Agent Agreement

This Agent Agreement ("Agreement") is entered into between:

babyTEL® Inc.,1425 René-Lévesque Blvd W., Suite 700, Montreal (Qc), Canada, H3G 1T7 ("**babyTEL**");

-and-

_____ **("Agent")**.

1. Services & Products: All of the babyTEL-branded internet telephony (VoIP) services, and accompanying VoIP service plans, products, equipment and devices promoted, offered, leased and sold by babyTEL, from time to time, as more fully described on the babyTEL Website (**www.babytel.ca** and **www.babytelusa.com**)

2. Territory: USA

3. Term: Initial term of one (1) year plus successive renewal terms of one (1) year each (the initial term and all applicable renewal terms shall sometimes be collectively referred to as the "Term"). Any party not wishing to renew this Agreement for the next successive renewal term, shall notify the other party in writing, sent via facsimile, posting the original notice by regular mail, at least ninety (90) days prior to the expiry of the then current Term. The parties shall continue to be bound by this Agreement throughout this notice period.

4. babyTEL's Reserved Rights:

a) All rights not granted to Agent on an exclusive basis are hereby expressly reserved to babyTEL. Without limiting the generality of the foregoing, babyTEL reserves the right to promote and sell the Services & Products in the Territory during the Term either directly or indirectly, or to appoint other agents, OEMs, resellers, distributors, etc., to do so.

b) Subject to Paragraph 10a), to change the Commission Rates set forth in **Attachment A** and/or **Attachment B** on 30 days' notice. The parties shall continue to be bound by this Agreement throughout this notice period.

5. Currency: USD Dollars

6. Agent Responsibilities: Throughout the Term Agent shall:

a) Actively represent, market, promote, advertise (inclusive of via Agent's website), and sell for the benefit and behalf of babyTEL, the Services & Products within the Territory to consumers and businesses (who once they subscribe with babyTEL become a "Contracted Subscriber");

b) to register new Contracted Subscribers via the Agent master account on the babyTEL Website giving babyTEL all of the account information babyTEL requires from time to time;

c) ensure that each Contracted Subscriber accepts and enters into babyTEL's current Terms of Use Agreement in a manner authorized by babyTEL (eg. in writing or via babyTEL's online subscription process);

d) use the babyTEL Intellectual Property (defined below) only for the purposes contemplated by this Agreement and to use the proper trademark notices, logos, and graphics as set forth in **Attachment C** (unless babyTEL instructs Agent otherwise) in connection with the babyTEL Trademarks. Agent shall use the babyTEL Trademarks correctly spelled and/or depicted, as indicated in **Attachment C**, and not as a verb or in the plural or in any other manner which might endanger the validity of the babyTEL Trademarks or of the registration thereof or application to register same. In the event of any misspelling or other incorrect depiction of or reference to the babyTEL Trademarks in any marketing materials developed by Agent, Agent shall immediately, at Agent's expense, (a) cease and desist from using the offending marketing materials, and remove them from Agent's website (if applicable); (b) deliver the offending marketing materials to babyTEL for destruction; and (c) broadcast, print, publish and disseminate corrected and babyTEL-approved marketing materials.

The phrase, "**babyTEL Intellectual Property**" means, in all language versions, forms, formats and media, all of babyTEL's existing, pending and future registered or unregistered trademarks, trade and corporate names, service names, logos (collectively, the "babyTEL Trademarks" which include those specified in **Attachment C**), existing, pending and future patents, protocols, processes, technologies, licenses, trade secrets, confidential information, marketing and business methods and strategies, competitive advantage, and every other intellectual property whatsoever inclusive of the babyTEL brand, reputation, image, goodwill and subscriber base.

e) obtain babyTEL's prior written approval before making, using, publishing, broadcasting, disseminating, etc., any statements or materials including marketing materials developed by Agent that reference the Services & Products and/or the babyTEL Intellectual Property inclusive of the babyTEL Trademarks. babyTEL shall endeavour to indicate in writing its approval, non-approval or approval subject to conditions, within 14 days from receipt of an approval request by Agent. Agent shall strictly adhere to babyTEL's response to Agent's approval request. If Agent is required to make changes to the statements or materials as a condition of approval, Agent shall re-submit the changed statements or materials to babyTEL for babyTEL's prior written approval in the same manner as indicated herein. Agent shall deliver free-of-charge to babyTEL six (6) final approved specimens of the statements, materials or marketing materials in question for babyTEL's own promotional use and archival purposes. The copyright in all such statements, materials or marketing materials shall belong exclusively to babyTEL;

f) provide the level of technical support to the Contracted Subscribers indicated in either Option 1, or Option 2 as selected by Agent herein in **Attachment A**;

g) carry out such other reasonable instructions given to Agent by babyTEL as would occur in the ordinary course of a babyTEL-agent relationship.

h) Purchase from babyTEL for the Agent's own use, two (2) babyTEL lines (Voice Paths), two (2) DID numbers and one (1) enterprise fax line.

