SERVICES AGREEMENT

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This Services Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Company"), a company organised and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SERVICE PROVIDER]** (the "Service Provider"), a company organised and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

RECITALS:

1. The Company wishes to retain Service Provider to provide certain [SPECIFY] [DESCRIPTION] services on the terms and conditions hereinafter set forth.
2. Service Provider wishes to provide such services to the Company on such terms and conditions.

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

# SERVICES TO BE PROVIDED

## Service Provider agrees to provide to the Company the services set out in Appendix “A” hereto (the “Services”).

## Service Provider agrees and undertakes to perform the Services in a timely fashion with all due skill, competence and diligence.

## Subject to the provisions of Section 7 hereof, Service Provider agrees that the Company shall have, at all reasonable times, access to the work product, or any component thereof, which Service Provider produces in performing the Services.

# COMPENSATION

The Company shall pay Service Provider for the Services and shall earn remuneration [SPECIFY] [e.g. fees/ commissions/ royalties on the basis of gross revenue generated by use of the Services, etc.] in accordance with the terms set out in Appendix “B” hereto.

# TERM AND TERMINATION

## The initial term of this Agreement (“Term”) shall be for a period of [NUMBER] years beginning on [DATE] and terminating on [DATE], unless terminated earlier in accordance with the provisions hereof. The Term shall be automatically renewed for successive [NUMBER] year periods unless a party sends a written notice of non-renewal to the other party no later than [NUMBER] days prior to the expiry of the Term, or of any renewal term, as the case may be.

## This Agreement may be terminated by the Company without notice upon the occurrence of an event of default. Each of the following constitutes an event of default for the purposes of this Agreement:

### if Service Provider commits any material dishonest or fraudulent act in the performance of any of its obligations hereunder or any material misrepresentation hereunder;

### if Service Provider persistently fails to perform the Services as required hereunder; or

### if Service Provider otherwise fails to perform or comply with any material term, condition or covenant of this Agreement;

## This Agreement may be terminated for any reason at any time by either the Company or Service Provider giving the other party [NUMBER] days’ written notice of termination, [it being understood and agreed that Service Provider shall not be entitled to terminate this Agreement pursuant to this paragraph 3(c) during the initial one-year Term].

## Service Provider shall forthwith upon termination return to the Company all confidential data embodied or recorded in tangible form, which is in its possession.

## [Upon the termination of this Agreement, royalties due to the Company in virtue of gross revenue generated by use of the Services shall survive and be paid as set forth in Appendix “B” hereto.]

# STATUS

## It is understood and agreed that this is an agreement for the performance of services and that the relationship of the parties to each other is that of independent contractors. No agency or partnership is created by this agreement. [Service Provider shall not hold itself out as or represent itself to be an agent of the Company]. Service Provider shall not be entitled to any remuneration, rights or benefits other than as set forth in this Agreement and in Appendix “B” hereto, unless otherwise agreed in writing by both parties hereto.

## Service Provider shall comply with all applicable statutes, [YOUR COUNTRY LAW], ordinances and regulations governing the performance of the Services.

# CONFIDENTIALITY AND EXCLUSIVITY

## Each party shall take all reasonable action and shall take at least the same precautions as it takes to prevent the disclosure of its own confidential information, to prevent the disclosure to third parties of the Confidential Information. Each party shall only have the right to disclose the Confidential Information to its officers, directors, employees, agents and consultants for the purposes authorised herein. Each party shall, prior to disclosing the Confidential Information or

## portion thereof to any such person, issue appropriate instructions to them to ensure that such persons are aware of their obligation to comply with the confidentiality and use obligations and restrictions contained in this Agreement. If each party has taken all such reasonable steps, it shall not be responsible if such Confidential Information or any part thereof should be divulged to any third party by reason of honest mistake or dishonest appropriation by any of each party’s agents or employees.

## For the purposes of this Section 5, “Confidential Information” means all confidential business data and information provided by a Party hereunder provided, however, that all Confidential Information that is delivered to either Party in writing shall bear an appropriate legend such as “Confidential” and all Confidential Information that is orally shared shall be identified to the other party in a written summary within [NUMBER] days following its oral disclosure. Failure to mark documents with an appropriate legend or the failure to identify orally disclosed information as “confidential” within [NUMBER] days following its oral disclosure shall be conclusive that the Disclosing Party has waived any restrictions with respect thereto. Confidential Information shall not include any data or information which:

### is or becomes publicly available through no fault of the disclosing party;

### is already in the rightful possession of the disclosing party prior to its disclosure to that party;

### is independently developed by the disclosing party;

### is rightfully obtained by the disclosing party from a third party;

### is disclosed with the written consent of the other party; or

### is disclosed pursuant to court order or other legal compulsion.

## Service Provider hereby covenants and agrees with the Company that throughout the Term and any renewal period, it shall not either by itself or in partnership, contract or association with any other person, as principal, agent, shareholder or in any other capacity whatsoever, directly or indirectly, offer to provide the Services to [DESCRIBE RESTRICTED PERSONS, CLIENTELE] within [COUNTRY].

