



GENERAL TERMS AND CONDITIONS

1. DEFINITION OF TERMS

1.1 In this Agreement, unless the context otherwise specifies:

"Affiliate" means any person or entity directly or indirectly controlling, controlled by, or under common control with Canopco or Customer;

"Agreement" has the meaning set forth in Section 1.1 of the document titled the "Solution Details and Customer Agreement", and any amendments thereto as may be made from time to time by mutual written consent of the parties or pursuant to Section 2.7 hereof;

"Confidential Information" means all data and information whether in written, machine readable or other tangible form, or disclosed orally, that is of value to the disclosing party, is not generally known to competitors of the disclosing party, and which is communicated to the other party in contemplation of this Agreement. Confidential Information shall include, but not be limited to, information relative to the disclosing party's customers, services, facilities, current or proposed business plans, roll-out plans, financial information relating thereto, telephone calling pattern information, prices, trade secrets, know-how, formulae, processes, data, network configuration and rights-of-way, drawings, proprietary information, customer lists, and any other non-public information which concerns the business and operations of the disclosing party;

"Contractor" means any third party from which Canopco has acquired any service or facilities used in providing the Services;

"Customer Site" means any of Customer's physical locations or premises to which Customer wishes Canopco to deliver the Services under this Agreement;

"Improper Use" means a use which is causing, or is reasonably likely to cause, damage to the relevant facilities, connections or network, or which is having, or is reasonably likely to have, an adverse effect on Canopco's performance under this Agreement;

"Interruption" means the inability to complete calls due to equipment malfunctions or human errors or actions. Interruption does not include any such inability which arises from: (a) the failure of any service or facilities provided by Customer; (b) the negligence or willful act or omission of Customer; or (c) the termination or suspension of the Services by Canopco, pursuant to this Agreement;

"Law" means a municipal ordinance or provincial, state, or federal law, governmental order, decision or regulation, or order of any court of competent jurisdiction, including without limitation, decisions and orders of the CRTC or FCC;

"Marks" means any trademarks, service marks, trade names, tag lines, slogans or any other rights in and to a party's identity;

"Canopco" means Canopco, a Globalive Communications Corp. company;

"Services" or **"Service"** means strictly those Canopco services described in Section 2.1, as may be amended from time to time;

"Service Administrator" means an individual authorized to provide Canopco with instructions, orders, authorizations and other directions, on behalf of Customer, as detailed in this Agreement. The Service Administrator will also be Canopco's point of contact for all notices and communications to Customer relating to this Agreement; and

"Service Components" means any and all facilities, Canopco software and Canopco processes used to provide the Services. For the sake of greater clarity, Service Components does not apply to hardware and equipment that belongs to



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Customer, including hardware and equipment acquired by Customer in connection with the Services, or any software that is in the public domain.

2. SERVICES

2.1 Canopco agrees to provide Customer with the services specified in Solution Details and Customer Agreement (the "Services") in accordance with the relevant Solution Details and Customer Agreement and these General Terms and Conditions. A Canopco-certified Local Area Network ("LAN") audit, which verifies that Customer's network is capable of supporting the minimum requirements for the Services (as determined in Canopco's discretion) (the "Minimum Requirements"), may be, at Canopco's discretion, a pre-requisite of Canopco's provision to Customer of any and all Services.

2.2 Customer agrees and acknowledges that it may be necessary for Canopco temporarily to suspend or interrupt service for technical or maintenance reasons, including without limitation for installations, changes or modifications of any kind to the Services. Such suspensions and planned maintenance will occur on a scheduled basis on weekends between 10:00pm and 6:00am (Eastern Standard Time). Such suspensions or interruptions of service will not be considered outages and do not qualify for credits or refunds.

2.3 Without incurring liability, Canopco may immediately and without notice:

- (a) discontinue or suspend the Services;
- (b) cancel a request for Services; or
- (c) temporarily block service to a particular authorization code,

if, in its reasonably exercised discretion, it deems such action is necessary, either to prevent Improper Use or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services.

