

## **MASTER SERVICES AGREEMENT**

These Terms and Conditions (the "Agreement") apply to any Services (as defined in the Service Agreement) that you (the "Customer") receive from Broadband Office Solutions or its representatives, affiliates, subsidiaries, successors, or assignees (collectively, "BBO"); are pursuant to your BBO Service Agreement(s); apply to each Service (whether offered on a stand-alone basis or in an integrated package); and shall take precedence in any conflict with your Service Agreement(s).

**Payment Policy.** You agree to pay all Service fees, incidental charges (including, but not limited to, charges associated with installation, expedites, moves, adds, changes, deletions and cancellations), federal, state and local taxes, surcharges, and other charges incurred on or through your account, including charges specified on the Service Agreement and any equipment purchases made through your account. Billing for each Service provided by BBO shall commence upon the completion of installation of such Service, which shall be defined as the date on which BBO tests and turns up such Service and notifies you that Service is available for use. BBO is not responsible for any delays that impede your ability to use the installed Service, including, but not limited to, delays requested by you or caused by a third party or delays incurred as a result of problems connecting the installed Service to your LAN, PBX, or other customer premises equipment ("CPE") by you or a third party. Furthermore, BBO may charge additional fees for changes made by you to orders after the Service Agreement is signed by you, but before the Service is installed.

Initial charges from BBO for Services with recurring monthly fees will include any start-up or installation fees and shall be invoiced at the beginning of the first full month after this Agreement and the accompanying Service Agreement are signed. All payments hereunder to BBO shall be due upon your receipt of BBO invoice. For your convenience, payment options include check, money order, or credit card (Visa, MasterCard, or American Express). Interest charges will be added to any past due amounts at the lower of 1.5% per month or the maximum rate allowed by law, prorated for each day past 30 days that payment is due.

Should you fail to keep your account balance current, BBO has the right to suspend your Service upon ten (10) days written notice (except as specified otherwise by FCC or state regulations, where applicable) and continue billing until sufficient payment has been received by BBO to bring current your account balance. If the Service is suspended due to your non-payment, it will not be restored until all charges (including any interest charges) and a minimum \$200 restoration fee per Service are paid in full. Should you fail to bring current your account balance within 10 days following suspension, BBO has the right to completely disconnect Service, reclaim all BBO owned phone numbers, IP addresses, and hardware, and charge all applicable Early Termination Fees (as defined herein) specified in this Agreement or the Service Agreements. If Service is disconnected but can be restored, BBO will only do so at your request and after all charges (including any interest charges) and a minimum \$600 restoration fee per Service are paid in full.

BBO may use any reasonable collection methods (including, but not limited to, sending your account to a third party collections agency and/or submitting your company to a credit rating agency for notation on your credit profile) to obtain payment for outstanding balances. You agree to reimburse BBO for its costs (including, but not limited to, reasonable attorneys' fees and/or collections agency fees associated with collecting delinquent or dishonored payments equivalent to 25% of the balance due) and for additional fees assessed by BBO for any check returned for insufficient funds up to \$50.

**Credit Inquiries/Deposits.** You authorize BBO to inquire into your credit history, including asking consumer reporting agencies or any other references for your credit information, and BBO reserves the right, at its sole discretion, to at any time, based on your credit worthiness, refuse you Service or require a non-interest bearing security deposit that will ultimately be refunded upon expiration or termination of the Service Agreement, assuming all amounts owed or due have been paid in full.

**Billing Disputes.** Notification from you of any dispute regarding your bill must be submitted to BBO's Billing Department within 45 days of the invoice date and have a corresponding open trouble ticket (please retain trouble ticket number for verification), or you will be deemed to have waived any objection to such payment. Once such disputes are identified, BBO will research such disputes in a reasonable amount of time and will not hold you liable to the charges until BBO have reached a conclusion on the validity of the claims. However, regardless of any billing disputes, all non-disputed balances must be paid in full and in accordance with the Payment Policy (as defined above).

**Access to Customer Premises and Equipment.** With respect to any installation, maintenance, or repair provided by BBO in connection with the Service, you agree to provide BBO with all necessary access to your premises, internal wiring, CPE, and other facilities and equipment and to allow BBO to perform such installation, maintenance and/or repair. With respect to any installation, BBO reserves the right to bill you a \$250 fee for each missed scheduled appointment date or CNR ("customer not ready") instance caused by you. Upon the third CNR instance, BBO reserves the right to cancel your Service request.

**Order Cancellation.** You agree to pay an order cancellation fee (a minimum of \$450 or equivalent to the actual cost of equipment, lines, and installation, whichever is greater) should you or BBO initiate the cancellation of your Service order prior to test and turn-up of Service, to compensate BBO for the time, money and resources spent to prepare and procure your Service order request. While reasonable efforts are made to provide Customer with Service ordered under the Agreement there may be circumstances under which BBO may not be able economically to provide or continue to provide such Services. Where and when BBO determines, in its sole discretion, that it cannot otherwise provide any and all Services to Customer on the Terms and conditions contemplated by this Agreement, BBO reserves the right to immediately cancel/discontinue Services without liability or further obligations to Customer.

**Term.** For ongoing Services, the term specified on the applicable Service Agreement shall commence on the date of installation. Notwithstanding the foregoing, this Agreement shall become effective on the date it is accepted by BBO and shall remain in effect for successive one-month periods until the end of the term set forth in the Service Agreement for each of the Services. Where a term longer than one month has been specified, and except as set forth in the Service Agreement or Schedules hereto, the initial term will automatically renew for successive one (1) year periods, unless you notify BBO in writing of your desire not to renew at least ninety (90) days prior to the expiration of the then current term. During the renewal term of the Service Agreement, BBO reserves the right to modify its pricing as set forth in the Service Agreement or elsewhere upon 30 days written notice to Customer. If any service converts to month to month after the expiration of the initial term, the discounts provided will expire at the end of the term and month to month rates may apply.

