

## MOBILE PAYMENT SERVICES AGREEMENT

THIS MOBILE PAYMENT SERVICES AGREEMENT (“AGREEMENT”) APPLIES TO THE USE BY YOUR ORGANIZATION (“COMPANY”) OF THE ZONG WEB PAYMENT SERVICES (“ZONG WPS”) OPERATED BY ZONG (“ZONG”), A DIVISION OF ECHOVOX, INC., A CALIFORNIA CORPORATION, AND THE USE OF RELATED MATERIALS. BY AFFIRMATIVELY ACCEPTING THESE TERMS, COMPANY AGREES THAT COMPANY HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY ON BEHALF OF THE COMPANY TO ENTER INTO THIS AGREEMENT.

Zong has developed and operates the Zong Web Payment Service (the “*Zong WPS*”), a hosted mobile payment service which enables online customers to make purchases by adding the charge to their mobile carrier (“*Mobile Carrier*”) phone bill.

Company owns and/or operates websites and web services, and/or other online destinations (collectively, “*Company Sites*”) and desires to offer Company Site visitors (“*Customers*”) the option of using the Zong WPS to purchase products and/or services made available on the Company Sites (“*Company Products*”).

This Agreement governs Company’s deployment of the Zong WPS on Company Sites.

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. Zong WPS Deployment.

**1.1 Account Setup.** To deploy Zong WPS in Company Sites, Company shall establish an online account with Zong at <http://developer.zong.com> (the “*Account*”) and provide requested information, such as Company name and contact information (the “*Account Information*”). If Company is required to accept a click-through version of the Mobile Payment Services Agreement when establishing an account, the terms of that Agreement shall not apply. Company represents and warrants that: (i) all Account Information provided by Company is true and correct; (ii) Company shall keep all Account Information current throughout the term of this Agreement; and (iii) Company will use the Account only for its own use and not for resale or for use by any third party unless otherwise authorized in writing by Zong. Company acknowledges that Zong shall not have any liability for errors in Account Information provided by Company or for Company’s failure to keep Account Information current. Subject to Company’s compliance with this Agreement, Zong hereby grants to Company during the term of this Agreement a non-exclusive and non-transferable license to use and access the Account for its own use for the purposes set forth in this Agreement. **Company should not access any APIs made available at <http://developer.zong.com>; a Zong representative will provide necessary integration tools for Company to properly deploy Zong WPS.**

**1.2 Provisioning.** After the account is established, Zong representatives shall provision the Account to enable mobile payments through Mobile Carriers in selected countries. Information about available geographies and participating Mobile Carriers is made available at <http://www.zong.com/zong/coverage.gsp> which is updated by Zong from time to time. Zong will alert Company via email whenever new countries become connected to the Zong WPS. After initial provisioning, Company may thereafter request, via email to [integration@zong.com](mailto:integration@zong.com), that the Account be provisioned for additional countries. Within a reasonable time following receipt of the email, Zong will provision the Account with the requested countries if available and notify Company of the new countries provisioned.

**1.3 Integration within Company Sites.** In order for the Zong WPS interface to be presented to Customers, specific HTML code must be embedded into pages of Company Sites on which Company Products are sold. The embedded code (referred to as an “*iFrame*”) is used to retrieve the Zong WPS interface and specific elements from the Company Account (the “*Hosted Content*”), to display the appropriate information to the Customer, and to retrieve necessary information from the Customer to process payment through the applicable Mobile Carrier. Company shall integrate the iFrame within applicable pages of Company Sites using the specifications set forth in the Zong Integration Guide provided by Zong (the “*Guide*”). Company shall be solely responsible for testing the deployment of iFrames within the Company Sites and for insuring that iFrame code is properly written to retrieve the necessary data.

**1.4 The Company Key.** Zong shall provide Company with a unique identifier (the “*Company Key*”) which is used to authenticate Company to Zong during established HTTP sessions between the Company Sites and the Zong WPS. Company is solely responsible for controlling use of and access to its Account and Company Key and Zong shall not have any liability to Company for unauthorized use of or access to the same.

