

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE APPOINTMENT OF AN  
INTERIM RECEIVER UNDER SECTION 47 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3

BETWEEN:

**SASKATCHEWAN TELECOMMUNICATIONS,**

APPLICANT

- and -

**WIRELESS AGE COMMUNICATIONS LTD.  
and  
WIRELESS SOURCE DISTRIBUTION LTD.,**

RESPONDENTS

**AFFIDAVIT OF MICHAEL ANDERSON**

I, MICHAEL ANDERSON, of the City of Regina, Saskatchewan, Chief Financial Officer, MAKE OATH AND SAY AS FOLLOWS, THAT:

1. I am the Chief Financial Officer of the Applicant, Saskatchewan Telecommunications ("SaskTel"), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be on information and belief and where so stated, I believe the same to be true.
2. I have reviewed the affidavit of Gary Hokkanen sworn on January 16, 2009 and the First Report of Interim Receiver and I swear this affidavit supplemental to my affidavit of January 8, 2009.
3. In my affidavit of January 8, 2009, I deposed that Wireless Age was a distributor for SaskTel pursuant to a Master Distributorship Agreement dated March 31, 2003 (the "Distributorship Agreement"). As the Distributorship Agreement contained some provisions that are commercially sensitive, it was not attached as an Exhibit to my previous affidavit. However,

since Wireless Age has applied to set aside the Interim Receivership Order granted by this Court on January 9, 2009, the express terms of the Distributorship Agreement have become particularly relevant to these proceedings and therefore a copy of the Distributorship Agreement is attached hereto as Exhibit "A".

4. SaskTel has completely lost confidence in Wireless Age and its ability to act as a distributor pursuant to the Distributorship Agreement. In particular, the following facts from the First Report of Interim Receiver, support SaskTel's conclusion that Wireless Age, if controlled by its former managers cannot continue as a distributor for SaskTel:

(a) All levels of management have indicated that inventory levels are of major concern – page 7.

(b) It would appear from our preliminary review of the books and records that approximately \$8,000,000 was taken in cash by WACI from WACL/Source as advances and/or management fees since April 30, 2007. ... Accordingly, between the increase in inter-company accounts receivable and management fees WACI has removed \$11,316,664 of funds from the companies since April 30, 2007. – Page 8 and Appendix A

(c) Both Wireless Age and Wireless Source are insolvent – Page 9

5. If the relief requested by Wireless Age in this application is granted, SaskTel will not permit Wireless Age to continue as a Distributor pursuant to the Distributorship Agreement. Without the revenues generated pursuant to the Distributorship Agreement, Wireless Age is not a viable business.

6. Express terms of the Distributorship Agreement include:

**Article 4 – Term**

4.1 Subject to the provisions of this Agreement, the initial term of this Agreement shall commence on March 31, 2003 and be effective for an initial term of one (1) year. Thereafter this Agreement shall renew automatically for successive one year terms unless either SASKTEL or Distributor shall give to the other written notice of their intention not to renew at least sixty (60) days prior to the expiry of the initial and any renewal term of this Agreement.

...

## **Article 6 – Duties**

6.1 Subject to the terms and conditions of this Agreement, the Distributor shall:

(a) maintain the Business Locations with such facilities as are necessary to maximize the marketing of the Services and operate the Business Locations for access by customers during industry standard hours of operation;

...

(d) devote adequate time, skill, and attention and use its organization and sales staff to market the Services in accordance with the terms and conditions of this Agreement and as SASKTEL may direct from time to time;

(e) represent SASKTEL in a professional and ethical manner including making commercially reasonable efforts at all times to give prompt, courteous, and efficient service to Subscribers and shall govern itself in all dealing with such Subscribers by the highest standards of honesty, integrity and fair dealing and shall do nothing which would tend to discredit, dishonour, reflect adversely upon or in any manner whatsoever injure the reputation of SASKTEL or of the Service and the quality image associated with SASKTEL and the Service;

...

## **Article 22 – Termination**

22.1 SASKTEL or the Distributor may terminate this Agreement without cause at any time upon giving the other thirty (30) days written notice of termination.

22.2 Notwithstanding anything to the contrary contained in this Agreement, nor any other provision of this Agreement, this Agreement may be terminated by SASKTEL prior to expiration of the term effective immediately upon happening of any one or more of the following:

(a) If the Distributor breaches any term, condition or Article of this Agreement, unless the Distributor remedies the breach within five (5) days written notice of breach by SASKTEL;

...

(g) the material impairment or deterioration of the reputation or the financial standing of the Distributor subsequent to the execution of this Agreement;

...

(i) if the Distributor becomes insolvent, is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any Act in force for insolvent persons or for the protection of debtors from creditors;

...

### **Article 23 – Rights and Obligations Upon Termination**

23.1 Termination of this Agreement by SASKTEL shall not deprive SASKTEL of any of its rights, remedies or actions against the Distributor for damages. In the event of termination, except as provided elsewhere in this Agreement, SASKTEL shall be discharged from and have no further obligations under this Agreement.

23.2 Upon termination or expiration of this Agreement:

(a) SaskTel shall pay to the Distributor, subject to the Articles relating to payment, any outstanding obligations of SASKTEL pursuant to this Agreement up to the effective date of termination or expiration;

...

(h) the Distributor shall have no claim to any indemnification, damages, or Compensation except for unpaid Compensation on orders for Services accepted by SASKTEL prior to the effective date of termination or expiration.

23.3 Upon expiration of this Agreement, Distributor shall not, for a period of six (6) months following such expiration market, sell or provide to any Subscriber any services or products, either by itself or on behalf of any party other than SASKTEL, in the Province of Saskatchewan, that are similar or equivalent to the Services or compete, in any way, with the Services. Upon termination of this Agreement by SASKTEL for cause or by Distributor without cause, Distributor shall not, for a period of nine (9) months following such termination, market, sell or provide to any Subscriber any services or products, either by itself or on behalf of any party other than SASKTEL, in the Province of Saskatchewan that are similar or equivalent to the Services or compete, in any way, with the Services. The obligations set forth in this Article 23.3 shall not apply where SASKTEL has terminated this Agreement without cause pursuant to Article 22.1 hereof nor where Distributor has terminated this Agreement with cause which is not termination by Distributor pursuant to Article 22.1 hereof.

23.4 Upon termination of this Agreement by SASKTEL without cause pursuant to Article 22.1, if Distributor's Compensation includes a residuals payment component, Distributor is then entitled to Compensation, if any, for that component as set out in the Appendices to this Agreement.

### **APPENDIX L**

3.8 Upon termination of the Agreement or this Appendix by SaskTel without cause or by the Distributor for cause, any residual payments Distributor is then entitled to pursuant to this Appendix shall continue for a period of six (6) months from the date of such termination.

7. It is SaskTel's position that Wireless Age has breached the Distributorship Agreement and that SaskTel is entitled to terminate the Distributorship Agreement pursuant to, *inter alia*, Article 22.2(a), (g) and/or (i). In the event of termination for cause, SaskTel has no further obligation to pay any amounts to Wireless Age other than compensation owing at the time of termination. Any such amounts would be far less than the amount that Wireless Age already owed to SaskTel pursuant to the Repayment Agreement and therefore, SaskTel would simply set off any such amounts against amounts owing to SaskTel and Wireless Age would not receive any further payments from SaskTel.

8. Alternatively, the term of the Distributorship runs from year to year with the current annual term ending on March 30, 2009. SaskTel is entitled to provide a notice to Wireless Age no later than January 29, 2009 that the Distributorship Agreement will not be renewed for a subsequent one year term. In such event, no further compensation is payable to Wireless Age except for compensation owing up to the date of expiration pursuant to Article 23.2.

9. In the further alternative, SaskTel can terminate the Distributorship Agreement without cause pursuant to Article 22.1. In such event, clause 3.8 of Appendix L entitles Wireless Age to receive payment for residuals for a period of six (6) months. Once again, these amounts would be far less than the amounts that Wireless Age owes to SaskTel pursuant to the Repayment Agreement and would be set off against such amounts.