7. babyTEL Responsibilities: babyTEL shall:

a) deliver the Services & Products to the Contracted Subscribers as per their Terms of Use agreement with babyTEL;

b) bill and collect from the Contracted Subscribers;

c) provide the Contracted Subscribers first-line technical support where Agent has selected Option 1 herein under **Attachment A; or** provide Agent's personnel second-line technical support where Agent has selected Option 2 herein under **Attachment A**;

d) provide Agent, on a reasonable efforts basis, access to sufficient information relating to the Contracted Subscribers to permit Agent to verify their account status and the Commission due Agent relating thereto;

e) pay Agent's Commission, after any applicable set-off, by the 18th day after each month-end, on monthly recurring revenues received during the Term by babyTEL from the Contracted Subscribers, calculated as follows:

i) During the Term: During the Term and subject to Paragraph 4b), Agent shall be entitled to Commission calculated at the Basic Commission Rates stipulated in **Attachment A**.

ii) After expiry of the Agreement: Agent shall continue to receive Commission calculated at the Commission Rates stipulated in **Attachment A**, and this for a further period of 1 year following non-renewal. Agent's entitlement to Commission shall automatically and immediately discontinue (without the need for notice or other action by babyTEL) where this Agreement is terminated for grounds of Agent's default, or Agent commences to promote, offer, sell or otherwise deliver, directly or indirectly, services and/or service plans that compete with or are similar to the Services;

iii) In the case of multiple agents, Commission shall be paid to the agent that ultimately enrolls the Contracted Subscriber to the Services;

iv) Any dispute or claim by Agent in regards to Commission paid must be made in writing within 30 days of delivery of such payment, with sufficient details to justify the grounds of such dispute, failing which the amount of the payment made by babyTEL to Agent shall be deemed definitively accepted by Agent. Agent shall not be entitled to assert or claim any compensation or set-off whatsoever against babyTEL.

8. Trademarks: Nothing herein shall cause the transfer of any babyTEL Intellectual Property, including any proprietary information of babyTEL or the babyTEL Trademarks, to Agent. All of the benefits flowing, arising or derived from each and every such use of, or reference to/by, Agent (or persons under the control of Agent) of the babyTEL Intellectual Property inclusive of the babyTEL Trademarks, shall enure exclusively to babyTEL. Agent shall immediately notify babyTEL upon discovery of the infringement by any third party of any of the babyTEL Trademarks. Agent shall not contest, invalidate or prejudice the validity of babyTEL's ownership or registrations (if any) of the babyTEL Intellectual Property, nor create any rights adverse to those of babyTEL, and Agent will not register or apply to register any of the babyTEL Trademarks in the Territory or in any other country nor will it use the babyTEL Trademarks in other countries. Agent shall use the Trademarks only in accordance with the premium standards, quality, specifications and directions herein or as instructed by babyTEL. Agent acknowledges that: (i) the continued maintenance of the great significance and value of the babyTEL Trademarks and associated goodwill; (ii) the premium quality of the Services and Products associated with the babyTEL Trademarks are an essential asset to babyTEL which has acquired secondary meaning in the mind of the public; (iii) any harm caused or resulting to the babyTEL Trademarks, or default of this Agreement by Agent relating to the babyTEL Trademarks, may not be adequately compensated in money damages and shall give rise, in babyTEL's sole discretion, to equitable recourses inclusive of injunctive proceedings against Agent.

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9. Restrictive Covenants: Agent hereby agrees to be bound by all of the provisions of the Non-Disclosure Non-Exploitation Agreement previously signed by Agent which are incorporated herein by this reference and which shall apply, *mutatis mutandis*, for the duration of this Agreement and any survival period stipulated or implied herein. Agent hereby acknowledges that all of the Contracted Subscribers are the customers of babyTEL. Agent shall not, directly or indirectly, solicit any of the Contracted Subscribers or any other babyTEL customers to the advantage of any party other than babyTEL. Furthermore, neither party shall solicit or hire the employees of the other during the Term and for a further period of one (1) year following the date contemplated herein for the natural expiry of this Agreement (even if this Agreement is sooner terminated) unless the other party consents in writing.

