
SECTION 2 – TERMS AND CONDITIONS

2.1 Agreement for Use of SBCLD International Long Distance Services (D)

By the Customer's use of the SBCLD Services provided hereunder, the Customer's is consenting to be bound by the terms and conditions of this Tariff.

2.2 Undertaking of SBCLD

SBCLD provides long distance Services, where authorized for International communications. Service areas are subject to change. SBCLD's Service is available twenty-four hours a day, seven days a week. SBCLD arranges for installation, operation, and maintenance of the Service in accordance with the terms and conditions set forth in this Tariff. This Tariff is applicable for Service offered via a LEC or CLEC and for Service provided to Casual Callers. For Service offered via a LEC or CLEC, this Tariff applies for the initial forty-five (45) days of Service or until there is a contract between SBCLD and the Customer.

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2.3 Limitation On Service

Service is offered subject to the availability of the necessary systems, facilities and equipment. SBCLD may decline applications for Service to or from a location where the necessary systems, facilities or equipment do not exist. SBCLD may discontinue furnishing Service in accordance with the terms of this document.

2.3.1 SBCLD reserves the right to discontinue or limit Service when necessitated by conditions beyond its control or when Service is used in violation of provisions in this document or the law.

2.3.2 SBCLD does not undertake to transmit messages, but offers its Service when available, and shall not be liable for errors in transmission or for failure to establish connections.

2.3.3 SBCLD reserves the right to refuse to process third party billed calls when standard validation techniques cannot confirm acceptance.

2.3.4 Reserved for Future Use

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2.3.5 SBCLD reserves the right to discontinue Service, limit Service or to impose requirements as required to meet changing regulatory or statutory rules and standards.

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2.4 Assignment or Transfer

All Services provided under this agreement are directly or indirectly controlled by SBCLD and the Customer may not transfer or assign the use of Services without the express prior written consent of SBCLD.

2.5 Customer Access

Except as stated otherwise in this document, the Customer may access SBCLD' network as follows: If the Customer's Access Line is pre-subscribed to SBCLD, the Customer dials 1, plus the area code, plus the seven-digit number.

2.6 Use of Service

Service may be used for any lawful purpose by the Customer or by any User. The Customer obtains no property right or interest in the use of any specific type of facility, Service, equipment, number, process, or code. All right, title and interest to such items remain, at all times, solely with SBCLD. Recording of telephone conversations of Service provided by SBCLD under this agreement is prohibited except as authorized by applicable federal, state and local laws.

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2.7 Discontinuance and Restoration of Service

Service continues to be provided until canceled by the Customer, in writing, or until canceled by SBCLD as follows:

- 2.7.1 Cancellation by the Customer B The Customer will be responsible for payment of all bills for Service until the date specified by the Customer through proper notice or until the cancellation date agreed to by SBCLD.
- 2.7.2 Cancellation by SBCLD B SBCLD, upon five (5) days verbal or written notice to the Customer and in accordance with applicable law, may discontinue Service without incurring liability:
 - (A) When any sum owed SBCLD is not paid within 30 days after the due date printed on the bill.
 - (B) If there is a reasonable risk that criminal, civil or administrative proceedings or investigations based on the transmission contents shall be instituted against SBCLD.
 - (C) For Lack of Use: SBCLD may discontinue Service if after three full billing cycles the Service has not been used.

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2.7 Discontinuance and Restoration of Service

2.7.3 The Customer shall be subject to discontinuance of Service without notice:

- (A) For any violation of law or of any of the provisions governing the furnishing of Service under this agreement.
- (B) For SBCLD to comply with any order or request of any governmental authority having jurisdiction.
- (C) Reserved for Future Use
- (D) For returned checks: If the Customer's check or draft is returned unpaid for any reason after one collection attempt.
- (E) Customer's or User's misuse, fraudulent, or unlawful use of the long distance network.
- (F) For emergencies.
- (G) For insufficient or fraudulent billing information.
- (H) Service that is used by the Customer or User that harasses another or interferes with the use of Service by other Customers.

