

## CONCIERGE™ APPLICATION SERVICES AGREEMENT

Application Services Agreement made as of the date this agreement is submitted online, by and between **BUYING BLOCK SERVICES INC. (“Buyingblock”)**, 571 King Street West, Suite 201, Toronto, Ontario, M5V 1M1, Canada and the **REAL ESTATE AGENT (“the Agent”)** as per the online request.

**WHEREAS** Buyingblock is the sole owner of the website software called “Concierge” that provides the Agent with a single online location for customers to source real estate industry providers such as mortgage brokers, lenders, inspectors, lawyers, insurers, movers, insurers, building contractors and telecommunications;

**AND WHEREAS** the Agent is a real estate agent licensed or otherwise authorized to operate a real estate business and wishes to license the use of Concierge from Buyingblock for use by the Agent and customers;

**AND WHEREAS** Buyingblock wishes to grant the Agent the rights in Concierge;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

### ARTICLE 1 – DEFINITIONS, INTERPRETATION, SCHEDULES

**1.1 Definitions.** In this Agreement, the following terms shall have the meanings set forth below, unless the context requires otherwise:

**"Activation Date"** means the date referred to in Section 4.1, or another date or dates agreed to in writing by the Parties, on which the Services shall commence in connection with the Agent, and on which the Application Service Fee shall be payable.

**"Agreement"** means this Agreement, including the Schedules, as it or they may be amended or supplemented from time to time in writing.

**"Agreement Date"** means the date that the parties intend that this Agreement shall commence, as of the date the request is submitted online.

**"Application Services"** means Buyingblock’s operation of the System to manage, store and provide access to the Data, as referred to in Article 2 generally and Section 2.1 specifically.

**“Application Service Fee”** means the fee payable by the agent for the Application Services, as referred to in Article 6 generally and Section 6.1 specifically.

**"Authorized User"** means the Agent, contractor or employee of the Agent, who has been expressly authorized by the Agent to access and use the System, the Services and the Documentation in connection with the business of the Agent in accordance with this Agreement.

**"Business Day"** means 8:30 a.m. to 8:30 p.m., Eastern time, Monday to Saturday inclusive, except statutory or civic holidays observed in the Province of Ontario.

**"Contact Details"** means the details regarding the contact persons and address for notices for the Agent and Buyingblock, as set out in Section 11.1.

**“Dispute”** means any dispute, disagreement or question between the Parties in connection with the interpretation or operation of this Agreement, or any actual, alleged or anticipated breach thereof, and which is dealt with in more detail in Article 9.

**“Documentation”** means the user manuals, reference manuals, and other materials supplied by Buyingblock to the Agent, as referred to in Section 2.6, whether prepared by Buyingblock or otherwise, in any form or medium, for use by The Agent in connection with the Services.

**"Intellectual Property Rights"** means: (a) any and all proprietary rights provided anywhere in the world under, (i) patent law, (ii) copyright law, (iii) trade-mark law, or (iv) any other statutory provision or legal principle applicable to the subject matter of this Agreement, including trade secret law; and (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing;

**“Data”** means the facts, figures, files, lists, records, reports, forms and other information, in electronic, paper or other form, concerning real estate industry providers such as lenders, inspectors, lawyers, insurers, movers, building contractors and telecommunications, that the Agent furnishes or makes available to Buyingblock pursuant to this Agreement in a form suitable for managing and storing, and that is managed and stored using the System and made available to the Agent and its customers pursuant to this Agreement.

**"Party"** means either the Agent or Buyingblock, as the context requires, and **"Parties"** means both the Agent and Buyingblock, and does not include any Authorized User or other third party.

**"Schedule(s)"** means any one or both of Schedules “A” and “B” attached hereto and forming an integral part hereof as of the Agreement Date, together with other schedules and documents that may be attached hereto by written agreement of the Parties following the Agreement Date.

**“Service Level Agreement”** means the document referred to in Section 4.2, and attached hereto as Schedule “A”, that sets out the characteristics and levels of service that Buyingblock intends to provide to the Agent, and that the Agent expects to receive from Buyingblock hereunder.

**“Services”** means the services offered by Buyingblock pursuant to and subject to this Agreement, including: (a) the Application Services; (b) the Training Services; and (c) the Support Services, either collectively or individually, as the context warrants, and any other services that Buyingblock agrees in writing to provide pursuant to this Agreement.

**“Software”** means Buyingblock’s proprietary website software called “Concierge” that, when used in conjunction with other components of the System, provides users with a single online location to find real estate industry providers such as brokers, inspectors, lawyers, insurers, movers, building contractors and telecommunications, and all enhancements, updates, revisions and releases thereto, and all related on-line documentation, associated media, and printed materials therefor.

**"Support Services"** means the technical support services provided by Buyingblock to the Agent, as referred to in Section 5.2 and described in detail in Schedule “B”, as the same may be amended or supplemented from time to time by written agreement of the Parties.

