

SERVICE AGREEMENT

AGREEMENT entered into this _____ day of _____, 20_____, between Alpine Management, Inc. dba Automated Payment Systems, P.O.Box 255, Sandy, Utah 84091 ("APS") and _____ ("Client")

RECITALS

1. APS provides automated collection and payment services.
2. Client desires to retain the services of APS to automate the collection and deposit process.
3. APS agrees to render these services subject to the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the foregoing and the mutual promises contained in this Agreement, the parties agree as follows:

1. **Appointment.** Client appoints APS as its exclusive agent for the collection and/or payment of monthly or other periodic charges ("periodic payments") from and/or to persons ("consumers / employees") who have agreed to pay and/or receive periodic payments to and/or from Client.
2. **Services.** APS accepts the appointment and agrees to provide to Client the following services:
 - A. APS will implement for Client an automated collection and payment service, including conversion support, and one-time operations training.
 - B. Upon the agreed date(s) of each calendar month (or the next banking day if any agreed upon date falls on a non-banking day) during the term of this Agreement, APS will submit data in the form required for the electronic debiting and crediting of periodic payments from and/or to consumers' / employees' checking, savings, credit card and/or debit card accounts and for the crediting and/or debiting of those periodic payments to and/or from Client's bank deposit account ("Client's Account") identified in this Agreement.
 - C. APS may also provide various ancillary services, including consulting for operations management, processing of returned transaction items, and delivery of appropriate reports.
3. **Fees.** The following terms shall govern the fees due APS from client:
 - A. Client agrees to pay APS a one-time implementation fee, ongoing per-transaction fees, and other fees per the FEE SCHEDULE attached to this Agreement and incorporated herein.
 - B. These fees shall not be changed until the expiration of the first ninety (90) days of the initial term of this Agreement, after which they may be changed by APS at any time and from time to time upon sixty (60) days prior notice to Client. Notwithstanding the other rights of termination in this Agreement, Client may, by written notice to APS given at least thirty (30) days prior to the effective date of the price increase, terminate this Agreement within ninety (90) days after the date of such notice, in which case such price increase will not become effective.
 - C. Client also agrees to pay any clearinghouse fees, bank account fees, bank charges, sales tax or other charges reasonably incurred by APS in rendering to Client the services described in this Agreement.
4. **Consumer / Employee Authorizations.** Client will obtain from each participating Consumer / Employee the necessary authorizations allowing the automatic transfer of the periodic payments from and/or to that Consumer's / Employee's bank account and/or credit card account and to and/or from Client's Account.
5. **Authorization to Deposit and/or Debit.** Client authorizes APS to make direct deposits and/or debits of periodic payments to and/or from Client's Account and to debit that account for fees and other charges as provided in this Agreement. Client further agrees to execute and deliver to APS all bank authorizations and any other documents necessary for APS to effect such deposits and debits. Client's Account is identified as follows:
Bank: _____ Branch: _____ Account Number: _____
6. **Collection / Payment Data.** Client shall provide APS with the data necessary to accomplish such transfers in the form and at the times prescribed by APS and shall make periodic checks and updates to guarantee this collection / payment data is current and accurate at all times. Client warrants that all such information is accurate and complete and that Client has obtained all necessary authorizations from the consumers / employees. The format and schedule specifications for delivery of collection / payment data by Client may be changed by APS from time to time and Client shall deliver this collection data in conformity with current specifications.
7. **Returned Debits.** Client authorizes APS to debit Client's Account for each debit entry returned unpaid on the day the return is received by APS or thereafter. Client warrants that it shall maintain at all times a sufficient balance in its account to cover such returned debit entries. Client shall be solely responsible for the amount of any returned debit entry which for any reason cannot, in whole or in part, be debited against Client's Account. APS may require Client to maintain a Reserve Balance with APS to cover returns, fees, and other charges, in an amount to be determined by APS. Such Reserve Balance may be increased at any time at the sole discretion of APS.
8. **Payment of Fees.** APS will deduct automatically all fees and other charges described in paragraph 3 from the periodic payments to be deposited and/or debited, into and/or from Client's Account. Client hereby authorizes APS to deduct these fees from periodic payments in Client's Account and/or Client's Reserve Balance with APS as described in paragraph 7 on or before the determined collection and/or payment date(s).
9. **Term.** The initial term of this Agreement shall be one-hundred and eighty (180) days, beginning on the date hereof and ending on the _____ day of _____, 20_____. This Agreement shall be automatically renewed for successive ninety (90) day periods thereafter unless either party gives the other party written notice of its intention not to renew at least sixty (60) days prior to the last day of the then current term, in which event the effective date of termination shall be such last day.
10. **Termination.** Either party has the right to terminate this Agreement, effective immediately, if the other party is in default of any obligation under this Agreement and that default continues for fifteen (15) days following written notice to the defaulting party. Such notice shall specifically state the problem or reason for a claim of default and shall afford the other party an opportunity to correct or cure the problem within such 15-day period. A default may also be declared if either party is declared bankrupt, files a petition under any bankruptcy laws, has a receiver appointed for all or substantially all of its property, or makes an assignment of all or substantially all of its assets for its creditors. Notwithstanding any foregoing provisions, APS shall be entitled to terminate this Agreement upon the giving of twenty-four (24) hours prior notice to the Client.
Upon termination, all rights and obligations hereunder shall cease except Client's obligation to pay the applicable fees for any services performed by APS prior to the effective date of termination, and to pay for any items returned subsequent to the effective date of termination.

