



STANDARD TERMS AND CONDITIONS

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The following STANDARD TERMS AND CONDITIONS ("Terms") are the terms and conditions under which Syringa Networks, LLC ("Syringa Networks") agrees to sell its services ("Services") to a customer ("Customer") of such Services where such Customer has not entered into a Master Services Agreement with Syringa Networks.

THE FOLLOWING IS A LEGALLY BINDING AGREEMENT BETWEEN CUSTOMER AND SYRINGA NETWORKS WITH RESPECT TO SERVICES. EACH CUSTOMER EXPRESSLY REPRESENTS AND WARRANTS THAT (i) THE CUSTOMER HAS READ, UNDERSTOOD, ACCEPTED AND AGREED TO EACH AND EVERY ONE OF THE TERMS SET FORTH BELOW; (ii) IS AT LEAST 18 YEARS OF AGE; (iii) HAS THE POWER AND AUTHORITY TO ENTER INTO THE TERMS.

The Terms will become binding upon Syringa Networks for any Service Order only when the Services are delivered to Customer. The Terms shall be immediately binding upon Customer upon its placement of any Service Order, regardless of how such Service Order is placed. Any deviations from these Terms are not valid unless expressly confirmed in a signed writing by Syringa Networks. The parties reject any and all terms and conditions that are supplemental to these Terms unless expressly approved in a signed writing by Syringa Networks. No course of prior dealing, business practices (whether existing, past or future) of Syringa Networks with respect to sales of Services through online, offline or other channels or means, or industry practices, will modify, supplement or explain the Terms used herein.

The Terms also incorporate the terms and conditions of Syringa Network's Acceptable Use Policy (available at: http://www.syringanetworks.net/resources/acceptable_use_policy/) as if fully set forth herein. The terms and conditions of Syringa Network's Acceptable Use Policy are subject to change with notice to Customer by publication to Syringa Network's website as identified above; Customer is responsible for monitoring the identified website for changes.

ARTICLE 1- DEFINITIONS

1. Meaning. Words shall have their normal or common meanings, except as otherwise defined in this Agreement:

(a) **Affiliate:** An entity that controls, is controlled by, or is under common control with, either Syringa Networks or Customer. "Control" is the ability to affect, directly or indirectly, the policies, management and operations of an entity through ownership of voting securities, by contract, or otherwise.

(b) **Agreement:** These Terms, including incorporated Addenda, Exhibits, Schedules, Appendices and other documents, as well as any amendments made by the Parties.

(c) **Circuit.** A telecommunications facility connecting two or more Customer locations.

(d) **Effective Date:** The date on which these Standard Terms and Conditions become legally binding on the Parties, identified as the date on which Customer signs the Exhibit A Service Order.

(e) **Exhibit:** A document (including appended Schedules or other attachments) that is appended to and made part of this Agreement and pertains to a particular product, including without limitation any and all Exhibit A Service Orders.

(f) **Governmental Charges:** Charges, both retroactive and prospective, that Syringa Networks is required or permitted to collect from Customer in connection with the furnishing of Service by Syringa Networks. The charges result from the application, enforcement or interpretation of existing, new or revised laws or regulations, actions taken by federal, state, local or foreign regulatory authorities, or judicial acts or decisions (collectively, "Governmental Activity") that directly or indirectly impose costs on Syringa Networks. Governmental Charges include, but are not limited to, those arising out of local, state, federal, foreign and third-party actions, programs or requirements relating to Universal Service, number portability, TRS, E911, access, reciprocal compensation and franchising.

(g) **Network:** The telecommunications network of one of the Parties, as applicable.

(h) **On-Net Service:** Service where all locations at which Service is provided are served directly by Syringa Networks' Network, allowing the entire Service to be furnished by Syringa Networks.

(i) **Point of Presence (POP):** A specific location within a Local Access Transport Area (LATA) where Service originates or terminates.

(j) **Point of Termination:** A location at which Syringa Networks' Service responsibilities end and Customer's responsibilities begin. A Point of Termination may be the demarc where Syringa Networks and Customer interconnect at Customer Premises, a local exchange carrier's central office, or a long-distance carrier's POP identified on Exhibit A.

(k) **Premises:** A physical address at which Service is provided and identified as a Point of Termination or Service location in a Service Order.

(l) **Customer:** The person, firm, corporation or other entity that orders Service and is responsible for the payment of all charges for Service, as well as compliance with applicable requirements set forth in this Agreement.

(m) **Service:** Syringa Networks-provided telecommunications or related service described in an Exhibit, a Schedule or a Service Order. Service may include entrance cables or drop wires terminating in a Syringa Networks distribution panel (DSX) situated on Customer Premises.

(n) **Service Order or Exhibit A:** A Service request set forth on an "Exhibit A" form that specifies the type and quantity of Service desired, Premises addresses, Points of Termination, protocols, requested Start of Service Date, and other information needed to provision Service.

(o) **Service Request Date:** The Service availability date requested by Customer in a Service Order.

(p) **Start of Service Date:** The date Service is first available for use by Customer, which date may be an accepted Service Request Date or the date Syringa Networks notifies Customer of Service availability. Syringa will commence billing Customer for the Service(s) ordered as of the Start of Service Date for the Term indicated in the Service Order ("Exhibit A").

(q) **Taxes:** Amounts Syringa Networks is required or permitted by federal, state, local or foreign taxing authorities to collect from Customer in connection with the furnishing of Service. Taxes include, but are not limited to, personal property taxes on property used to provide Service and sales, use, receipts, telecommunications, excise, utility, or other similar transaction-based taxes, however designated, imposed directly on the Service or upon Syringa Networks as a result of its provision of Service. "Taxes" does not include any tax based on Syringa Networks' net income, net worth, capital structure or payroll.

