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# MASTER SERVICE AGREEMENT

between



and

**Client**

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Thursday, April 23, 2009  
Version 1.00

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## 1 Introduction

This agreement ("Agreement") is between IPNetZone, ("IPNetZone") and <<Customer Name>> ("Client"), (hereinafter the "Parties) of the IPNetZone Managed Services. Any IPNetZone services or products ("Services") provided by IPNetZone to Client shall be governed by the terms and conditions herein. By activating the Services, Client agrees to be bound by these terms and conditions. Please read these terms and conditions carefully. They affect the legal rights between Client and IPNetZone by, among other things, requiring (1) Mandatory arbitration of disputes; (2) Limiting IPNetZone's liability under the agreement.

## 2 Terms and Conditions

The terms and conditions stated herein are in lieu of and replace any and all terms and conditions set forth in any documents issued by Client, including, without limitation, purchase orders and specifications. Any additional, different, or conflicting terms and conditions on any such document issued by Client at any time are hereby objected to by IPNetZone, and any such documents shall be wholly inapplicable to any sale made or service rendered hereunder and shall not be binding in any way on IPNetZone. No waiver or amendment to this contract or these terms and conditions shall be binding on IPNetZone unless made in writing expressly stating that it is such a waiver or amendment and signed by an Officer of IPNetZone.

## 3 Term

The term of this Agreement ("Term") begins on the date that Client purchases Services and continues for the duration of the service period as defined by the service plan/term that is selected by Client ("Plan") and is defined on the Network Service Level Agreement("SLA"). Subsequent terms of this Agreement automatically renew on an annual basis without further action by Client unless Client gives IPNetZone written notice of non-renewal at least thirty [30] days before the end of the term in which the notice is given. Client is purchasing the Service for the full term, meaning that if Client attempts to terminate Service prior to the end of a term, Client will be responsible for half the number of months remaining on the contracted term times the contracted monthly recurring charge all of which immediately become due and payable as defined in Section 5.6. Expiration of the term or termination of the Services does not excuse Client from paying all unpaid, accrued charges due in relation to the Agreement hereunder.

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## 4 Equipment

To provide the Services, IPNetZone may furnish, provide or sell Equipment to Client. All Equipment shipments are F.O.B. Client IPNetZone's facility, unless otherwise delivered by IPNetZone to Client. IPNetZone's liability for delivery shall cease, and title (if applicable) and all risk of loss or damage shall pass to Client upon delivery to carrier or upon receipt of acceptance signature by Client. Client will be provided a manufacturer's warranty from the date of purchase of Equipment or Services that will exist throughout the length of the Client' contract, so long as Client maintains good standing as a customer of IPNetZone. Client shall be required to obtain authorization from IPNetZone to return any Equipment. IPNetZone will provide replacement Equipment only if the Equipment is deemed defective and covered under the warranty. IPNetZone will not cover replacement for lost, stolen or modified equipment. IPNetZone may refuse equipment returned by Client that is not covered under warranty, and Client will be responsible to pay return shipping charges. Any furnished equipment provided to Client in conjunction with the services provided remains the property of IPNetZone and is to be returned upon termination of this agreement.

## 5 Billing, Charges and Payment

### 5.1 Payment

Equipment purchased in conjunction with IPNetZone service typically requires a 25% deposit, with the remaining balance due upon delivery. If the equipment is leased through IPNetZone's leasing partner, a deposit equal to 2 months' payments is required. Leases obtained through other sources will be treated as a cash purchase (i.e. a 25% deposit is required).

IPNetZone will issue an invoice to Client by the 15th day of each month for the service fee of the subsequent month and for any additional one-time charges from the preceding month. Client shall pay the full amount of the invoice within 30 days of the invoice date. A grace period of ten days will be extended.

