**CAROUSEL INDUSTRIES N.A., INC.**

**TERMS OF USE AGREEMENT**

**FOR**

**CUSTOMER**

**2-SMB-xxxxx-DGRA0418**

This SERVICES AGREEMENT (this “SA”) is made this 11th day of April, 2018 (the “Effective Date”), by and between Carousel Industries N.A., Inc., a Rhode Island corporation, with principal offices located at 659 South County Trail, Exeter, RI 02822 ("Carousel"), and CUSTOMER with principal offices located at ADDRESS ("Customer").

1. **DEFINITIONS.** Capitalized terms used in this Agreement but not defined herein shall have the meaning set forth in Exhibit 1 to this SA.
2. **SCOPE OF SERVICES.** The terms and conditions stated in this SA shall apply with respect to the provision of any and all telecommunications and related services ("Services") by CAROUSEL on behalf of itself and its Affiliates to Customer and as further described in one or more Customer Service Agreements executed pursuant to this Agreement (each, a “SA”). For your reference the additional SA agreement numbers are listed at the bottom of the signatory page. CAROUSEL shall provide the Services set forth in the SAs in accordance with the terms of this Agreement and the applicable SA. The Services will be performed at the location(s) specified in the applicable SA (each, a “Location”) by CAROUSEL or by an Affiliate or subcontractor of CAROUSEL authorized to provide the Services in the applicable jurisdiction. The terms and conditions of this SA are, and shall be, applicable to the Services provided to the Customer. For the avoidance of doubt, this SA shall serve as the agreement and governing documents with respect to each SA executed pursuant to and referencing this SA.
3. **EQUIPMENT.** Any saleby CAROUSEL to Customer of equipment shall be specifically set forth in the subject SA and the terms of any such sales shall be governed by this SA (“Equipment”). Unless otherwise expressly stated in the applicable SA, all Equipment shall be in new condition and CAROUSEL will transfer title to the Equipment, free and clear of any and all third party liens, claims, and encumbrances, to Customer upon receipt thereof by Customer at the Location designated in the applicable SA. All Equipment shall be delivered to the Location defined in the applicable SA with the shipping costs and charges being set forth in such SA. CAROUSEL shall provide Customer all associated user documentation for such Equipment. Risk of loss for the Equipment shall transfer to Customer upon receipt thereof by Customer at the Location. For the avoidance of doubt, unless otherwise provided in the SA, all equipment identified in the “Setup Service Charges” Section of any SA shall constitute “Equipment” for purposes of this SA.
4. **RIGHT TO USE.** CAROUSEL hereby grants to Customer, a non-exclusive, non-transferable worldwide right to use the CAROUSEL Platform during the Term of this SA and the applicable SA(s) in accordance with and subject to the terms and conditions of this SA. Customer may permit any of its agents, contractors and third party service providers to use the CAROUSEL Platform in connection with any outsourcing, facilities management, programming, processing or support services provided to Customer by any such third party; provided that such third party services are integrated into or associated with the Services. The term “CAROUSEL Platform” means the Simplicity Voice platform or other similar platform made available by CAROUSEL to Customer pursuant to this SA, including all software applications, functionality, tools, interfaces, documentation and other materials included therein. This non-exclusive, non-transferable right to use the CAROUSEL Platform shall immediately expire upon termination of this SA or with respect to a Location in the event that a SA shall expire or be terminated, subject to the terms of Section 10 of this SA.
5. **TERM.** The Agreement shall be effective as of the Effective Date and shall continue for a term of (36) months from the Effective Date (the “Term”), unless earlier terminated in accordance with the terms and provisions of the SA. Upon expiration of the Term, the Agreement shall renew automatically for the same Term under the same Terms as the current Agreement, unless either Party delivers to the other Party written notice of such Party’s intent not to renew the Agreement at least ninety (90) days prior to expiration of the then current Term.
6. **RATES AND CHARGES.** 
   1. The Non-Recurring Charges and Minimum Monthly Recurring Charges for the Services, and the associated rates, are set forth in the applicable SAs. Unless otherwise agreed by the parties in writing, the rates set forth in a SA shall apply for the duration of the Term only with respect to the Services provided at the Location (or other defined user group, in the case of Remote Users) expressly listed on the subject SA. It is agreed and understood by the Parties that the pricing may differ among SAs under this SA. The fees, costs and expenses associated with each additional Customer location not listed on a SA shall be separately agreed to by the Parties and documented by a separate SA or in a written modification to an existing SA executed by both Parties. With respect to any services outside the scope of the Services for which a unit cost is not identified in the relevant SA (“New Services”), unless otherwise agreed by the parties in writing, CAROUSEL’s standard business rates and terms shall apply to the New Services. CAROUSEL shall provide Customer with a current rate schedule for New Services from time to time and at the request of Customer. Except as expressly set forth in the SA, the applicable SA, or as otherwise agreed to by the Parties in writing, CAROUSEL shall be responsible for any expenses incurred by CAROUSEL or at its direction in connection with the performance of CAROUSEL’s express obligations under the SA.
   2. In addition to the Minimum Monthly Recurring Charges and Non-Recurring Charges, Customer will pay the applicable per minute rates set forth in the table below (charged in 6 second increments), based on Customer’s actual use of the Services (collectively, the “Usage Charges”). For the avoidance of doubt, and notwithstanding anything to the contrary in any SA, the Usage Charges below shall apply to all SAs during the Term. Except for the Usage Charges identified below, unless otherwise agreed by the Parties in writing, no other usage-based fees shall apply to the Services.

