Subscription Contract for VIRTUAL CALL CENTER Services

1. Subject

(1) By virtue of this Contract, Virtual Call Center GmbH (seat: Otto-Hahn-Str. 21, Erding 85435 GERMANY; company registration number: HRB 192767, tax number: 114/141/50235, EU tax number: DE277993151) (hereinafter referred to as the "Service Provider") provides access and product support to the Client (hereinafter collectively referred to as the "Parties") to its Virtual Call Center service (hereinafter referred to as the "Service") and provides the Client with the right to use the software required for the operation of the "Virtual Call Center" Service

(2) In relation to the Virtual Call Center Service, the Service Provider also supplies Voice over Internet Protocol (VoIP) services to the Client.

(3) The Client is only entitled to exercise the rights provided hereunder for the purpose of using the Virtual Call Center Service.

(4) The Client sets forth that he has reviewed the on-line specifications and documentations provided by the Service Provider (hereinafter referred to as the "Documentation") and concluded that the functionalities of the Virtual Call Center Service are capable of satisfying his needs and expectations, and he has understood and acknowledged the System Requirements for the use thereof.

2. The Activation of the Contract

(1) The Contract is concluded between the Parties electronically, on-line, as soon as the Client clicks on the link sent by the Service Provider in an e-mail message following registration by the Client.

1. The Client initiates the activation of the Subscription Contract by completing the registration form on the Service Provider's website.
2. The Service Provider confirms the data provided during the registration process, the tariffs and the contractual terms and conditions in an e-mail message sent to the Client.
3. By clicking the activation link sent in the return e-mail referred to in Section (2) above, the Client accepts these contractual terms and conditions provided by the Service Provider and the tariffs applicable as of the date of concluding the Contract.
4. The Service Provider sends an e-mail message to confirm the conclusion of the Subscription Contract.

(2) The Service Provider activates the service within two (2) business days following the confirmation of the Contract referred to in Section 1.4 above.

3. The Rights and Obligations of the Contracting Parties

(1) The Service Provider provides the Client with an interface protected by a user name and a password to guarantee that the Client's data may only be accessed with the user name and password that are chosen both of which may be modified at any time by the Client.

(2) The Client is responsible for notifying the Service Provider of any changes in his data supplied during the registration process to the Service Provider within 5 days of such change. The Service Provider shall have no liability for damages arising out of the inaccuracy of the data supplied during the registration process or failure to notify any changes in such data.

(3) During the registration process the Client may sign up for the electronic Newsletter service.

(4) The Client is entitled to provide access to the Software for the persons designated by him as well as to create user names and passwords for such persons. The Client is responsible for training the persons designated by him in the proper use of the Software.

(5) The Client is not entitled to request suspension of the Virtual Call Center Service.

(6) In the event that the Client uses the Service illegally or for an illegal purpose, this shall be regarded as a serious breach of contract and the Service Provider will be entitled to terminate this Contract with immediate effect.

(7) The Service Provider is entitled to use subcontractors (fulfillment partners) and shall have the same responsibility for their work as for his own. Only the Service Provider is entitled to give instructions to subcontractors and fulfillment partners.

(8) The Service Provider shall ensure 99% availability on an annual level. Downtime due to maintenance work announced in advance shall not be included in the calculation of availability.

4. Limitation on Liability

(1) In order to use the Service, the Client is to possess the appropriate Internet connection, local area network, workstations, headsets etc. The System Requirements specify the conditions precedent for using the Service.

(2) The Client is responsible for keeping his user name and password confidential. Furthermore, the Client is liable for all activities performed with his own user name and password or with any other user names and passwords created and allocated by him. The Client shall immediately notify the Service Provider about any unauthorized access or any breach of security.

(3) The Client is liable to set an appropriately complex password and to periodically change such password.

(4) In the event that the Client also provides access to the Software to other persons, the Client is liable to appropriately set the access levels of such persons. The Service Provider will hold the Client responsible for all damage attributable to the inappropriate allocation of access levels.

(5) The Client is liable to ensure that his own equipment operates free of viruses or harmful software and is protected against unauthorized access (e.g. by the use of firewall). The Service Provider shall have no liability whatsoever for damage attributable to harmful software either in the Client's equipment (on the client side) or in any of the Client's databases. The Client will be liable for damage caused by viruses or other harmful software or infections originating from his computer beyond the Client's control.

(6) The Service Provider will not be liable for damages attributable to errors beyond the Service Provider's control or arising out of errors resulting in a limitation in the use of the Software. The Service Provider's SCOPE OF CONTROL extends to the central system of the Virtual Call Center service, the Virtual Call Center Client Software (e.g. operator and supervisor interface), the Virtual Call Center Audio Download Software and the voice service supplied by the Service Provider with the Service. The above scopes of control serve as the demarcation points used as reference for the determination of the Parties' liability for contractual performance or a breach of contract.

