SIPhony Terms of Service Agreement

This SIPhony Terms of Service Agreement (the "Agreement") is entered into by and between REDtone Telecommunications Sdn Bhd ("REDtone") and the entity agreeing to these terms ("Customer"). REDtone and Customer is hereinafter referred to individually as a "Party" and collectively as the "Parties". This Agreement is effective as of the date Customer complete the SIPhony Account registration process (the "Effective Date").

1. Definitions

(a) "Admin Account(s)" means the administrative account(s) provided to Customer by REDtone for the purpose of administering the SIPhony Services.

(b) "Admin Console" means the online tool provided by REDtone to Customer for use in reporting and certain other administration functions.

(c) "Administrators" mean the Customer-designated personnel who administer the SIPhony Services to End Users on Customer's behalf.

(d) "Brand Assets" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

(e) "Customer Data" means data provided, generated, transmitted or displayed via the SIPhony Services by Customer or End Users.

(f) "End Users" means the individual users whom Customer permits to use the SIPhony Services.

(g) "SIPhony Services" means the software and services provided by REDtone on siphony.redtone.com and other designated websites, including associated offline and mobile components.

(h) "Order Form" means the REDtone provided order form or page that Customer completes in signing up for the SIPhony Services.

(i) "Data Policy" means the REDtone Data Protection Policy located at http://www.redtone.com/pdpa/ or such other URL as REDtone may provide.

(j) "Selling Rate" means the actual prices for the subscription and usages of the SIPhony Services paid for by the Customer.

(k) "SLA" means the SIPhony Service Level Agreement located at http://www.redtone.com or such other URL as REDtone may provide.

2. Use of Service

(a) **Data Transfer**. As part of providing the SIPhony Services, REDtone may transfer, store and process Customer Data within REDtone facilities in Malaysia, Singapore, Hong Kong, Vietnam, United States and Japan. By using the SIPhony Services, Customer consents to this transfer, processing and storage of Customer Data.

(b) **Revising Rates**. REDtone may make commercially reasonable changes to the SIPhony Services Selling Rate by providing Customer with written notice at least seven days prior to the start of the new rates.

(c) **SIPhony Credit**. The SIPhony credit is used to pay for the subscriptions and usages of SIPhony Services. The SIPhony credit that Customer purchases will be credited to the Customer Account at the time of purchase and may be shared with multiple End User Accounts.

(d) **Inactive Customer Account**. Customer Account with no active subscription and no active usage of the SIPhony Services over 180 days is considered an Inactive Customer Account. Unused SIPhony credit balance in an Inactive Customer Account will expire and is not refundable.

(e) **Subscription**. Customers may have to purchase subscriptions to use certain SIPhony Services. Subject to availability, the subscription can be purchased with either monthly or annual renewal option.

(f) **Refund Policy**. All purchases are final and non-refundable. If you believe that REDtone has charged you in error, you must contact us within 30 days of such charge. No refunds will be given for any charges more than 30 days old. We reserve the right to issue refunds or credits at our sole discretion. An administrative fee will be levied on each refund to recover the processing cost and bank charges.

(g) **Modifications To Terms of Service**. REDtone may modify this Agreement, including SLA and Data Policy, at any time by posting a revised version on the REDtone.com website or by otherwise notifying you in accordance with Section 12(e) of the Agreement. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the SIPhony Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the redtone.com website regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement.

3. REDtone's Obligations

(a) **Provision of SIPhony Services**. SIPhony Services will be made available to paying Customers with the SLA, Data Policy, and standard support provided at no additional charge and/or premium support if purchased.

(b) **Facilities**. All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where SIPhony stores and processes its own information of a similar type. REDtone has implemented industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data and protect against unauthorized access to or use of Customer Data.

4. Customer Obligations

(a) **Acceptable Use of Service**. Customers agree not to, and not to allow Customer's End Users, to use the SIPhony Services:

(i) to violate, or encourage the violation of, the legal rights of others;

(ii) for any unlawful, invasive, infringing, defamatory or fraudulent purpose;

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(iii) to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes or other items of a destructive or deceptive nature;

(iv) to alter, interfere with or circumvent any aspect of the SIPhony Services;

(v) to test or reverse-engineer the SIPhony Services in order to find limitations, vulnerabilities or evade filtering capabilities;

(vi) to use the SIPhony Services in a manner not authorised by REDtone

(b) **Customer Administration.** Customer agrees that REDtone's responsibilities do not extend to the administration of the SIPhony Services for Customer and that REDtone is merely a data-processor. Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. Customer is responsible for:

(i) maintaining the confidentiality of the password and Admin Account(s);

(ii) designating those individuals who are authorized to access the Admin Account(s);

(iii) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement.