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2.8 Restoration of Service

If Service has been discontinued for nonpayment or as otherwise provided herein and the Customer wishes it continued, Service shall, at SBCLD's discretion, be restored when all past due amounts are paid or the events giving rise to the discontinuance (if other than nonpayment) is corrected.

2.9 Cancellation of Application for Service

When the Customer or Applicant cancels an application for Service prior to the start of installation of Service, or prior to the start of special construction, no charge applies. Where installation of Service has been started prior to cancellation, a cancellation charge equal to the costs incurred by SBCLD but not greater than the charge for the minimum period of Service shall apply. If special construction has either begun or has been completed, but Service has not been provided at the time the Customer cancels Service, the Customer is responsible for all construction costs incurred by SBCLD on the Customer's behalf.

2.10 Initial Contract Period

Unless otherwise stated the initial contract period for Service is one month. Thereafter, contract periods shall be for successive one-month periods.

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2.11 Obtaining Services; Proof of Authorization and Identity

To obtain Service, SBCLD requires the Customer to provide SBCLD with whatever authorization SBCLD deems appropriate. Upon SBCLD's acceptance of this authorization, all applicable SBCLD terms and conditions, as amended from time-to-time, become the agreement for Service between SBCLD and the Customer. SBCLD reserves the right, at any time, to require any Customer to present proof of identification to SBCLD as SBCLD may then deem acceptable. Acceptance or use of Service offered by SBCLD shall be deemed an application for such Service and an agreement by the Customer to subscribe to, use, and pay for such Service.

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2.12 Establishment of Credit and Deposits; Toll Restriction; Credit Limits

2.12.1 SBCLD reserves the right to require all Applicants to establish credit worthiness to the reasonable satisfaction of SBCLD. In addition, if the conditions of Service or the basis on which credit was originally established have materially changed, an existing Customer may be required to establish additional credit. SBCLD reserves the right to examine the credit record and check the references of any Customer at any time. If the Customers financial condition is unknown or unacceptable, SBCLD reserves the right to require a security deposit, which SBCLD may apply to overdue charges. The security deposit amount shall be up to three month's estimated usage, with SBCLD determining the amount of the deposit. SBCLD shall pay interest on deposits as required under state law. SBCLD shall review the account periodically to determine if all amounts due have been paid within the terms and conditions of this agreement. In that event, SBCLD shall refund the deposit in full within the time prescribed under state law, but in no event later than one year following the deposit.

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2.12 Establishment of Credit and Deposits; Toll Restriction; Credit Limits (continued)

- 2.12.2 SBCLD reserves the right to refuse Service to any Applicant who is indebted to SBCLD for Service(s) previously furnished until satisfactory payment arrangements have been made for all such indebtedness. SBCLD further reserves the right to refuse Service to any Applicant who is currently indebted to SBCLD for Service(s) on another SBCLD account, until satisfactory payment arrangements have been made for all such indebtedness. SBCLD may also refuse Service to any Applicant attempting to establish service for a former Customer who is indebted for previous Service(s), regardless of whether or not the previous Customer was furnished Service at the same location, until satisfactory payment arrangements have been made for the payment of all such prior indebtedness. If Service is established and it is subsequently determined that any of the foregoing conditions exist, SBCLD may suspend or terminate such Service until satisfactory arrangements have been made for the payment of the prior and/or concurrent indebtedness. Where a Customer subscribes to more than one active telephone account, and SBCLD suspends or terminates Service to one or more of the Customer's accounts for nonpayment, SBCLD may, at its option, initiate action for collection, including the action to suspend or terminate some or all of the other active Customer accounts, with notice as prescribed under these terms and conditions. Finally, SBCLD reserves the right to discontinue granting any further credit to Customer in the event of Customer's repeated delinquency in payment for Services, fraudulent use, suspension or disconnection of Service, initiation of a proceeding by or against the Customer under the United States Bankruptcy Code, or any other material breach, where not prohibited by federal law, rule or regulation. In such event, SBCLD may, at its sole discretion, require the Customer to pre-pay for all future Services as thereafter directed by SBCLD.

