

Master Service Agreement

This Master Service Agreement ("Agreement") is made effective this _____ day of _____, _____ (the "Effective Date") by and between TampaBay DSL Inc., DBA ("PBX-Change"), an ITSP (Internet Telephony Service Provider), an Interconnected-VoIP Provider and a provider of voice application services ("VoIP Services") over the Internet, together referred to as the "Services" to its customers, with its principal office located at 5625 W Waters Avenue, Suite E, Tampa, FL, 33634 and _____ (the "CUSTOMER"), a(n) _____ company with its principal office located at _____ on behalf of itself and its affiliates. CUSTOMER desires to purchase and PBX-Change desires to supply the SERVICES as identified in this Agreement under the following terms and conditions.

- 1. TERM.** The maximum initial term of any Agreement is thirty-six (36) months commencing on the Go-Live Date (the "Service Term"), and shall automatically extend thereafter for 12-month term(s) (each a "Renewal Term") until this Agreement is terminated by either party by written notice given to the other party at least sixty (60) days prior to the expiration of the Term or Renewal Term. The term associated specifically with each individual agreement to be specified on a "Service Order Form". The EFFECTIVE DATE is determined by the date on the certificate of acceptance associated with the "go live date" at the CUSTOMER's location.
- 2. CHARGES AND PAYMENT.** CUSTOMER agrees to make all payments for Services within twenty (20) days of the PBX-Change invoice date (the "Due Date"). All applicable federal, state or local taxes, and all use, sales, commercial, gross receipts, privilege, surcharges or other similar taxes or license fees, whether charged to or against PBX-Change or CUSTOMER, shall be payable by, and is the sole responsibility of CUSTOMER. However, if CUSTOMER provides proof of its Florida Sales Tax exempt status, PBX-Change shall not charge the exempted taxes. CUSTOMER agrees to pay all non-exempt charges, provided such taxes, fees, charges, or surcharges are of general applicability to the telecommunications industry and PBX-Change is required to pay such taxes, fees, charges, or surcharges to government or quasigovernmental agencies. The foregoing notwithstanding, when applicable, monthly recurring charges (MRC) shall be invoiced 30 days in advance of service, all one-time charges at time of incurrence and all usage charges shall be invoiced in arrears. If any CUSTOMER payment is not received by the Due Date, PBX-Change may impose a late payment charge of the lesser of 1% of amount due or the highest legally permissible.
- 3. DEFAULT.** A "Default" shall occur if: (a) CUSTOMER fails to make any payment by its Due Date, or (b) either party fails to perform or observe any material term or obligation other than making payment, contained in this Agreement, or (c) upon the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, or (d) upon the insolvency, or the making of an assignment for the benefit of creditors, or the institution of any reorganization arrangement or other readjustment of debt plan of or by either party not involving the United States Bankruptcy Code; or (e) upon the appointment of a receiver for all or substantially all of a party's assets. The parties expressly agree that the failure of any particular circuit or any number of circuits shall not constitute a material breach of this Agreement.
- 4. REMEDIES.** Upon Default, that remains uncured for 30 days, the non-defaulting party may, in addition to any other rights it has according to law; (a) suspend its performance under this Agreement so long as such default remains uncured after written notifications; or (b) terminate this Agreement without liability or further obligation immediately upon written notice of termination to the defaulting party. If CUSTOMER is the defaulting party, PBX-Change may collect from CUSTOMER (a) charges for all Services delivered to the CUSTOMER, and (b) all additional charges specified herein through the remainder of the Service terms (as specified in the applicable Service Order Form) or any Renewal Term which shall be calculated based upon the following method (the "Termination Charges").
- 5. TERMINATION CHARGES.** If CUSTOMER terminates the agreement during the initial Service Term, CUSTOMER shall pay PBX-Change one hundred percent (100%) of the current recurring monthly charges for the first third of the initial Service Term, twenty-five percent (25%) of the current recurring monthly charges for the remaining two-thirds of the initial Service Term. However, if a Service Order Form specifically lists additional Termination Charges, the CUSTOMER shall also pay those specified charges to PBX-Change. CUSTOMER agrees that the damages for early termination would be difficult to determine and that the Termination Charges set forth herein constitute liquidated damages and are not intended as a penalty. In the event PBX-Change is the defaulting party, CUSTOMER shall not be obligated to pay any Termination Charges if it exercises its right to terminate the Agreement as a result of a Default by PBX-Change. In such an event, CUSTOMER will only be responsible for charges for Services received up to the date of termination.