(c) **End User Consent.** Customer's Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to allow Customer's access, monitoring, use and disclosure of this data.

(d) **Customer's Equipment**. Customer is solely responsible for the purchase, setup, use and operation of any equipment not provided by REDtone that may be used in association with the SIPhony Services.

(e) **Unauthorized Use.** Customer will use commercially reasonable efforts to prevent unauthorized use of the SIPhony Services and agree to notify REDtone immediately of any unauthorized use. REDtone cannot and will not be liable for any loss or damage arising from Customer's failure to comply with this requirement. Customer will be solely responsible for any and all amounts charged to Customer's account regardless of prompt notification of unauthorized use or fraudulent use, except to the extent such unauthorized use is caused by REDtone's gross negligence.

5. Billing and Payment

(a) **Account Type.** By default, all Customers will start on prepaid accounts. Qualified Customers who are able to post the requested security payment deposit can be upgraded to the postpaid accounts. For prepaid accounts, payment must be made prior to usage of SIPhony Services. For postpaid accounts, all payment are due 30 days after the invoice date unless otherwise indicated on the invoice.

(b) **Online Payment**. Customer may make the payment online credit cards. REDtone will bill the credit card provided for the applicable charges. If the payment is declined by the credit card provider, REDtone may immediately disable or cancel Customer access to the affected SIPhony Services.

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(c) **Manual Payment**. Manual payment is due upon Customer's receipt of the REDtone SIPhony invoice and are considered delinquent thirty days after the date of the applicable invoice.

(d) **Delinquent Payments**. Delinquent payments may bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by REDtone in collecting such delinquent amounts except where such delinquent amounts are due to REDtone's billing inaccuracies.

(e) **Stored Payment Information**. Customer may elect to store their credit card information with REDtone and its payment gateway partner in order to use the REDtone auto top-up and auto renewal facilities. REDtone and its partner will make all reasonable efforts, according to standard industry practice, to secure the Customer's payment information.

(f) **Auto Top-up**. Customer may elect to set up and activate the automatic top-up facility. This facility will attempt to automatically top-up the SIPhony credits in the Customer Account using the Customer stored payment information whenever the credit balance falls below the predetermined value.

(g) **Auto-Renewal**. By default, all subscriptions of SIPhony Services are on automatic renewal. This facility will attempt to automatically renew the respective subscriptions in the Customer Account using the Customer stored payment information whenever the subscription date is near the expiry. Customer may choose to end the subscription for any purchased SIPhony Services via the Admin Console and it will cancel the automatic renewal for the respective subscription.

(h) **Change of Account Currency**. Subject to availability, Customer may request to change the currency of their SIPhony account. An administrative fee will be levied on each change request to recover the processing cost and bank charges.

(i) **Unclaimed Payment**. For payments received by REDtone with no identifiable customer information, REDtone will distribute this information to the sale and support team for purpose of tracing the customer. If the payment remains unclaimed after 180 days, it will be converted into expired SIPhony credit. Expired SIPhony credit is not refundable.

(j) **Taxes**. Customer is responsible for any Taxes and Customer will pay REDtone for the SIPhony Services without any reduction for Taxes. If REDtone is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer unless Customer provides REDtone with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to REDtone, Customer must provide REDtone with an official tax receipt or other appropriate documentation to support such payments.

(k) **Billing Dispute**. Customer will waive the rights to dispute any billed amount if the billing dispute is not submitted to REDtone in writing within 90 days from the billing date. REDtone will review the billing dispute and a written response with the final decision together with any required corrective measure will be provided to Customer within 30 days from the receipt of the billing dispute.

6. Account Suspension

(a) **Suspension for Non-Payment.** For Customers with delinquent payment, REDtone will automatically suspend Customer's use of the SIPhony Services. The duration of this suspension will be until Customer pays REDtone all outstanding charges. If Customer remains

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suspended for non-payment for more than sixty days, REDtone may terminate Customer account.

(b) **Suspension of End User Accounts.** If an End User is in violation of the Agreement, then REDtone may automatically suspend the applicable End User Account. The duration of any suspension by REDtone will be until the applicable End User has cured the breach which caused the suspension.

(c) **Emergency Security Issues.** Notwithstanding the foregoing, if there is an Emergency Security Issue, then REDtone may automatically suspend the offending End User Account. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If REDtone suspends an End User Account for any reason without prior notice to Customer, at Customer's request, REDtone will provide Customer the reason for the suspension as soon as is reasonably possible.

7. Representations, Warranties and Disclaimers

(a) **Representations and Warranties.** Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the SIPhony Services, as applicable. REDtone warrants that it will provide the SIPhony Services in accordance with the applicable SLA and Data Policy.

