

# **Globalgig**

# **Main Service Agreement**

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# GLOBALGIG MAIN SERVICE AGREEMENT

THIS MAIN SERVICE AGREEMENT, together with any related Service Addenda, Service Order, and Globalgig Policy, as may be amended from time to time (collectively, the **“Agreement”**), is effective immediately (**“Effective Date”**),

## BY and BETWEEN:

1. IGEM COMMUNICATIONS LLC (DBA Globalgig), a Texas limited liability company, and its Affiliates, with a principal place of business at 1870 W. Bitters Road, Suite 103, San Antonio, Texas 78248 (**“Globalgig”**); and
2. the customer identified on the applicable Service Order, within Globalgig’s billing systems, or as a User of a Globalgig Service (**“Customer”**),

each referred to individually as a **“Party”** and together as the **“Parties”**.

## WHEREAS:

1. Globalgig offers to provide products and services under the terms outlined in this Agreement; and
2. Customer agrees to provide payment and other considerations, which constitute a valid and sufficient consideration to support the formation of a binding contract; and
3. By accessing or using Services, Customer agrees to be bound by this Agreement.
4. Continued use of a Service constitutes acceptance of the Agreement.
5. Both Parties acknowledge that this exchange of promises and obligations represents mutual consideration, and that in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

## AGREED TERMS:

### 1. DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

**“Affiliate”** any entity controlled by, in control of, or under common control of a Party hereunder, whereas the controlling entity possesses, directly or indirectly, or jointly with a third party or parties, the power to direct management and policies of the controlled entity;

**“Applicable Law”** any statute, law, treaty, rule, code, ordinance, regulation or rule (including binding codes of conduct and binding statements of principle incorporated and contained in such rules), permit, interpretation, certificate, judgment, decree, injunction, writ, order, subpoena, or like action of a Governmental Authority that applies, as the context requires, to this Agreement and the performance of obligations or other activities related thereto;

**“Business Day”** any day which is not a Saturday, a Sunday, or a designated non-working day, including a bank or public holiday in the jurisdiction in which the Services are to be provided;

**“Claim”** any loss, liability, damage and claim, and all related costs and expenses (including reasonable fees, expenses and disbursements of attorneys, accountants and other experts and professionals, and costs, fees and expenses of investigation, litigation or other proceedings of any claim, default or assessment, settlement, judgment, interest, court costs and penalties) paid or payable to a third-party;

**“Confidential Information”** in relation to either Party, all information (whether written, oral, in electronic form or otherwise) concerning the business, affairs, assets, customers, clients, suppliers, operations, processes, budgets, pricing policies, security reports (e.g., SOC, ISO/IEC 27001), traffic patterns and distributions, network maps, diagrams, technical and business and market ideas, costs, profit and margin information, business and market strategies and plans, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs) strategies, developments, “work made for hire” or other professional services, information developed, trade secrets and know-how of that Party and its Affiliates that the other Party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement, including the existence

and terms of this Agreement, and which is either designated by a Party as being confidential or which ought reasonably to be considered to be confidential;

<b>“Content”</b>	any Customer-provided or generated information, data, or message that is transmitted, accessed, or received over a Service or from or through a Globalgig-designated management portal;
<b>“Customer”</b>	Customer and any of its Affiliates that directly or indirectly use, access, or connect to a Service and any component thereof, including any Globalgig-designated management portal;
<b>“Customer Data”</b>	names, addresses, e-mail addresses, telephone numbers, government issued identifiers, financials, payment-related identifies, biometric data, location data, and any other sensitive personal data, and other relevant identifiers of all past, present, and subsequently acquired end users who are connected to Globalgig’s Services to any product or service offered by or in conjunction with Customer, as well as all other personally identifiable information (“ <b>PII</b> ”) relating to such end users as further defined by Applicable Law and Good Industry Practice;
<b>“Data Processing Addendum” or “DPA”</b>	Globalgig’s policy that outlines the responsibilities and obligations of Parties involved in the processing of Customer Data found at <a href="#">Globalgig Contract Conditions of Use</a> , which is incorporated by reference and may be updated upon prior notice to Customer;
<b>“Default”</b>	a substantial failure by a Party to perform its obligations under this Agreement, which may or may not be subject to any cure period specified herein;
<b>“Default Notice”</b>	written notice given by one Party to the other that prominently displays the words similar to “Notice of Default” and outlines the facts and presents evidence of the Default;
<b>“Deliverable(s)”</b>	original “work made for hire” under copyright law and all other Intellectual Property Rights;
<b>“Dispute”</b>	any general dissatisfaction, controversy, or disagreement arising out of or relating to this Agreement;
<b>“Dispute Notice”</b>	written notice given by one Party to the other that prominently displays the words similar to “Notice of Dispute” and outlines the facts and presents evidence of the Dispute;
<b>“Disputed Amount”</b>	good faith amounts withheld from payment in accordance with a Fee Dispute Notice, whilst non-Disputed Amounts remain payable by the due date;
<b>“End User(s)”, “User(s)”, or “Subscriber(s)”</b>	Customer, as well as any individual or entity that accesses or connects to a Service, including for the purpose of facilitating connectivity or functionality necessary to support the delivery of a product or service that is provided by, or in collaboration with, Customer for commercial purposes;
<b>“Fee Dispute Notice”</b>	written notice delivered to Globalgig via electronic mail at <a href="mailto:billing@globalgig.com">billing@globalgig.com</a> from Customer that isolates and substantiates the specific MRC and/or NRC that is the basis of Customer’s good faith dispute of said billed MRC or NRC amount, and shall include any documentation corroborating withholding of the Disputed Amount;
<b>“Firm Order Commitment” or “FOC”</b>	a formal confirmation issued by a carrier, data-center provider, or vendor acknowledging that a request for installation or modification has been received, accepted, and scheduled, and specifies the committed date on which the requested action(s) will be completed;
<b>“Disconnect Firm Order Commitment” or “DFOC”</b>	a formal confirmation issued by Customer or a carrier, data-center provider, or vendor acknowledging that a request for disconnect has been received, accepted, and scheduled, and specifies the committed date on which the disconnection will be completed;
<b>“Force Majeure Event”</b>	an event beyond the reasonable control of the relevant Party and occurs without its fault or negligence, including an act of God, pandemic, earthquake, flood, the elements, fire, explosion, power blackout, embargoes, any law, order, regulation, direction, action or request of any governmental entity or court or civil or military authority having jurisdiction over either Party, periodic governmental limitations that may be temporary or permanent or prohibit Globalgig from furnishing a Service, including modifications thereto, by any regulatory agency, legislative body or court of competent jurisdiction, national emergencies, insurrections, riots, terrorist attack, wars, civil disorder, rebellion, vandalism and sabotage, cable cuts not caused by Globalgig or its subcontractor, strikes, lock outs, and/or work stoppages of third parties;
<b>“Globalgig Policy”</b>	the Acceptable Use Policy, Security Management Policy, and any OEM Policy provided at <a href="#">Globalgig Contract Conditions of Use</a> , as may be amended or updated from time to time;
<b>“Good Industry Practice”</b>	the use of the standards, practices, and methods and the exercise of the skill, care, diligence, prudence, foresight, and judgment which would be expected from a skilled, qualified, and experienced person in Globalgig’s field engaged in a similar undertaking under similar

