

SYNAMEDIA VIVIDTEC COMMERCE AGREEMENT

This Commerce Agreement (“**Agreement**”) is entered into by and between Synamedia Vividtec Holdings, Inc. with an office at 1715 North Brown Road, Building B, Suite 200, Lawrenceville, Georgia, 30043, USA (“**Synamedia**”) and your company listed below (“**Customer**”) relative to Customer’s purchase of Synamedia products and services. This Agreement shall be effective from the date last written below (“**Effective Date**”) and continue until terminated in accordance with the terms of this Agreement.

1. DEFINITIONS

- a. **Affiliate** means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with Synamedia or Customer.
- b. **Synamedia.com** is Synamedia’s suite of on-line services and information at www.Synamedia.com.
- c. **Hardware** is the tangible Synamedia Product acquired by Customer from Synamedia.
- d. **Video Services** are any video processing services offered by Customer, as Customer’s primary business model, which services may include without being limitative encoding, transcoding, live linear TV, over-the-top, catch-up TV, recording capabilities by means of Customer’s communications network.
- e. **Price List** is the price list(s) published at Synamedia.com applicable to the relevant Synamedia entity to which each Purchase Order is issued by Customer.
- f. **Products** are, individually or collectively as appropriate, video processing related Hardware, Software and documentation listed on the then-current Price List (unless listed in the name of a third party).
- g. **Purchase Order** is an order issued by Customer to Synamedia for Products or Services to be purchased, licensed or provided under this Agreement.
- h. **Services** are any video processing related maintenance, technical support, or any other services performed or to be performed by Synamedia. Certain Services may require a separate statement of work.
- i. **Software** is the machine readable (object code) version of the computer programs listed from time to time on the Price List or provided with the Hardware and made available by Synamedia for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof.
- j. **Territory** is the country in which Customer’s principal place of business is located or, if authorized by Synamedia, the location at which Products or Services are being delivered or performed, or in the case of a Synamedia certified reseller, any country(ies) in which the Synamedia certified reseller has been granted Synamedia resale certifications.

2. SCOPE

- a. This Agreement set forth the terms and conditions for Customer’s purchase of Products and Services solely for use in the Territory and solely for Customer’s internal business use. Customer shall not resell to, make available for use by, or otherwise transfer title to any Product to any third party without such reseller certifications or distribution rights.
- b. Affiliates of Customer may submit orders for Products and Services under this Agreement; provided such Affiliate has executed an Affiliate Agreement, which is attached hereto as Exhibit A.

3. PRICES

- a. Prices for Products and Services shall be those specified in Synamedia’s then current Price List, less any applicable discount(s) at the time of acceptance of the Purchase Order by Synamedia, or in accordance with a Synamedia price quotation, if any.

- b. Subject to Section 5 below, all prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to Products and Services provided pursuant to this Agreement (except for taxes based on Synamedia's revenue income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical (except as is required by law), be billed as a separate item on the invoice. Synamedia reserves the right to increase any price or fee in the event a withholding prevents Synamedia from receiving the price specified above.

4. ORDERS

- a. Customer shall purchase or license Products or Services by issuing a Purchase Order to the applicable Synamedia entity as determined herein; provided however, for the purposes of Customer's rights and Synamedia's obligations and liabilities under this Agreement, the Synamedia entity which accepts each Purchase Order from Customer shall be the applicable entity and this Agreement shall be construed, for such purposes, as if entered into by Customer and such entity only. Further, Synamedia has the right to assign the Purchase Order to the applicable Synamedia entity and may require Customer to accept the terms of the Agreement with the applicable Synamedia entity if such entity is not a party to the Agreement. No additional terms on a Purchase Order shall be binding upon Synamedia and are deemed rejected.
- b. Upon and subject to credit approval by Synamedia following Synamedia's receipt of any Purchase Order, Synamedia will review and accept or decline any or all Purchase Orders for the Synamedia entity that will supply the Products or Services, and no other person is authorized to accept Purchase Orders on behalf of Synamedia.
- c. Cancelled Purchase Orders, rescheduled shipments or Product configuration changes requested by Customer less than thirty (30) days before the original scheduled shipping date shall be subject to (a) acceptance by Synamedia, and (b) a charge of fifteen percent (15%) of the total invoice amount affected. Synamedia reserves the right to reschedule shipment in cases of configuration changes requested by Customer within ten (10) days of scheduled shipment. All sales are final.