(b) **Disclaimers.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT. REDTONE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SIPHONY SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SIPHONY SERVICES ARE NOT CAPABLE OF PLACING EMERGENCY SERVICES CALLS.

8. Term and Termination

(a) **Agreement Term.** This Agreement will commence on the Effective Date and continue until Customer Account is terminated.

(b) **Termination for Breach.** Either party may suspend performance or terminate this Agreement if:

(i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice;

(ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days.

(c) **Effects of Termination.** If this Agreement terminates, then:

(i) the rights granted by one party to the other will cease immediately (except as set forth in this Section);

(ii) REDtone will provide Customer access to, and the ability to export the Customer Data for a commercially reasonable period of time at REDtone's then-current rates for the applicable services;

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(iii) after a commercially reasonable period of time, REDtone will delete Customer Data by removing pointers to it on REDtone's active servers and overwriting it over time; and

(iv) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.

(d) **Survival.** The obligations of the Parties set forth in Sections 1, 5, 8, 9, 10, 11, 12 shall survive any expiration or termination of this Agreement.

9. Confidentiality

(a) **Obligations.** Each party will protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and not disclose the Confidential Information, except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any affiliates' employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates' employees and agents in violation of this Section.

(b) **Exceptions.** Confidential Information does not include information that:

(i) the recipient of the Confidential Information already knew;

(ii) becomes public through no fault of the recipient;

(iii) was independently developed by the recipient;

(iv) was rightfully given to the recipient by another party.

(c) **Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: uses commercially reasonable efforts to notify the other party; and gives the other party the chance to challenge the disclosure.

10. Intellectual Property Rights; Brand Assets

(a) **Intellectual Property Rights.** "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and REDtone owns all Intellectual Property Rights in the SIPhony Services.

(b) **Display of Brand Assets.** REDtone may display those Customer Brand Assets authorized by Customer (such authorization is provided by Customer uploading its Brand Assets into the SIPhony Services) within designated areas of the Service Pages. Neither party may display or use the other party's Brand Assets beyond what is allowed in this Agreement without the other party's prior written consent.

(c) **Brand Assets Limitation.** Any use of a party's Brand Assets will inure to the benefit of the party holding Intellectual Property Rights in those Brand Assets. A party may revoke the other

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party's right to use its Brand Assets pursuant to this Agreement with written notice to the other party and a reasonable period to stop the use.

(d) **Publicity.** Subject to Section 10(c), Customer agrees that REDtone may include Customer's name or Brand Assets in a list of REDtone customers, online or in promotional materials. Customer also agrees that REDtone may verbally reference Customer as a customer of the SIPhony Services that are the subject of this Agreement.

(e) **Suggestions.** Partner agrees that REDtone shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Partner relating to the Service.

11. Indemnity and Limitation of Liability

(a) **Indemnity By Customer.** The Customer agrees to indemnify, defend, and hold harmless REDtone from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim regarding Customer Data or regarding Customer's use of the SIPhony Services in violation of this Agreement.

(b) **Equity Relief.** Customer acknowledges that any breach of its obligations with respect to REDtone's Intellectual Property rights may cause REDtone irreparable injury for which there are no adequate remedies at law, in which case REDtone shall be entitled to equitable relief in addition to all other remedies available to it.

(c) **Exclusion of Consequential and Related Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING ANY DAMAGES FOR LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFITS OR REVENUE, UNDER ANY THEORY OF LAW AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR SUCH DAMAGE.

(d) **Limitation on Amount of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5.

12. General

(a) **Assignment.** Neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, to any third party without the other party's prior written consent. This Agreement will bind and inure to the benefit of the parties' successors and permitted assignees.

(b) **Force Majeure.** If the performance of this Agreement or any obligation (other than payment obligations), is prevented or restricted by any condition beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such condition.

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(c) **Governing Law.** This Agreement will be governed by and construed according to the law of Malaysia. The state courts located in Malaysia shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts.

(d) **No Agency.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

(e) **Notices.** Unless specified otherwise herein, all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and must be delivered by email, text messages, personal delivery, facsimile or recognized overnight courier. Notices shall be deemed given upon delivery.

(f) **Severability.** If any provision of this Agreement is adjudged invalid or unenforceable, the remaining provisions will continue in full force and effect, and the parties agree to replace the affected provision with a valid provision that most closely approximates its intent and economic effect.

(g) **No Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

(h) **Entire Agreement.** This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

(i) **Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the order of precedence shall be: (1) the Order Form, (2) the Agreement, and (3) the terms located at any URL.

(j) **Counterparts.** The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

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