	circumstances seeking in good faith to comply with their obligations, and, where applicable, recognized industry standards such as ISO 27001 and SOC II Type II;
<b>“Governmental Authority”</b>	is: (i) any national, federal, state, or local government entity, authority, agency, instrumentality, court, tribunal, regulatory commission or other body, either foreign or domestic, whether legislative, judicial, administrative or executive; and (ii) any arbitrator to whom a dispute has been presented under government rule or by agreement of the parties with an interest in such dispute;
<b>“Infrastructure”</b>	the entire portfolio of equipment, systems, software, interfaces, portals, subscriptions, licensing, support, and any other network components used for the delivery of Services;
<b>“Intellectual Property” or “Intellectual Property Rights”</b>	patents, supplementary protection certificates, petty patents, utility models, trademarks, database rights, rights in designs, copyrights (including rights in computer software), business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights to use and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and the right to apply for and be granted, rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future anywhere in the world, in each case for their full term, and together with any renewals or extensions;
<b>“Minimum Terms and Conditions”</b>	terms and conditions at <a href="#">Globalgig Contract Conditions of Use</a> , as amended from time to time, that apply in the absence of an executed version as if the same were executed by both Parties, unless and until a component is executed, which will supersede the online version as of the date of its execution;
<b>“Month-to-Month”</b>	Services that are provided on a recurring monthly basis without a fixed Service Term commitment, whereas Globalgig’s then-applicable month-to-month rate may apply upon at least thirty (30) days’ written notice to Customer;
<b>“Monthly Recurring Charge(s)” or “MRC(s)”</b>	the minimum fee payable by Customer monthly from the Service Commencement Date to expiration or termination of a Service Term for the ongoing access to a Service(s), as set out in a Service Order, invoice, email, and/or from or through activation or modification within a Globalgig-designated management portal;
<b>“Non-Recurring Charge(s)” or “NRC(s)”</b>	usage-based fees and all one-time fees that may not be billed on a regular basis, which are payable by Customer for the ongoing access to a Service(s), as set out in a Service Order, invoice, email, and/or from or through activation or modification within a Globalgig-designated management portal;
<b>“OEM Policy”</b>	an original equipment manufacturer’s user, return, warranty, security, or license agreement, or other similar policy, associated with Infrastructure provided by Globalgig;
<b>“Renewal Term”</b>	an automatic twelve (12) month renewal or extension of a fixed Service Term commitment, or as otherwise set out in a new Service Order, invoice, email, and/or from or through activation or modification within a Globalgig-designated management portal;
<b>“Service(s)”</b>	any Infrastructure used by Globalgig under the terms of this Agreement;
<b>“Service Addendum”</b>	additional Service-specific terms and conditions that apply to a particular Service ordered by Customer that outline any unique obligations or rights associated with the applicable Service;
<b>“Service Commencement Date”</b>	the date on which the fixed Service Term commitment begins and all associated MRCs and NRCs become payable by Customer, and shall be the earliest of: <ul style="list-style-type: none"> <li>(i) when Globalgig notifies Customer that the Service or any Infrastructure component is ready at the demarcation point agreed to by Globalgig, which may be communicated by invoice, email, or through activation or modification within a Globalgig-designated management portal;</li> <li>(ii) when Customer accesses the Service or any Infrastructure component for any purpose other than mutually agreed upon non-production testing;</li> <li>(iii) for MRC equipment orders, including related shipping, licensing, and support, when the equipment arrives onsite, or when lost, stolen, tampered with, accessed, or opened by anyone other than a Globalgig-designated technician, where applicable; and/or</li> <li>(iv) for NRC equipment orders, including related shipping, licensing, and support, when the equipment ships from the original equipment manufacturer or distributor;</li> </ul>
<b>“Service Level Agreement” or “SLA”</b>	the functionality and performance specifications, and any other requirements pertaining to the functional and technical requirements of a specific Service provided by Globalgig;

<b>“Service Order”</b>	any instrument used to purchase or modify a Service, and may be offered in the form of a service order, statement of work, scope of work, proof of concept, and/or activation or modification made via a management portal;
<b>“Service Term”</b>	the greater of twelve (12) months or the fixed period during which Customer commits to receive and pay for a Service, as specified in the applicable Service Order, invoice, email, and/or from or through activation or modification within a Globalgig-designated management portal;
<b>“Term”</b>	the date from the Effective Date through the last date any Service is in effect, subject to the terms and conditions of this Agreement;
<b>“Termination Fees”</b>	a bona fide pre-estimate of the liquidated damages that Globalgig will incur and not a penalty that is equal to one hundred percent (100%) of outstanding or previously waived NRC’s of terminated Service(s) (including third party cancellation fees, if any) and one hundred percent (100%) of the MRC due for each terminated Service times the number of months remaining in its applicable Service Term.

- 1.2 For the avoidance of doubt, each Service Addendum and Service Order form an integral and binding part of this Agreement and shall have effect as if set out in full in the main body of this Agreement, and any reference to this Agreement includes each Service Addendum and Service Order.
- 1.3 In the event of any conflict or inconsistency between the main body of this Agreement, a Service Addendum, and a Service Order, the provisions of the main body shall prevail, followed then, in order of precedence, by the Service Addendum and then Service Order, unless the Service Addendum or Service Order explicitly provides that the Parties intended to deviate from the main body.
- 1.4 Customer-originated electronic or pre-printed forms, such as purchase orders, acknowledgments, or security or specification forms, are for convenience only and all terms and conditions stated thereon are void and of no effect under this Agreement.

## 2. TERM COMMITMENTS

- 2.1 This Agreement shall enter into force on the Effective Date and shall continue until termination of the Term.
- 2.2 Globalgig agrees to offer ongoing access to Services to Customer during the Term and each applicable Service Term from the Effective Date in accordance with the provisions of this Agreement.
- 2.3 Customer agrees to pay for Services ordered during the Term and each applicable Service Term from the Effective Date in accordance with the provisions of this Agreement.
- 2.4 Service Orders may contain a Service Term, the Service type and location(s), MRCs and NRCs, and any Service Order-specific Infrastructure, Specification, or Deliverable requirements.
- 2.5 A Renewal Term shall commence upon expiration of a Service Term unless: (i) either Party delivers written notice of cancellation to the other Party at least thirty (30) days prior to the expiration of the initial Service Term or a Renewal Term; or (ii) a new Service Term is specified in a new Service Order.
- 2.6 The furnishing of a Service is subject to the commercial availability of Infrastructure, on a continuing basis, and is limited to Globalgig’s capacity to offer a Service in accordance with the terms of this Agreement.

