



TERMS OF SERVICE

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

1. Definitions. For all purposes of the Agreement, the following terms shall have the definitions set forth below:

a. Agreement means collectively, the Telecommunications Agreement, one or more addenda ("Addenda") to supplement or modify this Agreement for specific Products, Services to be defined and more fully described in the respective addendum, and the Service Order(s) executed by the parties, as each may be amended, deleted or replaced from time to time. All references to the Agreement shall be deemed to include this document and its corresponding Addenda and Service Order(s).

b. Customer Acceptance Date means, with respect to each Service Order, the date on which SyncGlobal notifies Customer that all Services or Equipment described in such Service Order are available for Customer's use, or when Customer uses Services, with the parties acknowledging that any Customer Acceptance Date set forth on any Service Order is only an estimated date of availability of Services and that the foregoing definition of "Customer Acceptance Date" shall control for all purposes of the Agreement.

c. Customer Premises means the location or locations occupied by Customer or Customer's end users where Services or Equipment are delivered.

d. Equipment means any equipment that is either leased or sold to Customer by SyncGlobal for use in connection with the Services.

e. Facilities means all real or personal property owned or leased by SyncGlobal and used to deliver Services, and includes any Equipment that is leased to Customer by SyncGlobal.

f. Service(s) mean, individually and collectively, those telecommunications circuits, bandwidth, network monitoring services, dark fiber, colocation, Internet access, web-hosting, virtual private network ("VPN") services and/or other Internet Protocol ("IP") based data and/or voice services, and/or other telecommunications-related services and facilities described in a Service Order.

g. Service Order means a document, in the form prescribed from time to time by SyncGlobal, which sets forth, at a minimum, (i) the Service(s) or Equipment which are the subject of such Service Order, (ii) estimated Customer Acceptance Date(s), (iii) a Service or Equipment lease Order Term, and (iv) rates and charges applicable to such Service(s) and Equipment.

h. Tariff(s) means the tariff or tariffs covering some or all of the Service(s) filed by SyncGlobal with the Georgia Public Service Commission or other similar regulatory bodies from time to time and in effect during the term of this Agreement.

i. Addenda(s) means one or more Addendums attached to this contract.

2. Provision of Services and Equipment. Subject to all terms and conditions of the Agreement:

a. SyncGlobal shall, provide to the Customer those Services and Equipment specified in a Service Order; and

b. Customer shall pay for such Services and Equipment at the monthly recurring and non-recurring rates and charges provided in such Service Order as described in this Agreement.

c. SyncGlobal may, at its election, provide any additional services required for installation or use of the Services and Equipment, and Customer agrees to pay all rates and charges for such additional services upon invoice therefore by SyncGlobal.

3. Term. The term of this Agreement shall commence as of the Effective Date, and shall continue until expiration of the latest term set forth in any Service Order executed by the parties. If no term is specified on the Service Order, the term of this Agreement shall be deemed to be three (3) year. Upon the expiration of the initial Term specified in each Service Order ("Service Order Term"), or of any extension thereof, this Agreement shall continue in effect with respect to the Service covered thereby on a yearly basis upon the same terms and conditions unless terminated by either party upon thirty (30) days prior written notice; provided, however, that SyncGlobal may change the Monthly Charges applicable thereto pursuant to Section 4 hereof.

4. Third Party Services. SyncGlobal may arrange on behalf of the Customer for services to be provided by a third party ("Third-party Services"). Although this Agreement governs the terms of SyncGlobal's arrangement of Third-party Service, the service level parameters and related warranties (if any), pricing, surcharges, outage credits, required commitments, termination liability, and other service-specific terms of the Third-party Service shall be those of the provider of the Third-party Service ("Third-party Provider"). Such terms shall be passed through to the Customer; provided that, unless specifically agreed to the contrary in writing by the Customer in each case, any contracts entered into by

SyncGlobal for any such Third-party Service for which Customer may in any way become obligated hereunder (i) shall be for a term not extending beyond the term of the relevant Service, and (ii) shall not obligate Customer for any termination fees or other such charges in excess of the stated monthly recurring charges for such Third-party Service (as provided to the Customer) times the number of months remaining in the Service Term for the relevant service. In every Service Order which involves the procurement by SyncGlobal of any Third-party Service for which the Customer may in any way become obligated hereunder, SyncGlobal shall specifically identify each particular Third-party Service to be included therein.