**1.5 Zong Branding Required.** Each iFrame as displayed on Company Sites shall include Zong branding, including the Zong logo and other Zong brand elements (collectively, “*Zong Marks*”), provided that in no event shall Zong Marks be more prominent than Company branding on the Company Sites. If the Company Sites list payment options elsewhere within Company Sites, Zong will be listed as an available payment method.

**1.6 License to Company.** Subject to the terms and conditions of this Agreement, Zong hereby grants to Company during the term of this Agreement a non-exclusive, non-transferable, non-sublicensable, royalty-free license under Zong’s Intellectual Property Rights (as defined in Section 5 below) to use, copy, modify, and publish the iFrame and Zong Marks solely for the purposes of using the Zong WPS with Company Sites and in compliance with the Guide.

### **1.7. Restrictions.**

**1.7.1 Prohibited Content.** Company may not use the Zong WPS or iFrames in connection with any Company Product or Company Site related to adult entertainment or gambling.

**1.7.2 Price Points.** In order to use the Zong WPS, Company Products must be sold at available Price Points. “Price Points” means a set of specific prices at which Company Products may be sold at Company Sites. Price Points may be set by Mobile Carriers and may differ between Mobile Carriers and by geographic area. Zong will make Price Points available to Company and Company will sell Company Products on Company Sites at available Price Points for the corresponding geographies. It is Company’s responsibility to implement the correct Price Points for different geographies. When displayed to the Customer, Price Points are always expressed in the local currency.

**2. Zong WPS Support.** Zong shall use reasonable commercial efforts to provide support to Company in the event of technical problems related to the Zong WPS as set forth in the Service Level Agreement in [Exhibit A](#).

### **3. Transaction Flow & Payment Process.**

**3.1 Transaction Flow.** Customers who choose to pay for Company Products with the Zong WPS must enter a valid mobile phone number through an iFrame. Zong verifies that the Customer is in possession of the mobile phone by sending an SMS message for Customer confirmation before processing the transaction. Upon Customer confirmation and acceptance of Zong’s order terms and conditions, the transaction is processed through the applicable Mobile Carrier. Zong then notifies Company that the Customer has been charged and that Company may release the purchased Company Product to the Customer.

**3.2 Basis of Payment to Company.** Zong will coordinate billing of the Customer with the Mobile Carrier. The Mobile Carrier will retain a percentage of the amount paid by the Customer for the Company Product (with

the retained amount depending upon the Mobile Carrier, the Price Point, and Company Product) and remits the remainder, or “**Outpayment**” to Zong. Zong then deducts from the Outpayment: (i) the fees for use of the Zong WPS, and (ii) the nominal SMS fees associated with SMS messages transmitted as part of Company Product transactions, if such costs have not already been deducted by the Mobile Carrier. Zong then remits the remainder to Company. Outpayment tables are available at <http://www.zong.com/zong/coverage.gsp> (the “**Outpayment Tables**”). Payments due Company will be calculated on the basis of the monthly traffic reports provided by Zong and the statements from the applicable Mobile Carriers. The final statements for amounts payable to Company will be based solely on the final validated Mobile Carrier data.

**3.3 Payment Terms.** Zong will pay the Company no later than fifteen (15) days after receipt of Outpayments from the Mobile Carrier, which is normally sixty (60) days after the end of the month in which the transaction occurred. In addition, no later than sixty (60) days following the end of such month, Zong will provide the Company with online access to or copies of relevant statements necessary for settlement with the Company, including Zong statements and those of all participating Mobile Carriers. Zong will pay Company’s revenue share to the Company by bank transfer or check. All bank transfer fees shall be borne by the Company. If Company’s revenue share for a particular month is less than one thousand dollars (\$1,000.00), then that amount will be carried over to the following month’s revenue share payment.

### **3.4 Conditions to Payment.**

**3.4.1** Company acknowledges and agrees that Zong’s obligation to remit amounts to Company is subject to receipt of Outpayments from the applicable Mobile Carriers.