5. SHIPPING AND DELIVERY

Products will be shipped and delivered Ex Works (Incoterms 2010) to a carrier nominated by Customer and approved by Synamedia.

6. PAYMENT

Upon and subject to credit approval by Synamedia, payment for Products shall be thirty (30) days from shipping date and payment for Services shall be thirty (30) days from the invoice date. Fees for Services, other than those for which a statement of work is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a statement of work shall be set forth in the respective statement of work. Payments shall be in the currency of the Price List applicable to the Purchase Order. If Customer is delinquent in the payment of any invoice, Synamedia may withhold shipment of any order or provisioning of Services, and/or require prepayment for further shipments. Any sum not paid when due shall bear interest at a rate of (i) ten percent per annum or (ii) the maximum rate permitted by law, whichever is less. Where permitted under applicable law, Customer grants Synamedia a security interest in Products to secure payment for such Products and shall execute financing statements to perfect this security interest, if requested.

7. PROPRIETARY RIGHTS AND SOFTWARE LICENSING

Synamedia shall license the Software to Customer in accordance with Synamedia's End User License Agreement ("EULA"), which may be found at www.Synamedia.com/vividtec-end-user-license-agreement. Customer shall comply with all terms contained therein. Nothing in this agreement is deemed to assign any intellectual property rights to the other party and the parties shall retain all rights in any intellectual property delivered to the other party under this Agreement.

8. LIMITED WARRANTY

a. 90-Day Limited Software Warranty

Synamedia warrants that the Software will substantially conform to the applicable Documentation for ninety (90) days following the date the Software is made available to Customer. This warranty does not apply if the Software, Synamedia Product or any other equipment upon which the Software is authorized to be used: (i) has been altered, except by Synamedia or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Synamedia, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (iv) is licensed for beta, evaluation, testing or demonstration purposes or other circumstances for which Synamedia does not receive a payment of a purchase price or license fee. Synamedia will use commercially reasonable efforts to deliver to Customer Software free from any viruses, programs, or programming devices designed to modify, delete, damage or disable the Software or data.

At Synamedia's option and expense, Synamedia shall repair, replace, or refund the license fees paid for the non-conforming Software as exclusive remedy under the warranty. This remedy is conditioned on Customer reporting the non-conformance in writing within the warranty period. Customer may be asked to return the Software, the Product, and/or Documentation as a condition of this remedy.

Except as expressly set forth above, Synamedia and its licensors provide Software "as is" and expressly disclaim all warranties, conditions or other terms, whether express, implied or statutory, including without limitation, warranties, conditions or other terms regarding merchantability, fitness for a particular purpose, design, condition, capacity, performance, title, and noninfringement. Synamedia does not warrant that the Software will operate uninterrupted or error-free or that all errors will be corrected. In addition, Synamedia does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

b. 1 Year Limited Hardware Warranty

Synamedia warrants that commencing from the date of shipment to Customer (and in case of resale by a Synamedia reseller, commencing not more than thirty (30) days after original shipment by Synamedia), and continuing for one (1) year, the Hardware will be free from defects in material and workmanship under normal use. The date of shipment of Hardware by Synamedia is set forth on the packaging material in which the Product is shipped. This limited warranty extends only to the original user of the Hardware. Customer's sole and exclusive remedy and the entire liability of Synamedia and its suppliers under this limited warranty will be, at Synamedia's sole option, shipment of a replacement Hardware within the warranty period and according to the replacement process described in the warranty card (if any), or if no warranty card, a refund of the purchase price if the Hardware is returned to Synamedia, freight and insurance prepaid. Synamedia replacement parts used in Hardware replacement may be new or equivalent to new. Synamedia's obligations hereunder are conditioned upon the return of affected Hardware in accordance with Synamedia's then-current Return Material Authorization (RMA) procedures.

Restrictions. This limited warranty does not apply if the Hardware (a) has been altered, except by Synamedia or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Synamedia, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident.

