

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

In re:

TELEXFREE, LLC, TELEXFREE, INC.  
AND TELEXFREE FINANCIAL, INC.

Debtors.

Chapter 11

Case Nos. 14-40987-MSH, 14-40988-MSH,  
and 14 -40989-MSH

(Jointly Administered)

**APPLICATION OF THE DEBTORS FOR ENTRY OF AN ORDER UNDER 11 U.S.C.  
§§ 105(a) AND 363(b) AUTHORIZING RETENTION AND EMPLOYMENT OF  
STUART A. MACMILLAN AS INTERIM CHIEF EXECUTIVE OFFICER FOR THE  
DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby submit this application (the “**Application**”) for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code §§ 101, *et seq.* (the “**Bankruptcy Code**”): authorizing the retention and employment of Stuart A. MacMillan as Interim Chief Executive Officer (the “**Interim CEO**” or “**Mr. MacMillan**”) to the Debtors *nunc pro tunc* as of the Petition Date, and providing any additional relief required in order to effectuate the foregoing. The facts and circumstances supporting this Application are set forth in the declaration of Stuart A. MacMillan (the “**MacMillan Declaration**”), which is attached hereto as **Exhibit A** and incorporated herein by reference. In further support of this Application, the Debtors respectfully state as follows:

**Status of the Case and Jurisdiction**

1. On April 13, 2014 (the “**Petition Date**”), the Debtors commenced these cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating



and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. A creditors' committee has not yet been appointed in the Chapter 11 Cases.

4. On May 6, 2014, these Chapter 11 Cases were transferred from the United States Bankruptcy Court for the District of Nevada to the United States Bankruptcy Court for the District of Massachusetts, Central Division.

5. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2)(A).

6. The statutory predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code.

### **Background**

7. A detailed factual background of the Debtors' businesses and operations, as well as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth in the *Omnibus Declaration of William H Runge III in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**First Day Declaration**") filed contemporaneously herewith and incorporated herein by reference.

### **Retention of Stuart A. MacMillan**

8. Stuart A. MacMillan is a consultant with Impact This Day, Inc. ("**ITD**"). Mr. MacMillan has over 25 years of management experience, the last 15 of which have been in direct selling and multi-level marketing companies. Among other management positions, Mr. MacMillan previously served as the first International President of Excel Communications, a multi-level marketing telecommunications company, and later as the President of Excel

Communications in Canada. Mr. MacMillan also acted as the first Managing Director of Arbonne Canada.

9. Mr. MacMillan began consulting with the Debtors in early March 2014. The scope of his services included development and implementation of a revised compensation plan, development of new products and services, implementation of accounting systems, obtaining regulatory approvals, development of telecommunications analytics and protocols, reorganization and assessment of existing talent, searching for new talent and other management matters. MacMillan did not have a pre-existing relationship with the Debtors, the Debtors' management or the Debtors' equity holders prior to this initial engagement.

10. On April 13, 2014, immediately prior to the filing of these Chapter 11 Cases, Mr. MacMillan became the Interim Chief Executive Officer of the Debtors, pursuant to that certain engagement letter agreement by and between the Debtors and ITD (the "**Engagement Letter**"), attached to the MacMillan Declaration as **Exhibit 1**. Further, on April 13, 2014 and prior to the filing of these Chapter 11 Cases, Mr. MacMillan was elected to serve as an independent director of TelexFree, Inc. and TelexFree Financial, Inc, and an independent member of the Board of Managers of TelexFree, LLC.

### **Relief Requested**

11. By this Application, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors request entry of an order authorizing the retention and employment of Stuart A. MacMillan as Interim CEO to the Debtors *nunc pro tunc* as of the Petition Date. Mr. MacMillan will make decisions regarding the Debtors' reorganization efforts and their Chapter 11 Cases, as further described below.

12. Mr. MacMillan is well qualified to act on the Debtors' behalf given his knowledge and expertise with respect to multi-level marketing companies. In addition, Mr. MacMillan has taken steps to become familiar with the Debtors' business and financial affairs. Accordingly, the Debtors submit that the retention of Mr. MacMillan on the terms and conditions set forth herein is necessary and appropriate, is in the best interests of the Debtors' estates, creditors, and all other parties in interest, and should be granted in all respects.

#### **Scope of Employment**

13. The terms and conditions of Mr. MacMillan's retention are governed by the Engagement Letter, which reflects the substantial efforts required of the Interim CEO in this engagement.<sup>1</sup> Pursuant to the terms of the Engagement Letter, Mr. MacMillan has the authority to make decisions regarding management and operations of the Debtors and the Debtors' restructuring process and execute binding agreements on behalf of the Debtors, and has been performing such duties for the Debtors since his retention. Further, pursuant to the Engagement Letter, Mr. MacMillan performs all services, acts, or things necessary or advisable to manage and conduct the business of the Debtors which are normally associated with the position of Chief Executive Officer.