**3.4.2** Notwithstanding any information contained in Outpayment Tables or any information regarding SMS transmission costs otherwise provided to Company, Company acknowledges and agrees that: (i) Mobile Carriers may change Outpayment calculations and/or SMS transmission fees at any time and such changes may reduce amounts payable to Company under this Agreement; and (ii) Zong shall not be liable to Company for any reduction in amounts payable to Company by virtue of any action taken by Mobile Carriers. Zong shall provide notice of any such Mobile Carrier actions as soon as reasonable practical by posting changes to Outpayment Tables, by separate notice, or both.

**3.4.3** Zong reserves the right to change the basis for calculating Zong Fees, provided that it notifies Company at least fifteen (15) days in advance of any such change.

**3.4.4** Company acknowledges that Mobile Carriers and Zong do not bear any credit risk for transactions through the Zong WPS. Accordingly, any charge backs issued to Zong by Mobile Carriers for non-payment by Customers or otherwise, and any refunds paid by Zong to Customers (collectively, “**Charge Backs**”) shall be Company’s responsibility. Company acknowledges that Charge Backs may occur over one year from the original Company Product transaction. The amount of the Charge Backs received in a particular month will be deducted from amounts due Company for such month, or if this Agreement has terminated, Company will reimburse Zong for the amount of such Charge Backs within thirty (30) days following receipt of Zong’s invoice for the same, notwithstanding expiration or termination of this Agreement. Company’s obligation to remit such amounts to Zong shall survive expiration or termination of this Agreement.

**3.4.5** If Company disputes any payment made under this Agreement, Company must notify Zong in writing within thirty (30) days after receipt of such payment or Company waives any claim relating to such payment. Payment shall be calculated solely based on records maintained by Zong and from Mobile Carriers.

**3.4.6** If Company violates any applicable law, rule or regulation, or if a regulatory body or a Mobile Carrier suspends or blocks the transfer of Outpayments because of alleged Company conduct, Zong reserves the right to immediately suspend Company’s Account and/or payments due hereunder, in its sole discretion, in addition to any other remedies available to it. ZONG RESERVES THE RIGHT TO OFFSET AGAINST AMOUNTS DUE TO COMPANY ANY AMOUNT DUE TO ZONG UNDER THIS AGREEMENT, INCLUDING BUT NOT

LIMITED TO REIMBURSEMENTS OF CHARGE BACKS OR COSTS OR DAMAGES SUFFERED BECAUSE OF THE NON-COMPLIANCE BY COMPANY WITH APPLICABLE LAWS OR WITH THIS AGREEMENT.

**3.4.7** Company acknowledges and agrees that Zong shall not have any liability for fraudulent transactions by Customers and that Company is solely responsible for any Charge Backs arising from such Customer conduct.

**3.5 Audit.** Zong shall keep accurate and complete books and records relating to the performance of its obligations under this Agreement and any revenue generated and/or collected by it under this Agreement. Company, at its expense, and upon at least ten (10) days' advance written notice to Zong, shall have the right throughout the Term of this Agreement and for up to one (1) year after the end of the Term to examine or audit the books and records of Zong relating to revenues generated under this Agreement, at Zong's offices during normal business hours, in order to verify the figures reported in any report and the amounts owed to Company under this Agreement. In the event any such audit reveals an underpayment of any amounts due under this Agreement, Company shall be entitled to prompt payment of all amounts then due. In the event any audit shall reveal an underpayment of 5% or more of the amounts due for any calendar month, then Zong will reimburse Company the reasonable cost of such audit together with the underpayment.

**3.6 Taxes.** Transactions occur in various countries, each with different tax laws. Zong will collect payments from the Mobile Carriers net of applicable taxes. All amounts remitted by Zong to Company will be net of taxes. The Outpayment amounts by country and by Price Point on the Zong website are net of taxes. Except for taxes based on Zong's net income, Company shall be responsible for taxes, VAT charges, sales tax, customs duties, or similar taxes or imposts, withholding taxes, or similar charges arising out of amounts paid to Company under this Agreement.