The Service Provider's scope of control shall extend to the following:

- the central system of the Virtual Call Center
- the Virtual Call Center Client Software (e.g. operator and supervisor interface)
- the Virtual Call Center Audio Download Software

- the voice service supplied by the Service Provider with the Service

The Service Provider's scope of control shall not extend, in particular, to the following:

- the quality of the internet and local network, bandwidth
- quality impairment or defect due to overload (e.g. network, software) caused by other systems
- telecom connection
- power supply
- hardware defects
- the Client's workstations and local network
- improper use
- defects of the operation system and other system software (e.g. database)

The above scopes of control serve as the demarcation points used as reference for the determination of the Parties' liability for contractual performance or a breach of contract.

5. Payment of Fees and Invoicing

(1) The Contracting Parties agree that in consideration of the Services rendered hereunder the Service Provider will be entitled to the fees (hereinafter referred to as "Fee" or "Tariffs") agreed upon the conclusion (Section 2.2) or modification (Section 8.2) of this Contract.

(2) The Client shall pay the Fee to the Service Provider prior to using the Service. The Service Provider shall issue an invoice for the amount paid by the Client by wire transfer or other electronic means through the www.virtual-call-center.eu website and credit the amount to the Client's Balance. The Service Provider will provide the Client with on-line access to the invoice issued for the amount paid by the Client through electronic means. The Client may determine the amount credited to the Balance at his own discretion, provided that the amount is no less than 50 Euros.

(3) The Client will be entitled to use the Services as long as his Balance covers the fees payable for the Services he intends to use.

(4) The Service Provider deducts the fees falling due on the given day from the Balance on a daily basis and notifies the Client thereof via e-mail. Such notification shall contain a breakdown of the fees paid by the Client in a way that makes it possible to differentiate between the Fees payable for Virtual Call Center Services and for VoIP Services.

(5) The Service Provider will automatically deduct from the Balance any consulting, configuration, error search and troubleshooting costs occurring within or resulting from the Client's scope of control calculated at the hourly Support rate specified in the Tariffs for every hour or part thereof. The Tariffs are provided for in Annex No. 2. of these GTC.

(6) The Client may view his Balance at any time through the username and password protected website or in the Virtual Call Center Client Software subject to the appropriate level of authorization.

6. Product Support, Error Reports, Troubleshooting

(1) During the term of this Contract, the Service Provider ensures regular software updates and undertakes an obligation to continue the development of the application and always provide the most recent version as well as to rectify any malfunctions in the operation of the software free of charge.

(2) If the need arises, the Service Provider will offer courses to train the Client's staff to use the software in a manner specified in a separate agreement and for a separate fee.

(3) The Client may report errors associated with the functioning of the Service by telephone or e-mail, in English, between 7 a.m. and 8 p.m. on business days (phone: please insert English (+44 86380169) / German (+4981229984990 / Polish (+48123950886) phone number, as applicable; e-mail: support@virtual-call-center.eu). The required content of error reports concerning the Service: project(s) concerned, user(s) concerned, time of identifying the error, phone number of callee or caller, other means of identification (e.g. name, id number), name of interface and a detailed description of the error. The Service Provider will rectify the errors between 9 a.m. and 5 p.m. on business days. In the case of an Error Report, the Service Provider will confirm the presumable reason for the error, the expected time of commencing and completing the rectification of the error, or will request further information in order to identify, reproduce or rectify the error within four (4) hours if the Error Report is received during working hours or by 12 noon the next day if the Error Report is received outside working hours.

(4) In the case of a malfunction of the service, the Client undertakes an obligation to check whether the error has occurred within the Client's scope of control or within the scope of a third party necessary for the Client to use the Services (Section 4.1). The Client will only report the error once he has ascertained that it occurred within the Service Provider's scope of control. In the event that the cause of the error is beyond the Service Provider's SCOPE OF CONTROL, the Service Provider will be entitled to act in accordance with Section 5.5.

(5) In the case of a malfunction, the Service Provider can only be held responsible if the Client has reported the given error to the Service Provider either via e-mail or through the Error Report interface operated by the Service Provider and has provided sufficient detail for the Service Provider to be able to clearly identify the error. The date of reporting an error is the date on which the Client reports the error to the Service Provider described as a clearly identifiable manner.

(6) Any default by the Service Provider due to reasons beyond the Service Provider's control shall not be regarded as such.

(7) The Client understands that the Service functions properly if it functions in accordance with the contents of the Documentation. The system requirements are provided for in Annex No. 1. of these GTC.

(8) In the event that the Service is interrupted due to a defect within the Service Provider's scope of control and the duration of such interruption exceeds 20 minutes, or 30 minutes in the case of several short interruptions, on any given day, the Service Provider shall credit 5% of the total monthly system usage fee payable for the current month to the Client's balance. The duration of the interruption shall be the period between the time at which the Client reports the defect by telephone and the time at which the Service Provider sends notification about the elimination of the defect. The Service Provider shall send notification to the Client electronically within 48 hours. The Service Provider shall credit the above amount to the Client's balance by the 10th day of the month following the current month based on the duration specified in the notification.

