This Professional Services Agreement applies to Enterprise customers only, and specifically excludes all customers contracting under 'self-service' programs (e.g. AppDirect AppStore and AppDirect Starter AppStore) or 'trial' customers. Enterprise customers have a written order form tying back to these terms that is executed by AppDirect, Inc. and the contracting party.

This Professional Services Agreement is made by and between AppDirect, Inc. and the contracting entity identified in a written Order Form signed by both Parties ("*Company*") as of the date of the last signature therein (the "*Effective Date*"). Various capitalized terms are set forth on <u>Exhibit A</u> below.

1. Professional Services

- 1.1. <u>Professional Services</u>. All Professional Services to be provided by AppDirect to Company under this PSA shall be mutually agreed upon and documented in Statements of Work ("**SOW**") entered into from time to time by the parties.
- 1.2. Deliverables. AppDirect shall complete the Professional Services under each SOW in accordance with the Deliverables schedule set forth therein. Upon completion of each Deliverable (or sets of Deliverables, where appropriate), AppDirect shall provide a notice of delivery to Company ("Delivery Notice"). Company shall evaluate and test the Deliverable to determine if it conforms in all material respects with the Specifications set forth in the SOW. No later than fifteen (15) days after receipt of the Delivery Notice, Company shall provide AppDirect with either (i) written confirmation of acceptance or (ii) a written statement of errors ("Statement of Errors"). If provided, a Statement of Errors shall include at minimum a listing of errors to be corrected and a description of the errors in sufficient detail for AppDirect to understand the nature of the errors in order to duplicate and remediate the errors. If Company provides a Statement of Errors, AppDirect shall promptly correct (at its own expense) the errors sufficiently identified and return the corrected Deliverable to Company for retesting. Company shall, within fifteen (15) days of such delivery, provide AppDirect with a Statement of Errors, if any. If Company does not deliver a Statement of Errors within any applicable fifteen (15) day period, the Deliverable shall be deemed accepted. If, after AppDirect's second submission to Company, a Deliverable fails to conform in all material respects with the Specifications, the Company may either, as its sole and exclusive remedy: (i) again reject the Deliverable and return it to AppDirect for further correction and resubmission in accordance with the process described above; or (ii) terminate the relevant SOW. Company shall provide information, materials or assistance to enable AppDirect to perform its obligations under an SOW ("Company Obligations") as set forth in that SOW. AppDirect shall not be responsible for any failure to perform, or delay in performing the Professional Services to the extent caused by any failure of Company to perform the Company Obligations. If Company delays in or fails to fulfill a Company Obligation, any target date dependent on such Company Obligation shall be extended by an amount of time equal to the delay.
- 1.3. <u>Changes</u>. The parties recognize and acknowledge that an SOW may need to be revised as the work described therein progresses. The parties shall cooperate and work in good faith to adapt any such revisions. Either Party may submit to the other Party proposed changes,

modifications, alterations or other adjustments to the SOW ("Change Request"). Upon the receipt of any Change Request, the receiving Party will within fourteen (14) days agree to such Change Request or provide written comments to requesting Party. The parties will negotiate in good faith regarding the proposed changes. All Change Requests must be signed by an authorized representative of both parties to be effective. Each fully executed Change Request shall be deemed incorporated by reference into the SOW that it changes.

2. Company Responsibilities

- 2.1. <u>Access</u>: Where applicable, Company shall, at its own expense, provide AppDirect and its personnel with access to Company's facilities, computer equipment (including remote access), subcontractor's systems, and any other services, personnel, information, tools (including licenses) or materials that may be reasonably required for AppDirect to perform under this PSA.
- 2.2. <u>Cooperation</u>: In order to enable AppDirect to provide Professional Services in a timely manner, Company must cooperate fully and in a timely manner with AppDirect as reasonably requested by AppDirect, including (i) providing AppDirect with accurate and detailed information, and (ii) conducting any diagnostic and test activities.
- 2.3. <u>Dedicated Staff</u>: During the term of each SOW, Company shall designate and make available to AppDirect, as reasonably necessary, (i) an appropriately qualified technical lead employed by Company, and (ii) an appropriately qualified program manager; each of which shall be the contact persons at Company under this PSA and the relevant SOW, in charge of all tasks and responsibilities that are typically the responsibility of persons occupying such positions.