10. If the Distributorship Agreement either expires or is terminated for cause, Wireless Age is prohibited from competing with SaskTel for a period of six or nine months in accordance with Article 23.3. As such, Wireless Age is not a viable business without the continuation of the Distributorship Agreement. For the reasons stated above, Wireless Age has completely lost the confidence of SaskTel with respect to its ability to carry out its obligations under the Distributorship Agreement. Under no circumstances will SaskTel continue with a relationship

with Wireless Age if its former management is successful in setting aside the Interim Receivership Order and regaining control of the business and the cash generated by the business.

11. I make this affidavit in support of the application by SaskTel for an order appointing an Interim Receiver in respect of Wireless Age and Wireless Source.

SWORN BEFORE ME at the City of Regina, )  
in the Province of Saskatchewan, this 20<sup>th</sup> )  
day of January, 2009. )



A Commissioner of Oaths in and for the  
Province of Saskatchewan.



**MICHAEL ANDERSON**

~~My commissioner expires: Jan 2011~~  
or Being a Solicitor.

This Affidavit was delivered by:

MacPHERSON LESLIE & TYERMAN LLP  
Barristers & Solicitors  
1500 – 1874 Scarth Street  
Regina, Saskatchewan S4P 4E9

whose address for service is same as above.  
Lawyer in charge of file: Conrad D. Hadubiak  
Telephone Number: (306) 347-8447  
Fax Number: (306) 352-5250



## DISTRIBUTORSHIP AGREEMENT

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THIS AGREEMENT made this 31 day of March, 2003

**BETWEEN:**

**SASKATCHEWAN TELECOMMUNICATIONS**  
(herein called "SASKTEL")

**AND:**

**Wireless Age Communications Ltd.**  
(herein called the "Distributor")

**WHEREAS:**

1. SASKTEL provides communication products and services within the Province of Saskatchewan and select other markets; and
2. The Distributor desires to obtain from SASKTEL and SASKTEL is prepared to grant to Distributor the non-exclusive right to market SASKTEL's communication products and services in conjunction with the marketing and selling by the Distributor of its or others' services and products.

**NOW THEREFORE WITNESSETH** that in consideration of the covenants and payments set forth in this Agreement SASKTEL and the Distributor mutually agree as follows:

### ARTICLE 1 - DEFINITIONS

For the purpose of this Agreement the following terms have the following meanings:

- (a) "Agreement" means the main body of this agreement, Appendix "A" and/or other Appendices as may be added from time to time by agreement of SaskTel and Distributor;
- (b) "Affiliate" shall have the meaning given to that term as defined in the Saskatchewan Business Corporation Act, revised Statutes of Saskatchewan, 1978, c.B-10, as amended from time to time;
- (c) "Services" means the SASKTEL communication products and services described in Appendix "A" and/or other Appendices to this Agreement from time to time;
- (d) "Subscriber" or "Customer" means any natural person, corporation, partnership, or other entity or association who orders and contracts for Services through the Distributor;

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- (e) "SASKTEL's Tariffs" mean SASKTEL's Tariffs including but not limited to, SASKTEL's Non-Tariffed Products and Services Schedule, as amended from time to time and subject, where required, to the approval of any regulator of SASKTEL;
- (f) "Business Location" means the locations from which the Distributor manages its operations and will market the Services.
- (g) "Compensation" shall mean the fee or amount payable by SASKTEL to the Distributor for a sale by Distributor of the Services to a Customer as particularly provided for in the Appendices to this Agreement;
- (h) "Marks" shall mean all trademarks, service marks, trade names and any other rights in SaskTel identity and any logo, symbol, coined word or combination of words used by SaskTel or any indication of the branding and brands of SaskTel. For greater certainty, "Mark" shall include the rights of SaskTel as a registered or licensed user of Marks of others";
- (i) "Distributor" includes "Dealer" or "dealer"; and
- (j) "Dealer's Territory" means the geographical boundaries within which Distributor is authorized to offer the Services for sale as identified in the Appendices to this Agreement.

### **ARTICLE 2 - APPOINTMENT AND GRANT OF RIGHTS**

- 2.1 SASKTEL grants to the Distributor the right to act as SASKTEL's representative from the Business Locations to solicit and obtain Subscriber orders for the Services upon the terms and conditions set forth in this Agreement. The Distributor agrees to solicit and obtain Subscriber orders for the Services for SASKTEL in conjunction with the Distributor's marketing and selling of its services and products. Sales of the Services from locations other than the Business Locations of Distributor as at the effective date of this Agreement shall require SASKTEL's prior written approval, which approval will not be unreasonably withheld.
- 2.2 SASKTEL may, from time to time during the term of this Agreement, add to or modify the Services or pricing thereof as permitted by SASKTEL's Tariffs or by its regulator. These additions, modifications or pricing changes shall be communicated in writing by SASKTEL to the Distributor.
- 2.3 The Distributor agrees to accept such appointment and certifies that, except as specifically provided herein, it is capable of performing all of its obligations under this Agreement without assistance from or identification with SASKTEL.

## DISTRIBUTORSHIP AGREEMENT

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### ARTICLE 3 - CONTRACT WITH OTHERS

- 3.1 Whether Distributor's relationship with SASKTEL is exclusive or not with respect to the Services is addressed in each Appendix to this Agreement. If an Appendix to this Agreement for a Service covered by this Agreement does not address Distributor's relationship with SASKTEL as being exclusive, then such relationship shall be presumed not to be exclusive and Distributor shall be free to promote, market and sell goods and services of other parties that compete with SASKTEL products and services.
- 3.2 It is agreed by the Distributor that the relationship created by this Agreement on the part of SASKTEL shall be non-exclusive and SASKTEL shall have an unrestricted right to market and sell the Services in such ways and through such means as it may from time to time deem desirable. SASKTEL maintains the right and is not precluded in any way from entering into agreements for the marketing and selling of the Services with other parties.
- 3.3 The Distributor may not appoint or engage in any fashion or manner subdistributors or subdealers or other agents or entities to market the Services without the prior written approval of SASKTEL, which approval may be withheld in SASKTEL's unfettered and absolute discretion.

### ARTICLE 4 - TERM

- 4.1 Subject to the provisions of this Agreement, the initial term of this Agreement shall commence on March 31, 2003 and be effective for an initial term of one (1) year. Thereafter this Agreement shall renew automatically for successive one year terms unless either SASKTEL or Distributor shall give to the other written notice of their intention not to renew at least sixty (60) days prior to the expiry of the initial or any renewal term of this Agreement.

### ARTICLE 5 - DUTIES OF SASKTEL

- 5.1 Subject to the terms and conditions in this Agreement, SASKTEL shall:
- (a) pay Compensation to the Distributor in respect of orders for Services processed by the Distributor and approved by SASKTEL during the term of this Agreement;

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- (b) provide the Distributor with reasonable supplies of promotional materials which, in SASKTEL's opinion, will assist the Distributor in marketing the Services;
  - (c) provide the Distributor with training regarding the Services for a mutually agreeable number of the Distributor's personnel to assist the Distributor in marketing the Services; and
  - (d) assign an individual who will act as SASKTEL channel management representative for inquiries from the Distributor's designated representative about the Services.
- 5.2 SASKTEL may have the right to deal directly with Subscribers in any matter regarding the Services.
- 5.3 SASKTEL shall conduct Subscriber satisfaction audits in order to observe and confirm levels of Subscriber satisfaction and to assist in determining whether the Distributor is meeting the standards of Subscriber service and other similar requirements established by SASKTEL from time to time. Other programs and processes to confirm levels of Subscriber satisfaction will be developed and implemented by SASKTEL from time to time. SASKTEL, in its sole discretion, may share and review the results of any Subscriber satisfaction audit with the Distributor.