(9) The Service Provider shall develop the Virtual Call Center service continuously and release new versions on the dates notified electronically. The Client Software shall be automatically updated during the login process. The scheduled update will take place between 9 p.m. and 6 a.m. In the case of an acute defect, the Service Provider may modify the system and release a new update at any time without prior notification.

7. Right of Use

(1) The Parties set forth that the computer software (source program, code and the software hereunder) is proprietary to the Service Provider, including any and all (on-line and hard copy) documentation of any kind and on any data carrier.

(2) Upon the installation of the Virtual Call Center Client Software or any other software necessary for the Client to be able to use the Services, the Client will be liable to accept and observe all provisions relating to the right of use thereof.

8. Scope, Term, Modification and Termination of the Contract

(1) The Parties enter into this Contract for an indefinite period from the date of commencement of the Service.

(2) The Service Provider will be entitled to unilaterally modify this Contract or the System Requirements if the applicable laws are amended or in the case of a significant change in the circumstances of the Service, the modification of the Fees or the conditions required to use the Service as well as upon the introduction of new services.

(3) The Service Provider will notify the Client about any significant modifications to this Contract. The Service Provider will notify any and all modifications to the Client electronically, at least thirty (30) days prior to their entry into force.

(4) In the event that the Client refuses to accept the modifications, he will be entitled to terminate this Contract with thirty (30) days' notice.

(5) The Contract will terminate

   a)   if either Party serves extraordinary notice of termination;
   b)   if either Party serves ordinary notice of termination;
   c)   if either Party is dissolved without a legal successor;
   d)   by mutual agreement of the Parties;

(6) Either Party may terminate this Contract in writing with thirty (30) days' notice.

(7) In the event that the Client's Balance drops below the minimum level and the Client fails to top up the Balance within ninety (90) days of the Service Provider's request to that effect, the Service Provider will be entitled to terminate this Subscription Contract with fifteen (15) days' notice.

(8) Either Party may terminate this Contract with immediate effect by serving extraordinary notice of termination if the other Party seriously breaches his obligations hereunder.

(9) The Party hindered in the performance of this Contract shall inform the other Party in writing about the hindering circumstances without undue delay.

(10) In the event of the termination of this Contract, the Service Provider will be liable to repay any outstanding Balance to the Client. The Client understands and agrees that 15% of the amount due to him will be deducted from his Balance and withheld by the Service Provider as administrative cost.

(11) Discounts accrued hereunder may not be transferred to any third party and will be lost upon the termination of this Contract.

9. Data Management, Data Protection

(1) The Service Provider shall keep confidential and safeguard the data provided by the Client during the registration process, or uploaded, captured or produced by the Client after the registration and shall not disclose them to any third party.

(2) The Service Provider will store audio files for one (1) month while statistics and CDRs for one (1) year.

(3) The Service Provider accepts no responsibility whatsoever for damages or loss of profit resulting from the complete or partial, unforeseeable loss or destruction of data or audio files due to an unforeseeable event beyond the Service Provider's control.

(4) The Client authorizes the Service Provider to use any and all log files and system information generated on the Client's side during the functioning of the Virtual Call Center Client Software for the purpose of searching for errors.

10. Final provisions

(1) The Client authorises the Service Provider to include his corporate name and the Services used by the Client in the Service Provider's list of references until instructed otherwise by the Client.

(2) The Parties agree that they shall regard all data and information associated with this Contract, or the related agreements to be concluded hereunder or the performance thereof as business secret, and they undertake a mutual obligation to safeguard such data and information.

(3) Certain provisions will survive the expiry or termination of this Contract for any reason and by any means, in particular the provisions pertaining to the protection and safeguarding of business secrets and confidential information.

(4) Any references to 'business days' in this Contract shall mean the official business days published by the Republic of Germany and any references to 'time' shall be understood as being in the Central-European time zone (CET, CEST).

11. Annexes

1. System Requirements

Date: Erding, ……………………………

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Virtual Call Center GmbH.   Subscriber

Service Provider

Annex 1. System Requirements

Hardware requirements

- 1 gigahertzes (GHz) or faster 32 bit (x86) or 64 bit (x64) processor
- 1 GB RAM
- 100 MB free disk space

Operating systems

- Windows Platform: Microsoft Windows XP/Vista/7/8
- Linux Platform: Ubuntu 12.04 32/64bit

Headset

- In order to ensure high-level sound quality during calls, we recommend the use of USB headsets. Before purchasing large quantities of headsets, always request test devices from the manufacturer or distributor, to ensure that the quality is as required.

Internet

- To ensure business-level voice quality while using Virtual Call Center, you will need stable internet connections, with a minimum 100 kbit/sec bandwidth connection at each work station.
- Mobile internet connection is not recommended!