2.4 Canopco reserves the right to discontinue furnishing any or all of the Services, or limit the provision of the Services to the extent required by conditions beyond its control, including without limitation lack of transmission capacity, the revision, alteration or repricing of any underlying carrier's offerings, or when the Services or any part thereof is or becomes in violation of any applicable law, regulation, or the terms and conditions of this Agreement. Canopco shall use commercially reasonable efforts to advise Customer of any potential future Interruption to the Services and to provide backup systems so that Customer is not without telephone communication. In all cases, Canopco shall provide Customer with notice in accordance with the provisions of this Agreement, prior to terminating any of the Services.

2.5 In the event Customer is in default of payment of any amount due under this Agreement, Canopco may without any liability to Customer: (i) suspend all or any portion of the Services on two (2) business days written notice until such time as Customer has paid Canopco in full all charges then due and payable, including any interest thereon or applicable late fees or charges, and the costs for reconnecting the Services. Following such payment, Canopco shall reinstate the Services to Customer only upon the provision by Customer of assurance of Customer's future payment for the Services in a form and manner acceptable and satisfactory to Canopco at Canopco's sole discretion, including without limit a security deposit or letter of credit; or (ii) terminate the Agreement by providing Customer with written notice of termination in accordance with Section 3.1(ii) hereof.

2.6 Customer shall not resell the Services, directly or indirectly to third parties.

2.7 Customer may, from time to time, elect to order additional stations, optional services, and perform other moves, adds and changes (collectively or individually, "Change Orders") in respect of the Services. Upon request by Customer, Canopco will provide to Customer details as to what activities are considered Change Orders, estimated Change Order



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timelines and Change Order price rates, provided that if no such request is made, but Customer elects to order a Change Order reasonably so considered by Canopco, Customer agrees to pay forthwith upon execution of such Change Order the reasonable cost ascribed therefor by Canopco in accordance with Section 4 hereof. Customer may order Change Orders by contacting the Canopco Implementations Team, via email or telephone, at the following:

implementations@canopco.com or 1.866.717.3411.

Change Orders requested by Customer will be deemed sufficient to bind Customer. Customer and Canopco agree that all new services, and changes to existing services implemented by way of a Change Order, will be governed by the Agreement, as if expressly written into this Agreement, without the necessity of the parties actually executing a formal amendment to this Agreement.

3. TERM AND TERMINATION

3.1 This Agreement comes into effect when signed by both Customer and Canopco, and remains in effect for the Term specified in Solution Details and Customer Agreement (together with any extensions or renewals thereof, the "Term"), unless terminated earlier in accordance herewith, and provided that the Term shall automatically extend for consecutive one (1) year periods at the expiry of the Term unless Customer provides at least sixty (60) days advance written notice of non-extension at the expiry of the then-current Term. The Term begins on the date the Services have been installed by Canopco. This Agreement may only be terminated prior to the end of any Term by either party in accordance herewith, and upon reasonable written notice:

- i) for any reason, and with at least sixty (60) days prior written notice, upon the expiry of the first full calendar year from the Effective Date, subject to the early termination penalty set forth in Section 4.6 below;
- ii) for non-payment of any invoiced sum by Canopco to Customer on fifteen (15) days notice;
- iii) on fifteen (15) days notice for any material violation of any of the provisions of this Agreement, provided that such violation may be cured within this fifteen (15) day notice period;
- iv) upon twenty-four (24) hours notice for any violation of any applicable Law; provided that such violation may be cured within this twenty-four (24) hour notice period, and provided also that this right of termination shall not arise where the violation is disputed by the other party, acting reasonably; and
- v) immediately if one of the parties becomes insolvent or if insolvency or bankruptcy proceedings of any kind are initiated against a party, if a party is placed in receivership or if a party has to perform a transfer of property in favour of its creditors or its property is placed under sequestration or is subject to liquidation, or fails to provide security to the other when reasonably requested or otherwise does not meet the other's reasonable credit requirements.