### **ARTICLE 6 - DUTIES**

- 6.1 Subject to the terms and conditions in this Agreement, the Distributor shall:
- (a) maintain the Business Locations with such facilities as are necessary to maximize the marketing of the Services and operate the Business Locations for access by customers during industry standard hours of operation;
  - (b) retain qualified and competent personnel conversant in the specifications, features and advantages of the Services and to handle inquiries relating to the Services and process orders for the Services and performance duties under this Agreement with a reasonable degree of skill and diligence;
  - (c) ensure that training of personnel shall include instruction as to the proper use of, and restriction on the use of, information, confidential or otherwise, provided by SASKTEL;
  - (d) devote adequate time, skill, and attention and use its organization and sales staff to market the Services in accordance with the terms and conditions of this Agreement and as SASKTEL may direct from time to time;

## DISTRIBUTORSHIP AGREEMENT

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- (e) represent SASKTEL in a professional and ethical manner including making commercially reasonable efforts at all times to give prompt, courteous, and efficient service to Subscribers and shall govern itself in all dealings with such Subscribers by the highest standards of honesty, integrity and fair dealing and shall do nothing which would tend to discredit, dishonour, reflect adversely upon or in any manner whatsoever injure the reputation of SaskTel or of the Service and the quality image associated with SaskTel and the Service;
- (f) assign an individual who will act as the designated representative regarding the Services for the Distributor and who shall have the responsibility of handling Distributor employee Services inquiries, providing Distributor employee training ancillary to that provided by SASKTEL pursuant to section 6.1(c) above, and which shall include reporting promptly all Subscriber complaints;
- (g) not make any representation or warranty concerning the Services other than those issued in writing by SASKTEL;
- (h) not bind SASKTEL in respect of provision of the Services to Subscribers other than to the extent that SASKTEL will provide the Services to Subscribers subject to the availability of suitable equipment and facilities, and in accordance with SASKTEL's Tariffs;
- (i) understand and comply with the terms and conditions of SASKTEL's Tariffs applicable to the Services where required and comply with the provisions of SASKTEL's Dealer Manuals as amended from time to time and provided by SASKTEL to Distributor or made available to Distributor to access at SASKTEL's designated website;
- (j) use demonstration facilities, communication facilities such as SASKTEL High Speed Internet access service and/or any hardware provided by SASKTEL if any, solely for the purpose of marketing the Services and training the Subscriber;
- (k) offer the Services to the Subscriber, pursuant to the terms and conditions of any Services contract provided by SASKTEL and, when required, obtain execution of the Services contract by the Subscriber;
- (l) where necessary, train the Subscriber in the effective use of contracted Services;
- (m) meet with SASKTEL representatives at regular intervals or when required and deemed necessary by SASKTEL, to discuss its marketing activities. Additionally, the Distributor shall notify SASKTEL promptly of any problems which may affect the Distributor's ability to meet sales quotas of the Services established by SASKTEL from time to time;

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- (n) not market the Services covered by this Agreement outside the Dealer's Territory unless the Distributor has first received SASKTEL's written authorization;
- (o) meet the standards of Subscriber service and other similar requirements established by SASKTEL from time to time as have been communicated to Distributor by SASKTEL, which standards and other similar requirements shall be the same as those applied generally to other SASKTEL distributors of the Services;
- (p) ensure that each Service that it sells or distributes on SASKTEL's behalf pursuant to this Agreement that contains the software of another party is accompanied by the applicable End User License and/or Service Agreement in the form provided to Distributor from time to time;
- (q) where required by SASKTEL, use commercially reasonable efforts to enforce the terms of the End User License and Service Agreement with respect to a party who has purchased the Service from Distributor;
- (r) immediately notify SASKTEL of any infringement of SASKTEL's Marks or breach of SASKTEL's copyright in such Service to the extent Distributor becomes aware of such infringements. Additionally Distributor will cooperate with SASKTEL in any legal action to prevent or stop unauthorized use, reproduction or distribution of such Service;
- (s) use for its own business dealings only telecommunication voice and data services provided by SASKTEL and cellular and wireless services provided by SaskTel Mobility;
- (t) not sell, license or transfer the Services in any other manner to any party other than the intended retail end user of the Service;
- (u) display exterior and interior signage for the Services as deemed adequate by SASKTEL from time to time. All exterior signage referencing the Services, SASKTEL or its Marks is subject to SASKTEL's approval.

### ARTICLE 7 - PRICES AND TERMS

- 7.1 The Distributor shall quote only such prices and terms and conditions in respect of the Services as SASKTEL may from time to time designate in writing or as are provided in SASKTEL's Tariffs. SASKTEL shall have the absolute discretion to establish prices, charges, terms and conditions governing the provision of the Services by SASKTEL. The Distributor shall have no right, power or authority to make any contract or incur any obligation or liability which shall be binding upon SASKTEL or make any adjustment or settlement of complaints respecting the Services without the prior written consent of SASKTEL. The Distributor shall not offer or

## **DISTRIBUTORSHIP AGREEMENT**

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permit any form of discount or rebate in respect of the Services to a Subscriber of the Services including without limitation, any form of credit, discount or rebate based on the Compensation earned by Distributor pursuant to this Agreement, shall not gift the Services to anyone and shall not in any other manner directly or indirectly, in any circumstance, pay or compensate any person including a Subscriber for any charges that may be levied on such party or Subscriber by SASKTEL without the prior consent of SaskTel which may not be unreasonably withheld. Distributor shall in no event use the Services for its own purposes or distribute them to its Affiliates.

- 7.2 Distributor shall not make any representation or offer of any kind to any Subscriber of any credit , rebate, allowance or discount on terminal equipment Distributor sells that is conditional on the Subscriber purchasing the Services from SASKTEL without SASKTEL's prior written consent.

### **ARTICLE 8 - COMPENSATION**

- 8.1 Compensation shall be determined in accordance with Appendix "A" and/or the terms of other applicable Appendices to this Agreement from time to time. SASKTEL may, at its sole discretion, from time to time, during the term of this Agreement, modify the compensation structure. All such modifications shall be communicated to the Distributor in writing. Unless otherwise provided for in any Appendix to this Agreement, the Distributor shall not be entitled to receive any Compensation for Services provided by SASKTEL to any Subscriber other than those Services for which orders are received from the Distributor and approved by SASKTEL.
- 8.2 The Distributor acknowledges and agrees that SASKTEL is only obligated to pay and that the Distributor is only entitled to the payment of Compensation described as an initial commission or initial compensation one time in respect of any one Subscriber for any one Service.
- 8.3 Upon termination of this Agreement by the Distributor or SASKTEL without cause, the Distributor shall receive Compensation, if any, for existing Subscribers as set forth in the Appendices to this Agreement. In such event Article 23 hereof shall also apply.
- 8.4 Upon termination of this Agreement with cause or after expiration or when the term is not renewed, the Distributor shall not receive any Compensation and Article 23 of this Agreement shall apply.

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- 8.5 No Compensation shall be due the Distributor:
- (a) if the Subscriber fails, for any reason, to make payment for Services for any of the first three (3) months for which the Services are provided to the Subscriber;
  - (b) if for any reason SASKTEL is unable to provide the Services to the Subscriber; and
  - (c) for the marketing of the Services to itself or its Affiliates;

and if the Distributor has already received any Compensation, such amount will be charged and debited against Compensation due the Distributor in the future.

- 8.6 Compensation paid to the Distributor shall be repayable by Distributor to SASKTEL in the circumstances if any, specified in the Appendices to this Agreement.
- 8.7 No compensation shall be due to the Distributor if at such time such amounts would have been due to Distributor, Distributor's accounts with SASKTEL, it's parent Corporation or any affiliate of SASKTEL are not current and up to date as determined solely by SASKTEL.

### **ARTICLE 9 - INVOICING**

- 9.1 The method of invoicing and payment shall be as set forth in Appendix "A" and/or other Appendices to this Agreement from time to time.

### **ARTICLE 10 - MARKETING PRACTICES**

- 10.1 The Distributor shall maintain marketing practices and standards in respect of the Services that are, in SASKTEL's opinion, appropriate considering the high quality and reputation of the Services and SASKTEL. Without limiting the generality of the foregoing, the Distributor shall display and make available in the Business Locations promotional materials provided by SASKTEL.

### **ARTICLE 11- ADVERTISING AND PROMOTION**

- 11.1 In efforts to market the Services, the Distributor shall follow guidelines and standards provided by SASKTEL to Distributor from time to time.

## **DISTRIBUTORSHIP AGREEMENT**

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- 11.2 Effective upon the date of this Agreement Distributor consents to SASKTEL's use of Distributor's name in advertising and promotional campaigns relating to the Services without any further written approval of the Distributor being required including without limitation use of Distributor's name in any medium SASKTEL may use from time to time to communicate with its Customers such as SASKTEL's website.
- 11.3 Distributor shall not make any public statement or issue any press release or other publicity of any kind concerning the Services or the matters contemplated by this Agreement without the prior written consent of SASKTEL.

