



SYMONCARE™ MAINTENANCE AGREEMENT

This SymonCare Maintenance Agreement (hereinafter the "Agreement") is made as of the date last signed below (the "Effective Date"), by and between Symon Communications, Inc. (hereinafter "Symon"), a corporation doing business at 500 North Central Expressway, Suite 175, Plano, Texas 75074, and _____ (hereinafter "Customer"), having offices at the address provided in Section 11.5 herein. Symon agrees to provide Customer with the products and services as described herein.

1. DEFINITIONS

- 1.1. "Documentation" shall mean the Symon-supplied related hard-copy or electronically reproducible technical and user documents associated and provided with the Software or Hardware.
- 1.2. "Equipment" and "Hardware" shall mean the physical devices, including any installed Software or other logic device incorporated into such physical device, purchased from Symon from time to time by Customer. For purposes of Maintenance, Equipment and Hardware shall only mean Symon-manufactured proprietary products such as Symon Digital Appliances and Symon LED Displays.
- 1.3. "Equipment Software Upgrade" shall mean and include any Software program, any part thereof, not included in the Hardware or at the time of original licensing or purchase, which improves or alters the operating performance of the Hardware and which is provided by Symon to Customer at no additional charge when the Hardware is covered by Maintenance.
- 1.4. "Intellectual Property Rights" shall mean United States patent, copyright, trademark, trade secret, and any other intellectual property right(s), but not such rights in other countries.
- 1.5. "Maintenance" shall mean Replacement Software, Software Upgrades and Enhancements, Software malfunction corrections, Equipment Software Upgrades, telephone assistance and repair or replacement Hardware, as applicable. Maintenance is not offered on Third Party Hardware.
- 1.6. "Media" shall mean the Symon-supplied tangible medium in which the Software and/or Documentation are fixed.
- 1.7. "Optional Software" shall mean and include any program, any part thereof or any materials not included as part of or in the Software at the time of execution of this Agreement or at the time of original licensing, which improves or adds to the Software's functionality. Such Optional Software, at Symon's sole discretion, may be chargeable at Symon's then published rates.
- 1.8. "Order" shall mean a purchase order, schedule or other ordering document that identifies the quantity and pricing of Hardware, Equipment, Products, etc. that Customer desires to purchase from Symon. All Orders and transactions between the parties will be bound solely by the terms and conditions contained herein, unless such Order explicitly states the intent to modify this particular Agreement, and the Order is signed by both parties.
- 1.9. "Personnel" shall mean a party's officers, managers, employees, agents, representatives or contractors.
- 1.10. "Products" shall mean collectively the Media, Software, Hardware, Documentation and all Product Maintenance releases and updates provided to Customer hereunder.
- 1.11. "Replacement Software" shall mean and include a replacement version of the Software provided under Section 2.1, which is provided to Customer by Symon on magnetic diskette(s), or CD(s), or by internet download.
- 1.12. "Services" shall mean all services described herein.
- 1.13. "Software" shall mean all Symon-supplied original computer files (including all computer programs and data stored in such files) delivered on the Media, or electronically or embedded in computer Equipment as firmware, all whole or partial copies thereof, including modified copies and portions merged into other programs, and copies provided under Maintenance or any other Product hereunder, including Optional Software, Software Upgrades or Enhancements, Software malfunction corrections, Firmware, Firmware Upgrades and the like. All Software shall be subject to Symon's Software License. Software shall include all Symon proprietary software, as well as all Third Party Software incorporated into the Software.
- 1.14. "Symon Smart Screen" shall mean any LCD screen sold by Symon that has a modular, slide-out integrated controller incorporated in the display.
- 1.15. "Third Party Hardware" shall mean any hardware product manufactured by a third party entity that Symon is authorized to resell to Customer. Such Third Party Hardware includes but is not limited to brackets, television displays, cabling and any other non-Symon proprietary products.
- 1.16. "Third Party Providers" shall mean third party entities that provide either Third Party Software to Symon for incorporation into the Software.



1.17. "Third Party Software" shall mean any software products incorporated into the Software that is supplied to Symon by any third party entity and that Symon is authorized to sub-license to Customer.

1.18. "Upgrade" and "Enhancement" shall mean and include any program, any part thereof, or any materials not included in the Software at the time of execution of this Agreement or at the time of original licensing, which improves or alters the operating performance of the Software and which is provided by Symon to Customer at no additional charge when the Software is covered by Maintenance. Upgrades do not include Software necessary to maintain the functionality of the Software due to Customers changes of third party products. This exclusion is more fully described in Section 2.1.1.

2. SCOPE OF MAINTENANCE. Symon provides Maintenance at two (2) distinct levels: "Basic Maintenance" (also called SymonCare) and "24x7 Maintenance" (also called SymonCare Plus). All Software and Hardware attached to a single system (meaning a distinct installation of Symon Enterprise Software and all Products connected thereto) must have Maintenance or none of the Products will receive Maintenance, and all Products must be on the same level of Maintenance. (This does not apply to Symon LED Displays.) For each Maintenance Order hereunder, the Maintenance provided by Symon, at no additional charge, is as defined in Sections 2.1 – 2.2.

