

## WHITE LABEL SERVICE AGREEMENT

**THIS SERVICE AGREEMENT** (hereinafter referred to as the "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Netcom Consulting, Inc. (hereinafter referred to as "NTC"), a Florida Corporation, with a post office address of: 1500 University Drive, Suite 117, Coral Springs, Florida 33071, and \_\_\_\_\_ (hereinafter referred to as "Customer") whose

address is: \_\_\_\_\_.

URL address for the service: \_\_\_\_\_  
(eg. <http://www.yourdomain.com>)

### **WITNESSETH:**

**WHEREAS**, Netcom Consulting, Inc. provides an sms-platform, text messaging and gateway services ("Service") for the Customer.

### ARTICLE 1: SERVICE DESCRIPTION

- a) NTC will provide a white labeled version of their existing web-based SMS Management Interface to Customer. Customer will provide identifying graphics and/or text information to be integrated into the site. The site will present identity, links and contact information exclusive to Customer.
- b) The white label service will be hosted on NTC's servers. Customer will host and maintain their own web sites at their own expense.
- c) Customer will provide customer support to it's own clients. NTC will provide customer support by email and phone to Customer. Customer support is included in the monthly maintenance fee.
- d) The white label solution utilizes NTC's shared common short code(s).
- e) Customer can add unlimited number of sub-accounts and set own subscription pricing points.
- f) Payment for SMS units will be initiated through an e-commerce engine on the site, provided by NTC. Transactions will be processed through Customer's own Merchant or Pay Pal account, integrated into the e-commerce engine. Customer will purchase messages from NTC in blocks (for example 500 or 1000) and a message pool will be created. Subscribers will then purchase messages from Customer at a price that Customer designates. This pricing will be presented through the site and e-commerce engine. Each block of messages that subscribers purchase will be deducted from Customer's message pool. Customer will be responsible for purchasing sufficient messages so as to cover the needs of subscribers.
- g) Customer links to the SMS-platform by creating a sub-domain and pointing it to the IP address provided by NTC or by linking directly to a promo2cell.com sub-domain (reference: <http://client.yourdomain.com>).
- h) Customer will maintain a website that will be used for attracting new clients and describing the services offered. Each web page, existing or designed in the future that references the short code 41513 must also contain certain information. Failure to include this information or to make changes in a timely fashion as mandated by the carriers and requested by NTC may result in service disruption and termination.

Customer's website must contain the following information:

1. A clearly visible way for those asked to text in to 41513 to see full Terms and Conditions
2. Each time a visitor is asked to text to 41513 "Subscription renews automatically every month. Text STOP to 41513 to end. Msg&Data Rates May Apply." must appear.
3. Subscribers that text in must very clearly be told exactly how they can opt out of the list.

4. All supported carriers must be listed on terms and conditions page as well as each page that asks people to text in to 41513.

Supported carriers at present are: AT&T, Verizon Wireless, Sprint, Nextel, T-Mobile, Alltel, Virgin Mobile, Cellular One, US Cellular, Boost, Appalachian Wireless, Bluegrass Cellular, Cellular One of East Central Illinois, Centennial Wireless, Immix Wireless, Revol, Wireless, Unicel, West Central Wireless, Cellcom, Cellular South, Cincinnati Bell. Updates will be provided as they become available.

5. In the event a Premium Billed Services (PSMS) campaign ("pay to play") is being advertised and the Subscriber will be charged a fee to participate, the Subscriber shall be informed that charges will appear on their wireless bill, or be deducted from their prepaid balance.

#### ARTICLE 2: PRICING

- a) The monthly maintenance fee is \$495.00 for 500 keywords, \$695 for 1000 kws and \$995 for unlimited kws. A one time set up fee of \$495 applies to all packages. Text messages are charged at \$0.0375 - \$0.05 based on the volume. Text message prices are displayed on <http://www.promo2cell.com/whitelabel.html>. Prices are subject to change with a 14 day notice. All text message purchases are final and no refunds or credits will be given for purchased text messages. Text messages purchased from NTC will not expire during the term of this agreement.
- b) Service fee for Premium Billed Services (PSMS) is 8% of the end user billing price (for example the service fee for \$0.99 price point is \$0.079). NTC will transfer the funds received from carriers for such services within 10 business days after receiving the funds. Carriers normally pay 60-90 days after the end of the month and their billing fee is approximately 45%. All PSMS campaigns are subject to pre-approval by NTC and carriers.

