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January 19, 2018

Via Electronic Submission

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Submission of Contract Pursuant to 47 U.S.C. § 211 and 47 C.F.R. § 43.51

Dear Ms. Dortch:

Pursuant to § 211 (a) of the Communications Act of 1934, as amended, and § 43.51 of the Commission's rules, AT&T hereby files an agreement between AT&T and Synergem Technologies, Inc. The agreement provides Commercial Alternate E911 service in the state of California. If you have any questions, please do not hesitate to contact me at (202) 463-4148.

Sincerely,

/s/ Keith Krom  
Assistant Vice President-Senior Legal Counsel  
AT&T Services, Inc.

**AGREEMENT**

**BETWEEN**

**PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA**

**AND**

**SYNERGEM TECHNOLOGIES, INC.**



Signature: eSigned - Jeff Schlueter

Signature: eSigned - William Bockelman

Name: eSigned - Jeff Schlueter  
(Print or Type)

Name: eSigned - William Bockelman  
(Print or Type)

Title: Chief Operating Officer  
(Print or Type)

Title: DIR-INTERCONNECTION AGREEMENTS  
(Print or Type)

Date: 14 Dec 2017

Date: 14 Dec 2017

Synergem Technologies, Inc.

Pacific Bell Telephone Company d/b/a AT&T  
CALIFORNIA by AT&T Services, Inc., its authorized  
agent

# COMMERCIAL AGREEMENT

between

**Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA**

and

**Synergem Technologies, Inc.**

## GENERAL TERMS AND CONDITIONS

This Commercial Agreement is entered into by and between Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA (“AT&T”) and Synergem Technologies, Inc. (“Synergem”), (a Delaware Corporation), (referred to herein collectively as, the “Parties”; each, a “Party”), and shall apply to the State(s) of California.

### 1.0 INTRODUCTION

- 1.1. This Agreement sets forth the rates, terms and conditions under which the Parties agree to route and transport 911/E911 traffic in those territories where Synergem is a Designated 9-1-1 Service Provider or a Secondary Selective Routing Provider as defined in this Agreement. While the Parties reserve their right to argue otherwise in future proceedings as discussed below, they have agreed to treat this as a carrier-to-carrier commercial agreement rather than subject to the obligations of 47 USC § 251 (c). Nothing in this Agreement shall constitute an admission by either Party as to the question regarding the applicability of Section 251(a) or 251(c) to the traffic exchanged. Each Party reserves all rights to contend in other fora that Sections 251(a) and/or 251(c) does or does not apply to any traffic exchanged.
- 1.2. The functions, products and/or services available under this Agreement are set forth in the following Attachment(s) (which is/are hereby attached and incorporated herein), and are subject to the provisions of this Agreement. All of the provisions in this Agreement (including all Attachments, appendices, exhibits, schedules, and addenda hereto) are integrally related and non-severable. In the event of any inconsistency or conflict between these General Terms and Conditions and an Attachment, the Attachment shall control but only to the extent of such inconsistency or conflict.
  - 1.2.1. **ATTACHMENT** Alternate E911 Service Provider
- 1.3. This Agreement includes certain Attachments, appendices, exhibits, schedules and addenda, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.
- 1.4. This Agreement is applicable to and binding upon both Parties in the States of California and only applies within the geographic area in which Synergem is selected and approved by the 911 governing authority to provide emergency service to PSAPs and/or within AT&T serving areas that overlap Synergem-served E911 serving areas.
- 1.5. The facilities used by the Parties to provide the functions, products and/or services hereunder shall remain the property of the providing Party.
- 1.6. The Parties understand and agree that no performance measures and remedies, including without limitation, any wholesale service quality standards, liquidated damages, and remedies, shall apply to the products and/or services under this Agreement.

### 2.0 GENERAL DEFINITIONS APPLICABLE TO THE AGREEMENT (INCLUDING THE ATTACHMENT)

- 2.1. “**911 Service**” means a service that uses a universal telephone number to provide the public with access to the PSAP by dialing 911. Basic 911 Service collects 911 calls from one or more local exchange switches that serve a geographic area.
- 2.2. “**911 System**” or “**E911 System**” means the set of network, database and customer premises equipment (CPE) components required to provide 911 Service.
- 2.3. “**911 Trunk**” or “**E911 Trunk**” means a trunk capable of transmitting Automatic Number Identification (ANI) associated with a call to 911 from AT&T or Synergem to the E911 System.
- 2.4. “**911 Selective Router Trunk**” or “**E911 Selective Router Trunk**” means a trunk from a Selective Router capable of transmitting Automatic Number Identification (ANI) associated with an End User call to 911.
- 2.5. “**911/E911 Customer**” means a Public Safety Answering Point (PSAP), a municipality or other state or local government unit, or an authorized agent of one or more municipalities or other state or local government units to whom authority has been lawfully delegated to respond to public emergency telephone calls, at a minimum, for emergency police and fire services through the use of one telephone number, 911.

- 2.6. **"AT&T"** means BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA and AT&T TENNESSEE; Illinois Bell Telephone Company d/b/a AT&T ILLINOIS, Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA, Michigan Bell Telephone Company d/b/a AT&T MICHIGAN, Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale, The Ohio Bell Telephone Company d/b/a AT&T OHIO, Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA; Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA and/or AT&T TEXAS, and/or Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN.
- 2.7. **"Act"** means the federal Communications Act of 1934, as amended, including without limitation, by the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996).
- 2.8. **"Affiliate"** means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten (10) percent.
- 2.9. **"Automatic Location Identification" or "ALI"** means the automatic display at the PSAP of the caller's telephone number, the address/location of the telephone and, in some cases, supplementary emergency services information.
- 2.10. **"Automatic Number Identification" or "ANI"** means the telephone number associated with a communications device that originates an emergency call, which is the number used to route an E911 call to the appropriate PSAP for use in retrieving the associated ALI record for display to the call taker, the access line from which a call to 911 originates.
- 2.11. **"Billed Party"** means the recipient Party of a bill rendered from the Billing Party.
- 2.12. **"Billing Party"** means the Party rendering a bill.
- 2.13. **"Business Day"** means Monday through Friday, excluding holidays on which AT&T does not provision new orders for retail telecommunications services. The use of only "day" in this Agreement refers to a calendar day.
- 2.14. **"Company Identifier" or "Company ID"** means a three to five (3 to 5) character identifier chosen by the Local Exchange Carrier that distinguishes the entity providing dial tone to the End User. The Company Identifier is maintained by NENA in a nationally accessible database.
- 2.15. **"Database Management System" or "DBMS"** means a system of manual procedures and computer programs used to create, store and update the data required to provide Selective Routing and/or Automatic Location Identification for E911 Systems.
- 2.16. **"Designated 911/E911 Service Provider"** means the entity designated by the 911/E911 Customer to provide 911 services to the PSAPs in their jurisdictional serving area.
- 2.17. **"E911 Universal Emergency Number Service" (also referred to as "Enhanced 911 Service") or "E911 Service"** is a communications service whereby a PSAP answers telephone calls placed by dialing the number 911. E911 includes the service provided by the lines and equipment associated with the service arrangement for the answering, transferring, and dispatching of public emergency telephone calls dialed to 911. E911 provides completion of a call to 911 via dedicated trunking facilities and includes Automatic Number Identification (ANI), Automatic Location Identification (ALI), and/or Selective Routing.
- 2.18. **"Emergency Services"** means police, fire, ambulance, rescue, and medical services.
- 2.19. **"Emergency Service Number" or "ESN"** means a three to five digit number representing a unique combination of emergency service agencies (Law Enforcement, Fire, and Emergency Medical Service) designated to serve a specific range of addresses within a particular geographical area. The ESN facilitates selective routing and selective transfer, if required, to the appropriate PSAP and the dispatching of the proper service agency(ies).
- 2.20. **"End User"** means, as used in this Agreement, means a person or entity that is able to, or does in fact, initiate a 911 Emergency Services call. An End User may or may not be a retail customer of a Party.
- 2.21. **"Intellectual Property"** means copyrights, patents, trademarks, service marks, trade secrets, mask works and all other intellectual property rights.