10. Termination:

a) By Agent, for grounds that babyTEL invoked its recourse under Paragraph 4b), and furthermore provided that Agent's new average Base Commission Rate (i.e., subsequent to babyTEL's reduction of Agent's Base Commission Rate) falls below Ten Percent (10%). Should this be the case and furthermore provided that Agent delivers babyTEL a written notice of termination within Seven (7) days of babyTEL's action reducing Agent's Base Commission Rates (as aforesaid), termination shall be effective on the sixtieth (60th) day following receipt by babyTEL of Agent's aforementioned notice. The parties shall continue to be bound during this notice period.

b) By babyTEL, for:

   i) the failure of Agent to perform any material obligation or covenant expressed or implied hereunder within Fourteen (14) days of delivery to Agent of a written notice of default;

   ii) the commission by Agent or any person for whom Agent is responsible, of any act or omission that, in the sole opinion of babyTEL, has or may have an adverse effect on the babyTEL Intellectual Property or any other relationship of babyTEL. In this event, babyTEL need only deliver Agent a simple notice of termination.

c) By Either Party, immediately upon delivery of a simple notice, for:

   i) the voluntary or involuntary insolvency, receivership, bankruptcy or like event of the other party, inclusive of the winding-up or dissolution of the other party;

   ii) upon discovery of the substantiated falsity of any representation or warranty owing to the terminating party by the other party.

d) By Either Party, on the 14th day following delivery of a written notice specifying the grounds of default of a material obligation owed to the terminating party, where that other party fails or omits to cure such default.

11. Effect of Termination or Expiry: Upon expiry or sooner termination of this Agreement, Agent shall:

a) Return to babyTEL all of the babyTEL property (inclusive of the Marketing Materials) in the possession or under the control of Agent (or persons under Agent's control);
b) Cease and desist from all references to and uses of the babyTEL Intellectual Property (inclusive of the babyTEL Trademarks);
c) Cease and desist from representing itself as an agent of babyTEL; and

Upon expiry or sooner termination of this Agreement, babyTEL shall pay Agent any arrears or accrued Commission due through the date of expiry or termination in accordance with the provisions of this Agreement.

12. Warranties: babyTEL shall perform its obligations and deliver the Products & Services on an "as-is/where-is" basis without any warranties to the Contracted Subscribers whatsoever, expressed or implied, as more fully described in the babyTEL Website. Without limiting the generality of the foregoing, babyTEL shall not be liable for any warranties of merchantability or of fitness for a particular purpose, or of delivery of service without failure, interruption, delay, error or other problem, technical or otherwise. In no event shall babyTEL be liable for inability of a Contracted Subscriber or any third party who has use of the Services to access or secure **9-1-1** or other emergency services or personnel. The limitations set forth herein apply to claims of every nature including those founded in breach of contract, breach of warranty, products liability, extra-contractual liability and any and all other theories of liability and apply whether or not babyTEL was informed of the foreseeability of any particular type of damages. In no event shall babyTEL be liable for incidental, potential, indirect, special, consequential, punitive or exemplary damages, or for damages for no profits or for lost profits or for product liability. Furthermore, babyTEL has not made any representations or promises and has not undertaken any warranties whatsoever, expressed or implied, to Agent either herein or as an inducement to enter into this Agreement. Without limiting the generality of the foregoing, babyTEL has not undertaken any representations, promises or warranties as to the actual, likely or potential profitability of the present agency for Agent.

13. Survival: The provisions of Paragraphs 7 e(ii) and (iv), 8, 9,11, 12 and 14, as well as any other provision hereof whose scope expressly or impliedly exceeds the Term of this Agreement, inclusive of the obligation by Agent (if any) to pay one or more sums of money to babyTEL, shall survive the expiry or sooner termination of this Agreement.

14. Final Provisions: **Attachments A, B** and **C** form a binding part of this Agreement by this reference. This Agreement represents the entire understanding of the Parties and supersedes all prior understandings and agreements, oral or in writing. Nothing in this Agreement shall create any benefit or recourse in favour of any third party. No waiver of any recourse, right or benefit hereunder shall be binding unless it is in writing and signed by the waiving party. This Agreement shall not become binding unless and until it is mutually signed by all of the undersigned parties hereto. The Agent shall not be entitled to assign or delegate this Agreement without the prior written consent of babyTEL. This Agreement shall be governed by the laws of the Province of Quebec (or Canada to the extent that these shall apply) and every unresolved dispute concerning this Agreement shall be litigated before the courts in the District of Montreal. Any provision of this Agreement that is held to be unenforceable or invalid by a court of having final jurisdiction shall be severed herefrom without affecting the rest of this Agreement. The captions, headings and paragraph numbering are for convenience only. This Agreement shall not create any relationship of agency (except as otherwise expressly stipulated herein), partnership, or joint venture. Agent shall not have any authority to bind babyTEL or incur any liability, obligation, warranty or indebtedness of any kind on babyTEL's behalf. This Agreement shall bind and enure in favour of the parties hereto as well as their respective heirs, successors, assigns and legal representatives (inclusive of trustees).

The parties agree that this Agreement and all related documents shall be drafted in English. Les parties conviennent que cette convention et tous les documents y étant reliés de près ou de loin soient rédigés en anglais.