Where one party has given the other a notice of termination pursuant to this Section, and the other remedies the situation which gave rise to the right of termination before the expiry of the notice period, this Agreement shall not be terminated, but shall continue in full force and effect without prejudice to either's right to terminate for the other's subsequent or other breach of this Agreement.

4. CHARGES AND PAYMENT

4.1 Canopco will invoice Customer for, and Customer shall pay, all charges specified in the Solution Details and Customer Agreement or elsewhere in this Agreement and all applicable taxes, assessments or government charges relating to the Services for the Term, as extended if applicable. Charges will be billed monthly upon installation of any Services. Payment in full, without deduction, abatement or set off, of the amounts in each bill is due on the due date shown on



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the invoice or, if no due date is shown on the invoice, within thirty (30) days of the date of the invoice. Customer shall pay interest on all overdue amounts at the rate of two percent (2%) per month (24% per year).

- 4.2 Customer is responsible for paying for all usage charges including but not limited to data usage traffic which has been contracted for or calls originating from, and charged calls accepted at, their telephones, regardless of who made or accepted them.
- 4.3 Notwithstanding anything else herein, Customer shall be responsible for all amounts related to and associated with fraud and fraudulent usage.
- 4.4 Canopco may adjust (increase or decrease) any amount charged under this Agreement with thirty (30) days prior written notice to Customer, including adjustments to pass on increases or decreases to costs incurred by Canopco from third parties in connection with the Services. Upon receipt of a price increase or decrease notice from Canopco of more than 15% per calendar year, Customer may upon sixty (60) days prior written notice to Canopco, terminate this Agreement without liability for early termination penalties.
- 4.5 In accordance with Section 2.7 hereof, Customer shall pay Canopco (forthwith upon execution of any Change Order as Customer may from time to time request) the reasonable cost ascribed therefor by Canopco.
- 4.6 Upon termination for convenience of this Agreement by Customer in accordance with Section 3.1(i) or any material reduction in the Services provided hereunder, and notwithstanding anything in this Agreement, Customer hereby expressly agrees and acknowledges that Customer shall immediately pay to Canopco an early termination penalty of a lump sum equal to 50% of the charges (plus applicable taxes) which would otherwise have been payable by Customer to Canopco if Customer had not terminated this Agreement for convenience or materially reduced the Services provided hereunder.
- 4.7 Disputes must be submitted in writing to Canopco. Customers are still responsible for, and must pay the undisputed portion of their bill. Disputes concerning any charges must be raised within sixty (60) days of the invoice date and notice of such disputes must be made in accordance with the notice provisions herein contained. Customer expressly acknowledges that any charges not disputed in accordance herewith within such sixty (60) day period shall be deemed and considered by Canopco and Customer as accepted by Customer and not disputed. If Customer disputes a charge in accordance herewith and, following investigation Canopco determines that the disputed amounts are in fact due, Customer shall pay such charges and, if necessary, Canopco shall refer the account to a collections agency for collection.

5. CUSTOMER'S RESPONSIBILITIES

- 5.1 Customer shall comply with any restrictions on use of the Services in this Agreement, and with any use policies or instructions communicated to Customer by Canopco, and Customer shall not, without the prior written consent of Canopco, tamper with or change the Services or any Service Components or abuse the Services or use them in a manner that interferes with any Service Components, Canopco's network, or the use of Canopco services by other persons, or in a manner that avoids the payment of any charges.
- 5.2 Customer agrees to use the Services used only for lawful purposes and Customer shall not use the Services in a manner that contravenes or is in any way contrary to or prohibited by any Law, including without limitation (i) for unauthorized copying, duplication, distribution, display or modification of any material or information protected by copyright or trademark or otherwise lawfully restricted (including, without limitation, software, programs, games and computer code); (ii) for the transmission of any material that is unwanted, threatening, abusive, obscene, discriminatory (including, without limitation, hate literature directed at any identifiable group); (iii) the undertaking of mass-mail broadcasts of e-mail or Usenet postings with the intent of sending unsolicited advertising to other users of the Internet. Customer will be responsible for the actions and activities of any party who uses the Services provided to Customer hereunder whether or not such person used the Services with Customer's consent or knowledge.