ARTICLE 2 - SERVICE; OBLIGATIONS/LIMITATIONS

1. Service. Syringa Networks will provide, and Customer will receive, the Service or Services as set forth in an Exhibit A and such subsequent Exhibit A as the Parties may mutually agree. Syringa Networks shall not be required to provide any Service for which it has not received a signed Exhibit A and signed billing information schedule from Customer. Syringa Networks will be deemed to have accepted such Exhibit A at such time as Syringa Networks signs the Exhibit A. Notwithstanding the foregoing, any Exhibit A not signed by Syringa Networks will be deemed valid and binding upon the Parties upon commencement and acceptance of the Services ordered pursuant to such Exhibit A.

2. Availability of Facilities.

(a) Service is offered and furnished subject to the availability of all necessary facilities, including those acquired by Syringa Networks from or through third parties. Service where one or more of the locations at which Service is provided is not served directly by Syringa Networks' Network, may require that a portion of Service be furnished by a third-party service provider. When Syringa Networks provides a portion of Service furnished by a third-party, the terms, conditions and pricing is done on an individual case basis ("ICB") and will be subject to the requirements of the underlying service provider for that part of the Service it provides. Syringa Networks may limit or allocate Service, if necessary, due to facilities availability, taking into account Syringa Networks' then-current and projected capacity and the reasonable expectations of its existing and future customers.

(b) Except as expressly provided otherwise in an Exhibit or Service Order, Syringa Networks, following the provision of reasonable notice to Customer, may: (1) alter the methods, processes or suppliers by or through which it provides Service; (2) discontinue furnishing a feature or supporting an application associated with Service; (3) change the facilities used to provide Service; or (4) substitute comparable Service for that being furnished to Customer.

(c) Except as expressly provided otherwise in an Exhibit or Service Order, the facilities used to provide Service will be of Syringa Networks' exclusive choosing. In no event will title to those facilities vest in Customer or any other individual or entity.

3. Equipment and Access to Premises.

(a) Syringa Networks will own and control all Syringa Networks equipment necessary to provide the Service, which will remain Syringa Networks' personal property regardless of where located or attached ("Syringa Networks Equipment"). Syringa Networks may upgrade, replace or remove Syringa Networks Equipment, regardless of where located, so long as the Services continue in effect as set forth herein. Customer may not alter, move or disconnect Syringa Networks Equipment and is responsible for any damage to, or loss of, Syringa Networks Equipment caused by Customer's breach of this provision

or as the result of Customer's negligence or willful misconduct. Syringa Networks has no obligation to install, maintain or repair any equipment owned or provided by Customer, unless otherwise agreed to in a writing executed by the Parties. If Customer's equipment is incompatible with the Service, Customer is responsible for any special interface equipment or facilities necessary to achieve compatibility. Syringa Networks shall not be liable for any failure to provide or maintain any Service if such failure is the result of a lack of access rights as required hereunder.

(b) Syringa Networks may require access to Customer's premises to provision, install, inspect, maintain and repair the Services and the Syringa Networks Equipment. Customer must provide Syringa Networks with a contact and/or help desk number that can be reached at all times. Customer must also provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for installation and maintenance of the Syringa Networks Equipment at Customer's premises.

(c) If Customer intends to connect the Services to facilities that it does not own, it must provide Syringa Networks with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

(d) If Customer requests that Syringa Networks perform work associated with Customer's side of the Point of Demarcation, such as demarcation extensions, preparation of Customer's premises, testing of Customer's equipment or facilities, inside wiring and/or maintenance work on Customer's equipment, facilities or wiring, and Syringa Networks agrees to perform such work, Customer shall be responsible for paying Syringa Networks a time and materials charge associated with performance of the work.

4. Delays; Non-performance. Syringa Networks will not be liable to Customer or others with respect to any: (a) delay in meeting a Service Request Date; or (b) inability to provide Service after the Start of Service Date, except to the extent set forth in this Agreement.

5. Customer Information. Customer must provide all information necessary to provision Service, and/or such other information reasonably requested by Syringa Networks relating, among other things, to Customer's application or use of Service.

ARTICLE 3 - BILLING; PAYMENT; FINANCIAL STANDING

1. Billing. Monthly recurring charges are billed in advance; usage charges are billed in arrears; and non-recurring charges may be billed in advance or in arrears, as agreed in any Service Order. If Service is made available on a day other than the first day of a monthly billing period, or if Service is discontinued on a day other than the last day of a monthly billing period, monthly recurring charges will be prorated for the monthly billing period.

2. Customer Payment Obligation. Except as provided in Section 3.5 with respect to disputed amounts or as set forth on any Exhibit, Customer must pay all invoiced charges for Service without deduction or setoff within thirty (30) days of the date of an invoice ("Payment Period"). Unless otherwise permitted by Syringa Networks, payment must be made by check or wire transfer in accordance with instructions provided by Syringa Networks. If payment is made by check any restrictive endorsements or statements placed on checks will not be binding on Syringa Networks.

3. Late Payments.

(a) Interest. Except with respect to amounts disputed in good-faith by Customer, compounded interest shall accrue on invoiced charges not paid within the Payment Period as follows: (i) all sums remaining unpaid between one (1) and fifty nine (59) days after the expiration of the Payment Period shall accrue interest at the rate of one and one-half percent (1.5%) per month (or the maximum allowed by law, if less) from the expiration of the Payment Period until the date payment is made; and (ii) if such sums remain unpaid for sixty (60) or more days after the expiration of the Payment Period, such sums shall accrue interest at the rate of three percent (3%) per month (or the maximum allowed by law, if less) from the expiration of the Payment Period until the date payment is

made. Interest due hereunder shall be referred to herein as the "Default Rate of Interest."

