

This Master Services Agreement governs all Orders between Glowpoint, with offices located at 225 Long Avenue, Hillside, New Jersey 07205, and the Customer identified on the Order Form. Glowpoint and Customer are referred to herein as the "Parties" or individually as a "Party".

## 1. Definitions.

a. "**Agreement**" shall mean the agreement between Customer and Glowpoint pursuant to which Glowpoint provides and Customer receives the Services, comprising an Order Form, this Master Services Agreement, the SLA and the AUP.

b. "**AUP**" means the Glowpoint Acceptable Use Policy, as revised by Glowpoint from time to time and incorporated by reference herein, which is available at [http://www.glowpoint.com/downloads/Glowpoint\\_PDF\\_AUP-form.pdf](http://www.glowpoint.com/downloads/Glowpoint_PDF_AUP-form.pdf).

c. "**Circuit**" is a digital data telecommunications service between Glowpoint's point-of-presence and the Customer Location that includes one permanent virtual circuit connected to a network interface device on Customer's premises utilizing DSL, frame relay, ATM, leased line or other data communications technologies.

d. "**Content**" means the audio and video content transmitted using the managed video communications service.

e. "**Customer**" means the entity identified as such above.

f. "**Customer Location**" means any Customer premises described in an Order Form.

g. "**Effective Date**" means the date first written above.

h. "**Equipment**" means equipment provided to Customer by Glowpoint, its subcontractors or its affiliates, or used by Glowpoint to provide the Services.

i. "**Glowpoint**" means Glowpoint, Inc. and its affiliate(s), which include(s), but are not limited to, GP Communications, LLC, a Delaware limited liability company and regulated telecommunications service provider ("GP Comm").

j. "**Master Services Agreement**" means the terms and conditions set forth herein, which govern Glowpoint's provision, and Customer's receipt, of the Services.

k. "**Order Form**" means a form describing the Services ordered by Customer that is signed by authorized representatives of Customer and Glowpoint.

l. "**Payment Default**" has the meaning ascribed to such term in Section 16 below.

m. "**Services**" are the services ordered by Customer as described in an Order Form, which may include, without limitation: (i) high-speed telecommunications data services (which may include business-grade symmetric digital subscriber line ("DSL"), business-grade T1 Services, Frame Relay or ATM); (ii) application services provided by Glowpoint to Customer using DSL, T1 technology or other means of digital data communications; (iii) application services provided to Customer for the purpose of communications either over Glowpoint provisioned telecommunication services or through Customer-provided telecommunication services; and/or (iv) professional services. Regulated telecommunications services will be provided to Customer by GP Comm, but Glowpoint, Inc. shall act as its billing agent to Customer.

n. "**SLA**" means the Glowpoint Service Level Agreement, as revised by Glowpoint from time to time and incorporated by reference herein, which is available at [http://www.glowpoint.com/downloads/Glowpoint\\_PDF\\_SLA-form.pdf](http://www.glowpoint.com/downloads/Glowpoint_PDF_SLA-form.pdf).

o. "**Work Product**" means all materials, software, tools, data, inventions, works of authorship and other innovations of any kind (including, without limitation, any deliverable and any improvements or modifications to Glowpoint proprietary computer software programs and related materials) that Glowpoint, or personnel working for or through Glowpoint, may make, conceive, develop or reduce to practice, alone or jointly with others, in the course of performing the Services or as a result of such Services, whether or not eligible for patent, copyright, trademark, trade secret or other legal protection.

2. Provision of Services. Glowpoint will use commercially reasonable efforts to provide the Services that Customer may order from time to time either directly through Glowpoint or through an authorized Glowpoint sales agent. All Services will be supplied in accordance with this Agreement. If there is any inconsistency between this Master Services Agreement and any exhibit, schedule or other incorporated writing, this Master Services Agreement shall prevail. Glowpoint may revise this Master Services Agreement, the SLA or the AUP from time to time without Customer's consent, provided that any such revisions shall not materially reduce Customer's rights or materially increase its obligations hereunder. Glowpoint reserves the sole and exclusive right to determine the geographic area within which it provides Circuits and Services, and the rights to maintain, reconfigure or discontinue any Circuits, Services or other product. If Glowpoint intends to discontinue any of Customer's Circuits or Services, Glowpoint will provide Customer with at least thirty (30) days' written notice before discontinuing such Circuits or