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If CUSTOMER terminates the agreement during the Renewal Term, without giving at least sixty (60) days prior written notice to PBX-Change, CUSTOMER will pay PBX-Change two months of the current monthly recurring charges. Customer must return all equipment, including all parts, power supplies, cords, etc., in like-new condition and is responsible for full replacement cost of any items not returned as such.

6. MAINTENANCE. PBX-Change may from time to time suspend Service for routine maintenance or rearrangement. PBX-Change will give CUSTOMER a minimum of five (5) business days' advance notification (via phone or email) of such maintenance and PBX-Change shall use commercially reasonable efforts to ensure that such maintenance shall be performed between the hours of 11:30 PM to 6:00 AM local time, except in cases where emergency maintenance is necessary and unavoidable. PBX-Change may amend or modify Services provided such modifications do not materially effect, interrupt, or increase the cost of such Services with thirty (30) days written notice to CUSTOMER. In the event of a need for emergency repairs as much notice as practicable will be given. Both parties shall provide the other party (and revise as necessary) a list of contacts for maintenance and escalation purposes. PBX-Change will maintain a point-of contact for CUSTOMER to report a degradation or interruption in Service (the "Service Outage") to PBX-Change twenty-four (24) hours a day, seven (7) days a week. When CUSTOMER believes that a Service Outage has occurred, CUSTOMER must contact PBX-Change's Network Operations Center (the "NOC") at 1-813-356-0100 to identify the Service degradation and initiate an investigation (the "Trouble Ticket") of the cause of the Service Outage. If PBX-Change becomes aware of a service degradation, PBX-Change will contact CUSTOMER to determine whether a TROUBLE TICKET should be initiated. Once the TROUBLE TICKET has been opened, the appropriate PBX-Change personnel will initiate diagnostic testing and isolation activities to determine the source and severity of the degradation in Service. If there is a SERVICE OUTAGE, PBX-Change and CUSTOMER will cooperate to restore Service. A SERVICE OUTAGE ends when the affected Service is fully operative. In the event of a SERVICE OUTAGE, PBX-Change agrees to have repair personnel working to restore the affected Services within two (2) hours after receiving notification of the outage or failure by the CUSTOMER, or when first noticed by the PBX-Change.

Mean Time to Repair Credit: Service Credit equal to the applicable percentage set forth in Table 1 below:

Table 1 – Mean Time to Repair Service Credit

Mean Time to Repair:	Service Credit
0 to 4 hours	None
4 hours to 6 hours	15% of Billed Monthly Recurring Charges
6 hours to 8 hours	30% of Billed Monthly Recurring Charges
Greater than 8 hours	50% Billed of Monthly Recurring Charges

7. INDEMNIFICATION AND LIMITATION OF LIABILITY. Each party ("Indemnitor") shall hold the other party harmless from and against any and all loss, liability, damage, and expense (including reasonable attorneys' fees) for damages to any property, or injury to or death of any person to the extent arising out of or caused by any act or omission of indemnitor. The provision of this section shall survive the termination of service(s) and the Term of this Agreement, except in connection with breaches of confidentiality obligations. As it relates to the exception neither party be liable to the other party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature, including but not limited to any lost profits, lost revenues, lost savings, or harm to business. Each party hereby releases the other party, its subsidiaries, and affiliates, and their respective officers, directors, managers, employees, and agents from any such claim.

8. FORCE MAJEURE. In the event that either party's performance under this Agreement is delayed, prevented, obstructed, or inhibited because of any act of God, governmental action or any other cause beyond such party's reasonable control (the "Force Majeure Event"), such party will not be in default of this Agreement; provided, however, such party shall exercise commercially reasonable efforts to perform in spite of the Force Majeure Event. In the event of a Force Majeure Event, which materially impacts performance for ten (10) days or more ("Extended Delay"), either party may terminate the affected Services without penalty or further obligation upon written notice to the other party. During a Force Majeure Event, all payment obligations shall abate with respect to the impacted Services.