3. Ownership

- 3.1. <u>Designation</u>. In each SOW, the parties shall indicate a Deliverable owned by AppDirect by labeling it "*AppDirect-Owned Deliverable*" and a Deliverable owned by Company by labeling it "*Company-Owned Deliverable*". If the parties fail to indicate ownership of a Deliverable in an SOW, the parties agree that it shall be deemed an AppDirect-Owned Deliverable.
- 3.2. <u>AppDirect</u>. AppDirect owns and shall retain, all right, title and interest in and to the AppDirect-Owned Deliverables and all Intellectual Property Rights contained therein.
- 3.3. <u>Company</u>. Company owns and shall retain, all right, title and interest in and to the Company-Owned Deliverables and all Intellectual Property Rights therein.
- 3.4. <u>Background IP</u>. Each party (alone or together with its licensors, or Affiliates or subcontractors, as applicable) owns all rights, titles and interests worldwide, including without limitation all Intellectual Property Rights, in and to its own Background IP.
- 3.5. <u>No Implied Licenses</u>: All rights not granted by AppDirect or Company (as applicable) are expressly reserved. Except as expressly stated herein, nothing in this PSA shall confer to either party any license or right of ownership in material owned by the other party, whether by implication, estoppel, or otherwise.

4. Payment, Fees and Taxes

- 4.1. <u>Fees</u>: In consideration of the provision of Professional Services under this PSA, Company shall pay to AppDirect all Fees set forth in each SOW. Fees exclude any and all applicable Taxes, which shall be paid by Company in addition to the Fees.
- 4.2. <u>Payment Terms</u>: Unless otherwise expressly agreed in writing as part of an SOW:

- a. All Fees shall be in U.S. dollars (USD);
- b. AppDirect shall invoice Company as provided on the SOW;
- c. Company shall pay all amounts due within thirty (30) days of the date of AppDirect's invoice by way of electronic funds to the account number designated in writing by AppDirect;
- d. Each Party shall be responsible for payment of its own employment/payroll taxes; and
- e. Subject to Section 4.4 below, payment obligations hereunder are not subject to any set-off or withholding rights whatsoever, any and all of which are hereby expressly waived by Company.
- 4.3. <u>Late Payments</u>: Except for Disputed Amounts (defined below), any failure to make a payment of any Fees or Taxes in strict conformity with the requirements of this *Section 4* entitles AppDirect (in addition to all other rights and remedies available to it) to: (i) terminate the relevant SOW and/or this PSA for breach in accordance with *Section 5.2*, or (ii) suspend, in whole or in part, the provision of any or all Professional Services until such payment is received. Additionally, AppDirect shall have the right to assess and Company shall pay a charge, compounded monthly, of the lesser of (a) 1.5% per month or (b) the highest amount allowed by law on all past due amounts (excluding Disputed Amounts). Furthermore, upon any such failure all outstanding amounts shall become due and payable without further delay.
- 4.4. <u>Billing Disputes</u>: If Company in good faith disputes any portion of an AppDirect invoice, Company will advise AppDirect of its intention to withhold payment of such disputed portion by providing a dispute notice to AppDirect with written documentation identifying and substantiating the disputed amount ("*Disputed Amount*") within fifteen (15) days from receipt of the applicable invoice. If Company does not report or does not provide such substantiating documentation within such period, Company shall be deemed to have waived its right to dispute any portion of that invoice. AppDirect and Company agree to use their respective reasonable efforts to resolve Disputed Amounts within ten (10) days after AppDirect receives the aforementioned written notice from Company. To the extent Company abandons a dispute, Company shall immediately pay all Disputed Amounts, including interest from the invoice due date, if applicable. Any Disputed Amounts resolved in favour of Company shall be credited to Company's account on the next invoice following resolution of the dispute. Any Disputed Amounts determined to be payable to AppDirect shall be due within ten (10) days of the resolution of the dispute.
- 4.5. <u>Taxes:</u> If a payment by Company is subject to any withholding, excise, sales, value added, or any other taxes in accordance with applicable laws, Company shall be liable for all such taxes. As applicable, Company shall increase the Fees payable to AppDirect by an amount sufficient to fully offset the impact of such withholding tax or other taxes, such that AppDirect will receive the full amounts due under this PSA. Company agrees to use their best efforts to determine whether the withholding tax can be reduced or eliminated under an applicable tax treaty and AppDirect agrees to act in good faith to provide documentation necessary to evidence qualification under any such tax treaty. Company shall remit any such withholding to the relevant authority on a timely basis and provide to AppDirect documentation to evidence payment of such withholding taxes.

