

## CHERPLE LICENSE AGREEMENT

**IMPORTANT – READ CAREFULLY.** This Cherple™ License Agreement (this “**Agreement**”) is a legal contract between You (“**You**”) and Globaltel Media, Inc. (“**GTM**”).

This Agreement contains the terms and conditions that You must accept and that will apply to You for the GTM Cherple software product that accompanies this Agreement, and its content, including documentation, application program interfaces, and any patches, updates, upgrades, improvements, enhancements, fixes and revised versions that may be provided to You from time to time (“**Software**”) and the Cherple services provided through or in connection with the Software (the “**Service**”). By clicking on the “ACCEPT” button, You agree to be bound by the terms of this Agreement. If You do not agree to the terms of this Agreement, click on the “CANCEL” button, close the browser window, and terminate the registration process. You represent and warrant that you are at least 18 years of age or, as applicable, You possess the legal right and ability to enter into this Agreement. If You are agreeing to be bound to this Agreement in Your capacity as an employee or other representative of a company or other entity, You hereby represent that You have the authority to enter into binding agreements on behalf of such entity.

### **1. SCOPE OF THE SOFTWARE LICENSE.**

**1.1 License.** Subject to Your compliance with the terms and conditions of this Agreement, GTM grants to You a nontransferable, nonsublicensable and nonexclusive right to use and access the functionality of the Software through Your website or Internet application, and to allow other users to use and access such functionality, all in accordance with this Agreement.

**1.2 Restrictions.** You may not modify, reverse engineer, decompile, or disassemble the Software, except and only to the extent that such restrictions are prohibited by applicable law. You may not remove or alter any notice or mark of GTM, or any third party logo or mark, accompanying the Software. You may not resell the Software or use the Software for service bureau purposes.

### **2. SERVICE.**

**2.1 Acknowledgements.** You acknowledge that GTM must comply with all use policies and codes of conduct imposed by its wireless messaging aggregators and carriers. You agree that GTM may conduct any activity that it reasonably deems necessary to comply with such requirements, including without limiting by limiting the number of messages that may be sent to a cell phone number may receive as a safeguard against spamming activities.

**2.2 Conduct.** You agree to abide by all applicable local and national laws and regulations and are solely responsible for all acts or omissions that occur under Your account, including the content of any transmissions. You are solely responsible for any content of messages transmitted by Your or Your users through the Services (the “**Content**”), except for any content added by GTM in order to comply with Section 2.1 above. You shall not (and shall not permit Your users to): (i) use the Services in connection with junk SMS messages, spamming or any unsolicited messages (commercial or otherwise); (ii) harvest or otherwise collect information about others, including email addresses, without their consent; (iii) create a false identity mobile phone address or header, or otherwise attempt to mislead others as to the identity of the sender or the origin of the message; (iv) transmit through the Software, associate with the Software or publish with the Software any unlawful, harassing, libelous, abusive, threatening, and harmful, vulgar, obscene or otherwise objectionable material of any kind or nature; (v) transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity; (vi) libel, defame or slander any person, or infringe upon any person’s privacy rights; (vii) transmit any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs; (viii) interfere with or disrupt networks connected to the Software or violate the regulations, policies or procedures of such networks; (ix) attempt to gain unauthorized access to the Software, other accounts, computer systems or networks connected to the Software, through password mining or any other means; (x) place any advertising on or in connection with the Content; or (xi) engage in any other activity that GTM believes could subject it to criminal liability or civil penalty or judgment. GTM may refuse to transmit any Content through the Service but has no obligation to review any Content.

**2.3 Consent to Advertising.** You irrevocably consent and agree that GTM may, but is not obliged, to sell or otherwise monetize the rights to display advertisements content in connection with the Content and the user interface for the Software that appears on Your site or Internet application.

**3. TERMINATION.** Without prejudice to any other rights and without any liability to You or any third party, either party may terminate this Agreement with immediate effect upon the failure of the other party to comply with any of the terms and conditions of this Agreement. Such termination shall be effective immediately upon notification by GTM to You in any reasonable manner, including but not limited to notification by email or text. You may terminate this Agreement by providing GTM with notice thereof. In either such event, Your license to the Software shall immediately terminate, and You must destroy all copies of the Software. Each party’s obligations under Sections 4 (Ownership), 6 (Disclaimer), 7 (Indemnification), 8 (Limitation of Liability), 9 (Regulatory), and 10 (General)] will survive any termination of this Agreement.