**“System”** means all of the computer facilities, equipment and peripherals, as well as the Software and related software, that are utilized by Buyingblock to provide the Services and are under the direct care and control of Buyingblock or a contractor acting on Buyingblock’s behalf. For additional clarity, the “System” does not include the Agent’s computer facilities, equipment, peripherals or software, or the Internet, or any other computer facilities, equipment, peripherals or software, wherever situated, that are not under the direct care and control of Buyingblock or a contractor acting on Buyingblock’s behalf.

**"Taxes"** means all sales, goods and services, value added, use or other like taxes, levies and charges, chargeable by or payable to any federal, provincial, state, local or municipal taxation authority.

**"Term"** means the term or duration of this Agreement, as described in Section 10.1.

**"Training Services"** means the training services regarding the operation and use of the System provided to selected personnel of the Agent, as referred to in Section 5.1 and agreed upon by the Parties.

**"Website"** means Buyingblock's interactive site on the World Wide Web, through which the Agent shall be entitled to access the Software, the Services, the System and the Data in accordance with this Agreement.

**1.2 Headings and Table of Contents.** The division of this Agreement into Articles, Sections and Subsections, and the insertion of headings, are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**1.3 Extended Meanings.** Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include both genders. The terms "including" and "include" shall mean "including without limitation" and "include without limitation", respectively.

**1.4 Business Days.** If any payment or notice is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action, as the case may be, shall be made or taken on the next Business Day.

**1.5 Currency.** Unless otherwise stated, all dollar amounts referred to in this Agreement are in lawful Canadian currency.

**1.6 Interpretation.** Any rule of contractual construction to the effect that any ambiguity in this Agreement is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

**1.7 Remedies Cumulative.** Notwithstanding any other provision of this Agreement and, unless otherwise expressly stated herein, all rights and remedies of the Parties under this Agreement are in addition to their other rights and remedies and are cumulative, not alternative.

**1.8 Amendment of Agreement and Schedules.** This Agreement, including each Schedule hereof, may not be amended except by agreement of the parties in writing. Any such agreement shall expressly state that it is intended to amend this Agreement.

**1.9 Schedules.** This Agreement includes and incorporates the following Schedules:

|                |                         |
|----------------|-------------------------|
| Schedule "A" - | Service Level Agreement |
| Schedule "B" - | Support Services        |

**1.10 Order of Priority.** In the event of any conflict or inconsistency between any of the provisions of Articles 1 to 11 of this Agreement and the Schedules attached hereto, the provisions of Articles 1 to 11 of this Agreement shall prevail and govern the interpretation thereof, but only to the extent of such conflict or inconsistency.

## **ARTICLE 2 – PROVISION OF SERVICES & RELATED MATTERS**

- 2.1 Provision of Services.** Subject to the terms and conditions of this Agreement, Buyingblock shall provide the Agent with non-transferable, non-exclusive login access to the System and the Application Services.
- 2.2 Authorized Users.** Subject to the provisions of this Agreement, the Agent shall be entitled to permit Authorized Users to access and use the System, the Application Services and the Documentation in connection with the business of the Agent, and shall be entitled to establish rules and procedures in connection with such access and use; provided however that such rules and procedures shall be no more permissive than those applicable to the Agent hereunder, and no Authorized User shall be a Party to this Agreement or have any right of action against Buyingblock pursuant to this Agreement. The Agent shall be fully liable for all acts and omissions of all Authorized Users, or any other third party using or accessing the System through the facilities of The Agent or an Authorized User.
- 2.3 No Access or Use by Others.** Subject to Section 2.2 with respect to Authorized Users, the Agent's access to and use of the System and the Services is non-transferable. The Agent shall not provide any third party with the right to use or access the System or the Services for any purpose.
- 2.5 System Changes/Upgrades.** Subject to the provisions of the Service Level Agreement, Buyingblock shall have the unrestricted right, at any time during the Term, to change or upgrade any component of the System and the Services, including but not limited to the Software; provided that the System and Services as changed or upgraded shall have performance that is substantially equivalent or superior to the performance prior to such change or upgrade.

## **ARTICLE 3 – OWNERSHIP OF RIGHTS**

- 3.1 Rights Owned By Buyingblock.** Buyingblock shall own, exclusively, throughout the world and in perpetuity, all proprietary right, title and interest in the Software, the Services and the Documentation, including all Intellectual Property Rights therein.
- 3.2 Rights Owned by The Agent.** The Agent shall own, exclusively, throughout the world and in perpetuity, all proprietary right, title and interest in and to the Data, including all Intellectual Property Rights therein, subject only to any limits imposed by law, and to the rights of any third party under any agreement made between such third party and The Agent.
- 3.3 Buyingblock's License.** The Agent hereby grants to Buyingblock the right to access, copy, manage, store and otherwise use the Data for the purpose of providing the Services and otherwise fulfilling its obligation pursuant to this Agreement.