### **ARTICLE 12 - TRADE MARKS**

- 12.1 The Distributor shall not display or otherwise use any Mark or permit the same to be displayed or otherwise used in connection with any business conducted or controlled by the Distributor except as may be specified or approved in writing by SASKTEL. The Distributor agrees to notify SASKTEL of any unauthorized use of the Marks by other parties when such use comes to Distributor's attention.
- 12.2 The Distributor acknowledges and agrees that in connection with any reference to any Mark, the Distributor shall not in any manner represent that it possesses any ownership interest in the Marks or their registration, nor shall any action taken by the Distributor or on the Distributor's behalf create in the Distributor's favour any right, title or interest in and to any Mark. The Distributor shall sign a License Agreement with SASKTEL respecting the use of any Marks at the request of SASKTEL.
- 12.3 During the term of this Agreement, Distributor may only identify its connection with SaskTel as SASKTEL specifically authorizes in writing from time to time.
- 12.4 Distributor shall, solely at Distributor's expense and prior to the use of any of the Marks, make any and all changes, corrections or alterations to any such promotional material or activity which SASKTEL in its sole discretion, deems advisable or necessary.
- 12.5 Distributor acknowledges the value of the Marks and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to SASKTEL and that SASKTEL is the owner or the licensed user of the Marks. Distributor recognizes that nothing contained in this Agreement is intended as an assignment or grant to Distributor of any right, title or interest in or to the Marks and that this Agreement does

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not confer any right to grant a sub license or to assign Distributor's right to sue the Marks under this Agreement to third parties. Distributor will do nothing inconsistent with SASKTEL's rights in relation to the Marks and all rights, if any, that may be acquired by use of the Marks by Distributor shall enure to the benefit of and on behalf of SASKTEL. Distributor will not adopt, use (other than as authorized herein), register or seek to register any Marks anywhere in the world which is identical to the Marks or so similar thereto as to constitute a deceptive colorable imitation thereof or suggest or imply some association, sponsorship or endorsement by SASKTEL. SASKTEL makes no warranties regarding its ownership of any rights in or the validity of any of the Marks.

- 12.6 SASKTEL shall have the right, having given twenty-four (24) hours written notice, to conduct during normal business hours an examination of the facilities or equipment of the Distributor and the Business Locations related to the Distributor's activities in connection with the Marks and the Services and to interview Distributor's personnel to determine whether the use of any of the Marks and Distributor's activities in connection with the Services comply with this Agreement and with SASKTEL's standards of quality.
- 12.7 Distributor agrees to promptly notify SASKTEL of any unauthorized use of any of the Marks as soon as it comes to Distributor's attention. SASKTEL shall have the sole right to engage in infringement or unfair competition proceedings involving any of the Marks.
- 12.8 Upon termination of this Agreement, any permission or right to use any of the Marks granted hereunder shall forthwith terminate and Distributor shall immediately cease any use of the Marks and immediately cease identifying itself as connected to SaskTel in any manner. Distributor shall also promptly return to SASKTEL all materials in its possession or control displaying the Marks or referring to Distributor as SASKTEL's "AUTHORIZED DISTRIBUTOR" or any other term previously authorized by SASKTEL.
- 12.9 Distributor agrees that SASKTEL may use Distributor's trademarks, service marks or trade names in any joint or cooperative advertisement or promotional material. The restrictions applicable to the use of any Marks by Distributor shall apply to SASKTEL when using any of the Distributor's trademarks, service marks or trade names.
- 12.10 Nothing in this Agreement shall be construed as a waiver of Distributor's obligation to obtain prior written permission before use of any of the Marks.

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### **ARTICLE 13 - REPRESENTATIONS**

- 13.1 The Distributor acknowledges and agrees that the Distributor, its servants, agents and employees shall not directly or indirectly or by inference make any guarantees, warranties or representations with respect to the Services that conflict with or are in addition to those made in writing by SASKTEL. The Distributor shall indemnify and save SASKTEL harmless from and against any and all losses, damages, expenses, claims, suits and demands of whatsoever nature resulting from a breach of this Article.

### **ARTICLE 14 - CARE OF PROPERTY**

- 14.1 The Distributor shall at all times take reasonable care of property of SASKTEL, whether the same is in possession of the Distributor or under its control and shall cause no waste or injury to any of it. In the event that property of SASKTEL is lost or damaged the Distributor shall pay to SASKTEL the cost to repair it or, in the event of loss, the replacement value of such property. The Distributor acknowledges and agrees that the property of SASKTEL is delivered to the Distributor for the purposes as specified in this Agreement and is not to be used by the Distributor for any other purpose whatsoever.

### **ARTICLE 15 - EXPENSES**

- 15.1 All expenses incurred by the Distributor in any way pertaining to its activities on behalf of SASKTEL shall be borne solely by the Distributor and the Distributor shall not be entitled to reimbursement by SASKTEL for any part of such expenses. Nothing contained in this Agreement shall impose any liability on SASKTEL for any expenditures made or incurred by the Distributor or in anticipation of or in the performance of this Agreement.

### **ARTICLE 16 - PROFITS OR LOSSES**

- 16.1 Each party acknowledges and agrees that the other party has made no representations, guarantees, or warranties with respect to the prospective profits or losses, if any, to be made or incurred by the other party during the course of this Agreement.

## DISTRIBUTORSHIP AGREEMENT

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### ARTICLE 17 - DISCLOSURES

- 17.1 If requested, the Distributor shall provide SASKTEL, prior to commencement of or during the term of this Agreement, current financial statements and relevant supporting documentation relating to the Distributor's credit worthiness. The Distributor shall at all times, upon request by SASKTEL, furnish SASKTEL with such further information concerning the Distributor's business and operations as SASKTEL in its sole discretion deems necessary from time to time.
- 17.2 At all reasonable times during the currency of this Agreement, SASKTEL or its representatives shall be permitted free access to the Distributor's premises to inspect the operations, books and accounts of the Distributor pertaining to this Agreement to satisfy itself that the Distributor is conducting its business in a proper manner and in accordance with its terms. In the event SASKTEL has access to any of the Distributor's proprietary information, confidential to the Distributor and disclosed as such to SASKTEL, such information shall not be disclosed by SASKTEL or its personnel to any third party without the Distributor's consent, unless such information is in the public domain or disclosure is required or permitted under due process of law.
- 17.3 The Distributor shall maintain accurate records and accounts of all sales transactions pertaining to this Agreement, and shall retain the same for a period of three (3) years after the date of termination of this Agreement. If SASKTEL requires any information in connection with such accounts and records, the aforesaid accounts and records shall be made available by the Distributor during its normal business hours for examination by SASKTEL.
- 17.4 The Distributor will prepare and forward as may be requested by SASKTEL from time to time any and all reports which SASKTEL deems necessary or desirable.
- 17.5 The Distributor acknowledges and agrees that the names of customers, their cellular telephone numbers, or any other wireless communication numbers of products and services of SASKTEL constitute the confidential, exclusive and proprietary information of SASKTEL and are not to be disclosed to any third party without the written permission of SASKTEL. Upon the expiration or termination of this Agreement, the Distributor shall deliver to SASKTEL a true and complete listing of all its Subscribers together with their respective cellular telephone numbers and/or other wireless communication information as SASKTEL may request.

## DISTRIBUTORSHIP AGREEMENT

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- 17.6 In the event of any dispute between SASKTEL and the Distributor, with regard to records and accounts, in the absence of sufficient supporting documentation from the Distributor, SASKTEL's records and accounts shall be deemed to be accurate and correct.