#### **Professional Compensation**

14. Pursuant to the Engagement Letter, for the services of Mr. MacMillan, the Debtors agreed to pay Mr. MacMillan a monthly, non-refundable fee of \$50,000. In addition, the Debtors agreed to reimburse Mr. MacMillan for his reasonable out-of-pocket expenses incurred in connection with his engagement, including attorney's fees, travel, lodging, meals, telephone and

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<sup>1</sup> The summaries of the Engagement Letter contained herein are solely for the convenience of the Court and parties in interest. To the extent that such summaries and the terms of the Engagement Letter are inconsistent, the terms of the Engagement Letter shall control. Capitalized terms not otherwise defined in such summaries shall have the meanings ascribed to them in the Engagement Letter.

internet, duplicating, messenger, secretarial and personal legal fees. All fees and expenses are billed and payable on a monthly basis, or at Mr. MacMillan's discretion, more frequently.

15. Prior to the Petition Date, the Debtors remitted to Mr. MacMillan a retainer in the amount of \$180,000 (the "**Retainer**"), as described in the Engagement Letter. Any balance of the Retainer remaining after application to any prepetition professional services and related expenses will be held as a general retainer and applied to the payment of postpetition fees and expenses subject to any applicable orders of this or any other courts.

#### **Termination of Engagement**

16. Mr. MacMillan's engagement may be terminated for the reason's set forth in the Engagement Letter.

#### **Indemnification and Contribution Provisions**

17. The Debtors have agreed to indemnify, to make certain contributions to, and to reimburse Mr. MacMillan in connection with the Engagement Letter pursuant to terms wet forth therein.

18. The indemnification, contribution, and reimbursement provisions reflected in the Engagement Letter are customary and reasonable terms of consideration for Interim CEOs providing the services described in the Engagement Letter. The terms of the Engagement Letter were fully negotiated between the Debtors and Mr. MacMillan at arm's-length and the Debtors respectfully submit that the indemnification language in the Engagement Letter is reasonable and in the best interests of the Debtors, their estates, and creditors.

#### **Mr. MacMillan's Disinterestedness**

19. To the best of the Debtors' knowledge, information, and belief, Mr. MacMillan has no connection with, and holds no interest adverse to, the Debtors, their creditors, or any other party in interest, or their respective attorneys or accountants, or the Office of the United States

Trustee or any person employed in the Office of the United States Trustee, in the matters for which the Interim CEO is proposed to be retained except as disclosed in the MacMillan Declaration.

20. The Debtors attach the MacMillan Declaration, which discloses, among other things, any relationship that Mr. MacMillan has with the Debtors, their significant creditors, or other significant parties in interest. Based upon the MacMillan Declaration, the Debtors submit that Mr. MacMillan is a “disinterested person” as that term is defined by section 101(14) of the Bankruptcy Code.

21. In addition, as set forth in the MacMillan Declaration, if any new material facts or relationships are discovered or arise, Mr. MacMillan will provide the Court with a supplemental declaration.

22. The Debtors submit that the retention of Mr. MacMillan on the terms and conditions set forth herein is in the best interests of the Debtors, their creditors, and all parties-in-interest.

#### **Basis for Relief Requested**

23. The Debtors seek approval of the employment of Mr. MacMillan pursuant to section 363 of the Bankruptcy Code, *nunc pro tunc* to the Petition Date. Section 363(b)(1) of the Bankruptcy Code provides in relevant part that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

24. Under applicable case law, in this and other circuits, if a debtor's proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application."); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct").

25. The retention of Mr. MacMillan is a sound exercise of the Debtors' business judgment. Mr. MacMillan has extensive management experience, as well as experience in direct selling and multi-level marketing companies. The Debtors have determined that Mr. MacMillan will provide services that benefit the Debtors' estates and creditors. In light of the foregoing, the Debtors believe that the retention of Mr. MacMillan is appropriate and in the best interests of the Debtors and their estates and creditors.

26. The retention of interim corporate officers and other temporary employees, therefore, is proper under section 363 of the Bankruptcy Code. Bankruptcy courts frequently authorize the retention of officers utilizing this provision of the Bankruptcy Code. *See, e.g., In re Texas Rangers Baseball Partners*, Ch. 11 Case No. 10-43625 (DML) (Bankr. N.D. Tex. June 28, 2010) [Docket No. 28]; *In re Blue Stone Real Estate, Const. & Development Corp.*, 392 B.R. 897 (Bankr. M.D. Fla. 2008); *In re Lehman Bros. Holdings, Inc.*, Ch. 11 Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Dec. 17, 2008) [Docket No. 2278]; *In re PRC, LLC*, Ch. 11 Case No.