In order to cover such items, Client shall maintain in the Client Account and/or Reserve Balance with APS for the maximum period allowed by the regulations of the affected financial institutions and/or applicable state and federal laws, within which return items may be charged or contested, with a balance sufficient to cover return items and any fees due APS. The amount of such Reserve Balance following termination shall be at the sole discretion of APS. APS shall provide to Client return item verifications as such items are received. Client specifically understands and agrees that in the event the Reserve Balance is insufficient to cover returned items, any monies due will be immediately reimbursed to APS within seventy-two (72) hours of receipt of notice of such deficiency. Under no circumstances shall APS be responsible to return to Client any balance remaining in Client's Reserve Balance unless and until all possible returned items have been processed or the expiration of the applicable time period. After applicable time period, Client shall provide APS current account information and request Client's Reserve Balance.

11. **Warranties and Limitations of Liability.** APS warrants that it will exercise reasonable care in the performance of its obligations under this Agreement. *APS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED TO CLIENT.*
12. **Liquidated Damages.** Because of the extreme difficulty of fixing actual damages for any breach by APS of this Agreement or of any applicable law, the parties agree that APS's liability for any loss or damage caused by any such breach shall be limited to liquidated damages in the amount of the transaction fees paid for the two calendar months immediately preceding the month in which the event occurred which gave rise to the damage claim. The parties find this amount to be reasonable in light of the actual damages likely to result from such a breach. The provisions of this paragraph apply regardless of whether any such loss or damage results from performance or non-performance of obligations imposed by this Agreement. *IN NO EVENT SHALL APS BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL LOSSES RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY DUTIES HEREUNDER OR IMPOSED BY LAW, OR FOR ANY LOSS OR DAMAGE TO CLIENT, DIRECT OR CONSEQUENTIAL, ARISING OUT OF OR IN ANY WAY RELATED TO ACTS OR OMISSIONS OF THIRD PARTIES, INCLUDING, BUT NOT LIMITED TO, VARIOUS COURIER SERVICES, ANY MEMBERS OF THE ACH, CLIENT'S BANK OR ITS EMPLOYEES OR AGENTS, AND ANY FINANCIAL INSTITUTION WHICH RECEIVES OR ORIGINATES ENTRIES OR PAYS ELECTRONIC DEBITS FROM CUSTOMER ACCOUNTS.*
13. **Compliance with Law.** The parties agree as follows:
 - A. APS does not undertake to render any legal opinion to Client or to counsel Client with respect to its legal rights or obligations under federal, state, or local law.
 - B. Client shall be solely responsible for compliance with all laws and regulations whether federal, state, or local, as well as any federal or regional automated clearinghouse rules applicable to automatic and electronic transfers of funds, including, without limitation, laws, regulations, and rules governing correct authorizations by Consumers, disclosures, and notices required in connection with electronic funds transfers, and all necessary waivers and releases.
 - C. Any forms provided by APS to Client for use in connection with the collection data, authorizations, waivers, and notifications will be provided solely for the convenience of APS and Client, and APS makes no representation or warranty that such form provided is sufficient or otherwise in compliance with applicable federal, state, or local legal requirements or rules. APS shall have no liability to Client for failure of any such forms to comply with such requirements or rules. All such forms will be returned to APS and not used by Client after termination of this Agreement. Client shall not use such forms for any purpose outside of this Agreement.