### ARTICLE 18 - CONFIDENTIALITY

- 18.1 "Confidential Information" means all oral, written or machine-readable data and information that is not generally known to competitors of the disclosing Party and is identified as confidential at the moment of disclosure. Confidential Information shall include any support materials and documentation disclosed directly or indirectly by the disclosing Party to the receiving Party in connection with the disclosing Party's present or future development of business activities. Confidential Information shall also include all customer-related information obtained by Distributor under this Agreement and related to the Services including without limitation any and all information Distributor may have access to in using SASKTEL's customer management and billing systems where Distributor is a distributor of SaskTel Mobility's products and services pursuant to this Agreement. That information includes without limitation, SASKTEL's Customer billing information, product and service details being purchased by the Customer and the charges for such products and services. Confidential Information shall also include all copies in any form whatsoever of the above.
- 18.2 During the course of performance of this Agreement either Party may disclose to the other Party or allow the other Party access to certain Confidential Information, either directly or indirectly. These disclosures will be made or permitted upon the basis of the confidential relationship established between the parties and upon the receiving Party's commitment that, unless specifically authorized in writing by the disclosing Party, it will:
- (a) use such Confidential Information solely for purposes related to the course of performance of the Agreement;
  - (b) promptly return to the disclosing Party, upon its request, or certify as destroyed, any and all tangible material concerning Confidential Information, including all copies and notes, whether such material was made or compiled by Distributor furnished by SaskTel;
  - (c) take all reasonable precautions to maintain the secrecy of all Confidential Information disclosed to it; and
  - (d) disclose the Confidential Information only to those directors, officers, employees, agents and professional advisors with a bona fide need

## DISTRIBUTORSHIP AGREEMENT

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to know the Confidential Information for the purposes of performance of this Agreement.

- 18.3 The foregoing obligations shall not apply to any Confidential Information that:
- (a) shall become generally known through no act of the receiving Party;
  - (b) was disclosed in good faith to the receiving Party by a third party having legitimate possession and the right to make such disclosure;
  - (c) was in legitimate possession of the receiving Party prior to its disclosure hereunder;
  - (d) is independently developed by the receiving Party in the future as evidenced by appropriate records; or
  - (e) a Party is required by law to disclose.

Additionally, the aforesaid obligations shall not apply to any Confidential Information after the expiration of a period of five (5) years following the date of disclosure. Notwithstanding anything to the contrary in this Agreement, Distributor shall not be relieved of any of the above obligations regarding any and all customer-related information obtained under this Agreement and related to the Services. This Article shall survive termination of the Agreement.

- 18.4 Distributor acknowledges and agrees that monetary damages alone will not be sufficient to compensate SASKTEL for any breach of this Article by Distributor. Accordingly, Distributor agrees that SASKTEL shall have the right to apply for injunctive or any other available relief at law or at equity to prevent or restrain Distributor's breach of this Article 18 in addition to and not in substitution for any other remedy that SASKTEL may have at law or at equity.
- 18.5 Without limiting the provisions of Article 18, Distributor agrees that in the event this Article 18 is breached by Distributor then SASKTEL may at its option and in its complete and unfettered discretion, immediately terminate this Agreement upon written notice to Distributor to that effect.
- 18.6 Distributor indemnifies and saves harmless SASKTEL its employees and agents from and against any and all claims, demands, actions, losses, damages, and proceedings brought by any third party including SASKTEL customers, arising directly or indirectly out of any breach by Distributor of the provisions of this Article 18. Such indemnity shall include both direct and indirect, special, consequential or incidental damages of any kind. Such indemnity of Distributor shall extend to the actions or omissions whether negligent or not or willful or not of Distributor's employees and agents.

## DISTRIBUTORSHIP AGREEMENT

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- 18.7 Notwithstanding anything in this Article 18 nor this Agreement, in no event shall Distributor provide any kind of access to SASKTEL's customer management and billing systems to other than Distributor employees with a bona fide need to know for the purposes of performing Distributor's obligations under this Agreement where Distributor is authorized to sell SASKTEL's products and services under this Agreement.
- 18.8 The disclosure of Confidential Information shall not be construed as granting to the receiving Party a license of any rights under any copyrights or copyright applications in any country relating to any of the Confidential Information which the disclosing Party or an associated corporation may now or hereafter own or under which the disclosing Party or an associated corporation may now or hereafter hold licensing rights. The Confidential Information is the property of the disclosing Party.
- 18.9 SASKTEL maintains the sole and absolute discretion to determine what, if any, of the Confidential Information it will release to Distributor.
- 18.10 Subject to Article 17, Distributor maintains the sole and absolute discretion to determine what, if any, of the Confidential Information it will release to SASKTEL.
- 18.11 Upon termination of this Agreement, Distributor shall return to SASKTEL or certified as destroyed, at SASKTEL's sole discretion, all Confidential Information.

### ARTICLE 19 - LIMITATION OF LIABILITY

- 19.1 SASKTEL shall not be liable to the Distributor or any other person for any losses, damages, injuries, or costs, notwithstanding SASKTEL's notice of the same, arising out of or caused by the Distributor its employees, agents, subcontractors, or those for whom at law it is responsible, in the performance of this Agreement, including without limiting the generality of the foregoing, arising out of or caused by the occupation of the Distributor's premises by property of SASKTEL or the marketing of the Services by the Distributor pursuant to this Agreement.
- 19.2 In no event shall either party be liable to the other party for business or economic loss or indirect, special, or consequential damages even if the other party has been advised of the possibility of such loss or should have foreseen the possibility of such loss.

## DISTRIBUTORSHIP AGREEMENT

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### ARTICLE 20 - INDEMNITY

- 20.1 The Distributor will defend, indemnify and save harmless SASKTEL, its employees, agents and those for whom at law SASKTEL is responsible, from and against any and all losses, damages, awards, judgments, costs and expenses, including any legal fees and disbursements, of any nature arising out of any claims, demands, actions or proceedings that are (1) based directly or indirectly on any act or omission of the Distributor, its employees, agents, subcontractors, and anyone for whom at law the Distributor is responsible, in the performance of this Agreement, or (2) that arise directly or indirectly from any services or products Distributor develops for or sells to any party whether in conjunction with the sale of the Services pursuant to this Agreement or otherwise, except where such loss or damage is solely caused by the negligence of SASKTEL, its employees, agents, or those for whom at law SASKTEL is responsible.

### ARTICLE 21 - INSURANCE

- 21.1 Notwithstanding the provisions of Article 19 regarding indemnity, the Distributor shall obtain and maintain, during the term of this Agreement, at its own cost and expense, all insurance and any bonds required of the Distributor by law (or as requested by SASKTEL), including, but not limited to comprehensive general liability insurance with broad form endorsement which includes, but is not limited to, coverage for services liability, personal injury, bodily injury, broad form property damage, and contractual liability coverage with respect to the liability assumed by the Distributor pursuant to this Agreement. Limits shall be not less than \$2,000,000.00 for each occurrence. SASKTEL shall be named as an additional insured in the insurance required to be maintained by Distributor. All insurance required to be maintained by Distributor shall contain an endorsement or provision stating that SaskTel shall be notified in writing at least sixty (60) days prior to the cancellation of, or any material change in, such insurance. At the request of SASKTEL, the Distributor shall, within thirty (30) days of such request, furnish a certificate in a form acceptable to SASKTEL or other adequate proof as determined by SASKTEL that the foregoing insurance is in place.

### ARTICLE 22 - TERMINATION

- 22.1 SASKTEL or the Distributor may terminate this Agreement without cause at any time upon giving the other thirty (30) days written notice of termination.

## DISTRIBUTORSHIP AGREEMENT

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- 22.2 Notwithstanding anything to the contrary contained in this Agreement, nor any other provision of this Agreement, this Agreement may be terminated by SASKTEL prior to expiration of the term effective immediately upon written notice given by SASKTEL to the Distributor upon happening of any one or more of the following:
- (a) If the Distributor breaches any term, condition or Article of this Agreement, unless the Distributor remedies the breach within five (5) days written notice of breach by SASKTEL;
  - (b) If SASKTEL property is misused, damaged, or destroyed by the Distributor unless the Distributor remedies the misuse, damage or destruction within five (5) days written notice from SASKTEL;
  - (c) If the Distributor submits any false or fraudulent claims for reimbursement, refund, credit, rebate, Compensation or other payment by SASKTEL, or engages in any other conduct intended to increase the amount of Compensation payable by SASKTEL to the Distributor;
  - (d) If a Distributor fails to secure and maintain any license necessary for the conduct by the Distributor of its business pursuant to this Agreement;
  - (e) the conviction in any court of competent jurisdiction of the Distributor or any manager, director or officer of the Distributor for any crime or violation of law which in the reasonable opinion of SASKTEL, is likely to adversely affect the operation of business of the Distributor or tend to be harmful to the goodwill and reputation of SASKTEL or the Services;
  - (f) Any conduct or practice by the Distributor which is injurious to the goodwill or reputation of SASKTEL or the Services;
  - (g) the material impairment or deterioration of the reputation or the financial standing of the Distributor subsequent to the execution of this Agreement;
  - (h) the ascertainment by SASKTEL of any material fact existing at or prior to the execution of this Agreement which tends to materially impair or detract from the reputation or financial standing or the Distributor's ability to pay any debt due to SASKTEL;
  - (i) if the Distributor becomes insolvent, is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any Act in force for insolvent persons or for the protection of debtors from creditors;
  - (j) if the Distributor ceases to do business as a going concern;
  - (k) if a receiver or receiver/manager is appointed for the Distributor;
  - (l) if the Distributor takes the benefit of any Act in force for the winding up or liquidation of corporations;
  - (m) the Distributor assigns, transfers or otherwise disposes of this agreement or in any way attempts to do any of the foregoing