9. DISPUTE RESOLUTION. Upon any actual or alleged breach of, or DEFAULT under, this Agreement by any party, no action shall be taken with respect thereto against the breaching or defaulting party unless and until such breach or default remains uncured for thirty (30) days after written notice thereof to the party alleged to be in breach or default. Each party shall be entitled to seek in a court of law injunctive and other equitable relief for any breach of the terms of this Agreement. Otherwise, however, if a dispute arises out of or relates to this Agreement, any actual or alleged breach hereof or the interpretation hereof, and if such dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle such dispute by mediation administered by the American Arbitration Association (the "AAA") under its Commercial Mediation Procedures, or by private mediation as the parties may agree, before resorting to arbitration, litigation, or some other dispute resolution procedure. Any such dispute not resolved by negotiation or mediation shall be settled by binding arbitration in Hillsborough County, Florida pursuant to the commercial Arbitration Rules of the AAA, by a single arbitrator selected in accordance with rules of the AAA. Judgment on the arbitration award may be entered into any court having

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jurisdiction thereof. Either party may seek any interim or preliminary relief from the court of competent jurisdiction to protect its rights or property pending the completion of arbitration. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs of responding to such action.

- 10. COMPLIANCE WITH LAW AND GOVERNING AUTHORITY.** This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings, orders, and other actions of governmental agencies. It is agreed that each party shall obtain, file, and maintain any tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by any governmental body or agency having jurisdiction over its business. It is agreed that this Agreement is being executed by PBX-Change within the State of Florida, has become effective within the State of Florida, and therefore shall be governed by and construed in accordance with the laws of the State of Florida
- 11. CHANGE IN LAW.** If any government statute or regulation or order by a court of law or regulatory authority directly (a) prohibits performance under this Agreement, (b) makes such performance illegal, impossible or impractical, or (c) effects a change which has a material adverse impact upon either party's performance of its obligations under this Agreement, then the parties will use all reasonable efforts, to either (1) revise or amend such conflicting statute or regulation or order by a court of law or regulatory authority or (2) revise the Agreement so that (i) performance under the Agreement is no longer prohibited, illegal, impossible or is no longer impacted in a material adverse fashion, and (ii) the Agreement is revised in a manner that preserves, to the maximum extent possible, the respective original intent of the parties. Each party will endeavor to provide reasonable notice to the other party as to any proposed law, regulations or any regulatory proceedings or actions that could affect the rights and obligations of the parties under this Agreement. If the parties are unable to revise the Agreement in accordance with the above, then the party whose performance is rendered prohibited, illegal, impossible, impractical or is impacted in a material adverse manner shall have the right to, at its sole discretion, to cease performance of any such obligations or Services that are so prohibited, impossible, impractical or material and adversely affected without further obligation or liability upon thirty (30) days' prior written notice to the other party. The parties will continue to perform all such obligations and Services under this Agreement that are not so prohibited, impossible, impractical or material and adversely affected; provided if a material part of the rights and obligations under this Agreement are suspended in accordance with the above and the performance of the remaining obligations would not reasonably maintain the respective original intent of the parties or would not serve the essential purpose of this Agreement, then either party shall have the right to, at its sole discretion, to terminate this Agreement without further obligation or liability upon thirty (30) days' written notice to the other party.
- 12. SEVERABILITY OF PROVISIONS.** In the event any provision in this Agreement is held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect. The parties shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties. If the provision eliminated is a material provision and the parties are unable to negotiate a replacement provision, which reflects the original intent of the parties, either party may terminate the Agreement without liability or further obligation by providing thirty (30) days written notice to the other party.
- 13. CONFIDENTIALITY.** The parties agree that either party's proprietary or confidential information in either written, verbal, electronic or other form will not be disclosed by the other party either directly or indirectly, by any means, to any third person(s) without the express written permission of the disclosing party except as required to fulfill its obligations hereunder or unless otherwise required by governing authority or law. If CUSTOMER is governed by HIPPA requirements, then an additional Business Associate Agreement (BAA) agreement needs to be in place with PBX-Change and CUSTOMER.
- 14. ASSIGNMENT.** Neither party may assign its obligations under this Agreement without the prior written consent of the other party; such consent not to be unreasonably conditioned, delayed or withheld. Either party may, however, assign its rights hereunder to an affiliate or a company which purchases all or substantially all of its assets ("Assignee") without the consent of the other party, but with no less than thirty (30) days' prior notice to the non-assigning party; provided that the Assignee agrees to be bound by all the terms and conditions of this Agreement, including the Assignee's agreement to cure all prior defaults of the assigning party under this Agreement.
- 15. AFFILIATES.** From time to time it may be necessary for PBX-Change to provide services through an affiliate or third-party to CUSTOMER. Any provision of Service to CUSTOMER pursuant to this Agreement by an affiliate of the PBX-Change, or a third-party company used by PBX-Change, PBX-Change shall remain responsible to CUSTOMER for the delivery and performance of the Service in accordance with the terms and conditions of this Agreement. The parties acknowledge and agree that CUSTOMER's affiliates may purchase Services and be invoiced directly by PBX-Change under this Agreement; provided, however, any such CUSTOMER affiliate purchasing Services hereunder agrees that such Services are provided pursuant to and governed by the terms and conditions of this Agreement. Any reference to CUSTOMER in this Agreement with respect to a Service ordered by a CUSTOMER affiliate shall also be deemed a reference to the applicable CUSTOMER affiliate.