## 3. CHARGES AND PAYMENT

- 3.1. The Parties acknowledge and understand that Globalgig’s prices for Services offered under this Agreement are not inclusive of amounts that are payable for sales, use, or privilege taxes or tax-like charges, fees, or similar liabilities, including governmental or quasi-governmental imposed charges. The Parties agree that Globalgig will invoice and Customer will pay such tax or tax-like amounts; provided that, if Customer provides Globalgig with a valid direct payment permit, sale for resale exemption certificate, a sales tax exemption certificate, or other applicable exemption certificate acceptable to Globalgig, then after Globalgig’s receipt of such exemption certificate, Globalgig will not invoice the taxes covered by the exemption certificate(s).
- 3.2. The Service Commencement Date initiates invoicing. In no event may Customer’s act, omission, and/or inaction result in a delay of the Service Commencement Date. The first invoice includes the first partial month and the second full month of Service, plus any NRCs. All usage Services are invoiced based on the usage for the immediately preceding month.
- 3.3. Globalgig provides one billing account per Customer account per currency and issues monthly invoices electronically and/or through availability for download from a Globalgig-designated management portal. Any specific or unique invoicing needs must be identified before submission of a Service Order. Non-standard billing requirements, including but not limited to, references on invoices, purchase order information, separate accounts or currency, manual upload of invoices

to any Customer portal, reconfiguration of an existing billing account, and/or alternative delivery method, must be requested by Customer in writing and Customer agrees that any such changes may result in an additional MRC or NRC on Customer's invoice.

- 3.4. Invoices shall reflect US Dollars and are due and payable in US Dollars within thirty (30) days of receipt of the invoice.
- 3.5. A Fee Dispute Notice must be submitted to Globalgig at [billing@globalgig.com](mailto:billing@globalgig.com) within thirty (30) days from the due date of the invoice at issue, or Customer shall have waived its right to dispute said amounts.
- 3.6. Globalgig shall respond to all Fee Dispute Notices within thirty (30) days of receiving the same.
- 3.7. Non-Disputed Amounts not received by the due date may incur a monthly late charge equal to 1.5%, or the maximum rate permitted by Applicable Law, compounded monthly, beginning on the due date and continuing until paid in full.
- 3.8. Non-Disputed Amounts not received by the due date may incur a reasonable deposit or other form of security. In the event Customer does not respond to Globalgig's deposit or other form of security request, Globalgig reserves the right to suspend ongoing access to Services without further notice until Globalgig's requirements are met.
- 3.9. In the event that a Disputed Amount is resolved against Customer and Customer has withheld payment, Customer shall pay such amounts on the next invoice cycle after resolution of such Dispute. In the event that the Disputed Amount is resolved in favor of Customer and Customer has made payment, Globalgig shall credit such amounts from the date paid on the next full invoice cycle after resolution of such Dispute.
- 3.10. All activations, modifications, upgrades, and/or downgrades made by Customer from or through a Globalgig-designated management portal may result in increased MRC, NRC, and/or a new or restarted Service Term. By initiating said actions, Customer expressly agrees to all associated charges and Service Term commitments therein and hereby waives any requirement for prior or further approval, authorization, or further Service Order from Globalgig. All charges will be reflected in subsequent billing cycles and may be prorated for any partial month. All Service Term commitments begin on the first day of the month following said actions. Customer acknowledges and agrees that it is Customer's responsibility to review and understand the impact of changes prior to execution, and that all charges incurred due to said actions are non-refundable.

#### 4. USE OF SERVICE

- 4.1 Use of Service must comply at all times with the then-current version of a Globalgig Policy. Globalgig reserves the right to amend a Globalgig Policy from time to time upon written notice to Customer.
- 4.2 In the event a material modification of a Globalgig Policy has a material and detrimental effect on Customer's ability to use a Service in materially the same form as when ordered, then Customer may submit a Dispute Notice and commence resolution pursuant to Sections 15 (DISPUTE RESOLUTION).
- 4.3 Customer agrees to inform its End Users of a Globalgig Policy and ensure full adherence by its End Users.
- 4.4 Customer may not use Services for any unlawful purpose or in any unlawful manner, nor in any manner that interferes with the operation or use of Globalgig's Services by its other customers.

#### 5. SUBJECT TO LAW AND GOVERNING LAW

- 5.1 Both Parties agree to comply with and give all notices required by Applicable Law and to obtain and maintain all certifications, permits, licenses, approvals, or authorizations required by Applicable Law.
- 5.2 Each provision of this Agreement is separate and severable and enforceable accordingly. If any provision or part of a provision is found to be void, invalid, or otherwise unenforceable, the remaining part of the provisions will continue in full force and effect. This Agreement shall be governed by the laws of the State of Texas without regard to its principles of choice of law. The Parties consent to the exclusive jurisdiction of the courts of Travis County, Texas, U.S.A. The Parties consent to waive their right to a jury trial.

#### 6. USE OF NAME

- 6.1 Without the other Party's prior written consent, neither Party shall refer to itself as an authorized representative of the other Party or use the other Party's logos, trademarks, service marks, or any variation thereof in any advertising or other promotional materials including websites, or in any activity using or displaying the other Party's name or service(s) to be provided hereunder.
- 6.2 Globalgig may reference this Agreement and Customer as a client in its marketing or public materials and may use Customer's name and logo in accordance with Customer's brand guidelines. Any such reference will be limited to

acknowledging the business relationship and will not include any confidential, pricing, or proprietary information of Customer.

- 6.3 Each Party agrees to change or correct at its own expense any material or activity the Party affected determines to be inaccurate, misleading, or otherwise objectionable under this Section 6 (USE OF NAME).

## 7. SERVICE LOCATION ACCESS

- 7.1 Customer will provide Globalgig with supervised access to each Service location as necessary for Globalgig to review, install, inspect, maintain, or repair any Globalgig-owned equipment necessary to provide Services.
- 7.2 Globalgig may perform an installation review of each Service location prior to the installation of Services.
- 7.3 Customer shall be responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the equipment and the installation and ongoing provision of Services, including, but not limited to, providing physical, point-to-point cable cross-connection or other physical or logical link that connects two separate networks or systems, necessary internal configurations, and electrical or other utility service, the relocation of Customer's equipment, furniture, and furnishings as necessary to access any equipment and/or Services.
- 7.4 Missed, cancelled, or delayed Service appointments may incur overtime and/or rescheduling NRC. Globalgig shall not be liable for, and its performance obligations shall be deemed excused with respect to, any delays or failures caused by such delayed or rescheduled appointments.