#### **4. Company Performance.**

**4.1 License from Company.** Subject to the terms and conditions of this Agreement, Company hereby grants to Zong during the term of this Agreement, a non-exclusive, non-transferable, royalty-free, worldwide license under Company's Intellectual Property Rights (as defined in Section 5 below) (i) to use and reproduce the Hosted Content solely to perform Zong's obligations under this Agreement and (ii) to reproduce, distribute, publicly display, publicly perform, digitally perform and create derivative works of, the Hosted Content solely to perform its obligations under this Agreement. Company agrees that such license includes the right of Zong to maintain copies of Hosted Content and other data held within the Account following expiration or termination of this Agreement, whether as stored in system backup records or otherwise, but subject to Zong's confidentiality requirements with respect to such materials.

**4.2 Exclusive Appointment.** Company hereby appoints Zong as Company's exclusive provider of mobile phone based payment systems for Company Sites and on websites owned and/or operated by Company. During the term of this Agreement, Company shall not implement or promote any other third party mobile phone payment services.

**5. Proprietary rights.** The parties acknowledge and agree that, subject to the license grants contained in this agreement: (i) Zong and/or its applicable licensors retain all right, title, and interest in and to the method of delivery of the Zong WPS, the Guide and the information therein, all integration guides and materials, and all Intellectual Property Rights associated thereto. "**Intellectual Property Rights**" means all intangible, intellectual, proprietary and industrial property rights, wherever located, including, but not limited to, the following: (a) all trademarks, service marks, trade names and logos, including all registrations and applications therefore, including goodwill; (b) all copyrights, moral rights, and other rights in works of authorship including images, data and text, and all registration and applications therefore; (c) all patents and patents applications, and inventions (whether or not patentable); (d) all designs, ideas, information, know-how and trade secrets; and (e) all other rights covering intangible property recognized in any jurisdiction.

## 6. User Data; Privacy.

**6.1 User Data Collection, Use, and Ownership.** Customers who purchase through an iFrame may be asked to provide certain information which may be associated with other data maintained by Zong and service partners for the Zong WPS (the “*User Data*”). User Data collected by Zong shall be owned by Zong. During the Term of this Agreement, Zong shall use this data solely for such purpose and to fulfill Zong’s obligations hereunder. Except as stated above, user data collected by Company on Company Sites shall be owned by Company.

**6.2 Privacy Compliance.** Both parties agree to comply with all applicable local, state and federal laws and regulations including but not limited to CAN-SPAM and relevant consumer privacy protection laws and regulations.

## 7. Term and Termination.

**7.1 Term.** The term of this Agreement shall commence on the Effective Date and unless earlier terminated as provided herein, shall continue for eighteen months (18) months following the Effective Date (with the initial period referred to as the “*Initial Term*”). This Agreement shall automatically renew for successive one (1) year terms.

**7.2 Termination for Convenience.** Either party may terminate this Agreement for any reason or no reason upon thirty (30) days advance written notice to the other party.

**7.3 Termination for Breach.** Either party may terminate this Agreement upon fifteen (15) days’ written notice if it learns of any breach by the other party and such breach has not been cured within such fifteen (15)-day period. Notwithstanding the foregoing to the contrary, Zong may suspend Company’s use of the Zong WPS immediately and without notice in the event that Zong believes in its sole discretion that Company is not in compliance with the terms of this Agreement

**7.4 Effect of Termination.** Except as otherwise provided herein, upon expiration or earlier termination of this Agreement for any reason: (a) all licenses granted hereunder will immediately terminate; (b) Company shall remove and/or cause to be removed any iFrame code from the Company Sites and/or disable any code linking the Zong WPS to Company Sites; (c) upon written request, each party will return any and all copies of the other party’s Confidential Information in its possession or control to the other party, except that each party may maintain of copy of that Confidential Information necessary for tax or similar purposes; and (d) Zong may immediately terminate the Account and destroy any files, Hosted Content or other data identified with such Account, subject to retention of any Confidential Information or other information required by applicable law.

**7.5 Survival.** Provisions of this Agreement, which by their terms are to survive expiration or termination of this Agreement, as well as Sections 3.4, 3.6, 5, and 6 through 12, will survive the expiration or earlier termination of this Agreement.