In addition, Customer may be required to reimburse Syringa Networks for all reasonable costs incurred in connection with collection activities, including attorneys' fees and court costs.

(b) **Default Payments.** In addition to the default interest set forth above, if Customer defaults in the payment of any sum due hereunder, Customer shall pay to Syringa Networks a late charge equal to five percent (5%) of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Syringa Networks will incur by reason of late payment of Customer. Acceptance of such late charge by Syringa Networks shall in no event constitute a waiver of Customer's default with respect to such overdue amount, nor prevent Syringa Networks from exercising any of the other rights and remedies granted hereunder.

(c) **Order of Application of Payments.** All payments hereunder shall be applied first to fees, charges, including late charges, attorney's fees and costs, if any, then to interest and then to principal (with the oldest outstanding principal amounts being the first to be paid).

4. Customer Financial Standing. Upon a good faith determination by Syringa Networks that a change has occurred in Customer's financial condition, Syringa Networks may request information from a reporting agency to enable Syringa Networks to assess Customer's credit history and current credit standing. Customer hereby consents to all such inquiries. Based on the information acquired, Syringa Networks may change its billing arrangement with Customer including, without limitation, requiring weekly payments or a deposit of up to two (2) times Customer's aggregate monthly invoicing for the most recently invoiced monthly billing period.

5. Bill Disputes. To dispute an invoice, Customer must notify Syringa Networks by submitting its dispute as provided in Section 15.1, which dispute must include billing information, Circuit number(s), and any opened trouble ticket number(s), along with a full explanation of the basis of the disputed charges. Except as provided in an Exhibit, Customer, in good faith, may withhold the disputed amount but, nevertheless, must pay the undisputed remainder of the invoice within the Payment Period. No charge may be disputed more than sixty (60) days after the date of the invoice on which a charge appears. Any Customer payment of a charge timely disputed and in the manner required will not deprive Customer of its right to dispute the charge. Syringa Networks will investigate Customer's claim with a view toward resolving the dispute within thirty (30) days of Syringa Networks' receipt of Customer's notice. Following an investigation in which Customer co-operates with Syringa Networks, Syringa Networks may in good faith reject Customer's claim, in whole or in part, and will advise Customer of the reason for its action. If the dispute is not resolved to Customer's satisfaction, the Parties may further address the dispute pursuant to Article 13.

6. Bill Dispute Consequences. If a disputed amount withheld by Customer is determined to have been a legitimate charge, interest at the Default Rate of Interest may be charged, at Syringa's discretion, on the amount not paid within the original Payment Period, and Customer must pay the total amount due and owing within five (5) business days of its receipt of notice of the determination from Syringa Networks.

ARTICLE 4- TAXES AND GOVERNMENTAL CHARGES

1. Applicability. Unless otherwise expressly set forth on Exhibit A, the monthly recurring fees do not include any Government Charges and/or Taxes that may be imposed by any Governmental Activity in relation to the Service. Customer is responsible for payment of any Government Charges and/or Taxes except those based on Syringa Networks' net income, personal and real property, and assets.

2. Payment and Other Obligations. Customer must pay existing and future Taxes and Governmental Charges and comply with new or revised terms and conditions imposed by Syringa Networks as a result of Governmental Activity. Syringa Networks will provide thirty (30) days' notice to Customer of any new or revised terms and conditions resulting from Governmental Activity and such new or revised terms shall be effective

immediately. If Syringa Networks decides to impose new or revised terms and conditions neither mandated by nor consistent with a Governmental Activity, Syringa Networks will furnish Customer with at least thirty (30) days notice of the new or revised charge or terms and conditions, and Customer may discontinue the affected Service, without any termination or other payment obligation (except for any charges owed for Service up to the time of termination), by furnishing Syringa Networks written notice of its intent to discontinue the Service no later than thirty (30) days after receipt of Syringa Networks' notice of the new or revised charges, terms or conditions.

3. Exemption Certificate. If Customer believes itself to be exempt from any Taxes or Governmental Charges, it may provide Syringa Networks with a certificate demonstrating its eligibility for exemption. If the certificate is accepted, Syringa Networks will cease imposing the applicable Taxes or Governmental Charges and, if such charges previously had been imposed and collected, Syringa Networks will credit Customer in an amount equal to the charges paid by Customer during the ninety (90) day period immediately preceding the delivery of the accepted certificate, unless otherwise required by law or regulation.

4. Survival. Customer's obligation to pay Taxes and Governmental Charges under this Article 4 will survive the expiration or early termination of this Agreement.

ARTICLE 5 - TERM AND TERMINATION

1. Term. The term of this Agreement will commence on its Effective Date and remain in effect until the expiration of the latest Service Term for any Service(s) appearing on any Addendum to Exhibit A (Service Order) and incorporated under these Terms (as appearing at http://www.syringanetworks.net/support/terms_and_conditions/). Thereafter, the Service Term will automatically renew on a month-to-month basis unless one Party provides the other with written notice of its intent not to renew it at least sixty (60) days prior to the end of the initial service term or at least thirty (30) days prior to the end of any renewal term.

2. Termination and Discontinuation of Service.

(a) **Procedure.** If Customer terminates this Agreement (other than as provided in Section 5.1) or discontinues a Service for any reason, Customer must provide Syringa Networks with written notice in accordance with Article 15. Termination of this Agreement or any Service requires thirty (30) days prior written notice. For discontinuation of Service, the notice must identify the affected Service(s) (e.g., the Circuit ID and its Primary and Secondary locations) and provide the requested termination date for discontinuation, which may not be less than thirty (30) days from the date Customer's notice is received by Syringa Networks. A purported termination or discontinuation employing any other form of communication, or which fails to include essential information, will be ineffective, and Customer will remain fully obligated to Syringa Networks.