5. Service and Equipment Ordering. Customer shall offer to purchase Service(s) and Equipment by executing a Service Order prepared by SyncGlobal, and SyncGlobal shall be deemed to have accepted such offer upon SyncGlobal's execution thereof. Each Service Order (including all terms and conditions set forth therein) shall become part of, and be subject to all terms and conditions of, the Agreement.

6. Customer Premises, SyncGlobal Facilities.

a. Customer shall allow SyncGlobal access to the Customer Premises to the extent reasonably determined by SyncGlobal for the installation, inspection and scheduled or emergency maintenance of Services or Facilities. SyncGlobal shall notify Customer two weeks in advance of any regularly scheduled maintenance that will require access to the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises, and shall ensure that Customer Premises are secure and safe from hazards to the Facilities or to SyncGlobal's employees, agents and contractors.

b. Title to all Facilities shall remain with SyncGlobal. SyncGlobal will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others, without the prior written consent of SyncGlobal, to (i) rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, (ii) use any Facilities for any purpose other than that for which SyncGlobal provides them, (iii) take any action that causes the imposition of any lien or encumbrance on the Facilities. Anything in the Agreement to the contrary notwithstanding, in no event will SyncGlobal be liable to Customer or any other person for interruption of Services or for any other loss, cost or damage caused or related to improper use or maintenance of the Facilities by Customer or third parties provided access to the Facilities by Customer in violation of this Section. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any applicable Service Order) to allow SyncGlobal to remove the Facilities from the Customer Premises (1) after termination, expiration or cancellation of the Services in connection with which the Facilities were used, and (2) for maintenance, repair, replacement or otherwise as SyncGlobal may determine is necessary or desirable from time to time.

c. Customer shall defend, indemnify and hold harmless SyncGlobal, and its successors or assigns, against any and all claims, liability, loss, damage, or harm (including without limitation reasonable legal fees) suffered by SyncGlobal to the extent that the same arise from Customer's negligence, willful misconduct or failure to perform its obligations under this Section, including without limitation any damage to, or loss of, the Facilities resulting therefrom.

d. IP phone handsets installed for use with SyncGlobal's Hosted Sync Premium IP PBX/phone service are the property of SyncGlobal. Except in the case of gross negligence by the customer, SyncGlobal agrees to replace or repair damaged handsets at no cost to the customer for the duration of the initial term agreement

7. Customer-Provided Equipment. SyncGlobal may install certain Customer-provided communications equipment at the request of Customer, but SyncGlobal shall not be responsible for the operation or maintenance of any Customer-provided communications equipment. SyncGlobal shall have no liability whatsoever with respect to the configuration, management, performance or any other issue relating to Customer-provided communications equipment.

8. Emergency Calling.

a. 911/E911 Functionality. SyncGlobal's Service includes 911/Enhanced 911 functionality ("911/E911") that may differ from the 911/E911 functionality provided with different services. As such, it may have certain limitations.

Customer has read the following information concerning the 911/E911 functionality of SyncGlobal's Service. Customer acknowledges and accepts any limitations on the 911/E911 functionality of SyncGlobal's Service. Customer agrees to convey these limitations to all persons who may have occasion to place calls over SyncGlobal's Service.

(1) Correct Location Information. In order for a 911/E911 call to be directed to the correct emergency Public Safety Answering Point ("PSAP"), the address at which the calling station is physically located at the time of the call must be registered with SyncGlobal. This address is referred to as the "Registered Location" of the calling station. At the time that SyncGlobal establishes Service, SyncGlobal will enter Customer's primary service address as the Registered Location of all of Customer's Service stations unless Customer provides one or more different Registered Locations for some or all of its Service stations. If Customer relocates any Service station to a different address without updating its Registered Location, 911/E911 calls from that station may be directed to the wrong PSAP, may transmit the wrong address, or may fail to complete altogether. Customer must provide SyncGlobal a new Registered Location before relocating any Service station to a different address by calling SyncGlobal's Customer Service or by other methods provided by SyncGlobal. SyncGlobal will need up to seven (7) business days to update each Registered Location in applicable databases before 911/E911 calls can be properly directed with the correct address information.