Services, and Glowpoint will refund to Customer a pro-rated portion of any pre-paid fees associated with such discontinued Circuits or Services. Customer understands that Glowpoint's performance is dependent in part on third-party actions and the actions of Customer. Accordingly, Glowpoint shall be excused from performing under the Agreement to the extent it is unable to perform as a result of such actions or inactions, including, without limitation, Customer's failure to provision or maintain a Circuit with respect to an Order Form under which Customer is obligated to provide network connectivity. Unless otherwise expressly set forth in an Order Form, provision of Circuits does not include any Internet access services. Glowpoint reserves the right to substitute Services that are different from, but substantially equivalent to, the Services ordered by the Customer on an Order Form. If the Services necessary to meet Customer's requirements are subject to charges in addition to those set forth in an Order Form, Glowpoint will notify the Customer of any additional or increased charges and Customer shall have fourteen days to cancel the service order and avoid the additional or increased charges. Failure to cancel within such period will be deemed acceptance of the additional or increased charges.

3. Circuits and Services. Glowpoint will not supply any Circuits or Services until Customer has signed an Order Form. Glowpoint will not provide any Services until it has supplied a Circuit or Customer has provided appropriate network connectivity. Glowpoint will begin charging Customer for each Circuit or Service immediately following Glowpoint's notification to Customer that such Circuit or Service has been provisioned and tested by Glowpoint. Customer acknowledges that the availability and installed speed of a Circuit may vary from the pre-qualified or ordered speed depending on several factors, including, without limitation, the condition and length of the copper wiring that comprises the Circuit and availability of Services to the Customer Location where Services have been requested.

## 4. Customer Responsibilities.

a. Generally. Customer shall provide Glowpoint with all information, cooperation and access that Glowpoint reasonably requests (including, without limitation, information about and access to each Customer Location) as necessary or appropriate in performing the Services, including, without limitation, to allow installation and maintenance of each Circuit. Customer agrees to pay all taxes, federal universal service funds and other regulatory and governmental obligations, which amounts are payable and remitted by GP Comm or payable by/through Glowpoint, Inc. on purchases of underlying telecommunications services from vendors of such services, which vendors then remit those amounts. Customer acknowledges and will inform all end users that Glowpoint services do not include 911 or ancillary emergency services that may be available from local exchange service companies or other telecommunications services providers.

b. Content Rights. Customer shall be solely responsible for obtaining, and for bearing all costs, obligations and liabilities associated with, any licenses, releases or waivers related to the Content required by any third party or any act or regulation of any government, and any necessary rebroadcast or retransmission rights or permissions.

c. Customer covenants and agrees to retain all proprietary marks, legends and patent and copyright notices that appear on or in connection with the Services, Work Product, documentation and Confidential Information delivered to Customer by Glowpoint and all whole or partial copies made by Customer thereof in accordance with this Master Services Agreement.

5. Use of Service. Customer may use the Services for its internal business purposes only. Resale or sub-contracting the Services to third parties is prohibited. Customer acknowledges that Customer's use of the Services pursuant to this Agreement does not authorize Customer to act as an agent of Glowpoint with respect to the Services. Customer shall comply with the AUP. Glowpoint reserves the right to suspend or cancel any Circuit or Service with respect to which Customer is found or suspected to be in violation of the AUP.

6. Equipment. Glowpoint may supply new or recertified Customer premises Equipment ("CPE"). Recertified Equipment is Equipment that (a) may have been removed from its original packaging by Glowpoint or returned to Glowpoint by a customer after use, (b) is free from visible defects, and (c) is substantially equivalent in function and appearance to new units. Refurbished Equipment is previously-owned Equipment that has been remanufactured by the manufacturer or its agent, is free from visible defects, and is substantially equivalent in functionality to new units.

Glowpoint will repair or replace, in its sole discretion, any new or recertified Equipment that suffers from any manufacturer's defect. At Glowpoint's discretion, any Equipment that Glowpoint provides as replacement Equipment may be new, recertified or refurbished. Glowpoint shall have no obligation or liability in connection with any equipment not purchased or provided through Glowpoint and configured by Glowpoint, or for any abuse, reconfiguration, repair or misuse of any Equipment by any party (including, without limitation, Customer) other than Glowpoint. Customer is responsible for the safety and security of any CPE. Lost, damaged or non-returned CPE will be invoiced to Customer at the then-current replacement value. See the SLA for additional provisions regarding CPE.

