

NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT made this _____ day of _____, between Smart Choice Communications, LLC and its subsidiaries (“SmartChoice or the “Company”), and _____ (“Individual or Corporation”).

BACKGROUND

The nature of this agreement concerns all issues related to Smart Choice Communications, LLC’s business plan, its intellectual property, business operations, pricing, cost and other potential actions and transactions. Smart Choice Communications, LLC is the owner, the beneficial owner, and the intended owner of valuable intellectual property and information, which are commercial assets of considerable value and are defined in this Agreement as “Confidential Information”. The Individual or Corporation is an entity or individual with an interest in working with, cooperating with, co-developing with, investing in, and/or joining or partnering with Smart Choice Communications, LLC. Smart Choice Communications LLC wishes to disclose, and the Individual or Corporation desires to receive the Confidential Information. Smart Choice Communications, LLC is willing to disclose the Confidential Information to the Individual or Corporation on the condition that the Individual or Corporation does not disclose the same to any third party nor make use thereof in any manner except for purposes of investing in, partnering with, and/or assisting in the development of Smart Choice Communications, LLC’s business, infrastructure, business plan and/or other strategic developments and/or operations, and/or in the assessment of the viability of actions or transactions as they relate to Smart Choice Communications, LLC’s business.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitations, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Smart Choice Communications, LLC and the Individual or Corporation, for the benefit of Smart Choice Communications, LLC, do hereby agree as follows:

1. DEFINITION:

“Confidential Information” means any and all intellectual property, technical specifications, trade secrets, and/or proprietary material or business information of which Smart Choice Communications LLC is the owner, beneficial owner, and/or intended owner, whether in written form, electronic form, and/or oral form, and including without limitation, financial and technical information, intellectual property, business or marketing strategies or plans, experience and know-how, product development, and customer and supplier information, of Smart Choice Communications LLC, which has commercial value and has been maintained as confidential by Smart Choice Communications LLC. Disclosure of any information in written form, electronic form, oral form, and/or otherwise, will also be considered proprietary if transmitter provides the recipient with a written memorialization of and identifying same within ninety (90) days, and any inactivity or failure to give memorialization shall not be deemed to be a waiver of this provision. In the event the Individual or Corporation visits any of the offices of Smart Choice Communications LLC or meets with Smart Choice Communications LLC personnel or representatives, Confidential Information shall further include such information which may come to the Individual or Corporation’s knowledge as a result of any such visit or meeting.

2. DUTY NOT TO USE OR DISCLOSE:

The Individual or Corporation acknowledges and understands that the Confidential Information is confidential and proprietary, that it may constitute intellectual property and/or trade secrets of Smart Choice Communications LLC, and that it is of great value and importance to the success of Smart Choice Communications LLC’s business. The Individual or Corporation shall use the Confidential Information for evaluation purposes only. The Individual or Corporation agrees to safeguard the Confidential Information and to not disclose said Confidential Information to any third party, without the prior express written consent of Smart Choice Communications LLC. The Individual or Corporation will take all reasonable steps to prevent the unauthorized, negligent and/or inadvertent, disclosure thereof. The Individual or Corporation shall not, without the prior written approval of Smart Choice Communications LLC, directly or indirectly, disclose the Confidential Information to any person or business entity except for a limited number of employees, attorneys, accountants and other advisors of the Individual or Corporation, on a need- to-know basis. The Individual or Corporation agrees not to use the Confidential information. The Individual or Corporation shall be liable under this Agreement for any disclosure or use in violation of this Agreement by its or its affiliate’s employees, attorneys, accountants or other advisors. Smart Choice Communications LLC shall be entitled to injunctive relief if the Individual or Corporation breaches this provision and/or any other provision of this Agreement.

3. DUTY TO RETURN OR DESTROY:

The Individual or Corporation shall, upon the written request of Smart Choice Communications LLC, promptly: (a) return to Smart Choice Communications LLC any and all Confidential Information together with any copies or reproductions thereof; and (b) destroy any notes, memoranda or other documents concerning the Confidential Information and provide a certificate from an officer of the Individual or Corporation certifying to Smart Choice Communications LLC that all such items have been returned or destroyed.