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2.12 Establishment of Credit and Deposits; Toll Restriction; Credit Limits (continued)

- 2.12.3 SBCLD may regularly review any Customer's toll usage in order to protect itself from fraudulent or excessive usage by high-risk Customers or Customers who are delinquent in their payments. When SBCLD determines that the usage volume increases the likelihood that a particular Customer will not pay or will be unable to pay for usage, SBCLD may implement its toll blocking process. Pursuant to that process, SBCLD may place a restriction on or discontinue Customer's use of domestic and/or international long distance services 1+, 0+, and/or all 900/976/700/500 calls until the Customer makes payment arrangements satisfactory to SBCLD. Access to local calling, operator-assisted calls, emergency services (9-1-1), 800 and 888 calls will not be affected. In the event that toll access is restricted or blocked pursuant to the foregoing, Customers attempting to access restricted services will be automatically routed to either a recorded announcement or a service representative for information regarding restoration of service. This process allows SBCLD to reasonably limit the amount of toll usage Customers may accumulate. (D)
- 2.12.4 SBCLD may establish credit limits for new and existing Customers. Where a credit limit is established for a Customer, the Customer will be notified of the Customer's initial credit limit amount and any subsequent credit limit changes. Where a Customer becomes delinquent in payments, a new credit limit may be established that is lower than the Customer's initial credit limit. In the event a Customer's established credit limit is exceeded, or in the event a Customer becomes delinquent in the Customer's payments, SBCLD may implement its toll blocking process, as described above. SBCLD shall provide notice of adverse action regarding credit limits in accordance with Federal and State laws. (D)

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2.13 Advanced Payments; Credit Card Authorization

SBCLD reserves the right to require an advanced payment from Customers and Applicants who, in SBCLD's judgment, present an undue risk of nonpayment. Such advanced payment may be required instead of or in addition to a security deposit. SBCLD shall be authorized to apply such advanced payments against any Service charges incurred by the Customer. The advanced payment shall be equal to or less than estimated installation charges plus two months' estimated billing. Advance payment requirements may be increased or decreased by SBCLD as it deems necessary in the light of changing conditions. SBCLD shall pay interest on advance payments only where required under state law. SBCLD may alternatively require such Customers and Applicants to authorize credit card billing for advance payments as described in the payment and billing section herein.

2.14 Payment and Billing

2.14.1 Monthly recurring charges for Service components are billed in advance of Service and reflect the rates in effect as of the date of the invoice. For the purpose of computing partial-month charges, a month is considered to consist of thirty days. SBCLD will bill calls in whole minute increments, unless otherwise stated in the service description of your calling plan. If the charge for a call includes a fraction of a cent of \$.005 or more, the fraction of such charge is rounded up to the next higher whole cent. Otherwise, the charge is rounded down to the next lower whole cent. Rounding for charges for Service(s) is on a call-by-call basis.

2.14.2 Bills are due and payable upon receipt. The Customer is liable for any reasonable fees and expenses including attorney's fees SBCLD incurs in order to collect the charges owed to SBCLD. SBCLD may also charge the Customer a late fee on the overdue charges of \$5.00 per month, or up to the maximum amount allowed under state law. Charges may be assessed for unbilled traffic up to two (2) years in arrears, except for fraud, where no limitation shall apply.