(2) **Service Interruptions.** SyncGlobal's Service uses the electrical power available at Customer's premises or other locations where Service stations may be located. If there is an electrical power outage, 911/E911 calling (and other SyncGlobal Services) may be interrupted if Customer does not provide backup power for its Service stations and internal network or if any such backup power fails or is exhausted. Further, calls over SyncGlobal's Service, including 911/E911 calls, may not be completed if there is a problem with network facilities, including network congestion, failure of network components or equipment or of power provided to either, or other technical problems.

(3) **Suspension or Termination of Service.** Customer acknowledges that all SyncGlobal Service, including 911/E911, will be disabled if Customer's account is suspended or terminated.

(4) **Customer Responsibility.** It is the responsibility of Customer to notify its employees, guests, vendors and others who may have occasion to use SyncGlobal's Service of the limitations on the availability of traditional 911/E911 services. SyncGlobal will provide stickers to be placed on telephones and other equipment to be used with its Service to alert users to the existence of these limitations. Customer may obtain additional stickers without charge, if needed, by calling SyncGlobal Customer Service.

b. **PBX Service.** Unless Customer subscribes to SyncGlobal's PBX 911 Detect or 911 Remote Detect Service, Customer's primary telephone number and primary service address, and not the direct-dial number or physical address of an individual calling station, will be delivered to the PSAP serving Customer's primary service address when a 911/E911 call is placed using SyncGlobal's Service. With SyncGlobal's 911 Detect or 911 Remote Detect, the direct-dial telephone number and the actual physical address of the calling station will be delivered to the PSAP serving the physical address where the calling station is located if Customer provides the physical address of each station to SyncGlobal. SyncGlobal may need up to seven (7) business days to update the physical address of a station in applicable databases before 911/E911 calls can be properly directed with the correct address information. Additional recurring and non-recurring charges apply for SyncGlobal's 911 Detect and 911 Remote Detect Services.

c. **Limitation of Liability and Indemnification.** Customer acknowledges and agrees that SyncGlobal will not be liable for any service outage, inability to dial 911/E911 using SyncGlobal's Service, and/or inability to access emergency service personnel. Customer agrees to defend, indemnify, and hold harmless SyncGlobal and its affiliates, suppliers or agents from any and all claims, losses, damages, fines, penalties, costs, and expenses (including but not limited to reasonable attorney fees) by, or on behalf of, Customer or any third party or user of the SyncGlobal's Service relating to the failure or outage of the Services, including those related to 911/E911.

9. **Credit Approval and Deposits.** Customer will provide SyncGlobal with credit information regarding Customer if requested, and delivery of Services and

Equipment is expressly made subject to credit approval. SyncGlobal may require Customer to make a deposit (which will not exceed Customer's estimated charges for all Services for two months) as a condition to SyncGlobal's acceptance of a Service Order, or as a condition to SyncGlobal's continuation of Services. The deposit will be held by SyncGlobal as security for payment of Customer's charges, and, in SyncGlobal's sole discretion, may be applied against any past-due charge (in which case, Customer may be required to replenish such deposit). Upon termination of the Agreement, the amount of the deposit then remaining will be credited to Customer's account and any remaining credit balance (if any) will be refunded to Customer.

10. **Rates and Charges.** Rates and charges for Service(s) and Equipment shall be set forth in the Service Order pursuant to which such Service(s) and Equipment are provided to Customer. Charges for additional services, required for installation or use of such Services or Equipment shall be at SyncGlobal's then-current charges for same or specified in the applicable Service Order for the addition. Billing to Customer for recurring charges with respect to a given Service(s) or Equipment will commence on the Customer Acceptance Date for such Service(s) or Equipment. All other charges for Services, Equipment or additional services may be billed at the times designated by SyncGlobal. If any sales taxes, value added taxes, third-party charges or other charges or impositions are asserted against SyncGlobal after, or as a result of, Customer's use of Services by any local, state, national, international, public or quasi-public governmental entity or foreign government or its political subdivision, including without limitation, any tax or charge levied to support the Federal Universal Service Fund contemplated by the Telecommunications Act of 1996 and any amendment to, or any state or foreign equivalent ("Additional Charges"), Customer agrees to pay any such Additional Charges, together with a one percent (1%) administrative fee, and hold SyncGlobal harmless from any liability or expense associated with such Additional Charges.