## **ARTICLE 4 – ACTIVATION DATE; SERVICE LEVELS**

- 4.1 Passcode; Activation Dates.** Buyingblock shall, on or prior to the date required therefor, provide The Agent with login access, exclusive to the Agent, enabling the Agent to access the System and the Services, and entitling Buyingblock to receive the related Application Service Fees. The date that the Agent receives such passcode and pays such Application Service Fees shall be considered its Activation Date. The Agent shall maintain the confidentiality of any and all passcodes provided by Buyingblock, and shall be responsible for any unauthorized access to or use of the System or the Services.
- 4.2 Service Levels.** The Parties have jointly approved a document called the Service Level Agreement, attached hereto as Schedule "A", to identify and define the characteristics and levels of performance and

availability that Buyingblock intends to provide to the Agent, and that the Agent expects to receive from the System and the Services.

- 4.3 The Agent Responsibilities.** The Parties acknowledge that maintenance of the Service Levels outlined in the Service Level Agreement is contingent in part on the Agent assuming certain responsibilities. For example, each site from which the System will be accessed must have a reliable Internet connection linked to a computer that is running an up-to-date Internet browser.

#### **ARTICLE 5 – TRAINING AND SUPPORT**

- 5.1 Training.** Buyingblock shall, on such dates and at such places as are agreed upon by the Parties, provide the Training Services agreed upon by the Parties. Subject to further agreement as to dates, places and fees, Buyingblock shall provide such other training services as the Agent reasonably requires.
- 5.2 Support.** In order to maintain the services levels outlined in the Service Level Agreement, Buyingblock shall, from and after the Agreement Date, provide the Support Services described in Schedule “B”. During the Term, subject only to the Agent’s compliance with its obligations pursuant to this Agreement, the Support Services shall be provided without fee or other charge.

#### **ARTICLE 6 – FEES AND OTHER PAYMENTS**

- 6.1 Application Service Fee.** In consideration of receiving login access to the System, and subject to the other terms and conditions of this Agreement, the Agent employed by or affiliated with The Agent (“Franchisee The Agent”) shall pay Buyingblock an Application Service Fee of CA\$119.88 per year (based on CA\$9.99 per month) payable in advance. Buyingblock is entitled to increase the Application Service Fee at any time commencing twelve (12) months after the Activation Date, provided that The Agent will receive not less than thirty (30) days notice of any such increase, and there will not be more than one increase in any twelve (12) month period. The Agent shall be fully liable to Buyingblock for any unpaid Application Service Fees and related unpaid taxes of Franchisee The Agents.
- 6.2 No Training or Support Fees.** Unless otherwise expressly agreed by the Parties in writing, or if Buyingblock provides Training Services or Support Services outside the Greater Toronto Area, the Agent shall have no obligation to pay any fees for Training Services or Support Services.
- 6.3 Taxes.** In addition to the Application Service Fee, each Franchisee the Agent shall pay to Buyingblock all Taxes payable by such Franchisee the Agent pursuant to this Agreement, including but not limited to applicable federal Goods & Services Tax.
- 6.4 Invoices.** Buyingblock shall be entitled to submit invoice(s) to the Agent for the Application Service Fee and to The Agent for other products and services obtained by the Agent from Buyingblock hereunder, along with all applicable Taxes. All such invoices shall be delivered or mailed by Buyingblock to The Agent’s address set out in Section 11.1.
- 6.5 Payment.** Invoice(s) submitted by Buyingblock to the Agent or shall, subject to the terms and conditions hereof, be paid by the Agent on receipt thereof. Payments to Buyingblock shall be made by cheque payable to Buyingblock at its current business address or by Interac Money Transfer to Concierge@Buyingblock.com.
- 6.6 Unwarranted Late Payment.** The Agent shall pay interest on overdue invoiced amounts at the rate of ten percent (10%) per annum from the due date to the date payment is received by Buyingblock, such interest to accrue daily and be compounded monthly.

## **ARTICLE 7 - REPRESENTATIONS, WARRANTIES, COVENANTS & INDEMNITIES**

**7.1 Representations, Warranties, and Covenants.** Each Party represents, warrants and covenants to the other as follows and acknowledges that the other Party has relied upon the completeness and accuracy of such representations, warranties and covenants in entering into this Agreement:

- (a) it has the corporate capacity to enter into this Agreement and to perform each of its obligations hereunder; and
- (b) it has duly authorized, executed and delivered this Agreement, and this Agreement constitutes a legally valid and binding obligation of it enforceable against it in accordance with its terms except as such enforcement may be limited by applicable bankruptcy, insolvency and other laws of general application affecting the enforcement of creditors' rights and subject to general equitable principles.