Disclaimer. Except as specified in this limited warranty, all express or implied conditions, representations, and warranties including, without limitation, any implied warranty or condition of merchantability, fitness for a particular purpose, non-infringement, satisfactory quality, noninterference, accuracy of informational content, or arising from a course of dealing, law, usage, or trade practice, are hereby excluded to the extent allowed by applicable law and are expressly disclaimed by Synamedia, its suppliers and licensors. To the extent an implied warranty cannot be excluded, such warranty is limited in duration to the express warranty period. Because some states or jurisdictions do not allow limitations on how long an implied warranty lasts, the above limitation may not apply. These warranties give Customer specific legal rights, and Customer may

also have other rights which vary from jurisdiction to jurisdiction. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

9. CONFIDENTIAL INFORMATION

- a. “**Confidential Information**” shall be defined as information that has been conspicuously designated as “Confidential,” or bears a similar legend, or information disclosed orally which is identified as confidential or the like at the time of disclosure and confirmed as such in writing within thirty (30) days from disclosure. The receiving party shall not disclose the Confidential Information to any third party.
- b. The receiving party shall have no obligation with respect to information that: (a) was rightfully in possession of the receiving party without any obligation of confidentiality; (ii) becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the receiving party from a source other than that is without obligation of confidentiality; or (iv) is developed without use of the Confidential Information and such can be shown by documentary evidence. Upon written demand, the parties shall cease using the Confidential Information and return it within seven (7) days. Each party shall retain all right, title and interest to such party’s Confidential Information.

10. TERM AND TERMINATION

- a. This Agreement shall commence on the Effective Date and continue for one (1) year and shall automatically renew thereafter for successive one (1) year periods. Either party may terminate this Agreement at any time upon ten (10) days’ prior written notice.
- b. If a party breaches any provision of this Agreement, the non-breaching party may terminate this Agreement upon written notice as follows: (a) immediately if the breach is not capable of being cured and (b) thirty (30) days if the breaching party fails to cure such breach within such period.
- c. Upon termination all outstanding invoices immediately become due and payable, and if Synamedia agrees to complete delivery of any further Products or Services due against any existing Purchase Orders then Customer shall pay for such in advance.
- d. In the event that, following the expiration or termination of this Agreement, Customer places Purchase Orders and Synamedia accepts such, then any such Purchase Orders shall be governed by this Agreement notwithstanding the earlier expiration or termination; provided, however, that acceptance by Synamedia of any such Purchase Order will not be considered to be an extension or renewal of the term of this Agreement.

11. SERVICES

Customer may place Purchase Orders for the various Services offered by Synamedia. Such Services shall be subject to this Agreement and Synamedia’s standard technical support terms which can be found at www.synamedia.com/wp-content/uploads/technical-support-agreement. Purchase Orders for professional services shall be subject to a separate statement of work entered into between the parties.

12. EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

Synamedia Products, technology and Services are subject to U.S. and local export control laws and regulations. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Synamedia Products, technology and Services and will obtain all required U.S. and local authorizations, permits or licenses.

13. COMPLIANCE WITH LAWS, INCLUDING ANTI-CORRUPTION LAWS

Customer shall comply with all applicable country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures, including, but not limited to, anti-corruption laws, (“**Applicable Laws**”) and, in the case of Synamedia resale partners, Synamedia’s code of ethics published at: www.synamedia.com/supplier-code-of-conduct.

14. LIMITATION AND EXCLUSION OF LIABILITY

Neither party will be liable for the following: a) any indirect, incidental, exemplary, special or consequential damages; b) loss or corruption of data; c) loss of revenues, profits, goodwill or anticipated savings; or d) interruption to business. These exclusions will not, however, limit Customer's liability for its material breach of Section 7 (Proprietary Rights and Software Licensing) and Section 9 (Confidential Information). All liability of Synamedia, its affiliates, officers, directors, employees, agents, suppliers and licensors collectively, shall not exceed the money paid to Synamedia under this Agreement during the twelve (12) month period prior to the event that first gave rise to such liability. This limitation of liability is cumulative and not per incident. Nothing in this Agreement shall exclude or limit either party's liability for death, bodily or personal injury, fraud or fraudulent misrepresentation where such liability cannot be excluded or limited under applicable law.