## DISTRIBUTORSHIP AGREEMENT

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- without the prior written consent of SASKTEL which consent SASKTEL may arbitrarily or unreasonably withhold;
- (n) there is a substantial change in the management of or control of the Distributor's business;
  - (o) if the Distributor contravenes the restrictions set forth in Article 3 of this Agreement;
  - (p) change of business location of the Distributor's business; sale of the Distributor's business; or transfer of the Distributor's equity ownership in the business to a third party, without prior written approval of SASKTEL;
  - (e) any merger or acquisition of the Distributor's enterprise with or entered into by any other entity without prior written approval of SASKTEL;
  - (g) excessive churn rates, as defined and modified by SASKTEL from time to time;
  - (h) failure to support SASKTEL's business practices;
  - (i) excessive or repeated Customer complaints;
  - (j) violation of confidentiality.

22.3 Any Appendix to this Agreement may be terminated in accordance with the provisions contained in such Appendix.

### ARTICLE 23 - RIGHTS AND OBLIGATIONS UPON TERMINATION

23.1 Termination of this Agreement by SASKTEL shall not deprive SASKTEL of any of its rights, remedies or actions against the Distributor for damages. In the event of termination, except as provided elsewhere in this Agreement, SASKTEL shall be discharged from and have no further obligations under this Agreement.

23.2 Upon termination or expiration of this Agreement:

- (a) SASKTEL shall pay to the Distributor, subject to the Articles relating to payment, any outstanding obligations of SASKTEL pursuant to this Agreement up to the effective date of termination or expiration;
- (b) the Distributor shall, within five (5) days of the effective date of termination or expiration, deliver to SASKTEL any and all property, including all confidential and proprietary information, of SASKTEL in the possession of the Distributor;



## DISTRIBUTORSHIP AGREEMENT

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- (c) the Distributor shall return to SASKTEL, within five (5) days of the effective date of termination or expiration of this Agreement, any moneys owed by the Distributor to SASKTEL;
- (d) the Distributor will discontinue the use of Marks which SASKTEL has provided to the Distributor with permission to utilize, and any License Agreement in respect of Marks used in accordance with this Agreement shall terminate without any further notice;
- (e) the Distributor shall cease to hold itself out, in any manner, as a Distributor of the Services;
- (f) the Distributor shall immediately cease to market the Services;
- (g) the Distributor shall maintain all records as required by Article 17 above; and
- (h) the Distributor shall have no claim to any indemnification, damages, or Compensation except for unpaid Compensation on orders for Services accepted by SASKTEL prior to the effective date of termination or expiration.

23.3 Upon expiration of this Agreement, Distributor shall not, for a period of six (6) months following such expiration market, sell or provide to any Subscriber any services or products, either by itself or on behalf of any party other than SASKTEL, in the Province of Saskatchewan, that are similar or equivalent to the Services or compete, in any way, with the Services. Upon termination of this Agreement by SASKTEL for cause or by Distributor without cause, Distributor shall not, for a period of nine (9) months following such termination, market, sell or provide to any Subscriber any services or products, either by itself or on behalf of any party other than SASKTEL, in the Province of Saskatchewan that are similar or equivalent to the Services or compete, in any way, with the Services. The obligations set forth in this Article 23.3 shall not apply where SASKTEL has terminated this Agreement without cause pursuant to Article 22.1 hereof nor where Distributor has terminated this Agreement with cause which is not termination by Distributor pursuant to Article 22.1 hereof.

23.4 Upon termination of this Agreement by SASKTEL without cause pursuant to Article 22.1, if Distributor's Compensation includes a residuals payment component, Distributor is then entitled to Compensation, if any, for that component as set out in the Appendices to this Agreement.

### ARTICLE 24 - RELATIONSHIP

24.1 The Distributor and SASKTEL agree that they are independent contractors. Nothing in this Agreement shall be construed so as to create a partnership or joint venture or relationship of franchiser and franchisee or principal and agent. Neither party shall be liable for the debts or

## **DISTRIBUTORSHIP AGREEMENT**

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obligations of the other party. Except as expressly provided in this Agreement, SASKTEL may not in any other way exercise dominion or control over the Distributor's business.

- 24.2 Neither party is by this Agreement granted any right or authority to assume or create any obligation, express or implied, on behalf of the other or in any way bind the other in any manner whatsoever.

### **ARTICLE 25 - CONFLICT OF INTEREST**

- 25.1 The Distributor represents and warrants to the best of its knowledge and belief that, no SASKTEL official or employee has a direct or indirect interest or receives any direct or indirect proceeds from this Agreement.

### **ARTICLE 26 - SET OFF**

- 26.1 SASKTEL may, in its sole discretion, set off any and all amounts owed SASKTEL or an Affiliate by the Distributor for any reason including, but not limited to, any amounts associated with the provision by SASKTEL of telecommunications services against amounts owed to the Distributor by SASKTEL pursuant to this Agreement.

### **ARTICLE 27 - ASSIGNMENT**

- 27.1 This Agreement shall be considered personal to the Distributor and shall not be assigned, transferred or otherwise disposed of in whole or in part in any manner whatsoever by the Distributor whether by operation of law or voluntarily without SaskTel's prior written approval.

### **ARTICLE 28 - ENUREMENT**

- 28.1 This Agreement shall enure to the benefit of and be binding upon the successors and assigns of SASKTEL.

### **ARTICLE 29 - NOTICES**

- 29.1 Any notice or other communication pursuant to this Agreement required or desired by either party shall be deemed to have been given on the date when delivered or sent by confirmed facsimile transmission, or three (3)

## DISTRIBUTORSHIP AGREEMENT

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days after being sent by prepaid registered mail to the following addresses:

To the Distributor at:      The Wireless Age  
1401 Broad Street  
Regina, Saskatchewan  
S4R 1Y8  
Fax:(306)525-9647  
Attention: Dallas Robinson

To SASKTEL at:              Saskatchewan Telecommunications  
2550 Sandra Schmirler Way  
Regina, Saskatchewan  
S4P 3Y2  
Fax: (306) 569-9602  
Attention:    Director of External Channel  
Management

With a copy to:              Saskatchewan Telecommunications  
Legal Department  
2121 Saskatchewan Drive  
Regina, Saskatchewan S4P 3Y2  
Attention:    V.P. Corporate Counsel  
                 & Regulatory Affairs  
Fax: (306) 569-8445

### ARTICLE 30 - COMPLIANCE WITH LAW

- 30.1 Distributor shall comply with all federal, provincial and municipal law and regulations, which may be applicable to Distributor as an employer. Distributor shall, at its cost, comply with all other applicable federal, provincial, and local laws, ordinances, regulations and codes in the performance of this Agreement, including the procurement of all necessary permits, licenses and certificates, but excluding those licensing and other requirements related to the Services which are the obligation of SASKTEL. Distributor shall, at all times, hold harmless, indemnify and save harmless SASKTEL from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable legal fees and costs of litigation) which SASKTEL may from time to time incur or suffer as a result of, or arising out of, failure of Distributor to comply with any of the obligations set forth in this Article 30.

## **DISTRIBUTORSHIP AGREEMENT**

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### **ARTICLE 31 - WAIVER**

- 31.1 Failure by either party to insist upon the strict performance of any of the covenants, agreements, terms, provisions or conditions contained in this Agreement or to exercise any election shall not be construed as a waiver or relinquishment of such covenant, agreement, term, provision or condition but the same shall continue and remain in full force. No waiver shall be deemed to have been made unless expressed in writing.