**7.2 Buyingblock's Representations, Warranties, and Covenants.** Buyingblock further represents, warrants and covenants to the Agent as follows:

- (a) Buyingblock shall provide access to the System, and deliver the Services and the Documentation, in a professional and workmanlike manner;
- (b) Buyingblock is the legal and beneficial owner or authorized licensor of all rights, including all Intellectual Property Rights required to (i) provide the Agent with access to the System; and (ii) provide the Services and the Documentation, and has the full power and authority to do so without the consent of any other Person;
- (c) Buyingblock's provision of access to the System, and its delivery of the Services and the Documentation, and their use and enjoyment by the Agent, shall not infringe the Intellectual Property Rights of any Person. In the event that all or any component of the System, the Services or the Documentation is held or believed by Buyingblock to infringe any Intellectual Property Rights, or the Agent's access to or use of the System, the Services or the Documentation is enjoined, Buyingblock shall, at its expense, use reasonable commercial methods to modify the infringing component(s) to be non-infringing, or replace the infringing components with other substantially equivalent non-infringing components.
- (d) subject to 'down time' permitted pursuant to the Service Level Agreement, the System shall perform substantially in accordance with the service levels outlined in the Service Level Agreement, and Buyingblock shall at its own expense take the steps necessary to maintain the System accordingly. This warranty described in this Section 7.2 applies to the System only, and does not cover any problem or issue arising directly or indirectly from any other source.

**7.3 Indemnity by Buyingblock.** Subject to Section 7.4 below, Buyingblock shall indemnify and hold harmless the Agent, its directors, officers, employees, the Agents and independent contractors, against any actions, proceedings, claims, losses, damages, liability, awards, judgments, settlements consented to by Buyingblock, reasonable legal fees and other liabilities and expenses that the Agent may incur in consequence of a breach of any of the representations, warranties and promises of Buyingblock contained in this Agreement, provided that Buyingblock is notified promptly in writing of the claim or allegation and is given sole control of the defense and all related settlement negotiations.

**7.4 EXCLUSION OF BUYINGBLOCK'S LIABILITY.** EXCEPT AS EXPRESSLY SET OUT ELSEWHERE IN THIS AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED

REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND IN RESPECT OF THE SYSTEM, SERVICES OR DOCUMENTATION OR ANY OTHER PRODUCTS OR SERVICES USED OR DELIVERED BY BUYINGBLOCK HEREUNDER, OR TO WHICH THE AGENT IS GRANTED ACCESS HEREUNDER, INCLUDING BUT NOT LIMITED TO IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF UNINTERRUPTED OR ERROR-FREE SERVICE. FURTHER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT, BUYINGBLOCK WILL HAVE NO LIABILITY WHATSOEVER TO THE AGENT OR ANY AUTHORIZED USER UNDER THIS AGREEMENT FOR DAMAGES, DIRECT OR INDIRECT, FROM ANY CAUSE WHATSOEVER, AT LAW OR BY STATUTE, REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER CONTRACT OR TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF A FUNDAMENTAL TERM, FUNDAMENTAL BREACH OR OTHERWISE.

**7.5 The Agent's Representations, Warranties, and Covenants.** The Agent further represents, warrants and covenants to Buyingblock as follows:

- (a) The Agent is the legal and beneficial owner of all of the Data, and has the full power and authority to use and input the Data into the System without the consent of any other Person;
- (b) all of the Data that The Agent or any Authorized User furnishes to Buyingblock or otherwise inputs into the System will be correct, complete and decipherable by the System, and will not violate any applicable local, state, federal and international laws, including but not limited to laws prohibiting or restricting: (i) the creation, possession or distribution of pornographic or threatening material or hate propaganda; (ii) infringement of works protected by laws regarding trade marks, copyright, patents, trade secrets, and other intellectual property; (iii) defamation, invasion of privacy, use of personal information and unfair competition; and
- (c) The Agent shall be fully liable for all acts and omissions of Authorized Users or any other third party using or accessing the System through the premises, facilities or passcodes of the Agent or Authorized Users.

**7.6 Indemnity by The Agent.** The Agent shall indemnify and hold harmless Buyingblock, its directors, officers, employees, the Agents and independent contractors, against any actions, proceedings, claims, losses, damages, liability, awards, judgments, settlements consented to by The Agent, reasonable legal fees and other liabilities and expenses that the Buyingblock may incur in consequence of a breach of any of the representations, warranties and promises of the Agent contained in this Agreement, provided that the Agent is notified promptly in writing of the claim or allegation and is given sole control of the defense and all related settlement negotiations.