2.1. Software Maintenance. The parties hereby acknowledge and agree that the Maintenance can normally be accomplished by sending Replacement Software with each change, update, Upgrade or Enhancement that may be necessary, along with accompanying written instructions for implementation.

2.1.1. Upgrades, Enhancements and Replacement Software. Both levels of Maintenance shall include all Software Upgrades, Enhancements, updates and level changes, including Equipment Software Upgrades on the Hardware. Replacement Software will be provided for both Maintenance levels in the event the original Software becomes inoperative due to machine, user or diskette failure. Such replacement shall be limited to the Software only and Symon shall not be liable for loss of data, messages or file information. Customer shall be responsible for the installation of such Upgrades, Enhancements and Replacement Software. Upgrades do not include new or additional Software (such as a new "Collector") that is necessary to maintain compatibility with different third party products, such as Customer's implementation of new versions of a third party ACD platform and the like.

2.1.2. Telephone Assistance, Remote Access and Security Procedures. Symon shall provide Customer with telephone assistance (also called "Technical Support") for the reporting and servicing of Symon Products' malfunction, as defined in Exhibit A to this Agreement. Customer acknowledges and agrees that Technical Support requires Symon to remotely access the Symon Products and Customer hereby agrees to allow all reasonable and necessary remote access. If Customer requests Symon to incur any additional expenses (testing, training, equipment, materials or the like) in order for Customer to grant Symon the required remote access (or for Symon to perform any of its other responsibilities hereunder) due to any Customer internal procedure, security protocol or the like, then all such expenses incurred by Symon shall be paid by Customer, including the on-site expenses described in Section 2.3.2 below. Should Customer not grant Symon the required access or pay any of the additional expenses, Symon shall have no further Maintenance obligations under this Agreement.

2.1.3. Software Malfunction Correction. For both Maintenance levels, in providing Maintenance hereunder, Symon shall notify Customer of, and shall correct any Software malfunction in a timely manner upon receipt of notice of the malfunction. Notwithstanding the foregoing, upon notification by Customer, Symon shall use commercially reasonable efforts to correct any Software malfunction and/or supply a temporary fix to the problem in order to afford Customer the continued, efficient use of the Software. However, at some point, Symon may deem that the most expeditious way to provide Software malfunction correction is with the implementation of a Software Upgrade or Enhancement instead of performing custom code fixes (if such software malfunction has been corrected in a Software Upgrade or Enhancement). If Customer chooses not to implement such Upgrades or Enhancements, Symon shall not be obligated to provide Software code fixes underneath this Agreement and Symon shall not be obligated to return any fees paid for the Maintenance under this Agreement.

2.1.4. Exclusions. The Software Maintenance provided by Symon under this Agreement does NOT include support for the following:

- (a) Custom software developed for Customer. Support for such custom software must be purchased separately under an independent agreement; or
- (b) Software not installed on equipment meeting the minimum requirements found at: www.symon.com/requirements, or otherwise described therein. Due to the nature of all hardware and software, these requirements will necessarily be updated as new Products are released; or
- (c) Other scenarios as further described in Exhibit A.

2.2. Hardware Maintenance. Maintenance on the Hardware consists of repair or replacement of Hardware that is not operating in accordance with its published specifications. Maintenance on the Software installed on the Hardware is covered under Section 2.1.1 above.

2.2.1. If, during the term of Maintenance purchased hereunder, an item of covered Hardware is not operating in accordance with its published specifications, Customer shall remove, pack and ship such item of Hardware to Symon Communications, Inc. at 1358 Exchange Drive, Richardson, TX 75081. Upon receipt of such Hardware, Symon shall promptly repair or replace such item of Hardware. Replacement Hardware shall automatically be covered for the duration of the term. Replacement Hardware may be Hardware of substantially



similar specifications and functionality.

2.2.2. All transportation costs associated with shipment of Customer-owned Hardware to Symon shall be as defined in Exhibit A. All transportation costs associated with shipment of Customer-owned Hardware to Customer shall be paid by Symon. Symon shall not be responsible for the removal or re-installation of any returned Hardware.

2.2.3. In the event that Hardware Maintenance is required due to: (i) abuse or mishandling of the Hardware by Customer, or (ii) any environmental conditions where the Hardware is located (dust, moisture, etc.), or (iii) any other technical issues (electrical "spikes" or the like), or (iv) any other external factors outside the normal operating conditions for the Hardware; then the charges for Maintenance associated therewith shall be paid by Customer.