### **ARTICLE 32 - ENTIRE AGREEMENT**

- 32.1 This Agreement, including the attached Appendices, constitutes the entire agreement between the Distributor and SASKTEL pertaining to the subject matter and supersedes all prior agreements, understandings, negotiations, representations and discussions whether oral or written. This Agreement, including the attached Appendices, in other than those Articles under which SASKTEL has reserved to itself the right to modify or amend, shall not be modified, amended, rescinded or canceled except by the written agreement of both parties.

### **ARTICLE 33 - SEVERABILITY**

- 33.1 If any Article of this Agreement is invalid or unenforceable in any circumstances, the remainder of this Agreement, and the application of such Article in any other circumstances, shall not be affected.

## **DISTRIBUTORSHIP AGREEMENT**

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### **ARTICLE 34 - FORCE MAJEURE**

- 34.1 Neither party shall be responsible for any failure to comply with any of the terms of this Agreement where such failure is directly caused by or results from events of Force Majeure. Force Majeure shall mean an event, the cause of which is beyond the control of the party affected thereby, which could not reasonably have been foreseen and provided against and which, by the exercise of due diligence, the party affected is unable to overcome, including without limitation, acts of God, accidents, fires, explosions, weather conditions materially preventing or impairing work, inability to secure fuel or power, wars, civil commotion, riot, sabotage, applicable legislation and regulations thereunder, interruptions by government or court orders and future orders (lawful or otherwise) of any regulatory body of competent jurisdiction but shall not include financial difficulty.
- 34.2 The party affected by Force Majeure shall give prompt notice to the other upon the cessation of the event of Force Majeure.
- 34.3 If an event of Force Majeure lasts longer than thirty (30) days the parties shall meet to review the situation and determine under what conditions performance of this Agreement may continue or whether this Agreement shall terminate. Notwithstanding any other provision of this Agreement, if, by reason of Force Majeure, a party is wholly or partly unable to perform its obligations and the lack of performance has lasted longer than ninety (90) days, the party not affected by Force Majeure, or if both parties acknowledge that such lack of performance will last longer than ninety (90) days, the party not affected by Force Majeure may terminate this Agreement effective upon giving notice to the other party, with no party being entitled to damages notwithstanding any other provision of the Agreement.

### **ARTICLE 35 - SURVIVAL**

- 35.1 Articles 12, 17, 18, 19, 20, 22, 23, 26 and 36 shall survive expiration or termination of this Agreement.

### **ARTICLE 36 - GOVERNING LAW**

- 36.1 This Agreement shall be governed by and interpreted in all respects in accordance with the laws of the Province of Saskatchewan. The

## **DISTRIBUTORSHIP AGREEMENT**

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Distributor and SASKTEL submit to the jurisdiction of the Courts of the Province of Saskatchewan.

### **ARTICLE 37 - HEADINGS**

37.1 The headings contained in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of this Agreement

## DISTRIBUTORSHIP AGREEMENT


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### ARTICLE 38 - COUNTERPARTS; FACSIMILE

38.1 This Agreement may be executed in any number of counterparts with the same effect as if all parties all signed the same document. All counterparts will be construed together and will constitute one and the same agreement. This Agreement may be executed by the parties and transmitted by facsimile transmission and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered and executed one original Agreement.


IN WITNESS WHEREOF the parties hereto have signed and executed this Agreement as of the day and year first above written.

#### SASKATCHEWAN TELECOMMUNICATIONS

Per:   
Authorized Signature  
Stacey Sandison  
Name (Print or Type)  
GM - Customer and Marketing Services  
Title

Per: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Name (Print or Type)  
\_\_\_\_\_  
Title

#### WIRELESS AGE COMMUNICATIONS LTD

Per:   
Authorized Signature  
DALLAS ROBINSON  
Name (Print or Type)  
PRESIDENT  
Title

Per: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Name (Print or Type)  
\_\_\_\_\_  
Title

**SaskTel Distributorship Agreement**  
**SaskTel Mobility Cellular Service**  
**APPENDIX L**

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This Appendix L is incorporated into and forms part of the SaskTel Master Distributorship Agreement between SaskTel and the Distributor.

1. **SaskTel and Distributor agree as follows:**
  - 1.1 In this Appendix, "the Service" means SaskTel Mobility postpaid cellular service.
  - 1.2 A new Customer is defined as: a first time Customer of the Service, or a Customer who has not been a Customer of the Service for a minimum of the last thirty (30) days, or an existing Customer retaining the existing Service and activating an additional unit of the Service, eg. a new Customer is adding a new network access as defined by a unique wireless number.
  - 1.3 For the purposes of this Appendix, "a month" is defined as a calendar month.
  - 1.4 For the purposes of this Appendix "the date of activation" is defined as the date the Customer billing for the Service is established.
  - 1.5 For the purposes of this Appendix "commission period" is defined as commencing on the first (1<sup>st</sup>) day of the month and ending on the last day of the month.
2. **Sales/Activation Commission**
  - 2.1 SaskTel agrees to pay the Distributor for each successfully completed activation of a network access involved in a sale of the Service to a new Customer a sales/activation commission fee of \$50.00 (fifty dollars).
  - 2.2 The sales commission fee is fully earned by the Distributor only if the Customer retains the Service for a full one-hundred and eighty (180) days following the date of activation and has an account that is in good standing with SaskTel as determined by SaskTel.

- 2.3 The following deactivation debit will be applied to the Distributor's account as per the following charge back schedule:

Day of Customer's Deactivation	Deactivation Debit to Distributor's Account
0-30	100%
31-60	83.33%
61-90	67.67%
91-120	50%
121-150	33.33%
151-180	16.67%

**3. Residual Commission Fees**

- 3.1 A residual commission fee based on the Customer's monthly Billed Commissionable Revenue for the Service will be paid to the Distributor for every month in which the Customer signed on by the Distributor retains the Service. Billed Commissionable Revenue is defined as the amount of monthly rental fees (i.e. network access charges for rate plans and features, roaming, features, and long distance airtime usage) that the Customer is billed by SaskTel on a monthly basis for the Service. Billed Commissionable Revenue does not include taxes, licensing fees, event charges (i.e. downloadable games or ringtones) or other one-time charges or credits.
- 3.2 Eligibility to earn the residual commission fee begins with the date of activation by SaskTel for the Service. If a Customer changes among the various options for the Service, the residual commission fee will continue to be payable to the distributor who installed the Customer's Service even if another distributor was involved in assisting the Customer with a package or Service change.
- 3.3 In order to qualify for the residual commission fee, the Customer must have retained the Service consecutively and uninterrupted from the date of activation of the Service. In the event that the Customer does not pay SaskTel the monthly rental fees (network access charges) upon which residual commission fees are payable or any other SaskTel charges, the Customer will be suspended by SaskTel and will cease to qualify as a Customer entitling the Distributor to earn a residual commission fee. If the Customer at a future date repays to SaskTel all outstanding charges and retains the Service, such retention will entitle the Distributor to receive the residual commission fee on a go forward basis but will not entitle the Distributor to a residual commission fee for the period of suspension. If the Customer deactivates the Service during a commission period the Distributor would not receive a residual commission fee.

3.4 In return for the payment of the initial sales/activation and/or residual commission fees the Distributor shall carry out the following:

- successfully complete the sale, testing, activation of and training for the Service, as well as continue to provide ongoing support and troubleshooting;
- establish relationships with hardware vendors and handset distributors authorized by SaskTel Mobility and be able to provide warranty and support services for hardware compatible with the Service;
- source, support and service approved terminal hardware required by users to utilize the Service;
- ensure new Customers fully understand all of the terms, policies and conditions pertaining to the Service as defined in the SaskTel Dealer Manual and extranet as amended from time to time and provided to the Distributor by SaskTel (“the Dealer Manual”);
- independently consult with Customers and perform service and option assessments for new and existing Customers, regardless of Customers’ distributor affiliation;
- handle ongoing inquiries for new and existing Customers, regardless of Customers’ distributor affiliation;
- perform any Service changes (example: equipment programming or Service specifications) required by the Customer or SaskTel;
- provide proactive Customer contact on behalf of SaskTel;
- provide feedback to SaskTel with respect to the Service;
- perform all duties as defined in the Dealer Manual;
- further to Article 3 in the Master Distributorship Agreement, any third-party relationships the Distributor wishes to enter relating to the delivery of the Service must be preapproved in writing by SaskTel, and the Distributor will continue to be held responsible for the successful fulfillment of all duties outlined in the Agreement, whether performed by the Distributor or by a third party.