(b) **Early Termination or Discontinuation.** Unless otherwise agreed by the Parties in writing, if Customer terminates any Service ordered under this Agreement after the Start of Service Date but prior to the expiration of the Service Term set forth in any Service Order or Exhibit A, or for any early termination of Service due to an event of default by Customer for which Syringa has a right of termination of any Service prior to the expiration of the Service Term, Customer will be liable to Syringa for the Early Termination Liability as follows:

(i) All unpaid amounts for Service provided through the date of termination, including all monthly recurring charges and non-recurring charges, interest, late fees and charges, and attorney's fees and costs of collection; and

(ii) One hundred percent (100%) of the remaining monthly recurring charges that would have been incurred for Service for all remaining months of the Service Term, plus interest, late fees and charges, and attorney's fees and costs of collection, if applicable.

(c) **Termination Before Start of Service.** If Customer terminates any Service ordered under this Agreement after the Effective Date indicated on any Service Order or Exhibit A, but before the Start of Service Date, Customer is responsible for any and all of Syringa Network's past, present, and future expenses associated with establishing Service to Customer.

ARTICLE 6 – RESERVED

ARTICLE 7- WARRANTIES

1. The Parties. Each Party represents and warrants it is, and will remain, duly organized, validly existing, and in good standing under the laws of the place of its origin and possesses all the authority necessary to enter into and perform its obligations under this Agreement.

2. Syringa Networks. Syringa Networks represents and warrants that: (a) its On-Net Service is designed, installed, provided, and maintained in compliance with applicable legal requirements; and (b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by regulators or other third parties to furnish its Services to Customer.

3. Customer. Customer represents and warrants that: (a) all Customer traffic handled by Syringa Networks is compliant with applicable legal requirements and those established in the Terms; and (b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by regulators or other third parties to furnish its services.

4. Exclusion of Other Warranties. THE WARRANTIES SET FORTH IN SECTIONS 7.1 THROUGH 7.3 ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, NON- INTERFERENCE, AND NON-INFRINGEMENT.

ARTICLE 8 – DEFAULT AND REMEDIES

1. Default Events. A Party is in default under this Agreement if any of the following occurs (each an "Event of Default"):

(a) a Party becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for the relief of debtors or initiates any proceeding seeking protection from its creditors; or

(b) a Party violates any legal requirement relating to the provision or receipt of Service, and the violation is not remedied within thirty (30) days of receipt of written notice of the violation;

(c) except as may otherwise be provided in an Exhibit, a Party fails to perform a material obligation under this Agreement (other than the payment of money), and the failure is not remedied within thirty (30) days of receipt of written notice of the failure. A failure of Service is not a default entitling Customer to terminate the affected Service or this Agreement; or

(d) Customer fails to pay any amounts due hereunder, and the failure is not remedied within ten (10) days of written notice of the failure; provided, however, Syringa Networks shall not be required to provide such notice more than two times in any twelve-month period and such failure to pay when due thereafter shall be deemed an Event of Default without notice.

2. Default Remedies. Upon any Event of Default hereunder, the non-defaulting Party shall have the following remedies, to be exercised at its option, in addition to other remedies at law or in equity:

(a) **Termination for Non-Monetary Breach.** In addition to remedies available at law or in equity, the non-defaulting Party may terminate this Agreement (including its Exhibits and Service Orders, both implemented and pending), in whole or in part, for any Event of Default other than the failure to pay any sums due hereunder.

(b) **Remedies for Failure to Pay.** Upon any Event of Default arising from the failure to pay any sums due hereunder, Syringa Networks may, at its option, do one or more of the following: (a) refuse to accept additional Service Orders; (b) without further notice, suspend and/or disconnect Service furnished under this Agreement or any Service Order until Customer has paid all past due amounts owed, with interest and late charges as set forth in these Terms;

(c) offset unpaid balances with amounts Syringa Networks may owe Customer under any other agreement between the Parties; or (d) terminate any and all Services furnished under this Agreement or any Service Order. Following any suspension or disconnection of Service for non-payment, Service will not be restored until Customer pays in full all charges then due, including any late fees, interest, collection costs, and the costs incurred by Syringa Networks in restoring Service. If Customer fails to make full payment of the charges due within thirty (30) days of such suspension or disconnection, Service will be terminated effective as of the date of suspension.

(d) **Early Termination Liability.** A payment default or other default by Customer resulting in termination of this Agreement or any Service ordered pursuant to this Agreement will entitle Syringa Networks to collect from Customer applicable Early Termination Liability as set forth in Section 5.2.

ARTICLE 9 – CONFIDENTIAL INFORMATION

1. Confidential Information. Each Party must protect the other's confidential information with the same degree of care used to protect its own confidential information, but in no event may less than a reasonable standard of care be used by either Party in connection with the preservation of the other Party's confidential information. Confidential information shall be used by the recipient only for the purposes of performance under these Terms, any Service Order, and the Schedules comprising this Agreement.

2. Non-Disclosure. Neither Party shall disclose, publish, release, transfer or otherwise make available confidential information of, or obtained from, the other in any form to, or for the use or benefit of, any person or entity without the disclosing Party's consent. The Parties shall, however, be permitted to disclose relevant aspects of the other's confidential information to their officers, directors, employees, auditors, attorneys and representatives, to the extent that such disclosure is not restricted under these Terms, any Service Order, or the Schedules comprising this Agreement and only to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under these Terms and the Schedules; provided, however, that the recipient shall be responsible for ensuring that such officers, directors, employees, auditors, attorneys and representatives abide by the provisions of this Article 9.