## 8. Confidentiality.

**8.1 Definition.** “*Confidential Information*” includes without limitation, any and all proprietary information including but not limited to: (a) any and all technical and non-technical information, computer code and data, in any format, future and proposed technologies, business, products and services, development, design details and specifications, User Data, customer lists, sales reports, statistics, specifications, materials, guidelines and documentation, including this Agreement and its terms; and (b) any other information designated in writing by the disclosing party as “Confidential” or an equivalent designation. Confidential Information does not include (i) information that has become publicly known through no breach by the receiving party, (ii) information that has been independently developed by the receiving party without access to the disclosing party’s Confidential Information, as evidenced in writing; or (iii) information that was rightfully received by the receiving party from a third party that had no obligation to keep it confidential.

**8.2 Non-Use, Non-Disclosure and Ownership.** Each Party shall not use Confidential Information for any purpose other than the intended use set forth herein, and shall not disclose, disseminate or otherwise publish or communicate Confidential Information received hereunder (“*Recipient*”) to any person, firm, corporation or other third party without the prior written consent of the disclosing party (“*Discloser*”), except to employees, contractors, financial and legal advisors, and Affiliates who have a need to know, who have been informed of the Confidentiality obligations hereunder, and who have agreed in writing or are obligated as a matter of law, to maintain the Confidential Information in accordance with these Terms. The Recipient agrees to use the same degree of care that it uses to protect its own confidential information of a like nature from unauthorized disclosure, but in no event less than a reasonable degree of care. “*Affiliates*” shall mean foreign affiliates, a parent corporation, and majority-owned subsidiaries. These confidentiality restrictions will not apply; to Confidential Information required to be disclosed by Recipient by law by a governmental authority, by court order, discovery or administrative or quasi-administrative process, however, Recipient must provide notice to Discloser as soon as practicable of the disclosure demand and take all reasonable steps to limit disclosure of Discloser’s Confidential Information. The parties recognize and agree that nothing contained in this Agreement will be construed as granting any property right, by license or otherwise, to any Confidential Information of Discloser. Parties shall not, and shall not allow any party on its behalf to, copy, modify, reverse engineer, disassemble any Confidential Information. Parties further agree not to export or re-export (within the meaning of U.S. or other export control laws or regulations) any Confidential Information in any form. Parties agree that any violation or threatened violation of this Section will cause irreparable injury to the disclosing party, entitling the disclosing Party to seek injunctive relief in addition to all legal remedies.

## **9. Warranties.**

**9.1 Warranties by Zong.** Zong hereby represents and warrants to Company that Zong has all necessary rights to provide the Zong WPS.

**9.2 Warranties by Company.** Company hereby represents and warrants to Zong that: (a) Company owns or has acquired all right, title and interest in and to the Company Sites and Hosted Content necessary to grant the licenses set forth herein; (b) the Company Sites are free of any known computer viruses; and (c) the Company Sites, Hosted Content, and Company Products do not and will not: (i) infringe, violate, or misappropriate any third-party Intellectual Property Right; (ii) slander, defame, libel or invade the right of privacy, publicity or other property rights of any person; (iii) promote illegal activities, illicit drug use, or any matter or content that might be libelous, defamatory, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation or age; (iv) violate state or federal laws, including but not limited to privacy, consumer protection and data protection laws (e.g. COPPA), gambling, alcohol, and child pornography laws, or (v) operate in a manner that is otherwise harmful to any person or entity, or engage in deceptive practices.

**9.3 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKE ANY WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW EACH PARTY EXPRESSLY DISCLAIMS ANY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, ZONG DOES NOT WARRANT THAT THE ZONG WPS WILL BE UNINTERRUPTED OR ERROR-FREE.