**7. Charges and Payment Terms.** Charges shall commence on the first day of the Initial Order Term (as defined in Section 15 below). Glowpoint shall invoice Customer once a month by either providing a paper invoice or an electronic invoice. Glowpoint will bill Customer in advance for recurring charges and anticipated one-time charges, generally on the first day of the month. For example, Glowpoint's July 1 invoice will include any recurring charges for Services to be received from July 1 to July 31, any one-time and/or usage charges anticipated to be incurred during that period and any prior charges incurred but not yet invoiced. For new Services commencing during a month, the following month's invoice will reflect all charges associated with the installation and setup of such Services, prorated monthly charges for the month during which the Services commenced and the advance monthly charges for the following month. For example, if Glowpoint begins providing Services on July 15, the August invoice will include (a) any one time non-recurring charges, (b) the prorated monthly charges for July 15 through July 31 and (c) the monthly charges for August. Payment shall be submitted to: Glowpoint, General Post Office, P.O. Box 27538, New York, NY 10087-7538. Customer's payment shall be considered late if not received by Glowpoint within thirty (30) calendar days following Customer's receipt of the applicable invoice. After this thirty (30) day period, all unpaid charges will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower, and Customer shall pay all collection costs incurred by Glowpoint (including, without limitation, reasonable attorney's fees). If Customer has a bona fide, good faith dispute with any of the amounts on an invoice, Customer must pay, in accordance with the foregoing terms, all amounts not in dispute and provide Glowpoint with a written request for a billing adjustment, together with all supporting documentation (in the form requested by Glowpoint), within sixty (60) days after Customer's receipt of the applicable invoice. If Glowpoint does not receive this information within this sixty (60) day period, Customer's right to a billing adjustment shall be waived. In the event of a billing dispute, the parties shall attempt to promptly resolve the dispute by mutual agreement or, if the parties cannot mutually agree, by arbitration in accordance with the process described in Section 22.

**8. Taxes and Service Fees.** Customer shall be responsible for and shall pay all applicable federal, state and local taxes, fees, charges, surcharges or other similar exactions (hereinafter called "taxes") imposed on or with respect to the Services and/or Equipment that are the subject of this Agreement, whether such taxes are imposed directly upon Customer or upon GP Comm or upon Glowpoint, Inc., and include, but are not limited to, sales and use taxes, utility user's fees, municipal occupation and license taxes, excise taxes, business and occupations taxes, 911 taxes, franchise fees and Universal Service Fund (USF) fees or taxes, together with Glowpoint's administrative charges for complying with the imposition of taxes. For purposes of this Section, taxes do not include any taxes that are imposed on or measured by the net income of Glowpoint. If Customer is exempt from any such taxes for any reason, Glowpoint, Inc. (for itself and as billing agent for GP Comm) will exempt Customer from such taxes once Customer delivers a duly executed, signed and dated valid exemption certificate to Glowpoint's finance department and Glowpoint's finance department has approved such exemption certificate. Such exemptions should be sent directly to: Glowpoint, 225 Long Avenue, Hillside, NJ 07205, ATTN: Finance – Tax Department, with a copy to the address(es) set forth in the notice provision herein. If for any reason a taxing jurisdiction determines that Customer is not exempt from such taxes and assesses such taxes, Customer agrees to pay Glowpoint such taxes, plus any applicable interest or penalties. Customer shall indemnify and hold Glowpoint harmless for any liability or claims related to such unpaid taxes pursuant to the provisions of Section 18 herein.

**9. Security Interest and Security Deposit.** Glowpoint may perform a creditworthiness evaluation of Customer prior to accepting an Order Form from Customer. In conjunction with current or subsequent credit evaluation(s), Glowpoint

may require a security interest to secure all of Customer's obligations arising under this Agreement. Glowpoint may, in its discretion, also require Customer to provide Glowpoint with a security deposit in an amount required by Glowpoint at the time of order placement or during the Term (the "Deposit"). Once the Deposit is received, Glowpoint will review the amount of the Deposit every six (6) months thereafter. Customer shall provide any additional information, including, without limitation, monthly financial statements for past and present months, that Glowpoint may request in its sole discretion from time to time to evaluate Customer's ongoing credit status (the "Financial Documents"). If Glowpoint does not receive the Financial Documents within ten (10) days of Glowpoint's request, Glowpoint may stop taking orders and/or immediately terminate this Agreement, and Customer will be responsible for all disconnection fees in accordance with Section 10 below.