5. Term and Termination

- 5.1. <u>Term</u>: This PSA shall become effective on the Effective Date, and shall remain in full force and effect until all Professional Services hereunder or under any SOW or Order Form have expired or have been otherwise terminated in accordance with the terms of this PSA.
- 5.2. <u>Termination</u>: Either party may terminate this PSA (i) if the other party is in breach or default of any material obligation under this PSA, and such breach or default remains uncured thirty (30) days after receipt by the breaching party of a written notice from the non-breaching party informing of such breach or default, including a description and the details thereof, (ii) if the other party files for a voluntary petition of bankruptcy in any jurisdiction, is declared insolvent or bankrupt by a court of any competent jurisdiction, makes an assignment for the benefit of creditors, or is unable to pay its invoices as they mature, or (iii) as otherwise expressly permitted under this PSA. The termination of this PSA shall be without prejudice to any other rights and remedies available hereunder, at law or in equity.

5.3. Effect of Termination:

- a. <u>SOW</u>: Unless otherwise expressly stated in an SOW and subject to other applicable terms set forth in this PSA, upon any termination or expiration of an SOW:
 - all Professional Services rendered by AppDirect under such SOW shall immediately terminate; and
 - ii. Company shall pay to AppDirect all outstanding Fees and other amounts incurred in relation to such SOW within thirty (30) days of the expiration or the termination date thereof.
- b. <u>PSA</u>: Subject to other applicable terms set forth in this PSA, upon any termination or expiration of this PSA:
 - i. all SOWs and Professional Services rendered by AppDirect under this PSA shall immediately terminate;
 - ii. Company shall pay to AppDirect all outstanding Fees and other amounts incurred in relation to this PSA and any SOW within thirty (30) days of the termination or expiration date.

6. Confidentiality

- 6.1. <u>Confidential Information</u>: "Confidential Information" means: (i) information marked, designated or otherwise identified in writing by the Discloser as proprietary or confidential, (ii) information that, under the circumstances surrounding its disclosure or by reason of its nature, ought in good faith to be treated as proprietary or confidential by a reasonable Person, and (iii) any information prepared by Recipient that contains, reflects or is based upon, any Discloser's Confidential Information. Notwithstanding the foregoing, Confidential Information excludes (a) information that is or becomes in public through no fault of Recipient or its Authorized Recipients, (b) information that Recipient can prove with documented evidence was already known to Recipient at the time of its disclosure, (c) information that was obtained from a third party without violation of any confidentiality obligations; and (d) information that Recipient can prove was/is independently developed by Recipient, without use of Discloser's Confidential Information.
- 6.2. <u>Protection</u>: Recipient shall: (i) only use the Confidential Information to exercise its rights under this PSA, and always as part of its business relationship with Discloser; (ii) use the same degree of care to prevent unauthorized access and use of Discloser's Confidential Information

as it does for its own confidential information of a similar nature, but in any event not less than reasonable care; (iii) only disclose Confidential Information only to Authorized Recipients on a need-to-know basis, provided such Authorized Recipients are subject to confidentiality obligations at least as restrictive as this *Section 6*.