## Service Provider and the Company hereby acknowledge and agree that:

### the confidentiality and exclusivity covenants set forth in this Section 6 are reasonable in the circumstances and are necessary to protect the interests of the Company and Service Provider;

### and in addition to the right of the Company or Service Provider to claim damages, the breach by Service Provider and the Company of any of the confidentiality and exclusivity covenants set forth in this Section 5,

### as the case may be, may cause serious and irreparable harm to the Company or Service Provider, as the case may be, and in the event of a breach by either party (a “Party in Breach”) of any of these provisions,

### notwithstanding any other provision of this Agreement, the other party (the “Aggrieved Party”) shall be entitled, as a matter of right, to seek an injunction against the Party in Breach.

### The provisions of this paragraph shall not be construed so as to be in derogation or limitation of any other remedy, which the Aggrieved Party may have in the event of such a breach.

## The provisions of paragraphs 5(a) and 5(c) above shall survive the termination of this Agreement.

## The existence of any claim or cause of action of either party against the other, whether pursuant to this Agreement or otherwise, shall not constitute a defence to the enforcement of the provisions of this Agreement by either party against the other.

# INTELLECTUAL PROPERTY

## The Company acknowledges that Service Provider has custom designed the Services on the basis of an [interactive telecommunications and call processing platform OR other description] established and owned by Service Provider (the “Services Platform”). The Company agrees that all work produced in the development of the Services Platform and all work product which Service Provider produces in performing the Services, or any component thereof, including computer software, publications, reports and other materials prepared by Service Provider (whether or not copyrighted or patentable), shall be the property of Service Provider. The Company acknowledges that all copyright, rights to patents, trade secrets or other intellectual property in all such work and in the Services Platform are the property of Service Provider.

## [Service Provider hereby expressly reserves any and all moral rights arising under the Copyright Act ([COUNTRY]) as amended (or any successor legislation of similar force and effect) or at common law with Service Provider, as author, has with respect to all copyrighted works prepared by Service Provider hereunder including, without limitation, the right to attribution of authorship, the right to restrain any distortion, mutilation or other modification of any such work and the right to prohibit any use of any such work in association with a product, service, cause or institution that might be prejudicial to Service Provider’s reputation.]

# FORCE MAJEURE

If the performance of this agreement or any of the obligations hereunder is interfered with in whole or in part by reason of any circumstances beyond the reasonable control of the party affected, including but not limited to fire, explosion, power failure, acts of God, revolution, civil commotion or acts of public enemies, any [YOUR COUNTRY LAW], order, regulation, ordinance or requirement of any government or legal body or labour unrest, including without limitation, strikes, slowdowns, picketing or boycotts, then the party affected shall be excused from such performance on a day by day basis to extent of such interference.

# SUBCONTRACTS

[Service Provider agrees that all Services to be performed hereunder shall be performed in their entirety by Service Provider and that no part thereof, nor any modifications to the Services, nor any additional services, shall be performed by a subcontractor without the prior [written] approval of the Company.]

OR:

[Service Provider shall have exclusive responsibility for the selection of service suppliers for the operation of the [SPECIFY]. Service Provider undertakes and agrees, however, that all Services to be performed hereunder shall be performed by Service Provider. Any modifications to the Services, whether to be provided directly by Service Provider or a subcontractor, shall not take place without the prior written consent of both parties (as to any such modification, addition and the subcontractor), which consent shall not be unreasonably withheld.]

# INSPECTION

[If the Company has reasonable grounds to believe that Service Provider is directly or indirectly in breach of any of its obligations under this Agreement, the Company may, upon [reasonable / [NUMBER] days’] notice in writing to Service Provider, require that Service Provider permit the Company and its employees, agents, counsel, accountants, other representatives to have free and unrestricted access during normal business hours to all books of account, accounting records, income and other tax returns, material contracts, business, legal and accounting information, documents and data relating to Service Provider’s provision of Services under this Agreement. The Company, its employees, agents, counsel, accountants and other representatives shall have the right to make photocopies of any of such documents. The costs of this inspection shall be borne by the Company unless a [material] discrepancy in the amount of fees, commissions or royalties which should have been paid in accordance with Appendix “B” is found, in which case the costs of the inspection shall be borne entirely by Service Provider.]

OR:

## [At the end of each year of the term of this Agreement and any renewal thereof, Service Provider, at its own cost and expense, shall cause an audit to be performed, by a reputable firm of chartered accountants, of all financial matters and accounts, including subscriptions, revenues, expenses, commissions and royalties, under this Agreement for that year in order to determine and confirm the amount of the commissions and royalties earned and payable to the Company and shall deliver the written audited report to the Company within [NUMBER] days of the end of each such year.

## The Company shall be entitled to inspect, at its discretion from time to time, upon [NUMBER] à days’ notice in writing to Service Provider, all books of account, accounting records, statements, material contracts, business, legal and accounting information, documents and data relating to Service Provider’s provision of Services under this Agreement. The Company, its employees, agents, counsel, accountants and other representatives shall carry out such inspections during normal business hours and shall have the right to make photocopies of any of the documents mentioned above. The costs of this inspection shall be borne by the Company.]