3. Permitted Disclosures. Notwithstanding the foregoing:

(a) To the extent it is required to disclose such information in the context of any administrative or judicial proceeding, recipient may do so to the minimal extent required to comply with such required disclosure, provided that, to the extent permitted by applicable law, prior written notice of such disclosure and an opportunity to oppose or limit disclosure is given to disclosing Party, and such disclosed information shall continue to be safeguarded as confidential unless and until it falls under an exception set forth in Section 9.3(b) below; and

(b) Recipient shall have no obligation under these Terms with respect to any confidential information disclosed to it that (i) recipient can demonstrate was already known to it at the time of its receipt hereunder; (ii) is or becomes generally available to the public other than by means of recipient's breach of its obligations under these Terms; (iii) is

independently obtained from a third party whose disclosure violates no duty of confidentiality; or (iv) is independently developed by or on behalf of recipient without use of or reliance on any confidential information furnished to it under these Terms.

ARTICLE 10- INDEMNIFICATION

1. Syringa Networks' Indemnification of Customer. Syringa Networks will defend and indemnify Customer, its employees, directors, officers, and agents, from and against any suit, proceeding, or other claim brought by any person or entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to: (a) damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful act or omission of Syringa Networks in the provision of Service; or (b) Syringa Networks' violation of any of its representations and warranties under this Agreement.

2. Customer's Indemnification of Syringa Networks. Customer will defend and indemnify Syringa Networks, its employees, directors, officers and agents, from and against any suit, proceeding, or other claim brought by any person or entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to: (a) damage to real or tangible personal property, personal injuries (including death) arising out of the gross negligence or willful act or omission of Customer in the use of the Service; (b) representations regarding the nature of Customer's traffic; (c) any use or resale of Service by Customer or others; or (d) Customer's violation of any of its representations and warranties under this Agreement.

3. Intellectual Property. If Service, by itself as provided by Syringa Networks, becomes, or if Syringa Networks reasonably believes it may become, the subject of a suit, proceeding or other claim by any person or entity (not a party to or an Affiliate of a party to this Agreement) that the Service directly infringes U.S. patent, trademark or copyright rights of such person or entity, Syringa Networks at its own expense and option will: (a) procure the right to continue to provide Service; (b) modify or replace Service with a different one having substantially similar functionality; or (c) discontinue the Service and, as appropriate, refund to Customer a pro- rata portion of charges paid by Customer through the date of Service discontinuance.

4. Procedure. If a claim is made against Syringa Networks or Customer, the Party in receipt of the claim ("Indemnified Party") will notify the other Party ("Indemnifying Party") in writing no later than sixty (60) days after learning of a potential claim. The Indemnifying Party will be entitled to assume sole control of the defense of the claim and all related settlement negotiations. The Indemnified Party will provide assistance, information and authority reasonably necessary to assist the Indemnifying Party. A Party may not settle a claim without the other's consent if the settlement would impose an obligation on, or require any admission by, the other Party. Failure of the Indemnified Party to provide notification of a claim will not relieve the Indemnifying Party of its obligations under this Agreement except to the extent the delay prejudices the Indemnifying Party.

5. Limitation. Sections 10.1 and 10.3 set forth the entire liability of Syringa Networks, and Customer's sole and exclusive remedies, with respect to any claim subject to indemnification under this Agreement.

6. Survival. These indemnification obligations will survive termination of this Agreement.

ARTICLE 11 - LIMITATION OF LIABILITY

1. Consequential Damages. Neither Party is liable to the other for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever including, without limitation, any lost profits, lost revenues, lost savings or any other business loss including goodwill, loss of use of property, loss of data, cost of substitute performance equipment or services, downtime costs, and claims for damages or harm to business regardless of foreseeability or whether damages are caused by the negligence,

willful misconduct, or wrongful act arising from or related to these Terms. A Party's out-of-pocket costs for damages of the kinds specified in the preceding sentence that are recovered by a third party are indirect damages to such Party, and each Party releases the other Party and its Affiliates, as well as their respective officers, directors,

managers, employees, and agents, from damages from such claim(s), except to the extent they constitute claims for which indemnification is due under Sections 10.1 and 10.2.

2. Liability Limits. SYRINGA NETWORKS' ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT IS LIMITED TO THE LESSER OF THE DIRECT DAMAGES ALLEGED AND PROVED BY CUSTOMER OR THE TOTAL AMOUNT PAID BY CUSTOMER FOR SERVICE DURING THE THREE (3) MONTHLY BILLING PERIODS IMMEDIATELY PRECEDING A CLAIM. The foregoing limitations apply to all causes of action and claims irrespective of their nature, including breach of contract, breach of warranty, strict liability, negligence, misrepresentation, or any other tort.

ARTICLE 12- FORCE MAJEURE

With the exception of payment of fees and charges due under this Agreement and except as otherwise expressly provided in this Agreement, neither Party shall be liable to the other Party under this Agreement for any delay or failure of performance resulting from any cause beyond such Party's reasonable control and without its fault or negligence, including without limitation, unusually severe weather conditions; earthquakes; floods; nuclear accidents; acts of God; epidemics; war, terrorist acts, riots, insurrections and civil disturbances; government regulations; acts of civil or military authorities or the public enemy; and fuel or energy shortages (collectively "Force Majeure"). The Parties agree that no labor dispute concerning the personnel and subcontractors of either Party will be considered a Force Majeure event.

ARTICLE 13 - DISPUTE RESOLUTION

The undersigned Parties acknowledge and understand that they are transacting business in the state of Idaho and that this Agreement was negotiated, accepted and shall be performed in Idaho.