|  |  |
| --- | --- |
| **Description of Charge** | **Rate** |
| Inbound/Outbound Calls Within Continental U.S. | TBD |
|  |  |
| Inbound/Outbound Calls Outside Continental U.S. | TBD |
| 800/Toll-Free (Inbound Calls) Continental US | TBD |
| 800/Toll-Free US Alaska (Inbound Calls) | TBD |
| 800/Toll-Free US Hawaii (Inbound Calls) | TBD |
| 800/Toll-Free US Puerto Rico (Inbound Calls) | TBD |
| All Others US Territories or International Calling | CAROUSEL Standard Rates\* |
| Calls in excess of Carousel \*\* Fair Usage Policy | TBD |
| Conference Calling: DID Standard Number | TBD |
| Conference Calling: 800/Toll-Free Number | TBD |

\*CAROUSEL shall provide reasonable advance written notice of any changes to CAROUSEL’s Standard Rates.

\*Specific Details regarding Carousel’s Fair Usage Policy are located in Section 9 of this document.

1. **VOLUME AND COMMITMENT.** Customer agrees to deploy a minimum of (xx) seats of Simplicity Voice Basic User Licenses or associated higher tier licenses (each, a “Seat”) across all Locations, as detailed in each Service Agreement (SA) for each Location (the “Minimum Commitment”). The Minimum Commitment deployment period must be completed within six (6) months of execution of this Agreement (the “Minimum Commitment Date”). Customer agrees that the pricing of the Services set forth in this SA and related SAs is based upon Customer satisfying the Minimum Commitment on or before the Minimum Commitment Date. In the event that Customer shall fail to satisfy the Minimum Commitment on or any time after the Minimum Commitment Date, Carousel will commence billing at the commitment level immediately.
2. **TAXES AND SURCHARGES.** In addition to the Rates and Charges for the Service(s) described above and in the applicable SA(s), Customer shall be responsible for payment of all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services and any Equipment, expressly excluding any taxes that are based on CAROUSEL’s net income. Customer shall be responsible for the payment of all surcharges in effect from time to time, including but not limited to USF, PICC, and payphone surcharges, as required or permitted by applicable law, regulation or tariff and/or as specified on the CAROUSEL website at [www.carouselindustries.com](http://www.carouselindustries.com). To the extent any sale under this SA is claimed by Customer to be subject to a tax exemption, and Customer provides CAROUSEL with all proper and required tax exemption documents and certificates required by the applicable statutes and/or regulations of the jurisdiction providing said tax exemption, CAROUSEL agrees to exempt Customer from the collection of taxes to the extent warranted by such certificate(s) and documents. Failure to timely provide said certificate, in CAROUSEL reasonable discretion, will result in no exemption being available to Customer for any period prior to the date that the Customer presents the required tax exemption documents and certificates.
3. **BILLING AND PAYMENT.**
   1. **Non-Recurring Charges.** Notwithstanding anything to the contrary in this SA, fifty percent (50%) of the total Non-Recurring Charges set forth in 1-SMB-xxxxx-DGRAXXXX shall be due and payable upon receipt of invoice by Customer (“Non-Recurring Charge Initial Payment”). CAROUSEL shall not be required to order any Equipment or commence any Services prior to its receipt from Customer of the Non-Recurring Charge Initial Payment.
   2. **Monthly Recurring Charges and Usage Charges**. Monthly Recurring Charges and Usage Charges shall be due and payable by Customer in arrears and shall begin accruing immediately upon Customer’s commencement of the use of the Services, provided however; Customer shall have the right to dispute any such Monthly Recurring Charges and Usage Charges in accordance with and subject to the terms and provisions of this Section 9. Customer will receive a bill on or about the 1st of each month for the prior month’s Service (including pro-rata charges for Services added by Customer during the prior month), less any Service Credits earned for such month. All undisputed bills are due and payable within thirty (30) days of Customer’s receipt of the applicable invoice (“Due Date”). Customer must provide CAROUSEL with written notice of any disputed charge(s) within sixty (60) days after the date it receives the invoice for the subject charges. Failure by the Customer to dispute any charges within the applicable period shall be deemed an affirmative waiver by Customer of any right to thereafter dispute the subject charges. If the dispute is delivered to CAROUSEL in writing on or before the Due Date for the respective invoice, Customer may pay the invoiced amount less the disputed amount on or before the Due Date. Customer shall have no right to withhold amounts not disputed in writing to CAROUSEL on or before the Due Date, provided that payment of an invoice shall not be deemed a waiver of Customer’s rights to later dispute an invoice so long as notice of the disputed amount is delivered to CAROUSEL within the time period provided in this Section. Any dispute notice of Customer shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. CAROUSEL and Customer shall attempt in good faith to promptly resolve any reasonable objection to the invoiced amount. If the dispute is subsequently resolved in favor of CAROUSEL, Customer shall pay the disputed amount previously withheld within five (5) days of such resolution (if and to the extent that the disputed amount has been withheld). If the dispute is subsequently resolved in favor of Customer, at Customer’s election, CAROUSEL shall issue a credit on Customer’s subsequent invoice(s) or refund to any incorrectly invoiced amount to Customer. For avoidance of doubt, the Parties agree that Customer shall not be permitted to dispute any invoiced amount during a time period that Customer is in default under this SA. In the event Customer fails to pay any invoice when due, or provide CAROUSEL with a notice of dispute, CAROUSEL shall notify Customer regarding its failure to pay such invoice. If after CAROUSEL has provided such notice, Customer continues to fail to pay such invoice(s) within 15 days after such notice, CAROUSEL may terminate this Agreement or suspend Service, and shall be entitled to seek and exercise all rights and remedies permitted hereunder and under applicable law or in equity. Customer shall pay all reasonable costs of CAROUSEL, including court costs and reasonable attorneys' fees, incurred in connection with collecting all sums due under this SA, excluding those actions initiated by Customer against CAROUSEL, provided final judgment (beyond all appeals) is rendered in favor of Customer by a court of appropriate jurisdiction.