**4. OWNERSHIP.** All rights not expressly granted to You herein are expressly reserved by GTM. The Software, and any improvements or modifications thereto (including without limitation any suggestions that You or Your users make regarding new features, functionality or performance, whether adopted or not), are and will remain exclusive property of GTM and its licensors. Except with respect to the license grant, nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of GTM’s or its licensor’s, existing or future rights in or to the Software.

**5. MODIFICATIONS TO SOFTWARE.** GTM may modify or discontinue any aspect or feature of the Software and Service, in either case, as it deems reasonably necessary. Such changes shall be effective immediately upon posting of such addition, change, or deletion. Any use by You of the Software or Service after any such change has been posted shall constitute the acceptance of any such changes. If You do not agree with any such changes, you may terminate this Agreement in accordance with Section 3 (Termination).

**6. DISCLAIMER.** Your use of the Software and Services is entirely at Your own risk. You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to support Your website and access the Software, and for paying all related

access charges. The Software and Service is made available to You only "AS IS", AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GTM MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SOFTWARE OR SERVICE, AND HEREBY DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED REGARDING THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. You acknowledge that GTM has no control over mobile telephone network coverage and, as a result, messages may not be delivered or received.

7. **INDEMNIFICATION.** You will defend, indemnify, and hold harmless GTM and its affiliates, licensors, suppliers, officers directors, employees and agents from and against any and all claims, suits, proceedings, damages, costs, and expenses, including court costs and reasonable attorneys' fees arising out of or incurred as a result of: Your or Your users' gross negligence, willful misconduct or use of the Software or Services any component thereof in a manner in violation of this Agreement, except to the extent such claim is based on an indemnification obligation of GTM. GTM will defend, indemnify, and hold harmless You, and Your officers directors, employees and agents from and against any and all claims, suits, proceedings, damages, costs, and expenses, including court costs and reasonable attorneys' fees arising out of or incurred as a result of: the infringement of any third party intellectual property rights by the Software or Service (other than with respect to the content of any messages). Each party, as indemnitee, agrees to provide the indemnifying party with the opportunity to assume sole control the defense of the claim.

8. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL GTM OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, INDIRECT, GENERAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOSS OF BUSINESS, LOSS OF SYSTEMS OR DATA, COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE OR LOSS OF PROFIT OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE AND SERVICES RENDERED HEREUNDER (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF GTM OR ITS SUPPLIERS ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. GTM SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN EXCESS IN THE AGGREGATE OF \$10,000. Some jurisdictions do not allow the exclusion or limitation of liability for certain damages, so the above limitation may not apply to you to the extent prohibited by such applicable laws.

9. **REGULATORY.** The Software is subject to United States export control laws and regulations; You may not install, download or otherwise export or reexport the Software (i) into (or to a national or resident of) any country that is subject to a U.S. trade embargo ("Embargoed Country"); or (ii) to anyone listed on the U.S. Treasury Department's list of Specially Designated Nationals, or the U.S. Commerce Department's Table of Denial Orders, Entity List, or Unverified List (collectively "Denied Persons"). By installing, downloading or using the Application, you represent and warrant that you are not located in, under the control of, or a national or resident of any Embargoed Country, and that you are not, and not under the control of, any Denied Persons.

10. **GENERAL.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Though freely assignable by GTM, You may not assign or transfer this Agreement, or any of the rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of GTM and any attempt to do so shall be void. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California without reference to its choice of law rules. THE SOLE JURISDICTION AND VENUE FOR ACTIONS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE THE STATE AND US FEDERAL COURTS HAVING WITHIN THEIR JURISDICTION THE SAN DIEGO, CALIFORNIA. If any provision of this Agreement is held by a court of law to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby and the illegal, invalid, or unenforceable provision will be deemed modified such that it is legal, valid, and enforceable and accomplishes the intention of the parties to the fullest extent possible. The failure of either party to enforce any provision of this Agreement, unless waived in writing by such party, will not constitute a waiver of that party's right to enforce that provision or any other provision of this Agreement. All notices to GTM required or permitted under this Agreement must be in writing; must be personally delivered or sent by registered or certified mail (postage prepaid), by overnight courier, or by facsimile (receipt confirmed), to the following address: Globaltel Media, Inc., 4653 Carmel Mountain Road, Suite 308-508, San Diego, California 92130, USA, Attention: **[Contracts Administration]**.

**Please print this document for your records.**