2.2.4. Symon shall maintain a sufficient supply of temporary replacement Hardware, parts and components in inventory. When replacing parts, Symon shall install only new parts or parts of quality equivalent to new. Parts removed from the Hardware pursuant to service performed shall become the property of Symon. Notwithstanding anything else in this Agreement, Symon may use newer replacement Hardware with greater performance and capabilities, which may require Customer to install then-currently available Software Upgrades.

2.2.5. Third Party Hardware warranty and support is only available from the manufacturer. Symon does not provide Maintenance for third party products that are not manufactured by Symon. These products fall under the normal manufacturing warranties provided by the manufacturer.

2.2.6. Symon Smart Screens. Some Services are not offered on Symon Smart Screens, as further defined in Exhibit A.

2.2.7. Symon reserves the right to discontinue Maintenance on any Hardware Products. In the event of an aforementioned discontinuation, Symon shall take commercially reasonable steps to notify Customer at least six (6) months in advance. Notwithstanding the foregoing, such a discontinuation shall not affect Customer's rights with respect to any unexpired Order of Maintenance.

2.2.8. Risk of Loss. Customer shall be liable for any risk of loss or damage to the Customer-owned Hardware while at Customer's installation site and during periods of transportation from Customer's shipping point to Symon's receiving point. Symon shall be liable for any loss or damage to Customer-owned Hardware while at Symon's repair site and during periods of transportation from Symon's shipping point to Customer's receiving point. The maximum liability of Symon for physical loss or damage to the Hardware shall be the replacement of the Hardware with similar Hardware.

2.3. Extended Support. The Maintenance offered by Symon under this Agreement, at an additional charge, is as follows:

2.3.1. Additional Assistance.

(a) For Customers purchasing 24x7 Maintenance, there are no additional fees for after hours support.

(b) For Customers purchasing Basic Maintenance, please refer to Exhibit A for a full description of what Maintenance is covered and what Maintenance will incur an additional charge. The charges in Exhibit B shall apply to any non-covered assistance.

2.3.2. On-Site Services. Customers will incur a charge for onsite Maintenance at both Maintenance levels. Symon shall provide on-site Maintenance at Customer's request (or if it becomes necessary for on-services because Symon is not granted all reasonable and necessary remote access as further described above in Section 2.1.2), at the rates set forth in Exhibit B, subject to the availability of Symon's technical staff and the nature of the service request (i.e., emergency service shall be given priority over other requests for on-site Services). Customer shall also bear all reasonable costs incurred by Symon for on-site Services, including expenses for travel, labor and lodging for Symon's representative.

3. SERVICE PROCEDURES

3.1. Response Time. Telephone response time to Customer's request for assistance shall be as indicated in Exhibit A. For the purposes of this Agreement, a normal business day shall mean 7:00 a.m. to 7:00 p.m. (Central Time), Monday through Friday except for the following holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, and Christmas Day.

3.2. Callers. Customer shall only allow its Personnel who are knowledgeable about the Products to request Technical Support.

3.3. Call-In Procedures. Requests for assistance shall indicate that Customer's telephone call is a request for Technical Support and must include the following information: name of caller, company, telephone number, nature of the problem, whether the applicable Software is inoperative, and, in the event a Symon representative is not immediately available, the time that the caller shall be available to receive a return call from Symon.

3.4. Customer Assistance. Customer shall provide Symon with all reasonable and necessary assistance in the trouble-shooting and resolution process.

4. CHARGES



4.1. Symon's current rates for the Maintenance may be updated by Symon once annually on the anniversary date of the Maintenance purchased. Notwithstanding the foregoing, any unexpired Order for Maintenance shall not be affected by such change in rates until that Maintenance renews.

4.2. In no event shall Symon increase its rates for Maintenance to Customer by more than ten percent (10%) per year cumulatively from original date of purchase.

4.3. Symon's Extended Support and Services as provided herein shall be billed as defined in Exhibit B.

4.4. The parties hereto acknowledge and agree that all invoices for Maintenance pursuant to this Agreement shall be issued by Symon Communications, Inc., and further, that all payment instruments made by Customer for the Maintenance shall be made payable to Symon Communications, Inc. Invoicing will be annual in advance with payment due thirty (30) days from receipt of the invoice, unless contested in writing for either the amount or correctness of the invoice. Customer acknowledges and agrees that Maintenance charges are non-refundable, except for a breach by Symon of its Maintenance obligations hereunder.

4.5. Customer understands and agrees that the Technical Support Rates in Exhibit B do not cover repair of any Product that is not under Maintenance. If Customer has no Maintenance and calls Symon for Technical Support, the repair of the malfunctioning Product (i.e. repair to a piece of Hardware, providing a Software Upgrade or Enhancement, or the like) will incur an additional charge over and above the fees for the Technical Support necessary to trouble-shoot Customer's Products.

5. TERM AND RENEWAL

5.1. For Maintenance purchased simultaneously with new Products, the initial term of Maintenance shall commence upon the installation of the Products (or sixty (60) days from shipment, whichever comes first). The initial term shall be one (1) year, or such other period of time as agreed in writing in advance by the parties, and shall continue thereafter unless terminated by either party as provided for herein.