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2.14 Payment and Billing (continued)

- 2.14.3 Customers that are direct-billed (as opposed to shared-billed by a LEC or CLEC) must provide SBCLD updated information within fifteen (15) days of a change in billing address and/or contact information. If the Customer fails to timely provide such updated information, SBCLD reserves the right to terminate service on five (5) days verbal or written notice to last known address/contact, and the Customer shall be responsible for any and all cancellation penalties.
- 2.14.4 The Customer is responsible for payment of all charges for Service furnished to the Customer or the Customer's agents or End Users. SBCLD reserves the right to assess a charge of \$25.00 whenever a check or draft presented for payment of Service is not accepted by the institution upon which it was written.
- 2.14.5 Credit card billing and automatic withdrawal from the Customer's checking or savings account may be available. However, if a Customer presents an undue risk of nonpayment at any time, SBCLD may require the Customer to pay its bill in cash or the equivalent of cash. With credit card billing, charges for Services provided by SBCLD are billed on the Customer's designated and approved credit card. Should the Customer cancel or change their designated credit card for billing, the Customer shall promptly inform SBCLD and designate new information for billing. Charges for Service are billed monthly in accordance with terms and conditions between the Customer and the Customer's designated credit card company. Call detail will not be included in the credit card bill; call detail will be provided by SBCLD by separate mailing.

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2.15 Disputed Bills

Customers must notify SBCLD of any disputed charges in writing within 60 calendar days after the bill giving rise to such dispute is rendered. In the case of a billing dispute which cannot be settled with mutual satisfaction the Customer may, within 30 days of the date of the bill containing the disputed amount, request an in-depth investigation and review of the disputed amount. SBCLD shall communicate the results of such investigation and review as soon as reasonably possible. The undisputed portion and subsequent bills must be paid on a timely basis.

2.16 Changes to Rates and Charges

SBCLD may adjust its current rates and charges for Service(s) by providing ten (10) days written notice to the Customer before the changes take effect.

2.17 Tax Exemption Certificate

In order to be granted tax exempt status, a Customer claiming tax exempt status must provide SBCLD with copies of all tax exemption certificates and documents required by SBCLD at the time Service is ordered. SBCLD may accord the Customer tax exempt status upon receipt of the required documentation after Service is ordered. However, the Customer will be billed for all applicable taxes and will be responsible for the payment of same until such time as SBCLD has ceased billing the applicable taxes. SBCLD is not liable for refunding the amount of the taxes paid by the Customer. The Customer is responsible for seeking refunds for such taxes from the appropriate taxing authority.

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2.18 Notices

Any notices provided by SBCLD are deemed given and effective upon the earlier of (a) actual receipt by Customer or (b) three days after mailing if sent by mail, the day after express overnight delivery, or the day the notice is left at the Customer's Premises. Notices will be sent to the last billing address provided to SBCLD by the Customer.

2.19 Reserved for Future Use

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2.20 Inspection, Testing and Adjustment

SBCLD may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether the installation, operation or maintenance of the Customer's or SBCLD's facilities or equipment are in compliance with the terms and conditions of this agreement. SBCLD may interrupt Service at any time, without penalty or liability, due to the departure from or reasonable suspicion of the departure from any of these terms and conditions. Upon reasonable notice, the facilities or equipment provided by SBCLD shall be made available to SBCLD for such tests and adjustments as may be necessary for their maintenance in a condition satisfactory to SBCLD. No interruption allowance shall be granted for the time such tests and adjustments are made, unless such interruption exceeds twenty-four hours and an allowance is requested by the Customer.

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2.21 Interconnection

The Customer shall ensure that the facilities or equipment provided by the Customer are properly interconnected with the facilities or equipment of SBCLD facilities or equipment. If the Customer maintains or operates the interconnected facilities or equipment in a manner which results or may result in harm to SBCLD facilities equipment, personnel, or the quality of Service, SBCLD may, upon written notice, require the use of protective equipment at the Customer expense. If this written notice fails to eliminate the actual or potential harm, SBCLD may, upon written notice, terminate the existing Service of the Customer.