**10. Cancellation and Disconnection.** If Customer desires to cancel or disconnect any Circuit or Services, Customer shall provide Glowpoint with written notice of such desire, and Glowpoint shall cancel or disconnect such Circuit or Service within thirty (30) days after receiving such notice. Such written notice shall be sent to: Glowpoint, Inc., Attn.: Business Operations, 225 Long Avenue, Hillside, New Jersey 07205. If Customer elects to cancel or disconnect any Circuit or Service during the applicable Order Term (or if Glowpoint cancels or disconnects a Circuit or Service for Customer's Payment Default or other violation of the Agreement), Customer shall pay to Glowpoint the following as liquidated damages: (i) the monthly fees for the balance of the remaining Order Term or three months, whichever is greater; plus (ii) the full amount of all past due charges and interest thereon, if any; plus (iii) any disconnection, early cancellation or termination charges incurred and paid to third parties by Glowpoint due to such cancellation or disconnection; plus (iv) any additional amount specifically set forth in an Order Form. In the event Customer fails to make a required payment for two or more months and/or fails to respond to any Glowpoint notice, Customer shall be deemed to have cancelled the Circuit(s) and/or Service(s) and the foregoing liquidated damages shall be due and payable. The Parties agree that the liquidated damages are a good-faith estimate of Glowpoint's damages and are not a penalty.

**11. Support and Maintenance.** Glowpoint shall be Customer's initial point of contact with respect to support and maintenance for the Services. Glowpoint shall use commercially reasonable efforts to provide first and second-level technical and engineering support to Customer for issues relating to the Services. Support contact information and escalation procedures can be viewed at <http://www.glowpoint.com/ContactSupport.aspx>. Customer understands that Glowpoint may, from time to time, need to interrupt Services for maintenance and other operational reasons, and that Customer shall not receive any credits or compensation for such scheduled interruptions. If commercially feasible, Glowpoint will give Customer reasonable advance notice (via email or otherwise) of such interruptions. Glowpoint provides Customer support through the Glowpoint Service Desk, which is made available as outlined in the SLA. The Glowpoint Service Desk is open with live answered calls from 8:00 AM EST to 8:00 PM EST Monday through Friday at (866) GLOWPOINT or (805) 384-4255 (international). A Glowpoint operator is available during these times as well. For technical support issues before or after hours, a technician is on call 24 hours a day, 7 days a week, in accordance with the SLA. The billing/Customer Information Center is staffed from 9:00 AM to 5:00 PM EST Monday through Friday and can be reached at (866) GLOWPOINT or (805) 384-4255 (international). Glowpoint utilizes a ticketing system that escalates problems to higher levels within the Glowpoint Service Desk using automated triggers. The response time matrix for trouble calls is published at <http://www.glowpoint.com/ContactSupport.aspx>. A Customer service representative will complete an outbound communication to the Customer at least once per day until a technical problem is resolved, or until the ticket is closed, whichever is earlier. It is Glowpoint's desire to respond to each inbound call as rapidly as possible, provided that the number of inbound requests per ticket do not negatively impact Glowpoint's ability to resolve issues. Lack of access to appropriate Customer resources or lack of cooperation by the Customer to actively work through the Glowpoint Service Desk or assist in the effort to resolve a service issue can cause delays in achieving resolution. Open trouble tickets for an unavailable or uncooperative Customer will be considered closed 48 hours after three unsuccessful attempts to communicate with the Customer to resolve the problem are logged.

**12. Glowpoint's Warranties; Outage Credits.** Glowpoint warrants to Customer, and only Customer, that the Services shall perform substantially in accordance with