1. Applicable Law and Venue. This Agreement will be governed by the laws of the State of Idaho without regard to choice of law principles. The Parties agree any action arising out of or relating to this Agreement not otherwise resolved through subsection 13.3 of this Article, may be brought in state courts located in Ada County, Idaho, or in the United States District Court for the District of Idaho, and each Party hereby irrevocably and unconditionally submits to such jurisdiction and venue. The Parties agree and acknowledge that the transaction contemplated herein is initiated in Idaho, this Agreement was formed in Idaho, and performance of this Agreement shall be in Idaho. Each Party agrees to personal jurisdiction in Ada County and waives any objection to jurisdiction or venue there.

2. Litigation Election. Either Party may elect to litigate the following type of case or controversy: (a) an action seeking equitable relief; (b) a suit to compel compliance with this dispute resolution process; or (c) non-compliance with a Party's publicity obligations. Syringa Networks may elect to litigate billing or payment disputes or collections matters.

3. Mediation. The Parties may elect to engage in non-binding mediation as a first alternative to litigation. Such an election must be mutual and reflected in a writing signed by both Parties. Each Party will bear its own costs in mediation and all third party mediation costs will be shared equally between the Parties, unless otherwise agreed.

ARTICLE 14- ASSIGNMENT

1. Assignability. Upon at least thirty (30) days written notice, either Party may assign this Agreement to an Affiliate without the prior written consent of the other Party. In connection with any assignment by Customer to an Affiliate, or a merger, reorganization or sale of all or substantially all Customer assets to a third party, the assignee must: (a)

assume, in writing, all responsibilities and obligations under this Agreement; (b) be at least as creditworthy as Customer (as determined by Syringa Networks in its reasonable discretion) as of the Effective Date of this Agreement; and (c) deliver to Syringa Networks executed documents that are acceptable to Syringa Networks and establish the terms of the Assignment.

2. Prior Agreement. If this Agreement is assigned to an entity that, prior to the assignment, had an agreement with Syringa Networks, the service being provided will continue to be governed by that prior agreement, and the Service provided under this Agreement will be governed by these Terms, each without reference to the other.

ARTICLE 15 - NOTICES

1. Bill Disputes. Customer must submit a dispute of any invoiced charge(s) electronically to accounting@syringanetworks.net or such other address as Syringa Networks may specify from time to time.

2. Service Discontinuation. Customer must submit a request to discontinue a Service to disconnects@syringanetworks.net or such other address as Syringa Networks may specify from time to time. A request to discontinue Service will be effective no sooner than thirty (30) days after receipt thereof.

3. Other Matters. All other notices under this Agreement, including any notice pertaining to termination of this Agreement, must be in writing and delivered by overnight courier (e.g., Federal Express, DHL) or certified mail, return receipt requested, or via electronic mail to the persons whose names and business addresses appear below. A notice will take effect on the date of its receipt by the receiving Party:

If to Syringa Networks:	Syringa Networks, LLC. 12301 W. Explorer Drive Boise, Idaho 83713 Attn: Greg Lowe, CEO Email: glowe@syringanetworks.net
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If to Customer:	To the address on file at the time Customer submits a Service Order
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Syringa Networks may change its address and point(s)-of-contact by notifying Customer by bill message insert, email or in accordance with the requirements established in this Article.

ARTICLE 16 - MISCELLANEOUS

1. Interpretation. This Agreement may not be construed or interpreted against either Customer or Syringa Networks because that Party drafted, or caused its legal representative to draft, any of its provisions.

2. Order of Precedence. If there is an express inconsistency between a Term set forth herein, by itself, and a term in any Exhibit, or other contract document (including any Non-disclosure Agreement), the order of precedence, from the most to the least controlling, is the term contained in:

(a) the Exhibit or other contract document (including any Non-disclosure Agreement); then

(b) these Terms.

3. Syringa Networks Facilities, Equipment and Software. Syringa Networks facilities, including equipment and software, used to provide any Service will remain the exclusive property of Syringa Networks or its assignee, and nothing contained in these

Terms can be interpreted to convey to Customer any right, title or interest in the facilities, equipment or software, which will remain personal property even if attached to or embedded in realty. Customer may not remove or conceal any identifying plates, tags, or labels affixed to Syringa Networks facilities or equipment, nor may Customer alter, or attempt to alter, software furnished as part of Service. Syringa Networks may substitute or rearrange the facilities or equipment, or modify the software, so long as the quality of Service is not impaired by the changes. Upon termination of Service for any reason, Syringa Networks will retrieve its facilities and equipment from Customer Premises or Customer, at its expense, will return to Syringa Networks, within thirty (30) days of Service termination, all Syringa Networks-provided facilities and equipment, along with any software and other information or materials provided by Syringa Networks in connection with the furnishing of Service. The facilities, equipment, software or other materials retrieved or returned will be in the same condition as when initially delivered to Customer, normal wear and tear excepted. If Customer fails to return Syringa Networks' property or allow for its retrieval, Customer must reimburse Syringa Networks, upon demand, for the replacement cost of the facilities, equipment, software, and other information or materials provided, as well as any costs incurred by Syringa Networks resulting from the Customer's failure to return Syringa Networks' property.

4. Agency; Partnership; and Third Parties. Neither Party becomes the agent or legal representative of the other Party as a result of this Agreement, nor does it create a partnership or joint venture between the Parties. In addition, this Agreement confers no rights, benefits, or remedies of any kind on third parties.

5. Waiver. No waiver of any provision in this Agreement will be binding unless in writing and signed by both Parties. The failure of a Party to insist on the strict enforcement of any provision of this Agreement will not constitute a waiver of the provision and all terms of this Agreement will remain in full force and effect.

6. Subsequent Agreement; Signatures; and Communication Methods.

(a) **Subsequent Agreement.** No subsequent agreement between the Parties concerning Service will take effect or be binding unless made in writing and signed by both Parties.