2.22 Taxes and Surcharges

Federal excise tax and state and local sales, use, and similar taxes and surcharges shall be billed as separate line items. SBCLD may also impose surcharges on its Customers to recover amounts it is required by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs. The Customer will be responsible for the payment for all Services provided by SBCLD and for the payment of all excise, sales, use, gross receipts or other taxes and surcharges. SBCLD will not provide advance notice of changes to taxes and surcharges, except as required by law.

2.23 Local Charges

In certain instances, the Customer may be subject to local exchange company charges or message unit charges to access the SBCLD's network or to terminate calls. SBCLD shall not be responsible for any such local charges incurred by the Customer in gaining access to SBCLD's network.

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2.24 SBCLD's Limitation of Liability

- 2.24.1 SBCLD's liability for damages of any nature arising from errors, mistakes, omissions, interruptions, or delays of SBCLD, its agents, servants, or employees, in the course of establishing, furnishing, rearranging, moving, terminating, or changing the Service or facilities or equipment shall not exceed an amount equal to the charges applicable under this agreement (calculated on a proportionate basis where appropriate) to the period such error, mistake, omission, interruption or delay occurs.
- 2.24.2 SBCLD's liability for gross negligence arising out of mistakes, omissions, interruptions, delays, errors or defects occurring in the provision of Service(s) shall not exceed the higher of an amount equal to the charges applicable under this agreement (calculated on a proportionate basis where appropriate) and the sum of \$1,000.00.
- 2.24.3 SBCLD's liability for willful misconduct occurring in the provision of Service(s) shall not exceed the higher of an amount equal to the charges applicable under this agreement (calculated on a proportionate basis where appropriate) and the sum of \$2,000.00.
- 2.24.4 SBCLD will not be liable to the Customer for damages or statutory penalties or be obligated to make any adjustment, refund or cancellation of charges unless the Customer has notified SBCLD in writing of any dispute concerning charges, or the basis of any claim for damages, within sixty (60) calendar days after an invoice is rendered by SBCLD giving rise to such dispute or claim. Any such notice must set forth sufficient facts to provide SBCLD with a reasonable basis upon which to evaluate.

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2.24 SBCLD's Limitation of Liability

- 2.24.5 With respect to Service provided hereunder, SBCLD hereby expressly disclaims, without limitation, all warranties not stated in these terms and conditions, whether express, implied or statutory, and in particular disclaims all implied warranties of merchantability and of fitness for a particular purpose.
- 2.24.6 Under no circumstances whatsoever will SBCLD's officers, agents, or employees be liable for any damages, including but not limited to direct, indirect, actual, consequential, special, or punitive damages, or lost profits. In no event shall SBCLD be liable for any incidental, indirect, special, or consequential damages, including lost revenue or profit of any kind whatsoever regardless of the cause or foreseeability thereof. SBCLD will not be liable for any act or omission by any other company or companies furnishing a portion of the Service or furnishing facilities or equipment associated with such Service.
- 2.24.7 If SBCLD learns of actual or possible unauthorized, fraudulent, or unlawful use of any SBCLD Services, SBCLD will make an effort to contact the Customer, but Service may be blocked without notice and without liability to SBCLD. Service may be suspended by SBCLD without incurring liability by Blocking all calls or by Blocking calls to or from certain NPA-NXXs, certain countries, cities, or individual telephone stations for any Service offered by SBCLD. Service will be restored as soon as it can be provided without undue risk and only after accounts have been brought current.
- 2.24.8 SBCLD will not be liable for any failure of performance due to the use or abuse of any Service described herein by any party including, but not limited to, the Customer or User. Use or abuse includes, but is not limited to, any calls placed by means of PBX-reorigination or any other legal or illegal equipment, Service, or device.