08-10238 (MG) (Bankr. S.D.N.Y. Feb. 27, 2008) [Docket No. 182]; *In re Bally Total Fitness of Greater N.Y., Inc.*, Ch. 11 Case No. 07-12395 (BRL) (Bankr. S.D.N.Y. Aug. 21, 2007) [Docket No. 283]; *In re Exide Technologies, Inc., et al.*, (Case No. 02-11125) (JCA) (Bankr. D. Del. May 10, 2002).

27. Based upon the foregoing, the Debtors submit that the retention of Mr. MacMillan on the terms set forth herein and in the Engagement Letter, would inure to the benefit of the Debtors' estates and their creditors. Moreover, Mr. MacMillan is clearly qualified for the position for which he is being employed. The Debtors have determined that the compensation terms of the Engagement Letter are within the range for senior executive officers employed with companies of comparable size, value and reputation. Accordingly, the Debtors' decision to retain Mr. MacMillan pursuant to the terms of the Engagement Letter reflects an exercise of the Debtors' sound business judgment.

**Request for Approval of Retention of the Interim CEO**  
**Nunc Pro Tunc as of the Petition Date**

28. The Debtors request that Mr. MacMillan's retention be made effective *nunc pro tunc* as of the Petition Date, in order to allow Mr. MacMillan to be compensated for the work he performed for the Debtors prior to the Court's consideration and approval of this Application. The Debtors submit that under the circumstances, the Debtors would have suffered irreparable harm if Mr. MacMillan was not immediately retained, as at the time of his retention, the Debtors' former management was not in position to continue operating the company due to the burdens of regulatory investigations pending against the Debtors. As such, Mr. MacMillan's immediate retention was necessary to preserve the Debtors' business as a going concern. In addition, the Debtors' filing of this Application was delayed by the transfer of venue of these cases and the stay of proceedings pending the transfer. Accordingly, retroactive approval to the Petition Date



of Mr. MacMillan's retention is warranted. *See, e.g., In re National Home Centers, Inc.*, Case No. 09-76195 (Bankr. W.D. Akr. Jan. 21, 2010) *Order Authorizing Amended Application of Debtor to Employ Attorneys* (authorizing employment of debtor's counsel *nunc pro tunc* to debtor's petition date); *F/S Airlease II, Inc. v. Simon (In re F/S Airlease II, Inc.)*, 844 F.2d 99, 103 (3d Cir. 1988), cert. denied, 488 U.S. 852 (1988); *Indian River Homes, Inc. v. Sussex Trust Co.*, 108 B.R. 46, 51 (D. Del. 1989) (approval of debtor's employment of attorney and real estate agent as of a prior date was not an abuse of discretion).

### **Notice**

29. Notice of this Application is being given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Massachusetts, Central Division; (b) creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (c) those parties requesting notice pursuant to Rule 2002; (d) the Office of the United States Attorney General for the District of Massachusetts; (e) the Internal Revenue Service; (f) the Massachusetts Securities Division; (g) Massachusetts Department of Taxation, Bankruptcy Section; (h) Dept. of Employment, Training & Rehab, Employment Security Division; and (i) the Securities and Exchange Commission. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

### **No Prior Request**

30. No prior request for the relief sought in this Application has been made to this Court or any other court.

**Conclusion**

WHEREFORE, the Debtors respectfully request that the Court enter an Order, authorizing the retention and employment of Stuart A. MacMillan as Interim Chief Executive Officer to the Debtors *nunc pro tunc* as of the Petition Date, and providing any additional relief required in order to effectuate the foregoing.

Dated: May 28, 2014

GREENBERG TRAURIG, LLP

By: /s/ Joseph P. Davis

Joseph P. Davis (BBO#551111)  
One International Place, 20<sup>th</sup> Floor  
Boston, MA 02110  
Tel: (617) 310-6000  
Fax: (617) 310-6001  
davidjo@gtlaw.com

*Proposed Counsel for the Debtors  
and Debtors in Possession*

**Exhibit A**

**MacMillan Declaration**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

In re:

TELEXFREE, LLC, TELEXFREE, INC.  
AND TELEXFREE FINANCIAL, INC.

Debtors.