5.2. The term of each subsequent Order for Maintenance shall commence upon the commencement date set forth on the applicable Order and shall remain in force for an initial term of one (1) year, or such other period of time as agreed in writing in advance by the parties, unless terminated by either party as provided for herein.

5.3. At the end of the then-current term of any Order for Maintenance, the Maintenance shall automatically renew at Symon's then-current Maintenance rates unless Symon receives written notice of Customer's cancellation hereof at least thirty (30) days prior to the end of the term. Notwithstanding the foregoing, Customer may cancel the Maintenance for the following term should Customer not accept Symon's then-current Maintenance rates by notifying Symon within thirty (30) days of receipt of the new rates.

5.4. Should Customer not purchase Maintenance with the initial purchase of Products, or should Customer decline future Maintenance renewals, Customer acknowledges that a reinstatement fee may be required to purchase subsequent Maintenance on the aforementioned Products, as defined below.

- A. If Maintenance has been expired for less than one (1) year, Customer must pay for the number of months that have lapsed, plus one (1) year in advance. If this is being done to upgrade, the year paid in advance must be on the new Products. However, this scenario does not require an upgrade to a new Product.
- B. If Maintenance has been expired for more than one (1) year, but less than two (2) years, Customer must pay one (1) full year of Maintenance fees on the old Product, plus one (1) year in advance on the new Product. An upgrade to the most current version is required.
- C. If Maintenance has been expired for more than two (2) years, Customer will NOT be allowed to reinstate Maintenance.

6. ADDITIONAL ORDERS

Customer may place additional orders for Maintenance pursuant to this Agreement by order letter or purchase order to Symon, referencing this Agreement. However, any attempt to modify or supplement this Agreement shall be of no effect unless such modification is made in writing, specifically references this Agreement, and is signed by both parties.

7. CONFIDENTIALITY

By virtue of this Agreement, the parties may have access to the other party's confidential information. "Confidential Information" means and refers to all tangible or intangible information and materials, in any form or medium, including, but not limited to, Software and related documentation, trade secrets, business plans, forecasts, customers, and finances. A party's Confidential Information shall include information that is clearly designated or identified as confidential by appropriate letter or by a proprietary stamp or legend. Confidential Information shall also include all information disclosed orally or visually, or other form of tangible information without an appropriate letter or a proprietary stamp or legend, if it would be apparent to a reasonable person familiar with the party's business and industry in which it operates, that such information is of a confidential nature. A party's Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third-party without restriction on disclosure; or (iv) is independently developed by or for



the other party without use of or reference to the other party's Confidential Information. The parties will hold each other's Confidential Information in confidence. With respect to all Confidential Information other than Software and source code provided by Symon, such obligation shall terminate three years after termination of this Agreement. With respect to the Software and source code provided by Symon, such obligation is perpetual. The parties will not make each other's Confidential Information available in any form to any third-party for any purpose except to the extent necessary to exercise its rights under this Agreement and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case less than a reasonable degree of care. The parties agree that the limitations of liability contained herein shall not apply to any disclosure of Software or source code in breach of this provision and that any such breach shall terminate the rights to such Software and source code granted to Customer under this Agreement. It shall not be a breach of this Section 7 if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided the party served with such process promptly notifies the other party and provides reasonable assistance so that the other party may seek a protective order against public disclosure. Each party will limit the disclosure of Confidential Information to those of its Personnel who have a need to know such Confidential Information and who have been made aware of the party's obligations under this Section 7, and each party will take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its Personnel in violation of the terms of this Agreement. Each party will use the other party's Confidential Information only for its own internal business purposes.

8. INDEMNITY

Symon will indemnify, defend and hold Customer harmless from and against any and all losses, claims, liabilities, costs and expenses, including taxes, fees, fines, penalties, interest, reasonable expenses of investigation and attorneys' fees arising out of, or relating to, a claim by a third party that the Products or Services infringe upon a third party's Intellectual Property Rights; PROVIDED THAT Customer promptly notify Symon in writing of such suit or threat thereof and cooperate, at Symon's request, in the defense of such suit or claim. Symon's indemnity obligation under this Section 8 shall not extend to claims based on: (i) an unauthorized modification of the Products or Services made by Customer where the Products or Services would not be infringing without such modification, or (ii) customized portions of the Products or Services designed in accordance with written specifications provided by Customer where the Products or Services would not be infringing without such customized portions, or (iii) use or incorporation of the Products or Services with other products not provided by Symon or in a manner not approved by Symon.