## **ARTICLE 8 – CONFIDENTIALITY & PRIVACY**

**8.1 Definition.** For all purposes of this Agreement, "Confidential Information" of a Party means any and all information and material of a Party (the "Disclosing Party") which has or shall come into the possession or knowledge of the other Party (the "Recipient Party") in connection with or as a result of entering into this Agreement, including but not limited to information concerning the past, present and future customers, suppliers, employees, contractors, property and business of the Disclosing Party. For the purposes of this definition, "information" and "material" includes know-how, data, patents, copyrights, trade secrets, processes, techniques, programs, designs, formulae, marketing, advertising, financial, commercial, sales or programming materials, written materials, compositions, drawings, diagrams, computer programs, studies, work in progress, visual demonstrations, ideas, concepts, and other data, in oral, written, graphic, electronic, or any other form or medium whatsoever. For the sake of clarity, "Confidential Information" includes all "Data", as that term is defined in Section 1.1 of this Agreement.

- 8.2 Confidentiality Covenant.** Each of Buyingblock and the Agent, as a Recipient Party, shall keep all Confidential Information concerning the Disclosing Party in strict confidence, shall not make use of such Confidential Information other than for the exercise of its rights or the performance of its obligations under this Agreement, and shall not release, disclose, communicate or make available any such Confidential Information, other than to employees, the Agent and contractors of the Agent and Buyingblock who reasonably need to know such Confidential Information in connection with the exercise of rights or the performance of obligations under this Agreement, which employees, the Agents and contractors shall be bound to protect the received Confidential Information from unauthorized use or disclosure. Additionally, each of Buyingblock and The Agent, as a Recipient Party, shall use industry-standard procedures and technology to prevent unauthorized access to and disclosure of such Confidential Information.
- 8.3 Security Breaches.** Buyingblock shall inform The Agent of all security breaches that Buyingblock is or becomes aware of and which impact the privacy or confidentiality of the Agent Data, as soon as possible but in any event within 24 hours of such occurring.
- 8.4 Not Confidential Information.** Notwithstanding anything else stated in this Article 8, "Confidential Information" does not include information which:
- (a) is in the public domain when it is received by or becomes known to the Recipient Party or which subsequently enters the public domain through no fault of the Recipient Party (but only after it enters the public domain);
  - (b) is already known to the Recipient Party at the time of its disclosure by the Disclosing Party and, to the actual knowledge of Recipient Party, is not otherwise subject to any obligation of confidence;
  - (c) is received without any obligation of confidence by the Recipient Party from a third party that the Recipient Party has no reason to believe is in possession of such information subject to any obligation of confidence;
  - (d) is not subject to an obligation of confidence when released, disclosed, made available or communicated by the Disclosing Party to a third party; and
  - (e) is required to be disclosed pursuant to a valid order of a court of competent jurisdiction, or valid law, rule, regulation or other government action; provided, however, that the Recipient Party will use its best efforts to minimize such disclosure and will consult with and assist the Disclosing Party to obtain a protective order prior to such disclosure.
- 8.5 Injunctive Relief.** In addition to any other remedy to which a Party may be entitled at law or in equity, each Party shall be entitled to injunctive relief to prevent breaches by the other Party of the provisions of this Article 8 and to specifically enforce such provisions.

## **ARTICLE 9 - DISPUTE RESOLUTION**

- 9.1 Dispute Resolution.** If any Dispute shall arise during the term of this Agreement between the Parties concerning the interpretation or operation of this Agreement or any part hereof, the Parties shall in good faith attempt to resolve such Dispute promptly and in an amicable manner under the informal dispute resolution procedure set out in this Article 9.

- 9.2 Dispute Resolution Committee.** If a Dispute arises which is not resolved by the operational personnel involved, the operational personnel of either Party shall promptly report the Dispute to that Party's senior executive(s), who shall then promptly notify the other Party's senior executive(s) (the two senior executives collectively called the "Dispute Resolution Committee"). The Dispute Resolution Committee shall communicate (in person or otherwise) within five (5) Business Days following notification in an attempt to resolve the Dispute.
- 9.3 No Litigation Without Discussion.** If the Senior Executives cannot resolve the Dispute within five (5) days following notification thereof, each Party may take whatever steps it deems necessary to protect its interests. However, no Dispute shall be the subject of litigation or other formal proceeding between the Parties before being considered by the Dispute Resolution Committee as set forth in this Article 9.