(b) **Signatures.** Any requirement for a signature in any document relating to this Agreement (other than these Terms) may be satisfied by a facsimile transmission of an original signature or by delivery of electronic mail in PDF or similar scanned format, or by an electronic symbol or process ("e-signature") attached to or logically associated with this Agreement, including any component hereof, and executed or adopted by a person having the intent to sign the document. Any person completing, submitting or executing any such document on behalf of Customer by way of the Internet or other electronic or online means represents that he/she possesses the authority to act on Customer's behalf and any such documents so delivered to, and accepted by, Syringa Networks will be binding on Customer.

(c) **Communication Methods.** Neither electronic mail nor instant messaging (IM) will be a "writing" sufficient to modify the terms of these Terms, although those methods of communication may be used otherwise in the performance of the Parties' obligations under this Agreement.

7. Entire Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes prior or contemporaneous agreements, arrangements, or understandings, both written and oral, with regard to Service. The Addenda, Exhibits and other documents to which reference has been made are integrated parts of these Terms.

8. Severability. If any provision of this Agreement is found to be invalid or unenforceable under applicable law, it will be ineffective only to the extent of its invalidity and will not affect the remaining provisions in this Agreement.

9. Non-Exclusivity. This Agreement is non-exclusive. Either Party may enter into similar arrangements with others.

10. Publicity. Neither Party may issue a news release, public announcement, advertisement or other form of publicity relating to these Terms or Service without the prior written approval of the other Party.

11. Survival. The terms of this Agreement which, by their usage and context, are intended to survive this Agreement including, without limitation, the obligation to make payments for Service, will survive its expiration or termination.

12. Headings and Internal References.

(a) **Headings.** The Article and Section headings in this Agreement, including all its incorporated documents, are for convenience only and may not be considered in interpreting the provisions in which they appear.

(b) **Internal References.** Any plainly erroneous references or citations to Articles and Sections in this Agreement, including all its incorporated documents, will allow either Party to demonstrate to the reasonable satisfaction of the other Party the intended reference or citation based on logic, context and previous versions of contractual documents.

13. Electronic Documents. This document and any related agreements may be converted to, and retained solely in, electronic format. A party may provide this Agreement in electronic form and may provide a reproduction of this Agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this Agreement and such document shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.

14. Attorneys' Fees. If any action or proceeding relating to this Agreement or its enforcement is brought against any party to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements in addition to any other relief to which the prevailing party may be entitled.

EXHIBIT A
Service Order
[attached]

EXHIBIT A

EXHIBIT B

10.6.20

SYRINGA NETWORKS VOICE SERVICES

1. **Applicability.** This Service Exhibit ("Exhibit C") applies only to Syringa Networks Voice Service (the "Voice Service") and is incorporated into and made part of the Syringa Networks Standard Terms and Conditions (the "Terms").
2. **Service Description.** The Voice Service provides Public Switched Telephone Network ("PSTN") connectivity and optional advanced features to Customer Key Systems, PBXs and IP-PBXs through Syringa Networks dedicated network connections. Call control and features are provided by the Syringa Networks VoIP feature server.
3. **Voice Service Applications.** The Voice Service may be used as local and long-distance voice access service to serve enterprise premises telephony equipment, such as Key Systems, PBXs and IP-PBXs. The Voice Service is available only to single, distinct enterprises who will utilize the service for customary and normal business use.
4. **Required Services.** Syringa Networks requires that the Voice Service be provisioned over our own network transport. Syringa Networks must be the carrier of record for the underlying transport service. One of the following Syringa Networks Services must be purchased in conjunction with the Voice Service:
 - Syringa Networks dedicated WAN Service (Layer 2 Ethernet, or Layer 3 IPVPN service),
or
 - Syringa Networks Business Internet Access Service
5. **Supported Customer Interfaces.** The Voice Service can be delivered to a Customer in the following manner: (a) SIP Trunking over an IP network connected to an IP-PBX via Ethernet; or (b) standard PRI/Analog trunk interfaces provided by a Syringa Networks IAD (Integrated Access Device) that is installed on the Customer premise; or (C) Hosted PBX ("Cloud Voice") that delivers voice service on per user basis to IP phone sets on the Customer premise that are owned by the customer or leased from Syringa Networks. Due to the nature and complexity of satisfying ongoing interoperability specifications between our VoIP serving platform and Customer owned IP-PBXs, Syringa Networks SIP Trunking and PRI/ Analog trunk Voice Service is limited to support specific IP-PBX manufacturers/models for which an ongoing interoperability maintenance arrangement exists between Syringa Networks' VoIP feature server vendor and the IP-PBX manufacturer. Other manufacturer's IP-PBXs may also be compatible, but have not been tested with the Syringa Networks VoIP platform. Syringa Networks may not be able to provide configuration guidelines, but will use reasonable efforts to test and activate non-certified or compatible devices.
6. **Voice Equipment.** Customer is solely responsible for installation and maintenance of its equipment (phone system) and for any modifications, upgrades, or physical movement of such equipment, including installation of additional equipment. Customer is solely responsible for implementing such configurations on its equipment. Customer shall provide Syringa Networks advance written notice of any modification, upgrade, or replacement of Customer's equipment not less than ninety (90) days prior to any such modification, upgrade or replacement. Any equipment, including IP phone sets, that is owned and installed by Syringa Networks for provision of the Voice Services, will be maintained by Syringa Networks.

