable, the Michigan Single Business Tax. Taxes shall be billed as separate items on the invoice.
6. **Customer's Responsibilities.** Throughout the term of the Maintenance Plan, Customer shall:
  - (a) Follow all of Ameritech's or the Product manufacturer's installation, operation and maintenance instructions.
  - (b) Provide the proper Product environment, electrical connections and telecommunications connections as specified by Ameritech and/or the Product manufacturer(s).
  - (c) Provide access to the Product sufficient to enable Ameritech to perform its maintenance obligations hereunder.

- (d) Provide adequate work space for Ameritech's personnel.
  - (e) Comply with all applicable laws, codes, ordinances and regulations.
  - (f) Have Ameritech perform all moves, adds or changes.
  - (g) Supply a remote access port where requested by Ameritech to include necessary hardware and public switched network access at no cost to Ameritech.
  - (h) Appoint an individual who shall be fully responsible for coordinating the activities of Customer.
  - (i) Maintain a fully supportable level of software and hardware.
7. **Term.** The term of the Maintenance Plan is set forth on the first page of the Agreement. After this initial term, the Maintenance Plan shall automatically renew for consecutive one (1) year terms until terminated by either party upon at least thirty (30) days written notice prior to the expiration of the then-existing term. Upon renewal of the Maintenance Plan, the maintenance services provided by Ameritech shall remain unchanged (except with respect to pricing) unless both parties agree in writing to any changes at the time of renewal.
  8. **Reconditioning.** If any unit of Product must be factory reconditioned because normal repair or replacement of parts cannot keep such unit in satisfactory operating condition, Ameritech shall submit a quotation for the required reconditioning to Customer. In the event Customer declines to authorize such reconditioning, Ameritech may delete such item of Product from this Agreement and Ameritech will issue the appropriate refund for the deletion, if applicable.
  9. **Product Relocation.** If Customer's Product is relocated and such relocation increases the cost for Ameritech to provide the maintenance services described herein then Ameritech may, at Ameritech's option, either terminate this Agreement, or continue to perform the maintenance services and charge Customer for any extra costs it incurs because of the relocation.
  10. **Time and Material.** Unless otherwise agreed to, services performed at Customer's request which are outside those specified herein shall be on a time, material(s) and transportation basis at Ameritech's then prevailing discounted rates. Provisioning of such services shall be at the discretion of Ameritech and shall be subject to the availability of personnel and parts, if applicable. All terms and conditions of this Agreement (except with respect to pricing) shall apply to such services.
  11. **Maintenance Not Covered.** This Agreement does not cover maintenance required to repair damages, malfunctions or service failures caused by, Customer, third parties or any Force Majeure Conditions (as described in Section 16(c)), including but not limited to power failures, lightning, storm damage, strikes, and labor disputes. Other exclusions include: batteries (including batteries for equipment back-up), headsets, perishable/consumable commodities (such as printer cartridges or ribbons), portable telephones, answering machines, power conditioners or conditioner supplies, any software which is at a revision level not currently supported by the software licensor, or causes beyond Ameritech's reasonable control.  
  
In the event a manufacturer discontinues producing a Product or in the event the Product has outlived the manufacturer's suggested product life cycle, then Ameritech shall continue to provide maintenance services for as long as parts are readily available. In the event repair parts are not readily available, Ameritech shall advise Customer and Customer shall have the option to replace the Product with a similar product at Ameritech's then prevailing rates. In the event Customer declines to authorize such replacement, Ameritech shall delete such Product(s) from this Agreement and Ameritech will issue, if applicable, a refund for such deletion.  
  
In the event Customer notifies Ameritech of a problem (under Section 1) and Ameritech reasonably determines that the problem was not caused by the Product maintained herein, Customer agrees to pay for the services rendered by Ameritech at Ameritech's then prevailing rates.
  12. **Confidentiality.** Each party shall protect the confidentiality of information provided by the other party, or to which the receiving party obtains access by virtue of its performance under this Agreement that has been identified as confidential by the disclosing party or by its nature warrants confidential treatment. The receiving party shall use such information only for the purposes of this Agreement and shall not disclose it to anyone except its employees and employees of its corporate affiliates who have a need to know the information. These nondisclosure obligations shall not apply to information that is or becomes public through no breach of this Agreement, is received from a third party free to disclose it, is independently developed by the receiving party or its required by law to be disclosed. Confidential information shall be returned to the disclosing party upon its request. The parties agree that an impending or existing violation of these confidentiality provisions would cause the disclosing party irreparable injury for which it would have no adequate remedy at law, and agree that the disclosing party shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.
  13. **Termination.** (a) Either party may terminate this Agreement immediately following written notice in the event the other party is in default as to any of its material obligations hereunder provided that (i) the defaulting party receives notice of termination containing a reasonably complete description of the default, and (ii) the defaulting party fails to cure such default within thirty (30) days of receiving such notice or ten (10) days of such notice if the default is nonpayment.  
  