## **ARTICLE 10 - TERM AND TERMINATION**

- 10.1 Term.** This Agreement shall commence and be fully effective on the Agreement Date, and shall remain in effect for a period of one (1) year following the later of the Activation Date or Agreement Date, unless terminated earlier in accordance with Sections 10.2 to 10.4; provided that, subject to The Agent paying the Application Service Fee and meeting its other obligations under this Agreement, this Agreement shall be extended for successive periods of one (1) year unless The Agent provides Buyingblock with notice of termination not less than thirty (30) days prior to the end of the current one-year period.
- 10.2 Termination by The Agent.** The Agent may terminate this Agreement at any time upon written notice to Buyingblock for breach of this Agreement by Buyingblock, for Buyingblock's insolvency, for a delay or failure by Buyingblock to perform under this Agreement due to a force majeure event, or for any other reason in The Agent's sole discretion. Upon termination of this Agreement pursuant to this section, the Agent shall be liable to Buyingblock for payment of all amounts payable for the Services provided by Buyingblock during the Term. The Agent shall not be entitled to a refund of Service fees and other amounts, if any, paid to Buyingblock in respect of the period after the effective date of termination.
- 10.3 Termination by Buyingblock for Breach.** Prior to resort to termination under this Section 10.3, Buyingblock shall use reasonable commercial efforts to resolve a Dispute with the Agent using the dispute resolution procedures set forth in Article 9 above. In the event that a resolution of the Dispute is not attainable pursuant to Article 9, Buyingblock may terminate this Agreement if (i) The Agent is in default of any of its material obligations hereunder, including but not limited to the obligation to pay Service Fees or other amounts payable to Buyingblock pursuant to this Agreement, and (ii) such default is not remedied within ten (10) days following the date of receipt of written notice thereof from Buyingblock, which notice shall specify the alleged breach and the remedies sought, and indicate an intent to terminate the Agreement in the absence of such remedies.
- 10.4 Termination by Buyingblock for Insolvency.** Buyingblock shall have the right to terminate this Agreement immediately and without notice if the Agent ceases to conduct business in the normal course, or becomes insolvent or bankrupt, or makes any assignment for the benefit of creditors, or proceedings are instituted by or against The Agent seeking relief, reorganization or rearrangement under any laws relating to insolvency, or a receiver, liquidator or trustee is appointed in respect of any property or assets of the Agent; or an order is made for the liquidation, dissolution or winding up of the Agent.
- 10.5 Return of Materials.** Subject to Section 10.6 below, upon the expiration or any termination of this Agreement, the Agent and Buyingblock shall each promptly return to the other all tangible and intangible property which has been delivered to it by the other Party in connection with the Agreement,

except (i) where such return is impossible or illegal or it was clearly contemplated by this Agreement that any such property would be retained by the Party to which it was given, or (ii) a Party is in default of this Agreement, in which case the Party not in default shall have the right to retain possession of the property of the other Party pending the curing of such default or other resolution satisfactory to both Parties..

**10.6 Data and Other Confidential Information.** Upon the expiration or termination of this Agreement, each Party shall promptly, on request of the other Party, destroy (and certify the destruction of) all Confidential Information (including all copies thereof) of such other Party; provided that the Agent acknowledges and accepts that it is impractical for Buyingblock to destroy Data contained on archived databases, and that Buyingblock's sole responsibility with respect to Data shall be to: (i) provide The Agent with a copy of all Data residing on Buyingblock's 'live' server(s) as of the expiration or termination date, (ii) delete all Data then residing on Buyingblock's 'live' server(s), and (iii) maintain the confidentiality of Data contained on archived databases for not less than five (5) years.

## **ARTICLE 11 - GENERAL**

**11.1 Notices.** Every notice provided for in this Agreement shall be in writing (which may include writing in electronic form) and shall be delivered to Buyingblock or the Agent as follows:

To Buyingblock: 571 King Street West, Suite 201, Toronto, Ontario, M5V 1M1  
Fax: 416-920-2096; Email: [info@Buyingblock.com](mailto:info@Buyingblock.com); Attention: Bruce Whitaker

To The Agent: as per the contact details on the online request.

Each Party may change its address for the purposes of this Section from time to time by giving written notice of such change to the other Party in accordance with this Section. Each such notice shall be: (i) personally delivered; or (ii) sent by email, electronic facsimile transmission or other direct written electronic means; or (iii) sent by registered mail or commercial courier. Any notice sent by the means described in (i) shall be deemed to have been received on the Business Day on which it is delivered, or if not delivered on a Business Day, on the next Business Day thereafter. Any notice sent by the means described in (ii) shall be deemed to have been received on the date on which it was transmitted, but if not transmitted on a Business Day or prior to 5:00 p.m. on the Business Day that it was transmitted, then on the next Business Day thereafter. Any notice sent by the means described in (iii) shall be deemed to have been received on the earlier of the day it is signed for on behalf of the recipient or the third Business Day following the date on which it is mailed or sent. If mail service is or is threatened to be interrupted at any time when a notice is required to be given hereunder, then such notice shall be given by one or more of the other means described in this section.

**11.2 Entire Agreement.** Subject only to any Acknowledgement of Receipt and Acceptance executed by an Authorized User, this Agreement, together with any Schedules and any agreements and documents to be delivered pursuant to the terms of this Agreement, including any amendments made pursuant to Section 1.8 above, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of any of the Parties in respect of the subject matter hereof. There are no conditions, representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement.

**11.3 Waiver.** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred from or implied by any Party's failure to act or delay in acting in respect of any default, breach, non-

observance or anything done or omitted to be done by another Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance (whether of the same or any other nature).