SIGNED AND AGREED by the parties hereto, through their respective authorized officers, to take effect as of the last date written below.

_____	**babyTEL® Inc.**
By:_____	By: _____
	Stephen Dorsey
	President
Date:	Date:

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Attachment A: Additional Scope of Agent's Obligations and Associated Commission Rates:

AGENT CONSENTS TO THE FOLLOWING OPTION
BY INITIALING IN THE APPROPRIATE BOX PROVIDED:

Agent Undertakes To:
a) Be a non-exclusive agent of babyTEL; and
b) Provide first-line support to the Contracted Subscribers.

AGENT ACCEPTS THE FOLLOWING BASIC COMMISSION RATES ASSOCIATED WITH THIS OPTION AS PER PARAGRAPH 7 e(i) OF THE AGREEMENT:

- For each new subscriber who has paid for at least 60 days of service, a one time commission equal to $75 per line only (no commission will be payable on ongoing recurring revenues, local or International long-distance usage, or on babyBOX-, Softphone- and other Device sales and rentals, and on all non-recurring revenues such as (de)-/(re)-/activation plan fees and plan change fees).

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ATTACHMENT B: COMMISSION RATES ON RETAIL TERMINATION RATE – SPECIAL CASES

0% Commission:

Cuba – Guantanamo	Italy – Mobile	Sweden - Mobile	United Kingdom - Mobile PNS
Cuba – Other	Portugal – Mobile	Switzerland - Mobile	United Kingdom - Special Mobile

5% Commission:

Afganistan	Germany – Mobile	Germany – Mobile	United Kingdom - O2 Mobile
Austria - Mobile Telering	Germany – Roaming Mobile	Germany – Roaming Mobile	United Kingdom - T-Mobile
Belgium - Mobile	Germany - T-Mobile	Germany - T-Mobile	United Kingdom - Vodafone Mobile
Chile - Mobile	Haiti - Special Services	Haiti - Special Services	
Czech Republic - Mobile	Hungary – Mobile	Hungary – Mobile	
France - Mobile Roaming	Luxembourg - Mobile	Luxembourg - Mobile	

10% Commission:

Austria - Mobile Connect	India - Bangalore Touchtel	India - Touchtel OnNet	Philippines - Mobile
Belgium - Other	India – Bombay	Italy - Mobile (TIM)	Philippines - Other
Chile - Santiago	India – Calcutta	Italy - Vodafone Mobile	Philippines - Smart Mobile
Denmark – Mobile	India – Hydrabad	Japan - Military	Poland – Warsaw
Finland – Mobile	India – Madras	Luxembourg - Other	Portugal - Optimus Mobile
Germany - 02 Mobile	India – Madras Touchtel	Monaco - Other	Portugal - TMN Mobile
Germany - E-Plus Mobile	India - New Delhi	Norway - Mobile	Portugal - Vodafone Mobile
Haiti – Mobile	India - New Delhi Touchtel	Pakistan - Karachi	United Kingdom - Orange Mobile
Hong Kong - Other	India – Other	Pakistan - Lahore	Vietnam – Hanoi
India - Ahmedabad	India – Punjab	Pakistan - Other	Vietnam - Ho Chi Minh City
India - Bangalore	India - Reliance OnNet	Philippines - Manila	Vietnam – Mobile

ATTACHMENT C: SPECIFIC babyTEL TRADEMARKS & STANDARDS FOR THEIR USE

Specific babyTEL Trademarks:

babyTEL® / babyTEL[MD]
Powered by babyTEL™ / Propulsé par babyTEL[MC]
Canadian Village ™
babyVILLAGE™ / babyVILLAGE Program™
babyBOX™
babyMAIL™
Your Internet Telephone Company ™ / téléphonie par Internet [MC]
offering you more - connecting you for less ™ / service complet de téléphonie sur Internet haute vitesse [MC]

Graphics:

Graphics, such as the example provided below, for each specifically authorised babyTEL Trademark will be provided by babyTEL and must be utilized by Agent at Agent's expense, the whole subject to babyTEL's approval as provided in Section 9 of the Agreement.

Trademark Notices:

Unless babyTEL indicates otherwise in writing from time to time, any use of and reference to any of the above-mentioned babyTEL Trademarks shall also include the notice that such are Trademarks of babyTEL Inc.

For example:

"[Insert desired babyTEL Trademark]" "[® or ™][1] **is a trademark of Voice & Data Systems Inc. used under license**./ «[Insérez la marque de commerce de babyTEL choisit] » « [® ou MC] » **est une marque de commerce de babyTEL Inc. utilisée sous licence.**

Eg: **"babyTEL"® is a trademark of babyTEL Inc. used under license. / « babyTEL[MD] » est une marque de commerce de babyTEL Inc. utilisée sous licence.**

[1] (as the case may be)

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