(b) In the event of termination due to Customer's default, Customer shall pay all expenses associated with termination, including reasonable attorneys' fees, incurred by Ameritech to enforce any of its rights under the Agreement and/or applicable law. Customer shall also be liable for the termination charges set forth below.  
  
(c) Customer may elect to terminate this Agreement by providing thirty (30) days written notice to Ameritech. In the event Customer terminates this Agreement pursuant to this Section, Customer shall be liable for an amount equal to fifty percent (50%) of the fees for the remaining term of this Agreement.

(d) In the event Customer elects to terminate portion(s) or reduce the grade of the maintenance services provided hereunder, Customer shall be liable for fifty percent (50%) of the fees for the terminated or reduced portion of the maintenance for the remainder of the term of this Agreement.

(e) Ameritech may terminate this Agreement or any portion thereof if Customer utilizes anyone other than Ameritech to provide maintenance services and MAC for the Products which are set forth herein.

14. **Other Services.** (a) In the event Customer elects to upgrade Customer's maintenance services, Ameritech shall waive any termination fees for this Agreement as long as the upgraded services are equal to or exceed the remaining term of this Agreement.

(b) During the term of this Agreement, Ameritech shall offer to Customer discounted time and material rates and discounted Normal Business Day MAC rates.

15. **Subcontracting.** Ameritech may subcontract any or all of the work to be performed by it under this Agreement, but shall retain full responsibility for the work to be subcontracted.

16. **Limitation of Liability and Indemnification.** (a) EXCEPT FOR OBLIGATIONS UNDER THE INDEMNITY PROVISIONS OF THIS AGREEMENT, AMERITECH SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS AND BUSINESS OPPORTUNITIES, REGARDLESS OF THE CAUSE OF ACTION, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS UNDERTAKEN IN THIS AGREEMENT.

(b) EXCEPT FOR PERSONAL INJURY, DEATH OR DAMAGE TO TANGIBLE PROPERTY, REGARDLESS OF THE FORM OR CAUSE OF ACTION, AMERITECH'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE MAINTENANCE FEES PAID BY CUSTOMER FOR THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE.

(c) NEITHER AMERITECH NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY DELAY OR FAILURE IN PERFORMANCE HEREUNDER DUE TO FIRES, STRIKES, OTHER LABOR DISPUTES, EMBARGOES, REQUIREMENTS IMPOSED BY GOVERNMENT REGULATIONS, CIVIL OR MILITARY AUTHORITIES, ACTS OF GOD, THE PUBLIC ENEMY OR OTHER CAUSES WHICH ARE BEYOND THE CONTROL OF THE PARTY UNABLE TO PERFORM (HEREINAFTER "FORCE MAJEURE"). IF A FORCE MAJEURE OCCURS, THE PARTY DELAYED OR UNABLE TO PERFORM SHALL GIVE IMMEDIATE NOTICE TO THE OTHER PARTY.

(d) AMERITECH SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER, CUSTOMER'S CORPORATE AFFILIATES, AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL LOSSES, DAMAGES, CLAIMS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS), WHETHER BASED IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), TO THE EXTENT ARISING OUT OF OR RESULTING FROM (i) AMERITECH'S ACTS OR OMISSIONS, OR THOSE OF PERSONS FURNISHED BY IT, (ii) DEFECTIVE PRODUCTS OR SERVICES PROVIDED HEREUNDER, (iii) THE FAILURE OF AMERITECH TO FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR (iv) ASSERTIONS UNDER WORKERS' COMPENSATION OR SIMILAR LAWS MADE BY PERSONS FURNISHED BY AMERITECH.

CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS AMERITECH, AMERITECH'S CORPORATE AFFILIATES, AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL LOSSES, DAMAGES, CLAIMS, LIABILITIES, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS), WHETHER BASED IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), TO THE EXTENT ARISING OUT OF OR RESULTING FROM (i) CUSTOMER'S ACTS OR OMISSIONS, OR THOSE OF PERSONS FURNISHED BY IT, (ii) THE FAILURE OF CUSTOMER TO FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR (iii) ASSERTIONS UNDER WORKERS' COMPENSATION OR SIMILAR LAWS MADE BY PERSONS FURNISHED BY CUSTOMER.