11. **Payment.**

a. SyncGlobal shall invoice Customer for recurring charges for the Services, Equipment, other Charges and for charges for additional services required for installation or use of such Services, on a monthly basis; provided, however, that SyncGlobal may invoice Customer for nonrecurring charges at any time. Billing for partial months is prorated based on a calendar month. Customer shall pay all amounts set forth on an invoice no later than the due date set forth thereon, or, if no due date is set forth thereon, within thirty (30) days after the date of the invoice. Past due amounts bear interest at a rate of 1.5% per month (or the highest rate allowed by law, whichever is less) beginning from the date first due until paid in full. Customer agrees to pay SyncGlobal its reasonable expenses, including attorney and collection agency fees, incurred in enforcing SyncGlobal's rights under the Agreement.

b. Customer is responsible for all Service charges, even if incurred as the result of unauthorized use, except that Customer shall not be responsible for fraudulent or unauthorized use (i) by SyncGlobal or its employees, or (ii) by third parties to the extent that such use (A) is caused by SyncGlobal's gross negligence or willful misconduct, or

(B) originates on SyncGlobal's side of the Demarcation Point. For purposes hereof "Demarcation Point" if applicable, shall be defined as a pre-established minimum point of entry (MPOE) in the building within which the Customer Premises (location directly and exclusively occupied by Customer to which Service is delivered) is located.

12. Disputed Invoices. In the event Customer disputes any portion of a SyncGlobal invoice, Customer shall pay the undisputed portion of the invoice by the date the same is due, and shall submit to SyncGlobal a written claim for the disputed amount, which claim sets forth with specificity Customer's grounds for such dispute. All claims must be submitted to SyncGlobal within sixty (60) days of receipt of the invoice for those Services. Customer waives the right to dispute any charges not disputed within such sixty (60) day period. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced in, and calculated in accordance with, Section 9.

13. Use of SyncGlobal Marks. Customer shall not use any trademarks, service marks, logos or trade names of SyncGlobal (the "**SyncGlobal Marks**") in any manner whatsoever, including without limitation in any advertising, signage, marketing materials, website content, brochures or any other materials in any medium, without SyncGlobal's express advance written consent.

14. Customer's Use of Service and Equipment. Customer shall defend, indemnify, and hold harmless SyncGlobal from and against any and all costs, losses, harm or damages (including without limitation reasonable attorney's fees) arising out of or relating to Customer's use of the Services or Equipment, including claims resulting from use of the Services by Customer's end users and/or the content of any communications transmitted via the Service(s). Customer shall not cause or permit Customer or Customer's end users to use the Services and Equipment: (i) to violate, or in connection with any act or omission which violates, any law, rule, regulation or policy of any government authority; (ii) for any unlawful, immoral, invasive, infringing, harassing, defamatory, fraudulent, or obscene purpose; or (iii) in a manner that violates SyncGlobal's then-current publicly available policies regarding acceptable use of Service(s) available at <http://www.syncglobal.net/syncglobal-aup.pdf>. Customer shall pay all charges arising from all use of the Services by Customer or its end users, without regard to whether such use was authorized by Customer.