### 5.2 Credit Terms

All Services provided to Client and covered by the Agreement shall be subject to credit approval or review by IPNetZone. Client will provide such credit information upon execution. IPNetZone, in its sole discretion and judgment, may discontinue

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credit at any time with notice or require a deposit if Client is no longer in compliance with the agreed upon credit terms.

### 5.3 Billing

IPNetZone will email a PDF version of the entire detailed invoice to the email address specified by the Client during the provisioning phase of deployment. Client may request a monthly paper statement via US Mail; however, an administrative fee will be assessed. Invoices and charges shall include monthly service fees, shipping charges, equipment charges, taxes, and any other applicable charges. Billing for monthly service fees commences upon purchase of the Services, and the first month's monthly service fee shall be prorated to take into account any partial month that may occur as the result of the date monthly service fees are initiated. Thus, the first month of service will be billed on a prorated basis from the date of activation. All subsequent months will be billed on the preceding fifteenth of the month, with payment due on the fourteenth of the month for which that invoice is being issued.

### 5.4 Late/Non-Payment

Client shall pay the full amount of the invoice within 30 days of the invoice date. A grace period of ten days will be extended. Thereafter, any undisputed amount due shall bear interest at an annual rate (the "Default Rate") equal to the lesser of (i) one and half percent (1.5%) in excess of the "prime rate" as published in The Wall Street Journal from time to time, or (ii) the maximum rate permitted under applicable law.

If any charges for the Services are due but unpaid for any reason including, but not limited to, non-payment for 60 days past due, IPNetZone may, upon notice to Client suspend or terminate Services and all accrued charges shall be immediately due, plus a late fee of the lesser of 1.5% per month or the maximum allowed by law accrued from the date of invoice until payment in full is received by IPNetZone. If charges cannot be processed due to insufficient funds, Client may be charged a minimum fee of one hundred fifty dollars (\$150.00). A fee will also be charged to activate a suspended account. Service may be suspended and/or terminated due to chronic late payments; any interrupted account will be subject to a minimum \$500 reactivation fee and/or at IPNetZone's discretion may require a 2-month deposit before service reinstatement. No suspension or termination of the Services or of this Agreement shall relieve Client from paying any amounts due hereunder.

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## 5.5 Taxes

Prices for the Services do not include any customs duties, sales, use, value added, excise, federal, state, local, public utility or other similar taxes. All such taxes shall be paid by Client and will be added to any amounts otherwise charged to Client unless Client provides IPNetZone with an appropriate exemption certificate. If IPNetZone refunds any amounts paid for the Services by Client, applicable taxes may not be refundable.

## 5.6 Early Termination Fees

### 5.6.1 Managed Services

The monthly Managed services charge above has been priced based upon an extended term. If the managed service is terminated by Client before the end of the agreed term, Client will be billed an Early Termination Charge equal to half the number of months remaining on the contracted term times the contracted monthly recurring charge.

### 5.6.2 Circuit Services

The monthly MPLS Circuit service charge above has been priced upon an extended term. If the any or all circuits are cancelled before the end of the agreed term, Client will be billed an Early Termination Charge equal to the remaining months on the contract times the contracted monthly recurring charge.

Disconnection Fees shall become immediately due, when Client notifies IPNetZone of the cancellation of the Services. From time to time, IPNetZone may sponsor promotional limited-time offers that provide a rebate on Equipment. An additional Disconnection Fee may apply to these offers and Client should review the terms of such offers. Submission of a rebate form, whether by US mail or on-line, represents agreement with the terms and conditions of such offer, including a higher Disconnection Fee, if applicable.

## 5.7 Credits

Client acknowledges and agrees that the Services are provided "as is, where is."

## 5.8 Discounts

From time to time in its sole discretion, IPNetZone may offer promotions or discounts. Client must provide any promotion or discount codes upon purchase of the Services. Client may not be entitled to a subsequent credit for such promotions or

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discounts, if not requested at the time of account creation or change of service.