7. **Other Database Updates.** Customer will utilize Syringa Networks-provided order forms to provide accurate data required by Syringa Networks to complete all updates to the LIDB, CARE, LNP, Directory Assistance and any other necessary databases. In regards to LNP, Customer agrees that it is responsible for completing and verifying LNP information before updating the 911 database.
8. **Pricing.** In addition to the applicable non-recurring charges, rates for the Voice Service consist of the following:
 - a. Monthly recurring charges for the number of concurrent call paths (SIP trunk sessions).
 - b. Monthly recurring charges for TNs (telephone numbers (DIDs), new or ported)
 - c. Monthly recurring charges at a flat-rate tier for Local and Long Distance (IntraState, Interstate & International) usage as detailed on the Exhibit A (service order).
 - d. Monthly recurring charges for Toll Free services as detailed on the service order.
9. **Additional Charges.** Customer is subject to the applicable charges for moves, adds, changes, and upgrades for those items covered by this Exhibit. All Services other than those stated herein will be provided at the prevailing standard Syringa Networks rates. Service records will constitute full proof of the content and nature of Customer's Service(s).
10. **Flat-Rated Pricing Tiers and Call Detail Records.** Customer MRC for Local and Long Distance usage will be billed according to the flat-rate pricing Tier listed on the service order. Syringa Networks will periodically audit a customers' call usage based on call duration of each Call Detail Record ("CDR"). If a customers' average three (3) month call usage is determined to be higher than the contracted flat-rate tier, Syringa Networks reserves the right to adjust the Customer up to a higher flat-rate pricing tier that will cover the usage overages.
11. **Use of Service.** Customer may use the Voice Service for any lawful purpose provided that: (a) such use does not interfere with or impair service over any of the facilities and associated equipment constituting Syringa Networks' network; (b) such use does not impair the privacy of any communications over the facilities and equipment of Syringa Networks; (c) Customer will use the Voice Service in accordance with all laws and regulations, and the terms and conditions contained in this Schedule, and (d) Customer may use the Voice Service for inbound call center voice traffic; (e) Customer may **not** use the Voice Service for outbound call center (or similar enterprise), 900/976 based or other information or entertainment services, telemarketing, autodialing, continuous or extensive call forwarding, fax broadcast, or fax "blasting." Syringa Networks reserves the right to immediately terminate the Voice Service if Syringa Networks determines, in its sole discretion, that the Customer has violated any term of this Exhibit or Standard Terms and Conditions. Customer agrees to use the Voice Service solely for Customer's own internal purposes. Customer shall not use the Voice Service, either on a stand-alone basis or in combination with any other services or products, to provide any telecommunications or other service to a third-party. Any such use by Customer shall be deemed a default under this Agreement.
12. **Fraudulent Calls.** Customer shall be responsible for paying Syringa Networks for all charges for the Voice Service, even if incurred as a result of fraudulent or unauthorized use. In the event Syringa Networks discovers or reasonably believes fraudulent calls are being made, Syringa Networks may take immediate action that is reasonably necessary to prevent such fraudulent calls from taking place, including without limitation, denying Voice Service to particular Automatic Number Identifiers (ANIs) or terminating Voice Service to or from

specific locations. Syringa Networks shall use reasonable efforts to notify Customer in the event Syringa Networks takes action upon discovery of fraudulent calls. In the event Customer discovers or reasonably believes fraudulent calls are being made, Customer shall notify Syringa Networks as soon as possible at 1-800-454-7214 and open a trouble ticket.

13. **Emergency Services (911, E-911)**. PLEASE READ THE INFORMATION BELOW ABOUT 911 DIALING CAREFULLY. BY USING AND PAYING FOR THIS SERVICE, CUSTOMER ACKNOWLEDGES AND AGREES TO ALL OF THE INFORMATION BELOW REGARDING THE LIMITATIONS OF THE VOICE SERVICE WITH REGARD TO 911 EMERGENCY DIALING SERVICE, AND THE DISTINCTIONS BETWEEN SUCH SERVICE AND TRADITIONAL WIRELINE 911 OR E-911 CALLS.

(A) In particular, please note that Customer will not be able to place traditional wireline 911 or E-911 calls with the Voice Service:

- In the event of a power outage, or backup power failure;
- In the event of a loss of connectivity to the network or failure of network equipment;
- In the event of network congestion or overutilization of the network;
- In the event Customer uses a phone at a location other than the established fixed, primary location as determined by Syringa Networks' service records (commonly known as "nomadic" use).

Customer acknowledges that Syringa Networks has advised that the Voice Service does not support traditional wireline 911 or E-911 in these instances. Customer agrees to advise all individuals of this limitation who may have occasion to place calls using the Voice Service.

(B) Syringa Networks offers 911 Services subject to the limitations herein. The 911 Services are the static implementation of Syringa Networks E-911 Direct portfolio of services. Customer shall ensure that DID/DOD's are not used in a location different than the primary address as submitted on the Customer Service Order. Customer shall notify Syringa Networks of changes in end user location by submitting a new Customer Service Order to Syringa Networks to update service records.

***911/E-911 calling is not supported when the Voice Service is utilized at any location other than the user's fixed, primary service location.**

14. **Warranties**. EXCEPT AS OTHERWISE PROVIDED HEREIN, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORILY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE VOICE SERVICE(S). SYRINGA NETWORKS ALSO MAKES NO WARRANTY THAT THE VOICE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED. SYRINGA NETWORKS DOES NOT WARRANT THAT THE VOICE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR AT ANY MINIMUM SPEEDS.

15. **CPNI**. Customer Proprietary Network Information ("CPNI") is Customer information acquired by Syringa from provisioning regulated telecommunications services to Customer. CPNI includes, among other things, Service identities, quantities and locations; information on how Service is being used; and Service billing information. Unless or until otherwise instructed by Customer, Syringa may use Customer CPNI or share it with its agents and independent contractors for the purpose of furnishing Customer with information about Syringa's telecommunications-related products that may be of interest to Customer. Customer's approval of this use of its CPNI will remain in effect until Customer contacts Syringa and indicates it no longer wishes to have its CPNI used for such purpose. To revoke its approval, Customer may contact Syringa at any time and at no cost by dialing 1-800-454- 7214.