Chapter 11

Case Nos. 14-40987-MSH, 14-40988-MSH,  
and 14 -40989-MSH

(Jointly Administered)

**DECLARATION OF STUART A. MACMILLAN IN SUPPORT OF THE APPLICATION  
OF THE DEBTORS FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 105(a) AND  
363(b) AUTHORIZING RETENTION AND EMPLOYMENT OF STUART A.  
MACMILLAN AS INTERIM CHIEF EXECUTIVE OFFICER FOR THE DEBTORS  
NUNC PRO TUNC TO THE PETITION DATE**

Stuart A. MacMillan, being duly sworn, hereby states as follows:

1. I am a consultant with Impact This Day, Inc. (“ITD”), engaged by the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) as Interim Chief Executive Officer pursuant to that certain letter agreement between ITD and the Debtors (the “**Engagement Letter**”), dated April 13, 2013, attached hereto as **Exhibit 1**.

2. I submit this declaration (the “**Declaration**”) in support of the *Application of the Debtors for Entry of an Order Under 11 U.S.C. §§ 105(a) and 363(b) Authorizing Retention and Employment of Stuart A. MacMillan as Interim Chief Executive Officer for the Debtors Nunc Pro Tunc to the Petition Date* (the “**Application**”)<sup>1</sup> on the terms and conditions set forth in the Application and the Engagement Letter, *nunc pro tunc* to the Petition Date. I have personal knowledge of the matters set forth herein.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Application.

### **Disinterestedness**

3. In connection with these Chapter 11 Cases, I requested and obtained from the Debtors a list of interested parties and significant creditors (the “**Potential Parties in Interest**”).<sup>2</sup> The list of Potential Parties in Interest which I reviewed is annexed hereto as **Exhibit 2**. The Potential Parties in Interest reviewed include, among others, the Debtors officers and directors, contract parties, suppliers, creditors, and various professionals.

4. Based upon my review of the Potential Parties in Interest, I have concluded that I do not have any interest materially adverse to the interests of the Debtors’ estates, or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

5. If any new material relevant facts or relationships are discovered or arise, I will promptly file a supplemental declaration.

### **Compensation**

6. Pursuant to the Engagement Letter, for my services as Interim CEO, the Debtors agreed to pay me a monthly, non-refundable fee of \$50,000. In addition, the Debtors agreed that I will be reimbursed for reasonable out-of-pocket expenses incurred in connection with my engagement, including travel, lodging, meals, telephone and internet, duplicating, messenger, secretarial and personal legal fees. All fees and expenses are billed and payable on a monthly basis, or at my discretion, more frequently.

7. Prior to the Petition Date, the Debtors remitted to me a retainer in the amount of \$180,000 (the “**Retainer**”), as described in the Engagement Letter. I will hold any balance of the Retainer remaining after application to any prepetition professional services and

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<sup>2</sup> As may be necessary, I will supplement this Declaration if I become aware of a relationship that may adversely affect my retention in these cases or would otherwise require disclosure.

related expenses as a general retainer and apply to the payment of postpetition fees and expenses upon allowance by the Court, and subject to any orders of this or any other court.

8. I have made no commitments with respect to compensation or payment in connection with these Chapter 11 Cases other than in accordance with the Engagement Letter, and I have no agreement with any other entity to share with such entity any compensation I received in connection with these Chapter 11 Cases.

9. By reason of the foregoing, I believe that I am eligible for retention by the Debtors pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules.

Dated this 28<sup>th</sup> day of May 2014

By: /s/ Stuart A. MacMillan  
Stuart A. MacMillan

**Exhibit 1**

**Engagement Letter**

April 13, 2014

Stuart MacMillan  
Chairman and Managing Partner  
Impact This Day, Inc.  
126 3rd Avenue North, Suite 206  
Safety Harbor, FL 34695

**Re: TelexFREE – Interim Chief Executive Officer Role**

Dear Mr. MacMillan:

The purpose of this letter is to confirm the understanding and agreement (the “Agreement”) between Impact This Day Inc. (“ITD”) and TelexFREE, LLC, TelexFree, Inc., and TelexFree Financial Inc. and its subsidiaries and their respective assigns and successors (jointly and severally, the “Company”) to provide Stuart MacMillan, a Consultant with Impact This Day, Inc., to act as the Company’s Interim Chief Executive Officer (the “Interim CEO”). Upon execution of this letter by each of the parties below and receipt of the retainer described below, this letter will constitute an agreement between the Company and ITD.

1. Description of Services

The Interim CEO shall serve as the Company’s Chief Executive Officer on an interim basis, reporting to the Company’s Board of Directors whether acting as a whole or through a special committee or independent director(s) (the “Board”) and shall have authority to make decisions regarding management and operations of the Company and the Company’s restructuring process and execute binding agreements on behalf of the Company consistent with the authority granted by the Board. The Interim CEO’s duties and responsibilities may be further defined from time to time by the Board. In performing his duties, the Interim CEO shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Company which are normally associated with the position of Chief Executive Officer. The Interim CEO will render such business and professional services in the performance of his duties, consistent with the Interim CEO’s position within the Company, as will reasonably be assigned to him by the Board. In addition, Mr. MacMillan will be appointed as an independent member of the Board of Directors of the Company.