## 5.9 Billing Disputes

Client must dispute any charges for the Services in writing within thirty (30) days of the date of the charge by IPNetZone or Client waives any objection and further recourse. Written statements disputing charges must be sent to:

Billing Department  
IPNetZone  
38-31 Crescent Street, 2<sup>nd</sup> Floor  
Long Island City, NY 11101

Or [billing@ipnetzone.com](mailto:billing@ipnetzone.com)

## 6 Changes to the Agreement, Services or Plan

Changes to the Agreement, Services, or Plan that correspond to the terms of the original Agreement can be submitted through a written request. All price and service changes to this Agreement need written agreement by both parties. If there is a significant change in terms, a new Agreement should be written that might result in price changes associated with the change.

## 7 Termination

Client agrees to provide IPNetZone with sixty (60) days notice of termination. The monthly service charge above has been priced based upon an extended term. In accordance with section 5, Disconnection Fees may apply. IPNetZone reserves the right, at its sole discretion, to suspend, terminate or change the Services for cause including without limitation, misuse of the Services (see attached Acceptable Use Policy) in any way, Client's breach of this Agreement, suspected fraud or activity by Client that adversely affects the Services, IPNetZone, or other Client' use of the Services. IPNetZone reserves the right to determine, at its sole discretion, what constitutes misuse of the Services and Client agrees that IPNetZone's determination is final and binding on Client. IPNetZone may require an activation fee to change or resume a terminated or suspended account.

## 8 Privacy

IPNetZone is committed to respecting Client's privacy. Once Client chooses to provide personally identifiable information, it will only be used in the context of Client's relationship with IPNetZone. IPNetZone will not sell, rent, or lease Client'

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personally identifiable information to others. Unless required by law or subpoena or if Client' prior permission is obtained, IPNetZone will only share the personal data Client provides with other IPNetZone entities and/or business partners that are acting on IPNetZone's behalf to complete the activities described herein. Such IPNetZone entities and/or national or international business partners are governed by IPNetZone's privacy policies with respect to the use of this data.

## 9 Returns and Adjustments

Client may not return Equipment for any reason without prior approval of IPNetZone. All returns shall be in original packaging or equivalent. Client shall be responsible for all costs related to shipping to IPNetZone any Equipment that is being returned. Any Equipment returned to IPNetZone without prior authorization for its return or proper packaging may be refused. In order to obtain an appropriate refund, upon cancellation Client must obtain a return material authorization number from IPNetZone, return to IPNetZone any Equipment provided hereunder, undamaged and in good working condition, in its original packaging and with its original content or otherwise will be immediately responsible for paying to IPNetZone an amount equal to the fair retail price of the equipment minus any payments Client had previously paid specifically for said Equipment.

## 10 Technical Support

IPNetZone provides technical support to Client via telephone, e-mail, and on-site, as defined in Addendum "A" of the SLA, for the Equipment described in Addendum "B" of the SLA, and for the Services described in Addendum "C" of the SLA. Technical Support will be provided as defined in Section 2 of the SLA. Support for other applications and uses is not provided or implied.

## 11 On-Site Services

If IPNetZone personnel perform Services on Client' Sites defined in Addendum "A" of the SLA, (i) Client will provide all facilities, access, furnishings, equipment, software, documentation, passwords, and data necessary to perform the Services, (ii) Client will maintain adequate security, safety, utilities, and environmental standards, consistent with industry standards, and its regular practices; additionally, Client represents and warrants that it will maintain during the term of this Agreement: (a) Commercial General Liability ("CGL") insurance, including Blanket Contractual Liability and Broad Form Property damage, with limits of at least \$1,000,000

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combined single limit for bodily injury and property damage for each occurrence; (b) Professional Liability or Errors and Omissions insurance in the amount of at least \$1,000,000 for each occurrence; and (c) excess or umbrella liability at a limit of no less than \$2,000,000 per occurrence and aggregate in excess of the underlying required above. The CGL, excess or umbrella liability, and policies of Customer will designate IPNetZone and its officers, directors and employees as an Additional Insured. (iii) While on Client' premises, IPNetZone personnel will comply with Client' standard rules and regulations consistently applied and communicated to IPNetZone in advance; (iv) except as otherwise provided in an Attachment, Client will reimburse IPNetZone for its reasonable out-of-pocket expenses incurred in connection with the Services, including coach class travel, economy lodging, compact automobile rental if necessary and meals or a reasonable allowance for meals.