**Fair Usage and Overage Charges.** All Services that included unlimited plans shall remain within the bounds of Reasonable traffic. For the purpose of this section, “Reasonable” shall be defined as no more than 1000 minutes of combined inbound and outbound usage per IP user and no more than 500 minutes of combined inbound and outbound usage per Analog user. Any usage in excess of this amount, whether inbound or outbound, will be billed at the current CAROUSEL Standard Rate\* of $.02 per minute. CAROUSEL shall provide reasonable advance written notice of any changes to CAROUSEL’s Standard Rates.

1. **TERMINATION.**
   1. Either party may terminate this SA or the applicable SA on thirty (30) days' written notice if the other party materially breaches the terms of the SA or a SA, and such breaching party fails to cure the breach within such thirty (30) day period; provided, however notwithstanding anything to the contrary herein provided, the cure period shall be fifteen (15) days with respect to the payment of any sum due from Customer to CAROUSEL under this SA.
   2. A party may terminate the SA upon written notice to the other party if (i) the other party dissolves or becomes insolvent or bankrupt; (ii) the other party makes an assignment for the benefit of creditors; (iii) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; (iv) a trustee or receiver of the other party is appointed; or (v) any bankruptcy, reorganization, insolvency or similar proceeding is instituted by or against the other party and not dismissed within thirty (30) days.
   3. Customer shall have the right to terminate this SA or any SA for convenience upon ninety (90) days prior written notice to CAROUSEL, subject to payment of a “Termination Charge” calculated as follows:

“Termination Charge” shall mean the amount of the most recent Monthly Recurring Charges due under the SA (including all SAs) as detailed in the SA multiplied the number of months remaining in then-current Term of the SA.

Customer shall be required to pay the full amount of the Termination Charge within thirty (30) days of delivery by CAROUSEL of a notice of Termination in accordance with this Section.

* 1. Customer shall pay all reasonable costs of CAROUSEL, including court costs and reasonable attorneys' fees, incurred in connection with Customer’s default under this SA.

1. **TERMINATION LIABILITY.** If the SA is terminated by CAROUSEL due to Customer’s material breach in accordance with Section 10, including for nonpayment of fees or charges due from Customer to CAROUSEL as and when the same are due, Customer shall pay to CAROUSEL, immediately upon demand, (i) all amounts then due and unpaid, plus (ii) the Termination Fee and other costs due from Customer as detailed in Section 10.
2. **TERMINATION ASSISTANCE SERVICES.** Notwithstanding anything to the contrary in this SA,upon the expiration or termination of this SA for any reason, CAROUSEL shall, (i) continue to provide the Services to the extent requested by Customer for up to three (3) months after expiration or termination at the rates and in accordance with the Service Levels in effect under this SA immediately prior to such expiration or termination (the "Termination Assistance Period"); and (ii) provide such assistance as reasonably required by Customer to transfer the Services to another vendor or to Customer itself (collectively, "Termination Assistance Services"). For the avoidance of doubt, CAROUSEL shall be required to provide Termination Assistance Services requested by Customer regardless of the reason for termination, provided however, that if CAROUSEL terminates the SA due to Customer’s failure to pay any sum due from Customer to CAROUSEL under this SA, CAROUSEL shall have the right to require that all charges and sums due under the SA, including Termination Assistance Services, shall be paid in advance rather than arrears and CAROUSEL may invoice Customer on a semi-monthly basis, and Customer shall pay charges and costs provided during the Termination Assistance Period, including all invoiced amounts within fifteen (15) days following Customer’s receipt of the applicable invoice.
3. **COMPLIANCE WITH LAWS.** Each party shall comply with all applicable international, federal, state and local laws, regulations, court decisions or administrative rulings applicable to the provision or use of the Services in the relevant jurisdiction, including applicable privacy, telecommunications and similar laws. Without limiting the foregoing, if Customer utilizes the Services for the purpose of making telephone solicitations, Customer must comply with the national do-not-call requirements, including the rules as set forth in 47 C.F.R. Section 64.1200 and 16 C.F.R. Part 310. Any violation by Customer of the immediately preceding sentence shall constitute a material breach of the SA. Each party shall indemnify and hold the other party harmless from all costs, expenses, and liability arising from any failure of such party to comply with applicable laws, regulations, or administrative rulings in accordance with this Section.
4. **REGULATORY APPROVAL.** This Agreement shall be subject to and governed by any applicable regulatory agencies or other governmental authority having jurisdiction over the subject matter hereof. Should any approval or authority be required for any acts, duties or obligations to be performed hereunder, the Parties will cooperate in securing the same.
5. **UNAUTHORIZED USE OF SERVICES**. Customer, and not CAROUSEL, shall bear the risk of loss and assume all liability arising from any unauthorized or fraudulent usage of Services provided under the SA to Customer. CAROUSEL reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof, provided, however, that any such action shall be consistent with applicable federal and state laws, rules, and regulations. Any such action by Customer shall be deemed a material breach of the SA by Customer.
6. **WARRANTIES.**