the performance criteria set forth in the SLA. This limited warranty shall be void if: (a) any Equipment has been subjected to physical or electrical stress, misuse, neglect, accident or abuse, or damaged by any external causes; (b) the Services or any Equipment has been repaired or altered by anyone other than Glowpoint or Glowpoint's subcontractors or affiliates, without Glowpoint's express, prior written approval; (c) the Services or any equipment has been provided by someone other than Glowpoint or Glowpoint's subcontractors or affiliates; or (d) the Services or any Equipment is used in violation of the Agreement or any instructions furnished by Glowpoint. Glowpoint's sole obligation and Customer's sole and exclusive remedy if the Service fails to meet the SLA shall be to use reasonable commercial efforts to correct such failure, *provided* that (i) Customer promptly reports such failure as specified in the SLA; (ii) the failure can be reproduced or confirmed by Glowpoint; and (iii) the cause of the failure is within Glowpoint's control. If a performance failure occurs that is within Glowpoint's control, and Glowpoint is unable to correct such failure within the time periods set forth in the escalation procedures available at <http://www.glowpoint.com/ContactSupport.aspx>, then, as Customer's sole and exclusive remedy, Glowpoint will credit Customer's account with the amounts set forth in the SLA for the type of failure experienced by Customer, but only up to the amount paid by Customer for such Services in the month in which such failure occurred, as specified in the SLA. A single failure to meet the SLA shall not be a material breach of this Agreement, but repeated failures that substantially interfere with Customer's use of the Services may constitute a chronic outage and permit Customer to terminate the affected Service if Glowpoint is unable to remedy such failures after written notice and application of all commercially reasonable efforts. Except as provided herein and in the SLA, Glowpoint shall have no liability in connection with the failure of any of the Services to meet any transmission speed, throughput rates or other performance criteria, or in connection with any unavailability of or interruption in the Services.

**13. Customer's Warranties.** Customer warrants and represents that: (a) the Content and any portion thereof does not in any way violate any existing law, or infringe upon or misappropriate any copyright, patent, trademark, trade secret, right of publicity, right of privacy or other proprietary rights of any third party, either in whole or in part; (b) the Content contains no matter which, if published, will be libelous or defamatory; (c) it has obtained or will obtain all necessary consents, licenses, permissions and releases necessary to grant Glowpoint the rights granted hereunder; (d) the Content complies with all federal, state and local laws and regulations (including those governing export and import and privacy) that are applicable to the transmission or use of the Content as permitted or contemplated by the Agreement for each country in which the Content is intended to be transmitted or delivered; (e) it has the full power and authority to enter into the Agreement and to perform its obligations hereunder; and (f) Customer is solely responsible for, and has paid or will promptly pay, all amounts due any third-party content provider or other person or entity that has a right to receive any royalty or other payment as a result of the transmission or other use of the Content as contemplated by or provided under the Agreement.

**14. Warranty Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS MASTER SERVICES AGREEMENT, ALL CIRCUITS, SERVICES AND PRODUCTS (INCLUDING EQUIPMENT) HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE THEREOF IS AT CUSTOMER'S OWN RISK. GLOWPOINT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS MASTER SERVICES AGREEMENT, GLOWPOINT DOES NOT WARRANT THAT THE SERVICES OR CIRCUITS WILL PERFORM AT A PARTICULAR SPEED, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. GLOWPOINT DOES NOT GUARANTEE THAT ITS PROCEDURES AND SERVICES WILL PREVENT LOSS, ALTERATIONS OR UNAUTHORIZED ACCESS TO CUSTOMER DATA OR CONTENT HOSTED, DISTRIBUTED OR DELIVERED THROUGH ANY FACILITY EMPLOYED IN THE DELIVERY OF THE SERVICES. In addition to, but not in limitation of, the above disclaimer, neither Glowpoint nor its agents or suppliers shall have any liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to (a) any unauthorized or improper use or modification of the Equipment or Services; (b) any unauthorized combination of the Equipment or Services with other

equipment or services; (c) any use of any version of the Services other than the latest release of the Services; or (d) any breach of this Agreement, the SLA or AUP by Customer. Glowpoint (and Glowpoint's agents and suppliers) shall not be liable to Customer for any of the following resulting from, or in any way related to, the Services or Equipment: (i) viruses, worms, Trojan Horses, or other undesirable data or software produced or initiated by third parties; or (ii) the attempt by unauthorized users (e.g., hackers) to obtain access to Customer's data, website, computers, private network or other networks.