## 8. IP ADDRESSES AND DOMAIN NAME REGISTRATION

- 8.1 Customer agrees to return to Globalgig any IP addresses or address blocks assigned to Customer by Globalgig upon expiration, cancellation, or termination of a Service.
- 8.2 Customer may be required to renumber the IP addresses assigned to Customer by Globalgig.

## 9. ASSIGNMENT

- 9.1 Neither Party may assign, novate, or transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld, delayed, or conditioned.
- 9.2 Notwithstanding the foregoing, either Party may, upon at least sixty (60) days' written notice in accordance with Section 14 (NOTICES), assign this Agreement without the other Party's written consent to:
  - 9.2.1 any entity controlled by, under the same control as, or controlling said Party; or
  - 9.2.2 any successor entity in connection with any merger, consolidation, recapitalization, reorganization, or sale of all or substantially all the capital stock or assets of such Party or its parent, subsidiary, or commonly owned affiliate.
- 9.3 Any such assignment or transfer notice must include:
  - 9.3.1 documentation ensuring that all outstanding invoices have been paid in full, and
  - 9.3.2 acceptance of this Agreement in its entirety or documentation evidencing the Parties' acceptance of any contrary terms.
- 9.4 Any assignment or transfer made without the required notice, acceptance of this Agreement, applicable written consent, full payment, or as otherwise permitted under this Section 9 (ASSIGNMENT) shall constitute an incurable Default.
- 9.5 If any assignee fails to agree to be bound by all of the terms and obligations of this Agreement, or if any assignment is made in breach of this Section 9 (ASSIGNMENT), such assignment will be null and void and of no force or effect.

## 10. CUSTOMER DATA PROCESSING

- 10.1 The Internet is not a secure network. Confidential or sensitive information should not be transmitted unprotected.
- 10.2 Each Party shall use Good Industry Practice and comply with all Applicable Laws to protect Customer Data from unauthorized access, use, or disclosure.
- 10.3 Customer shall ensure it has obtained all necessary rights and licenses for the access, use, or process Customer Data in connection with this Agreement.

- 10.4 Globalgig is responsible for providing functionality within this Agreement to enable Customer to transmit, download, access, use, or disclose Customer Data in accordance with data subject rights under Applicable Law.
- 10.5 Globalgig will access, use, and process Customer Data only as required to provide Services and in accordance with Globalgig's Data Processing Addendum.
- 10.6 Neither Party may disclose Customer Data to any third party except to employees or subcontractors with a legitimate business need; provided, such individuals are bound by data protection obligations at least as restrictive as those in the Data Processing Addendum. Globalgig requires that Customer use firewalls, anti-virus, industry-standard anti-malware and intrusion prevention software, and other security devices or methods to protect Customer Data.
- 10.7 Each Party shall promptly notify the other Party in writing if there is actual or suspected fraudulent or other unauthorized use of Customer Data or a Service.
- 10.8 Globalgig will make commercially reasonable efforts to restore any lost or corrupted Customer Data, with such effort constituting Globalgig's sole liability and Customer's sole and exclusive remedy for such loss or corruption.
- 10.9 Customer is responsible for maintaining back-up copies of its current Customer Data, and Globalgig is responsible for providing functionality within this Agreement to enable Customer to transmit, download, access, use, or disclose Customer Data.

## 11. CONFIDENTIAL INFORMATION

- 11.1 Neither Party may divulge Confidential Information to any person or entity except for the recipient's employees, contractors, consultants, lenders, legal counsel, and/or financial advisors who have a need to know and are under a duty of non-disclosure with respect to such Confidential Information.
- 11.2 The recipient shall use the Confidential Information only for the purposes of this Agreement and shall protect it from disclosure using at least the same degree of care used to protect its own data, but in no event less than a reasonable degree of care.
- 11.3 Confidential Information does not include any information which: (i) was already known by the receiving Party, (ii) becomes publicly known through no wrongful act of the receiving Party, or (iii) is independently acquired or independently created without violating any of the obligations under this Agreement.
- 11.4 Further, the recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement, or order of competent jurisdiction, provided that, unless prohibited by the terms of such demand, or otherwise prohibited by law, such Party promptly informs the other Party of the demand and affords the other Party a reasonable opportunity to seek judicial relief.
- 11.5 Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed upon request of the disclosing Party.
- 11.6 Reverse engineering (also known as backward engineering or back engineering) is a process or method through the application of which one attempts to understand, through deductive reasoning, how a device, process, system, or piece of hardware or software accomplishes a task with very little (if any) insight into exactly how it does so. Neither Party shall, directly or indirectly, reverse engineer or aid or assist in the reverse engineering of any part of Confidential Information it receives. Reverse engineering includes, without limitation, decompiling, disassembling, sniffing, peeling semiconductor components, or otherwise deriving source code.
- 11.7 To the extent the Services involve the processing of any names, addresses, e-mail addresses, telephone numbers, government issued identifiers, financials, payment-related identifiers and other relevant identifiers of all past, present, and subsequently acquired End Users who are connected to Globalgig's Services to any product or service offered by or in conjunction with Customer, as well as all other personally identifiable information relating to such End Users as further defined by applicable local, state, or federal regulations or law and applicable generally accepted industry standards (collectively "**PII**" or "**Personal Data**") the Parties agree to incorporate a specific Addendum to this Agreement regarding the regulation of Personal Data. The Addendum shall be signed by the Parties and form part of this Agreement. In the course of performing their obligations under this Agreement, the Parties agree to treat all personal information as confidential, and the Parties undertake to observe all Applicable Laws regarding the handling and processing of such information.
- 11.8 The Parties agree that an impending or existing violation of these confidentiality provisions may cause the disclosing Party irreparable injury for which it would have no adequate remedy at law and agree that the disclosing Party may be entitled to seek immediate injunctive relief (with no requirement of posting a bond or surety) prohibiting such violation, in addition to any other rights and remedies available to it.

## 12. FORCE MAJEURE

- 12.1 Neither Party shall be deemed in Default of this Agreement if and to the extent that such Party's performance is delayed or prevented due to a Force Majeure Event.
- 12.2 If Globalgig is unable to provide Service (or a component thereof) due to a Force Majeure Event and it is commercially impracticable to restore a Service to its original state, Globalgig may, upon at least twenty (20) Business Days' written notice, terminate the affected Service (or Infrastructure component thereof) and refund any prepaid but unused amounts.

