

## **RETAIL LOCATION AGREEMENT**

This Retail Location Agreement, hereinafter referred to as "Agreement," is made this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between Synergy Telecom, Inc. (hereinafter "Synergy") and \_\_\_\_\_ (hereinafter "Retailer").

### **W I T N E S S E T H**

**Whereas**, Synergy is in the telecommunications business and sells prepaid calling cards for end use through various retail outlets in the United States; and

**Whereas**, Retailer owns and/or operates retail stores shown in Schedule 1 to this agreement; and

**Whereas**, Retailer desires to sell Synergy prepaid calling cards to its customers at its retail locations shown in Schedule 1.

### **A G R E E M E N T**

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Synergy and Retailer agree as follows as follows:

#### **ARTICLE 1 RETAIL MARKETING and SALES AGREEMENTS**

1.1 Synergy will provide an adequate inventory of its prepaid calling cards for Retailer to actively market and sell at its retail locations shown in Schedule 1. Synergy is obligated to provide all point-of-sale marketing material to Retailer that in Synergy's sole discretion is necessary for the marketing of its prepaid calling cards.

1.2 Retailer is obligated to use its best efforts in marketing for sale the prepaid cards provided by Synergy, including prominent display of point-of-sale marketing material throughout each retail location to include, but not limited to counter displays at registers, front and/or side window signs, out side signs and displays if provided by Synergy, and posters. All point of sale marketing material will remain the property of Synergy.

#### **ARTICLE 2 COMPENSATION**

2.1 The Retailer will collect the face value of each Synergy prepaid calling card sold in its retail locations. Synergy will invoice the Retailer every Monday for each prepaid calling card sold **and activated** by the end use customer pursuant to the schedule of fees attached hereto as Schedule 2. Retailer will execute a *Debit/Credit Authorization and Payment Agreement* attached hereto as Schedule 3, for the purpose of accounting to Synergy for the sales invoiced during the prior week. Under the *Debit/Credit Authorization and Payment Agreement*, (hereinafter "ACH transfer") Synergy is authorized to debit or credit the account shown in Schedule 3 for all cards sold and activated by end use customers. In the event that invoicing and ACH transfer of funds cannot be done on any given Monday, Retailers obligations under this Agreement are not excused and the invoicing and ACH transfer of funds will continue to be authorized by Retailer.

2.2 Synergy will issue a weekly summary invoice to Retailer. In the event that any ACH transfer or individual card sale or activation is disputed, written notice of the dispute must be received in the office of Synergy within seven (7) days of Retailers receipt of its weekly summary invoice or the dispute is waived.

Within seven (7) days of Synergy's receipt of any dispute, Synergy will provide written proof of the validity of the ACH transfer or card activation. If no validation of the portion of the account in dispute is made, Synergy will promptly credit Retailer's account by ACH transfer in the amount of the disputed transfer.

2.3 Upon Retailer's taking possession of prepaid calling cards for inventory, Retailer assumes any risk of loss to such inventory. Retailer will take all reasonable measures necessary to safeguard the inventory of prepaid calling cards from loss or theft. Prepaid calling cards activated will be invoiced pursuant to Article II of this Agreement.

2.4 In the event of any loss or theft of prepaid calling cards held in inventory by Retailer, Retailer will immediately contact Synergy to notify it of the loss. Synergy will take all steps reasonably necessary to mitigate the loss to Retailer.

### **ARTICLE 3 TAXES**

Retailer is solely responsible for collecting all taxes (including federal excise tax, state, county and local sale taxes, or any other taxes or fees due to any governmental or quasi-governmental agency on the retail sale of prepaid telecommunication services).

### **ARTICLE 4 COVENANTS**

4.1 During the term of this Agreement the Retailer will have access to and become familiar with various trade secrets and proprietary information consisting of processes and compilations of information, records and specifications owned by Synergy and regularly used in the operation of Synergy's business. The Retailer shall not disclose any such trade secrets or proprietary information directly or indirectly, nor use such in any way, either during the term of this Agreement or at any time thereafter, except as required in performing his services under this Agreement. All marketing materials, files, records, documents, drawings, specifications, equipment, and similar items provided to Retailer, whether or not reproduced by Retailer shall remain the exclusive property of Synergy and shall not be disclosed to any third party without prior written consent of Synergy.

