



Professional Services Agreement

This Professional Services Agreement (“Agreement”) is between ASC Networks Inc. (“ASC” or “Consultant”) and _____ (“Customer”). Specific Professional Services to be provided to Customer, and Customer’s payment obligations for same, shall be set forth in one or more Statements of Work hereunder. This Agreement is effective as of the later of the dates beneath the parties’ signatures below (the “Effective Date”).

1. DEFINITIONS

“Professional Services” shall mean work performed by Consultant for Customer pursuant to a Statement of Work under this Agreement.

“Statement of Work” shall mean Consultant’s standard form for ordering Professional Services, which has been completed and executed by both parties, and which specifies the scope and schedule of Professional Services to be performed by Consultant for Customer and the applicable fees. Each Statement of Work entered into hereunder shall be governed by the terms of this Agreement.

2. ORDERING, CHARGES, PAYMENT, TAXES

- 2.1 **Who May Order.** Customer or a wholly owned subsidiary of Customer (each a “Customer Entity”) may obtain Professional Services from Consultant under this Agreement. By signing a Statement of Work, a Customer Entity agrees that any Professional Services obtained pursuant to the Statement of Work are subject solely to the provisions of this Agreement and the Statement of Work. Customer represents and warrants that any Customer Entity who purchases Professional Services shall perform its obligations in accordance with the terms and conditions of this Agreement and the relevant Statement of Work.
- 2.2 **Fees for Professional Services.** Unless otherwise expressly stated in the applicable Statement of Work, Professional Services shall be provided on a time and materials (“T&M”) basis at Consultant’s T&M rates in effect at the time the Professional Services are performed. On a T&M engagement, if an estimated total amount is stated in the applicable Statement of Work, that amount is solely a good faith estimate for Customer's budgeting and Consultant's resource scheduling purposes and not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Consultant will continue to provide Professional Services on a T&M basis under the same rates and terms.
- 2.3 **Incidental Expenses.** Customer shall reimburse Consultant for material(s) and reasonable travel, administrative, and out-of-pocket expenses incurred in conjunction with the Professional Services.
- 2.4 **Invoicing and Payment.** Consultant shall invoice Customer monthly, unless otherwise expressly stated in the applicable Statement of Work. Charges shall be due and payable thirty (30) days from the date of the invoice and shall be deemed overdue if unpaid thereafter. Except for charges being disputed reasonably and in good faith, amounts remaining unpaid after the due date shall be subject to interest at 1.5% per month (19.56% per annum), or the highest rate allowed by law if lower, from the due date until the amounts are paid. Customer shall issue a purchase order, or alternative document acceptable to Consultant, on or before commencement of Professional Services under the applicable Statement of Work.
- 2.5 **Taxes.** Charges for Professional Services hereunder do not include any federal, provincial, state, local, value-added, goods and services, harmonized or foreign taxes, duties or levies of any nature (“Taxes”). Any Taxes required to be paid by Consultant as a result of the Professional Services rendered hereunder (other than Taxes based on Consultant’s income) shall be billed to and paid by Customer.

3. CONTRACT PROPERTY

- 3.1 **Contract Property.** Consultant hereby grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to use for its internal business purposes anything developed by Consultant for Customer under this Agreement (“Contract Property”). The Contract Property is not “work for hire” and Consultant shall retain all ownership rights to the Contract Property.



3.2 **Relationship to Online Service.** The Professional Services provided under this Agreement may be in support of Customer's license, under a separate agreement, to use the ASC service. Such separate agreement shall govern all use by Customer of such service. Neither this Agreement nor any Statement of Work hereunder grants Customer any license or rights to use the ASC service. In addition, except for the Professional Services described in Statements of Work hereunder, Customer agrees that its purchase of Professional Services under this Agreement is not contingent upon the delivery of any future functionality or features in the ASC service, nor is it dependent upon any oral or written public comments made by Consultant with respect to future functionality or features.

3.3 **License for Customer Background IPR.** For any information, design, specification, instruction, software, data or material furnished by Customer to Consultant or any of its affiliates ("Customer Supplied Materials") Consultant and its affiliates are hereby granted a non-exclusive, royalty-free, worldwide license for the term of this Agreement to make, use, reproduce and otherwise exploit such Customer Supplied Materials, but only to the extent such license is necessary to permit Consultant to provide the Provisional Services requested by Customer (including Customer Entities) pursuant to this Agreement.