2. Information Provided by the Company and Forward Looking Statements

The Company shall use all reasonable efforts to: (i) provide the Interim CEO with access to other management and representatives of the Company; (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties,



financial condition and prospects of the Company; and (iii) provide the Interim CEO with access to copies of all notices, complaints, lawsuits against the Company or any of its owners or employees which are related to the Company's business; any threatened or filed legal action, investigations, complaints from the Company's outside consultants and/or third parties, and all complaints, lawsuits, investigations, notices, subpoenas or correspondence from State or Federal agencies or authority that are in the possession, custody or control of the Company. Throughout the Term of the Agreement, the Interim CEO shall be promptly notified if, as and when any of the foregoing is known by the Company and shall be entitled to all documents related thereto upon his request.

The Interim CEO shall rely, without further independent verification, on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by the Interim CEO in connection with the services performed for the Company. The Company acknowledges and agrees that the Interim CEO is not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein. The Interim CEO is under no obligation to update data submitted to him or to review any other areas unless specifically requested to do so by the Board in writing.

ITD and the Interim CEO understand that the services to be rendered by the Interim CEO may include the preparation of projections and other forward-looking statements, and numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections. In addition, the Interim CEO will be relying on information provided by the Company in the preparation of those projections and other forward-looking statements.

### 3. Compensation

- (a) For the services of the Interim CEO, the Company agrees to pay the Interim CEO a monthly, non-refundable fee of \$50,000. Payment of such fees are due and payable on the first business day of each month commencing on the date this Agreement is signed which shall be paid to the Interim CEO on a pro rata basis for the month of April, 2014.
- (b) In addition, the Interim CEO will be reimbursed for his reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging, meals, telephone and internet, duplicating, messenger, secretarial and personal legal fees. All fees and expenses will be billed and payable on a monthly basis or, at the Interim CEO's discretion, more frequently.

- (c) The Company shall promptly remit to the Interim CEO a retainer in the amount of \$180,000 which shall be credited against any amounts due and owing the Interim CEO by the Company at the termination of this engagement and any remaining amount returned to Company upon the satisfaction of all of its obligations hereunder.

4. Term

- (a) This Agreement will apply from the commencement of the services referred to in Section 1 and may be terminated with immediate effect by either party without cause by written notice to the other party.
- (b) The Interim CEO normally does not withdraw from an engagement unless the Company misrepresents or fails to disclose material facts, fails to pay fees or expenses, interferes with the Interim CEO's duties, responsibilities and decisions, or makes it unethical or unreasonably difficult for the Interim CEO to continue performance of the engagement, or other just cause exists ("Good Reason"). Notwithstanding the foregoing, the Interim CEO may resign at any time as set forth above.
- (c) On termination of the Agreement, any fees and expenses due to the Interim CEO shall be remitted promptly (including fees and expenses that accrued prior to but are invoiced subsequent to such termination) and paid within 5 days of receipt of the foregoing subject to any required Bankruptcy Court approval.
- (d) In the event the Interim CEO is terminated without Cause on less than 30 days notice or resigns with Good Reason, he shall also receive an amount equivalent to 1 month's pay in lieu of notice. "Cause" shall mean gross negligence, willful default or fraud by the Interim CEO; "Good Reason" shall include but not be limited to the Company's misrepresentation of or failure to disclose material facts, failure to pay fees or expenses when due (or circumstances indicating to the Interim CEO that fees or expenses will not be paid when due), circumstances such that it is unethical or unreasonably difficult for the Interim CEO to continue performance of the engagement, the refusal by the Company or its employees to implement actions directed by the Interim CEO in that capacity; or other just cause .
- (e) The provisions of this Agreement that give the parties rights or obligations beyond its termination shall survive and continue to bind the parties.

5. Relationship of the Parties

The parties intend that an independent contractor relationship will be created by this engagement letter. The Interim CEO is not to be considered an employee of the Company and shall not be entitled to any of the benefits that the Company provides for the Company employees. The Company acknowledges and agrees that the Interim CEO's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the AICPA, SEC or other state or national professional or regulatory body.

6. No Third Party Beneficiary

The Company acknowledges that all advice (written or oral) provided by the Interim CEO to the Company in connection with this engagement is intended solely for the benefit and use of the Company (limited to its Board and management) in considering the matters to which this engagement relates. The Company agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks referred to herein without the Interim CEO's prior approval (which shall not be unreasonably withheld), except as required by law.