### 13. RESALE OF SERVICES

- 13.1 In the event Customer procures Services for non-resale purposes, then Customer represents and agrees that Services provided by Globalgig are intended for Customer's internal use and not for resale, redistribution, or transfer to any third party or End User unless Globalgig has agreed in writing prior to such act.
- 13.2 For the purposes of this Agreement, "resale" shall not include Customer's use of the Service to enable connectivity or functionality necessary to deliver its own services to End Users, provided that such services are not substantially similar to, or competitive with, those offered by Globalgig or any other provider operating in the same industry as Globalgig.
- 13.3 Any unauthorized resale or distribution shall constitute a Default of this Agreement and, in addition to any other remedies available to Globalgig under Applicable Law, may result in immediate suspension or termination of ongoing access to Services, and/or a revision to Customer's pricing and terms to reflect Customer's reseller status retroactively to the date that Customer's status changed.
- 13.4 In the event that Customer procures Services for resale purposes, then:
  - 13.4.1 Customer represents and warrants that it is a carrier, reseller, or shared tenant service provider, has all certifications, permits, licenses, approvals, or authorizations required by any entity, and that Services provided by Globalgig are intended for resale, redistribution, or transfer to a third party or End User.
  - 13.4.2 Customer is fully responsible for managing its End Users, including all aspects of solicitation, service requests and orders, installation, operation, and termination of Services.
  - 13.4.3 Customer shall also handle End User credit assessments, customer support, billing, collections, dispute resolution, and any related licensing or purchase agreements, taxes, and fees.
  - 13.4.4 Customer shall be financially liable for all usage generated by End Users and bears sole responsibility for any uncollected amounts, billing adjustments (including those related to fraud or unauthorized access), and credit extensions.
  - 13.4.5 Globalgig does not manage, operate, or control Content transmitted via the Services and assumes no liability for the nature or substance of such Content.

### 14. NOTICES

- 14.1 All consents, requests, demands, communications, and notices permitted or required to be given under this Agreement must be in writing and will be deemed validly given:
  - 14.1.1 upon delivery if personally delivered with fees prepaid, including by a recognized courier service;
  - 14.1.2 upon receipt if delivered by certified or registered United States mail, postage prepaid and return receipt requested, as indicated by the date on the signed receipt; or
  - 14.1.3 on the date of electronic mail delivery or availability from or through a Globalgig-designated management portal or website.
- 14.2 The Parties have consented and agreed to conduct some transactions electronically, including but not limited to electronic mail transmission, posting from or through a Globalgig-designated management portal or website.
- 14.3 To be effective, a notice of Default (except Customer payment breach) must be sent via certified mail, registered mail, or overnight mail service in addition to electronic communications.
- 14.4 In all cases, if such notice is received on a day that is not a Business Day or after 5:00 P.M. on a Business Day, the notice will be deemed to have been given at 9:00 A.M. on the next Business Day.
- 14.5 Notices will be deemed effective when sent to the last email or physical address provided by a Party.

### 15. DISPUTE RESOLUTION

- 15.1. Except for actions seeking a temporary restraining order or injunction, or suits to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedures set forth herein with respect to any Dispute. All discussions occurring and documents exchanged pursuant to this Section 15 (DISPUTE RESOLUTION) are considered Confidential Information.
- 15.2. Each Party agrees to continue performing its obligations under this Agreement while any Dispute is being resolved unless and until such obligations end by either resolution of the Dispute or termination of this Agreement and/or affected Service.
- 15.3. The Parties shall use good faith efforts to resolve a Dispute through good faith negotiation as follows:
- 15.3.1. Level 1 representatives will meet with each other and endeavor in good faith to resolve such Dispute within five (5) Business Days after receipt of a Dispute Notice;
  - 15.3.2. if not resolved, the Dispute will be escalated to the Level 2 representative for a further good faith effort at resolving the Dispute, which will not exceed five (5) Business Days from the date when the Dispute was escalated to them by the Level 1 representative;
  - 15.3.3. if not resolved, the Dispute will be escalated to the Executive Level for a further good-faith effort at resolving the Dispute.
  - 15.3.4. Customer agrees to address any Dispute in good faith and in accordance with the escalation hierarchy below:

	Globalgig Dispute Escalation:
Level 1	<p>Attention: Customer Account Management Team  <a href="mailto:CAMTeam@Globalgig.com">CAMTeam@Globalgig.com</a></p> <p>with a copy to:            Attention: Legal Department  <a href="mailto:Legal@Globalgig.com">Legal@Globalgig.com</a></p>
Level 2	<p>Attention: Jennifer McHenry            Manager of Client Account Services Sales            Operation <a href="mailto:Jennifer.McHenry@Globalgig.com">Jennifer.McHenry@Globalgig.com</a></p> <p>with a copy to:            Attention: Gregg Rowe            Chief Channel Officer:  <a href="mailto:Gregg.Rowe@Globalgig.com">Gregg.Rowe@Globalgig.com</a></p>
Executive Level	<p>Attention: Ernest Cunningham            Chief Executive Officer  <a href="mailto:Ernest.Cunningham@Globalgig.com">Ernest.Cunningham@Globalgig.com</a></p> <p>with a copy to:            Attention Jim Tipton            Chief Financial Officer  <a href="mailto:Jim.Tipton@Globalgig.com">Jim.Tipton@Globalgig.com</a></p>

- 15.4. If, after participating in good faith negotiations, the Parties are unable to resolve any Dispute within ninety (90) days after receipt of the Dispute Notice, then the Parties agree to seek mitigation in accordance with Section 16 (MEDIATION).

**16. MEDIATION**

- 16.1 Any Dispute in law or equity arising out of this Agreement or any resulting transaction, including Disputes involving the Parties to this Agreement, their officers, agents, or employees, shall be submitted to neutral, non-binding mediation prior to the commencement of litigation or any other proceeding before a trier of fact.
- 16.2 The Parties will select a mutually acceptable mediator to act as the mediator in the Dispute. If a mediator cannot be agreed upon by the Parties, each party shall designate a mediator, and the mediators so selected shall select a mediator who shall mediate the Dispute.
- 16.3 Each Party shall share equally in its cost unless an award otherwise provides.
- 16.4 If the Dispute is resolved successfully through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the Dispute, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution of

the Dispute, in accordance with the remaining terms of this Agreement and other rights and remedies afforded to them by law, including, without limitation, filing a lawsuit.

## 17. DISCONNECT REQUIREMENTS

- 17.1 Customer agrees to provide Globalgig with at least thirty (30) days' prior written notice for any disconnection request.
- 17.2 Globalgig endeavors to process Customer's disconnection request within thirty (30) days of Globalgig's receipt of the disconnect request; provided, however, that, prior to Globalgig initiating steps to disconnect the Service, Customer must provide Globalgig with a complete and accurate DFOC confirming that the disconnect order has been issued for the cross-connect, or other physical or logical link that connects two separate networks or systems, for all endpoints associated with the Service subject to disconnection ("**DFOC Notice**").
- 17.3 Customer acknowledges and agrees that disconnection of one endpoint will result in disconnection of all endpoints associated with the Service being disconnected. As such, the DFOC Notice must include all endpoints.
- 17.4 In all cases, Globalgig's thirty (30) day estimated timeline to complete disconnection of the Service will commence only after Globalgig receives the DFOC Notice from Customer.
- 17.5 Customer will provide the DFOC Notice to Globalgig no later than five (5) business days after Globalgig receives the initial disconnection request from Customer.
- 17.6 Failure to provide a timely DFOC Notice will result in continued billing for the Services at each endpoint until all disconnect requirements are satisfied and all associated timelines have been met.
- 17.7 Globalgig shall have no liability for fees, costs, or Claims arising from disconnection delays caused by Customer's acts, omissions, or failure to provide the DFOC Notice as required.