In the event a claim of infringement is made, or Symon believes that such a claim is likely to be made, then Symon shall at its expense: (a) procure the right to continue using the Products or Services; (b) replace or modify the Products or Services so that it becomes non-infringing; or (c) if neither (a) or (b) above is commercially practical, then at Symon's sole option, remove the infringing Products or Services, and issue to Customer a credit equal to the amount paid by Customer for those Products, amortized over a five (5) year period, and issue a full credit equal for any prepaid fees already received by Symon.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR DAMAGES HEREUNDER EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 AND IN OTHER PROVISIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH SYMON WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. SYMON'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN. THE FOREGOING SHALL NOT LIMIT THE INDEMNIFICATION, DEFENSE AND HOLD HARMLESS OBLIGATIONS SET FORTH IN THIS AGREEMENT, NOR WILL IT APPLY TO A BREACH OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS HEREIN.

10. DISPUTE RESOLUTION

The parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

If the negotiations do not resolve the dispute within thirty (30) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A party



may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each party may submit in writing to a party, and that party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, and requests for admission. Each party is also entitled to take the oral deposition of two (2) individuals of the other party. Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within forty-five (45) days of the demand for arbitration. The arbitration shall be held in Collin County, Texas. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party for the costs of production of documents (to include search time and reproduction costs). The parties shall equally split the fees of the arbitration and the arbitrator.

11. GENERAL TERMS

11.1. Relationship Between the Parties. In performance of this Agreement, Symon is acting as an independent contractor. Nothing in this Agreement creates a partnership, joint venture, or agency relationship between the parties.

11.2. No Solicitation. During the term of this Agreement and for twelve (12) months thereafter neither party will solicit for employment any employee or contractor of the other whom was directly involved in the Maintenance performed hereunder. If during this agreement or for twelve (12) months thereafter, either party directly or indirectly retains the services (whether as an employee, independent contractor, or otherwise) (the "Hiring Party") of any employee of the other party (the "Damaged Party") who has been involved in the delivery of Maintenance under this Agreement, the parties agree that the Damaged Party will be damaged, but that the amount of this damage will be difficult to determine. Accordingly, the parties agree that for each such employee hired by the Hiring Party, the Hiring Party shall pay to the Damaged Party Fifty Thousand Dollars (\$50,000) as liquidated damages, and not as a penalty.

11.3. Law. This Agreement and all matters arising out of or relating to this Agreement will be governed by the internal laws of the State of Texas. In the event of any controversy, claim, or dispute between the parties arising out of or relating to this Agreement, such controversy, claim, or dispute may be tried solely in a state or federal court for Collin County, Texas, and the parties hereby irrevocably consent to the jurisdiction and venue of such courts.

11.4. Force Majeure. Neither party shall be liable under this Agreement because of any failure or delay in the performance of its obligations (except for payment of money) on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities, or any other cause beyond its reasonable control.

11.5. Notice. Wherever one party is required or permitted to give notice to the other pursuant to this Agreement, such notice shall be deemed given when delivered in hand, when mailed by registered or certified mail, return receipt requested, postage prepaid, or when sent by a third party courier service where receipt is verified by the receiving party's acknowledgment, and addressed as follows:

In the case of Symon:

Symon Communications, Inc.
 Attn: Director of Contract Management
 500 North Central Expressway, Suite 175
 Plano, Texas 75074

In the case of Customer:

Customer Name: _____
 Attn: _____
 Address: _____
 City, State Zip: _____

Either party may from time to time change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective.

11.6. Severability and Construction. If, but only to the extent that, any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Agreement is not affected by such declaration or finding and is capable of



substantial performance, then the remainder shall be enforced to the extent permitted by law. No rule of construction will apply in the interpretation of any provision of this Agreement to the disadvantage of one party on the basis that such Party put forward or drafted such provision.

11.7. Survival. The parties hereto agree that provisions which expressly or by their nature continue to apply after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

11.8. Publicity. Symon, at its sole discretion, may issue a news release, public announcement, advertisement or publicity stating the existence of this Agreement and any business dealings.

11.9. Waiver. Any waiver of this Agreement or of any covenant, condition, or agreement to be performed by a party under this Agreement shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

11.10. Headings. The headings in this Agreement are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms herein.

11.11. Remedies. The remedies reserved by either party in this Agreement shall be cumulative and additional to any other remedies provided in law or equity. Customer agrees that if any provision of this Agreement is breached, a remedy in law may be inadequate and, therefore, without limiting any other remedy available at law or equity, an injunction, specific performance or other form of equitable relief or money damages or any combination thereof shall be made available to the Symon. Symon shall be entitled to recover the cost of enforcing this Agreement, including, without limitation, reasonable attorney’s fees.

11.12. No Assignment. Neither party may assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement unless the assignee agrees in writing to be bound by the terms and conditions of this Agreement. Subject to the foregoing, this Agreement will be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Notwithstanding the foregoing, nothing in this Section shall prevent Symon from engaging third party subcontractors in the performance of its obligations under this Agreement.