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16. ADDITIONAL PROVISIONS. This Agreement, together with the, Quote, Service Order Form(s), Move Add Change Order Form(s) (the "MAC Form"), and Service Level Agreement (the "SLA") which are incorporated herein by reference, and which together with this Agreement constitutes the entire understanding between the parties with respect to Services provided herein and supersedes any prior agreements or understandings. This Agreement is not exclusive. Nothing in this Agreement will prevent CUSTOMER or PBX-Change from entering into similar arrangements with, or otherwise providing Services to, any other person or entity. All notices hereunder shall be made in writing and shall be delivered to the addresses set forth below by either overnight courier or certified mail, return receipt requested. Any such notice shall be deemed effective on the Go-Live Date. The parties agree that a digitized (electronic) or facsimile copy of the executed Agreement shall be the same as an original copy. The failure of either party to give notice of Default or to enforce compliance with any of the terms or conditions of this Agreement will not be considered the waiver of any other term or condition of this Agreement. No subsequent amendment to this Agreement will be effective or binding unless it is made in writing and executed by authorized representatives of both parties. The individuals executing this Agreement on behalf of each party hereby represent and warrant to the other party that such individual is authorized to so execute this Agreement.

17. ADD/REMOVAL OF SERVICES. Mobility license and RCF can be removed at any time in service term, should services no longer be needed, without financial penalty. This Agreement may be updated using a MAC Form.

18. 9-1-1 EMERGENCY.

(a) 9-1-1 emergency calls will be routed ONLY to the address reflected on the applicable service order, and that in the event of a failure of the Services 9-1-1 emergency calls may not be completed successfully, and (b) the customer is solely responsible for ensuring that its premise equipment is functional and that power is available to such premise equipment.

CUSTOMER acknowledges that under FCC rules, PBX-Change is considered to be a "provider of interconnected VoIP services" and is responsible for compliance with the requirements of the FCC's rulings and notices regarding E911; including but not limited to the provisions of the VoIP E911 Order under which PBX-Change will be responsible for the following: To "**Specifically advise every new and existing subscriber**, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service."

To "**Obtain and keep a record of affirmative acknowledgement** by every subscriber, both new and existing, of having received and understood the advisory described in the paragraph above;" and to "Distribute to its existing subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VoIP service.

Each subscriber should **distribute such warning stickers or other appropriate labels to each new user** prior to the initiation of that user's service."

Provider:

TampaBay DSL Inc. dba PBX-Change
5625 W Waters Avenue
Suite E
Tampa, FL 33634

Customer:

Customer: _____
Address 1: _____
Address 2: _____
City, St, Zip: _____

DATE

DATE

TITLE

TITLE

PRINT NAME

PRINT NAME

SIGNATURE

SIGNATURE

Initial: _____