7. Conflicts

ITD is not currently aware of any relationship that would create a conflict of interest with the Company. Because ITD is a consulting firm that serves clients in numerous cases, both in and out of court, it is possible that ITD may have rendered or will render services to or have business associations with other entities or people which had or have or may have relationships with the Company, including creditors of the Company. ITD will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals, including entities or individuals whose interest may be in competition or conflict with the Company's, provided ITD makes appropriate arrangements to ensure that the confidentiality of information is maintained.

8. Confidentiality

The Interim CEO shall keep as confidential all non-public information received from the Company in conjunction with this engagement, except: (i) as requested by the Company or its legal counsel; (ii) as required by legal proceedings or (iii) as reasonably required in the performance of this engagement. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is or becomes public other than as a result of a breach of this provision.

9. Indemnification and Limitations on Liability

The attached indemnification and limitation on liability agreement is incorporated herein by reference and shall be executed upon the acceptance of this Agreement. Termination of this engagement shall not affect these indemnification and limitation on liability provisions, which shall remain in full force and effect.

10. Miscellaneous

This Agreement (together with the attached indemnity provisions), including, without limitation, the construction and interpretation of thereof and all claims, controversies and disputes arising under or relating thereto, shall be governed and construed in accordance with the laws of the State of Florida, without regard to principles of conflict of law that would defer to the laws of another jurisdiction. The Company and ITD agree to waive trial by jury in any action, proceeding or counterclaim brought by or on behalf of the parties hereto with respect to any matter relating to or arising out of the engagement or the performance or non-performance of the Interim CEO hereunder. The Company and ITD agree, to the extent permitted by applicable law, that any state or federal court located in the State of Florida shall have exclusive jurisdiction over any litigation arising out of this Agreement; to submit to the personal jurisdiction of the state and federal courts of the State of Florida; and to waive any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the State of Florida for any litigation arising in connection with this Agreement.


This Agreement shall be binding upon ITD and the Company, their respective heirs, successors, and assignees, and any heir, successor, or assignee of a substantial portion of the Company's respective businesses and/or assets, including any Chapter 11 Trustee. This Agreement incorporates the entire understanding of the parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by the Company and ITD.

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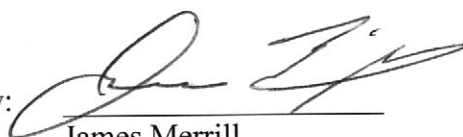
If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.

Very truly yours,

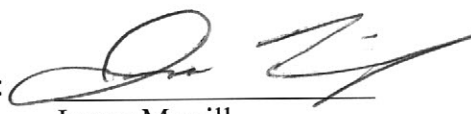
TelexFREE, LLC

By:   
James Merrill  
Title: President

TelexFREE, Inc.

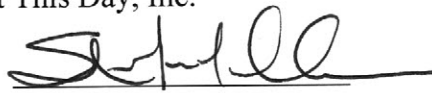
By:   
James Merrill  
Title: President

TelexFREE Financial, Inc.

By:   
James Merrill  
Title: President

Accepted and agreed:

Impact This Day, Inc.

By:   
Stuart MacMillan

### **INDEMNIFICATION AND LIMITATION ON LIABILITY AGREEMENT**

This indemnification and limitation on liability agreement is made part of an agreement, dated April 11, 2014 (which together with any renewals, modifications or extensions thereof, is herein referred to as the "Agreement") by and between Impact This Day, Inc. (the "ITD") and TelexFREE, LLC (the "Company") to appoint Stuart MacMillan, a Consultant with ITD, as the Company's Interim Chief Executive Officer (the "Interim CEO").

A. The Company agrees to indemnify, defend and hold harmless the Interim CEO against any and all losses, claims, damages, liabilities, penalties, obligations and expenses, including the costs for counsel or others in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which the Interim CEO is a party, or enforcing the Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Interim CEO's acceptance of or the performance or nonperformance of their obligations under the Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the Interim CEO's gross negligence or willful misconduct. The Company also agrees that (a) the Interim CEO shall not have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with the engagement of the Interim CEO, except to the extent that any such liability for losses, claims, damages, liabilities or expenses are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the Interim CEO's gross negligence or willful misconduct and (b) in no event will the Interim CEO have any liability to the Company for special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity). The Company further agrees that it will not, without the prior consent of the Interim CEO, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which the Interim CEO seeks indemnification hereunder (whether or not the Interim CEO is an actual party to such claim, action, suit or proceedings) unless such settlement, compromise or consent includes an unconditional release of the Interim CEO from all liabilities arising out of such claim, action, suit or proceeding.