## **10. Indemnity.**

**10.1 Indemnity by Company.** Company agrees to indemnify, defend and hold harmless Zong and its Affiliates and their respective officers, directors, employees, consultants and agents (collectively, “*Indemnified Parties*”) from any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys fees and costs) to the extent arising from (a) Company’s gross negligence or intentional breach of any representation or warranty made by Company under this Agreement; (b) Company’s breach of the confidentiality provision of this

Agreement; (c) the infringement by the Company Site, Hosted Content or Company Product of any Intellectual Property Right of any third party; or (d) Company's failure to comply with the restrictions set forth in Section 1.7.

**10.2 Conditions for Indemnification.** An Indemnified Party entitled to indemnification under this Agreement may tender a claim to Company by notifying Company of the claim promptly after first receiving written notice of the claim, providing information in its possession relating to the claim, and reasonably cooperating, at Company's expense, with Company's efforts to defend the claim. Failure to promptly notify Company after receiving notice of a claim shall not relieve the Company of its indemnification obligations hereunder provided any delay in notifying Company does not materially prejudice Company's rights to defend the claim. Company shall promptly assume the defense of the claim at its own expense, and will pay all costs associated with the defense of the claim, including attorneys' fees and the amount of any settlement reached or final judgment awarded against the Indemnified Party. The Indemnifying Party will have full control over such defense, including any settlement discussions or agreement, provided that Company shall not settle any claim without the prior written consent of the applicable Indemnified Parties where such settlement includes an admission of liability of the Indemnified Parties or imposes any obligation on the Indemnified Parties.

**11. Limitation of Liability.** EXCEPT FOR EITHER PARTY'S LIABILITY FOR BREACH OF THE CONFIDENTIALITY PROVISIONS HEREIN, OR FOR THE INDEMNIFICATION OBLIGATIONS OF COMPANY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EXCEPT FOR EITHER PARTY'S LIABILITY UNDER SECTIONS 8 AND 10, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY AMOUNT GREATER THAN THE TOTAL OF ALL AMOUNTS PAID AND PAYABLE TO THE OTHER PARTY HEREUNDER.

## **12. General**

**12.2 Assignment.** Neither party may assign or delegate its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of the other party; provided, however, that Zong may assign or transfer this Agreement, whether by operation of law or otherwise, without Company's consent pursuant to a merger or other corporate reorganization or the sale or transfer substantially all of the assets to which this Agreement relates. Any attempted assignment in violation of this Section will be void and without effect. Subject to the foregoing, this Agreement will benefit and bind the parties' successors and permitted assigns.

**12.2 Joint Marketing Activities.** Company and Zong may jointly prepare any and all co-marketing activities and press releases regarding this Agreement and the relationship between the parties. Co-marketing activities will include the joint rights to display Company and Zong marks on marketing materials and websites. Each party retains the right to have final approval for each and all co-marketing activities and press releases created, written or drafted by the other party making reference to or disclosing any or all activities arising out of or related to this Agreement.

**12.3 Jurisdiction, Venue and Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, excluding its conflicts of law rules and notwithstanding the actual residence of the parties. The parties hereby agree that all lawsuits arising out of or related to this Agreement will be brought in the state or federal courts located in Santa Clara County, California, and each party hereby submits itself to the exclusive jurisdiction and venue of such courts for such purpose. Notwithstanding the above, Zong shall have the option to refer collection matters to any court or tribunal in any jurisdiction in which Company does business. The parties agree that the United Nations Convention on the International Sale of Goods will not apply to this Agreement. Company consents to service of process by notice in compliance with Section 12.4. As an express condition of this Agreement, Company agrees that any judgment

against it granted in the state or federal courts in the United States shall constitute a stipulated judgment in any action filed in any other jurisdiction.

**12.4 Notice.** Any notices required or permitted hereunder shall be given to the appropriate party at the address set forth in the first paragraph of this Agreement or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by facsimile, upon confirmation of receipt; if sent by electronic mail, upon confirmation of receipt; if sent by certified or registered mail, postage prepaid, five days after the date of mailing; or if sent by overnight courier service, on the next business day after the date of sending. A copy of notices to Zong shall be sent to:

Zong  
c/o Echovox, Inc.  
116 Hamilton Ave  
Palo Alto, CA 94301

**12.5 No Agency.** The parties understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither party (nor any agent or employee of that party) is the representative of the other party for any purpose and neither party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

**12.6 Force Majeure.** Any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party including, but not limited to, acts of God, acts of civil or military authority, fires, floods, earthquakes, environmental conditions, riots, wars, sabotage, strikes or labor disputes, failure of power, theft, failure of telecommunications lines or compliance with any law, regulation, or order (whether valid or invalid) of any governmental body. The performance of each party's obligations under this Agreement (except for payment obligations) shall be on a commercially reasonable efforts basis.