15. Nondisclosure.

a. SyncGlobal and Customer acknowledge that, in the course of performance under the Agreement, a party may receive (the "**Receiving Party**") Confidential Information (as hereinafter defined) of the other party (the "**Disclosing Party**"). Neither party shall disclose to any third party or use for any purpose whatsoever, except to the extent required for such party's performance under the Agreement, any Confidential Information of the other party. Anything in this Section to the contrary notwithstanding the obligation of Receiving Party to protect the confidentiality of any information or materials shall terminate as to any information or materials which: (i) are, or become, public knowledge through no act or failure to

act of the Receiving Party; (ii) are publicly disclosed by the proprietor thereof; (iii) are lawfully obtained without obligations of confidentiality by the Receiving Party from a third party after reasonable inquiry regarding the authority of such third party to possess and divulge the same; (iv) are independently developed by the Receiving Party from sources, or through persons, that the Receiving Party can demonstrate had no access to Confidential Information of the Disclosing Party; or (v) are lawfully known by the Receiving Party at the time of disclosure other than by reason of discussions with or disclosures by the Disclosing Party.

b. For all purposes of the Agreement, "**Confidential Information**" shall mean all technical, economic, business, engineering or other information (including "trade secrets", as that term is defined at Section 10-1-761(4) of the Official Code of Georgia Annotated) which is proprietary to the Disclosing Party (or with respect to which the Disclosing Party owes a third party a duty of confidence) and which the Disclosing Party discloses to the Receiving Party either (i) in tangible form marked as confidential, or (ii) orally, provided that the Disclosing Party identifies such information disclosed orally as being confidential at the time of disclosure and then promptly confirms the confidential nature of such information in writing to the Receiving Party.

16. Force Majeure. If either party shall be prevented from performing any portion of the Agreement (except obligations for the payment of money) by causes beyond its control, including without limitation labor disputes, civil commotion, war, governmental regulations or controls, inability to obtain materials or service(s), casualty to or failure of equipment, software or communications services, or acts of God, such party shall be excused from performance for the period of the delay and the time for such party's performance shall be extended for a period of time equal to the duration of the conditions causing such delay.

17. Suspension of Service(s).

a. SyncGlobal may suspend Service(s) without liability if Customer fails to pay a past due balance for charges (other than amounts disputed in accordance with Section 11) within five (5) business days after Customer's receipt of written notice from SyncGlobal of planned suspension of Services, and may continue such suspension until all amounts due are paid in full and Customer has satisfied any applicable credit or deposit requirements of SyncGlobal, or SyncGlobal terminates the applicable Service(s), Service Order(s) or the Agreement pursuant to Sections 17 or 18.

b. SyncGlobal may immediately suspend Service(s) without liability if Customer violates its obligations under Section 12, 13, or 14, and may continue such suspension until any such violation has been cured to the reasonable satisfaction of SyncGlobal, or until SyncGlobal terminates the applicable Service(s), the Service Order or the Agreement pursuant to Section 17 or 18.

18. Termination by SyncGlobal. SyncGlobal may, by sending written notice of termination to Customer with termination effective as of the date such notice is given,

terminate the Agreement or any Service Order, all without liability, in the event that:

a. any amounts due and owing by Customer (other than amounts disputed in accordance with Section 11) remain unpaid sixty (60) days after the date such amounts were first due;

b. Customer (i) suspends its business operations; (ii) becomes insolvent, (iii) makes a general assignment for the benefit of creditors, or (iv) files (or has filed against it) a petition in bankruptcy;

c. Customer's use of Services materially exceeds Customer's credit limit and/or then-current deposit balance, unless (i) within five (5) business days' written notice thereof by SyncGlobal, Customer provides adequate security for payment for Services, or (ii) prior to materially exceeding such credit limit, Customer has provided to SyncGlobal adequate security for payment for Services;

d. anything in Section 17 or 18 to the contrary notwithstanding, Customer breaches Section 13 with respect to Services, or Customer's end users use Service(s) in a manner described at subsection (i), (ii), or (iii) of Section 13, more than three (3) times in any one hundred eighty (180) day period during the term applicable to such Services;

e. SyncGlobal is ordered, by a federal, state or local governmental entity, regulatory body or court of competent jurisdiction, to cease providing Service(s); or

f. changes in applicable law, regulation, decision, rule or order materially increase the costs to SyncGlobal of, or materially affects other terms of SyncGlobal's delivery of Service(s), and SyncGlobal and Customer are unable to reach agreement respecting new rates, terms and/or conditions regarding such Service(s) within thirty (30) days after SyncGlobal's delivery of written notice requesting renegotiation thereof.