4.2 On the termination of this Agreement or whenever requested by Synergy, the Retailer shall immediately deliver to Synergy all property in Retailer's possession or under his/her/its control belonging to Synergy.

4.3 Retailer agrees that the Contract is exclusive and further agrees to refrain from entering into any other contracts or agreements with anyone else during the duration of this Contract for the retail sale of prepaid calling cards or other services provided by Synergy to Retailer during the term of this Contract.

4.4 Retailer agrees to provide Synergy a right of first refusal on any offer to sell prepaid calling cards or other services provided by Synergy in the event the Retailer acquires, owns, operates, or manages other retail locations not identified in Schedule 1.

### **ARTICLE 5 WARRANTIES AND LIMITATIONS OF LIABILITY**

5.1 Synergy warrants for a period of ninety (90) days from first activation of any prepaid calling card that such card will be free from defects and will conform to the specifications stated on the card. If any defect occurs, Synergy will have the option of replacing the card or refunding the face value of the card to the end use customer within thirty (30) days from notice of the defect. Such replacement or refund will be

the exclusive remedy for both the retailer and end-use customer for breach of warranty, breach of contract, negligence, or any other legal claim or damages.

5.2 The warranty contained in section 5.1 shall be in lieu of and excludes all other expressed or implied warranties. Synergy makes no implied warranties to the Retailer concerning the prepaid calling cards sold pursuant to this agreement and shall not be liable to the Retailer for any consequential or special damages directly or indirectly related to the use, failure, or end use customer's inability to use the prepaid calling cards. To the extent allowed by law, Synergy disclaims all implied warranties, including implied warranties for particular purposes and/or implied warranties of merchantability.

5.3 The Retailer will hold Synergy free and harmless from any obligations, costs, claims, judgments, attorney's fees or attachments arising from or growing out of the retail sale of prepaid calling cards or services rendered to any retail outlet pursuant to the terms of this Agreement or in any way connected with the obligations, representations, or services rendered to any such Retailer by Synergy.

**ARTICLE 6  
INDEMNIFICATION**

**RETAILER SHALL INDEMNIFY AND SAVE HARMLESS SYNERGY AND ITS OWNERS, AGENTS, EMPLOYEES, TELECOMMUNICATIONS CARRIERS, AND REPRESENTATIVES FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, BROUGHT OR MADE ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ARISING FROM OR OCCASIONED BY THE ACTS OF RETAILER IN THE EXECUTION OR PERFORMANCE OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING ALL EXPENSES OF LITIGATION, COURT COSTS, JUDGMENTS AND ATTORNEYS FEES FOR ANY CLAIM OR DAMAGE RECEIVED OR SUSTAINED BY ANY PERSON OR PERSON'S PROPERTY- INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF SYNERGY.**

**ARTICLE 7  
TERM OF AGREEMENT**

7.1 Term of Contract. The initial term of this Contract is \_\_\_\_\_ years, beginning on \_\_\_\_\_, The terms of this Contract shall be deemed to be automatically renewed for an identical and successive terms as the initial term thereafter unless written notice of non-renewal is given by either party at least ninety-one (91) days prior to the expiration of the initial term or, in the case of renewal terms of this Contract, at least ninety-one (91) days prior to the expiration of any renewal term thereafter.

7.2 The term of this Agreement shall begin on the effective date shown below and shall continue in full force and effect until terminated by written notice from one party to the other pursuant to Section 7.1. Notice shall be by U.S. Mail, Certified and Return Receipt Requested to the addresses as follows:

C Synergy Telecom, Inc.  
4536 Thousand Oaks, Suite 104  
San Antonio, Texas 78233

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