#### ARTICLE 3: TERMS OF PAYMENT

All fees are final and billed in advance. If the service fee payment is more than five (5) business days late, NTC has the right to refuse service to the Customer.

#### ARTICLE 4: TERM

The initial term of this Agreement is six (6) months. After the initial term, this Agreement will automatically renew in terms of three (3) months unless cancelled 30 days prior the end of the ongoing term. If the service fee payment is more than thirty (30) calendar days late, NTC has the right to terminate this agreement immediately.

#### ARTICLE 5: ZERO TOLERANCE SPAM POLICY/ NATURE OF CONTENT/COMPLIANCE

Netcom Consulting, Inc. takes a zero tolerance stance against sending of unsolicited text messages, commonly known as spam. Any Customer, or other client who sends out spam will have their ability to generate outgoing sms messages permanently terminated. 3rd party advertising is not allowed. Each outgoing group message has to include opt-out instructions. A confirmation reply message has to be sent to the customer with opt-out instructions if the customer is added to a user group. This applies also to messages which are directed to external applications and the reply messages have to be sent through Netcom's http gateway.

All messages that originate from the Customers must comply with all applicable federal, state and local laws as well as with carrier regulations. Netcom Consulting, Inc. reserves the right to require changes or disable as necessary any website, account, database, or other component that does not comply with this policy, at its sole discretion. Netcom Consulting, Inc. also reserves the right to make any such modifications in an emergency at our sole discretion.

Netcom Consulting, Inc. will not be liable for any damages incurred related to spam.

Additionally, the transmission of any form of adult content and use of related keywords is strictly forbidden.

In the event of litigation, it is the responsibility of each party to bear its own attorneys' fees and costs throughout the entire process of any proceeding in accordance with Article 12.

#### ARTICLE 6: MONITORING OF SERVICE

You agree that Netcom Consulting, Inc. has the right to monitor the service electronically at any time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers. Netcom Consulting, Inc. reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement. Netcom Consulting, Inc. also reserves the right to refuse refunds in cases where Netcom Consulting, Inc. believes abuse has taken place. Netcom Consulting, Inc. reserves the right to monitor any and all communications through or with our facilities. You agree that Netcom Consulting, Inc. is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded in the event that such service is monitored and/or disclosed. NTC acknowledges that resellers' customers belong to reseller. Resellers' customers are considered confidential assets and NTC agrees not to sell them, solicit them, refer them or otherwise engage them in any of NTC or NTC affiliate business activities during the term of this agreement.

#### ARTICLE 7: RELATIONSHIP OF THE PARTIES

Nothing contained in this Agreement shall be construed as creating any agency, legal representative, partnership, or other form of joint enterprise between the parties. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

#### ARTICLE 8: DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY

A) NETCOM CONSULTING, INC. EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE NETCOM CONSULTING SERVICE WILL BE ERROR-FREE, TIMELY, SECURE OR UNINTERRUPTED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY NETCOM CONSULTING, INC., ITS EMPLOYEES, LICENSORS OR AGENTS WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE.

B) UNDER NO CIRCUMSTANCES WILL NETCOM CONSULTING, INC., OR ITS AFFILIATES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE NETCOM CONSULTING, INC. SERVICE, INCLUDING BUT NOT LIMITED TO RELIANCE ON ANY INFORMATION OBTAINED ON THE NETCOM CONSULTING, INC. SERVICE; OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, LOSS OF OR DAMAGE TO DATA, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO NETCOM CONSULTING, INC. RECORDS, PROGRAMS OR SERVICES. YOU HEREBY ACKNOWLEDGE THAT THIS PROVISION WILL APPLY WHETHER OR NOT NETCOM CONSULTING, INC. IS GIVEN NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND THAT THIS PROVISION WILL APPLY TO ALL SERVICES AVAILABLE FROM NETCOM CONSULTING, INC. AND ITS AFFILIATES.