- 6.3. <u>Legal Disclosure</u>: If Recipient becomes legally compelled to disclose any Discloser Confidential Information, Recipient shall (i) immediately notify in writing Discloser, allowing the latter to seek a protective and other appropriate remedy; and (ii) only disclose the portion of Discloser Confidential Information that Recipient is legally compelled to disclose, and make commercially reasonable efforts to obtain confidential treatment of such information.
- 6.4. <u>Return Of Information</u>: Upon Discloser's written request, Recipient shall promptly return (or at the Disclosing Party's option, destroy) all originals, copies, reproductions and summaries of Discloser's Confidential Information and certify in writing the return or destruction of the same; provided that copies may be retained solely for archival purposes pursuant to a party's document retention policies.
- 6.5. <u>Unauthorized Use</u>: Recipient shall notify in writing Discloser immediately upon discovery of any actual or threatened unauthorized use, disclosure, misuse or misappropriation of Discloser Confidential Information, including the details and the circumstances thereof. Recipient shall reasonably cooperate with Discloser to help Discloser correct the situation.
- 6.6. <u>Conflict and Survival</u>: In the event of conflicts or inconsistencies between this *Section 6* and the provisions of a non-disclosure agreement executed between the parties, as applicable, the provisions of this *Section 6* shall take precedence. This *Section 6* shall survive termination of this PSA for a period of three (3) years from the date of termination or expiration hereof.

7. Security, Compliance and Privacy

- 7.1. Compliance with Laws: Each party shall comply with all applicable laws and regulations, including without limitation those relating to data privacy and data protection, anti-bribery and anti-corruption such as the UK Bribery Act and the US Foreign Corrupt Practices Act. Each party and its employees and agents will not directly or indirectly make or offer payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of any individual or any official of any government (including a decision not to act) or inducing such a person to use his or her influence to affect any such act or decision in order to assist in obtaining, retaining, or directing any such business.
- 7.2. <u>Personal Data:</u> Each party shall treat Personal Data that it receives, collects, provides or processes as part of its obligations under this PSA in accordance with the Data Protection Addendum attached to the Subscription Services Agreement as Exhibit B, and applicable privacy and data protection law.
- 7.3. <u>Access to Premises</u>: If access to a party's premises is necessary, the visiting party and its agents, employees, contractors, invitees and representatives shall comply with all of such party's reasonable safety and security rules and policies.

8. Warranties

8.1. <u>AppDirect Warranty</u>: AppDirect warrants to Company that (i) the Professional Services shall be performed in a good workman like manner in accordance with normal industry

standards, (ii) the Deliverables shall conform in all material respects to the Specifications of the applicable SOW.

- 8.2. <u>Company Warranties</u>: Company warrants that it has obtained and/or will obtain all licences, permits, approvals, registrations, certifications and/or authorisations necessary to perform its obligations under this PSA.
- 8.3. No Other Warranties: Except for the express and limited warranties provided in *Section* 8.1 and 8.2 above, to the maximum extent permitted by applicable law: (i) all AppDirect Deliverables, Professional Services, Documentation, Confidential Information, and all other products or services provided directly or indirectly by AppDirect, its Affiliates or subcontractors under this PSA (including any and all Intellectual Property Rights related thereto, and in each case any and all components thereof) are furnished "as is" and "as available" without warranty, representation or condition of any kind, whether written, oral, express, implied, whether arising by equity, law, course of dealing or otherwise; and (ii) each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Neither AppDirect nor its Affiliates warrants that the AppDirect Deliverables, Professional Services or Documentation will be error free or run uninterrupted.

9. Limitation of Liability

- 9.1. <u>Limitation of Liability</u>: Except for (i) either party's (or its Affiliates') Intellectual Property claims against the other party, (ii) Company's payment obligations under this PSA and (iii) either party's breach of *Section 6*, to the maximum extent permitted by applicable law, in no event shall either party or its Affiliates be liable to the other party or any other person or entity for an amount that exceeds the sum of the Fees received by AppDirect from Company for Professional Services rendered under the applicable SOW (if the breach relates to an SOW hereto) or this PSA (if the breach relates to this PSA) during the six (6) months immediately preceding receipt of the notice advising the party of existence of such Claim.
- 9.2. <u>Indirect Damages Disclaimer</u>: Notwithstanding anything to the contrary, in no event shall either party be liable to the other party for any special, exemplary, indirect, incidental, consequential or punitive damages, including without limitation any damages for loss of profits, of projected savings or revenues, of opportunities, of goodwill or other similar economic prejudice, or loss or corruption of data, whether arising in contract, tort, or under any other legal theory whatsoever, even if such party has been advised of, knows or should know the possibility of such damages, or such damages have been reasonably foreseeable.
- 9.3. Exclusion of Certain Liabilities: Notwithstanding the foregoing, AppDirect shall have no liability whatsoever with regard to any claims that arise out of an action, omission or fault of Company, a Customer or an End User.
- 9.4. <u>Scope</u>. This *Section 9* shall apply notwithstanding any failure of essential purpose of any limited remedy and regardless of the legal or equitable theory on which claims are brought (contract, tort, including negligence, or otherwise). Multiple claims shall not expand the limitations set forth in this *Section 9*.