- 2.22. **"Inter-Selective Router Trunk"** or **"Inter-SR Trunk"** means a trunk from a Selective Router capable of transmitting Automatic Number Identification (ANI) associated with an End User call to 911 that may be between Selective Routers.
- 2.23. **"Interconnected Voice over Internet Protocol Service"** or **"Interconnected VoIP Service"** means a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the End User's location; (3) requires IP-compatible customer premises equipment (CPE); and (4) permits users to generally receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- 2.24. **"Master Street Address Guide"** or **"MSAG"** means a database of street names and house number ranges within their associated communities defining Emergency Service Zones (ESZs) and their associated Emergency Service Numbers (ESNs) to enable proper routing of E911 calls.
- 2.25. **"National Emergency Number Association"** or **"NENA"** means the National Emergency Number Association, a not-for-profit corporation established in 1982 to further the goal of "One Nation-One Number". NENA is a networking source and promotes research, planning, and training. NENA strives to educate, recommend standards and provide certification programs, legislative representation and technical assistance for implementing and managing 911 systems.
- 2.26. **"Points of Interconnection"** or **"POI"** means a point on the AT&T network (Selective Router location or some other mutually agreeable location(s)) identified by Synergem where the Parties deliver 911/E911 traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. Each Party is responsible for the facilities to its side of the POI(s). Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI(s).
- 2.27. **"Primary Service Provider"** means a Designated 911/E911 Service Provider that is operating in an area with a Split Wire Center and such service provider serves the PSAP(s) with a majority of the telephone numbers.
- 2.28. **"Pseudo-ANI"** or **"pANI"** means a telephone number used to support routing of wireless 911 or nomadic VoIP 911 service calls. It may identify a wireless cell, cell sector or PSAP to which the call should be routed. Pseudo-ANI is also known as routing number.
- 2.29. **"Public Safety Answering Point"** or **"PSAP"** means a government entity operating under common management which receives 9-1-1 calls from a defined geographic area and processes those calls according to a specific operational policy.
- 2.30. **"Secondary Service Provider"** means a Designated 911/E911 Service Provider that is operating in an area with a Split Wire Center and such service provider serves the PSAP(s) with a minority of the telephone numbers.
- 2.31. **"Split Wire Center(s)"** means a Wire Center that serves multiple PSAP jurisdictions.
- 2.32. **"Selective Routing"** or **"SR"** means the routing and equipment used at a **"E911 Selective Router"** or **"Selective Router"** or **"Tandem"** to route a 911 call to the proper PSAP based upon the number and location of the caller. Selective Routing is controlled by an ESN, which is derived from the location of the access line from which the 911 call was placed.
- 2.33. **"Shell Records"** means those database records associated with Pseudo-ANI telephone numbers. Shell Records facilitate call delivery and the appropriate ALI display for wireless 911 and nomadic VoIP 911 service calls.
- 2.34. **"Wire Center"** is a specified geographical area which encompasses a company Central Office building, identified with V & H coordinates, that houses switching and non-switching equipment and includes the outside plant necessary for the provisioning of telephone service to customers.

### 3.0 PRICING

- 3.1. Rates, terms and conditions for access to each Party's facilities and trunking are set forth in the applicable Attachment. The rates, terms and conditions in the applicable Attachment for use of Synergem's facilities are subject to the terms set forth in this Agreement, including but not limited to, Limitation of Liability/Indemnity (Section 8), Billing and Payment of Rates and Charges and Billing Disputes (Section 9), Dispute Resolution (Section 10) and Taxes (Section 15) and shall be binding on the Parties operating under this Agreement. In the event of any inconsistency between the terms

of this Agreement and the access tariffs, the terms of this Agreement shall prevail.

#### **4.0 TECHNOLOGY EVOLUTION**

- 4.1. Nothing in this Agreement shall constrain or otherwise limit the Parties from continuing to evolve and otherwise modify their networks by, for example, deploying new and different technologies and altering the manner of connection of facilities as provided in this Agreement. The Parties shall retain the right to connect their networks using the technologies as agreed herein. Before a Party may propose a material network change that would affect the manner that the other Party terminates or receives 911 calls as agreed under this Agreement, a Party will provide 180 days advance notice of such changes in technology to the other Party. Thereafter, the Parties may mutually agree to such material change and amend this Agreement as needed. For example, a Party will provide the other Party advance notice before changing from SS7 to SIP signaling. Notwithstanding the foregoing, in no event shall either Party make changes to the manner in which an OSP delivers 911 calls to Synergem nor the mutually agreed POI without the advance written approval of the regulatory authorities with jurisdiction.

#### **5.0 PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARK**

- 5.1. Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied or contain symbols, pictures, or language from which a connection to said name and/or marks; the Party to whom a request is directed shall respond promptly.
- 5.2. Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

#### **6.0 FORCE MAJEURE**

- 6.1. No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make monetary payments) resulting from a "Force Majeure Event". A "Force Majeure Event" is defined as any act or occurrence beyond the reasonable control of a Party or the Parties, without limitation, acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any governmental authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, labor difficulties, including without limitation, strikes, slowdowns, picketing, boycotts or other work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers, individually and collectively. If a Force Majeure Event shall occur, the Party affected shall give written notice to the other Party of such Force Majeure Event promptly, but in any case within a reasonable period of time following such an event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon relevant obligations or performances shall be suspended: (a) to the extent such Party is affected by such Force Majeure Event and (b) during the continuance thereof such obligations or performances shall be excused if the nature, severity and duration of such Force Majeure Event reasonably dictates; and in either case, the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to such suspended or excused obligations or performances, excluding the aforementioned obligation to make monetary payment. The Party whose obligation or performance is suspended or excused shall use its reasonable efforts to avoid or remove the cause of nonperformance, and the Parties shall give like notice of such removal and perform with dispatch once the causes are removed or cease.

#### **7.0 GOVERNING LAW**

- 7.1. Unless otherwise provided by applicable law, this Agreement shall be governed by and construed in accordance with the laws of the state in which the functions, products and/or services at issue are furnished or sought shall apply, without regard to conflict in law principles.

- 7.2. Each Party will abide by any applicable federal and state laws and regulations in obtaining 911/E911 Customer authorization prior to changing an 911/E911 Customer's provider of services and/or products made available through use of the functions, services and/or products provided under this Agreement and in assuming responsibility for any charges that may apply to the extent any state regulation applies to the changing of an 911/E911 Customer's provider of services and/or products made available through use of the services and/or products provided under this Agreement.