## 18. TERMINATION

- 18.1 Customer may terminate this Agreement or a Service for its convenience and without cause upon giving thirty (30) days' written notice to Globalgig and payment of the Termination Fees.
- 18.2 Either Party may immediately terminate this Agreement or the affected Service upon giving written notice to the other if:
  - 18.2.1 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - 18.2.2 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business operations.
- 18.3 Due to a Force Majeure Event in accordance with the terms of Section 12 (FORCE MAJEURE).
- 18.4 Due to Globalgig's inability to resolve an Intellectual Property Rights Claim as described in Section 20 (INDEMNITY).
- 18.5 If either Party commits a Default (as defined below), then the non-defaulting Party may (at its option) terminate the affected Service(s). For these purposes, a "**Default**" is one or more of the following:
  - 18.5.1 a substantial failure by a Party to perform its obligations under this Agreement that has not been remedied within a period of twenty (20) Business Days of a Default Notice;
  - 18.5.2 Customer fails to make payment when due and has not been remedied within a period of five (5) Business Days of notice from Globalgig;
  - 18.5.3 Customer fails to adhere to a Globalgig Policy and has not remedied within a period of two (2) Business Days of notice from Globalgig so long as such event does not pose an immediate or substantial threat of harm to Globalgig;
  - 18.5.4 a Party violates Applicable Law;
  - 18.5.5 any resale or distribution of a Service without Globalgig's prior written consent; or
  - 18.5.6 any use of a Service that poses an immediate and substantial threat of harm to Globalgig or Globalgig's ability to provide services to Customer or other customers.

## 19. CONSEQUENCE OF TERMINATION

- 19.1 For convenience, at any time and without cause, Customer may terminate this Agreement or a Service upon thirty (30) days' written notice to Globalgig; provided, however, that Customer shall remain liable for Termination Fees.
- 19.2 In the event of a Default by Globalgig, Customer shall have the right to terminate the affected Service without further liability to Customer, except for payment of any outstanding amounts due, minus any refund for prepaid but unused amounts.
- 19.3 In the event of a Default by Customer, Globalgig shall have the right to:
- 19.3.1 suspend ongoing access to Service(s) whereas payment obligations shall continue in effect;
  - 19.3.2 cease accepting or processing orders and invoice all accrued but unpaid charges;
  - 19.3.3 if applicable, withhold delivery of usage and billing reports accessible from or through any Globalgig-designated management portal; and/or
  - 19.3.4 terminate the affected Service or this Agreement without further liability and invoice Termination Fees.
- 19.4 Each Party agrees to pay reasonable expenses (including attorney and collection agency fees) incurred due to the other Party's Default.

## 20. INDEMNITY

- 20.1. Each Party ("**Indemnifying Party**") shall indemnify, defend, and hold harmless the other and all of their officers, agents, directors, shareholders, subcontractors, subsidiaries, employees and other affiliates (collectively, "**Indemnified Party**") from and against a Claim imposed upon the Indemnified Party by reason arising out of or as a result of the Indemnifying Party's:
- 20.1.1 gross negligence or willful, criminal, or fraudulent misconduct; and/or
- 20.1.2 violation of Applicable Law.
- 20.2. Globalgig agrees to indemnify, defend, and hold harmless Customer from any Claim incurred by Customer related to or arising from any allegation that a Service violates, infringes, or misappropriates any third-party(ies) Intellectual Property Rights; provided, that Globalgig's foregoing infringement indemnification shall not apply if the Claim arises out of or results from:
- 20.2.1 Content provided by or through Customer;
- 20.2.2 modifications to the Service made by Customer or others and not made by Globalgig or any of Globalgig's suppliers;
  - 20.2.3 the combination of the Service with any other products, services, or materials, where in the absence of such combination the Service would not have been infringing;
  - 20.2.4 Globalgig's adherence to instructions or specifications from Customer; or
  - 20.2.5 use of the Service by Customer in violation of this Agreement.
- 20.3. In the event of a Claim of Intellectual Property Rights, as Customer's sole and exclusive remedy Globalgig shall either procure for Customer the right to continue using the Service or modify or replace the alleged infringing Service or component so that the Service becomes non-infringing and provides substantially the same features and functionality as before, or upon inability to reasonably perform either of the foregoing options, Customer may terminate the affected Service, and Customer shall receive a refund of any prepaid but unused amounts.
- 20.4. Customer acknowledges that Globalgig exercises no control whatsoever over Content and that it is the sole responsibility of Customer to ensure that the Content it and its users transmit and receive complies with all Applicable Law. For the avoidance of doubt, Content does not include information made available by or through Globalgig. Customer agrees to indemnify, defend, and hold harmless Globalgig from any Claim related to Content or Customer's misconduct or negligent use of Services. Customer shall make no Claim against Globalgig for any information, product, service, software, or otherwise not provided by Globalgig.
- 20.5. Any of the foregoing indemnification obligations shall not apply to the extent of the Indemnified Party's gross negligence or willful, criminal, or fraudulent misconduct, and/or violation of Applicable Law.
- 20.6. For the purposes of this Agreement, gross negligence means any act or failure to act (whether sole, joint or concurrent) by a person that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences which the person acting or failing to act knew, or should have known, would result from such act or

omission, provided that gross negligence does not include any act or failure to act insofar as it: (a) constituted mere ordinary negligence; or (b) was done or omitted in accordance with the express instructions or approval of all Parties.

- 20.7. In the event a Claim relates to the negligence of both Parties, the relative burden of the Claim shall be attributed equitably between the Parties in accordance with the principles of comparative negligence or a similar principle that may be applicable in the jurisdiction in which the Service(s) are to be provided. In the event any action is brought against an Indemnified Party, such Party shall immediately notify the Indemnifying Party in writing, and the Indemnifying Party shall, upon request, assume the cost of the defense on behalf of the Indemnified Party. The Indemnifying Party shall pay all expenses incurred by and satisfy all Claims rendered against the Indemnified Party, provided that the Indemnified Party shall not be liable for any settlement of Claims effected without its written consent.