g. SyncGlobal deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities, or Services.

h. SyncGlobal determines that such Service violated any law, statute, or ordinance, including the Communications Act of 1934 (as amended), or that the imposition of any statute, or promulgation of any rule, regulation, or order of the Federal Communications Commission or other governing body makes SyncGlobal's performance under this Agreement commercially impracticable;

19. Termination by Either Party. In addition to any other right of a party to terminate the Agreement or a Service Order, a party may, by sending written notice of termination to the breaching party with termination effective as of the date such notice is given, terminate the Agreement or a Service Order in the event such party believes the other party has committed a material breach of any obligation undertaken in the Agreement or the Service Order (as the case may be), provided that such non-breaching party has first delivered written notice of

such breach to the other party, and (i) if the breach arises other than under Sections 3, 4, 10, 13 or 14, thirty (30) calendar days have passed since receipt of said notice and the breaching party has not cured such breach, (ii) if the breach arises under Sections 3, 4, 10, 13 or 14, five (5) business days have passed since receipt of said notice and the breaching party has not cured such breach. Termination and receipt of any applicable credits are Customer's sole remedies in the event of any SyncGlobal default. Termination of this Agreement for cause does not relieve Customer of any obligations to pay SyncGlobal for charges accrued for Service or applicable cancellation and/or disconnection charges.

20. Termination by Customer.

a. Customer may terminate a Service Order prior to the end of the term therefore without payment of any applicable termination charge if: (i) any Service offered under the Service Order is Unavailable (as defined below) on two (2) or more separate occasions of more than three (3) hours each in any thirty (30) day period, or (ii) such Service is Unavailable for more than twelve (12) hours (measured in the aggregate) at any time within any sixty (60) day period. For purposes of the foregoing, "Unavailable" shall mean a total interruption in any Service specified in the Service Order, except for any interruption that is an Excused Outage. The duration of any interruption will commence when SyncGlobal first detects or is made aware of such interruption of a Service and will end when the Service first ceases to be fully interrupted. Customer must exercise its right to terminate the Service Order under this Section, in writing, within thirty (30) days after the occurrence that gave rise to a right of termination hereunder. "**Excused Outage**" means an interruption, outage, unavailability, delay in provision of, or other degradation of, Service caused by (x) scheduled maintenance events of which Customer receives prior notice, (y) actions or inactions of Customer or Customer's end users, or failure of Customer-provided power or equipment, or (z) an event of force majeure as defined in Section 15.

b. In addition to any other right of Customer to terminate the Agreement or a Service Order hereunder, Customer may terminate the Agreement or a Service Order prior to the end of the term thereof upon thirty (30) days' prior written notice to SyncGlobal, subject to payment to SyncGlobal, in addition to any other charges incurred by such Customer in connection with any Service Order(s), of the termination charges set forth in Section 4, and 21.

21. Effect of Termination.

a. Upon termination or expiration of the Agreement or a Service Order for any cause whatsoever:

(1) all obligations of SyncGlobal under the Agreement or a Service Order (as applicable) shall immediately terminate; provided, however that each party's respective obligations under Section 14 hereof and Customer's defense and indemnification obligations shall survive the termination or expiration of the Agreement or Service Order (as applicable); and

(2) all payment obligations of Customer under the Agreement or Service Order (as applicable) with respect to such terminated Service(s) (including any obligations to pay termination charges in connection therewith), shall accrue through the date of such termination and shall become immediately due and payable.

22. Termination Charges. Upon termination of the Agreement or of a Service Order by SyncGlobal pursuant to Section 17(a), 17(b), 17(c), 17(d) or 18 or by Customer for any reason other than pursuant to Section 18 or 19(a), SyncGlobal may, in addition to all other remedies that may be available to SyncGlobal at law or in equity, assess and collect from Customer, and Customer shall pay, a termination charge equal to the sum of (i) all credits or waivers of charges applied to Customer's account from the Effective Date to the date of termination with respect to each terminated Service Order; and (ii) an amount equal to one hundred percent (100%) of the recurring monthly charges for each month remaining in the then-current term of each terminated Service Order.