## 8.0 LIMITATION OF LIABILITY/INDEMNITY

### 8.1. LIMITATION OF LIABILITY

- 8.1.1. Except for indemnity obligations expressly set forth herein or as otherwise expressly provided, to the maximum extent permitted by applicable law, each Party's liability to the other Party (inclusive of both Parties' respective Affiliates and their respective officers, directors, employees, agents, and other representatives) for any and all Losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees) ("Loss" or "Losses") relating to or arising out of such Party's performance under this Agreement and any and all dealings and arrangements between the Parties relating to the products and/or services hereunder (but excluding any Loss(es) relating to or arising out of any AT&T tariffs and products purchased by Synergem from AT&T tariffs, which shall be governed exclusively by such tariffs), including any negligent act or omission, whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action arising from allegations that a breach of this Agreement constitute a violation of a statute, shall not exceed in total the amount AT&T or Synergem, as the case may be, has charged or would have charged to the other Party for the alleged failure to perform or improper performance (not to exceed the billings between the Parties for such affected products and/or services for the month or months in which the condition occurred, but not to exceed twelve (12) months in any event). To the maximum extent permitted by applicable law, neither Synergem nor AT&T shall be liable to the other Party for any indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation, for any lost business opportunity/profits) suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind (but excluding gross negligence or willful misconduct in accordance with Section 8.1.2), whether active or passive (and including alleged breaches of this Agreement and causes of action arising from allegations that a breach of this Agreement constitutes a violation of a statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including negligent acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 8.1.2 to indemnify, defend, and hold the other Party harmless against any amounts payable to a third party, including any Losses, and indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation, for any lost business opportunity/profits) of such third party, subject to Section 8.1.3 below; provided, however, nothing in this Section 8.1.1 shall impose indemnity obligations on a Party for any Losses or indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation, for any lost business opportunity/profits) suffered by that Party's customers (including without limitation, its 911/E911 Customers) in connection with any affected products and/or services. Rather, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") and Indemnitee's Affiliates (and their respective officers, directors, employees, agents, and other representatives) against any Loss or claim made by or through the Indemnifying Party's customers (including without limitation, its 911/E911 Customers).
- 8.1.2. Except as otherwise expressly provided and subject to Section 8.1.5 below, in the case of any Loss alleged or claimed by a third party to have arisen out of the gross negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own gross negligence or willful misconduct or that of its officers, directors, employees, agents, contractors, or others acting in aid or concert with it.
- 8.1.3. A Party may, in its sole discretion, provide in its tariffs and contracts with its customers (including without limitation, its 911/E911 Customers) or third parties that relate to any products and/or services provided or contemplated by this Agreement that, to the maximum extent permitted by applicable law, such Party shall

- not be liable to such customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged such customer or third party for the products and/or services that gave rise to such Loss and (ii) any indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation, for any lost business opportunity/profits). If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 8.1.3.
- 8.1.4. A Party (and its Affiliates and their respective officers, directors, employees, agents, and other representatives) shall not be liable for damages to the other Party's customer's premises (including without limitation, the premises of its 911/E911 Customers) resulting from the furnishing of any products and/or services hereunder including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by the Party's gross negligence or willful misconduct, subject to Section 8.1.5 below.
- 8.1.5. In the event that a Party to this Agreement ("Claiming Party") claims that any Loss was result of the gross negligence or willful misconduct of the other Party ("Responding Party") to this Agreement, and a court of competent jurisdiction or an Arbitration Panel, as applicable, finds that any claimed Loss is the result of the other Party's own gross negligence or willful misconduct, through findings of fact and conclusions of law issued by such court or Arbitration Panel, then the Parties agree to limit any award up to treble monetary damages (excluding attorneys fees, interests and costs) for such gross negligence or intentional conduct.
- 8.1.6. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE PARTIES VOLUNTARILY AGREE, AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL, THAT THE RIGHTS AND REMEDIES AS STATED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DISPUTE RESOLUTION, SECTION 11, OF THIS AGREEMENT (AS TO THE SUBJECT-MATTER OF THIS AGREEMENT) ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THAT A PARTY MAY POSSESS PURSUANT TO STATUTE, OR AT COMMON LAW OR IN EQUITY AND ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY WITH RESPECT TO ANY CLAIMS, LOSS(ES) AND DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL DEALINGS, ARRANGEMENTS, NEGOTIATIONS, AND/OR COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE AGREEMENT, INCLUDING SUCH MATTERS WITH RESPECT TO ACTUAL OR POTENTIAL WHOLESALE TERMS AND CONDITIONS APPLICABLE TO ANY AREA IN WHICH AT&T OPERATES (BUT EXCLUDING ANY CLAIMS, LOSS(ES) AND DISPUTES RELATING TO OR ARISING OUT OF ANY OF EITHER PARTIES' TARIFFS, WHICH SHALL BE GOVERNED EXCLUSIVELY BY SUCH TARIFFS).**
- 8.2. **INDEMNITY**
- 8.2.1. **Responsibility of Each Party for its Services:** Except as otherwise expressly provided in this Agreement (including without limitation, in a product/service-specific Attachment), each Party shall be responsible only for the products and/or services that are provided by such Party, its agents, contractors, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the products and/or services provided by the other Party, its agents, contractors, subcontractors, or others retained by such other Party.
- 8.2.2. **Claims of Loss by Third Party(ies):** Except as otherwise expressly provided in this Agreement (including without limitation, in a product/service-specific Attachment) and subject to Section 9.1, Limitation of Liability above, and to the extent not prohibited by applicable law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Losses to a third party arising out of the gross negligence, or willful misconduct ("Fault") of such Indemnifying Party, its officers, directors, employees, agents, its customers (including without limitation, its 911/E911 Customers), contractors, or others retained by the Indemnifying Party, in connection with the Indemnifying Party's provision of products and/or services and performance under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment or agency,

- respectively, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 8.2.3. **Claims of Loss by a Customer (including without limitation, a 911/E911 Customer) of a Party:** Except as otherwise expressly provided in this Agreement (including without limitation, in a product/service-specific Attachment) and subject to Section 8.1, Limitation of Liability above including without limitation, Section 8.1.5, in the case of any Loss alleged or claimed by a customer (including without limitation, its 911/E911 Customer) of either Party, the Indemnifying Party whose customer alleged or claimed such Loss shall defend and indemnify the Indemnified Party against any and all such claims or Losses by such Indemnifying Party customer regardless of whether the underlying product and/or service or performance giving rise to such claim or Loss was provided or provisioned by the Indemnified Party, unless the claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party. Notwithstanding anything to the contrary in this Section 9.2.3 and this Agreement, AT&T shall have no liability to the customers of Synergem for claims arising from the provision of the products and/or services hereunder to Synergem, including but not limited to claims related to Synergem's marketing or sales of Synergem's offerings that are based on or use the products and/or services provided hereunder, delayed restoral or nonrestoral of the products and/or services hereunder, quality of service or any resulting billing or any other type of dispute. Except in instances involving gross negligence or willful misconduct by AT&T, Synergem agrees to indemnify, defend, and hold AT&T harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by Synergem's customers for any products and/or services provided by AT&T hereunder. Notwithstanding anything to the contrary in this Section 8.2.3 and this Agreement, Synergem shall have no liability to the customers of AT&T for claims arising from the provision of the products and/or services hereunder to AT&T, including but not limited to claims related to AT&T's marketing or sales of AT&T's offerings that are based on or use the products and/or services provided hereunder, delayed restoral or nonrestoral of the products and/or services hereunder, quality of service or any resulting billing or any other type of dispute. Except in instances involving gross negligence or willful misconduct by Synergem, AT&T agrees to indemnify, defend, and hold Synergem harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by AT&T's customers for any products and/or services provided by Synergem hereunder.
- 8.2.4. **Claims of Loss by a Party Against other Party:** Subject to Section 8.1, Limitation of Liability above, the Indemnifying Party shall defend, indemnify and hold harmless the Indemnified Party against any claim or Loss arising from the Indemnifying Party's use of products and/or services provided hereunder, or performance, under this Agreement, including, without limitation, any claim(s) or Loss(es) arising from: i) Indemnifying Party's use of products and/or services offered under this Agreement; or ii) involving any claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the use of products and/or services offered under this Agreement by Indemnifying Party or its customers (including without limitation, use by its 911/E911 Customer's).
- 8.2.5. **Indemnity for Damage to Facilities.** Subject to the limitations of liability set forth in Section 8.1, Synergem shall reimburse AT&T for damages to AT&T's facilities utilized to provide any products and/or services hereunder caused by the gross negligence or willful act of Synergem, its officers, directors, employees, agents, contractors, or subcontractors or Synergem's customers or resulting from Synergem's or its customer's improper use of AT&T's facilities, or due to malfunction of any facilities, functions, products, services and/or equipment provided by any person or entity other than AT&T. Upon reimbursement for damages, AT&T will cooperate with Synergem in prosecuting a claim against the person or entity causing such damage. Synergem shall be subrogated to the right of recovery by AT&T for the damages to the extent of such payment. In addition, Synergem hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other service degradation or damage to AT&T facilities and hereby agrees to release, defend and indemnify