4. TERM AND TERMINATION

4.1 **Term.** This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with this Section 4.

4.2 Termination for Convenience.

4.2.1 **Termination by Customer.** Customer may terminate this Agreement and/or any Statement of Work hereunder at any time for convenience by providing Consultant five (5) business days prior written notice, except for Statements of Work that are billed in advance or that otherwise expressly do not permit cancellation or termination for convenience. If Customer terminates a Statement of Work for convenience prior to its completion, then (i) Consultant will stop work under the Statement of Work promptly upon notification; and (ii) Customer will be billed for (a) in the case of a T&M Statement of Work, the planned hours under that Statement of Work during such notice period; or (b) in the case of a fixed fee Statement of Work, a prorated amount corresponding to the planned work during such notice period. Because Consultant cannot guarantee continuity of resources should Customer desire to restart work under a Statement of Work after having given notice of termination for convenience thereof, such restarting of work may involve additional billable hours and effort for information transfer, project re-planning, and other reasonable restart activities.

4.2.2 **Termination by Consultant.** Consultant may terminate this Agreement at any time for convenience by providing Customer five (5) business days prior written notice; provided, however, that any Statement of Work outstanding at the time of such a termination by Consultant shall continue to be governed by this Agreement as if it had not been terminated. In addition, Consultant may terminate a Statement of Work for convenience with five (5) business days prior written notice if Customer has not authorized work to begin under such Statement of Work within thirty (30) calendar days of its effective date.

4.3 **Termination for Material Breach.** Either party may terminate this Agreement and/or any Statement of Work hereunder if the other party is in material breach of this Agreement or such Statement of Work and has not cured such breach within thirty (30) days of written notice specifying the breach. Consent to extend the cure period shall not be unreasonably withheld, so long as the breaching party has commenced cure during the thirty (30) day period and is pursuing such cure diligently and in good faith.

4.4 **Failure to Make Payment.** Notwithstanding anything in this Section 4 to the contrary, if Customer fails to make payment on any due date, Consultant shall have the right to suspend Professional Services hereunder and, if such failure to make payment has not been cured within thirty (30) days of the due date, upon written notice terminate this Agreement and any or all outstanding Statements of Work hereunder.

4.5 **Termination for Insolvency.** Either party may terminate this Agreement immediately upon written notice if the other party enters into insolvency or bankruptcy proceedings of any sort.

4.6 **Effect of Termination.** Termination of this Agreement and/or any Statement of Work hereunder shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges and expenses accruing prior to such termination. The parties' rights and



obligations under Sections 4, 5 and 6 (to the extent appropriate) shall survive termination of this Agreement and/or any Statement of Work hereunder.

5. INDEMNITY, WARRANTY, REMEDY, LIMITATION OF LIABILITY

5.1 **Indemnity.** Each party (“Provider”) shall defend the other party (“Recipient”) against any action, suit or proceeding alleging that any information, design, specification, instruction, software, data or material furnished by the Provider to the Recipient hereunder (“Material”) infringes a copyright or patent or misappropriates a trade secret of a third party (a “Claim”), and will indemnify and hold harmless the Recipient from and against any loss, damage or costs (including reasonable attorneys’ fees) awarded to such third party against Recipient by a court of competent jurisdiction in any such Claim, provided that: (i) Recipient notifies Provider in writing within thirty (30) days of the Claim; (ii) Provider has sole control of the defense and all related settlement negotiations for the Claim; and (iii) Recipient provides Provider with the assistance, information and authority reasonably necessary to perform the above. Provider shall reimburse Recipient for its reasonable out-of-pocket expenses incurred in providing such assistance.

Provider shall have no liability for any Claim of infringement or misappropriation to the extent that (i) the Material is based on specifications provided by Recipient, (ii) such Claim is based upon Recipient’s use of a superseded or altered version of some or all of the Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Material which was provided to Recipient, or (iii) the Material is used outside the scope of any right or license granted in respect to such Material.

