

Business Only Broadband 
MASTER SERVICE AGREEMENT

CUSTOMER: _____

DATE: _____

THIS MASTER SERVICE AGREEMENT (“MSA”) is entered this ____ day of _____, 20____, by and between _____ (the “Customer”), and BOB, LLC, an Illinois limited liability company. This Agreement sets forth the Services to be provided to Customer by incorporation and reference, the standard terms and conditions related thereto, the rights and legal obligations governing the Parties, and the policies and procedures that Customer agrees to comply with throughout the term of the Agreement.

1. DEFINITIONS.

1.1 **Affiliate:** Any entity that controls, is controlled by, or is under common control with BOB.

1.2 **Agreement:** This Master Service Agreement, any PSA, Exhibits attached hereto including BOB’s Privacy Policy (See, Exhibit A), BOB’s Acceptable Use Policy (See, Exhibit B), any other BOB policy and procedure (which may be amended from time to time), Service Order Form(s) executed by Customer, the Notice of Availability, and any of the foregoing that may be made available on BOB’s Website.

1.3 **BOB:** BOB, LLC, an Illinois limited liability company, doing business under the name of Business Only Broadband, and its affiliates. References to BOB include BOB’s parent company, affiliates, subsidiaries, shareholders, directors, officers, employees, representatives, and agents. BOB may also include, for purposes of installation and assignment of obligations under this Agreement or Service Order Form(s), any subcontractor of BOB.

1.4 **BOB Equipment:** Any and all facilities, equipment, or devices provided by BOB or its authorized subcontractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks.

1.5 **BOB Network:** The telecommunications/data communications network and network components owned, operated, or controlled by BOB, including BOB metropolitan area networks, facilities, and BOB’s Equipment at the Service Location(s). The BOB Network does not include network equipment not operated or controlled by BOB.

1.6 **Bob Website:** Any website owned or operated by BOB including the URL located at www.bobbroadband.com and the Administrative Website.

1.7 **Confidential Information:** All information regarding either Party’s business which has been marked, or is otherwise communicated, as being “proprietary” or “confidential,” or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, this Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the parties’ communications regarding such items

1.8 **Customer:** The company, corporation, individual, party, and/or other entity named in this Agreement and/or any Sales Order Form(s).

1.9 **Customer-Provided Equipment:** Any and all facilities, equipment, supplies, Ethernet broadband router, cables, wires, and/or devices supplied by Customer for use in connection with the Services.

1.10 **Licensed Software:** Computer software or code provided by BOB or required to use the Services, including without limitation, associated documentation, and all updates thereto.

1.11 **Monthly Recurring Charge(s) or MRC(s):** All monthly recurring fees, charges, and Taxes associated with the Services, use of BOB Equipment, set-up or activation fees, re-activation fees, minimum fees, technical support, maintenance and repair, and applicable federal, state, and local taxes, fees, surcharges and recoupment’s (however designated).

1.12 **Non-Recurring Charge(s) or NRC(s):** All fees and charges associated with the provisioning, calibration, and/or installation of Services as known and identified in the Service Order Form(s).

1.13 **Notice of Availability:** BOB’s written or electronic notice that states the date Services are available for immediate use by Customer (subject to this Agreement) at Customer’s Service Location(s).

1.14 **Party (or Parties):** A reference to BOB or the Customer; and in the plural, a reference to both Customer and BOB.

1.15 **PSA:** The applicable Product Service Addendum (PSA) between Customer and BOB which provides additional terms and conditions applicable to Services ordered by Customer under the Agreement.

1.16 **Service(s):** Any service(s) set forth under a PSA between Customer and BOB.

1.17 **Service Commencement Date:** The date(s) on which BOB first makes available Service(s) for use by Customer, as confirmed electronically or in writing with a Notice of Availability.

1.18 **Service Order Form(s):** A request for BOB to provide Services to a Service Location(s) submitted by Customer to BOB: (a) on a then-current BOB Service Order Form designated for that purpose, or (b) if available, through BOB’s electronic order processing system designated for such purpose.

1.19 **Service Location(s):** The Customer location(s) where BOB provides Services, to the extent Customer owns, leases, or otherwise controls such location(s).

1.20 **Service Term or Term:** The duration of time (commencing on the Service Commencement Date and including any Renewal Term) Customer agrees to pay for Services, as specified in a Service Order Form(s).

1.1 **Taxes:** Any federal, state, and/or local taxes (including any taxes that may be characterized as fees, tariffs, charges, surcharges, etc.) that may be levied or assessed upon the BOB Equipment or Services provided to Customer.