AT&T, and hold AT&T harmless, from any claims for Loss or damages, including but not limited to direct, indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation, for any lost business opportunity/profits), made against AT&T by a customer, any telecommunications service provider or telecommunications user relating to such testing by Synergem. Subject to the limitations of liability set forth in Section 8.1, AT&T shall reimburse Synergem for damages to Synergem's facilities utilized to provide any products and/or services hereunder caused by the gross negligence or willful act of AT&T, its officers, directors, employees, agents, contractors, or subcontractors or AT&T's customers or resulting from AT&T's or its customer's improper use of Synergem's facilities, or due to malfunction of any facilities, functions, products, services and/or equipment provided by any person or entity other than Synergem. Upon reimbursement for damages, Synergem will cooperate with AT&T in prosecuting a claim against the person or entity causing such damage. AT&T shall be subrogated to the right of recovery by Synergem for the damages to the extent of such payment. In addition, AT&T hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other service degradation or damage to Synergem facilities and hereby agrees to release, defend and indemnify Synergem, and hold Synergem harmless, from any claims for Loss or damages, including but not limited to direct, indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation, for any lost business opportunity/profits), made against Synergem by a customer, any telecommunications service provider or telecommunications user relating to such testing by AT&T.

- 8.2.6. **Indemnification Procedures:** Whenever a claim shall arise for indemnification under this Section 8.2, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim. The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party. Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim. Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement. At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party. Each Party agrees to cooperate and to cause

its officers, directors, employees, agents, and other representatives to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Nondisclosure, Section 11, of this Agreement.

## **9.0 BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES**

- 9.1. The Billing Party shall include all charges under this Agreement on the monthly bill(s) rendered to the Billed Party (hereinafter "Invoice").
- 9.2. The Billed Party shall pay all charges under this Agreement within sixty (60) days of the Invoice date ("Bill Due Date").
- 9.3. A good faith billing dispute under this Agreement requires the Billed Party to provide a written claim to the Billing Party to permit the Billing Party to investigate the merits of the dispute. Such claim must identify the following within ten (10) Business Days from the date the Billing Party is notified of the dispute: (a) the account number under which the Invoice has been rendered; (b) the specific charge that the Billed Party believes was billed in error; (c) the date of the Invoice; and (d) the reason or grounds for the dispute.
- 9.4. Billing inquiries and/or claims of overbilling by the Billing Party shall be referred to the Billing Party for investigation within twelve (12) months of the charge(s)' first appearance on an Invoice to the Billed Party. Absent a claim and/or dispute by the Billed Party as to a charge within twelve (12) months from its first appearance on an Invoice to the Billed Party, it will be deemed that the Billed Party has waived its right to dispute such charges. If the Parties determine that the Billed Party was billed incorrectly for items rendered pursuant to this Agreement, a billing adjustment shall be calculated. If a refund to the Billed Party is due (the Billed Party had paid the disputed charges), an adjustment shall be made for the overcharges and shall be credited to the Billed Party within thirty (30) days of the Resolution Date, as defined below. If the refund is credited to the Billed Party within thirty (30) days of the Resolution Date, interest will not be applicable. If the refund is not credited within thirty (30) days of the Resolution Date, the interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in AT&T's intrastate access service tariff; or (ii) the highest interest rate permitted by applicable law, in either case compounded daily from the Bill Due Date to and including the date that the refund is actually made. The resolution date will be the date upon which notice is deemed to have been received by the Billed Party under the notice provisions in this Agreement ("Resolution Date"). If the dispute is decided in favor of the Billing Party, the Billed Party shall pay (to the extent not paid, then disputed, as permitted herein) the Resolved Amount, as defined below, to the Billing Party within thirty (30) days of the Resolution Date. To the extent that the Disputed Amounts have been escrowed and following the Resolution Date are paid directly from that escrow account, the Billed Party shall pay the Billing Party interest on the unpaid amount no longer in dispute ("Resolved Amount") if not paid within thirty (30) days of the Resolution Date. The Billed Party shall pay the Billing Party interest on the Resolved Amount at the lesser of (iii) the rate used to compute the Late Payment Charge contained in AT&T's intrastate access service tariff; or (iv) the highest interest rate permitted by applicable law, in either case compounded daily from the Resolution Date to and including the date that the payment is actually made. Interest shall accrue on any unpaid Resolved Amount that was not escrowed at the lesser of (v) the rate used to compute the Late Payment Charge contained in AT&T's intrastate access service tariff; or (vi) the highest interest rate permitted by applicable law, in either case compounded daily from the Bill Due Date to and including the date that the payment is actually made.
- 9.5. Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to back-bill for or claim credit for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount.

## **10.0 DISPUTE RESOLUTION**

### **10.1. Finality of Disputes**

- 10.1.1. Except as otherwise specifically provided for in this Agreement including without limitation, Section 9 above (as to billing disputes), no claim may be brought for breach of any obligation under this Agreement more than twenty-four (24) months from the date the occurrence that gives rise to the claim is discovered or reasonably

should have been discovered with the exercise of due care and attention.

## 10.2. Alternative to Litigation

10.2.1. The Parties desire to resolve claims under this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of this Agreement.

## 10.3. Commencing Dispute Resolution

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

10.3.1.1. Billing disputes: Billing Disputes between the Parties arising out of or relating to this Agreement shall be resolved in accordance with the procedures set forth in Section 9 above and Section 10.5 below; and

10.3.1.2. Informal Dispute Resolution (described below); and

10.3.1.3. Formal Dispute Resolution (described below); and

10.3.1.4. Arbitration (described below).

## 10.4. Informal Resolution of Non-Billing Disputes

10.4.1. Billing disputes that are addressed in Section 9 of this Agreement are not subject to this Informal Resolution Process.