C) UNDER NO CIRCUMSTANCES, UNDER THE TERMS OF THIS AGREEMENT, SHALL DAMAGES INCLUDE LOSS OF BUSINESS, OR LOSS OF PROFITS, WHETHER BASED ON BREACH OF AGREEMENT, BREACH OF WARRANTY, PRODUCT LIABILITY, OR OTHERWISE, TO ANY PARTY IN PRIVY TO THIS AGREEMENT, OR ANY THIRD PARTY NOT SO SITUATED.

D) THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

#### ARTICLE 9: COPYRIGHT AND TRADEMARKS

All contents of the Netcom Consulting, Inc. are proprietary to Netcom Consulting, Inc., and/or its suppliers and are protected under Copyright. All rights are reserved. Netcom Consulting, Inc. reserves any rights not expressly granted herein. The Customer acknowledges that he/she/it does not presently know the special skills, techniques or business policies, nor does the Customer have business forms or access to the Company's body of knowledge, and as such, such information is deemed confidential and a trade secret, as such term is defined within the meaning of Florida Statutes § 688.02 inter alia, entitling Company to all protections available under both Florida and Federal law.

#### ARTICLE 10: FORCE MAJEURE

If by reason of failures of telecommunications or internet service providers, labor disputes, riots, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond the control of Netcom Consulting, Inc., Netcom Consulting, Inc. is unable to perform in whole or in part its obligations as set forth in this Agreement, then Netcom Consulting, Inc. shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make Netcom Consulting, Inc. liable to the Customer or other third parties.

#### ARTICLE 11: GOVERNING LAW

Florida law shall govern this Agreement, and any dispute arising from the relationship between the parties to this Agreement, excluding any laws that direct the application of another jurisdiction's laws. In any litigation, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both), or seeks a declaration of any rights or obligations under this Agreement, each party shall be responsible for their respective attorneys' fees and costs, as stated in Article 12. The parties consent to the exclusive jurisdiction and venue of the courts of the State of Florida or to any Federal Court located within the State of Florida.

#### ARTICLE 12: ATTORNEYS' FEES AND COSTS

Any legal controversy or legal claim arising out of or relating to this Agreement or our services, which results in litigation, shall result in each party being solely responsible for its respective attorneys' fees and costs throughout the entire process of any and all proceedings.

#### ARTICLE 13: SEVERABILITY AND SURVIVABILITY

- a) Severability. If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

- b) Survivability. The terms of this Agreement apply to those obligations that survive any cancellation, termination, or rescission, namely – warranty, indemnification, liability and limits thereon, rights and obligations upon and following termination and assignment.

ARTICLE 14: INDEMNIFICATION

You agree to defend, indemnify and hold harmless Netcom Consulting, Inc. against any and all claims, losses, penalties, causes of action, damages, liability, costs, expenses (including but not limited to attorneys' fees and costs) or claims caused by or resulting indirectly from your use of the service, without limitation or exception, including your violation of any third-party's rights, (including, without limitation, infringement of any copy right trademark, service mark, trade secrets, right of privacy or publicity or any other third party right). The terms of this section shall survive the termination of your relationship with Netcom Consulting, Inc.

ARTICLE 15: ASSIGNMENT

In the event of a merger or consolidation of Netcom Consulting, Inc., the surviving or new corporation and any subsidiaries are similarly subject to the rights and obligations of this Agreement. This white label service agreement is transferable to another reseller if current reseller merges, consolidates or sells company or division of company to another company or entity. All terms & conditions will apply to new reseller.

ARTICLE 16: ENTIRE AGREEMENT

This Agreement constitutes the complete and exclusive statement of the Agreement between the parties regarding the products and services provided hereunder, and supersedes any prior Agreements between the parties with respect thereto.

ARTICLE 17: WAIVER

The failure of Netcom Consulting, Inc. to enforce a provision of this Agreement shall not be construed as a waiver or limitation of Netcom Consulting, Inc.'s right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have duly executed, sealed and delivered this Agreement in triplicate the day and year first above written.

NETCOM CONSULTING, INC.

CUSTOMER

By: \_\_\_\_\_

Signed By: \_\_\_\_\_