23. LIMITATION OF LIABILITY

a. Any other provision of the Agreement to the contrary notwithstanding, the aggregate liability of SyncGlobal to Customer for any losses or damage, whether direct or indirect, arising out of or in connection with the Agreement or the use of any Services or Facilities by Customer or any Customer end user, including without limitation any cause of action sounding in contract, tort or strict liability, shall be limited to actual, direct damages incurred but in no event shall exceed an amount equal to the proportionate fixed monthly charge paid to SyncGlobal by Customer for the Service(s) and Equipment which gave rise to the liability during the one (1) month period of time immediately prior to the occurrence of the act or omission giving rise to such liability. SyncGlobal's liability and SyncGlobal's Advertising & Publishing provider BellSouth Advertising & Publishing Corporation (BAPCO) in total per Customer for any errors or omissions in directories, directory listings, yellow and white page publications shall be limited to One Dollar (\$1).

b. Except for Customer's indemnification obligations under the Agreement, neither party shall be liable to the other party for lost profits or other consequential damages, special damages, general damages, incidental damages, indirect damages, or exemplary or punitive damages, cover damages, or for any claims against such other party by any third party, even if such party was advised of the possibility of same.

c. Each party represents and warrants that it is fully authorized to enter into this Agreement. SyncGlobal represents and warrants that the Services will be provided in accordance with the applicable Service Schedule and generally applicable industry standards. The Parties agree that for the purposes of this Agreement, industry standards shall be defined as the standards set forth in the relevant Bellcore technical references and technical advisories, if available. SyncGlobal does not guarantee, represent or warrant that the Service(s) will be without interruption

d. PROVIDED HEREIN, IN NO EVENT SHALL SYNCGLOBAL BE LIABLE TO THE CUSTOMER, OR ANY END USER OR ANY OTHER PARTY, PERSON OR ENTITY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF MISTAKES, ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS, LOST DATA, CLAIMS OF THIRD PARTIES, OR DEFECTS IN TRANSMISSION, OR DELAYS, INCLUDING THOSE WHICH MAY BE CAUSED BY REGULATORY OR JUDICIAL AUTHORITIES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OBLIGATIONS OF EITHER PARTY PURSUANT TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT INCLUDING NEGLIGENCE AND OTHERWISE. EXCEPT AS OTHERWISE SET FORTH HEREIN, SYNCGLOBAL MAKES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR ANY PURPOSE, OR NON-INFRINGEMENT OF THE SERVICE OR, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED BY SYNCGLOBAL. SYNCGLOBAL'S LIABILITY TO CUSTOMER FOR DIRECT DAMAGES (INCLUDING WITHOUT LIMITATION SERVICE OUTAGE CREDITS) MAY NOT EXCEED ONE MONTH'S CALCULATION OF THE APPLICABLE MRCS REGARDLESS OF THE FORM OF ACTION, NATURE OF THE CLAIM ASSERTED OR THE FRUSTRATION OF EITHER PARTY'S PURPOSE. SYNCGLOBAL HAS NO LIABILITY FOR THE CONTENT OF INFORMATION THAT CUSTOMER PASSES THROUGH SYNCGLOBAL'S NETWORK, CUSTOMER'S TRANSMISSION ERRORS, OR ANY FAILURE TO ESTABLISH CONNECTIONS OUTSIDE OF THE SYNCGLOBAL NETWORK.

e. 911/E911 Service. SyncGlobal and its employees, directors, officers, and agents, shall not be liable for any damages for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of SyncGlobal or any of its employees, directors, officers, or agents, except for willful or wanton misconduct, either in connection with developing, adopting, implementing, maintaining, or operating any emergency 9-1-1 system or in the identification of the telephone number, address, or name associated with any person accessing an emergency 9-1-1 system, and Customer hereby releases SyncGlobal from and agrees to indemnify SyncGlobal against any such liability.

24. Exclusive Remedies. Except as otherwise specifically provided for herein, the remedies set forth in this Agreement comprise the exclusive remedies available to Customer in law or in equity.