10.4.2. Upon receipt by one Party of notice of a non-billing related dispute by the other Party pursuant to Section 10.3.1 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. Upon agreement, the representatives may utilize alternative procedures (such as mediation) to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in an arbitration as described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in an arbitration or lawsuit. If the Parties are unable to resolve the non-billing dispute through Informal Dispute Resolution procedures within sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.3.1 of this Agreement, then either Party may invoke Formal Dispute Resolution under Section 10.5 of this Agreement, or the Parties may agree, in writing, to extend the Informal Dispute Resolution period for the number of days that they deem necessary to resolve the dispute.

## 10.5. Formal Dispute Resolution

10.5.1. If the Parties are unable to resolve the dispute through the informal procedure described in Section 9 above (as to billing disputes) or Section 10.4 above (as to non-billing related disputes), then either Party may invoke the Formal Dispute Resolution procedures described in this Section 10.5. Formal Dispute Resolution procedures may not be invoked by either Party with respect to non-billing related disputes earlier than the date that is sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.3.1 of this Agreement.

10.5.2. Claims Subject to Mandatory Arbitration. The following claims, if not settled through the informal procedure described in Section 9 above (as to billing disputes) will be subject to mandatory arbitration pursuant to Section 10.6 below:

10.5.2.1. Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 9 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately

preceding receipt of the letter initiating a billing dispute under Section 9, the Parties will annualize the actual number of months billed.

10.5.3. All Other Claims and Relief. Any claim and any relief other than as specified in Section 10.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate judicial or regulatory authority with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

## 10.6. Arbitration

10.6.1. Disputes subject to mandatory arbitration (or when arbitration is agreed to by both Parties) under Section 10.5.2 of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. All arbitrations will be held in Dallas, Texas unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitration of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

## 11.0 NONDISCLOSURE

11.1. Each Party anticipates and recognizes that it will come into possession of technical or business information or data about the other Party and/or its customers (including without limitation, its 911/E911 Customers) as a result of this Agreement which will be considered confidential by such other Party ("Proprietary Information"). The Parties agree (1) to treat all such information and data as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. Each Party agrees not to disclose confidential information and/or data of or pertaining to the other Party or its customers (including without limitation, its 911/E911 Customers) to any third party without first securing the written consent of such Party. The foregoing shall not apply to information that is in the public domain. Nothing in this Agreement prevents either Party from disclosing operations results or other data that might reflect the results of this Agreement as a part of that Party's aggregate operating data as long as the disclosed data is at a level of aggregation sufficient to avoid disclosing with specificity information obtained in the operation of this Agreement.

11.2. Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.

11.3. Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:

11.3.1. Was at the time of receipt, already known to the Party receiving the request ("Receiving Party"), free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Party disclosing the information ("Disclosing Party"); or

11.3.2. Is, or becomes publicly known through no wrongful act of the Receiving Party; or

- 11.3.3. Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
  - 11.3.4. Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
  - 11.3.5. Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
  - 11.3.6. Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
  - 11.3.7. Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.
- 11.4. If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section 11, that Party will immediately inform the other Party of the order or request before such data or information is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of billing and/or usage records of or pertaining to an individual customer (including without limitation, its 911/E911 Customer).
- 11.5. This Section 11 will not preclude the disclosure by a Party of information or data subject to this Section to consultants, agents, or attorneys representing that Party, or the Office of the Public Counsel for a State, or appropriate State Commissions or staffs, or FCC Staff, provided that such representatives are informed of the confidential nature of the information and/or date prior to disclosure and are bound by confidentiality requirements that are at least as restrictive as applicable to the Parties to this Agreement.
- 11.6. The provisions of this Section 11 shall survive the expiration and/or Termination of this Agreement, unless agreed to in writing by the Parties.

## 12.0 ASSIGNMENT

- 12.1. This Agreement is not assignable in whole or in part by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld. Without the prior written consent of the non-transferring party, not to be unreasonably withheld, no interest in this Agreement shall be sold, assigned, transferred, mortgaged, pledged, conveyed or encumbered, whether voluntarily, involuntarily or by operation of law or otherwise (including, without limitation, by merger, consolidation, dissolution, or voluntary or involuntary sale), however, upon sixty (60) days prior written notice, either Party may assign the Agreement in whole or in part to its Affiliates without obtaining the other Party's consent. At the time of any assignment of this Agreement, the assignee shall assume all of the obligations under this Agreement pursuant to an assignment and assumption agreement reasonably satisfactory to the other Party. Any assignment, transfer, conveyance, pledge or mortgage in violation of this Section shall be voidable at the reasonable discretion of the non-transferring Party.

## 13.0 NOTICES

- 13.1. Notices given by Synergem to AT&T under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be pursuant to at least one of the following methods:
- 13.1.1. delivered by electronic mail (email).
  - 13.1.2. delivered by facsimile.
- 13.2. Notices given by AT&T to Synergem under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be pursuant to at least one of the following methods:

13.2.1. delivered by electronic mail (email) provided Synergem has provided such information in Section 13.4 below.

13.2.2. delivered by facsimile provided Synergem has provided such information in Section 13.4 below.

13.3. Notices will be deemed given as of the earliest of:

13.3.1. the date of actual receipt;

13.3.2. notice by email shall be effective on the date it is officially recorded as delivered by delivery receipt and in the absence of such record of delivery, it shall be presumed to have been delivered on the date sent;

13.3.3. on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone;

13.4. Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CARRIER CONTACT
NAME/TITLE	Sandra W. Hallman CFO
STREET ADDRESS	523 South Stephens St.
CITY, STATE, ZIP CODE	Pilot Mountain, NC 27041
FACSIMILE NUMBER	N/A
PHONE NUMBER*	276-628-2954
EMAIL ADDRESS	shallman@synergemtech.com

NOTICE CONTACT	AT&T CONTACT
NAME/TITLE	Contract Management ATTN: Notices Manager
FACSIMILE NUMBER	(214) 712-5792
EMAIL ADDRESS	The current email address as provided on AT&T's CLEC Online website

\* Informational only and not to be considered as an official notice vehicle under this Section.

13.5. Either Party may unilaterally change its designated contact name, address email address, and/or facsimile number for the receipt of notices by giving written Notice to the other Party in compliance with this Section 13.0. Unless explicitly stated otherwise, any change to the designated contact name, address, email address, and/or facsimile number will replace such information currently on file. Any Notice to change the designated contact name, address, email address, and/or facsimile number for the receipt of Notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

**14.0 THIRD PARTY BENEFICIARIES**

14.1. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third party beneficiary rights hereunder. This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

**15.0 TAXES**

15.1. The Party purchasing products and/or services ("Purchasing Party") shall be responsible for all federal, state or local, sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax(es)") imposed on or with respect to the products and/or services provided under this Agreement including those Taxes the incidence of which is imposed on the Party providing products and/or services ("Providing Party") other than taxes imposed on the income of the Providing Party. The Purchasing Party shall reimburse the Providing Party for the

amount of any such Taxes that the Providing Party is required to pay or collect. The Purchasing Party agrees to indemnify and hold harmless the Providing Party for any costs incurred by the Providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the Providing Party due to the failure of the Purchasing Party to pay or collect and remit any Tax to such authority. Nothing shall prevent the Providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the Purchasing Party for such Tax; or (2) it collects the Tax from the Purchasing Party. Notwithstanding anything in this Agreement to the contrary, the Purchasing Party shall be liable for and the Providing Party may collect Taxes that were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an Invoice within four (4) years after the Tax otherwise was owed or due.