11.13. Export Administration. Customer will comply fully with all relevant export laws and regulations of the United States, including without limitation the U.S. Export Administration Regulations (collectively “Export Controls”). Without limiting the generality of the foregoing, Customer will not, and shall require its representatives not to, export, direct, or transfer Hardware or any direct product thereof to any destination, person, or entity restricted or prohibited by the Export Controls.

11.14. Compliance With Laws. Symon shall perform all its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

11.15. Third Party Beneficiaries. Customer acknowledges and agrees that all Third Party Providers shall be third party beneficiaries to this Agreement. Such Third Party Providers may seek any legal remedy to enforce their rights, including but not limited to their Intellectual Property Rights, directly against Customer.

11.16. Entire Agreement. This Agreement, together with all attachments hereto, and all documents referenced herein, each of which is incorporated herein for all purposes, represents the entire agreement of the parties, and supersedes all prior agreements, authorizations, negotiations, or proposals, with respect to the subject matter of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and an Order, this Agreement shall be controlling with respect to those transactions covered by that Order. The parties agree that any other terms or conditions included in any quotes, acknowledgments, confirmations, purchase orders or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties.

IN WITNESS WHEREOF, Customer and Symon have each caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the Effective Date.

 (“Customer”)

By: _____

Name: _____

Title: _____

Date: _____

Symon Communications, Inc.
 (“Symon”)

By: _____

Name: William G. Cole

Title: Chief Financial Officer

Date: _____



EXHIBIT A

SOFTWARE BASIC MAINTENANCE (SYMONCARE)

BASIC MAINTENANCE IS DESIGNED FOR SYMON CUSTOMERS WHO ONLY NEED SUPPORT DURING NORMAL BUSINESS HOURS (7A.M. – 7 P.M. Central Time, Monday – Friday, except holidays).

*The goal of **Symon Technical Support** is to ensure that Symon Products and offerings are functioning to the specifications under which they were purchased. Our Technical Support staff members are trained on Symon Products and are usually able to help Customers in achieving normal and routine functionality via telephone or web-enabled communications (90% success rate). If Technical Support cannot achieve resolution, they are trained to escalate to the next level of expertise. Third Party Software/Hardware warranty and support is only available from the manufacturer. Symon does not provide service for third party products that are not manufactured by Symon. These products fall under the normal manufacturing warranties provided by the manufacturer.*

This table outlines the Service Level Agreements for Customers with Basic Maintenance agreements. Help is available from 7A.M. – 7 P.M. Central Time Zone, Monday - Friday:

Severity Level	Problem Definition	Response Time	Response Updates
1	Critical. A severity one (1) issue is a catastrophic production problem which may severely impact the client's production systems, or in which client's production systems are down or not functioning; loss of production data and no procedural work around exists.	<60 minutes	Twice per business day
2	Major. A severity two (2) issue is a problem where the client's system is functioning but in a severely reduced capacity. The situation is causing significant impact to portions of the client's business operations and productivity. The system is exposed to potential loss or interruption of service.	<90 minutes	Once per business day
3	Minor. A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss, one which impairs some operations but allows the client to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the client's operation and issues in which there is an easy circumvention or avoidance by the end user. This includes documentation errors.	<120 minutes	Every other business day
4	Request. A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.	<24 hours	Once per week

Symon Technical Support can routinely solve most Customer issues on the same day. Certain issues that require fixing of Software bugs, corrupted data bases, network issues, policy and security issues, or system fixes may take longer than normal. Under these situations, Symon will provide the Customer with estimates regarding resolution and will use commercially reasonable efforts to resolve the problem.

TECH SUPPORT TOLL FREE NUMBER: 1-877-789-TECH

Email for call back (M-F, 7a-7p CST): support@symon.com

Support needed after hours, weekends, and holidays is available through Time and Materials charges.

Rates are published at: <http://support.symon.com>



EXHIBIT A

SOFTWARE 24x7 MAINTENANCE (SYMONCARE PLUS)

24x7 MAINTENANCE IS FOR SYMON CUSTOMERS WHO NEED SUPPORT ANYTIME:

- **During Business Hours**
- **After Hours**
- **Weekends**
- **Holidays**

The goal of Symon Technical Support is to ensure that Symon Products and offerings are functioning to the specifications under which they were purchased. Our Technical Support staff members are trained on Symon Products and are usually able to help Customers in achieving normal and routine functionality via telephone or web-enabled communications (90% success rate). If Technical Support cannot achieve resolution, they are trained to escalate to the next level of expertise. Third Party Software/Hardware warranty and support is only available from the manufacturer. Symon does not provide service for third party products that are not manufactured by Symon. These products fall under the normal manufacturing warranties provided by the manufacturer.