## Each Party represents, warrants and covenants to the other Party that it has the requisite power and authority to enter into this SA and to carry out all activities and transactions contemplated hereunder. CAROUSEL further represents, covenants and warrants that CAROUSEL has and shall have all rights, titles, licenses, permissions and approvals required to grant the right to use and perform its obligations under this SA.

## CAROUSEL represents, warrants and covenants that: (i) Equipment sold by CAROUSEL under this SA will transfer title to the Equipment, free and clear of any and all liens, claims and encumbrances upon full payment of the applicable Charges by Customer to CAROUSEL for the Equipment; and (ii) the CAROUSEL Platform and the Services, and Customer’s use thereof as contemplated by this SA and in accordance with the terms and provisions of this SA, do not and will not infringe, violate, trespass or in any manner contravene or breach any patent, copyright, trademark, license or other property or proprietary right or constitute the unauthorized use or misappropriation of any trade secret of any third party; (iii) it will perform the Services in a professional and workmanlike manner consistent with the highest industry standards using personnel with the requisite level of skill and training; (iv) it will perform its obligations under this SA in compliance with all applicable laws, rules, regulations, orders of any governmental (including any regulatory or quasi-regulatory) authority.

## CAROUSEL represents, warrants and covenants that the CAROUSEL Platform does not and will not contain any program routine, device, code or instructions or other undisclosed feature, including, without limitation, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse, bug, error, defect or trap door, that is capable of accessing, modifying, deleting, damaging, disabling, deactivating, interfering with, or otherwise harming the software, any computers, networks, data or other electronically stored information, or computer programs or systems (collectively, “Disabling Procedures”). Subject to applicable laws, CAROUSEL agrees to notify Customer immediately upon discovery of any Disabling Procedures that have been introduced onto the CAROUSEL Platform, and, CAROUSEL agrees to take action immediately, at its own expense, to identify and eradicate such Disabling Procedures and carry out any recovery necessary to remedy any impact of such Disabling Procedures.

* 1. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SA,** CAROUSEL MAKES NO WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CAROUSEL DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON CAROUSEL’S BEHALF AND THE CUSTOMER MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF CAROUSEL. THIS SECTION SURVIVES TERMINATION OF THE SA. EXCEPT FOR THE WARRANTY SET FORTH IN CLAUSE (i) OF SECTION 17(b) ABOVE, ALL EQUIPMENT PROVIDED UNDER THE SA AND EACH SA IS PROVIDED TO CUSTOMER ON AN AS IS BASIS AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, PROVIDED THAT CAROUSEL SHALL PASS THROUGH TO CUSTOMER ANY AND ALL MANUFACTURERS’ WARRANTIES APPLICABLE TO SUCH EQUIPMENT TO THE EXTENT PERMITTED.