- 15.2. To the extent a purchase of any products and/or services provided under this Agreement is claimed to be for resale and thus subject to tax exemption, the Purchasing Party shall furnish the Providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the Purchasing Party for any period prior to the date that the Purchasing Party presents a valid certificate. If applicable law excludes or exempts a purchase of a product and/or service provided under this Agreement from a Tax, but does not also provide an exemption procedure, then the Providing Party will not collect such Tax if the Purchasing Party (a) furnishes the Providing Party with a letter signed by an officer of the Purchasing Party claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies the Providing Party with an indemnification agreement, reasonably acceptable to the Providing Party, that holds the Providing Party harmless from any Tax, interest, penalties, Loss, cost or expense with respect to forbearing to collect such Tax.
- 15.3. With respect to any Tax or Tax controversy covered by this Section 15, the Purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any Tax that it is ultimately obligated to pay. The Purchasing Party will ensure that no lien is attached to any asset of the Providing Party as a result of any contest. The Purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the Providing Party shall be refunded to the Providing Party.
- 15.4. If a Party is assessed by a taxing authority or jurisdiction any Tax that has been paid by or been invoiced to the other Party that arises in conjunction with or directly related to this Agreement, then the Parties will work cooperatively and assist each other as necessary in resolving the matter with the taxing authority or jurisdiction.

## **16.0 EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION**

- 16.1. The Effective Date of this Agreement shall be five (5) calendar days after the Parties' final authorizing signatures have been affixed to this Agreement (the "Effective Date").
- 16.2. The term ("Term") of this Agreement shall commence upon the Effective Date and shall expire on January 14, 2020 (the "Expiration Date"). Upon the Expiration Date of this Agreement, neither Party shall have any further obligation under this Agreement, except as otherwise set forth in Section 16.7 below and pursuant to Survival, Section 30.
- 16.3. If at any time within one hundred and eighty (180) days or any time thereafter of the Expiration Date, if AT&T serves "Notice of Expiration", Synergem shall have ten (10) calendar days to provide AT&T written confirmation to the Notice of Expiration indicating if Synergem wishes to pursue a successor agreement with AT&T or terminate this Agreement, which Termination will be one (1) day after the Expiration Date except as otherwise stated herein ("Termination Date"). If Synergem wishes to pursue a successor agreement with AT&T, Synergem shall attach to its written confirmation or Notice of Expiration, a written request to commence negotiations with AT&T. Upon receipt of Synergem's request, the Parties shall commence good faith negotiations for a successor agreement.
- 16.4. The terms and conditions of this Agreement shall continue in full force and effect until the earlier of: (i) the effective date of the successor agreement, if any, or (ii) the Termination Date set forth in Section 17.
- 16.5. Notwithstanding any other provision of this Agreement, and in addition to the Parties' rights to terminate under other Sections of this Agreement, including without limitation, Section 30, if a Party is an OSP but whose status as a Designated 911/E911 Service Provider is revoked, conditioned, or modified by the 911/E911 Customer in a geographic

area within a State covered by this Agreement, then either Party may terminate this Agreement upon not less than forty-five (45) days prior written notice to the other Party. In addition the above mentioned rights to terminate this Agreement, if a Party is not an OSP but whose status as a Designated 911/E911 Service Provider is revoked, conditioned, or modified by the 911/E911 Customer in a geographic area within a State covered by this Agreement, then the Parties shall cooperate to terminate this Agreement upon not less than forty-five (45) days prior written notice from one Party to the other Party. Provided however, notwithstanding these termination rights, neither Party may terminate this Agreement when this Agreement covers a State or geographic area where the revoked Designated 911/E911 Service Provider Party remains a Designated 911/E911 Service Provider in another geographic area within a State covered by this Agreement.

- 16.6. Notwithstanding any other provision of this Agreement, and in addition to the Parties' rights to terminate under other Sections of this Agreement, including without limitation, Section 30, a Party may terminate this Agreement upon forty-five (45) days prior written notice to the other Party in the event that the other Party fails to perform a material obligation or breaches a material provision of this Agreement and the other Party fails to cure such nonperformance or breach by 5:00 p.m. Central Time on the forty-fifth (45th) calendar day after receipt of written notice thereof. If the Party against which the claim of nonperformance or breach is made materially and in good faith disagrees with the claim, it shall notify the claiming Party of its disagreement in writing by 5:00 p.m. Central Time of the fourteenth (14th) day following receipt of the nonperformance/breach notice, providing with specificity the basis for its disagreement, and the dispute shall then be resolved between the Parties pursuant to Section 9 above (as to billing disputes) and/or Section 10 above (as to non-billing disputes). If the nonperformance/breach is not disputed in a timely manner, the Party shall cure the nonperformance/breach and certify in writing to the other by the deadline on the forty-fifth (45th) day that the nonperformance/breach has been cured. Any Termination of this Agreement pursuant to this Section 16 shall take effect in accordance with the written notice delivered to the nonperforming/breaching Party after it failed to cure and/or to certify by the deadline on that forty-fifth (45th) day.

After a Party provides notice of termination of this Agreement, the Parties will work cooperatively in good faith to effect an orderly transition of 911 Services to the newly Designated 911/E911 Service Provider as identified by the 911/E911 Customer in the geographic area at issue for the benefit of each Party's End Users using the function, products and/or services provided in this Agreement.

- 16.7. Upon notice of termination of this Agreement, each Party shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its customers (including without limitation, its 911/E911 Customers) have been transitioned to another 911 Services serving arrangement, if applicable, by the Termination Date. In addition, the Party whose products and/or services will be discontinued/disconnected, on or before the Termination Date, shall inform its customers (including without limitation, its 911/E911 Customers) that the Party's provided products and/or services will be discontinued/disconnected, unless otherwise provided herein or mutually agreed by the Parties. When applicable, if, before the Termination date, a Party has not transitioned or disconnected/discontinued the products and/or services being provided using the products and/or services hereunder, unless otherwise mutually agreed in writing signed by both Parties, then the other Party may terminate any such products and/or services still in-service on the first day following such Termination Date, provided however, that if termination of this Agreement resulted from a material breach by a Party, then the other Party may not terminate any such services still in-service until forty-five (45) days after the Termination Date. Regardless of the contractual relationship between the Parties as of the Termination Date of this Agreement, the Parties shall work in good faith to ensure each Party's End Users have access to 911/E911 Services.
- 16.8. In the event that any federal or state government action (including by a regulatory agency, a court, or a legislature) requires either Party to: a) modify, provide, or otherwise make available this Agreement or any part of this Agreement to any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement, including by way of example, at prices or price structure/application or arrangements different than agreed to in this Agreement as a whole by the Parties, the Parties both agree except to the extent prohibited by law that the procedures of Section 29 (Severability) shall be invoked to address those provisions that were required to be provided, modified, or otherwise made available to any other telecommunications carrier, or any other person or entity.

## **17.0 WAIVER**

- 17.1. The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times, in full force and effect, unless terminated or amended as provided for herein.