25. Indemnity.

a. Customer ("Indemnitor") will defend, indemnify and hold harmless SyncGlobal and its employees, officers, directors and partners (each, an "Indemnitee") from and against all third-party claims, actions, damages, liabilities, costs, fees and expenses, including without limitation

reasonable attorneys' fees, for physical damage to tangible property such as but not limited to fire damage related directly or indirectly to SyncGlobal customer located equipment, or bodily injury arising from Indemnitor's negligence or misconduct in connection with the performance of this Agreement. Customer will defend, indemnify and hold SyncGlobal harmless from and against all third-party claims, actions, damages, liabilities, costs, fees and expenses, including without limitation reasonable attorneys' fees, arising from violation of any third party intellectual property right, claims of any kind by End Users, and/or Customer's or its End users' negligent, willful, improper or illegal use, misuse, abuse, modification, or resale of the Services. Customer will defend, indemnify and hold SyncGlobal harmless from and against claim or loss for, alleging, or arising from any bodily injury, including but not limited to death, mental injury, mental anguish or distress, and mental disease. Customer agrees to defend, indemnify and hold harmless SyncGlobal and BAPCO from all damages, claims, suits, losses or expenses, including without limitation costs and attorney's fees, to the extent of their relative fault, arising out of or resulting from any error, omission or act of such party hereunder associated with directory services or listings. Customer will maintain property insurance (customer's and SyncGlobal's property) in amounts sufficient to replace customers and SyncGlobal's property listing SyncGlobal as additional insured.

b. Customer understands that music on hold transmitted via telephone lines and IP is a public performance of music. Customer agrees to defend, indemnify and hold harmless SyncGlobal for any misuse of public performance rights for music Customer uploads, uses, or in any way associates with any SyncGlobal provided Music on Hold Service or other Services.

26. Assignment. Customer may not assign any portion of this Agreement, voluntarily or involuntarily, including without limitation by operation of law or by merger in which such party does not survive, except with the express consent of SyncGlobal, and any attempt to do so shall be null and void. No person or entity not a party hereto shall have any interest herein or be deemed a third party beneficiary hereof, and nothing contained herein shall be construed to create any rights enforceable by any other person or third party.

27. Notice. Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective upon receipt, and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package delivery or courier service; or (iii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid. All notices given under the Agreement shall be addressed to the individuals identified on the Service Order (at the address designated thereon) or to such other addresses of which the parties have been advised in writing by any of the above-described means.

28. Governing Law. The Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to Georgia's conflict of law principles. The parties agree that any

appropriate state or district court located in Fulton County, Georgia, shall have exclusive jurisdiction over any case or controversy arising hereunder, and Customer hereby consents to the personal jurisdiction of all such courts over Customer.

29. Entire Agreement. This Agreement, including without limitation all Service Order(s), and addenda constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, and, except as provided herein, may not be amended, modified or altered except by a written instrument duly executed by the parties.

30. Severability. Any provision of the Agreement held or determined by a court (or other legal authority) of competent jurisdiction to be illegal, invalid or unenforceable in any jurisdiction shall be deemed separate, distinct and independent, and shall be ineffective only to the extent of such holding or determination without (i) invalidating the remaining provisions of the Agreement in that jurisdiction or (ii) affecting the legality, validity or enforceability of such provision in any other jurisdiction.

31. Relationship of Parties. Nothing in the Agreement shall be construed as creating a joint venture or partnership between the parties. Neither party has or shall have any authority to bind, assume any obligation for or incur any debt on behalf of the other party in any respect whatsoever.

32. Effect of Tariffs. With respect to those Service(s) offered under SyncGlobal's Tariff(s), the Agreement is subject to and controlled by the provisions of the Tariff, and any changes to said Tariff that may be made from time to time. Such Tariff provisions and changes shall control over any conflicting provisions of this Agreement.

33. This Agreement consists of all the terms and conditions contained herein and in documents incorporated herein specifically by reference. This Agreement constitutes the complete and exclusive statement of the understanding between the parties and supersedes all proposals and prior agreements (oral or written) between the parties relating to Services provided hereunder.