The table below outlines the Service Level Agreements for Customers with “24 X 7” Support agreements. Help is available 24 hours per day:

Severity Level	Problem Definition	Response Time	Response Updates
1	Critical. A severity one (1) issue is a catastrophic production problem which may severely impact the client's production systems, or in which client's production systems are down or not functioning; loss of production data and no procedural work around exists.	<45 minutes	Twice per business day
2	Major. A severity two (2) issue is a problem where the client's system is functioning but in a severely reduced capacity. The situation is causing significant impact to portions of the client's business operations and productivity. The system is exposed to potential loss or interruption of service.	<90 minutes	Once per business day
3	Minor. A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss, one which impairs some operations but allows the client to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the client's operation and issues in which there is an easy circumvention or avoidance by the end user. This includes documentation errors.	<120 minutes	Every other business day
4	Request. A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.	<24 hours	Once per week

Symon Technical Support can routinely solve most Customer issues on the same day. Certain issues that require fixing of Software bugs, corrupted data bases, network issues, policy and security issues, or system fixes may take longer than normal. Under these situations, Symon will provide the Customer estimates regarding resolution and will use commercially reasonable efforts to resolve the problem.

TECH SUPPORT TOLL FREE NUMBER: 1-877-789-TECH

Email for call back (M-F, 7a-7p CST): support@symon.com



EXHIBIT A – HARDWARE / SOFTWARE SUPPORT MATRIX

Symon provides a committed level of Technical Support on all current, generally available Products that are covered under a Software or Hardware Maintenance Agreement. There are two coverage options available: Basic Maintenance (SymonCare) and 24x7 Maintenance (SymonCare Plus). All Software and Hardware Products comprising a single system must have Maintenance or none of the Products will receive Maintenance, and all Products must be on the same level of Maintenance. Symon Products that are not covered under an agreement are supported on an ad-hoc, as available, time and materials basis at Symon's then current published rates, which can be found at http://support.symon.com . Unless otherwise specified in writing, Symon provides a standard ninety (90) day warranty on its entire line of new Products. Warranty and Maintenance Services commence upon installation by Symon, or sixty (60) days from the date of shipment, whichever comes first.	Warranty	Basic Support (Symon Care) Option	24 X 7 Support (Symon Care Plus) Option
SOFTWARE SUPPORT SERVICES			
Software Replacement For Media Loss or Failure (Available via CD or download; Installation not included)	●	●	●
Software Enhancements (e.g. Service Packs, Patch Releases or Hot Fixes which are available via download; Installation not included.)		●	●
Minor Upgrades (Minor Releases: e.g. 8.1 to 8.2; Available via CD or download; Installation not included)		●	●
Major Upgrades (Major Releases: e.g. 7. x to 8.0; Available via CD; Install & migration not included)		●	●
Regular Hours Technical Support (Available via Phone & Email: 7am – 7pm CST, Monday – Friday)	●	●	●
After-Hours Emergency Technical Support (Available 7 pm – 7 am CST, Monday – Friday & Weekends)			●
Holiday Emergency Technical Support (Symon Holidays)			●
Discounted Training Services** (Classroom instruction offered at 20% discount over published rates)			●
Discounted Onsite Installation Services* (Offered at 20% discount over published rates)			●
Discounted Remote Installation Services* (Installs, upgrades, rebuilds, etc. offered at 20% discount over published rates)			●
HARDWARE SUPPORT SERVICES			
Repair of Defective Symon-built Hardware Products (e.g. SDAs, NetLite IIs, etc) at Symon's Depot Facilities (removal/re-installation not included)	●	●	●
Replacement of Symon-built Defective Hardware Products (e.g. SDAs, NetLite IIs, etc) That Cannot Be Repaired (removal/re-installation not included)	●	●	●
Enhancement of Hardware Products (Equipment Software Upgrades with Instructions; Installation not included)		●	●
Paid Transport by Symon of Repaired/Replaced Hardware Products from Symon's Depot to Customer's Facilities (removal/re-installation not included)		●	●
Regular Hours Technical Support (Available via Phone & Email, 7am – 7pm CST, Monday – Friday)	●	●	●
After-Hours Emergency Technical Support: (Available 7 pm – 7 am CST, Monday – Friday & Weekends)			●
Holiday Emergency Technical Support (Symon Holidays)			●
Loaner Equipment During Equipment Repair** (removal/re-installation not included)			●
Paid Transport by Symon of Defective Equipment from Customer's Facilities to Symon's Depot for Repair** (removal/re-installation not included)			●
Paid Transport by Symon of Loaner Equipment from Symon's Depot to Customer's Facilities** (removal/re-installation not included)			●
Discounted Training Services* (Classroom instruction offered at 20% discount over published rates)			●
Discounted Onsite Installation Services* (Offered at 20% discount from published rates)			●
Discounted Remote Installation Services* (Offered at 20% discount from published rates)			●

* **Covered Services** - These discounted Services are available after your initial billable installation and only applies to Symon-provided Services, not third party services passed through to Customer. These discounts are calculated from Symon's normal full retail prices and cannot be combined with any other discount or offer. These discounts do not apply to any Symon MessageLink installation.