In the event that some or all of the Material is held or is reasonably believed by Provider to infringe or misappropriate the intellectual property rights of a third party, Provider shall have the option, at its expense, to (i) modify the Material so it no longer infringes or misappropriates; (ii) obtain for Recipient a license to continue using the Material; or (iii) require return of the affected Material and all rights thereto from Recipient. If Provider is Consultant, then Customer may, upon thirty (30) days prior written notice to Consultant, terminate the relevant Statement of Work, in which case Customer shall be entitled to recover the fees paid for that portion of the Material. If Customer is the Provider and such return materially affects Consultant’s ability to meet its obligations under the relevant Statement of Work, then Consultant may, upon thirty (30) days prior written notice to Customer, terminate such Statement of Work, in which case Customer shall pay Consultant for Professional Services rendered through the date of termination on a T&M or percent of completion basis as appropriate.

This Section 5.1 (Indemnity) states the Provider’s sole liability to, and the Recipient’s exclusive remedy against, the Provider for any type of claim described in this Section 5.1.

5.2 **Warranty and Disclaimers.** Consultant warrants that the Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards. Customer must report any deficiencies in the Professional Services to Consultant in writing within ninety (90) days of performance of such services in order to receive warranty remedies. This warranty is exclusive and in lieu of all other representations, warranties and/or conditions, whether express or implied, including any implied warranties or conditions of merchantability, merchantable quality or fitness for a particular purpose.

5.3 **Warranty Remedy.** For any breach of the warranty in Section 5.2, Customer’s exclusive remedy, and Consultant’s entire liability, shall be the re-performance of the Professional Services. If Consultant is unable to re-perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to Consultant for the deficient Professional Services.

5.4 **Limitation of Liability.** In no event shall either party be liable for any indirect, incidental, special, consequential, reliance or cover damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in action in contract or tort (including negligence), even if the other party or any other person has been advised of the possibility of such damages. Neither party’s aggregate liability for damages hereunder shall exceed the total amount of fees paid and/or due by Customer under the applicable Statement of Work.

6. GENERAL

6.1 **Cooperation; Delays.** Each party agrees to cooperate reasonably and in good faith with the other in the performance of the Professional Services and acknowledges that delays may otherwise result. Customer agrees to provide, or provide



access to, the following: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from its employees and agents, continuous administrative access to its ASC account, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Professional Services.

Customer is also responsible for the following: (i) assigning a dedicated internal project manager for each Statement of Work to serve as a single point of contact for Consultant; (ii) defining and maintaining its business objectives and requirements that will guide its use of the ASC application; (iii) reviewing customizations made to ASC application for conformance with relevant requirements; (iv) except where the relevant Statement of Work provides otherwise, training its users generally in the use of the ASC application; and (v) administering the ASC application generally for its own internal business purposes.

Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under this Agreement. Either party may suspend performance hereunder immediately upon written notice should the other party's employees or agents fail to act accordingly.

Except where the relevant Statement of Work provides otherwise, scheduling of Consultant's resources must be agreed to no later than ten (10) business days prior to the date work is scheduled to begin. Subsequent scheduling of changes requested by Customer may result in additional fees. Delays caused by Customer under a Statement of Work to which Consultant has dedicated resources and begun work will be billed to Customer as follows: (i) offsite planned resources will be billed at 50% of the planned hours during the period of the delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of the delay (maximum of 8 hours per business day). Delays caused by Customer that exceed ten (10) business days shall entitle Consultant to terminate the relevant Statement of Work for cause immediately upon written notice.

- 6.2 **Confidentiality.** "Confidential Information" shall mean all confidential or proprietary information disclosed orally or in writing by one party to the other that is identified as confidential or whose confidential nature is reasonably apparent. Confidential Information shall not include information which: (i) is or becomes a part of the public domain through no fault of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure or any breach of confidence; (iv) is independently developed by the receiving party; or (v) is required to be disclosed by law. Each party agrees to hold the other's Confidential Information in confidence, and not to use or disclose such Confidential Information other than in connection with performance of obligations hereunder.
- 6.3 **Acceptance.** Upon completion of each deliverable under a Statement of Work, Consultant will provide a complete copy thereof to Customer and, upon request, demonstrate to Customer its functionality in conformance with the relevant specifications. Customer is responsible for conducting any additional review or testing of such deliverable pursuant to any applicable acceptance criteria or test suites agreed upon by the parties for such deliverable.