## 21. LIMITATION OF LIABILITY

- 21.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, RELIANCE, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF BUSINESS REVENUES OR PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PERFORMANCE OF SERVICES, OR ANY OTHER ACTIVITIES IN CONNECTION HEREWITH.
- 21.2 THE ENTIRE LIABILITY OF GLOBALGIG ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, AND HOWEVER ARISING, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION OR OTHERWISE, AND WHETHER OR NOT GLOBALGIG WAS AWARE OF THE POSSIBILITY OF SUCH LOSS ARISING, SHALL BE LIMITED TO ONE HUNDRED TWENTY-FIVE PERCENT (125%) OF THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT.
- 21.3 GLOBALGIG MAY PROVIDE SOME OR ALL OF THE SERVICES THROUGH THIRD-PARTY SUPPLIERS; PROVIDED, THAT, GLOBALGIG SHALL AT ALL TIMES REMAIN RESPONSIBLE AND LIABLE FOR THE OBLIGATIONS AND ACTS OF SUCH THIRD-PARTY SUPPLIER TO THE SAME EXTENT AS IF SUCH PERFORMANCE, OBLIGATIONS, AND ACTS WERE OF GLOBALGIG DIRECTLY.
- 21.4 THE PARTIES ACKNOWLEDGE THAT GLOBALGIG'S THIRD-PARTY SUPPLIERS ARE NOT A PARTY TO THIS AGREEMENT. EXCEPT AS REQUIRED TO OFFER A SERVICE, A PERSON WHO IS NOT A PARTY TO THIS AGREEMENT HAS NO RIGHT UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 TO RELY UPON OR ENFORCE ANY TERM OF THIS AGREEMENT.
- 21.5 EXCEPT TO THE EXTENT OTHERWISE PERMITTED BY LAW, GLOBALGIG SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, EITHER IN CONTRACT OR IN TORT, FOR ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD.
- 21.6 THE FOLLOWING SECURITY SERVICES DISCLAIMER MAY APPLY TO CERTAIN SERVICES THAT HAVE A SECURITY DIMENSION, INCLUDING, WITHOUT LIMITATION, ADVANCED MONITORING – SD-WAN; MANAGED SD-WAN; VPN CLIENT; AND CERTAIN LEGACY SERVICES (e.g. Advanced Monitoring – Premise Firewall Service and Managed Premise Firewall Service): SECURITY SERVICES ARE PROVIDED AS IS.
- 21.6.1 CUSTOMER'S SOLE AND EXCLUSIVE REMEDY(IES) REGARDING SECURITY SERVICES ARE EITHER: (A) SET FORTH IN CORRESPONDING SECTION OF THE APPLICABLE GLOBALGIG SERVICE LEVEL AGREEMENT, OR (B) AT GLOBALGIG'S DISCRETION, TO HAVE GLOBALGIG REPAIR OR REPLACE ANY GLOBALGIG-PROVIDED FIREWALL DEVICE IF IT IS DEFECTIVE.
- 21.6.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT: (A) THE SECURITY SERVICES CONSTITUTE ONLY ONE COMPONENT OF CUSTOMER'S OVERALL SECURITY PROGRAM AND ARE NOT A COMPREHENSIVE SECURITY SOLUTION; (B) THERE IS NO GUARANTEE THAT THE SECURITY SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT NETWORKS OR SYSTEMS CONNECTED TO THE FIREWALL OR SUPPORTED BY THE SECURITY SERVICES WILL BE SECURE, OR THAT THE SECURITY SERVICES WILL MEET CUSTOMER'S REQUIREMENTS; (C) THERE IS NO GUARANTEE THAT ANY COMMUNICATIONS SENT BY MEANS OF THE SECURITY SERVICES WILL BE PRIVATE; (D) THERE IS NO GUARANTEE THAT ANY AVAILABLE CONTENT OR URL BLOCKING SOFTWARE WILL BLOCK ALL SITES NOT DESIRED BY CUSTOMER OR THAT SUCH SOFTWARE WILL NOT BLOCK ANY SITES THAT ARE DESIRED BY CUSTOMER; AND (E) ANY AVAILABLE CONTENT OR URL BLOCKING SOFTWARE IS USED AT CUSTOMER'S SOLE RISK AND DISCRETION.

## 22. REPRESENTATIONS AND WARRANTIES

- 22.1 Each Party represents and warrants to the other that:
- 22.1.1 it will comply, and remain in compliance with, all domestic and foreign Applicable Laws;
  - 22.1.2 it has full power and authority to enter into and perform this Agreement in accordance with its terms, and
  - 22.1.3 the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
- 22.2 Globalgig represents and warrants that:
- 22.2.1 it will perform in a good workmanlike manner and in accordance with Good Industry Practice;
  - 22.2.2 all Globalgig personnel will have the experience and education required or appropriate for their assigned roles; and
  - 22.2.3 for any Service that fails to perform, Globalgig may promptly reperform such Service at no charge to Customer and/or provide credits or other remedies to Customer as specified in the associated Service Level Agreement.
- 22.3 Customer represents and warrants that it has the legal authority to access, use, and disclose Customer Data.
- 22.4 GLOBALGIG WILL USE GOOD INDUSTRY PRACTICES TO ACTIVATE SERVICES; HOWEVER, FAILURE TO DO SO SHALL NOT BE CONSIDERED A BREACH OR DEFAULT BY GLOBALGIG UNDER THIS AGREEMENT.
- 22.5 THE PARTIES ACKNOWLEDGE AND AGREE THAT WARRANTIES DO NOT APPLY WHATSOEVER PRIOR TO THE SERVICE COMMENCEMENT DATE AND THEREAFTER SOLELY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.
- 22.6 THE PARTIES ACKNOWLEDGE THAT IT IS TECHNICALLY IMPRACTICABLE TO PROVIDE SERVICE FREE OF FAULTS, AND DO NOT UNDERTAKE TO DO SO.
- 22.7 EXCEPT FOR THE REMEDIES AS OUTLINED IN AN ASSOCIATED SERVICE LEVEL AGREEMENT, GLOBALGIG MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OR ANY OTHER IMPLIED WARRANTIES ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.
- 22.8 ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND GLOBALGIG DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN GLOBALGIG'S INFRASTRUCTURE OR SERVICES WILL BE ERROR-FREE OR FREE FROM INTRUSION.
- 22.9 GLOBALGIG AGREES TO PASS THROUGH TO CUSTOMER THE MANUFACTURER'S WARRANTY PROVIDED TO GLOBALGIG BY ITS THIRD-PARTY VENDOR IN CONNECTION WITH HARDWARE OR SOFTWARE PROVIDED AND INSTALLED BY GLOBALGIG TO DELIVER SERVICES TO THE EXTENT PERMITTED BY THE TERMS AND CONDITIONS OF SUCH WARRANTY AND THIS AGREEMENT. ADDITIONALLY, THE MANUFACTURER'S WARRANTY IS IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF GLOBALGIG.
- 22.10 GLOBALGIG SHALL HAVE NO OBLIGATION, AND NO WARRANTY WILL APPLY TO ANY HARDWARE OR SOFTWARE, OR ANY PART THEREOF, WHICH HAS BEEN REPAIRED BY OTHERS, IMPROPERLY INSTALLED, IMPROPERLY USED, REVERSE ENGINEERED, ABUSED, ALTERED, DAMAGED, SUBJECTED TO ACCIDENT, NUISANCE, FLOOD, FIRE, ACTS OF GOD, OR ON WHICH ANY SERIAL NUMBER OR OTHER IDENTIFIER HAS BEEN ALTERED, DEFACED, OR REMOVED. GLOBALGIG WILL NOT BE RESPONSIBLE FOR ANY DISMANTLING, REASSEMBLY, OR REINSTALLATION CHARGES.
- 22.11 GLOBALGIG WILL HAVE NO LIABILITY UNDER THE AGREEMENT, INCLUDING ANY SERVICE LEVEL AGREEMENT, AND SERVICE LEVEL CREDITS WILL NOT BE ISSUED, FOR ANY FAILURE TO PROVIDE A SERVICE OR INFRASTRUCTURE TO THE EXTENT THE FAILURE RESULTS FROM A SOFTWARE BUG AS DEFINED BELOW. THE PARTIES AGREE THAT A DEFECT WILL NOT BE EXCLUDED FROM THE SOFTWARE BUG DEFINITION SOLELY BECAUSE IT WAS FIRST REPORTED BY CUSTOMER OR BECAUSE IT CANNOT BE IMMEDIATELY REPRODUCED. A "**SOFTWARE BUG**" MEANS ANY DEFECT, ERROR, OR MALFUNCTION THAT:
- 22.11.1 **IDENTIFICATION.** HAS BEEN IDENTIFIED BY GLOBALGIG, CUSTOMER, OR THE APPLICABLE ORIGINAL EQUIPMENT MANUFACTURER, WHETHER BEFORE OR AFTER THE SERVICE EVENT;
  - 22.11.2 **DOCUMENTATION.** IS RECORDED BY GLOBALGIG IN ITS ISSUE-TRACKING SYSTEM, RELEASE NOTES, CUSTOMER ADVISORIES, OR OTHER WRITTEN DOCUMENTATION FOLLOWING SUCH IDENTIFICATION, IT BEING UNDERSTOOD THAT COMPLETE DOCUMENTATION MAY NOT BE AVAILABLE AT THE TIME THE DEFECT IS FIRST REPORTED; AND