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- 5.3 Customer shall designate, in writing, one representative as Customer's Service Administrator. Customer may change its designated Service Administrator at any time upon providing Canopco with written notice of such change as soon as reasonably practicable, but in any case not less than seven (7) days.
- 5.4 Canopco shall provide customer support to Customer twenty-four (24) hours a day, seven (7) days a week. Where Canopco has assisted in problem determination, and determined that any outage was not caused by Canopco, subsequent on-site problem determination and resolution may be provided by Canopco with the direction or request of Customer, and Canopco shall invoice Customer for such assistance. Canopco will provide Customer with reasonable problem determination before Canopco renders any billable assistance. Prior to engaging in any billable assistance, Canopco shall: (i) inform Customer's Service Administrator that there may be billable charges on a problem, and (ii) receive Customer's consent to engage in the billable work.
- 5.5 Customer hereby authorizes Canopco to issue a press release regarding the intent and scope of this Agreement for the purpose of promoting the Services to the general public. Customer also authorizes Canopco to use Customer's name and logo in accordance with the promotion of the Service during the term of this Agreement. Canopco acknowledges that Canopco's use of Customer's name (if trademarked) and logo may be subject to Customer's reasonable usage guidelines, as communicated to Canopco by Customer from time to time.
- 6. CANOPCO EQUIPMENT AND INSTALLATION**
- 6.1 Canopco will install and maintain the Service Components required to provide Services to the legal boundary of Customer Site and in the case of a Customer located in a Multi-Dwelling Unit ("MDU"), to the main terminal room in the MDU. Customer shall be responsible for obtaining at its sole cost all rights-of-way, permissions and/or third party consents (including, without limitation, the consent of Customer's landlord or building owner) required to permit Canopco to install and maintain the Service Components from the legal boundary of Customer Site to Customer Interface Unit (the "CIU") which is the point of service demarcation for the Services. In the case of an MDU, the CIU may be located either within Customer's suite or the nearest telecommunications closet serving Customer's suite.
- 6.2 Customer grants Canopco access to Customer's premises to install, maintain, change, or modify the Service Components in any way, at any time that Canopco deems necessary or advisable. Canopco is entitled to immediate access to the Service Components, without notice, at any time between 9:00am and 5:00pm on a business day (regardless of whether Customer is open on that day) and at such other times as the parties may agree. In the event that Customer is in default of this Agreement with Canopco or this Agreement is terminated for any reason, then Customer directly (indirectly) hereby shall (or shall irrevocably direct its staff, landlord (if applicable) and any other custodial staff to) permit Canopco access to Customer's premises to remove any Service Components not owned by Customer. Canopco shall not be responsible for any delays, interruptions in the Services, damages or costs that may result if Canopco is unable to obtain access to Customer's premises.
- 6.3 Customer shall, at its cost:
- (a) prepare any Customer Site for the installation of the Services, including any Service Components, in accordance with Canopco's reasonable instructions;
 - (b) provide all necessary floor plans, space for the Service Components and accessible wiring locations free of asbestos and other environmental hazards per government regulations;
 - (c) provide dedicated electric source, circuits, power and isolated ground;
 - (d) provide a suitable operating environment (including isolated ground, air conditioning, humidity, heat and security) per manufacturer's specifications which specifications will be provided to Customer by Canopco upon request;
 - (e) provide raceway, conduit, holes and wireways;