 - D. Client will indemnify and hold harmless APS and APS's processing financial institutions from any and all claims, lawsuits, demands, damages, costs, or other expenses, including, but not limited to attorney's fees, resulting from or in any way related to (1) Client's breach of any warranty contained herein or, arising by operation of law; (2) any act or omission of Client or Client's employees or agents; (3) any act by any consumer or consumer's employees or agents; or (4) Client's failure to comply with any applicable law, regulation or rule.
14. **Delayed or Excused Performance.** APS shall not be liable for any delay or other failure of performance caused by factors beyond the reasonable control of APS, such as, but not limited to, strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction or acts of third parties as described in paragraph 12. If, after the date of this Agreement, any law, regulation, or ordinance, whether federal, state, or local, becomes effective which substantially alters the ability of APS to perform its services hereunder, APS shall have the right to terminate this Agreement upon twenty-four (24) hours notice.
15. **Disclaimer of Third Party Rights.** The rights and obligations created by this Agreement apply solely to the parties hereto, subject only to the indemnity provision applicable to APS's originating depository financial institutions. Neither APS nor Client intends that any third party shall benefit from the performance of the duties described herein, or acquire any cause of action or other claim against either party for non-performance of those duties.
16. **Entire Agreement; Modification; Providing Copies.** This Agreement constitutes the entire agreement between the parties relating to the specific subject matter hereof, and no modification of this Agreement shall be binding on APS unless such modification is in writing and signed by an authorized representative of APS. Providing a copy of this agreement with a copied signature shall be just as enforceable as returning the agreement with an original signature.
17. **Notices.** Any notice required or allowed to be given under this Agreement shall be addressed to the other party at the address set forth above or to such other address as either party may instruct the other party in writing.
18. **Assignability.** This Agreement is not assignable by either party without first receiving the prior written consent of the other.
19. **Severability.** If any provision of this Agreement is held invalid, illegal, or otherwise unenforceable, this Agreement will be interpreted as if such provision, to the extent the same has been held unenforceable, had never been contained herein.
20. **Applicable Law and Forum.** This Agreement shall be construed in accordance with the laws of the State of Utah, and the parties designate the Third Judicial District Court in and for Salt Lake County, State of Utah, as the only court where venue of any legal action shall be proper.
21. **Attorney's Fees and Costs.** In the event either party shall undertake, in any way, to enforce this Agreement, the party in default shall be liable for all attorney's fees and costs incurred in enforcing this Agreement.
22. **Form of Entity.** The Client acknowledges that its business is a (circle one): Sole Proprietorship, Partnership, LLC, Corporation. Regardless of the form of organization, the individual signing below represents that he has authority to sign on behalf of the Client and that said individual, as further inducement for the execution of this contract, shall be personally responsible for the performance of the obligations of Client pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

APS:
By: _____
Title: _____

CLIENT:
By: _____
Title: _____