4. EXCLUSIONS:

The Individual or Corporation shall not have any obligation under this Agreement with respect to any information that is: (a) already in the possession of the Individual or Corporation prior to its receipt from Smart Choice Communications LLC; or (b) publicly known at the time of disclosure or becomes publicly known through no wrongful act or failure of the Individual or Corporation; or (c) subsequently disclosed to the Individual or Corporation on a non-confidential basis by a third party not having a confidential relationship with Smart Choice Communications LLC, which rightfully acquired such information; or (d) shown to be independently developed by the Individual or Corporation; or (e) communicated to a third party by the Individual or Corporation with the express written consent of Smart Choice Communications LLC. Furthermore, the Individual or Corporation may disclose the Confidential Information to the extent required by any subpoena, summons, order or other judicial process, but it will promptly advise Smart Choice Communications LLC of such disclosure, so that Smart Choice Communications LLC may lawfully seek to prevent such disclosure.

5. CONFIDENTIALITY OF DISCUSSIONS:

The Individual or Corporation and Smart Choice Communications LLC acknowledge that the existence of any discussion(s) regarding any or all actual and potential cooperation between themselves is itself Confidential Information, and the Individual or Corporation agree to keep confidential the existence of these discussions, Smart Choice Communications LLC's interest in the actual and potential cooperation, and the Individual or Corporation's interest in the actual cooperation and potential cooperation.

6. REMEDY:

The Individual or Corporation has entered into the undertakings contained in this Confidentiality Agreement in order to induce Smart Choice Communications LLC to reveal to it Confidential Information and Smart Choice Communications LLC shall be entitled to enforce this Confidentiality Agreement through any remedy available to it at law and/or in equity including the obtaining or injunctive relief without the necessity of proving actual damages. The Individual or Corporation agrees that Smart Choice Communications LLC shall be entitled to injunctive relief if the Individual or Corporation breaches any provision in this Agreement. Further, the Individual or Corporation agrees to indemnify Smart Choice Communications LLC and to hold Smart Choice Communications LLC harmless for any damages it may sustain as a result of a breach of this Agreement by the Individual or Corporation or its parents, subsidiaries or affiliates and employees.

7. NO REPRESENTATION OR WARRANTIES:

All information is provided by Smart Choice Communications LLC and is not verified by Smart Choice Communications LLC. Smart Choice Communications LLC makes no representation or warranty, express or implied, regarding such information. The Individual or Corporation agrees that it will: conduct its own investigation, due diligence and analysis, prior to consummating any cooperative relationship with Smart Choice Communications LLC, and to rely on the results of that investigation in any decision to cooperate, and not rely on any information provided by Smart Choice Communications LLC except to the extent provided, and subject to the limitations set forth in, the representations and warranties set forth in any definitive executed agreement between the parties.

8. GENERAL:

This Agreement shall be governed by the laws of the State of New York, without application of conflicts of laws, and state courts located in the State of New York shall be the sole jurisdiction for any disputes arising thereunder. The parties consent to the jurisdiction in those courts and to service of process in any manner permitted by those courts.

9. DURATION:

This agreement shall be effective as of the date of signature and shall continue for a period of three (3) years or until terminated / cancelled in writing by the Parties. The obligation to protect the information received prior to any termination / cancellation or expiration shall survive and continue beyond such termination / cancellation or expiration of this Agreement for the period three (3) years.

IN WITNESS THEREOF, the parties have executed this Confidentiality Agreement under seal as of the day and year first written above.

Smart Choice Communications, LLC

Name (Print): _____

Title: _____

Signature: _____

33 East 33rd Street, 11th Floor
New York, New York 10016

Individual or Company

Name (Print): _____

Title: _____

Signature: _____

Address: _____

City, State, and Zipcode: _____

Phone Number: _____

Fax Number: _____