1.22 **Termination Charge:** All accelerated amounts due under this Agreement whereby Customer shall pay to BOB, as a termination charge, all of the MRCs (plus all other applicable fees, charges, and other amounts incurred by Customer) that would have been payable by Customer if the Services described in the Service Order Form(s) had been provided to Customer until the end of the full Service Term.

2. TERM

2.1 **Commencement and Termination.** This Agreement shall become binding on Customer when BOB receives and accepts a Service Order Form executed by Customer. The Term of this Agreement shall commence on the Service Commencement Date and shall terminate upon the completion of the last effective Service Order Form, subject to automatic renewal set forth under the Service Term Renewal provision. The Service Term for any Service Order Form(s) shall be extended in the case of interdependency between Service Location(s), and shall extend for the longest term between the applicable Service Order Form.

2.2 **Service Term Renewal.** Upon the expiration of the Service Term for all Service Order Forms equal to or in excess of one (1) year, this Agreement and each applicable Service Order Form shall automatically renew for successive periods of one (1) year each ("**Renewal Term(s)**"), unless otherwise stated in these terms and conditions, or if prior written notice of non-renewal is delivered by either Party to the other at least sixty (60) days before the expiration of the Service Term or the then current Renewal Term.

2.3 **Right to Increase Monthly Recurring Charges and Terminate.** BOB reserves the right to increase Customer's then current MRCs for any Service Term Renewal provided that BOB gives Customer written or electronic notice of such proposed increase at least sixty (60) days prior to the end of the applicable Service Term (or applicable Service Renewal Term), subject to Customer's right to terminate the Agreement within thirty (30) days prior to the end of the then current Service Term (or Service Renewal Term) by sending BOB its written notice not to renew this Agreement.

3. BROADBAND SERVICES, EQUIPMENT, AND INSTALLATION

3.1 **Orders.** Customer shall submit to BOB a properly completed Service Order Form(s) to initiate Services to Customer's Service Location(s). A Service Order Form shall become binding on the Parties when BOB accepts Customer's Service Order Form, unless BOB provides Customer written or electronic notice that Services cannot be provided for any reason. By executing a Service Order Form, Customer represents and warrants that Customer: (a) either owns the Service Location(s) or has received permission from the legal owner and/or any other necessary party of the Service Location(s) to make any changes to the interior and/or exterior necessary to install BOB Equipment (b) is legally authorized to purchase and receive the Services and BOB Equipment (if applicable), (c) is not prohibited from entering and fulfilling its obligations under this Agreement, and (d) is authorized to act and affirm that the information Customer supplies to BOB is correct, accurate, and complete. A single Service Order Form containing multiple Service Locations or Services may have multiple Service Commencement Dates; provided, however, that any discrepancy or disagreement between the Parties concerning the termination date shall then be the latest date among the Service Order Form(s).

3.2 **Service Location(s) and Installation.** Customer shall pay BOB the NRC per the Service Order Form(s) upon BOB's notification to Customer of the Service Commencement Date. If any other fees will be incurred during the provision that are not identified in the NRCs, Customer will be notified of such fees prior to installation and Customer will have the option to incur such fees or terminate the effected Service Order Form without penalty.

3.3 **Customer Responsibilities.** Customer shall comply with and satisfy the following responsibilities ("**Customer Responsibilities**") related to the installation, support, and maintenance of Services and BOB Equipment: (a) Obtain, secure, maintain 'roof rights' for BOB Equipment from property owners at each Service Location and make available to BOB upon request all applicable and necessary authorizations, licenses, permits, and proof thereof; (b) Provide secure and environmentally sound space sufficient for BOB Equipment at each of the Service Locations, no further than three hundred (300) feet from Customer's router or switch interface; (c) Provide internal building conduit to allow BOB the ability to rod/rope cable to the point of demarcation; (d) Provide UPS AC power equipment, circuit sizing to be determined, if applicable; (f) Emergency local generator backup service, if applicable; (g) Provide, install and maintain a device that is capable of routing network traffic between the Service and the customer's Local Area Network (LAN); and (h) Customer must provide a point of contact (POC) for installation, Service activation and any maintenance activities.

In the event Customer fails to comply with any of the Customer Responsibilities, BOB may cancel or terminate Services at such particular Service Location(s), without any liability or obligation to Customer upon notice of termination to Customer; provided, however, that if BOB has incurred any costs or expenses related to or arising out of installing or preparing to install the Services that it would otherwise not have incurred, a charge equal to those costs and expenses plus a termination fee equal to twenty percent (20%) of BOB's incurred costs and expenses, including, but not limited to, any contracts entered into by BOB in connection with this Agreement and any completed or incomplete installation services rendered shall apply to Customer's final billing invoice for that particular Service Location(s). In the event Customer fails to keep an installation appointment, or in BOB's opinion, the Service Location(s) is/are not prepared to accept the installation of the BOB Equipment, installation services related to Customer-Provided Equipment, and/or Services, BOB may charge Customer BOB's then current hourly rates for the installation appointment, including any and all applicable NRCs.

3.4 **BOB Equipment / UCC.** BOB Equipment is and shall remain the property of and title to BOB regardless of where installed at the Service Location(s), and shall not be considered a fixture or an addition to Customer's land, roof, property, or Service Location(s). BOB will not maintain or in any way be responsible for any software, cables, or hardware attached to the BOB Equipment that is not installed by BOB or in any way related or unrelated to the use of Services, including Customer's internal network. Unless BOB has notified Customer that it has lease rights to the roof in which the BOB Equipment is installed, it is Customer's sole obligation to safely secure and reasonably protect BOB Equipment from and against damage, abuse, and theft while at the Service Location(s). BOB reserves the right to refuse to perform any installation or repair work, or may when necessary, charge Customer for interior or exterior cable or wiring to complete the installation or repairs at BOB's then current hourly rates. BOB shall perform any installation or de-installation of BOB Equipment in a workmanlike manner using reasonable care, but shall not be liable for any reasonable alterations or necessary work to the Service Location(s) that are required for the installation services, use, or removal of the BOB Equipment, including, but not limited to, holes in walls or ceilings, cable wiring, penetration, or antenna mounting brackets.

At any time, BOB may, but is under no obligation to, remove or change BOB Equipment in its sole discretion in connection with providing Services. Customer shall not move, rearrange, disconnect, remove, repair, or otherwise tamper with any BOB Equipment or permit others to do so without the prior written consent of BOB. Customer shall not use, or permit the use of, BOB Equipment for any purpose other than authorized by this Agreement. Customer agrees not to take any action that would directly or indirectly impair BOB's title to any BOB Equipment furnished to Customer, nor expose BOB to any claim, lien, suit, encumbrance, or legal process related to the use or possession of BOB Equipment. Customer agrees to pay BOB's full repair or reimburse BOB's replacement price of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned BOB Equipment or part thereof, together with any costs incurred by BOB in obtaining or attempting to obtain possession of any such BOB Equipment including, but not limited to, attorneys' fees. Customer hereby grants, and BOB is hereby authorized, to file and/or record an applicable UCC financing statement(s) against Customer's property and/or Service Location(s) in an effort to protect its rights, title, and interest to any BOB Equipment provided to Customer and/or located at any Customer Service Location.

3.5 Customer-Provided Equipment. BOB has no duty, obligation, responsibility, or liability with respect to any loss, damage, claim, injury, loss or degradation of Service, and/or lawsuit related to Customer's use of Customer-Provided Equipment or connection therewith to BOB Equipment.

3.6 Authorized Reseller of Services. With prior written consent from BOB, and subject to acceptable terms and conditions required by BOB, Customer shall have a limited, non-exclusive, and non-transferable right to resell Services to its customers, purchasers, subscribers, end users, and/or third party users ("**Subscribers**"); provided, however, that BOB shall not be liable for any act or omission resulting from Customer's sale or resale of any Service(s). Customer is not an agent or representative of BOB and shall not hold itself out as such. Customer is acting only as a reseller of Services and, if applicable, BOB Equipment provided to Subscribers using the Services resold by Customer. BOB makes no representations or warranties of any kind to Customer or its Subscribers with respect to the resale of Services. Customer shall notify and instruct any Subscriber of resold Services that any such agreement for Services is exclusive between Customer and Subscriber. All right, title and interest in and to the Services, including all copyrights, trademarks, service marks, logos, names, patents and other intellectual property embodied in the Services or provided by BOB in connection therewith shall remain the property of BOB. Customer shall be solely responsible for interfacing with respect to its service offerings including, without limitation, order provisioning, billing, collection, billing adjustments/credits, tax collection and payments, customer service, and dispute resolution. As a reseller of Services (if applicable), Customer represents and warrants the following: (a) Customer is a business in good standing, and that it has all applicable local, state and federal licenses and permits, and has the full power, authority and legal right to resell the Services contemplated under this Agreement; (b) Customer will not resell Services to any Subscriber that has not provided Customer, and does not have, an established acceptable usage policy that is commercially reasonable and consistent with industry standards including, among other things, prohibiting illegal and improper use of Services; (c) Customer shall use commercially reasonable efforts to market and resell the Services; and (d) any and all information provided by Customer under or relating to this Agreement and the resale of Service, including all information provided is complete, true, and not misleading in any material respect ("**Reseller's Representations and Warranties**"). In consideration of BOB's consent to permit Customer to resell Services, Customer agrees to indemnify and hold BOB harmless from and against any and all costs, fines, liens, charges, losses, injuries, expenses, damages, claims, lawsuits, demands, judgments, actions and/or proceedings (including attorneys' fees) ("**Claim**)

arising out of or related to Customer's direct or indirect sale, resale, marketing, promotion, distribution, connection, installation, servicing, or making the availability for use of Services, and any breach of Reseller's Representations and Warranties. Customer agrees to notify BOB in writing within five (5) days of its knowledge of any Claim asserted against Customer related to or arising out of the resale of Services. Termination of this Agreement will automatically and immediately terminate Customer's reseller's rights under this Section.

3.7 Administrative Website. BOB may, at its sole option, make one or more of its administrative websites available to Customer in connection with Customer's use of the Services (each an "**Administrative Website**"). BOB may furnish Customer with one or more user log-in IDs and/or passwords for use on the Administrative Website. Customer shall be responsible for the confidentiality and use of such user IDs and/or passwords. Customer is directed to promptly notify BOB if Customer has lost or cannot recall its password or log-in ID, or if there has been any unauthorized release, use, or other compromise of any user ID or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Website. BOB may change or discontinue the Administrative Website, or Customer's right to use the Administrative Website, at any time without prior notice. Additional terms and policies may apply to Customer's use of the Administrative Website. Any such terms and policies may be posted on the site. Any inconsistency between content of the Administrative Website and any Service Order Form(s) or this Agreement shall be controlled first by the Service Order Form(s).

3.8 Access to Information. Subject to the terms and conditions of this Agreement, the rules, policies, and procedures of BOB, and payment of any applicable charges, BOB may provide Customer with reasonable access to User guides, Customer's billing invoices, installation guides for end-user installable BOB Equipment, Services history, product support, and support for Services.

4. CHARGES, BILLING, AND PAYMENT.

4.1 Monthly Recurring Charges. Billing of Service(s) shall begin on the Service Commencement Date. Customer shall be billed on a monthly basis for Services. Customer agrees to timely pay in full all MRCs for Services as set forth or referenced in the applicable Service Order Form(s), or as invoiced by BOB. All payments must be paid in United States currency.

4.2 Third-Party Charges. Customer may incur charges from third-party service providers that are separate and apart from the amounts charged by BOB. These may include, without limitation, charges resulting from accessing third-party services, calls to parties who charge for their telephone based services, and/or BOB purchasing or subscribing to other offerings from third-party services on Customer's behalf. Customer agrees that all such charges and fees, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

4.3 Payment of Billing Invoices. Except as otherwise indicated herein or on the Service Order Form(s), BOB will invoice Customer in advance on a monthly basis for all MRCs under the Agreement. MRCs shall be billed to Customer on the Service Commencement Date and shall be paid by Customer within thirty (30) days of such billing invoice. All activities and Services used under Customer's account shall be chargeable to and the sole responsibility of Customer. All other charges will be billed monthly in arrears. Customer shall make timely payment to BOB for all invoiced amounts within thirty (30) days from the date of the billing invoice. If no such date exists, Customer shall pay invoiced amounts within thirty (30) days of receipt of the billing invoice. Any amounts not fully paid to BOB on

or before the due date is a material breach. If a Service Commencement Date is not the first day of a billing period, Customer's next monthly invoice shall include a prorated charge for the Services, from the date of installation to the first day of the new billing. In certain cases, BOB may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between Customer and the third-party. BOB shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party.

4.4 Partial Payment. Partial payment of any billing invoice will be applied to the Customer's outstanding charges in the amounts and proportions as solely determined by BOB. Acceptance of partial payment(s) by BOB shall not constitute a waiver of any rights to collect the full balance owed under this Agreement.

4.5 Payment by Credit Card. Upon Customer's written request and BOB's acceptance of such request, BOB will accept certain credit card payments for charges generated under this Agreement. All credit card payments shall be subject to a processing fee equal to three percent (3%) of each charged payment amount. By providing BOB with a credit card number, Customer authorizes BOB to charge Customer's credit card for all charges generated under any Service Order Form(s) and this Agreement, until: (i) this Agreement is terminated, or (ii) Customer provides sixty (60) days prior notice that BOB stop charging the credit card. Customer agrees to provide BOB with updated credit card or alternate payment information on a timely basis prior to the expiration or termination of the credit card on file or in the event that Customer's credit card limit is or will be insufficient to cover payment. If BOB is unable to charge Customer's credit card for any reason, Customer agrees to pay all amounts due, including any late payment charges or bank charges, upon demand by BOB.

4.6 Credit Approval and Deposits. Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide BOB with credit information requested by BOB. Customer authorizes BOB or BOB's agent to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to BOB will be true, complete, and correct. BOB, in its sole discretion, may deny the Services based upon an unsatisfactory credit history of Customer.

4.7 Taxes and Fees. Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Customer will also be responsible for paying any Service Order Form fees and administrative fee charged by BOB including payment obligations and Taxes that become retroactively applicable.

4.8 Other Government-Related Costs and Fees. BOB reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees (if any), regardless of whether BOB or its affiliates pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. These obligations may include those imposed on BOB or its affiliates by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction, as well as those that BOB or its affiliates are required to collect from the Customer or to pay to others in support of statutory or regulatory programs. For example, BOB customers may be charged a monthly regulatory recovery fee to help defray BOB's contributions to municipal, state, and federal programs. This regulatory recovery fee is not a tax, and it is not government-mandated. Taxes and

other government-related fees and surcharges may be changed with or without notice.

4.9 Disputed Invoice. If Customer disputes any portion of a billing invoice, Customer must timely pay the undisputed portion of the invoice and, within thirty (30) days from the invoice date, BOB must receive a written claim including all documentation substantiating Customer's claim for all disputed amounts of the invoice. In any billing dispute where such amount in dispute is equal to or greater than fifty percent (50%) of the total billing invoice amount, Customer shall be required, as a condition precedent to its right to dispute amount such billing invoice, to timely pay BOB fifty percent (50%) of the total billing invoice amount ("**Good-Faith Payment**"). If BOB does not receive from Customer its written claim to dispute charges within thirty (30) days from the billing invoice date and does not timely pay the Good-Faith Payment (when applicable), Customer forever waives its right to contest or dispute such charges and releases and holds BOB harmless from and against any and all liability or claim of loss for any error, inaccuracy, and discrepancy, and Customer shall pay all amounts due in the invoice (plus applicable late fees and interest). Subject to the limitation in this section, the Parties shall negotiate in good-faith to resolve any billing dispute. In the event the Parties fail to mutually resolve any timely billing dispute within sixty (60) days ("**Dispute Period**") after the written dispute is received by BOB, then BOB and Customer may agree to mutually extend the Dispute Period an additional sixty (60) days. In any event that a billing dispute is not resolved within one-hundred and twenty (120) days, any such dispute shall be deemed settled and resolved in favor of BOB, and all disputed charges shall be deemed valid charges to Customer. In no event shall any billing dispute exceed 120 days. Any disputed amounts that are not timely received when due, and are determined as valid charges to Customer in favor of BOB, shall be subject to the Late Fee, as set forth hereunder.

4.10 Past-Due Amounts. Any undisputed payment not made when due will bear interest charge equal to one and one-half percent (1.5%) per month, or BOB's then current late interest rate, not to exceed the highest rate allowed by law on the unpaid invoice (the "**Late Fee**") until paid in full. The Late Fee shall be computed and compounded daily on any unpaid and past due charges, beginning on the due date until the invoiced amount is paid in full. If Customer's account is delinquent, Customer authorizes BOB to charge Customer's credit card on record, and/or BOB reserves the right to refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any BOB Equipment that Customer fails to return in accordance with this Agreement. If BOB is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned BOB Equipment, Customer agrees to pay all costs of collection or other action, including attorneys' fees and court costs. At BOB's discretion, BOB may require Customer to pay a reactivation fee to reestablish Services to Customer's account for any payment delinquency, rejected payment, unauthorized use of Service(s), or any other default by Customer under this Agreement.

4.11 Rejected Payments. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution, plus the invoiced amount that should have been paid by Customer but for the rejected payment.

4.12 BOB's Right of Offset. If Customer defaults on any payment obligation owed to BOB under this Agreement and BOB has funds or credits that are owed to Customer, BOB may offset that which it is owed by first applying such funds to the full balance due by Customer.

4.13 **Change of Billing Information.** Customer agrees to promptly notify BOB in writing whenever Customer's billing information changes.

5. **TERMINATION OF AGREEMENT / SALES ORDER.**

5.1 **Termination by Prior to Service Commencement Date.** If Customer terminates this Agreement without cause by delivering written notice to BOB no less than 48-hours prior to the Service Commencement Date. In such termination event, BOB will not refund any fees, charges, or other amounts paid to BOB. Customer agrees to reimburse or pay BOB for any and all costs and/or expenses incurred or owed by BOB in connection with Customer ordering the Services *plus* a termination fee equal to twenty percent (20%) fee of BOB's incurred costs and expenses, including, but not limited to, any contracts entered into by BOB in connection with this Agreement and any completed or incomplete installation services rendered.

5.2 **Termination for Convenience.** Notwithstanding any other term or provision in this Agreement, Customer shall have the right, in its sole discretion, to terminate any or all Sales Order Form(s) at any time after the Service Commencement Date upon thirty (30) days prior written notice to BOB; provided, however, that Customer shall pay BOB all outstanding amounts due for Service and the applicable Termination Charge within thirty (30) days of the effective termination date, and shall the return all applicable BOB Equipment. Failure to pay said amounts within thirty (30) days is a breach hereunder.

5.3 **Termination by BOB.** BOB may terminate this Agreement and/or any Service Order Form(s) prior to the Service Commencement Date without penalty if BOB determines that the Services cannot be provided to Customer for any reason.

5.4 **Termination for Customer Breach of Default.** (a) If Customer is in breach or default of any term or obligation under this Agreement, and fails to cure such breach within five (5) days of the due date for any economic breach, or within thirty (30) days for any other non-economic breach from Customer's receipt of a notice of default, Customer shall pay BOB all accrued amounts due prior to Customer's breach within thirty (30) days, and BOB may in its sole option: (i) terminate this Agreement (ii) terminate or suspend Service to some or all of the Service Order Form(s); (iii) require Customer to pay the applicable Termination Charges within thirty (30) days; (iv) require a deposit, advance payment, or other satisfactory assurances in connection with any or all Service Order Form(s) as a condition of continuing to provide the Services to Customer; (v) require Customer to pay all of BOB's reasonable attorneys' fees, court costs, and collection costs; and/or (vi) seek any other recourse or remedy available to BOB under this Agreement, or at law or equity. This section does not apply to a timely billing dispute, unless BOB has reviewed the dispute and determined in good-faith that the charge is correct after the Dispute Period.

(b) Subject to the limitations set forth in Section 6 hereunder, If BOB is in material breach or default of any term or obligation under this Agreement and BOB fails to cure such breach within thirty (30) days from BOB's receipt of Customer's written notice of default, Customer may terminate this Agreement, and BOB shall promptly refund to Customer the amount equal to the MRC paid for such month in which the BOB's breach occurred, subject to proration as of the date of such breach.

5.5 **Effect of Expiration or Termination of the Agreement or a Service Order Form(s).** Upon the expiration or termination of a Service Order Form for any reason: (i) BOB may, at its discretion, disconnect/terminate the applicable Service to Customer; (ii) BOB may delete all applicable data, files, electronic messages, voicemail or other information that may be stored on BOB's servers, equipment, or systems; (iii) Customer shall permit BOB access to retrieve from the applicable Service Location(s) any and all BOB Equipment (however, if Customer fails to permit access, or if the

retrieved BOB Equipment has been damaged and/or destroyed other than by BOB or its agents, normal wear and tear excepted, BOB may invoice Customer Replacement Charge of the relevant BOB Equipment, or in the event of minor damage to the retrieved BOB Equipment, the cost of repair, which amounts shall be immediately due and payable); and (v) Customer's right to use applicable Licensed Software (if applicable) shall automatically terminate, and Customer shall be obligated to return the Licensed Software to BOB. Customer shall not be refunded any amounts related to set-up, installation, and/or any other amounts already charged to Customer.

5.6 **Return of BOB Equipment.** Customer must return all BOB Equipment in good working condition, ordinary wear and tear excepted. Customer will be subject to a charge in an amount equal to the then replacement price to replace the non-returned BOB Equipment, damaged, or defective BOB Equipment with new BOB Equipment of similar or the then current model of the BOB Equipment, as the case may be (the "**Replacement Charge**"). Customer shall permit BOB representatives to access the Service Location(s) to de-install and remove BOB Equipment, or with BOB's prior approval Customer may safely remove the BOB Equipment and return it to BOB within five (5) days of the Termination Date. Unless BOB has lease rights to the roof in which the BOB Equipment is installed, any risk of loss for any BOB Equipment shall be borne by Customer until BOB de-installs or accepts delivery of BOB Equipment. BOB may charge Customer BOB's then current hourly rates for any missed appointment which is the result of no fault of BOB, to remove BOB Equipment. Failure of Customer to return BOB Equipment within five (5) days will be subject to the Replacement Charge, and BOB shall not be required to accept BOB Equipment from Customer beyond said five (5) day period.

6. **LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES; WARNINGS.**

6.1 **LIMITATION OF LIABILITY.** CUSTOMER'S SOLE REMEDIES UNDER THIS AGREEMENT ARE AS EXPRESSLY SET FORTH IN THIS SECTION. THE AGGREGATE LIABILITY OF BOB UNDER THE AGREEMENT FOR ANY AND ALL CLAIMS, SERVICE DISRUPTION, LOSSES, INJURY, DAMAGES, AND CAUSES ("**DAMAGES**") ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO BOB DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. BOB SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, USE, BUSINESS, OR PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT. NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED TO BOB FOR SERVICES, BOB EQUIPMENT, LICENSED SOFTWARE (IF ANY), TERMINATION CHARGES, NRCs, OR MRCs.

6.2 **WAIVER OF LIABILITY.** IN NO EVENT SHALL BOB, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS, AND/OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION, OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, ANY EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER OR THIRD-PARTY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY

VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

6.3 **DISCLAIMER OF WARRANTIES.** SERVICES, BOB EQUIPMENT, BOB NETWORK, AND/OR LICENSED SOFTWARE SHALL BE PROVIDED PURSUANT TO THE TERMS AND CONDITIONS IN THE APPLICABLE PSA(S), AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, BOB EQUIPMENT, OR LICENSED SOFTWARE (IF ANY).

6.4 **Disruption/Delays in Service.** Due to many factors that are not in the control of BOB, the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance, or in which an error or interruption in the Services could lead to severe injury to business, persons, property, information, or environment. "High Risk Activities" may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. Customer expressly assumes the risks of any damage(s), loss, and/or liability involving High Risk Activities which may result from a disruption or delay in Service(s).

7. **INDEMNIFICATION.**

7.1 **Indemnification by Customer.** Customer shall indemnify, defend, and hold harmless BOB from and against any and all claims, loss, cost, expense (including attorneys' fees), injury, demands, damages, actions, suits, and/or proceedings whether civil, criminal, administrative, or investigative (collectively, "Claims") related to or arising out of: (i) Claims asserted by the property owner of the Service Location(s) so long as BOB performs its work with reasonable care; (ii) Customer's negligence or willful act or omission; (iii) Customer's misuse of Services, BOB Equipment, and/or Licensed Software; (iv) Customer's breach of any term, condition, representation, warranty, duty, and/or obligations in this Agreement; (v) any libel or slander by Customer; and/or (vi) infringement of a U.S. patent or U.S. copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service. Customer agrees to notify BOB promptly, in writing, of any Claims, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Claims.

7.2 **Indemnification by BOB.** Subject to the limitations set forth under Section 6, BOB shall indemnify, defend, and hold harmless Customer from and against any and all claims, loss, cost, expense (including attorneys' fees), injury, demands, damages, actions, suits, and/or proceedings whether civil, criminal, administrative, or investigative (collectively, "Claims") related to or arising out of: (i) damage to tangible personal property or real property, and personal injuries (including death) arising out of the gross negligence or willful misconduct of BOB while working on Customer's Service Location(s); (ii) BOB's breach of any term, condition, representation, warranty, duty, and/or obligations in the Agreement; and/or (iii) infringement of a U.S. patent or U.S. copyright, or unauthorized use of trademark, trade name, or service related to BOB Equipment or Licensed Software. BOB agrees to notify Customer promptly, in writing, of any Claims, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Claims.

8. **SOFTWARE & SERVICES.**

8.1 **License.** If and to the extent Customer requires the use of Licensed Software in order to use the Services supplied under any Service Order Form, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. Customer may not claim title to, or an

ownership interest in, any Licensed Software (or any derivations or improvements thereto).

8.2 **Restrictions.** Customer agrees that it shall not: (i) copy Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of BOB; (ii) reverse engineer, decompile, or disassemble the Licensed Software; and/or (iii) create, write, or develop any derivative software or any other software program based on Licensed Software.

8.3 **Updates.** Customer acknowledges that use of Services may periodically require updates and/or changes to certain Licensed Software resident in BOB Equipment or Customer-Provided Equipment. BOB may perform such updates and changes remotely or on-site, at BOB's sole option.

8.4 **Intellectual Property Rights in the Services and IP Address.** Title and intellectual property rights to Services and IP Addresses are owned by BOB, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. Copying, redistribution, reselling, bundling or publication of Services, in whole or in part, without express prior written consent from BOB or other owner of such material, is prohibited.

9. **CONFIDENTIAL INFORMATION AND PRIVACY.**

9.1 **Disclosure and Use.** All Confidential Information shall be kept by the receiving Party in strict confidence and shall not be disclosed to any third party without the disclosing Party's express written consent. Notwithstanding the foregoing, such information may be disclosed: (A) to the receiving Party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using Services, rendering Services, and marketing related products and services (provided that in all cases the receiving Party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement.

9.2 **Exceptions.** Notwithstanding the foregoing, each Party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving Party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving Party; (iii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing Party; (iv) is developed independently by the receiving Party without use of the disclosing Party's Confidential Information; or (v) is required to be disclosed by law or regulation.

9.3 **Monitoring.** BOB shall have no obligation to monitor usage of Services made in connection with this Agreement; provided, however, that Customer acknowledges and agrees that BOB shall have the right to monitor any usage from time to time and to use and disclose such usage data and information in accordance with this Agreement, and as otherwise required by law or government request.

10. **CUSTOMER PRIVACY POLICIES.**

10.1 **Privacy Policy.** In addition to the provisions of Article 9, the Privacy Policy (attached hereto as Exhibit A) applies to BOB's handling of Customer Confidential Information. In the event of a conflict between the provisions of Article 9 and any provision of the Privacy Policy, the applicable provision of the Privacy Policy shall prevail in the resolution of a conflict.

10.2 **Privacy Note Regarding Information Provided to Third Parties.** BOB is not responsible for any information provided by Customer to third parties, and such information is not subject to the privacy provisions of this

Agreement or the Privacy Policy. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

11. **USE POLICY.**

11.1 **Use Policies.** Customer agrees to use Services subject to BOB's Acceptable Use Policies ("AUP") which may be amended from time to time. The AUP is posted on BOB's Website.

12. **MISCELLANEOUS TERMS.**

12.1 **Force Majeure.** Neither Party shall be liable to the other Party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, act of terrorism, epidemic, acts of regulatory or governmental agencies, unavailability of right-of-way, spectrum interference, electrical storms, heavy precipitation, excessive weather conditions, unavailability of services or materials upon which the Services rely, or other causes beyond the nonperforming Party's reasonable control; provided, however, that except as otherwise provided in this Agreement, Customer's obligation to pay for Services provided shall not be excused or delayed by any act of force majeure or for any other reason.

12.2 **Assignment and Transfer.** Customer is strictly prohibited from assigning any right, obligation or duty, in whole or in part, and/or of any other interest hereunder, without the prior written consent of BOB, of which consent can be withheld for any reason. BOB may assign its rights and obligations hereunder to any party or entity without Customer's consent. All obligations and duties of Customer under this Agreement shall be binding on all successors in interest and assigns.

12.3 **Notices.** Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing (unless electronic notice is expressly permitted herein) and shall be given via personal delivery, overnight courier, or via U.S. Certified Mail, Return Receipt Requested. Electronic notice sent by sender is presumed sent and received. Notices to Customer shall be sent to the Customer last billing address provided to BOB. Customer shall notify BOB in writing of any change in Customer's mailing address. Failure to provide such change in Customer's mailing address shall not invalidate the effectiveness of mailing notices to Customer. All notices to BOB shall be sent to the following address: BOB, LLC, Attn: Chief Executive Officer, 999 Oak Creek Drive, Lombard, Illinois 60148. All such notices shall be deemed given and effective on the day when delivered by overnight delivery service or certified mail.

12.4 **Entire Understanding.** This Agreement between Customer and BOB constitute the entire understanding of the parties related to the subject matter hereof, and supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. If there is a conflict between a Service Order Form(s) and the PSA, or this MSA, the Service Order Form(s) shall control. No modifications, amendments, supplements to, or waivers of this Agreement shall be effective or binding unless it is executed in writing by authorized representatives of both Parties.

12.5 **Construction/Severability.** In the event that any portion of this Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

12.6 **Survival.** The rights and obligations of either Party, that by their nature would continue beyond the expiration or termination of this

Agreement or any Service Order Form(s), including without limitation representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order Form.

12.7 **Governing Law and Venue.** The domestic law in which the Service is provided or the laws of the State of Illinois, in BOB's sole discretion, shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. Any litigation or dispute related to this Agreement will be brought in state or federal courts located in the State of Illinois, and Customer hereby irrevocably consents to personal jurisdiction of such courts for such purpose, all without waiving any right to remove to federal court in the same county. No Party will make a motion to dismiss or transfer any case filed in accordance with this subsection on the basis of improper venue, personal jurisdiction, or for the convenience of any Party or witness.

12.8 **No Waiver.** No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

12.9 **No Agency.** Neither Party is an agent, representative, or partner of the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties.

12.10 **Article Headings and Pronouns.** The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof. The singular form denotes the plural and the masculine form denotes the feminine or neuter wherever appropriate.

IN WITNESS WHEREOF, BOB and Customer agree to the terms and conditions of this Agreement on the date first above written.

BOB, LLC:

By: Alan Rosenberg
Its: Chief Executive Officer

CUSTOMER:

By: _____
Its: Authorized agent or representative

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EXHIBIT A

[Business Only Broadband's Privacy Policy]

EXHIBIT B

[Business Only Broadband's Acceptable Use Policy]

EXHIBIT C
[Service Order Forms]

EXHIBIT D

[Product Service Addendum(s) (PSA(s))]