SECTION 2 – TERMS AND CONDITIONS

2.24 SBCLD's Limitation of Liability (continued)

- 2.24.9 Compensation for any injury the Customer may suffer due to the fault of third parties must be sought from such other parties.
- 2.24.10 SBCLD will not be liable for any failure of performance due to any action, such as Blocking or refusal to accept certain calls, that SBCLD deems necessary in order to prevent unauthorized, fraudulent, or unlawful use of its Service.
- 2.24.11 SBCLD shall not be liable for any failure of performance hereunder if such failure is due to any cause or causes beyond SBCLD's reasonable control. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, terrorism, cable cut, storm or other similar occurrence, any law order, regulation, direction, action or request by the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, or preemption of existing Service to restore Service in compliance with the Commission's Rules and Regulations.
- 2.24.12 SBCLD shall not be liable for interruptions, delays, errors, or defects in transmission, or for any injury, caused by the Customer, the Customer's agents, users, or by facilities or equipment provided by the Customer.

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2.25 Liability of the Customer

The Customer shall indemnify, defend and hold harmless SBCLD (including the cost of reasonable attorney's fees) against:

- 2.25.1 Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information, or other content transmitted over SBCLD's facilities or equipment.
- 2.25.2 Claims for patent infringement arising from combining or connecting the SBCLD's facilities or equipment with facilities, equipment, apparatus or system of the Customer.
- 2.25.3 All other claims (including, claims for damage to any business or property, or injury to, or death of, any person) arising out of any act or omission of the Customer, or the Customer's agents, Users, or Customers, in connection with any Service or facilities or equipment provided by SBCLD.
- 2.25.4 Any and all claims, demands, suits, actions, losses, damages, assessments or payments asserted against SBCLD and any affiliated or unaffiliated Third Party Vendor or operator of facilities employed in provision of the Service by someone other than the Customer (e.g., authorized or unauthorized) who has use of the Service directly or indirectly through the Customer.
- 2.25.5 Any claim asserted against SBCLD arising out of or relating to the failure of SBCLD to provide Service to the Customer.

SECTION 2 – TERMS AND CONDITIONS

2.25 Liability of the Customer (continued)

- 2.25.6 Any claim of defacement of, or damage to, the Customer's premises resulting from the furnishing, installation or the attachment of instruments, equipment and associated wiring on or from the Customer's Premises.

- 2.25.7 Any suits, claims, losses or damages, including punitive damages, attorney fees and court costs by third persons arising out of the construction, installation, operation, maintenance, or removal of the Customer's Circuits, facilities, or equipment connected to Services. This includes without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the Customer's Circuits, facilities or equipment, and proceeding to recover taxes, fines, or penalties for failure of the Customer to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate Service(s).

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2.25 Liability of the Customer (continued)

In addition to the liabilities identified above in this section, the Customer will be responsible for:

2.25.8 Taking all necessary legal steps for interconnecting Customer-provided terminal equipment with the long distance network. The Customer will ensure that the signals emitted into the long distance network do not damage Company-Provided equipment, injure personnel, or degrade Service to other Customers or other users of the long distance network. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In Addition, the Customer will comply with applicable local exchange carrier signal power limitations.

2.25.9 Reimbursing SBCLD for damages to facilities or SBCLD-Provided equipment caused by the negligence or willful acts of the Customer's officers, employees, agents, contractors, or authorized or unauthorized user(s).

2.25.10 Reserved for Future Use

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2.25.11 Payment of all charges by SBCLD for Service(s) that need to be moved, replaced, or redesigned as a result of inaccurate information provided by the Customer.

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2.25 Liability of the Customer (continued)

- 2.25.12 Not using any service mark or trademark of SBCLD or referring to SBCLD in connection with any product, equipment, promotion, or publication of the Customer without prior written approval of SBCLD.
- 2.25.13 Payment to SBCLD for amounts equal to the monthly recurring charges which would have been paid had SBCLD been able to commence or to continue to provide Service, in the event that SBCLD's ability to commence or to continue to provide Service in a timely manner is delayed or interrupted because of the non-performance by the Customer of any obligation set forth in these terms and conditions.