## 12 Breach

In the event of a breach of the terms of the Agreement, including the prevailing party shall pay reasonable attorney, court, collection and other costs incurred for enforcing rights hereunder.

## 13 Indemnification

The Parties agree, at their own expense, to defend, indemnify, and hold harmless each other, their affiliates, suppliers, subcontractors, and representatives from and against any and all claims or liabilities including, without limitation, reasonable attorneys' fees, arising from or relating to the use of the Service (whether authorized or unauthorized) or any violation of this Agreement or applicable law, including, without limitation, any claims relating to the content on, or goods or services provided through, the Service, such as defamation claims, copyright claims, privacy claims, obscenity claims, etc. Client acknowledges and agrees that IPNetZone takes no responsibility for the content on, or goods or services provided through, the Service.

## 14 Disclaimer of Consequential Damages

In no event shall IPNetZone or its vendors be liable for any special, incidental, indirect, punitive or consequential damages or for any damages, including but not limited to loss of life, injury, loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use services or products provided hereunder. Notwithstanding the foregoing, IPNetZone acknowledges and agrees that it is liable for any

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gross negligence arising out of or in connection with this Agreement.

## 15 Warranty and Liability Limitations

IPNetZone makes no warranties, express, or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. Neither IPNetZone nor its vendors will be liable for unauthorized access to IPNetZone's or Client' transmission facilities or premise equipment or for unauthorized access to or alteration, theft or destruction of Client' data files, programs, procedures or information through accident, fraudulent means or devices, or any other method. Any claim against IPNetZone must be made within 90 days of the event of the claim or 90 days from the termination of service, whichever is earlier and IPNetZone has no liability thereafter IPNetZone's liability is limited to repair, replacement, credit or refund. IPNetZone may elect to provide a refund in lieu of credit, replacement, or repair. All warranties cover only defects arising under normal use and do not include malfunctions or failures resulting from misuse, abuse, neglect, alteration, modification, improper installation, or repairs by anyone other than IPNetZone. Notwithstanding the foregoing, IPNetZone acknowledges and agrees that it is liable for any gross negligence arising out of or in connection with this Agreement.

In no event shall IPNetZone's total liability exceed one month's worth of the customer's monthly service charge.

## 16 Export Compliance

Client agrees to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Services. Client agrees to comply with applicable local, state, and federal regulations governing the locality in which the Equipment and Services are used.

## 17 Software Copyright

Any software used by IPNETZONE to provide the Services and any software provided to Client in conjunction with providing the Services are protected by copyright law and international treaty provisions. Client may not copy the software or any portion of it.

## 18 Survival

The provisions of section 4, 8, 9, 11, 12, 14, 18, 20 shall survive any termination of the Agreement.

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## 19 Notices

IPNetZone communicates with Client primarily via email. Notices to Client shall be sent to the email address specified by Client at the time of registration for the Services or as subsequently specified by Client ("Email Address for Contact Personnel: Administrative, Technical, Billing, General"). Client is responsible for notifying IPNetZone of any Email Address changes. Client agrees that sending a message to the Email Address is the agreed upon means of providing notification. Email is used to communicate important information about the Services, billing, changes to the Services and other information. The information is time-sensitive in nature. It is required that Client read any email sent to the Email Address in a timely manner in order to avoid any potential interruption in the Services provided hereunder. In the event that a notice alleges a breach of this Agreement it will be sent certified mail, return receipt requested.