**12.7 Severability.** In the event that any of the provisions of this Agreement are held to be unenforceable, the remaining portions of the Agreement will remain in full force and effect.

**12.8 Expenses.** Each party will pay its own expenses and costs incurred in the negotiation, execution of, and fulfillment of such party's obligations under this Agreement, except as may otherwise be set forth herein.

**12.9 Subcontractors.** Zong may subcontract portions of its obligations under this Agreement to one or more third party providers at its sole discretion, including but not limited to Zong affiliated companies, provided that Zong will remain responsible for its obligations under this Agreement to the extent not performed as required. Notwithstanding any other provision of this Agreement, neither Zong nor any of its related companies shall have any responsibility or liability of any kind for any acts or omissions of Mobile Carriers or any third parties.

**12.10 Headings.** Heading and captions are for convenience only and are not to be used in the interpretation of this Agreement.

**12.11 Third Party Beneficiaries.** Each of Zong's Affiliates provided any services related to this Agreement are express and intended third party beneficiaries of this Agreement and may enforce any of its terms and exercise any of the rights to the same extent as Zong.

**12.12 Entire Agreement.** This Agreement and the attached exhibits constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersede all prior understandings and agreements relating to such subject matter. Any waiver, modification, or amendment of any

provision of this Agreement shall be effective only if in writing and signed by the parties. The provisions of this Agreement shall prevail over any conflicting provisions in a purchase order, acceptance notice or other document.

## **EXHIBIT A**

### **SERVICE LEVEL AGREEMENT**

#### **SERVICE LEVEL**

- Up-time  $\geq 99\%$
- 24 hours a day, 365 days a year monitoring
- Planned outages not exceeding 5 hours
- 24/7 Support hotline to Company
- Regular updates of device compliance & support (at least once monthly)

#### **SUPPORT AND MAINTENANCE**

Zong provides telephone support as well as support via e-mail. Zong will provide Company with a telephone number and e-mail address for reporting faults. Only fault reports from authorized Company's personnel will be admitted. Each fault will be categorized according to the following Severity Levels:

- Severity 1: System is completely down or severely hindered; there is no alternative solution.
- Severity 2: System performance is hindered; however, the system is still able to function either with or without an alternative work-around.
- Severity 3: System performance is not hindered, but requires a slight modification or change (such as configuration set change request.)
- Severity 4: Technical Questions

Zong will respond to each fault reported as quickly as possible and Zong commits to respond to each Severity Level according to the following time frames:

Severity Level	Working Hours Response Time	Non-Working Hours Response Time
1	30 minutes	120 minutes
2	120 minutes	180 minutes
3	24 hours	24 hours from next working day
4	48 hours	48 hours from next working day

“Working Hours” are defined as 8am to 5pm Pacific time Monday through Friday, excluding U.S. Federal Holidays. Non-working Hours are defined as all hours other than Working Hours.

#### **FRONT LINE END USER SUPPORT**

Zong offers a front line End User support, which includes:

- Use of toll free and/or national rate numbers accessible to all Company End Users in all territories where Carrier billing is provided at 888-502-6491.
- Business hours support of the front line for North America.
- E-mail support form accessible to all End Users worldwide. Any e-mail submitted is responded to within latest one working day.
- Frontline support in seven major languages, English, French, German, Spanish, Portuguese, Norwegian and Swedish.
- Initial call handling and resolution, including but not limited to:
  - Helping users with difficulties accessing downloading content.
  - Processing refunds, subject to agreement and guidelines to be established with Company customer care.