1. **LIMITATIONS OF LIABILITY.**
   1. EXCEPT IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS AND BREACHES OF A PARTY’S OBLIGATIONS UNDER SECTION 26 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES.
   2. EXCEPT IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS AND BREACHES OF A PARTY’S OBLIGATIONS UNDER SECTION 27 (CONFIDENTIALITY) OR CUSTOMER’S LIABILITY UNDER SECTIONS 10 AND 11 OF THIS SA, THE PARTIES AGREE THAT IN NO EVENT SHALL EITHER PARTY’S CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF ALL CHARGES PAID OR PAYABLE BY CUSTOMER TO CAROUSEL UNDER THE AGREEMENT.
   3. CAROUSEL will not be responsible for nor provide any support services nor incur any liability whatsoever on account of any computer programs and associated documentation not prepared or provided by CAROUSEL as a component of the Services hereunder. Nor shall CAROUSEL have any responsibility for the installation, operation, malfunction and/or maintenance of computer communication lines, modems, controllers, processing or any other computer hardware of any kind furnished by others. CAROUSEL will not be responsible for the consequences of unauthorized changes or modifications to licensed software products or firmware made by Customer or its agent, servant, employee or independent contractor.
   4. CAROUSEL also shall not be liable for any damages arising out of or relating to: interoperability, interaction, access or interconnection problems with applications, equipment, services, content or networks not provided by directly by CAROUSEL.
   5. The terms of this Section 18 survive termination or expiration of this Agreement.
2. **INDEMNIFICATION.** 
   1. **Each Party shall indemnify, defend and hold harmless the other Party, its Affiliates and each of their officers, directors, employees and agents (“Indemnities”) from and against all claims, losses, liabilities, judgments, settlements, fines, and other expenses (including reasonable attorney’s fees) arising out of: (i) a** breach of either Parties representations or warranties under this Agreement; (ii) bodily injury or death or property damage resulting from either Party or its subcontractors’ acts or omissions other than in accordance with this Agreement; (iii) allegations that the CAROUSEL Platform or the Services, or Customer’s use thereof in accordance with this Agreement, infringes or misappropriates a third party’s patent, copyright, trademark, trade secret or other intellectual property right, subject to the terms of this SA.
   2. If the CAROUSEL Platform or the Services, or any portion thereof becomes, or in CAROUSEL’s reasonable opinion is likely to become, the subject of any such claim or action described in clause (iii) of Section 19(a), then CAROUSEL shall: (i) procure for Customer and its Affiliates the right to continue utilizing the CAROUSEL Platform and Services, as contemplated hereunder; (ii) modify the CAROUSEL Platform or Services, to render the same non-infringing (provided such modification does not degrade the performance or functionality of the CAROUSEL Platform or Services, as reasonably determined by Customer); or (iii) provide a functionally equivalent, non-infringing replacement for the same which is reasonably acceptable to Customer. If none of the foregoing is possible and if such CAROUSEL Platform or Services (or portion thereof), is found to infringe by a court of competent jurisdiction, CAROUSEL or Customer will have the right to terminate the relevant SA(s), in which case CAROUSEL will refund to Customer all fees paid for Implementation Services, depreciated on a five year straight line basis. Any termination by Customer under this Section will be without prejudice to any other rights and remedies which Customer may have under this Agreement or at law or in