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- (f) provide a secure room with locks for temporary Service Component storage; and
 - (g) provide all, equipment, software and services (on Customer side of the point of service demarcation) necessary for use or used in conjunction with the Services.
- 6.4 Customer is responsible for any additional installation costs incurred by Canopco as a result of Customer's failure to comply with the foregoing requirements.
- 6.5 Customer must ensure that its network continues to meet the Minimum Requirements during the term of the Agreement. Customer acknowledges that failure to ensure that its network continues to meet the Minimum Requirements may impact the quality of the Services.
- 6.6 Unless otherwise expressly provided for and agreed to in writing by the parties, the Service Components shall be and shall remain at all times the sole property of Canopco. This Agreement provides only for the locating of the Service Components with Customer for the convenience of Customer and creates no other property rights in the Service Components whatsoever. Canopco maintains the right to substitute, repair, remove, change or otherwise deal with the Service Components in whatever way Canopco sees fit and at any time it deems appropriate.
- 6.7 Such Service Components not owned by Customer are licensed to Customer until such time as Customer ceases to obtain Services from Canopco or until Canopco requires the return of the Service Components for service or other purposes. Such Service Components are provided for use solely by Customer and only in connection with the Services.
- 6.8 Customer confirms that it has a license to use such Service Components (including, without limitation, the right to retain or use the Service Components) for the duration of this Agreement and that on its termination, Canopco may repossess such Service Components at its sole expense.
- 6.9 Customer will use the Service Components properly and only for its intended use and will keep the Service Components clean, dry, in a well-ventilated location and in good repair. Customer will not remove, affix to other property, lend out, disassemble, misuse, tamper with, modify or expose the Service Components to conditions that may result in damage to the Service Components. Customer will not attempt to program, configure, turn off, or otherwise deal with the Service Components, except with the prior express permission, knowledge and assistance of Canopco. In the event that there is an interruption of service for any reason whatsoever due to failure of the Service Components, Customer will immediately notify Canopco via telephone and in writing and will follow Canopco's direction in dealing with the problem. Canopco will have no liability to Customer whatsoever for interruption of use of the Service Components except as specifically set out herein.
- 6.10 Customer is fully responsible for any and all damages, which may occur to the Service Components during the period that the Service Components are in Customer's possession except if attributable to force majeure. Any cost of such damage, as determined by Canopco, acting reasonably, shall be paid to Canopco by Customer within seven (7) days of invoicing for the cost of such damage.

7. WARRANTIES, LIABILITY, INDEMNITY

- 7.1 Each party represents and warrants to the other as follows:
- (a) the party has at the present time and will at all times during the term of this Agreement have good and sufficient power, authority and right to enter into and perform its obligations under this Agreement; and
 - (b) this Agreement constitutes a valid, binding and legally enforceable obligation of the party in accordance with its terms.