If Customer, in its reasonable and good faith judgment determines that any submitted deliverable does not meet the applicable functional requirements set forth for such deliverable in the relevant Statement of Work, Customer must notify Consultant within ten (10) business days after Consultant's submission of the deliverable to give written notice to Consultant specifying any deficiencies in detail. Consultant shall use commercially reasonable efforts to promptly cure any such deficiencies within twenty (20) business days of such notice and then resubmit the deliverable for further review and acceptance testing in the same manner. Should any deliverable fail to satisfy the applicable functional requirements after the second resubmission of such deliverable to Customer, Customer may (i) again reject the deliverable and return it to Consultant for further cure and resubmission; or (ii) terminate the relevant Statement of Work for cause immediately upon written notice and recover all Professional Services fees associated with such deficient deliverable. Notwithstanding the foregoing, in the event the applicable functional requirements as stated in the Statement of Work are subsequently determined by the parties to be inappropriate or to require modification due to changed circumstances, incorrect assumptions or other reasons at the time of actual delivery and testing of a deliverable, the parties shall cooperate in good faith to appropriately modify such requirements.

Customer shall provide Consultant a written acceptance of each deliverable promptly upon acceptance. Failure to reject a deliverable within the applicable acceptance period shall be deemed acceptance of such deliverable.



- 6.4 **Changes to Scope.** Any changes to the scope of work under a Statement of Work shall be made by written change order or amendment to the Statement of Work signed by an authorized representative of each party prior to implementation of such changes.
- 6.5 **Relationship between the Parties.** Consultant is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Each party shall be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes. Each party shall maintain appropriate worker's compensation and general liability insurance for its employees.
- 6.6 **Governing Law; Venue.** The entity with whom Customer is contracting and the laws that apply and the courts which can adjudicate any such lawsuit, depend on where the Customer is domiciled.

If You are domiciled in:	You are contracting with:	Notices should be addressed to: **	The governing law is:	The courts having exclusive jurisdiction are
The United States of America	ASC Networks USA Inc., a Delaware corporation	Attn: VP Sales 15 British American Blvd., Latham, New York 12110 USA	New York and controlling United States federal law	New York City, New York, U.S.A
All Countries other than United States of America	ASC Networks Inc., a Canadian corporation	Attn: VP Sales 235 Terence Matthews Crescent, Ottawa, Ontario, K2M 2B3 Canada	Ontario and controlling Canadian federal law	Ottawa, Ontario, Canada

** with copy to: Mediagrif Interactive Technologies Inc.
1111 St-Charles Street West
Suite 255
Longueuil, Quebec J4K 5G4 Canada

- 6.7 **Notice.** All notices hereunder shall be in writing and shall be delivered to the other party's project manager or to the first address listed in the applicable Statement of Work (if to Customer) or to Consultant's address on the Statement of Work (if to Consultant). Notice shall be effective upon receipt.
- 6.8 **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
- 6.9 **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or any infringement, misappropriation or breach in respect to either party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.
- 6.10 **Force Majeure.** Neither party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes, labor problems (other than those involving the employees of the affected party), or delays involving hardware, software or power systems not within a party's possession or reasonable control, provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.
- 6.11 **Entire Agreement.** This Agreement constitutes the complete agreement between the parties and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter thereof. Neither this Agreement nor any Statement of Work hereunder may be modified or amended except in a writing signed by a duly authorized representative of each party. It is expressly agreed that any terms and conditions that may be attached to Customer's purchase order, whenever received by Consultant, shall be null and void and superseded in full by the terms of this Agreement and the applicable Statement of Work. The parties agree that this Agreement will be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that



ambiguities shall not be interpreted against the party that drafted the relevant language.

6.12 **Subcontractors and Affiliates.** Consultant may, in its reasonable discretion, use its affiliated companies and/or third party contractors inside or outside the United States and/or Canada to perform any of its obligations hereunder, including but not limited to migration of Customer data.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives identified below.

Acknowledged and Agreed to:

	ASC Networks Inc.
Signature	Signature
Name	Name
Title	Title
Date	Date