10. Indemnification

10.1. <u>Indemnification by AppDirect</u>: AppDirect shall defend and indemnify Company, its Affiliates and subcontractors (including its and their respective directors, officers, employees, agents and representatives) against any third-party claim alleging that the AppDirect Deliverables directly (i) infringe its trademarks, copyrights or patents issued in the United States or Canada, or (ii)

misappropriate its trade secrets. AppDirect shall pay the amount of any resulting adverse final judgment (or settlement to which AppDirect consents). This *Section 10.1* states the entire liability of AppDirect, and Company's exclusive remedy, with respect to any actual or alleged violation, infringement or misappropriation of any third-party Intellectual Property Rights by AppDirect.

- a. AppDirect's obligation under *Section 10.1* shall not apply to the extent that any claim is based on or results from: (i) any specifications, information, input, code, content or materials provided by or on behalf of Company, including Company's trademarks and Company Background IP, (ii) Company's use of the AppDirect Deliverables after AppDirect notifies Company to discontinue such use, (iii) any combination of any of the AppDirect Deliverables with a non-AppDirect service, system, network, hardware, product, software, equipment, data or process to the extent of such combination, (iv) any use of, or access to the AppDirect Deliverables that is or are not in compliance with this PSA or the SOW, and (v) any modification or alteration of the AppDirect Deliverables by any person other than AppDirect.
- b. If a claim occurs or in AppDirect's opinion is reasonably likely to occur, AppDirect may, at its expense but without obligation to do so, at its option (i) procure the right to continue to use the allegedly infringing item as permitted by this PSA, or (ii) modify or replace the item to make it non-infringing without substantially compromising its principal functions, or (iii) terminate this PSA upon written notice to Company and provide a prorated refund of any pre-paid unused Fees.
- 10.2. <u>Indemnification by Company</u>: Company shall defend and indemnify AppDirect, its Affiliates and Subcontractors (including its and their respective directors, officers, employees, agents and representatives) against any Customer, End User or third-party claim arising of or resulting from (i) Company Background IP, Company trademarks or any data provided by Company and/or (ii) Company's non-compliance with *Section 7.2*.
- 10.3. <u>Procedures:</u> Each indemnitor's indemnification obligation is conditioned on the indemnitee: (i) giving the indemnitor prompt written notice of any claim; (ii) permitting the indemnitor to solely control and direct the defense or settlement of such claim, provided that the indemnitor will not settle any claim in a manner that requires the indemnitee to admit liability or pay money without the indemnitee's prior written consent; and (iii) provide the indemnitor all reasonable assistance in connection with the defense or settlement of such claim, at the indemnitor's cost and expense. The indemnitee may hire independent legal counsel or other advisors at its own cost and expense.

11. Remedies, Governing Law and Venue

- 11.1. Remedies: Each party acknowledges and agrees that the other party may suffer immediate and irreparable harm as the result of breach of any of the nondisclosure, confidentiality and Intellectual Property protection provisions contained in this PSA, for which monetary or other possible damages may not be a sufficient and adequate remedy. Therefore, each party agrees the other party shall be entitled to seek injunctive and other equitable relief in the event of (i) an actual or threatened breach, violation, infringement or misappropriation of Intellectual Property Rights, and/or (ii) an actual or threatened breach or violation of the nondisclosure and confidentiality obligations contained herein, in all cases without the necessity of posting bond.
- 11.2. <u>Governing Law</u>: This PSA shall be governed, construed and enforced in accordance with the laws of the State of California, without regard to its conflict of laws principles that would otherwise cause the laws of another jurisdiction to apply. The 1980 United Nations Convention

on Contracts for the International Sale of Goods and its related instruments will not apply to this PSA. Each party hereby expressively waives its right to a jury trial of any claim based upon or arising out of this PSA or the subject matter hereof.