## **18.0 DISCLAIMER OF WARRANTIES**

- 18.1. EXCEPT AS SET FORTH HEREIN, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER, AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR INTENDED OR PARTICULAR PURPOSE FOR EACH PRODUCT AND SERVICE. ADDITIONALLY, THE PARTIES ASSUME NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

## **19.0 RELATIONSHIP OF THE PARTIES**

- 19.1. Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party (and each Party's contractor(s), if any) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.
- 19.2. This Agreement shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other nor to act as an agent or representative for the other unless written authority, separate from this Agreement, is provided. Nothing in this Agreement shall be construed as providing for the sharing of profits or Losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. No Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

## **20.0 FILING OF AGREEMENT; GOVERNMENTAL REQUIREMENT**

- 20.1. The Parties agree that this Agreement shall not be filed with a State Utility Commission, but in the event a Party ("Disclosing Party") is requested, required or ordered by a state regulatory body or a court of competent jurisdiction finds, that this Agreement should be filed, or that such Agreement should be submitted to a state regulatory body for approval, or should a regulatory body or court of competent jurisdiction find that its provisions should be tariffed pursuant to applicable law or regulation, the Disclosing Party must provide the other Party ("Receiving Party") with written notice of such requirement as soon as possible and the Receiving Party shall cooperate with the Disclosing Party in expeditiously complying with any such request, order or finding.

## **21.0 AMENDMENTS AND MODIFICATIONS**

- 21.1. Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by authorized representatives of both Parties. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders,

quotations, acknowledgments, Invoices or other communications.

## **22.0 INTERPRETATION/JOINT WORK PRODUCT**

- 22.1. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective representatives and legal counsel, and shall be fairly interpreted in accordance with its provisions and, in the event of any ambiguities, no inferences shall be drawn against either Party.

## **23.0 NO LICENSE**

- 23.1. Except as otherwise expressly provided in this Agreement (including without limitation, any Attachment), no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement. For the sake of clarity, and without limiting the foregoing, no license is granted under this Agreement to any Master Street Address Guide (MSAG). Any license under any patent, copyright or other Intellectual Property (including, but not limited to, any MSAG) shall be granted only pursuant to a separate licensing agreement, which shall take precedence over the terms of this Agreement.

## **24.0 INTELLECTUAL PROPERTY**

- 24.1. Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

## **25.0 COMPLIANCE AND CERTIFICATION**

- 25.1. Each Party shall comply at its own expense with all applicable laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of applicable law.
- 25.2. Synergem warrants that, to the extent applicable and required, it has obtained all necessary State certification required in each State covered by this Agreement. Upon request, each Party shall provide proof of certification.
- 25.3. Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other third parties that may be required in connection with the performance of its obligations under this Agreement.
- 25.4. Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA, to the extent applicable.

## **26.0 NETWORK MAINTENANCE AND MANAGEMENT**

- 26.1. The Parties will exchange information appropriate for the implementation and performance of this Agreement (for example, as applicable, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, escalation processes, etc.).
- 26.2. Each Party will provide a 24-hour contact number for network management issues to the other's surveillance management center.
- 26.3. The Parties shall not use any products and/or services hereunder in any manner that interferes with or impairs or undermines service over any facilities of the other Party, its Affiliated companies or other connecting telecommunications carriers, prevents any telecommunications carrier from using its telecommunications service, impairs the quality or the privacy of telecommunications service to other carriers or to either Party's customers (including without limitation, its 911/E911 Customers), causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue using or refuse to provide the products and/or services hereunder, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

## **27.0 CUSTOMER INQUIRIES/CUSTOMER NOTICES**

- 27.1. Except as may otherwise be required hereunder, each Party will refer all questions regarding the other Party's services or products directly to the other Party.
- 27.2. Except as may otherwise be required hereunder, each Party will ensure that its representatives who receive inquiries regarding the other Party's services:
- 27.2.1. Direct the caller to the other Party if the caller inquires about the other Party's services or products; and
- 27.2.2. Do not in any way disparage or discriminate against the other Party or its products or services.
- 27.3. The Parties shall be responsible for all notices and other communications with their customers (including without limitation, their 911/E911 Customers), including without limitation, any notices of pending disconnection due to the Termination or expiration of this Agreement.

## 28.0 INSURANCE

- 28.1. At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits, which may be met through self insurance, and any additional insurance and/or bonds required by applicable law:
- 28.1.1. Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$500,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$500,000 for Bodily Injury by disease-each employee. To the fullest extent allowable by Law, each Party will include a waiver of subrogation in favor of the other Party.
- 28.1.2. Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence limit for Personal Injury and Advertising; and \$10,000,000 Products/Completed Operations Aggregate limit. Fire Legal Liability sub-limits of \$1,000,000 are also required if this Agreement involves collocation. These limits can be met with a combination of Commercial General Liability and umbrella. Each Party, its Affiliates, officers, agents and employees shall be listed as additional insured by the other Party. Each party will include the other Party as an additional insured to its respective Commercial General Liability policy.
- 28.1.3. If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 28.2. Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 28.1.1 through 28.1.3 of this Agreement.
- 28.3. The Parties agree that companies affording the insurance coverage required under this Section 28 shall have a rating of A-or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 28.4. Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 28.5. AT&T agrees to accept Synergem's program of self-insurance in lieu of insurance coverage only if certain requirements are met. These requirements are as follows:

### Workers' Compensation and Employers' Liability

Synergem may elect to self-insure for Workers' Compensation and Employers' Liability, subject to the approval of AT&T.

Synergem shall:

- provide a copy of the Certificate of Authority to Self-insure Workers' Compensation obligations issued by the state in which the operations are to be performed or the employer's state of hire, and
- provide a copy of the Certificate of Authority annually for the term of this Agreement, and
- obtain Workers' Compensation and Employers' Liability insurance immediately if the state rescinds the Certificate of Authority.

The option to self-insure Workers' Compensation and Employers' Liability is specific to a Party and does not extend to subcontractors a Party may hire.

#### Commercial General Liability and Umbrella

Synergem may elect to self-insure for Commercial General Liability, subject to AT&T approval if these requirements are met.

Synergem shall:

- provide a copy of its most recent audited financial statements with an unqualified opinion from the auditor, and
- provide a current Dun & Bradstreet report with a composite credit appraisal score of "1" or "2", or
- maintain a long-term unsecured issuer rating of BBB- from Standard & Poor's or Baa from Moody's during the term of this Agreement, or
- maintain liquidity in the form of cash or cash equivalents of (10) times the amount of insurance required, and
- obtain Commercial General Liability insurance immediately if Synergem is unable to comply with the financial strength and size requirements in this section, and
- provide this information annually for the term of the Agreement.

The option to self-insure Commercial General Liability is specific to Supplier and does not extend to subcontractors Supplier may hire.

#### Automobile Liability

Synergem may elect to self-insure for Automobile Liability, subject to AT&T approval, if these requirements are met:

Synergem shall:

- provide a copy of the Certificate of Authority to self-insure Automobile Liability obligations issued by the state in which the operations are to be performed, and
- provide a copy of the Certificate of Authority annually for the term of this Agreement, and
- obtain Automobile Liability insurance immediately if the state rescinds the Certificate of Authority to self-insure Automobile Liability obligations.

The option to self-insure Automobile Liability is specific to Synergem and does not extend to subcontractors Synergem may hire.

28.6. This Section 28 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a referenced instrument.

## **29.0 SEVERABILITY**

29.1. Except as otherwise provided herein, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith and diligent efforts to amend this Agreement to replace the unenforceable provision with an enforceable provision that is mutually acceptable and that reflects the intent of the unenforceable provision as closely as possible; provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon ninety (90) days written notice to the other, during which time the Parties shall work cooperatively to establish an

orderly transition of customers (including without limitation, its 911/E911 Customers) to other serving arrangements as addressed in Section 16. In any situation in which the right to terminate under this Section 29 is triggered by State government action, the right to terminate shall arise only in the State in which such action occurred and would apply for that State only unless this Agreement otherwise permits a Party to terminate this Agreement in more than one State, including without limitation, in its entirety.