15. GENERAL

- a. Governing Law, Jurisdiction and Venue. This Agreement and all matters relating to this Agreement will be construed and controlled by the laws of New York. The courts located in New York will have exclusive jurisdiction over any disputes that might arise under or in connection with this Agreement.
- b. Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, industry-wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, floods, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.
- c. No Waiver. The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.
- d. Assignment. Neither this Agreement nor any rights or obligations under this Agreement shall be assigned by a party without the other's prior written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the parties may assign this Agreement to any Affiliate. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under this Agreement.
- e. Severability. If part of or one or more terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.
- f. Attorneys' Fees. In any suit or proceeding relating to this Agreement, the prevailing party can recover from the other, attorney, accountant, and other professional fees incurred in connection with the suit or proceeding. This provision is intended to be severable from the other provisions of this Agreement and shall survive expiration or termination and shall not be merged into any such judgment.
- g. No Agency. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence of this Agreement. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
- h. Entire Agreement. This Agreement consists of these terms and conditions, including any URLs referred to therein, which are deemed to form part of this Agreement. This Agreement is the complete agreement between the parties hereto and replaces any prior oral or written communications other than an Existing Agreement which shall continue in effect in accordance with its terms. This Agreement specifically replaces any Internet Commerce Agreement previously accepted by Customer. There are no representations, or warranties, expressed or implied, which are not specified herein; all of which are excluded. This Agreement may be modified only by a written document executed by the parties hereto.

- i. Future Products and Services. For any Products and Services included in the Price List, including Products and Services which become or have become Synamedia Products or Services as a result of an acquisition by Synamedia of another entity, Synamedia may stipulate additional requirements prior to allowing Customer or a certified Synamedia reseller the ability to license and distribute such Products and Services. Further, Synamedia may require additional license terms which will be made available to Customer when ordered.
- j. End of Life. Synamedia reserves the right to end the life (EOL) of its Products in accordance with its EOL policy which can be obtained from Synamedia. Synamedia will provide regular notice on its website of the affected Product's end-of-sale date and/or the last day when the affected Product can be ordered.
- k. Notices. All notices required or permitted under this Agreement will be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt or one business day after being sent by email. All other notices will be sent to the addresses set forth below in this Agreement (and notices to Synamedia shall be further addressed to the Office of the General Counsel, Attn: Contract Notice) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph. Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs or any other terms referenced via URL in this Agreement may be by posting on Synamedia.com.
- l. Survival. The following sections shall survive the expiration or earlier termination of this Agreement: Sections 2 (Scope), 6 (Payment), 7 (Proprietary Rights and Software Licensing), 8 (Limited Warranty), 9 (Confidential Information), 10 (Term and Termination), 12 (Export, Re-Export, Transfer and Use Controls), 14 (Limitation and Exclusion of Liability), 15 (General).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date which is written below.

Synamedia Vividtec Holdings, Inc.

"Customer"

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Exhibit A
Affiliate Agreement

As of the date of last signature below (“Effective Date”) the Affiliate of Customer (“Affiliate”) specified below hereby explicitly agrees to abide by the terms and conditions of the Commerce Agreement entered into between Synamedia Vividtec Holdings, Inc., with an office at 1715 North Brown Road, Building B, Suite 200, Lawrenceville, Georgia, 30043, USA (“Synamedia”) and _____ (“Customer”) (“the Agreement”). Definitions used in this Affiliate Agreement and not otherwise defined herein shall have the meaning ascribed to it in the Agreement.

Affiliate acknowledges that upon Synamedia’s and Affiliate’s execution of this Affiliate Agreement, and for as long as Affiliate is an Affiliate of Customer within the meaning of the Agreement, Affiliate will have the right to purchase Synamedia Products and Services pursuant to the rights and obligations of the Agreement. Affiliate hereby explicitly accepts the terms and conditions of such Agreement. If Affiliate violates terms and conditions of the Agreement, Synamedia will hold the Affiliate fully liable.

This Affiliate Agreement shall be effective from its Effective Date and shall continue unless terminated in accordance with the terms of the Agreement or where the Agreement has terminated or expired. (“Term of the Affiliate Agreement”). Any renewal beyond said Term of the Affiliate Agreement must be expressly agreed upon by both parties.

Except as otherwise set forth herein, all terms of the Agreement, including its exhibits, attachments and/or appendixes thereto, remain unchanged and in full force and effect.

The parties have caused this Affiliate Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the Effective Date of authorized to execute this Affiliate Agreement.

 (“Affiliate”)
Address: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____

Synamedia Vividtec Holdings, Inc.

Signature: _____
Print Name: _____
Title: _____
Date: _____