**15. Term and Termination.** This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance herewith, shall remain in effect until ninety (90) days have passed during which Customer does not have any orders for Service pending and there are no Order Forms in effect, at which point, this Agreement shall terminate automatically (the "Term"). Unless otherwise stated in the applicable Order Form, each Order Form shall have an initial term of one (1) year (365 days) (the "Initial Order Term"), beginning on the first date upon which any Services governed by such Order Form are available for Customer's use, as reasonably determined by Glowpoint. In the event there is no renewal term stated in the Order Form, the term of the ordered Service(s) shall automatically renew for successive renewal periods of one (1) year unless either Party provides thirty (30) days' written notice of termination to the other Party prior to the expiration of any service period. The Initial Order Term together with any renewal period shall be referred to as the "Order Term". If Customer fails to pay the fees for Services under an Order Form within forty (40) calendar days after the date of the invoice, or if Customer fails to meet any of its other obligations under such Order Form, Glowpoint may in its discretion, and without any further notice, stop taking orders for additional Circuits, stop provisioning Services not yet installed and suspend all Services under such Order Form. If Customer fails to pay the fees for Services under an Order Form within sixty (60) calendar days after the date of the invoice ("Payment Default") or if Customer fails to meet any of its other obligations under such Order Form, Glowpoint may do any combination of the following in its discretion and without notice: (i) terminate any or all of the Services provided under this Agreement, (ii) disconnect any applicable Circuit(s) or Service(s) and treat such disconnection as a disconnection for purposes of Section 10 above, or (iii) terminate the applicable Order Form. In the event any Order Form is terminated, Customer shall remain responsible for and shall pay Glowpoint all fees accrued prior to the date of such termination and all liability imposed hereunder for terminating any applicable Circuits prior to the end of their respective Order Terms.

**16. Survival.** Any accrued rights to payment, any remedies, and Sections 8, 10, 12 (with respect to the limitations set forth therein), 14, and 16 through 22 will survive any expiration or termination of this Agreement.

**17. Limitations of Liability.** EXCEPT FOR THE INDEMNITY PROVISIONS SET FORTH IN SECTION 18 AND FEES OWED TO GLOWPOINT BY CUSTOMER, NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY LOST REVENUE, LOST PROFITS, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SERVICES AND EQUIPMENT. IN NO EVENT WILL GLOWPOINT OR ITS AGENTS OR SUPPLIERS BE LIABLE TO CUSTOMER, ANY USER, OR ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO CUSTOMER'S BUSINESS, ITS RELATIONSHIP WITH ITS USERS, OR OTHERWISE. NEITHER GLOWPOINT NOR ITS AGENTS OR SUPPLIERS SHALL BE LIABLE FOR ANY DAMAGES ASSOCIATED WITH THE INTERRUPTION, UNAVAILABILITY, OR LOSS OF USE OF SERVICES OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER GLOWPOINT NOR ITS AGENTS OR SUPPLIERS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF A CUSTOMER'S DATA FILES, PROGRAMS PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. GLOWPOINT'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO A CLAIM ARISING UNDER THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER THEORY, WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER IN A ONE (1) MONTH PERIOD FOR THE INDIVIDUAL CIRCUIT IN QUESTION; PROVIDED, HOWEVER, THAT CUSTOMER PROVIDES

GLOWPOINT WITH WRITTEN NOTICE OF SUCH CLAIM WITHIN SIX (6) MONTHS OF THE OCCURRENCE GIVING RISE TO SUCH CLAIM.

**18. Indemnity.** Each party (the "Indemnifying Party") shall, at its own expense, indemnify and hold the other party, its successors and assigns, and each of its affiliates and their successors and assigns, and each of their respective directors, officers, partners, contractors, employees and agents (collectively the "Indemnified Parties") harmless from and against any claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expenses, including reasonable attorneys' fees, and amounts paid in settlement resulting from or arising out of any claim, suit action or proceeding (each a "Claim") made or brought by a third party against any of the Indemnified Parties as a result of: (a) in the case of Customer as the Indemnifying Party, (i) the Content infringing on the intellectual property rights of any third party or misappropriating the trade secrets of any third party, (ii) Customer's gross negligence or intentional misconduct, including, without limitation, Claims for damage to property and/or personal injuries (including death) due to such gross negligence or willful misconduct, (iii) the unauthorized disclosure by Customer of any Glowpoint Confidential Information; or (b) in the case of Glowpoint as the Indemnifying Party, (i) Glowpoint's gross negligence or intentional misconduct, including, without limitation, Claims for damage to property and/or personal injuries (including death) due to such gross negligence or willful misconduct, or (ii) the unauthorized disclosure by Glowpoint of any Content or Customer Confidential Information. The party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any Claim. The Indemnifying Party shall have sole control and authority with respect to the defense or settlement of any Claim and the party seeking indemnification shall reasonably cooperate (at the Indemnifying Party's expense) with the Indemnifying Party in the defense of any Claim. The Indemnifying Party shall not enter into any settlement which imposes liability or restrictions on the party seeking indemnification without the prior written approval of such party, such consent not to be unreasonably withheld or delayed.

**19. Non Disparagement.** Neither Glowpoint nor Customer shall make any disparaging remarks about the other party or its products or services to any third party other than its employees.