equity. Notwithstanding any other provision in this SA to the contrary, CAROUSEL shall have no liability under this Article 19 resulting from, arising out of or relating to a combination of use of the CAROUSEL Platform by Customer with other software, equipment or devices. CAROUSEL will have no liability for any infringement claim to the extent it; (i) is based on modification of CAROUSEL Platform other than by CAROUSEL, with or without authorization; or (ii) solely results from failure of Customer to use an updated version of the CAROUSEL Platform, or (iii) results from, arises from a combination of use of the Platform by Customer with other software, equipment or devices.
   3. CAROUSEL will have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise except that Customer may in its sole discretion participate in the defense of any such claim or action at Customer’s expense. Without limiting the foregoing, CAROUSEL may not, without Customer’s prior written consent, settle, compromise or consent to the entry of any judgment in any such commenced or threatened claim or action, unless such settlement, compromise or consent: (i) includes an unconditional release of the relevant Customer Indemnities from all liability arising out of such commenced or threatened claim or action; and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, any Customer Indemnities or otherwise adversely affect any Customer Indemnities.
3. **ACCESS TO CUSTOMER PREMISES.** To the extent that any Services shall be required to be performed by CAROUSEL on Customer's premises, CAROUSEL shall use commercially reasonable efforts to comply with all reasonable Customer policies and procedures which have been provided to CAROUSEL in writing by Customer prior to the date on which access to Customer’s premises is scheduled, including policies and procedures related to premises security, use of Customer equipment, facilities, safety and other similar policies which are generally applicable to Customer's employees and invitees, as the same may be in effect at the time of CAROUSEL’s access.
4. **FORCE MAJEURE.** Except with respect to Customer’s payment obligations, notwithstanding any other provision of the Agreement, a Party shall be excused from any delay or failure in performance of the Agreement to the extent such delay or failure is caused by wildfire, flood, explosion, war, strike, embargo, governmental requirement, civil or military authority, Act of God, or any other causes beyond its reasonable control, provided that such Party was not at fault in creating the force majeure event. Any such delay or failure shall suspend the Agreement until the Force Majeure ceases.
5. **RELATIONSHIP OF PARTIES.** Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between CAROUSEL and Customer. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act.
6. **CAROUSEL SIMPLICITY VOICE FACILITIES.** Equipment furnished by CAROUSEL which is identified as “CAROUSEL Property” in the applicable SA (if any) shall remain CAROUSEL property and shall be returned to CAROUSEL on expiration or termination of the Agreement or as earlier requested by CAROUSEL, in good condition, reasonable wear and tear excepted. Customer shall reimburse CAROUSEL for any loss of, or damage to, CAROUSEL Property on the Customer’s premises, except loss or damage caused by CAROUSEL’S own employees, agents or contractors.
7. **NOTICES.** All notices and communications under the Agreement shall be in writing and shall be given by personal delivery, recognized national overnight courier service (i.e. Federal Express), or by U.S. registered or certified mail, return receipt requested to the address set forth below or to such other address as may be designated in writing by such Party. Notice shall be deemed given upon receipt.

If to Customer:

If to CAROUSEL:

Carousel Industries N.A., Inc.

659 South County Trail

Exeter, RI 02822

Attn: CFO

CUSTOMER

ADDRESS

Attn:

With a copy to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **ENTIRE AGREEMENT.** The SA, including the attached Exhibits, and all SAs under this SA and which are signed by both parties, represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the Parties relating to the Service. Any modification to this SA shall be in writing signed by authorized representatives of both Parties. This SA and any amendment of the terms hereof, may be signed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.
2. **WAIVER.** No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.
3. **PARTIAL INVALIDITY.** If any provision of the Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render the Agreement unenforceable, but rather the Agreement shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of the Agreement, the Parties shall promptly attempt to negotiate a substitute therefore.
4. **ASSIGNMENT.** Neither party may assign the Agreement without the written consent of the other party, which consent shall not unreasonably be withheld or delayed; provided that no such consent shall be required for any assignment by a party to an Affiliate; or to an entity which succeeds to all or substantially all of such party’s assets whether by merger, sale or otherwise.
5. **GOVERNING LAW.** The Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. Each party consents to personal jurisdiction in the state and federal courts of the State of Delaware.
6. **Conflicts**. The Parties agree that the legal terms in the SA shall be superseded by the terms of this SA. All other Charges and Fees detailed in the SA shall apply for the term of this SA, unless otherwise specified in this SA.

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1. **911 EMERGENCY SERVICES.** Customer hereby represents and warrants that it understands any 911 emergency dialing provided by Carousel Simplicity Voice is not traditional 911 emergency dialing and has limitations as detailed in SA – 911 Services. Customer further acknowledges that they have been supplied with a copy of SA – 911 Services and have reviewed it thoroughly and completely. As such, Customer and Customer’s End-Users shall defend, indemnify, and hold harmless Carousel Simplicity Voice and or any of our subsidiaries, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to End-User in connection with Simplicity Voice Services, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorney’s fees) by, or on behalf of, Customer or Customers End-Users or any third party relating to the absence, failure or outage of the Service, including 911 Service, incorrectly routed 911 Service calls, and/or the inability of any user of the Service to be able to use 911 Service or access emergency service personnel.

Accepted by Customer: Accepted by Carousel Industries N.A., Inc.:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Service Agreements (SA’s) Referenced under Section 2 Scope of Services Are:

1-SMB-xxxxx-DGRAXXXX> This document itemizes Monthly Recurring Charges and One-Time or Non Recurring Charges

CSA – 911 Services > This document describes in detail the operation of 911 and possible limitations when using this service.

**The remainder of this page is intentionally left blank.**

**Exhibit 1**

**Definitions**

“Affiliate” means an entity that controls, is controlled by, or is under common control with, a Party to this Agreement. For purposes of this definition, “control” means the ownership of fifty percent or greater of the voting securities or assets of an entity.

“Agreement” means, collectively, this SA and all SAs.

“Charges” shall mean all charges, fees and other amounts due under the Agreement.

“Confidential Information” means all nonpublic information relating to a Party or its Affiliates that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation, (a) all nonpublic information relating to a Party’s or its Affiliates’ technology, customers, employees, business plans, agreements, finances and other business affairs, (b) as to Customer, CPNI, (c) as to CAROUSEL, the CAROUSEL Platform, and (d) the terms of this Agreement. Confidential Information may be contained in tangible materials, such as drawings, data, specifications, reports and computer programs, or may be in the nature of unwritten knowledge. Confidential Information does not include any information that (w) has become publicly available without breach of this Agreement, (x) can be shown by documentation to have been known to the receiving Party at the time of its receipt from the disclosing Party or its Affiliates, (y) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or (z) can be shown by documentation to have been independently developed by the receiving Party without reference to any Confidential Information.

“CPNI” or “Customer Proprietary Network Information” has the meaning given to such term in The Communications Act of 1934, as amended, codified at [47 U.S.C.](http://en.wikipedia.org/wiki/Title_47_of_the_United_States_Code) [§ 151](http://www.law.cornell.edu/uscode/47/151.html) et seq.

“SA” has the meaning set forth in Section 2.

“Equipment” has the meaning set forth in Section 3.

“Location” has the meaning set forth in Section 2.

“Monthly Recurring Charges” means the monthly recurring charges for Services provided under a SA, as set forth in the applicable SA.

“Non-Recurring Charges” or “Setup Service Charges” means the one-time charges in connection with a SA, as set forth in the applicable SA.

“Party” or “party” means a party to this Agreement.

“Security Breach” means any unauthorized use, disclosure or acquisition of or access to any Confidential Information maintained, processed or transmitted by CAROUSEL or its agents or subcontractors in connection with the Services and specifically include the a “breach” as defined in 47 C.F.R. § 64.2011.

“Service Commencement Date” means the date on which CAROUSEL begins to provide the Services under a SA as agreed upon by the Parties, and as set forth in the applicable SA.

“Term” has the meaning set forth in Section 5.

“Termination Charge” has the meaning set forth in Section 11.

“CAROUSEL Platform” has the meaning set forth in Section 4.

“CAROUSEL Property” has the meaning set forth in Section 22.

“Usage Charges” has the meaning set forth in Section 6.