# INDEMNIFICATION

## Service Provider hereby covenants and agrees to indemnify and save harmless the Company, its directors, officers, employees, agents and representatives (the “Company Indemnified Parties”) from and against any claims, demands, actions, causes of action, damages, losses, costs, liabilities, expenses, penalties or fines (including reasonable legal fees) which any of the Company Indemnified parties may sustain, incur or suffer and/or which any person including, without limitation, a Subscriber may make or bring against a Company Indemnified Party arising directly or indirectly in any way by reason of, out of, *in re*spect of or in connection with:

### any non-fulfilment of any covenant or agreement on the part of Service Provider under this Agreement;

### any incorrectness in or breach of any representation of Service Provider contained in this Agreement;

### any act or omission, including, without limitation, any negligence or other tortuous act, committed by Service Provider and its directors, officers, employees, agents and representatives in the performance of its obligations under this Agreement;

### any untruth, inaccuracy or incorrectness of any of the marketing materials prepared and distributed by Service Provider pertaining to the Services;

### the Services including, without limitation, the operation, administration or provision thereof.

## The Company hereby covenants and agrees to indemnify and save harmless Service Provider its directors, officers, employees, agents and representatives (“Service Provider Indemnified Parties”) from and against any claims, demands, actions, causes of action, damages, losses, costs, liabilities, expenses, penalties or fines (including reasonable legal fees) which any of the Service Provider Indemnified Parties may sustain, incur or suffer and/or which any person may make or bring against an Service Provider Indemnified Party arising directly or indirectly in any way by reason of, out of, *in re*spect of or in connection with any covenant or agreement on the part of the Company under this Agreement or any incorrectness in or breach of any representation of the Company contained herein.

[IF SERVICE PROVIDER IS AN INDIVIDUAL:

## The Company shall not be liable or responsible for bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by Service Provider in the performance of this Agreement.]

## The indemnifications set forth in this Section 10 shall survive the termination of this Agreement and for a period of [NUMBER] year(s)] thereafter.

# GENERAL TERMS

## This Agreement, including Appendices “A” and “B” hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

## No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

## Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party without the prior written consent of the other party. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.

## Each party represents and warrants in favour of the other that it has all necessary capacity and authority to enter into this Agreement and to carry out its respective obligations hereunder and that neither party is a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, statute, judgment, decree or [YOUR COUNTRY LAW] which would be violated, contravened, breached by, or under which default would occur as a result of, the execution and delivery of this Agreement and the performance of its respective obligations hereunder.

## Time shall be of the essence of this Agreement.

## Each party hereby agrees that upon the written request of the other party, it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and will cause the execution of all such further documents as are within its power to cause the doing or execution of, as the other party may from time to time reasonably request be done and/or executed as may be required to effect to the purposes of this Agreement and to carry out the provisions hereof.

## Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered in person during normal business hours of the recipient on a business day or sent by first class mail, postage prepaid, or by telecopier, as follows:

### in the case of a notice to the Company to:

[COMPANY NAME]

[INDIVIDUAL NAME]

[FULL ADDRESS] [

[STATE/PROVINCE]

[FAX NUMBER]

[INDIVIDUAL NAME]

### in the case of a notice to Service Provider to:

[COMPANY NAME]

[INDIVIDUAL NAME]

[FULL ADDRESS] [

[STATE/PROVINCE]

[FAX NUMBER]

[INDIVIDUAL NAME]

and shall be conclusively deemed to have been given and to have been received on the following business day, if so delivered or sent by telecopier, and on the third business day following the mailing thereof, if so mailed (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause). Addresses for notice may be changed by giving notice in accordance with the foregoing.

## This Agreement shall be governed by and construed in accordance with the [YOUR COUNTRY LAW] of the Province of [STATE/PROVINCE] and the [YOUR COUNTRY LAW] of [COUNTRY] applicable therein and shall be treated, in all respects, as an [STATE/PROVINCE] contract. Each party thereto irrevocably attorns to and submits to the non-exclusive jurisdiction of the Courts of [STATE/PROVINCE] with respect to any matter arising hereunder or related hereto.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# COMPANY SERVICE PROVIDER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**APPENDIX “A”**

**SERVICES TO BE PROVIDED**

Provider shall provide the Services to the Company upon the terms and conditions set out in the Agreement and as set out below. The Company and Provider may amend this Appendix from time to time during the Term and any renewal period.

[DETAILED DESCRIPTION OF SERVICES]

**APPENDIX “B”**

**PAYMENT**

The Company shall pay Provider for the Services, and the Company shall earn commissions and royalties on the revenue generated by use of the Services, in accordance with the terms set out below. The Company and Provider may amend this Appendix from time to time during the Term and any renewal period.

[DETAILED DESCRIPTION OF PAYMENT TERMS]