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- 7.2 Canopco will provide the Services using currently available technology, and will avoid using any hardware, software or methods known to threaten Customer's security. Subject to Section 7.3 and except as expressly stated in this Agreement, Canopco makes no warranties of any kind whatsoever, whether express or implied, statutory or otherwise and, without limitation, all implied warranties or statutory conditions of quality, merchantability, non-infringement, or fitness for a particular purpose are, except as expressly provided in this Agreement, hereby disclaimed by Canopco and its Affiliates, directors, officers, employees, agents, successors, and assigns. Canopco does not guarantee the privacy of files or e-mail or the security of any computer used to access the Services. Canopco has no responsibility for any damage suffered by any person, organization, group or entity due to loss of data, delay, non-delivery, security breaches, computer viruses or service interruptions in using the Services, whether or not caused by the negligence, errors or omissions of Canopco or those for whom it is responsible at law. Canopco exercises no control and has no responsibility whatsoever over the information passing through the Services. Use of any information obtained through the Services is at Customer's sole risk and Customer assumes full responsibility for the accuracy, reliability, quality or effect of information obtained through the Services.
- 7.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER IN CONTRACT OR IN TORT FOR ANY CLAIM, LOSS OR DAMAGE IN ANY WAY RELATED TO, OR ARISING OUT OF, THIS AGREEMENT SHALL BE LIMITED TO ITS ACTUAL, DIRECT DAMAGES, AND SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF CUSTOMER'S INVOICES FOR THE PREVIOUS SIX (6) MONTHS. SUBJECT TO THE FOREGOING, IN NO EVENT SHALL CANOPCO BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE LOSSES OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER OR HOWSOEVER CAUSED, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF INCOME, LOSS OF PROFIT OR FAILURE TO REALIZE EXPECTED SAVINGS ARISING DIRECTLY OR INDIRECTLY FROM BREACH OF THIS AGREEMENT (INCLUDING FUNDAMENTAL BREACH OR OTHERWISE), NEGLIGENCE, ANY ACT OR OMISSION OF CANOPCO OR UNDER ANY OTHER THEORY OF LAW OR EQUITY, EVEN IF CANOPCO HAD BEEN ADVISED OF, HAD KNOWLEDGE OF, OR REASONABLY COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGES.
- 7.4 Subject to Section 7.3 hereof, Customer agrees to defend, indemnify and hold harmless Canopco, its officers, directors, shareholders, employees, agents, and permitted assigns from any claims, liabilities, losses, costs or damages, including lawyer's fees, related to or arising out of (i) the acceptance of any Service by Customer or the provision or lack of provision or delay in provision of any Service to Customer, or Customer's or Customer's customers or permitted assigns' use of the Service; and (ii) any breach of this Agreement by Customer or those for whom it is responsible at law.
- 7.5 If Canopco receives a written claim, notice of lawsuit, or demand that is covered by the indemnification provisions of this Agreement, Canopco shall notify Customer in writing and tender to Customer the defense of such claim, lawsuit, or demand to the extent it relates to the indemnification provisions of this Agreement. If Customer fails to assume the defense, it shall accept liability for Canopco's settlement of such third party claims, lawsuits, and demands. Customer shall have absolute and sole discretion to settle any such suit, claim or action except if to the detriment of the Canopco.
- 8.0 9-1-1 EMERGENCY CALLING LIMITATIONS**
- 8.1 If the Services use Voice over Internet Protocol ("VoIP"), Customer acknowledges and understands that 9-1-1 emergency calling using VoIP does not work the same way as traditional wireline 9-1-1 emergency calling. Customer acknowledges and understands that when someone dials 9-1-1 using the Service, such a 9-1-1 emergency call will be subject to the following limitations:
- (a) the 9-1-1 call will be routed to a third party call centre agent designated by Canopco (the "Operator"); The use of a call centre increases delays related to handling of 9-1-1 emergency calls and thus increases the risk to the individual in an emergency calling situation;



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- (b) The Operator will not necessarily automatically be provided with Customer's address and telephone number. The caller must orally provide the Operator with Customer's address, telephone number and all other necessary information. Once the caller has successfully provided the Operator with the relevant address and all other necessary information, the Operator will attempt to route the call to the appropriate Public Safety Answering Point (PSAP) which serves the address the caller has provided;
- (c) If the caller disconnects the 9-1-1 emergency call, neither the Operator nor the PSAP will be able to call the caller back or trace the caller's location;
- (d) The 9-1-1 emergency call may not be handled by the PSAP in the same way as traditional wireline 9-1-1 services. For example, the call may be delivered to the PSAP utilizing 10-digit administration numbers as opposed to the PSAP's main 9-1-1 lines. Calls handled this way may not be given the same priority as normal 9-1-1 calls;
- (e) 9-1-1 emergency calls made from locations outside of Canada or from a location within Canada not serviced by 9-1-1 cannot be completed by the Operator. The caller will be told to use an alternate service to dial 9-1-1;
- (f) If there is a power outage, such outage will prevent all elements of the Service, including 9-1-1 emergency calling, from working;
- (g) The Service utilizes an Internet connection and the public Internet. As a result, there is a greater possibility of network congestion, other types of service outages and/or reduced speed in the routing of a 9-1-1 emergency call as compared to traditional wireline 9-1-1 emergency calling.