- 11.4 Severability.** Any provision of this Agreement which is invalid or unenforceable in any legal jurisdiction shall, as to that jurisdiction only, be ineffective to the extent of such invalidity or unenforceability, and shall be severed from the balance of this Agreement without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other legal jurisdiction.
- 11.5 Survival.** The provisions of Articles 1, 3, 6, 7, 8, 9, 10 and 11 of this Agreement, as well as the provisions of the Schedules required to fully effectuate such Articles, shall survive any termination thereof without limit as to time.
- 11.6 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 11.7 Jurisdiction and Venue.** Each of the Parties hereby: (i) irrevocably submits to the jurisdiction of the superior courts located in the City of Toronto, Province of Ontario (and any courts handling appeals from those courts) for the purpose of any suit, action or other proceeding arising out of this Agreement, and (ii) waives, and shall not assert, in any such suit, action or proceeding, to the fullest extent permitted by applicable law, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement may not be enforced in or by such courts.
- 11.8 Force Majeure.** Neither Party shall be liable for any delay or failure to perform under this Agreement if such delay or failure is due to any contingency beyond its reasonable control, including but not limited to acts of God, war, explosion, fire, flood, earthquakes, epidemics, acts of civil or military authorities, labor disputes or civil disturbance. Unless otherwise agreed by the Parties in writing, in the event of any such delay or failure, the time of delivery or performance shall automatically be extended for a period of time equal to the time lost by reason of such force majeure event, and the Party unable to perform due to the force majeure event shall: (a) provide prompt written notice thereof to the other Party; and (b) use reasonable commercial efforts to remedy the delay or failure.
- 11.9 Time of Essence.** Time shall be of the essence of this Agreement in all respects.
- 11.10 Successors and Assigns.** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assignees, provided however, that The Agent may not assign this Agreement or any of its rights or obligations hereunder (a change of control being considered herein as an assignment) without the prior written consent of Buyingblock, and no permitted assignment by the Agent shall relieve the Agent of any of its obligations under this Agreement until such obligations have been performed in full by the assignee or waived in writing by Buyingblock.
- 11.11 Relationship of Parties.** Each of the Parties is an independent contractor. Nothing herein shall be construed to place the Parties in a relationship of principal and The Agent, employer and employee, partners, associates, affiliates or joint venturers, and neither Party shall have the power to obligate or bind the other Party in any manner whatsoever.

**11.12 Agreement Date.** This Agreement shall not become a valid and binding agreement of the Parties unless and until each Party has duly executed this agreement by the Agent submitting the request and Buyingblock responding with login and password to the Agent.

**11.13 Counterparts.** This Agreement may be executed in one or more counterparts, including but not limited to counterparts delivered by fax or pdf or other non-alterable electronic format, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument.

BY SIGNING BELOW, the Parties agree to be bound by the terms of this Agreement as of the date of this Agreement first above mentioned.

**BUYING BLOCK SERVICES INC.**

**The AGENT**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

I have authority to bind Buyingblock

I have authority to bind the Agent

**Schedule "A"**

**SERVICE LEVEL AGREEMENT**

**1. Service Levels.** The Purpose of this Service Level Agreement (the "SLA") is to identify and define the characteristics and levels of performance and availability that Buyingblock will provide and the Agent will receive from the System pursuant to the Agreement to which the SLA is attached. Unless otherwise indicated, the capitalized terms used in the SLA have the same meanings as they do in the Agreement.

**2. Access & Connectivity.** Buyingblock will host the Web Site, the Software and the Data on the System and, in accordance with this Agreement, the Agent will have access thereto via the world-wide web, using a web browser application such as Internet Explorer or Netscape. Buyingblock shall be solely responsible for ensuring connectivity between the System and Buyingblock's Internet service provider. Buyingblock shall have no responsibility whatsoever for ensuring the connectivity between such Internet service provider and the Agent.

**3. Capacity Planning.** Buyingblock will review System capacity and the Agent's needs on a regular basis or as requested by the Agent, without cost to the Agent, and where deemed necessary by Buyingblock in its reasonable discretion, Buyingblock will scale the System hardware and server infrastructure to accommodate increasing demand and maintain desired service levels.

**4. Availability.** The System (which for the purpose of the SLA includes the Web Site and the Software) will be 95% available for the Agent's access and use pursuant to this Agreement. Availability will not include the time permitted for Scheduled Maintenance, as defined in Section 5 below. The remedy for system unavailability is described in Section 9 below.

**5. Scheduled Maintenance Windows.** Buyingblock will have the right, twice per week during the Term, without incurring any liability to the Agent, to render the System inaccessible to the Agent in order to provide any maintenance, repairs, upgrades or other services to the System deemed necessary by Buyingblock, in its sole discretion. Standard Scheduled Maintenance Windows will occur between 2:00 am and 6:00 am, local time. Time permitted for Scheduled Maintenance will not be included in any calculation of System Downtime.