**20. Proprietary Rights.**

a. **Ownership of Work Product.** Customer agrees that all Work Product shall be the property of Glowpoint and hereby assigns all rights it may have in the Work Product and in all related patents, patent applications, copyrights, mask work rights, trademarks, trade secrets, rights of priority and other proprietary rights to Glowpoint. Customer acknowledges that Glowpoint, in its sole discretion, shall have the right to license the Work Product or any portion thereof, and/or incorporate the Work Product or any portion thereof into Glowpoint products, for use by other licensees or customers of Glowpoint. At Glowpoint's request and expense, Customer shall assist and cooperate with Glowpoint in all reasonable respects and shall execute documents, give testimony and take further acts as reasonably requested by Glowpoint to acquire, transfer, maintain and enforce patent, copyright, trademark, mask work, trade secret and other legal protection for the Work Product.

b. **License of Work Product.** Subject to Customer's performance of its obligations hereunder, Glowpoint shall grant to Customer (and only to Customer) a worldwide, non-exclusive, non-transferable license during the term of this Agreement to use the Work Product solely for Customer's internal business purposes. Customer shall not, without the written consent of Glowpoint: (i) decompile, disassemble or otherwise reverse engineer the Work Product or any portion thereof; (ii) rent, lease, sublicense, sell, transfer or otherwise grant rights in or to the Work Product (in whole or in part) to any third party in any form; or (iii) use the Work Product for third-party training or otherwise share commercially.

c. **Ownership of Content.** Glowpoint acknowledges and agrees that, as between Glowpoint and Customer, Customer is the exclusive owner of all rights in and to the Content and that, except as may be otherwise provided in this Agreement or an Order Form, nothing in this Agreement grants to Glowpoint any rights in or to such Content. Subject to Section 22, Glowpoint acknowledges further that it shall have no right to seek injunctive relief in connection with this Agreement or to otherwise prevent Customer and/or its licensees from distributing, using or exploiting the Content, and that any suit to enforce the provisions of this Agreement shall be a suit for solely for monetary damages. Notwithstanding anything to the contrary in this Agreement, in the event the Service is used for anything other than videoconferencing, Glowpoint is hereby granted a perpetual, royalty-free, nonexclusive, nontransferable, worldwide license to use any Content from such non-

videoconferencing use in Glowpoint's presentations. Glowpoint covenants and agrees to provide Customer a courtesy credit as the source of the licensed material. Glowpoint may distribute such licensed material in any format, including, without limitation, CD-ROM, DVD and Internet.

d. **Reservation of Rights.** Except as otherwise expressly provided herein, nothing in this Agreement shall be deemed to grant, directly or by implication, estoppel or otherwise, any right or license with respect to any technology or other intellectual property rights, and each Party retains all right, title and interest in and to their respective technologies and other intellectual property rights.

**21. Force Majeure.** Neither party hereto shall be responsible for any failure to perform its obligations under this Agreement (other than obligations to pay money) if such failure is caused by: acts of God; war; terrorist activities; strikes or other labor disturbance; inability to secure labor, equipment, materials, supplies or third party services; insurrection; sabotage; embargo; fire, flood or other casualty; unavailability or failure or interruption of transportation, electrical, telecommunications or water facilities or third party services; failure of third party software; acts of any governmental body; changes in laws or governmental regulations; or any other causes that are beyond the reasonable control of such party.