8.2 User Obligations In Respect of 9-1-1 Emergency Calls: Customer agrees:

- (a) to inform any persons with access to the Service being provided to Customer of the 9-1-1 emergency calling limitations set forth in this Agreement; and
- (b) that when installing or moving the location of a VoIP telephone or VoIP telephone adaptor from one address to another, Customer will always make sure that Customer records the current address and telephone number in a location easily visible from each telephone connected to the Service so that it can be communicated to the Operator and the PSAP by any potential user of the Service in an emergency.

8.3 Indemnity In Respect of 9-1-1 Emergency Calls: Without limiting the indemnification obligations in Section 7.3 hereof, Customer further agrees to indemnify and hold Canopco, its officers, directors, employees, suppliers and agents harmless from any and all third party claims or actions arising out of any misrouted, blocked and/or delayed 9-1-1 emergency calls made using the Service being provided to Customer.

9. **CONFIDENTIALITY**

9.1 Canopco and Customer agree that each shall hold Confidential Information exchanged under this Agreement in confidence and shall use the same solely for the purpose of performing their obligations under this Agreement. Canopco and Customer further agree that they shall not disclose any Confidential Information to anyone except those Affiliates, employees or Contractors to whom such disclosure is necessary for the purposes authorized herein. In the event such Confidential Information must be disclosed by any party to third persons (other than Affiliates, employees or Contractors) for the purpose of performing this Agreement, the disclosing party shall, prior to disclosure, obtain written consent from the party that disclosed the Confidential Information. Notwithstanding the foregoing, a party may disclose Confidential Information to its professional advisors without the written consent of the disclosing party where, in the opinion of the receiving party, the advice of its professional advisors is necessary to accomplish the objectives of this Agreement. Each party shall use not less than the same degree of care to avoid disclosure of Confidential Information



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as it uses for its own confidential information of like importance and, in any event, shall use a reasonable degree of care.

9.2 This Agreement shall not apply to information: (a) previously known to a party free of any obligation to keep it confidential; (b) that has been or is subsequently made public by a party that owns that information or by a third party who is under no obligation of confidence to any party; (c) that is independently developed by a party or an Affiliate without reference to or knowledge of the other party's Confidential Information; (d) that is disclosed with the prior approval of the owner of the information; or, (e) disclosure is ordered pursuant to a legal power of a court or governmental agency and prior notice of at least 5 business days is provided to the party whose Confidential Information is being requested. Any combination of Confidential Information regarding, for example, products or features of technology, shall not be deemed to be within the foregoing exception merely because individual portions of such combination are disclosed or separately known in the public domain or known by the receiving party.

9.3 Without limiting the generality of the foregoing, unless Customer provides express consent or disclosure is pursuant to a legal power, all information kept by Canopco regarding Customer, other than Customer's name, address and listed telephone number, is confidential and may not be disclosed by Canopco to anyone other than:

- (a) Customer;
- (b) a person who, in the reasonable judgment of Canopco, is seeking the information as an agent of Customer and has provided Canopco with an written authorization signed by Customer;
- (c) another telephone company, provided the information is required for the efficient and cost effective provision of telephone services and disclosure is made on a confidential basis with the information to be used only for that purpose;
- (d) a company involved in supplying Customer with telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose;
- (e) an agent retained by Canopco to evaluate Customer's creditworthiness or in the collection of Customer's account, provided the information is required for and is to be used for that purpose and Canopco received written authorization from Customer; or
- (f) a public authority or agent of a public authority, if in the reasonable judgment of Canopco it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information.