11.3. <u>Venue</u>: Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the Superior Court of San Francisco County and/or the United States District Court for the Northern District of California in connection with any dispute under the PSA or the enforcement of any right or obligation under the PSA.

12. Miscellaneous

- 12.1. <u>Notices</u>: All notices, authorizations, and requests given or made in connection with this PSA must be sent by registered mail, express courier, facsimile or electronic mail to each party as set forth below. The notices shall be deemed delivered on the date shown on the postal return receipt, or on the courier, facsimile or electronic mail confirmation of delivery. The notices to AppDirect shall be addressed to <u>legal@appdirect.com</u> and AppDirect, Inc., 650 California Street, 25th Floor, San Francisco, CA 94108, Attn: Legal Department. The notices to Company shall be addressed to the address reflected in the latest SOW.
- 12.2. <u>Independent Contractors</u>: Nothing contained in this PSA shall be construed as creating a joint venture, partnership, association or employment relationship between the parties, nor shall either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.
- 12.3. <u>Non-Solicit</u>. During the term of each SOW and for a period of one (1) year following the expiration or termination of such SOW, Company will not actively solicit the employment of AppDirect personnel or subcontractors involved directly with providing Professional Services. The foregoing shall not apply to a general solicitation.
- 12.4. <u>Collaboration</u>: Each party shall provide reasonable assistance to the other party, at the other party's expense, when needed in obtaining necessary permits, approvals, registrations and/or certifications.
- 12.5. Export Controls: The Deliverables and other technology made available under this PSA may be subject to export laws and regulations of the United States and other jurisdictions. Company agrees to comply with all such regulations applicable to Company, including obtaining any necessary import licenses. Each party represents that it is not named on any U.S. government denied-party list. Company shall not permit Customers or End Users to access or use any Deliverable in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. or foreign export law or regulation.
- 12.6. <u>Force Majeure</u>: Non-performance of either party shall be excused to the extent that performance is rendered reasonably impossible by a Force Majeure Event which is not in the reasonable control of a party, and is not caused by such party's negligence or wilful act. However, this *Section* shall not relieve Company from its payment obligations set forth in this PSA.
- 12.7. <u>Assignment</u>: Neither party may assign or otherwise transfer this PSA or any rights or obligations hereunder, in whole or in part, without the prior written consent of the other party, which shall not be unreasonably withheld. However, either party may assign or transfer this PSA in whole without the other party's consent (a) to an Affiliate, or (b) in connection with a merger, corporate reorganisation, acquisition, transfer, or sale of all or substantially all of its assets. Subject to the foregoing, this PSA shall bind and inure to the benefit of the parties, their

respective successors and permitted assigns. Any attempted assignment in breach of this Section 12.7 shall be void.

- 12.8. <u>Precedence of Terms</u>: Unless otherwise agreed in writing, in the event of any conflict or inconsistency between the SOW, this PSA, and/or its Exhibits, such conflict or inconsistency shall be resolved in the following order of priority: (i) SOW, (ii) Exhibits, (ii) this PSA.
- 12.9. Interpretation: The headings of sections and subsections in this PSA are used for convenience purposes only, and shall have no legal force or effect. Whenever used in this PSA: (i) the terms in plural include the singular, and vice versa, and (ii) the terms "includes", "including" and "such as", mean respectively "including without limitation", "includes without limitation" and "such as without limitation". A reference to a statute or a regulation, or a provision thereof, is a reference to such statute, regulation, or provision as it is in force as of the Effective Date, and as it may be amended, supplemented or re-enacted thereafter, and includes any subordinate regulation and legislation. Unless expressly agreed to in writing, the terms and conditions of any purchase or sales order shall not affect the effect and the interpretation of this PSA, and in case of any conflicting terms, the terms and conditions of this PSA shall prevail. Unless expressly provided otherwise, all operation hours are based on the Pacific Time Zone.
- 12.10. <u>Waiver</u>: The failure of either party to fully enforce the performance by the other party of any provision shall not affect the right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof on any occasion be taken or held to be a waiver of the provision itself.
- 12.11. <u>Severability</u>: If any provision of this PSA is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law. Nonetheless, such provision shall continue to apply in full force and effect in all other jurisdictions, as the case may be. Moreover, the remaining provisions of this PSA shall remain in full force and effect.
- 12.12. <u>Survival</u>: Notwithstanding any other provision of this PSA, the provisions which by their nature are intended to survive the termination of this PSA shall survive termination of this PSA and any permitted assignment of this PSA. Without restricting the generality of the foregoing, but for further clarity, the following sections shall survive the termination or the expiration hereof (as the case may be): 3 (Ownership), 4 (Payment, Fees and Taxes), 5 (Term and Termination), 6 (Confidentiality), 9 (Limitation of Liability), 10 (Indemnification), 11 (Remedies, Governing Law and Venue), and 12 (Miscellaneous).
- 12.13. Entire Agreement: This PSA, including all SOWs, Exhibits, amendments and all other documents incorporated into this PSA by reference, constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede any other prior and contemporaneous communications and agreements. Any amendments to this PSA or to any document related thereto shall be made in writing and signed by duly authorized representatives of each party. This PSA may be executed in two or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.
- 12.14. <u>Language</u>: The parties have expressly requested that this PSA as well as all related documents be drafted in English.