- 6. Unscheduled Maintenance.** Subject to Section 9 below, Buyingblock will also have the right at any time to render the System inaccessible to the Agent in order to provide any emergency maintenance, repairs, upgrades or other services to the System deemed necessary by Buyingblock, in its sole discretion. Buyingblock will provide the Agent with notice of Unscheduled Maintenance as soon as possible by a reasonable method elected by Buyingblock. System unavailability resulting from Unscheduled Maintenance will be included in any calculation of System Downtime.
- 7. System Downtime.** System Downtime is the unavailability of the System to the Agent and Authorized Users resulting solely from component, software, or hardware failures within the System, or the System's connectivity to Buyingblock's Internet Service Provider excluding (a) Scheduled Maintenance Windows, or (b) General Internet Failures, or (c) reasons of Force Majeure.
- 8. Unrelated Problems.** Buyingblock will cooperate with third parties and the Agent's technical support personnel at their request at no cost to the Agent, in an effort to resolve problems with communications, networks, hardware and software unrelated to the System that impact on the availability thereof to the Agent, provided that Buyingblock will have no responsibility for such problems.
- 9. Compensation for System Downtime.** Notwithstanding Section 6.1 of the Agreement, for each twenty-four (24) hours of System Downtime, the Agent's account will be credited for one day of Service Fees, pro-rated for part hours. Within fifteen (15) days following the end of each month during the Term, Buyingblock will calculate the number of minutes of the Agent's "System Downtime" in that month, and if applicable, a credit will be applied in the following invoice.
- 10. Monitoring & Reporting.** Buyingblock will monitor service levels of the System. A server failure, a transaction (record updates or e-mail) failure and other System component failure will generate a page alert to Buyingblock's support team. Buyingblock will notify the Agent thereof after Buyingblock's receipt of same by a reasonable method elected by Buyingblock.
- 11. The Agent's Obligations.** The agent is solely responsible for providing Buyingblock with accurate and current contact information for the Agent's designated points of contact. Buyingblock will be relieved of its obligations under Section 10 if Buyingblock's contact information for the Agent is materially inaccurate due to the Agent's action or omission or if Buyingblock's failure is due solely and directly to reasons of Force Majeure.
- 12. Continuity.** Buyingblock will, at its own expense, use commercially reasonable efforts to ensure continued availability of the System and the Services in the event that the System or any material part or parts thereof becomes unavailable or inaccessible to the Agent due to a cause beyond the control of the Agent.
- 13. Security.** Buyingblock will establish appropriate security features for regulating access to the non-public Web Site, including the Software and the Data, and upon request shall provide documentation of such security features to the Agent so that the Agent can cooperate with Buyingblock in the implementation of security protocols and procedures.
- 14. Support.** Support Services in connection with the System and the Application Services are described in detail in Schedule "B" of the Agreement.

**Schedule "B"**

**SUPPORT SERVICES**

1.1 **Services Included.** From and after the Effective Date, Buyingblock will provide the following Support Services, encompassing telephone and online support, with respect to the System and the Application Services in the manner set forth herein:

- (i) identification and resolution of errors, failures and malfunctions of the System and the Application Services;
- (ii) explanation of functions and features of the System and the Application Services;
- (iii) clarification of Documentation relating to the System and the Application Services;
- (iv) guidance in the operation of the System and obtaining access to the Application Services;
- (v) consultation on data processing problems in connection with the System and the Application Services;

1.2 **Support Availability.** Support will be provided from 8:30 am to 8:30 pm ET, Monday through Saturday. After hour support will be available for emergency requests only.

1.3 **The Agent's Obligations.** The Agent will provide Buyingblock with all available information concerning a request for Support and the related circumstances.

1.4 **Response Times.** Subject to Section 1.2, at least 75% of the Agent's requests for Support will be answered directly by a qualified Buyingblock support technician. At least 95% of the Agent's requests for Support not answered directly will be answered by a qualified Buyingblock support technician within eight (8) business hours. A qualified Buyingblock support technician will respond within two (2) hours to a request for Support characterized by the Agent as an emergency. Requests for Support not responded to within two (2) hours will be escalated to Buyingblock management for immediate action.

1.5 **Deemed Notification.** For the purposes of Subsection 1.4, a request for Support made by telephone or email to an employee of Buyingblock, to an answering service employed by Buyingblock, or to a telephone recording device or fax machine used by Buyingblock will be deemed to be received at the time it is made.

1.6 **Support Services Restrictions.** Buyingblock will not be responsible for any services for which Buyingblock is expressly not responsible pursuant to (i) this Schedule "B", or (ii) the Agreement to which this Schedule "B" is attached, or (iii) the Service Level Agreement.

1.8 **Limitations of Liability.** If the event causing or triggering the error, failure or malfunction of the System was within the control of the Agent, or constituted a misuse of the System, Buyingblock will not be liable to provide Support Services with respect thereto.