22.11.3 **REPRODUCIBILITY.** MAY NOT BE IMMEDIATELY REPRODUCIBLE BY GLOBALGIG, CUSTOMER, OR THE ORIGINAL EQUIPMENT MANUFACTURER, PROVIDED GLOBALGIG IS UNDERTAKING COMMERCIALY REASONABLE EFFORTS TO REPRODUCE OR DIAGNOSE THE ISSUE.

22.12 NOTWITHSTANDING ANYTHING TO THE CONTRARY, GLOBALGIG IS NOT AN INSURER OF EITHER THE PROPERTY OR SAFETY OF ANYONE AND LIMITS ITS LIABILITY FOR ANY LOSS OR DAMAGE, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, TO GLOBALGIG'S ORIGINAL SELLING PRICE OF THE HARDWARE OR SOFTWARE, REGARDLESS OF THE CAUSE OF SUCH LOSS OR DAMAGE.

## 23. MISCELLANEOUS

- 23.1 Globalgig may perform scheduled maintenance between midnight and 6 AM, local time, upon ten (10) calendar days' written notice to Customer.
- 23.2 In the event emergency maintenance is required, Globalgig will use its best efforts to provide Customer with as much advanced notice as is practicable under the circumstances and shall provide written notice to Customer as soon as possible following such emergency maintenance event.
- 23.3 Customer acknowledges that maintenance may result in Service interruptions. In no event shall interruptions for maintenance constitute a Default or Service Level Agreement failure.
- 23.4 The waiver of either Party of a Dispute or Default shall not operate as or be construed to be a waiver of any subsequent Dispute or Default thereof.
- 23.5 This Agreement shall not create any agency, employment, joint venture, partnership, representation, or fiduciary relationship between the Parties. Neither Party shall have the authority, nor shall any Party attempt, to create any obligation on behalf of the other Party.
- 23.6 The provisions of this Agreement and the rights and obligations created hereunder are intended for the sole benefit of Globalgig, and do not create any right, claim, or benefit on the part of any person not a party to this Agreement, including customers of Customer.
- 23.7 The covenants and understandings contained in this Agreement with respect to payment of amounts due, confidentiality, representations, warranties, liability, and indemnification shall survive any termination of this Agreement. If any provision of this Agreement is to any extent invalid, illegal, or incapable of being enforced, in whole or in part, such provision shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other provisions hereof shall remain in full force and effect; and to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
- 23.8 This Agreement and other documents to be delivered pursuant to this Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed and delivered by the Parties.
- 23.9 Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.
- 23.10 Delivery of a copy of this Agreement or any other document contemplated hereby, bearing an original manual or electronic signature by facsimile transmission (including a facsimile delivered via the Internet), by electronic mail in "portable document format" (".PDF") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original signature.

## 24. ENTIRE AGREEMENT

- 24.1 This Agreement constitutes the entire agreement for Services between Globalgig and Customer and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect.
- 24.2 Any and all Services pertaining to the subject matter hereof and active as of the Effective Date shall be governed by this Agreement.
- 24.3 There are no oral agreements between the Parties.
- 24.4 No Party is entering into this Agreement in reliance on, and this Agreement shall not be contradicted or supplemented by, any prior or contemporaneous:
- 24.4.1 condition, discussion, promise, statement, understanding, or undertaking;

- 24.4.2 letter of intent, memorandum of understanding, commitment, or approval; and/or
- 24.4.3 other agreements, such as pre-printed forms, purchase orders, acknowledgments, or security or specification forms, which are for convenience purposes only, and all terms and conditions stated thereon are void and of no effect under this Agreement.
- 24.4.4 This Agreement may not be amended, except pursuant to an instrument in writing executed by each Party, or as expressly provided for herein.

**BY ACCEPTING THIS AGREEMENT CUSTOMER ACKNOWLEDGES AND AGREES TO RECEIVE AND PAY FOR THE SERVICES PROVIDED BY GLOBALGIG, INCLUDING ANY SUBSEQUENT SERVICE ORDERS, UNDER THIS AGREEMENT.**

**THIS AGREEMENT CONSTITUTES THE ENTIRE UNDERSTANDING BETWEEN GLOBALGIG AND CUSTOMER WITH RESPECT TO THE SUBJECT MATTER HEREIN. ALL SERVICES RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT AND ACTIVE AS OF THE EFFECTIVE DATE SHALL BE GOVERNED EXCLUSIVELY BY THE AGREEMENT.**

**[END OF DOCUMENT]**