### **30.0 SURVIVAL**

30.1. The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the Termination or expiration of this Agreement, shall survive the Termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following sections are specifically agreed by the Parties to continue beyond the Termination or expiration of this Agreement: Sections 16 (Effective Date, Term, Expiration and Termination), 8 (Limitation of Liability/Indemnity), 18 (Disclaimer of Warranties), 9 (as to any billing/charges matters hereunder), 10 (as to any disputes hereunder), 11 (Nondisclosure), and 15 (Taxes).

### **31.0 AUTHORITY**

31.1. AT&T represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. AT&T represents and warrants that AT&T Services, Inc. has full power and authority to execute and deliver this Agreement as agent for AT&T. AT&T represents and warrants that it has full power and authority to perform its obligations hereunder.

31.2. Synergem represents and warrants that it is a Corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

31.3. Each individual whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

### **32.0 COUNTERPARTS**

32.1. This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

### **33.0 ENTIRE AGREEMENT**

33.1. The terms and condition contained in this Agreement and any Attachments, appendices, exhibits, schedules, and addenda and other documents or instruments referred to herein and incorporated into this Agreement by reference (if any) constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement. In the event the Parties enter into another agreement for the exchange of telecommunications related functions, products and/or services that addresses similar telecommunications related functions, products and/or services provided under this Agreement for the exchange of 911 Emergency Services calls, the terms and conditions of this Agreement shall continue to control as to those telecommunications related functions, products and/or services used for the exchange of 911 Emergency Services calls governed by this Agreement.

### **34.0 INFORMATION SECURITY**

34.1. Each Party shall comply with NENA information security requirements available at: [http://c.ymcdn.com/sites/www.nena.org/resource/resmgr/Standards/NENA\\_75-001.1\\_NG-Security\\_20.pdf](http://c.ymcdn.com/sites/www.nena.org/resource/resmgr/Standards/NENA_75-001.1_NG-Security_20.pdf) Each Party further agrees to comply with the terms and conditions of the NENA information security requirements, as may be changed from time-to-time by NENA. Each Party shall cooperate fully with the other Party, including by completing checklists or similar documentation, as needed to meet a Party's obligations that End User information, software and/or computer systems a Party uses for the 911 Services under this Agreement comply with the standards and requirements set forth by NENA as applicable for 911 Services.

### **35.0 TARIFF REFERENCES**

- 35.1. References to state tariffs throughout this Agreement shall be to the currently effective applicable Parties' tariffs for the state(s) or jurisdiction(s) in which the services were provisioned; provided however, where certain AT&T services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which AT&T provides such services as a result of detariffing or deregulation.

# **ATTACHMENT 01**

## **Alternate E911 Service Provider**

**Alternate E911 Service Provider**

## 1.0 INTRODUCTION

- 1.1 This Attachment provides for the implementation of facilities and processes that will enable the transfer of wireless 911 calls from PSAPs serviced by Synergem and PSAPs served by AT&T.
- 1.2 The Parties acknowledge and agree that the Parties can only provide 911/E911 Service in a territory where it is the Designated 911/E911 Service Provider, and then only that 911/E911 Service configuration as purchased by the 911/E911 Customer. The Parties agree that access to the Parties' E911 Selective Routers and E911 Database Management System is provided on an "as is" basis.
- 1.3 Nothing in this Agreement shall obligate either Party to aggregate other carriers' traffic.

## 2.0 INTER-SELECTIVE ROUTING FOR CALL TRANSFERS

- 2.1 Each Party will deploy and maintain one-way Inter-SR Trunks from its Selective Router or POI to the other Party's Selective Router or POI for the transfer of calls to PSAPs handled by the other Party's E911 System.
- 2.2 Neither Party will charge the other Party for the Inter-SR Trunks provided pursuant to this Attachment unless Synergem orders Inter-SR Trunks from AT&T using an Access Service request (ASR), which would result in AT&T billing Synergem as rated in the attached pricing schedule.
- 2.3 Each Party has the option of providing its own facilities for these Inter-SR Trunks or obtaining the facilities from a third party. Synergem can also obtain its facilities from AT&T by ordering such facilities via an Access Service Request (ASR) as rated and specified in the applicable AT&T special access tariff or guidebook.
- 2.4 Each Party will design its Inter-SR Trunk groups to support the existing E911 generic of the AT&T E911 Selective Router tandem.
- 2.5 Each Party will establish and maintain a sufficient number of Inter-SR Trunks to support simultaneous Inter-SR PSAP call transfers such that a P.01 grade of service is attained.
- 2.6 Each Party will cooperate to provide the appropriate number of one-way outgoing 911 Inter-SR Trunks over diversely routed facilities, where available, between Selective Routers or POIs, as appropriate, to enable transfer of 911 calls between PSAPs served by the Primary Service Provider's E911 System and PSAPs served by the Secondary Service Provider's E911 System.
- 2.7 Each Party will maintain appropriate dial plans to support inter-SR wireless 911 call transfers.
- 2.8 Each Party will alarm and monitor its respective originating 911 Inter-SR Trunks and work cooperatively to restore service in accordance with federal, state and local 911 rules.

## 3.0 Interoperability Arrangements

- 3.1 To the extent the Parties implement Inter-SR Trunks in support of call transfer with ALI for wireless 911 calls, Synergem and AT&T shall work cooperatively to have wireless carriers load pANI shell records into their respective ALI Databases. Synergem shall update its ALI steering tables in its ALI Database and AT&T shall update its ALI steering tables in its ALI Database in order to support 911/E-911 Service call transfers between each Party's respective PSAP with ALI for wireless 911 calls.
- 3.2 ALI Database Responsibilities
  - 3.2.1 Where the Parties implement inter-selective router trunks in support of PSAP-to-PSAP call transfer with ALI for wireless 911, each Party shall load pANI Shell Records and update ALI steering tables in their respective ALI databases to support PSAP-to-PSAP call transfer with ALI for wireless 911 calls.

## 4.0 METHODS AND PRACTICES

- 4.1 With respect to all matters covered by this Agreement, each Party will comply with all of the following to the extent that they apply to access to 911 Services: (i) all FCC and applicable state Commission rules and regulation; (ii) any requirements imposed by any Governmental Authority other than a Commission; (iii) the terms and conditions of the Party's Commission-approved tariff(s); and (iv) the principles expressed in the recommended standards published by NENA.

## 5.0 PHASED PROJECT NOTIFICATION

- 5.1 Synergem will obtain approval from the 911/E911 Customer to provide 911 Services within the governing 911/E911 Customer's jurisdiction and will provide such documentation to AT&T.
- 5.2 In the event Synergem implements 911 Services in different phases (i.e. wireless, wireline, etc.), Synergem will notify AT&T of such project implementation approach, and coordinate a mutually agreed upon timeframe with AT&T on each project phase.

*E911 DSO Trunk Pricing Sheet*  
*(Wireline Trunks)*

*11/4/2014*

<i>State</i>		<i>MRC</i>		<i>NRC</i>	
CA		\$26.00		\$741.00	