Express consent shall be deemed to have been given by Customer where Customer provides:

- written consent;
- oral confirmation verified by an independent third party;
- electronic confirmation through the use of a toll-free number;
- electronic confirmation via the Internet;
- oral consent, where an audio recording of the consent is retained by the Canopco; or
- consent through other methods, as long as an objective documented record of Customer consent is created by Customer or by an independent third party.

10. MISCELLANEOUS TERMS



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10.1 **Relationship of the Parties.** The parties hereto do not intend this Agreement or the relationship established hereunder to constitute a partnership, joint venture, relationship of franchiser and franchisee, relationship of principal and agent, or relationship of employer and employee, between Canopco and Customer or between Canopco and any officers, directors, employees, agents, clients or contractors of Customer. Customer shall have no obligation or authority to bind Canopco or to assume or create any obligation or responsibility, expressed or implied, on Canopco's behalf, or in its name, nor shall it represent to anyone that it has such power or authority and vice versa. **Trademarks.** Customer agrees not to display or use any of Canopco's Marks, and not to permit the same to be displayed or used by third parties, other than in connection with the sale, distribution or promotion of the Services, in accordance with this Agreement. **Expenses.** Unless expressly agreed in writing, each party to this Agreement shall pay for all of its own costs and expenses related to this Agreement and its performance, including without limitation all employee expenses and all costs and expenses for travel, entertainment, sales and support materials, postage and deliveries. **Unenforceable Provisions.** If any part of this Agreement is invalid or not enforceable under applicable law or regulation, the parties together shall determine within twenty (20) days whether the remaining parts of this Agreement can continue to operate without the scope and intention of this Agreement being materially altered. If the parties agree that the scope and intention of this Agreement: (i) would be materially altered following the removal of the invalid or unenforceable part, this Agreement shall immediately terminate; or (ii) would not be so altered, then this Agreement shall continue to operate without the application of the invalid or unenforceable part. **Subcontractors.** Canopco is entitled to utilize the services of a third party in performing some or all of its obligations under this Agreement or any Change Order, provided that at all times Canopco shall remain liable to Customer for such obligations under this Agreement. **Force Majeure.** Canopco shall be relieved from the performance of its obligations under this Agreement if and for so long as it is unable to perform such obligations due to circumstances beyond its reasonable control, including, but not limited to, acts of God, acts or omissions of any common carrier, labour disputes, regulatory restrictions, changes in law or regulation or other acts of governmental authority. **Entire Agreement.** This Agreement, including the Solution Details and Customer Agreement, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes any prior agreements or understandings between the parties. **No Waiver.** The failure of either party at any time to require performance by the other party of any provision, condition or covenant in this Agreement shall in no way affect its right thereafter to enforce the provision, condition or covenant, nor shall the waiver by either party of any breach of any provision, condition or covenant in this Agreement be taken or held to be binding upon the party, and the waiver shall not be taken or held to be a waiver of any future breach of the same provision, condition or covenant. **Survival.** The provisions of this Agreement relating to the limitation of liability, confidentiality, indemnification and termination shall survive the early termination or expiration of this Agreement. **Assignment.** Neither party shall assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party which shall not be unreasonably withheld, provide that a change of control of Canopco shall be deemed not to occasion an assignment of this Agreement. **Headings.** The headings appearing in this Agreement have been used for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement. **Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both Parties even though both Parties do not sign the same counterpart. **No Third-Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any person not a party hereto. **Compliance with Law.** Each party shall comply, at its own expense, with the provisions of all laws, regulations, orders, licensing requirements and codes which are applicable to such party, to its performance of this Agreement, or to its status as an employer. **Successors.** This agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, assigns, and legal representative of any type whatsoever. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the Province of Ontario and the federal laws of Canada applicable therein. Venue and jurisdiction shall exclusively be in Ontario.