B. These indemnification provisions shall be in addition to any liability which the Company may otherwise have to the Interim CEO. In the event that, at any time whether before or after termination of the engagement or the Agreement, as a result of or in connection with the Agreement or the Interim CEO's role under the Agreement, the Interim CEO is required to be available for examination, deposition or other written, recorded or oral presentation, or the Interim CEO is required to produce or otherwise review, compile, submit, duplicate, search for,



organize or report on any material within the Interim CEO's possession or control pursuant to a subpoena or other legal (including administrative) process, the Company will reimburse the Interim CEO for its out of pocket expenses, including the reasonable fees and expenses of its counsel, and will compensate the Interim CEO for the time expended by its personnel based on such personnel's then current hourly rate.

C. If any action, proceeding or investigation is commenced to which the Interim CEO proposes to demand indemnification hereunder, the Interim CEO will notify the Company with reasonable promptness; provided, however, that any failure by the Interim CEO to notify the Company will not relieve the Company from its obligations hereunder, except to the extent that such failure shall have actually prejudiced the defense of such action. The Company shall promptly pay expenses reasonably incurred by the Interim CEO in defending, participating in, or settling any action, proceeding or investigation in which the Interim CEO is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under the Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. The Interim CEO hereby undertakes, and the Company hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined by the court that the Interim CEO is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which the Interim CEO is a party is also against the Company, the Company may, in lieu of advancing the expenses of separate counsel for the Interim CEO, provide the Interim CEO with legal representation by the same counsel who represents the Company, provided such counsel is reasonably satisfactory to the Interim CEO, at no cost to the Interim CEO; provided, however, that if such Company counsel, the Interim CEO or separate counsel selected by the Interim CEO shall determine that due to the existence of actual or potential conflicts of interest between the Interim CEO and the Company such counsel is unable to represent both the Interim CEO and the Company, then the Interim CEO shall be entitled to use separate counsel of its own choice, and the Company shall promptly advance its reasonable expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent the Interim CEO from using separate counsel of its own choice at its own expense. The Company will be liable for any settlement of any claim against the Interim CEO made with the Company's written consent, which consent shall not be unreasonably withheld.

D. In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the relative fault of the Company, on the one hand, and the Interim CEO, on the other hand,

as determined by said court, in connection with the statements, acts or omissions which resulted in the losses, claims, damages, liabilities and costs giving rise to the indemnification claim and other relevant equitable considerations shall be considered; and further provided that in no event will the Interim CEO's aggregate contribution for all losses, claims, damages, liabilities and expenses with respect to which contribution is available hereunder exceed the amount of fees actually received by the Interim CEO pursuant to the Agreement. No person found liable for a fraudulent misrepresentation shall be entitled to contribution hereunder from any person who is not also found liable for such fraudulent misrepresentation.

E. In the event the Company and the Interim CEO seek judicial approval for the assumption of the Agreement or authorization to enter into a new engagement agreement pursuant to either of which the Interim CEO would continue to be engaged by the Company, the Company shall promptly pay expenses reasonably incurred by the Interim CEO, including attorneys' fees and expenses, in connection with any motion, action or claim made either in support of or in opposition to any such retention or authorization, whether in advance of or following any judicial disposition of such motion, action or claim, promptly upon submission of invoices therefor and regardless of whether such retention or authorization is approved by any court. The Company will also promptly pay the Interim CEO for any expenses reasonably incurred by them, including attorneys' fees and expenses, in seeking payment of all amounts owed it under the Agreement (or any new engagement agreement) whether through submission of a fee application or in any other manner, without offset, recoupment or counterclaim, whether as a secured claim, an administrative expense claim, an unsecured claim, a prepetition claim or a postpetition claim.

F. Neither termination of the Agreement nor termination of the Interim CEO's engagement nor the filing of a petition under Chapter 7 or 11 of the United States Bankruptcy Code (nor the conversion of an existing case to one under a different chapter) shall affect these indemnification provisions, which shall hereafter remain operative and in full force and effect.

G. The rights provided herein shall not be deemed exclusive of any other rights to which the Interim CEO may be entitled under the certificate of incorporation or bylaws of the Company, any other agreements, any vote of stockholders or disinterested directors of the Company, any applicable law or otherwise.




TelexFREE, LLC

By: 


James Merrill  
Title: President

Impact This Day, Inc.

By: 

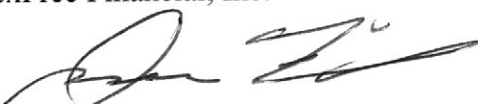
Stuart MacMillan  
Title: ~~President and CEO~~  
Managing Partner.

TelexFree, Inc.

By: 

James Merrill  
Title: President

TelexFree Financial, Inc.