3.5 SaskTel agrees to pay the Distributor residual commission fees, contingent on the minimum sales quota as stated in Article 5.2 below being met by the Distributor. The Distributor will earn residual commission fees based on their performance evaluated monthly on a series of measures as detailed in the modules in 3.6. Percentages will be calculated and added together then multiplied by Billed Commissionable Revenue to determine the Distributor’s total residual commission fee for the commission period.

3.6 Modules are as follows:

**Module A**

The Distributor's postpaid cellular customer base will be determined as of the last day of the commission period.

<b>A - Customer Base</b>	
0 - 749	3.50%
750 - 1999	4.50%
2000 - 15000	5.50%
15000+	6.50%

**Module B**

Postpaid gross network accesses will include all new postpaid cellular activations during the commission period.

<b>B - Postpaid Gross Network Accesses</b>	
0 - 4 new activations	0.00%
5 - 24 new activations	0.50%
25 - 249 new activations	1.00%
250 - 499 new activations	1.50%
500+ new activations	2.00%

**Module C**

Average revenue per unit (ARPU) is calculated by dividing the Distributor's customer base (derived by averaging the customer base from the first day in the commission period with the customer base from the last day in the commission period) into the total billed customer revenue of the Distributor's customer base for the month. Unlike Billed Commissionable Revenue, billed revenue includes licensing fees, event charges (i.e. downloadable games and ringtones) and other one-time charges and credits.

<b>C - ARPU target</b>	
\$0 - 34.99	0.00%
\$35.00 - 39.99	0.50%
\$40.00 - \$44.99	1.00%
\$45.00 - 49.99	1.50%
\$50.00+	2.00%

**Module D**

Wireless data gross network accesses will include all Mobile Office/1xRTT and BlackBerry™ activations during the commission period.

<b>D - Wireless Data Gross Network Accesses</b>	
0 – 1 data loads for the month	0.00%
2 – 4 data loads for the month	0.25%
5 – 19 data loads for the month	0.50%
20+ data loads for the month	1.00%

**Module E**

Aurora usage is based on the volume of eligible transactions the Distributor completes using Aurora, the SaskTel Mobility billing and customer care system. This module will only be available for a period of one year from when this payment schedule becomes effective or from when the dealer receives Aurora.

<b>E - Aurora Usage</b>	
0 – 49% of eligible transactions	0.00%
50 – 74% of eligible transactions	0.50%
75% + of eligible transactions	1.00%

- 3.7 SaskTel will use reasonable efforts to pay residual commission fees within 30 (thirty) days of the month immediately following the commission period.
- 3.8 Upon termination of the Agreement or this Appendix by SaskTel without cause or by the Distributor for cause, any residual payments Distributor is then entitled to pursuant to this Appendix shall continue for a period of six (6) months from the date of such termination.
- 4. **Packaged phone and service**
  - 4.1 Any packaged phone and postpaid cellular network access offer is subject to the policies and procedures outlined by SaskTel Mobility. Any such offer is subject to the same commissioning components as outlined in Section 3 and 4.
  - 4.2 SaskTel Mobility reserves the right to change or discontinue any or all elements of any packaged phone offer, including changing the phone model and pricing from time to time. Any such changes will be communicated to the Distributor by SaskTel Mobility and/or its wholesaler.

- 4.3 SaskTel Mobility's current packaged phone offering is available from SaskTel Mobility's authorized wholesaler.
- 4.4 The Distributor is responsible for all federal, provincial and local taxes pertaining to the purchase and sale of the packaged phone offer.

## **5. Quotas**

- 5.1 A minimum sales quota must be maintained on a monthly basis in order to retain Distributor status.
- 5.2 The minimum sales quota per individual business location is 90% (ninety percent) of the forecasted monthly gross activations for the Service. The forecast is prepared annually by SaskTel Mobility and provided to the Dealer.
- 5.3 The minimum sales quota will be reviewed on a quarterly basis by SaskTel to determine what if any adjustments need to be made thereto on a go forward basis.

## **6. Management of Customer Base**

- 6.1 The Distributor agrees that Customers who have purchased the Service through Distributor will be considered by SaskTel to remain Customers of the Distributor ("Distributor's customer base") for as long as the Distributor maintains distributor status with SaskTel for such Service and as long as such Customers retain the Service. The Distributor also agrees that, in the sole discretion of SaskTel, it may be necessary to migrate Customers from one distributor to another distributor or to a neutral non-commissionable SaskTel base of Customers. SaskTel may, without limitation, change a distributor as a result of one of the following:
  - (a) Customer choice, because of Customer dissatisfaction with the service received from original distributor; or
  - (b) transfer of Distributor's customer base. No transfer, assignment or other disposition of Distributor's customer base or any interest therein may be made by Distributor without the prior written approval of SaskTel.

**7. Cooperative Advertising Premium**

**7.1** An additional payment of \$50.00 (fifty dollars) per sale of the Service to a new Customer will be made available to the Distributor over and above the initial sales commission for use in Service advertising or promotions. The \$50.00 (fifty dollar) payment is available to the Distributor, conditioned on the following terms:

- i) the Distributor matches or exceeds the contributed amount in the cooperative advertising balance for any promotions or advertising that the Distributor undertakes which features the Service;
- ii) the cooperative advertising balance is based on a six (6) month sliding window and includes a mechanism to drop unused cooperative advertising dollars at the end of each 6th month;
- iii) the Distributor will have six (6) months from the completion of the advertising to submit coop claims for reimbursement;
- iv) all promotional and advertising programs or campaigns pertaining to the Service undertaken by the Distributor must receive prior approval from SaskTel; and
- v) the \$50 (fifty dollar) payment is fully earned by the Distributor only if the Customer retains the Service for a full one-hundred and eighty (180) days following the date of activation. The payment will be clawed back in its entirety if the Customer terminates the Service before the full one-hundred and eighty (180) days.

**8. Definitions**

For the purposes of this Appendix the following terms have the following meanings:

- (i) "Dealer Manual" means the SaskTel prepared manual and guide a copy of which has been provided to the Distributor or made available to the Distributor to access remotely on SaskTel's website.
- (ii) "Dealer's Territory" means the geographical area within which the Dealer may sell the Service.
- (iii) "Dealer" or "dealer" means Distributor.
- (iv) "SaskTel" means SaskTel Mobility.

**9. Dealer's Territory**

The Dealer's Territory for the Service is the province of Saskatchewan. The Dealer's appointment is not exclusive for the Dealer's Territory and SaskTel retains the unrestricted right to market the Service in the Dealer's Territory by such mode or in such manner as SaskTel determines, including the appointment of other distributors of the Service in the Dealer's Territory.

As long as the Distributor is authorized to sell the Service in the Dealer's Territory, the Distributor shall not promote, advertise, sell or market in any manner in the Dealer's Territory any product or service whether the Distributor's own product or service or that of another party that competes with the Service.

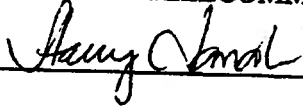
**10. Termination**

- 10.1 This Appendix may be terminated upon thirty (30) days written notice by either party hereto. Upon receiving written notice by SaskTel, the Distributor will immediately cease entering into any new activation arrangements with Customers for the Service.
- 10.2 This Appendix may be terminated by SaskTel pursuant to the provisions of the Master Distributorship Agreement between SaskTel and the Distributor of which this Appendix forms a part.
- 10.3 In the event the Distributor is in breach of any of the terms and conditions of this Appendix and such breach is not remedied within five (5) days after written notice by SaskTel of such breach, this Appendix shall be deemed to be terminated upon expiration of the said five (5) day period and all new activation arrangements with Customers for the Service shall cease.
- 10.4 This Appendix shall be in effect from the date of signing subject to being terminated sooner as provided in Section 10.1, 10.2 or 10.3 above or automatically upon the termination of the SaskTel Master Distributorship Agreement between SaskTel and Distributor.

AGREED TO this 30<sup>th</sup> day of March, 2005.

SASKATCHEWAN TELECOMMUNICATIONS

Per:



Wireless Age Communications Ltd.

Per:

