



Dear Customer,

Thank you for your interest in TouchTunes. Enclosed are the required documents to be completed in order to become a TouchTunes partner.

- 1) **Company Information:** This information is required to open your account in our system. *This sole document* may be faxed to 847-419-3304.
- 2) **Credit Application & Guarantee:** This document must be filled out entirely and duly signed. The information will be used to request credit information on your behalf and to establish a line of credit.
- 3) **Bank Account Information:** This document must be filled out entirely and duly signed. Please attach a voided check which clearly displays the routing and account number. This is to set up your account for automatic withdrawal (referred to as "sweep").
- 4) **Music and Service Agreement / Product Warranty:** We recommend that you read this agreement in its entirety. You are required to fill out your company information on page 1, and the agreement is to be signed and dated on page 9. Please initial the bottom of all other pages. Your Inside Sales Representative will explain the available plans, and the terms governing this agreement.
- 5) **DSL Contract:** Your company information must be filled out on page 1, and the agreement is to be signed and dated on page 5. Please initial the bottom of all other pages.

**Please return documents 1, 2, 3, 4 and 5 in the self addressed envelope (to ensure confidentiality) provided for your convenience. Missing information or signatures will result in delays in establishing your account.** TouchTunes will not activate or ship any jukeboxes until all of the above paperwork has been received and approved by our credit department.

Should you require additional information, please do not hesitate to contact your Inside Sales representative at the following toll free number: 888-338-5853.

Thank You,  
Credit Department  
TouchTunes Music Corporation



# TouchTunes

1280 Rose Road  
Lake Zurich, IL 60047

## Company Information

Business Name: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Business Address: \_\_\_\_\_ Work Fax: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Other Phone: \_\_\_\_\_

County: \_\_\_\_\_

Shipping Address(if different than above): \_\_\_\_\_

Principle/Owner

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

How would you like your invoices sent to you?

Please check one:

E-mailed \_\_\_\_\_ Faxed \_\_\_\_\_

Billing / A/P e-mail address: \_\_\_\_\_

How would you like General and Promotional notices sent to you?

Please check one:

E-mailed \_\_\_\_\_ Faxed \_\_\_\_\_

General / Promotional e-mail address: \_\_\_\_\_

## Company Contacts

Name(s) of

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

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

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

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

Accounts Payable:

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

Office Manager or Secretary:

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



**CREDIT APPLICATION AND AGREEMENT:**

**A. APPLICANT and/or BUSINESS INFORMATION:**

**Legal Business Name:** \_\_\_\_\_  
(Please list any DBA's, Trade Names, Divisions or Subsidiaries)

**Physical Address:** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Estimated Annual Sales:** \_\_\_\_\_ **Contact Person:** \_\_\_\_\_

**Amt. Credit Requested:** \_\_\_\_\_ **Type of Business:** \_\_\_\_\_ **Years in Business** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

- Sole Proprietorship/DBA:**  
Owner \_\_\_\_\_ SS# \_\_\_\_\_
- Partnership/DBA:**  
Owner \_\_\_\_\_ SS# \_\_\_\_\_  
Owner \_\_\_\_\_ SS# \_\_\_\_\_
- Corporation/LLC:**  
Owner \_\_\_\_\_ SS# \_\_\_\_\_

**Federal Tax No.(if applicable)** \_\_\_\_\_ **Sales Tax Exemption Cert.**  YES  NO  
(please provide if applicable in your state)

**B. BANKING INFORMATION:**

**Bank:** \_\_\_\_\_ **Branch:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Account #:** \_\_\_\_\_ **Type of Account:** \_\_\_\_\_

**C. TRADE REFERENCES:**

- | (Company Name) | (Contact) | (Phone#) | (# of Years) |
|----------------|-----------|----------|--------------|
| 1. _____       |           |          |              |
| 2. _____       |           |          |              |
| 3. _____       |           |          |              |

**Page 2. TouchTunes Application and Agreement (con't.)**

The preceding information is for the purpose of obtaining credit and is warranted to be true. I/We hereby authorize TouchTunes to investigate all referenced and customary credit information sources including consumer credit reporting repositories regarding my/our credit and financial responsibility for the purpose of obtaining credit and for periodic review for the purpose of maintaining the credit relationship.

**CREDIT POLICY:** Statements are rendered as of the last day of each month. C.O.D. restrictions may be placed on any past due account.

**CREDIT TERMS:** All invoices are due TouchTunes. A service charge of 1 ½ % per month or 18% per annum, or the highest legal rate, which ever is less, may be assessed on delinquent invoices.

**CHANGE OF OWNERSHIP:** I/We understand that we must notify TouchTunes in writing by certified mail of any change in ownership, the name of the business or structure of the business under which credit is established.

**DEFAULT POLICY:** In the event of default, and if this account is turned over to an agency and/or an attorney for collection, the undersigned agrees to pay all reasonable attorney fees, and/or costs of collection whether or not suit is filed.

**APPLICANT'S SIGNATURE ATTESTS FINANCIAL RESPONSIBILITY, ABILITY AND WILLINGNESS TO PAY IN ACCORDANCE WITH THE ABOVE TERMS:**

**Company Name:** \_\_\_\_\_

**By:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**By:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**CONSENT TO OBTAIN CONSUMER CREDIT REPORT**

The undersigned individual who is either a principal of the credit applicant or a sole proprietorship of the credit applicant, recognizing that his or her individual credit history may be a factor in the evaluation of the credit history of the applicant, hereby consents to and authorizes the use of a consumer credit report on the undersigned by the above named business credit grantor, from time to time as may be needed, in the credit evaluation process.

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(date)

## GUARANTEE OF OBLIGATIONS

**Guarantee of Obligations:** In consideration of TOUCHTUNES' entering into the Music Services Agreement, dated as of the date hereof, with \_\_\_\_\_ (the "Operator") (the "Agreement," which term will include any and all amendments thereto and substitutions therefor hereafter made and regardless of whether they are made with or without the approval of the undersigned), and in order to induce TOUCHTUNES to enter into the Agreement, the undersigned hereby, *jointly and severally*, unconditionally and irrevocably guarantee payment when due of any and all amounts owing under the Agreement, as set forth in this Guaranty of Obligations (the "Guarantee").

**Waiver of Defenses of Guarantor:** The obligations of the undersigned shall not be impaired, diminished or discharged, in whole or in part, by any waiver or extension of time of any obligations of the Operator granted by TOUCHTUNES under the Agreement, by any course of dealing between TOUCHTUNES and the Operator, by the unenforceability of the Agreement, in whole or in part, for any reason whatsoever, by the release of any guarantor or other obligor or any collateral, or by any other act, omission, event or circumstance which might operate to discharge a guarantor in whole or in part or which might operate as a defense, in whole or in part, to any obligation of a guarantor or which might invalidate, in whole or in part, this Guarantee.

**Bankruptcy Provision; Expenses:** The undersigned, *jointly and severally*, agree to pay on demand (a) any amount which TOUCHTUNES is required to pay under any bankruptcy, insolvency or other similar law on account of any amount received by TOUCHTUNES under or with respect to the Agreement or this Guarantee, and (b) all expenses of collecting and enforcing this Guarantee including, without limitation, expenses and fees of legal counsel, court costs and the cost of appellate proceedings. If any amount owing under this Guarantee is not paid within five days of the date of demand by TOUCHTUNES, then the undersigned, *jointly and severally*, agree to pay interest thereon at the rate of 18 % per annum or the maximum amount permitted by law, whichever is greater, from the later of (i) the date of such demand or (ii) the date on which TOUCHTUNES pays or expends the amount demanded, until such amount is paid in full to TOUCHTUNES.

**Remedies: Order of Pursuit:** This is a guarantee of payment and not of collection. TOUCHTUNES shall not be required to resort to or pursue any of its rights or remedies under or with respect to any other agreement or any other collateral before pursuing any of its rights or remedies under this Guarantee. TOUCHTUNES may pursue its rights and remedies in such order as it determines, and the exercise by TOUCHTUNES of any right or remedy will not preclude its exercise of any other right or remedy. *TOUCHTUNES may pursue any of its rights or remedies under this Guarantee against any of the undersigned without pursuing any of its rights or remedies against any of the other undersigned.*

**Delay and Waiver:** The failure or delay by TOUCHTUNES in exercising any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance. No waiver by TOUCHTUNES of any of its rights under the Agreement or this Guarantee shall be valid unless such waiver is set forth in an instrument in writing signed by TOUCHTUNES.

**Amendment; Assignment:** This Guarantee may not be amended except in a writing approved by TOUCHTUNES and the undersigned. This Guarantee will inure to the benefit of any successor or assign of TOUCHTUNES, including successive successors and assigns. This Guarantee may not be assigned by any of the undersigned without the prior written consent of TOUCHTUNES, which may be withheld in its sole discretion.

**Governing Law:** This Guarantee shall be governed by and construed under the laws of the State of New York applicable to agreements entered into and performed entirely therein, without applying the conflict of law principles thereof.

GUARANTORS:

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



**TOUCHTUNES MUSIC CORPORATION**  
**(Including all affiliates and the servicing agent, Firestone Financial Corp.)**  
**AUTOMATIC CONTRACT PAYMENT PLAN**  
**AUTHORIZATION FORM**  
**(Please print or type)**

1. **INDIVIDUAL'S NAME:** \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

2. **BANKING INFORMATION:**

**From which monthly contract payment will be automatically deducted is:**

**BANK NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PHONE #:** \_\_\_\_\_

**ACCOUNT TYPE:** (please check one below)

Checking ?      Debit Account ?      Savings ?

**ACCOUNT #:** \_\_\_\_\_ **ROUTING #:** \_\_\_\_\_

**3. BANK AUTHORIZATION:** Please honor ACH debits on our account drawn by and payable to Technical Maintenance Corporation or its affiliates or its servicing agent, Firestone Financial Corp. We agree that your rights with respect to such debit shall be the same as if it were a check drawn on your bank account. This authority shall remain in effect until further notice. We understand that TouchTunes Music Corporation and Firestone Financial Corp. must be notified in writing 30 days in advance of any changes to our financial institution or account number.

We understand that for NSF's or Stop Payments there will be a \$35.00 charge per incident.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**ATTACH VOID CHECK HERE**

**(AUTHORIZATION IS NOT VALID WITHOUT A VOID CHECK)**

## MUSIC SERVICE AGREEMENT

**IN CONSIDERATION OF** the representations, warranties, covenants, and agreements contained in this **MUSIC**

**SERVICE AGREEMENT**, dated as of \_\_\_\_\_ <date> (this “**Agreement**”), between

**TOUCHTUNES MUSIC CORPORATION**, a Delaware corporation (“**TouchTunes**”), 1280 Rose Road, Lake

Zurich, IL 60047, and \_\_\_\_\_ <company name> , a \_\_\_\_\_ <state>

corporation (“**Operator**”), with offices at \_\_\_\_\_

\_\_\_\_\_ <address> , and other good and valuable

consideration, the receipt and adequacy of which are hereby acknowledged, the parties **AGREE** as follows:

### **1. JUKEBOXES.**

1.1. This Agreement shall apply to any digital jukebox (each, a “**Jukebox**”, and collectively, the “**Jukeboxes**”): (i) manufactured by TouchTunes and acquired by Operator on or after the date hereof; (ii) manufactured by a person other than TouchTunes and modified on or after the date hereof using a kit supplied by TouchTunes or a third party authorized by TouchTunes to operate using the music services contemplated by this Agreement (each, a “**Modified Jukebox**”); or (iii) subject to or covered by any music service agreement between TouchTunes and Operator, as of the termination date of such coverage.

1.2. Operator shall not install any Jukebox in any Establishment located outside of the forty-eight contiguous states of the United States of America and Puerto Rico, provided however, that Jukeboxes may be installed in Alaska and Hawaii if such Jukeboxes are connected to TouchTunes by means of broadband internet connection or a local internet service provider (“local ISP”).

1.3. Operator shall install and operate the Jukeboxes in compliance with all applicable laws, rules, regulations, ordinances, and governmental orders (including those regulating noise or decibel levels or requiring abatement procedures for noise emissions). Operator shall not install or operate any Jukebox in any Establishment that Operator knows or should know is not in compliance in all material respects with all applicable laws, rules, regulations, ordinances, and governmental orders. Without limiting the generality of the foregoing, Operator shall not install or operate any Jukebox unless and until it has obtained all applicable permits and licenses.

1.4. Operator shall ensure that each Jukebox has uninterrupted access to a standard grounded AC (110 volt) continuous electrical power source, and a twenty-four hour per day operational standard analog telephone line, or broadband Internet connection each as specified in the applicable Jukebox operator manual, and is otherwise operated strictly in accordance with the owner’s manual applicable to that model of digital jukebox.

1.5. Operator shall ensure that each Jukebox communicates with TouchTunes’ central server at least once each month.

1.6. Operator shall ensure that the front of each Modified Jukebox bears the following notice in a place clearly visible to the public: "This jukebox has been modified using a kit manufactured by TouchTunes Music Corporation. The audio and video content available on this jukebox is provided by TouchTunes Music Corporation. TouchTunes Music Corporation has no affiliation with the manufacturer of this jukebox."

1.7. Operator shall not alter, remove, or replace any trademark or notice thereof or notice of patent, copyright, or other such proprietary marking or insignia displayed or otherwise appearing on any Jukebox.

1.8. As between TouchTunes and Operator, TouchTunes and its licensors own, control or exclusively maintain all of the music, software, patent (pending and/or registered) and any other intellectual property recorded or installed on, embedded in, or associated with each Jukebox (collectively, the "**Intellectual Property**"). Operator shall use the Intellectual Property solely for purposes of operating each Jukebox under this Agreement. Operator shall not infringe or take any other action that could adversely affect in any respect TouchTunes' or its licensors' right, title, or interest in, to, or under any of the Intellectual Property. Without limiting the generality of the foregoing, Operator shall not, and shall not permit any other person to: (i) copy or otherwise transfer any Intellectual Property (including any Title or software) from any Jukebox to any other device of any kind or to any other person; or (ii) copy or otherwise reproduce any printed material relating to any Jukebox provided to Operator by TouchTunes or copyrighted by TouchTunes.

The use of musical works and sound recordings copyrighted by third parties in connection with the Jukeboxes are subject to the terms of TouchTunes' license agreements with the copyright owners of such works. Operator shall comply with all applicable laws and protect the copyright owners' rights in such works. Except as provided hereunder, Operator is not granted any sale, resale, reproduction, distribution or promotional use rights for the third-party copyrighted works or recordings.

1.9. Operator shall not modify or adjust in any manner the bios settings for the pre-loaded hard drive (the "**Hard Drive**") [or Tune Central unit ("**Tune Central**") in any Jukebox. Operator shall use all commercially reasonable efforts to ensure that the Establishment where any Jukebox is installed does not modify or adjust in any manner any such bios settings.

1.10. Upon termination of this Agreement for any Jukebox or Tune Central, in order to protect the Intellectual Property rights of TouchTunes and its licensors, TouchTunes shall have the right to disable the functioning of the Intellectual Property or otherwise erase the Intellectual Property on the hard drive of such Jukebox or Tune Central, remove all music software, and intellectual property from said Hard Drive and all rights connected with the Hard Drive shall terminate. Operator may retain ownership of the Hard Drive. Operator acknowledges that upon the termination of this Agreement, all rights to download, store, publicly perform or otherwise use the music, software and intellectual property contained in or stored on the Hard Drive shall terminate.

## **2. MUSIC SERVICES.**

TouchTunes shall make the following Music Services available to Operator.

2.1. TouchTunes shall make a wide selection of musical titles ("**Titles**") available for play on the Jukeboxes in accordance with this Section 2.

2.2. Operator may download an unlimited number of Titles without charge to Jukeboxes connected to TouchTunes servers by means of a broadband internet or TouchTunes' local ISP. For Jukeboxes that are connected to TouchTunes by other means, including an 800-telephone line, Operator may download the first 750 Titles from TouchTunes' central music library without charge. This right shall not apply to any subsequent installation of such Jukebox if it is relocated to a different Establishment. After 750 Titles have been downloaded, Operator may download during the one-year period commencing on the Start Bill Date of each such Jukebox, and during each succeeding one-year period, 365 Titles free of charge. Operator shall incur (and TouchTunes may immediately bill Operator for) the "Per Title Download Fee" specified in the *Fee*

*Schedule* attached to and made a part of this Agreement (“the Fee Schedule”) for each Title downloaded at any time in excess of the then-applicable free Title download limit.

2.3 TouchTunes will make technical support for the Music Services available to Operator via a special service telephone number. Operator shall not disclose such special service telephone number to any Establishment or any other person.

2.4 Within five business days after installing any Jukebox (or, in the case of any Initial Jukeboxes, within five days of the execution of this Agreement) Operator shall notify TouchTunes of the date such installation was completed and provide the business name, address, city, state, zip code, telephone number, facsimile number, and manager name (or name of another appropriate contact person) of each establishment where Operator installed such Jukebox (each, an “**Establishment**”) (and the same information for the principal owner(s) of such Establishment), and a reasonably detailed description of the type of business conducted by and the clientele of such Establishment.

### **3. MUSIC SERVICE FEES.**

3.1. Before or upon the installation of each Jukebox, Operator shall notify TouchTunes in writing of Operator’s selection of a Music Service Fee Program for the Jukebox, as described and set forth in the Fee Schedule and Sections 3.2 and 3.3. Upon written notice to TouchTunes, Operator may change the Music Service Fee Program for any Jukebox(es). Any such change shall be effective as of the Monday following the business day on which TouchTunes received such notice. Operator may change billing programs for each Jukebox without charge one time in any twelve month period. Operator shall incur (and TouchTunes may immediately bill Operator) a “Billing Program Change Fee” for any additional billing program changes for such Jukebox during that twelve month period in the amount specified in the *Fee Schedule, plus any applicable taxes*. Operator will be allowed to change the Music Fee Program for the Jukebox once during the first ninety (90) day period following initial installation without charge, plus any applicable taxes. The fees described below and on the *Fee Schedule* are subject to any applicable taxes.

3.2. Operator shall pay to TouchTunes for each Jukebox under the Fixed Rate Program the following amounts as specified in the *Fee Schedule*: (i) the “Base Service Fee; *plus* (ii) the “Per Play Fee” for each play on such Jukebox; *plus* (iii) the “Tune Central Per Play Fee” for each Tune Central play on such Jukebox; *provided, however,* that in no event, shall Operator pay to TouchTunes for any Jukebox under the Fixed Rate Program more than the “Maximum Service Fee” specified in the *Fee Schedule*.

3.3. Operator shall pay to TouchTunes for each Jukebox under the 20% (percent) Program, twenty percent (20%) of gross revenue after deductions by Operator for payments made by Operator for certain taxes, if applicable, as provided in Section 7, *plus* the “Background Music Fee”. 3.4. Notwithstanding Sections 3.2 and 3.3, any Tune Central rented by Operator from TouchTunes under a Tune Central Agreement (“TCA”) shall be governed by the terms and conditions of the TCA, including payment of an additional \$0.17 per Tune Central play.

3.5. All Music Service Fees for each Jukebox shall commence as of the earliest one week period during which (i) twenty-five plays have occurred on the Jukebox; or (ii) coinage on the Jukebox has attained \$5.00 (in each case, the “**Start Bill Date**”).

3.6. In addition to any other rights and remedies that TouchTunes may have resulting from or based upon any breach by Operator of its obligations under this Agreement, if Operator continues to operate any Jukebox that is subject to the terms of this Agreement using music or a music service supplied by a third party or by Operator, or if a Jukebox that is subject to this continues to generate revenue using music not supplied by TouchTunes before the scheduled expiration date of this Agreement for such Jukebox, Operator shall incur (and TouchTunes may immediately bill Operator) for each Jukebox a penalty in the amount specified as the “Early Termination Fee” in the *Fee Schedule* hereto.

**4. PROMOTION AND ADVERTISING REVENUES.** So long as Operator complies in all material respects with its obligations under this Agreement (including its obligation to provide Establishment-related information pursuant to Section 2.4, TouchTunes shall pay to Operator an amount equal to ten (10) percent of revenues actually received by TouchTunes for advertising played or displayed on any Jukebox, less any commissions, provisions, reserves, and other direct costs incurred by TouchTunes to generate such advertising revenues ("**Net Ad Revenue**"); *provided, however*, that if Operator or any Establishment declines to broadcast or display any advertisement on any Jukebox, Operator's share of Net Ad Revenue for such advertisement and Jukebox shall decrease proportionately as determined by TouchTunes in its sole discretion. TouchTunes shall pay all amounts owing to Operator under this section within thirty days after the end of the calendar quarter in which they were earned. TouchTunes may in its sole discretion set off amounts owing to Operator under this section against any amounts owing from Operator to TouchTunes under this Agreement.

**5. INVOICES.**

5.1. TouchTunes shall send Operator monthly invoices specifying all amounts due and payable by Operator under this Agreement; *provided, however*, that TouchTunes' failure to specify on any invoice any amounts then due and payable from Operator to TouchTunes shall not relieve Operator of its obligation to pay such amount once stated on any subsequent invoice.

5.2. TouchTunes shall not execute any electronic fund transfer pursuant to Section 6 unless it has sent Operator an invoice for the amounts subject to such transfer at least four business days before such electronic fund transfer is executed.

**6. PAYMENTS.**

6.1. Operator shall remit all amounts due and payable to TouchTunes hereunder by electronic fund transfer.

6.2. Promptly after the date hereof, and in any event before Operator installs any Jukebox at any Establishment, Operator shall execute and endorse all documents necessary to establish an electronic fund transfer procedure between Operator's bank and TouchTunes' bank. Operator shall pre-authorize TouchTunes and its bank to make regular periodic withdrawal payments from Operator's accounts for the amounts due and payable to TouchTunes hereunder.

6.3. Operator shall maintain in its accounts that are accessible as provided in Section 6.2 sufficient funds to satisfy all amounts due and payable to TouchTunes hereunder as they become due and payable. Operator shall incur (and TouchTunes may immediately bill Operator for) an "Insufficient Funds Service Charge" in the amount specified in the *Fee Schedule* each time any electronic fund transfer is unsuccessful due to insufficient funds.

6.4. TouchTunes, through its bank, shall execute electronic fund transfers for each monthly billing cycle (which cycle begins on the Monday of the week of the Start Bill Date for each Jukebox). Each regular monthly billing cycle thereafter commences on the first Monday in each month and ends on the Sunday of the week beginning with the first Monday of the next month.

6.5. Without limiting TouchTunes' other rights and remedies, in order to protect the Intellectual Property rights of TouchTunes and its licensors, TouchTunes shall have the right to disable the functioning of the Intellectual Property or otherwise erase the Intellectual Property on the jukeboxes or hard drives and/or terminate this Agreement if Operator's account is delinquent for a period exceeding thirty (30) days. Operator shall be responsible for, and shall hold TouchTunes harmless from and against, any fees, costs or expenses associated with any such delinquency in accordance with paragraph 12.3.

**7. TAXES.**

Operator shall pay all sales, use, and other taxes payable in respect of gross revenues generated by all Jukeboxes operated by Operator. Upon request, Operator shall provide TouchTunes with evidence satisfactory to TouchTunes that Operator has paid such taxes. If TouchTunes pays or is required to pay any sales, use, or other taxes in respect of gross revenues generated by any Jukebox operated by Operator or any amounts TouchTunes receives or is entitled to receive hereunder, TouchTunes may immediately bill Operator for the full amount of such taxes.

**8. LATE PAYMENTS.** All amounts due and owing or otherwise payable to TouchTunes under this Agreement shall bear interest at a rate per annum equal to the lower of 24.0 percent or the maximum rate permitted by applicable law. The accrual or payment of such interest shall not be excused or be construed as a waiver by TouchTunes of Operator's timely obligation to make all payments owing to TouchTunes hereunder. Operator shall be responsible for all costs and expenses (including collection agency fees and reasonable attorneys' fees) TouchTunes incurs in connection with collecting any amounts owing to TouchTunes hereunder, including any applicable interest.

**9. PERFORMANCE ROYALTIES.** So long as Operator installs and operates each Jukebox in accordance with the terms and conditions of this Agreement and otherwise complies with its obligations hereunder, TouchTunes shall be solely responsible for the payment of all royalties and other amounts payable to performers or artists or their representatives in respect of the play of Titles on such Jukebox.

The previous obligation applies only to Jukeboxes that are operated by the insertion of coins, bills or other monetary equivalents and operable (e.g. the Titles are chosen) by patrons of the Establishment that are located in an establishment that does not charge admission, cover, minimum or similar fees.

**10. NO EXCLUSIVITY AND NON-COMPETITION.**

10.1. Nothing in this Agreement or otherwise shall give Operator any exclusive right or interest to install or operate TouchTunes digital jukeboxes in any given territory or type of Establishment. TouchTunes has and will continue to sell or lease digital jukeboxes and provide Music Services to third-parties who may operate in the same territory and service the same types of Establishments as Operator

10.2 TouchTunes agrees that it will not operate Jukeboxes or any coin or currency-operated or pay-for-play music entertainment equipment in location owner establishments to compete with Operator. Nothing in this Agreement shall prevent TouchTunes from installing or seeking to install Jukeboxes or other equipment in other venues or types of establishments of any kind whatsoever. The parties hereto acknowledge that due to the innovative design and technology of the Jukeboxes, TouchTunes is uniquely equipped to develop new markets.

**11. REPRESENTATIONS AND WARRANTIES.** Each party hereto hereby represents and warrants to the other party as follows:

11.1. Such party has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

11.2. Such party has duly authorized and approved by all requisite action on its part the execution and delivery by it of this Agreement, the performance by it of its obligations hereunder, and the consummation by it of the transactions contemplated hereby.

11.3. Such party has duly executed and delivered this Agreement and, assuming that this Agreement has been duly authorized, executed, and delivered by the other party hereto, this Agreement constitutes a legal, valid, and binding obligation of such party, enforceable against it in accordance with its terms.

11.4. The execution and delivery of this Agreement by such party, and the payment, performance, observance, defense, and discharge by such party of each of its obligations hereunder, do not and will not: (i)

conflict with, contravene, violate, or cause any breach of any provision of the charter, by-laws, or any other organizational document of such party; (ii) conflict with, contravene, or violate any law, rule, regulation, ordinance, permit, license, or governmental order applicable to such party or any property, asset, business, or operation of such party, or cause the acceleration, amendment, cancellation, rescission, revocation, suspension, termination, withdrawal, or other modification of any such permit, license, or governmental order, or give any other person the right to do so; or (iii) conflict with, contravene, violate, cause any breach of, constitute a default or an event that with the giving of notice or lapse of time or both would become a default under, or cause the creation of any lien or other encumbrance on any property or asset of such party pursuant to any contract to which such party is a party or by which any property, asset, business, or operation of such party is bound or affected.

## **12. TERM AND TERMINATION.**

12.1. Unless earlier terminated as provided in Section 19 or Section 12.3, each Jukebox shall be subject to this of this Agreement for a five year period beginning on the delivery date of that Jukebox (“Individual Jukebox Term”). Thereafter, the Individual Jukebox Term for such Jukebox shall automatically renew for a five-year period under the Fees in effect as of such renewal date, unless terminated in accordance with Section 12.2. The fees as set out in the Fee Schedule are guaranteed by TouchTunes for the Individual Jukebox Terms for each individual Jukebox.

12.2. Either party may terminate this Agreement with respect to a Jukebox as of the end of the initial or any automatic renewal Individual Jukebox Term by sending written notice of termination by certified, registered or express mail to the other party not later than thirty days prior to the end of the then-effective term. This Agreement shall terminate at the time the last Individual Jukebox Term of all Jukeboxes covered by this Agreement terminates.

12.3. Either party may terminate this Agreement at any time by sending written notice of termination to the other party if: (i) any representation or warranty of the other party contained herein was not true and complete in all material respects when made; (ii) the other party has not timely complied in all material respects with each covenant or agreement contained herein to be complied with by it and has not cured any such breach or default within ten business days of receipt of written notice thereof from any other party hereto; or (iii) the other party makes a general assignment for the benefit of creditors, or any proceeding is instituted by or against such person seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up or reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency or reorganization; *provided* that, in the event of any such proceeding instituted against the other party, such proceeding has not been stayed or dismissed for a period of sixty days

12.4. The termination or expiration hereof shall not release any party from any obligation accruing before such termination or expiration or which, in accordance with the terms hereof, survives such termination or expiration, nor release a defaulting party from liability for its default hereunder and for any damages incurred by the other party as a result of any such default hereunder.

**13. FINANCIAL INFORMATION.** Operator shall provide TouchTunes such financial statements or other financial information with respect to Operator, and such bank and other financial references, as TouchTunes may from time to time reasonably request. Operator hereby authorizes TouchTunes to contact any such references and perform any credit verification procedures in respect of Operator as TouchTunes may from time to time reasonably deem appropriate. TouchTunes shall keep all such information confidential. Operator hereby represents and warrants to TouchTunes that Operator is solvent, and that Operator has no reason to believe that it may become insolvent at any time during the one-year period commencing on the date hereof.

**14. CONFIDENTIALITY.**

14.1 Operator shall hold in strict confidence all proprietary or confidential information of TouchTunes or relating to any Jukebox or the relationship of the parties contemplated by this Agreement, including the terms and conditions of this Agreement and the performance by the parties of their respective obligations hereunder (collectively, "**Confidential Information**").

14.2 Operator shall not use any Confidential Information, except to the extent Operator reasonably determines is necessary in connection with the consummation of the transactions contemplated hereby and the performance of its obligations hereunder. Except as provided in the immediately preceding sentence, Operator shall not directly or indirectly copy, reproduce, use, publish, disseminate, misuse, misappropriate, sell, assign, or otherwise transfer or disclose to any person any Confidential Information.

**15. DISCLAIMER OF WARRANTIES.** EXCEPT FOR ANY EXPRESS WARRANTIES PROVIDED FOR UNDER THE GENERAL TERMS AND CONDITIONS OF SALE APPLICABLE TO ANY JUKEBOX, TOUCHTUNES DOES NOT GIVE OR MAKE TO OPERATOR OR ANY CUSTOMER THEREOF ANY WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR DESCRIPTION WHATSOEVER IN RESPECT OF ANY JUKEBOX OR THE MUSIC SERVICES TO BE PROVIDED HEREUNDER. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, TOUCHTUNES HEREBY DISCLAIMS AND OPERATOR HEREBY WAIVES ALL IMPLIED WARRANTIES OF ANY KIND, NATURE, OR DESCRIPTION WHATSOEVER IN RESPECT OF ANY JUKEBOX OR THE CONDITION OR PERFORMANCE THEREOF OR THE MUSIC SERVICES TO BE PROVIDED HEREUNDER, INCLUDING, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**16. INDEMNIFICATION.**

16.1. Each party hereto (in its capacity as indemnitor hereunder, "**Indemnitor**") shall indemnify the other party and its affiliates and their respective representatives with respect to, and hold each of them harmless from and against, all liabilities, losses, damages, claims, costs, expenses, amounts paid in settlement, interest, awards, judgments, penalties, or fines of any kind, nature, or description whatsoever (including, without limitation, all reasonable fees and disbursements of counsel, accountants, experts, and consultants) (collectively, "**Losses**") suffered, incurred, or sustained by such person or to which such person becomes subject resulting from, arising out of, or relating to: (i) Indemnitor's breach of any representation, warranty, covenant, or agreement contained herein; or (ii) any nonfeasance, misfeasance, or malfeasance of Indemnitor or any of its affiliates or any of their respective representatives in connection with this Agreement or any transaction contemplated hereby or the performance of any of Indemnitor's obligations hereunder.

16.2. Operator shall also indemnify TouchTunes and its affiliates and their respective representatives with respect to, and hold each of them harmless from and against, all Losses suffered, incurred, or sustained by such person or to which such person becomes subject resulting from, arising out of, or relating to the exercise by TouchTunes of its rights pursuant to Section 12.3. including as a result of any claim brought or made by any Establishment where any Jukebox is installed, or by any customer thereof; except to the extent any such Losses are caused by the gross negligence or willful misconduct of TouchTunes.

**17. LIMITATION OF LIABILITY.** Notwithstanding anything to the contrary contained herein, neither party hereto nor any of its affiliates shall be liable to the other party hereto or any other person under or in connection with this Agreement for any consequential, incidental, indirect, exemplary, remote, speculative, special, or other not reasonably foreseeable damages, punitive damages, or lost profits, business interruption costs, opportunity costs, or other similar damages of any kind, nature, or description whatsoever whether of not such party knew or should have known of the possibility of any such damages.

**18. CUMULATIVE REMEDIES.** To the fullest extent permitted by applicable law, all rights, powers, and remedies of each party hereto under this Agreement shall be cumulative and not alternative, and in addition to all other rights, powers, and remedies of such party, whether specifically granted under this Agreement or otherwise existing under any applicable law. Each party hereto may exercise any of its rights, powers, or remedies under this Agreement from time to time and as often and in such order as it may deem necessary, appropriate, or desirable. The exercise or the beginning of the exercise by either party hereto of any of its rights, powers, or remedies under this Agreement shall not be construed to be a waiver of its right to exercise at the same time or thereafter any of its other rights, powers, or remedies.

**19. FORCE MAJEURE.**

19.1 Neither party hereto shall be liable for any default or delay in the performance of its obligations hereunder if and to the extent such default or delay is caused, directly or indirectly, by any event beyond such party's reasonable control.

19.2. If any event of force majeure prevents either party hereto from timely performing all of its obligations hereunder (other than the payment of money), the non-performing party shall be excused from further performance or observance of its obligations so affected for so long as such circumstances prevail and such party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay.

19.3. If any event of force majeure prevents either party hereto from timely performing any of its obligations hereunder for a period of more than thirty consecutive days, the other party may terminate this Agreement immediately by delivery of written notice thereof.

19.4 If the cost to TouchTunes of the music provided under this Agreement increases or decreases, TouchTunes shall have the right to adjust the Music Service Fees as set forth in this paragraph 3 and the attached Fee Schedule by the same percentage as such increase or decrease. In the event of an increase in cost of music, Operator, at its sole expense, may review TouchTunes' books and records solely to verify the increased cost of the music, subject to confidentiality provisions in TouchTunes agreements with music suppliers.

**20. WAIVER OF JURY TRIAL.** Each party hereto hereby unconditionally and irrevocably waives all right to trial by jury in any action, suit, or proceeding based upon, resulting from, arising out of, or relating to this Agreement or any transaction or agreement contemplated hereby, or for the recognition or enforcement of judgment resulting from any such action, suit, or proceeding (each, a "**Designated Action**").

**21. EXPENSES.** Except as otherwise expressly provided herein, each party hereto shall pay all costs and expenses incurred by or on behalf of such party in connection with this Agreement and the performance of its obligations hereunder; *provided, however*, that, if a final and binding judgment is obtained by either party hereto against the other in any Designated Action, such judgment debtor shall pay all costs and expenses (including reasonable fees and disbursements of counsel, accountants, experts, and consultants) incurred by such judgment creditor in connection with or resulting from such Designated Action.

**22. NOTICES.** Each party hereto shall give or make any notice or other communication hereunder in writing delivered in person, or by reputable overnight business courier service, or registered or certified mail (postage prepaid, return receipt requested) to the addressee set forth on the signature page of this Agreement (or to such other address as either party may hereafter specify for such purpose by notice given in accordance with this paragraph).

**23. COMPLIANCE WITH LAWS.** Operator shall comply in all material respects with all applicable laws, rules, regulations, and governmental orders in connection with the performance or observance of its obligations hereunder.

**24. FURTHER ACTION.** Operator shall, promptly after any request by TouchTunes and at Operator's sole cost and expense, take or cause to be taken all actions, do or cause to be done all things, and execute and deliver or cause to be executed and delivered all documents, instruments, certificates, further assurances (including assurances of continuing solvency), or other papers, that TouchTunes may reasonably deem necessary, appropriate, or desirable in connection with this Agreement, the consummation of the transactions contemplated hereby, and the performance by Operator of its obligations hereunder.

TouchTunes may assign its rights or delegate its obligations under this Agreement with novation to any other person, including to any lender as security for TouchTunes' payment obligations to such lender.

**26. General.** This Agreement: (i) Contains the entire agreement of the parties concerning the subject matters hereof and may not be amended except by a written instrument signed by both parties hereto; (ii) May not be assigned by Operator without the prior written authorization of TouchTunes, which shall not be unreasonably withheld, but subject to such conditions as TouchTunes may reasonably require. No such assignment or purported assignment shall relieve or shall be construed to relieve Operator or TouchTunes from any of its obligations hereunder; and, (iii) Shall be governed by and construed under the laws of the State of New York applicable to agreements entered and performed entirely therein. It is understood and agreed between the parties that the exclusive venue for any action, suit or proceeding arising from or based upon this Agreement, shall be the appropriate state and federal courts located in the city of New York in the State of New York. (iv) No waiver by either of the parties hereto or any failure by the other party to keep or perform any covenant or condition under this Agreement shall be deemed to be a waiver of any other breach of the same, or any other covenant or condition. (v) Any provision of this Agreement which is held to be invalid or unenforceable for any reason shall be enforced to the extent of such invalidity or unenforceability without effecting the validity or enforceability of the remanding provisions herein; (vi) The parties acknowledge that the relationship between them is in the nature of independent contractors. This Agreement shall not be deemed to create a partnership or joint venture, and neither party shall be deemed to be the other's agent, partner, employee or representative.

**IN WITNESS WHEREOF**, each party hereto has executed and delivered this Agreement as of the date first written above.

**TOUCHTUNES MUSIC CORPORATION**

**OPERATOR:**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

TouchTunes Music Corporation  
3 Place du Commerce  
4th Floor  
Montreal, Quebec H3E 1H7  
Canada

Operator Address:

**FEE SCHEDULE**

**ALL FEES DESCRIBED IN THE AGREEMENT AND THE FEE SCHEDULE SET FORTH BELOW ARE SUBJECT TO ANY APPLICABLE TAXES.**

**GENERAL FEES**

<i>Early Termination Fee</i>	\$30.00 per week remaining on contract as of termination date
<i>Per Title Download Fee</i>	\$1.50 (only as applicable as defined in Section 2.2)
<i>Billing Program Change Fee</i>	\$149.00
<i>Insufficient Funds Service Charge</i>	\$35.00 per occurrence

**MUSIC SERVICE FEE PROGRAMS**

	<b><u>Fixed Rate Program</u></b>	<b><u>20 % Program</u></b>
<i>Base Service Fee</i>	\$12.95 per week	Not applicable
<i>Per Play Fee</i>	\$0.04 per play	Not applicable
<i>Tune Central Per Play Fee</i>	\$0.18 per Tune Central play	Not applicable
<i>Background Music Fee</i>	Not applicable	<p>If Titles played free of charge during subject week represent 20.0 percent or more but less than 40.0 percent of all Titles played during such week, \$7.50 additional charge</p> <p>If Titles played free of charge during subject week represent 40.0 percent or more but less than 80.0 percent of all Titles played during such week, \$15.00 additional charge</p> <p>If Titles played free of charge during subject week represent 80.0 percent or more of all Titles played during such week, the Maximum Service Fee shall apply</p>
<i>Minimum Service Fee</i>	Not applicable	Not applicable
<i>Maximum Service Fee</i>	\$99.95 per week	Not applicable

**SCHEDULE A: INITIAL JUKEBOXES**

[LIST AS APPROPRIATE]

## **PRODUCT WARRANTY**

This product warranty (Product Warranty) is provided by TouchTunes™ Music Corporation, a Nevada corporation ("TouchTunes"), to the legal and rightful owner, lessee or licensee ("Operator") of the TouchTunes Jukeboxes and other TouchTunes products. Operator and TouchTunes have entered into agreement(s), including amendments thereto ("MSA") outlining the terms and conditions for TouchTunes to provide certain services in connection with such products. Capitalized terms used herein and not otherwise defined have the meanings assigned to them in the MSA. This Product Warranty is effective upon the purchase and delivery of each TouchTunes Jukebox ("TT Jukebox") and/or other related TouchTunes products ("TT Products") and is subject to the terms and conditions set forth herein and in the MSA. By accepting this Product Warranty and the products delivered herewith, the Operator is deemed to confirm and ratify such terms and conditions.

### **1. Product Warranty Period.**

Subject to the limitation of paragraphs 2.2, 2.3, 2.4, 2.5 and 2.7 hereof, the term of the product warranty shall be as follows:

- 1.1 New TT Jukebox(es), excluding accessory parts such as remote controls and batteries, shall be covered by a two (2) year product warranty commencing from the date of shipment of TT Jukebox(es) to Operator.
- 1.2 New Tune Central, come with a twelve-month warranty and used Tune Central have a six-month warranty from time of shipment. TT Jukeboxes and refurbished TT Jukebox(es) sold, leased, licensed or otherwise provided to Operator by TouchTunes shall be covered by a six (6) month warranty commencing from the date of shipment of such products.
- 1.3 All other new parts, or new products sold, leased, licensed or otherwise provided to Operator by TouchTunes shall be covered by a ninety (90) day warranty commencing from the date of shipment of such products.
- 1.4 All used or refurbished parts and products, except for refurbished TT Jukebox(es) per paragraph 1.2 herein, shall be covered by a thirty (30) day warranty commencing from the date of shipment of such products.
- 1.5 This Product Warranty shall not apply to any TouchTunes product already in possession of an Operator prior to the date of delivery of this Product Warranty; provided, however, that this Product Warranty shall apply to any subsequent products delivered to an Operator and shall fully replace any existing warranty agreement or understanding, whether express or implied. TouchTunes may amend this Product Warranty in connection with the delivery of future products and the Product Warranty delivered at such time shall control.
- 1.6 This Product Warranty shall be independent of, and TouchTunes shall have no obligation under, any warranty provided by a supplier other than TouchTunes for products that Operator may receive in connection with TouchTunes products and shall not limit the rights of Operator under such other warranties.

### **2. Product Warranty, Servicing, and Repairs.**

- 2.1 Subject to limitations of Section 1 and paragraphs 2.2, 2.3, 2.4, 2.5 and 2.7, hereof, TouchTunes shall bear the cost to repair, or replace and ship product back to Operator TT Jukeboxes and TT Products covered under this Product Warranty.
- 2.2 Notwithstanding any provision herein to the contrary, Operator shall bear all costs (including the costs for such parts and all freight cost for the shipment to TouchTunes and back to Operator) for TT Jukeboxes or TT Products that require replacement or repair due to negligence or vandalism or found defective because of improper usage, treatment, handling, or that are beyond the warranty periods described herein.
- 2.3 TouchTunes shall provide Operator with available technical documentation and service manual (the "TouchTunes' Operator Manual") to facilitate installation and maintenance of the TT Jukebox. Operator, at its own cost and expense, will keep and maintain each TT Jukebox and TT Product in good repair, presentable condition and proper working order. Operator shall promptly make any necessary repairs in accordance with TouchTunes' Operator Manual, and all repair work shall be performed by properly trained and skilled personnel. Operator shall only use spare or replacement parts supplied by TouchTunes and shall not use any TouchTunes parts on any non-TouchTunes product without the written consent of TouchTunes; failure to do so shall cause this Product Warranty to be null and void. Operator shall promptly execute from time to time any upgrade or repair requested by TouchTunes upon receipt by Operator of the required upgrades or parts. Operator agrees to comply with TouchTunes' system for ordering spare or replacement parts. Operator may obtain replacement parts directly from a TouchTunes distribution center. When a TouchTunes distribution center is not reasonably accessible to the Operator or a part is not available from the distribution center, TouchTunes shall arrange to deliver the part directly to Operator. In TouchTunes' sole discretion, should a replacement part be immediately required to repair a TT Jukebox that cannot play music and Operator requests by telephone such part prior to 2:00 p.m. Central Time, TouchTunes shall use commercially reasonable efforts to provide the part to Operator by the end of the next business day. In order to minimize the downtime, TouchTunes, at its sole discretion, may decide to ship a replacement part prior to receiving the defective one. Should TouchTunes determine that a replacement part not be required to have the TT Jukebox play music, or should Operator already have a spare part in consignment, TouchTunes shall use commercially reasonable efforts to have such parts delivered within five (5) days of receipt of Operator's order.
- 2.4 Replacement parts to be provided by TouchTunes hereunder shall be delivered following confirmation through TouchTunes' helpline department and issuance of a return authorization confirmation number by TouchTunes. Any part replaced pursuant to this Product Warranty shall be returned, by a traceable, secure means, by Operator to TouchTunes within thirty (30) days of receipt of the replacement part. Should any such part not be returned within thirty (30) days, Operator shall pay TouchTunes the amount determined by TouchTunes to constitute the replacement cost (the "Advance Replacement Amount") and shall own the part, except for Hard Drive which shall remain the exclusive property of TouchTunes at all times, as provided under this Product Warranty. Should such part be returned within the said thirty (30) days, TouchTunes shall issue full credit against the Advance Replacement Amount should such failure have occurred due to normal wear and tear or manufacturer's defect. Should such parts be returned after the said thirty (30) days TouchTunes shall issue credit against the Advance Replacement Amount should such failure have occurred due to normal wear and tear or manufacturer's defect, less a \$75 administration fee. TouchTunes shall periodically provide Operator with an updated list of parts and their respective prices.
- 2.5 Notwithstanding anything in this Product Warranty to the contrary, in the event that (i) Operator breaches any of the conditions stipulated herein or causes a Default under the MSA, or (ii) the MSA terminates for any reason or no reason, or (iii) Operator fails to pay TouchTunes the amounts owing for the purchase of TT Jukebox or TT Products within the payment terms established by TouchTunes, TouchTunes' Product Warranty obligations herein shall be null and void as of the date of such breach, default, non-payment, or termination, as the case may be.
- 2.6 At TouchTunes' request, Operator shall provide TouchTunes with the current status and operating condition of any TT Jukebox subject to this Product Warranty.
- 2.7 EXCEPT AS IS SPECIFICALLY AND EXPRESSLY STATED IN PARAGRAPHS 1.1, 1.2, 1.3, 1.4 and 2.1, TOUCHTUNES MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF ANY TT JUKEBOX, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

## DSL AGREEMENT

Agreement made [DATE] between **TOUCHTUNES MUSIC CORPORATION**, a Delaware corporation (“*TouchTunes*”), 1280 Rose Road, Lake Zurich, IL 60047, and [**OPERATOR**], a [STATE] [corporation] (“*Operator*”), with offices at \_\_\_\_\_ .

WHEREAS TouchTunes and AT&T Corp. have entered into an agreement whereby AT&T and its affiliated divisions will provide to operators of TouchTunes digital jukeboxes 1) equipment that enables “Sites” to connect to AT&T’s DSL service and 2) access to AT&T’s “DSL Service;” and TouchTunes desires to make such equipment and “DSL Service” available to Operator;

**NOW THEREFORE, IN CONSIDERATION OF** the agreements made herein and other good and valuable consideration, the parties **AGREE** as follows:

### 1. Definitions.

When used in this Agreement:

- (a) “Equipment” means the modem, telephone cord and power cord provided by AT&T to Operator that enables Operator to connect to the “DSL Service”.
- (b) “DSL” means Digital Subscriber Line, a technology that provides a high speed data access service utilizing a combination of an Operator’s existing local exchange physical plant (i.e., copper facility), a specialized DSL equipped wire center or other facility with DSL equipment, and transport to the Asynchronous Transfer Mode (“ATM”) Cell Relay switch where an Internet service provider (“ISP”) is connected.
- (c) “Service” or “DSL Service,” mean the DSL Internet access service that is provided by AT&T to each Site. The Service combines DSL transport and Internet access allowing connection to TouchTunes and to the Internet using DSL technology for the underlying transport between Operator and the AT&T data network.
- (d) “Site” means a physical location that is approved by TouchTunes, that has a TouchTunes digital jukebox owned and operated by Operator, and that, at Operator’s request, receives DSL Service under this Agreement.

### 2. Equipment and Service

- (a) Through AT&T, DSL Service will be provided to Sites, subject to the geographic and technical scope of the Services and availability of necessary facilities, equipment and access.
- (b) Operator will receive a self-installation kit containing Equipment for each DSL line to be installed, which Operator shall self-install. If AT&T technician installation services are required, Operator may purchase such services at rates specified in the Price Schedule attached to and made a part of this Agreement (the “Price Schedule”). Operator shall pay TouchTunes in advance for all technician installation service charges. AT&T will only perform such services upon receipt of written approval from TouchTunes.
- (c) Title and all risk of loss to the Equipment shall pass to Operator upon shipment. Operator has 30 days after receipt to test the Equipment and notify TouchTunes in writing if the Equipment is defective. Any such equipment will be repaired or replaced at TouchTunes’ or AT&T’s option. Neither TouchTunes nor AT&T is responsible for any impairment caused by (a) any non-conformity attributable to improper use or environmental or electrical conditions or attachment of materials or devices not supplied hereunder; or (b) installation, operation or maintenance of hardware or software not supplied under this Agreement. If Operator uses any other equipment it owns, Operator grants AT&T a license to use such equipment in the manner necessary to provide the Service.

### **3. Pricing and Payment**

(a) Operator shall pay TouchTunes for each Site the rates specified in the Price Schedule, without deduction, setoff or delay for any reason. Operator shall pay all taxes duties, levies, and other similar charges (and any associated interest and penalties) relating to the installation, license, use or provision of the Service.

(b) Billing for each Site begins when the Service is first provisioned or made available at a Site. Operator will advise TouchTunes of any billing dispute within 15 days after receipt of invoice or the invoice shall be deemed correct.

(c) Payment is due upon receipt of the invoice. Restrictive endorsements or other statements on checks accepted by TouchTunes will not apply. Operator shall reimburse TouchTunes for all costs (including reasonable attorney's fees) associated with collecting delinquent or dishonored payments. Where payments are overdue, TouchTunes may assess interest charges at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law.

(d) Each party shall comply with all applicable laws and regulations.

### **4. Access to Premises**

Operator will provide AT&T, or its contracted personnel, reasonable access to all Sites at all reasonable hours to install, inspect, test, rearrange, maintain, repair or remove the Services. If Operator instructs AT&T not to complete an installation of Service at a Site and AT&T is thereby prevented from activating Service, Operator will have ten (10) business days from the date of the notice to grant permission for AT&T to perform work at that location. If Operator does not notify AT&T of such permission within that period, AT&T has the right to cancel the order.

### **5. Term**

(a) The Term of this Agreement shall be three (3) years for each Site. This Agreement shall remain in effect for the later of the Term or until the last Site's Service term expires or is otherwise terminated.

(b) Operator understands that the Service connection is provided to each individual Site. The Early Termination Fee specified in the Pricing Schedule (the "ETF") will apply for each Site terminated early. If Operator desires to transfer the Service to a different Site or Operator no longer operates a TouchTunes digital jukebox at such Site, Operator shall notify TouchTunes and TouchTunes will use reasonable efforts to have such Service moved to another Site or to another physical location with a TouchTunes digital jukebox operated by a third party. Licensee is responsible for payment of all monthly fees until the Service for the terminated Site is activated at another location. If the Service cannot be moved to another Site or third party site, Operator shall pay the ETF. If the Service is moved to another Site, Operator shall move the Equipment and self-install it at the new Site. If the Service is moved to a third party site, Operator shall pay TouchTunes an Equipment Replacement Fee of \$100.00.

(c) Operator may terminate Services for any Jukebox upon thirty (30) days prior written notice to TouchTunes, provided, however, that Operator will pay the ETF.

### **6. Limitations Of Liability**

(a) EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDIES FOR ANY CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR OBLIGATIONS UNDER THIS AGREEMENT SHALL BE:

(i) FOR BODILY INJURY OR DEATH TO ANY PERSON, OR REAL OR TANGIBLE PROPERTY DAMAGE, NEGLIGENCELY CAUSED BY A PARTY, OR DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF A PARTY OR ANY BREACH OF ARTICLE 7(a) (Marks), THE OTHER PARTY'S RIGHT TO PROVEN DIRECT DAMAGES;

(ii) FOR INTELLECTUAL PROPERTY INFRINGEMENT, THE REMEDIES SET FORTH IN

ARTICLE 11 (Further Responsibilities);

(iii) FOR DAMAGES OTHER THAN THOSE SET FORTH ABOVE AND NOT EXCLUDED UNDER THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY TWELVE (12) MONTH PERIOD) AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY OPERATOR FOR THE AFFECTED SERVICE IN THE RELEVANT COUNTRY DURING THE THREE (3) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED. THIS SHALL NOT LIMIT OPERATOR'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

(b) EXCEPT FOR THE PARTIES' ARTICLE 11 (Further Responsibilities) OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS.

(c) NEITHER TOUCHTUNES NOR AT&T SHALL BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR INTERRUPTIONS (EXCEPT FOR CREDITS FOR SUCH SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR INTERRUPTIONS EXPLICITLY SET FORTH IN AN ATTACHMENT, PRICING SCHEDULE OR SERVICE GUIDE) OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR, UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S, USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

(d) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AT&T AND/OR TOUCHTUNES MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY REPRESENTATION OR WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(e) AT&T AND/OR TOUCHTUNES DOES NOT GUARANTEE NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER DATA AND INFORMATION.

(f) THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE.

(g) THESE LIMITATIONS OF LIABILITY SET OUT IN THIS ARTICLE 6 SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT.

(h) FOR PURPOSES OF THIS PARAGRAPH "PARTIES" INCLUDES AT&T.

## **7. Intellectual Property Rights**

Operator agrees not to display or use, in advertising or otherwise, any of TouchTunes or AT&T's tradenames, logos, trademarks service marks or other indicia of origin without TouchTunes or AT&T's consent. All intellectual property in all Services shall be the sole and exclusive property of TouchTunes, AT&T or their suppliers. Operator agrees not to display or use in advertising or otherwise the AT&T mark or any other Marks without the TouchTunes or AT&T's prior written consent, provided that such consent may be revoked at any time.

## **8. Use Of Service**

Operator agrees to comply with the AT&T Yahoo! Terms of Service (located at <http://sbc.yahoo.com/terms>) or the AT&T Acceptable Use Policy (located at <http://support.sbcglobal.net/article.php?item=441>) (collectively, the "AUP") as applicable to the Service provided at the Site. AT&T may amend the AUP at any time in its sole discretion. If Operator fails to rectify a violation of the AUP within five (5) days after receiving notice, then the DSL Service may be suspended. The DSL Service may be suspended or terminated immediately and without notice in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines: (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T Services or the Internet; or (iii) that such violation otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.

#### **9. Miscellaneous**

Operator acknowledges that AT&T and TouchTunes do not own, operate or manage the Internet and that the Internet is in no way an affiliate of TouchTunes, AT&T or any of their affiliates. AT&T and TouchTunes cannot and will not guarantee that the Services will provide Internet access that is sufficient to meet Operator's needs. Operator further agrees that use of the Internet and the Services is solely at its own risk and is subject to all applicable local, state, federal and international laws and regulations. Notwithstanding the terms set forth in the Governing Law section of the Agreement, Services provided pursuant to this Agreement are classified as interstate services because the Service is utilized to access the Internet. Nothing contained in this Addendum may be construed to convey to Operator any interest, title, or license in the user ID, electronic mail address, Universal Resource Locator or domain name used by TouchTunes or AT&T in connection with the Services.

#### **10. Termination Rights; Limitations of Liability**

AT&T may amend its applicable tariffs under certain conditions. If such changes materially and adversely affect TouchTunes, TouchTunes has the right to terminate its agreement with AT&T on thirty days notice unless such condition is remedied by AT&T. If TouchTunes elects to terminate the AT&T agreement in such circumstances, TouchTunes shall have the right to terminate this Agreement effective as of the termination of the AT&T agreement. In such case, no ETF would be payable.

#### **11. Force Majeure.**

Neither party hereto shall be liable for any default or delay in the performance of its obligations hereunder, nor shall AT&T be liable for any default or delay in performance of the Service, if and to the extent such default or delay is caused, directly or indirectly, by any event beyond such party's or AT&T's as the case may be, reasonable control. If any event of force majeure prevents either party hereto from timely performing all of its obligations hereunder (other than the payment of money), the non-performing party shall be excused from further performance or observance of its obligations so affected for so long as such circumstances prevail and such party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. If any event of force majeure prevents either party hereto from timely performing any of its obligations hereunder for a period of more than thirty consecutive days, the other party may terminate this Agreement immediately by delivery of written notice thereof.

#### **12. Notices.**

Each party hereto shall give notice in writing delivered in person, or by reputable overnight business courier service, or registered or certified mail (postage prepaid, return receipt requested) to the address set forth above (or to such other address as either party may hereafter specify for such purpose by notice given in

accordance with this paragraph).

**13. General.**

This Agreement: (i) Contains the entire agreement of the parties concerning the subject matters hereof and may not be amended except by a written instrument signed by both parties hereto; (ii) May not be assigned by Operator without the prior written authorization of TouchTunes, which shall not be unreasonably withheld, but subject to such conditions as TouchTunes may reasonably require. No such assignment or purported assignment shall relieve or shall be construed to relieve Operator or TouchTunes from any of its obligations hereunder; and, (iii) Shall be governed by and construed under the laws of the State of New York applicable to agreements entered and performed entirely therein. It is understood and agreed between the parties that the exclusive venue for any action, suit or proceeding arising from or based upon this Agreement, shall be the appropriate state and federal courts located in the city of New York in the State of New York. (iv) No waiver by either of the parties hereto or any failure by the other party to keep or perform any covenant or condition under this Agreement shall be deemed to be a waiver of any other breach of the same, or any other covenant or condition. (v) Any provision of this Agreement which is held to be invalid or unenforceable for any reason shall be enforced to the extent of such invalidity or unenforceability without effecting the validity or enforceability of the remanding provisions herein; (vi) The parties acknowledge that the relationship between them is in the nature of independent contractors. This Agreement shall not be deemed to create a partnership or joint venture, and neither party shall be deemed to be the other's agent, partner, employee or representative.

**IN WITNESS WHEREOF**, each party hereto has executed and delivered this Agreement as of the date first written above.

\_\_\_\_\_  
OPERATOR

TOUCHTUNES MUSIC CORPORATION

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

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

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

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

## PRICING SCHEDULE

*Self Installation Kit Equipment Supplied by AT&T:* No charge.

*Technician Installation Charges* (provided only at Operator's request): \$250.00 per Site. If AT&T increases its price, TouchTunes shall have the right to charge operator the additional amount.

*Early Termination Fee:* \$450.00

*DSL Service:* \$29.95 per month

*Equipment Replacement Fee:* \$100.00 (paragraph 5(b)).

In addition, Operator will be charged a monthly Federal Universal Service Fund (FUSF) cost recovery fee at the rate set by the Federal Communications Commission to help recover charges from AT&T's data transport supplier pursuant to state and federal telecom regulations. This fee is not a tax or government required charge.

## INFLATION PROTECTION

There will be a yearly inflation protection calculation, and possible adjustment to all specified pricing and charges, as set forth below. Annual inflation protection of three percent (3%) has been included in the price for Services. Any inflation increase over three percent (3%) will be applied to the fees. For purposes of this Agreement, the US Bureau of Labor Statistics Employment Index ("Index") shall be the measure of inflation. The inflation impact calculation shall be performed as follows:

On the first 12-month anniversary of the Effective Date, change in the Index for the previous 12-month period will be calculated. If the change in the Index is three percent (3%) or less, no action will be taken. If the change in the Index is more than three percent (3%), the pricing for all Services provided pursuant to this Agreement, including any Services that have been added via Amendment or otherwise to this Agreement, will be changed by the amount that the change exceeds three percent (3%); and this process will be repeated on each 12-month anniversary of the Effective Date to reflect changes in the Index.