## 20 Force Majeure (Events Beyond Our Control)

IPNetZone shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, or labor strikes, labor difficulties, equipment failure, late delivery by suppliers, or other difficulties of IPNetZone as may occur in spite of IPNetZone's best efforts.

## 21 Governing Law / Resolution of Disputes

### 21.1 Mandatory Arbitration

Please read this provision carefully. It means that, except as noted below, Client and IPNetZone will arbitrate any disputes or claims in any way related to or concerning the agreement, or the provision of services or products to Client, including any billing disputes ("claim"). Claims shall be submitted to final, binding arbitration before the American Arbitration Association ("AAA"). This agreement to arbitrate also requires Client to arbitrate claims against other parties relating to services or products provided or billed to Client if claims are asserted against IPNetZone in the same proceeding. Arbitration will be conducted under the AAA's published commercial arbitration rules and supplemental procedures for consumer-related disputes, which are available by calling the AAA at 800-778-7879 or visiting its web site at [www.adr.org](http://www.adr.org). The AAA has a fee schedule for arbitrations. Client will pay the published share of the arbitrator's fees and administrative expenses ("Fees and Expenses") except that: (a) for Claims less than \$200, IPNetZone will pay all Fees and Expenses; and (b) for Claims between \$200

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and \$1,000, Client will pay only \$200 in Fees and Expenses, or any lesser amount as provided under AAA's Supplemental Procedures for Consumer-Related Disputes. Client and IPNetZone agree to bear their own other fees, costs, and expenses, including those for any attorneys, experts, and witnesses. The AAA Supplemental Procedures for Consumer-Related Disputes provide that unless a hearing is requested, disputes will be resolved based on written submissions, and no personal appearance is required. If Client requests an arbitration hearing, that hearing will take place either via telephone or in New York, NY. As a limited exception to the agreement to arbitrate, Client and IPNetZone agree that: (a) Client may file Claims in small claims court in Queens County (Queens), New York, if the Claims qualify for hearing by such court; (b) if Client fails to timely pay amounts due, IPNetZone may assign the account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or the Agreement; and (c) any Claim filed as a class action is not subject to arbitration but instead must be filed in the New York Supreme Court, County of Queens (Queens) or in the United States District Court for New York. All notice of claims should be sent via certified mail, return receipt requested to Jeff Lear, 1500 West University Avenue, Suite 103, Georgetown, Texas 78628

#### Prefiling Notice of Claim

Before instituting arbitration or suit, the parties agree to provide each other with an opportunity to resolve the claim by sending a written description of the claim to the addresses provided below. If the claim is not able to be resolved within thirty (30) days of receipt of notice, then Client or IPNetZone may initiate arbitration or suit as described in section 21.1. All claim notices should be sent to:

Director of Operations  
Shripal Daphtary  
IPNetZone.  
38-31 Crescent Street, 2<sup>nd</sup> Floor  
Long Island City, NY 11101

Or [billing@IPNetZone.net](mailto:billing@IPNetZone.net)

## 21.2 Governing Law

The Agreement and the relationship between Client and IPNetZone shall be governed by the laws of the State of New York without regard to its conflict of law provisions. To the extent court

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action is initiated to enforce an arbitration award or for any other reason consistent with Section 21.1, Client and IPNetZone agree to submit to the personal and exclusive jurisdiction of the courts within the state of New York, to the extent possible in Queens County, and waive any objection as to venue or inconvenient forum. The failure of IPNetZone to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.

## 22 Entire agreement

The terms and conditions of this Agreement, along with the pricing listed in the SLA, constitute the entire Agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to the Services. This agreement shall be binding upon the heirs, successors, and assigns of IPNetZone and Client.

Attachments hereto made a part of this Agreement: any future Attachments or Amendments to this Agreement executed by both parties will become part of, and subject to, this Agreement.