** **Symon Smart Screens** – These Services are not available on Symon Smart Screens.



EXHIBIT A

SERVICES THAT SYMON TECHNICAL SUPPORT WILL PROVIDE

Symon Technical Support will provide the following services to customers that have a current maintenance agreement:

1. Troubleshoot the Symon system, all related applications, and any error messages that may result from running the Symon system.
2. Escalate issues as needed and provide customers with status updates.
3. Assist in configuring Symon hardware, like the NetLite II and the SDA (one instance of each).
4. Assist customers with the installation of the Symon client software on ONE (1) PC for instructional purposes and answer any questions related to the client installation.
5. Answer questions about the software use, within reasonable limits.
6. Demonstrate the functionality of the system by showing customers how to add and use a single feature item, like a connection site, board, virtual sign, message in Composer, message in Design Studio, etc.
7. Recommend training programs for customers based on their questions.
8. Provide software upgrades and patches through online downloads.
9. Provide systems documentation through online downloads.
10. Provide customer-related information like: Customer ID, Site ID, Installation Code, License Files, etc.
11. Set up content subscriptions and provide appropriate content codes.
12. Create login IDs for Symon support sites like <http://my.symon.com> and <http://support.symon.com>.
13. Process "Change of MAC Address" requests.
14. Process "Change Symon Licenses" requests.
15. Import and purge Symon Licenses.
16. Create Return Authorizations for Symons software and hardware.
17. Create Advance Shipping Authorizations for Symon hardware, as appropriate.
18. Create Ship Requests for software.
19. Create DRM licenses (e.g., SDA 600S).



EXHIBIT A

Symon Professional Services can be contracted to perform THE FOLLOWING SERVICES, which ARE NOT PROVIDED BY SYMON TECHNICAL SUPPORT:

1. Move or migrate the Symon software from one PC to another in a production or test environment*
2. Add or reconfigure Data Collectors in Portal Admin
3. Perform major software upgrades or any upgrade that requires database conversion or rebuilding*
4. Reinstalling Symon CMS Reporter process after migration or CMS upgrade
5. Creating and modifying CMS report(s) used by Symon applications (adding fields, skillset, changing width of the column, changing ACD, etc.)
6. Analyzing select statements for ODBC Collector
7. Adding a new LOB (line of business)
8. Trouble-shooting LOB Admin solution once Symon determines that the issue is with LOB Admin
9. Adding and configuring new collector
10. Installing and configuring more than two SDAs, LED boards, Symon clients (RAS, DS, InView)
11. Adding or modifying more than 1-2 Composer messages, published variables, messages with content in Design Studio
12. Rebuilding SES database
13. Reinstalling SES server software
14. Support for any type of custom solution
15. Consulting services
16. Support covered in a PS Service Agreement
17. Reinstall the Symon software on an existing PC*

* If the Customer elects to move, install or reinstall the Symon software without Symon's assistance and the Customer experiences any issues, Symon reserves the right to require that the Symon software installation is "Certified" by a Symon Professional Services Consultant before it will be supported by Symon Technical Support. "Certified" means that a Symon Professional Services Consultant reviews the status of the Customer's system and agrees that the system is fully operational and the system has been properly installed. The aforementioned certification process will incur a charge at Symon's then-current Professional Services rates.

The following are the Customer's responsibility. Symon will counsel and advise where possible, but the Customer is ultimately responsible for the following:

1. Trouble-shooting issues related to non-Symon products, like 3rd party hardware/software issues, Customer network issues, Customer security policies, Customer permission issues, etc.
2. Applying operating system patches or installation of operating systems.
3. Providing support for 3rd party hardware/software with which the Symon system integrates, like Avaya CMS.
4. Creating backups.



EXHIBIT B

SCHEDULE OF EXTENDED SUPPORT RATES*

Telephone Support

	<u>During Business Hours</u> (7:00 am - 7:00 pm CST)	<u>After Hours &</u> <u>Weekends & Holidays</u>
No Maintenance Contract (Incurs a two (2) hour minimum charge)	\$ 250.00 per hour	\$ 500.00 per hour
Basic Maintenance Contract (Incurs a one (1) hour minimum charge)	No Charge	\$ 250.00 per hour
24x7 Maintenance Contract	No Charge	No Charge

Onsite Services

(Incurs an eight (8) hour minimum charge)

<u>During Business Hours</u> (8:00 am – 6:00 pm local time)	<u>Weekends & Holidays</u>	<u>Business Day</u> <u>After Hours (Mon – Thurs)</u>
\$ 250.00 per hour Plus travel & living expenses	\$ 500.00 per hour Plus travel & living expenses	\$ 375.00 per hour Plus travel & living expenses

* These rates are Symon’s current rates at the time of execution of this Agreement. Symon, at its sole discretion, may change these rates in the future. Symon’s then-current rates shall apply to all future Services covered above.