EXHIBIT A

Definitions

- 1. "Affiliates" means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity.
- 2. "AppDirect" means AppDirect, Inc.
- 3. "Authorized Recipients" means the Recipient's Affiliates, subcontractors and its and their respective directors, officers, employees, agents, consultants, and legal or financial advisors.
- 4. "Background IP" means any Intellectual Property owned, created, developed, leased and/or licensed by a party prior to, outside of or independently from the PSA, including without limitation technology, tools, methods, algorithms, application programming interfaces, know-how and data.
- "Customer" means any customer of Company who uses any services provided by AppDirect.
- 6. "Deliverable/s" means the item to be delivered by one Party to the other Party as identified on any SOW.
- 7. "*Discloser*" means a party to this PSA who discloses Confidential Information under this PSA and/or such party's Affiliates, subcontractors and its and their respective directors, officers, employees, agents, consultants, and legal or financial advisors.
- 8. "**Documentation**" means the documentation created by AppDirect and delivered to Company to support the Company's use of and support of its Customer's or End User's use of services provided by AppDirect.
- 9. "End User" an end user of services provided by AppDirect.
- 10. "*Error*" means the failure of a Deliverable to operate in all material respects with the Specifications for that Deliverable.
- 11. "Fees" means the Fees set forth in an SOW to be paid by Company for the Professional Services.
- 12. "Force Majeure Event" means: (a) any action taken by a government or public authority of any kind, including but not limited to embargo, export or import restriction, rationing, quota, restriction or prohibition, (b) any civil commotion or disorder, riot, invasion, terrorist act, threat of or preparation of war, (c) accident, explosion, fire, storm, electric failure, flood, earthquake, subsidence, epidemic or natural physical disaster, (d) strike, labour unrest, (e) failure caused by the Internet, backbone peering point issues, or DNS issues; or (f) any other similar event.
- 13. "Intellectual Property" means all intellectual property, including without limitation all Canadian, U.S. and other jurisdictions elected by AppDirect (a) trademarks and service marks (whether or not registered), trade names and other designations of source of origin, together with all goodwill related to the foregoing, (b) patents and patent applications, (c) copyrights, whether or not registered, (d) trade secrets and confidential information, including without limitation know-how, technology methods,

ideas and inventions, (e) software and computer code (whether in source code, object code or any other form) and (f) all applications and registrations of any of the foregoing.

- 14. "Intellectual Property Rights" means all rights in and to the Intellectual Property.
- 15. "**Professional Services**" means any services rendered by AppDirect to Company hereunder pursuant to a Statement of Work but specifically excluding Support Services and any other services provided as part of any AppDirect products.
- 16. "*Recipient*" means the party that receives Confidential Information from the other party and such party's Authorized Recipients.
- 17. "Specifications" means the technical and other specifications for Deliverables as set forth in the applicable SOW.
- 18. "Statement of Work" or "SOW" means the mutually agreed upon document that outlines the Professional Services which AppDirect will perform for Company each of which shall reference this PSA.