By: 

James Merrill  
Title: President

**Exhibit 2**

**Potential Parties in Interest**

**LIST OF POTENTIAL PARTIES IN INTEREST**

**Debtors and Affiliated Entities**

TelexFree, LLC  
TelexFree, Inc. (f/k/a Common Cents Communications, Inc.)  
TelexFree Financial, Inc.  
Ympactus Commercial LTDA-ME

**Equity Holders**

James M. Merrill  
Carlos Wanzeler

**Restructuring Professionals**

Greenberg Traurig, LLP  
Alvarez & Marsal North America, LLC

**Employees**

Adriana Nascimento  
Adriana P Ferreira  
Ana Paula V Oliveira  
Andre DaCosta  
Andreia B Moreira  
Daniel F Nascimento  
Danielle N Goes  
Geisiene G Belasco  
Kamila D Lima  
Kimberly Soares  
Renata B Oliveira  
Richard Stearns  
Steve Labriola  
Thalmon Vieira

**Contract employees**

Gabriela Tavares  
Genious Trend  
IMPACT This Day Inc.  
Jetbi Inc  
Leonardo Casula  
Maria Alice Pereira  
Opt 3 Solutions, Inc.  
Rafaela L Carvalho  
Telecom Logic, LLC

**Parties to leases**

CIL Cedar Hill

Regus

**Parties to contracts**

1099Express.com

Advent Communications

Albourn & Associates

Alvarez & Marshall

ATW Training & Consulting, Inc.

Avalent Systems, LLC

Axeo Technologies INC

BFT Telecom LLC

Bingo Telecom

Boston Bean Coffee Company

Branders Com Inc

BTG GLOBAL, LLC.

BWFC Processing Center, LLC

CCH Inc

Corporate Electrical Contractors Inc.

Craft Financial Solutions, LLC

C/O Joe H. Craft

Crankshaft Marketing

Creative Office Pavilion

Creative R US

DID WORLD WIDE

Directnet International

Dynamic Network Services, Inc.

EVENTBRITE INC

eXecutive Management Services

Exigo Office, Inc.

Foley Hoag LLP

Garvey Schubert Barer

Gateway Services Web payment

GOOGLE\*SVCSAPPSTELEXMountain View

GreenbergTraurig

GSA General Solutions Associates, LLC

Hanna-Shea Consulting

Harpers Payroll

IDT Domestic Telecom Inc

Infinium Wireless llc

Info Law Group LLP

INTUIT \*QB ONLINE

ISG Telecom Consultants LLC  
Lane Powell Attorneys & Counselors

**Law firms, accountants and other professionals**

LIGA Telecom  
Master Communication  
NETSUITE  
New Relic Inc  
PERCONA LLC  
Priority Payout Corp  
Pulse Supply  
PWC  
RACKSPACE CLOUD 210-312-4000 TX  
Speedflow  
The Last Drop Inc  
The Sheffield Group, Inc.  
Unitelecom Inc  
USAC Universal Service Administrative Company  
Voxbone  
Xand Operations LLC  
ZENDESK, INC. SAN FRANCISCO CA

**Utilities**

Access Northeast  
Amazon Web Services, Inc.  
Verizon

**Banks and Merchant Companies (Closed Accounts)**

Bank of America  
Citizens Bank  
Fidelity Bank  
Global Payroll Gateway, Inc.  
Middlesex Savings Bank  
Paypal  
Phoenix Payments LLC  
ProPay Inc  
TD Bank  
Wells Fargo

**Banks and Merchant Companies**

Allied  
Argus (Telexfree LTD)  
Bank of New England

First Citizens Bank  
Infinex Investments, Inc  
International Payout Systems | i-payout.com  
MFS  
PNC Bank  
Vantage Payments  
Verifi, Inc.  
Waddell and Reed, Inc.

**Top 30 Creditors**

Benjamin Argueta  
Bruno Graziani  
Carla Peres  
David Martinez  
DL1 INC  
Du painting DbA  
Edison Oswaldo Jurado Aleman  
Edwin Herman Maina Lima  
Graca Luisa andrade  
Jacqueline Zieff  
JMC INC  
Jose Anominondas Jr  
Jose Carlos Maciel  
Jozelia Sangali  
Leonardo Francisco  
Leone da Silva santos  
Marcelino Salazar Bacilio  
Marco Almeida  
Michael Calazans  
Nathana Santos Reis  
Norberto Rey  
Paola Zollo Alecci  
Paulo Francisco da Silva  
Pedro Taveras  
Renato Alves  
Renato Ribeiro  
Robert Bourguignon  
Roman Mishuk  
Rosa Marina Cabral Souto  
Vagner Roza