THE INDEMNIFIED PARTY SHALL NOTIFY THE INDEMNIFYING PARTY OF ANY WRITTEN CLAIM, LOSS OR DEMAND FOR WHICH THE INDEMNIFYING PARTY MAY BE RESPONSIBLE UNDER THIS PROVISION AND SHALL COOPERATE WITH THE INDEMNIFYING PARTY TO FACILITATE THE DEFENSE OR SETTLEMENT OF THE CLAIM. THE INDEMNIFYING PARTY SHALL KEEP THE INDEMNIFIED PARTY REASONABLY APPRISED OF THE CONTINUING STATUS OF THE CLAIM, INCLUDING ANY LAWSUIT RESULTING THEREFROM, AND SHALL PERMIT THE INDEMNIFIED PARTY, AT ITS EXPENSE, TO PARTICIPATE IN THE DEFENSE OR SETTLEMENT OF SUCH CLAIM. THE INDEMNIFYING PARTY SHALL HAVE FINAL AUTHORITY REGARDING DEFENSE AND SETTLEMENT.

[IF SERVICES ARE TO BE PERFORMED IN OHIO]

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE EXTENT THAT ANY SERVICES ARE PERFORMED IN THE STATE OF OHIO, THE INDEMNIFYING PARTY HEREBY WAIVES ANY IMMUNITY FROM ITS OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTY, ITS CORPORATE AFFILIATES, AND THEIR OFFICERS, EMPLOYEES AND AGENTS AGAINST AND FROM CLAIMS BY EMPLOYEES OF THE INDEMNIFYING PARTY, WHICH IMMUNITY WOULD OTHERWISE ARISE BY OPERATION OF OHIO REVISED CODE §§ 4123.74 AND 4123.41 AND SECTION 35, ARTICLE II, OHIO CONSTITUTION OR ANY OTHER STATUTE OR CONSTITUTIONAL PROVISION.

(e) ANY LEGAL ACTION ARISING FROM OR IN CONNECTION WITH ANY DEFECT OR FAILURE IN ANY PRODUCT PROVIDED BY AMERITECH, OR THE PERFORMANCE OR NONPERFORMANCE OF ANY SERVICE PROVIDED BY AMERITECH, MUST BE BROUGHT WITHIN TWO (2) YEARS AFTER THE ACCEPTANCE OF SUCH PRODUCT OR SERVICE BY CUSTOMER.

(f) THIS SECTION 16 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

17. **Assignment.** (a) Neither party shall assign any right or obligation under this Agreement without the other party's prior written consent. Any attempted assignment shall be void, except that either party may assign monies due or to become due to it, provided that (i) the assigning party gives the other party at least thirty (30) days prior written notice of such assignment, and (ii) such assignment does not impose upon the other party obligations to the assignee other than the payment of such monies.
- (b) Notwithstanding the foregoing, Ameritech may assign this Agreement, in whole or in part, to any of its affiliates. Upon such assignment and assumption of liability thereto by the assignees, the assignor shall be discharged of any liability under this Agreement.
- (c) Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns.
18. **General.** (a) Failure of either party to insist on performance of any term or condition of this Agreement or to exercise any right hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.
- (b) During the provision of services under this Agreement and for a period of six (6) months thereafter, neither party shall hire or solicit to hire employees of the other with whom it has had contact in connection with performance hereunder. However, either party may hire employees of the other who respond to public solicitations of employment and are not otherwise solicited for hire.
- (c) Notices given by one party to the other under this Agreement shall be in writing and shall be delivered personally, sent by express delivery service, certified mail or first class U.S. mail, postage prepaid and addressed to the parties at the respective addresses set forth in this Agreement, or to such other address as either party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, or (iii) three (3) days after mailing in the case of first class or certified U.S. mail.
- (d) No third party shall have any rights under this Agreement as a third party beneficiary.
- (e) Customer represents that it has all requisite authority (corporate and otherwise) to enter into and perform its obligations under this Agreement.
- (f) The rights and remedies set forth in this Agreement shall be the parties' exclusive remedies, regardless of the cause of action, for the breach of this Agreement.
- (g) If either party to this Agreement takes legal action to enforce the terms of the Agreement against the other, the losing party shall bear the legal fees and expenses of the prevailing party.
- (h) This Agreement and any claims arising hereunder or related hereto, whether in contract or tort, shall be governed by the laws of Illinois, except provisions relating to conflict of laws. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Cook County, Illinois.
- (i) If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.
- (j) The terms contained in this Agreement and any attachment(s) referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither party shall be bound by any pre-printed terms additional to or different from those in this Agreement that may appear subsequently in the other party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by both parties.