**22. Confidentiality.** All technical and business information, including, but not limited to, patents, patent applications, trademarks, tradenames, know-how, financial statements, business plans, pricing, descriptions of Equipment and Services and Glowpoint's technology in whatever form furnished by either party to this Agreement (the "Disclosing Party") to the other party (the "Receiving Party") under or in contemplation of this Agreement (collectively, "Confidential Information") shall remain the property of the Disclosing Party. Unless the Disclosing Party otherwise agrees in writing, its Confidential Information: (a) shall be treated in confidence by the Receiving Party and used by the Receiving Party only for the purposes of performing the Receiving Party's obligations under this Agreement; (b) shall not be reproduced or copied in whole or in part, except as necessary for use as authorized in this Agreement; (c) shall be made available only to those employees of the Receiving Party who have a need to have access to such Confidential Information and have agreed to comply with the terms of this Section 22; and (d) shall, together with any copies thereof, be returned, be destroyed, or, if in the form of software recorded on an erasable storage medium, be erased when no longer needed by the Receiving Party to perform its duties under this Agreement or when this Agreement terminates, whichever occurs first. The Disclosing Party's Confidential Information shall not include information that: (i) is independently developed by the Receiving Party as evidenced by documentation in such party's possession; (ii) the Receiving Party has lawfully received from another source free of restriction and without breach of this Agreement; (iii) has become generally available to the public without breach of this Agreement by the Receiving Party; or (iv) is otherwise known, or becomes known to the Receiving Party free of any obligation to keep in confidence. Except as set forth below, Glowpoint will not participate, record, view, listen to or otherwise monitor any of Customer's communications through the Service unless Customer expressly agrees thereto. Any data that Glowpoint collects regarding Customer's use of the Services, which will be limited to such data as is necessary for Glowpoint to perform the Services, will be used solely for billing and support purposes, for network statistical reporting (in which no details identifying Customer will be made available to any third party), for usage reports available solely to Customer or as otherwise required to perform the Services. Notwithstanding the foregoing, in the event either party is required to disclose Confidential Information of the other party under any applicable law, regulation, or order from a court or an administrative or regulatory agency having competent jurisdiction, such party shall have the right to make such required disclosure without being deemed to have breached this Agreement; provided, that such Receiving Party shall exercise commercially reasonable efforts to (i) promptly notify the Disclosing Party in order to provide the Disclosing Party an opportunity to seek any available protective order; (ii) provide the Disclosing Party with reasonable cooperation, upon reasonable request by the Disclosing Party and at the Disclosing Party's expense; and (iii) disclose only the portion of the Disclosing Party's Confidential Information that is required to be disclosed under such law, regulation or order.

**23. Miscellaneous.** This Agreement is not assignable or transferable by operation of law or otherwise by Customer without the prior written consent of Glowpoint, which such consent will not be unreasonably withheld. Glowpoint may

subcontract the performance of Services to third parties or assign any of its other obligations or rights hereunder; provided that Glowpoint shall remain responsible to Customer under this Agreement. The parties agree that they are independent contractors and that this Agreement and relations between Glowpoint and Customer hereby established do not constitute a joint venture, agency or contract of employment between them, or any other similar relationship. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement is intended solely for the benefit of the parties and is not intended to confer third party beneficiary rights upon any other person or entity. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Executed counterparts of this agreement and any Order Form may be delivered by facsimile, which shall be sufficient evidence of execution without any need for delivery of the original executed counterpart. Any notice, report, approval or consent required or permitted hereunder shall be in writing, and effective on the date of delivery (if sent by hand, first class US mail, or courier), or on the date sent (if sent by facsimile or email and proceeded by a copy sent by first class U.S. mail or overnight courier service). Notices will be sent to Customer at the address, fax or email located on the applicable Order Form. Notices to Glowpoint shall be sent to: Glowpoint Inc., 225 Long Avenue, Hillside, NJ 07205 ATTN: Operations, with a copy to the General Counsel's Office at the same address and an email address of drobinson@glowpoint.com. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision of this Agreement shall be adjudged by any court or arbitrator of competent jurisdiction to be illegal, unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and

effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of New Jersey and the United States without regard to conflicts of laws provisions thereof. No waivers, amendments, changes or modifications to this Agreement shall be effective unless set forth in a written agreement executed by Customer and an executive of Glowpoint having the title of Vice President or a greater title. This Agreement (and all other agreements, exhibits and schedules referred to in this Agreement) is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to any of the subject matter of this Agreement. Any amendment to this agreement will supersede stated clauses in this agreement only if accepted and signed by both parties. Binding arbitration shall be the sole and exclusive remedy for resolution of disputes between the parties. Such dispute shall be submitted for arbitration in Newark, New Jersey, before a single arbitrator agreed upon by the parties, or, if they are unable to agree on a single arbitrator, before a panel of three arbitrators, with one arbitrator selected by each party and the third selected by the two arbitrators selected by the parties. Such arbitration shall be governed by the commercial rules of the American Arbitration Association. The arbitrator's decision will be final and may be entered into any court of competent jurisdiction. The prevailing party will be entitled to recover its attorney's fees and costs in connection with such arbitration. Glowpoint may cooperate with law enforcement organizations that have requested information regarding Customer and provide such organizations with any information requested. Customer shall assist Glowpoint in responding to any state or federal request for information regarding an end user pursuant to the Communications Assistance for Law Enforcement Act ("CALEA") and/or any other similar or related statute.