There is a 30 day notification period required for all Service terminations whether initiated by the Customer or BBO except as provided otherwise in this agreement. In the case of a material breach of this Agreement by BBO, BBO shall also be given 30 days to cure. Both parties agree that no notice must be given in the event of: a) an order of a court or governmental authority; or b) upon institution by or against Customer of a voluntary or involuntary proceeding under the United States Bankruptcy Code or the insolvency of Customer. For Customers under term agreements (as defined herein), if Service is terminated before the agreed upon term is completed, Customer agrees to pay BBO within 90 days of termination: 1) the monthly recurring charges and

minimum monthly usage amount multiplied by the number of months remaining in the Service term period; and 2) any previously waived installation, monthly access charges and special promotional credits given, in one lump sum, (collectively, the "Early Termination Fee"). Any termination of Service or of this Agreement will result in all IP addresses and phone numbers assigned to you by BBO reverting back to BBO. All BBO property (including, but not limited to, BBO routers, switches, equipment, facilities, and software) shall be returned to BBO. If the property is not returned and received within 30 days of the Service termination date, BBO will bill you for the missing property on the following month's invoice, which you will be obligated to pay in full. BBO reserves the right to terminate this Agreement (or restrict or suspend Service) in the event you violate this Agreement.

**Acceptable Use.** You agree not to use or allow the use of the Service to in any way transmit or post material that, as BBO determines in its sole discretion: (a) is prohibited by any law or regulation, or facilitates or encourages the violation of any law or regulation; (b) disrupts third parties' use or enjoyment of any Services; (c) invades the privacy of third parties, or violates the intellectual property rights or other rights of BBO or any third party; (d) is abusive, profane, libelous, slanderous, obscene, threatening, misleading, harassing, discriminatory, or otherwise harmful or objectionable; (e) causes the transmission or propagation of any virus, worm or other harmful or disruptive component; (f) violates or tampers with the security of any computer equipment, network, or program; (g) constitutes, facilitates, or encourages unsolicited commercial email or "spam"; (h) violates any other use requirement of which BBO may notify you from time to time or that is contained in any acceptable use policy posted on BBO' website. This Agreement together with the actual removal of material or denial of access to material by BBO is deemed notice to you within the meaning of the Digital Millennium Copyright Act. The bundled minutes and unlimited usage calling plans (the "Plan") are for outbound voice traffic only, and are designed for Customers with normal usage characteristics, not to exceed average of 1500 minutes per channel. Customers with call-centers, telemarketing operations and/or unusually high level may be excluded from the Plan at BBO discretion. No individual or entity shall have, receive or retain any proprietary interest in any toll-free long distance service number. Customer is responsible for all charges for toll-free, long distance and International service provided by BBO. Telephony calling for any unlawful or illegal purposes made by Customer is prohibited and will result in immediate shutdown of Services. All associated usage charges including Early Termination Fees will be billed to the Customer and is the Customer's sole responsibility to pay in full. YOU REPRESENT AND COVENANT THAT ANY CURRENT OR PLANNED WEBSITE BBO OR ITS PARTNERS WILL BE HOSTING ON YOUR BEHALF (THE "HOSTED WEBSITE") DOES NOT AND WILL NOT VIOLATE THE AFOREMENTIONED ACCEPTABLE USE POLICY. IF YOU VIOLATE THESE POLICIES, BBO RESERVES THE RIGHT TO IMMEDIATELY SUSPEND OR DISCONNECT SERVICE WITHOUT NOTICE AND CHARGE ALL APPLICABLE TERMINATION FEES.

**Limitations.** Your Service may have certain storage space and bandwidth utilization limitations. You agree that BBO may measure your storage space and bandwidth usage and in other ways enforce such limitations without further notice including a refusal to store incoming email or further download or upload traffic. In the event that Customer requests to move any Service from its current location to another location, which BBO determines is cost-prohibitive, then BBO reserves the right to charge a relocation fee, or terminate Service.

**Protection of Systems or Business.** You agree that BBO may also monitor use of the Service and such use or other information related to your account, including but not limited to systems or business the identity of the IP address owner or the usage records generated by the customer, as BBO reasonably feels is necessary to maintain, repair, and protect its. BBO may disclose such information when ordered by subpoena, court order, or governmental agency. In addition, although BBO does not systematically monitor the content on the Hosted Website, BBO reserves the right to require content that BBO determines in its sole discretion violates its acceptable use policy (as set forth in Section 8) be promptly removed and, if it is not, to suspend or terminate the Service without further notice.

**Unauthorized and Authorized Third Party Use.** You are responsible for ensuring the confidentiality of any password you obtain from BBO and for the consequences of any unauthorized use of your Service. If you have reason to believe that your account with BBO is no longer secure, you must promptly notify your BBO Customer Service Representative. You shall also be responsible for ensuring compliance with any Service obligations or restrictions under this Agreement by any customers of yours or other third parties authorized by you to use your account, including, but not limited to, being fully liable to BBO for any charges incurred as a result of such usage.

**General and Specific Disclaimer of Warranties; Limitation of Liability; and Remedies.** YOU EXPRESSLY AGREE THAT THE SERVICES, INCLUDING ANY ASSOCIATED INSTALLATION, MAINTENANCE, OR REPAIR AND ANY ASSOCIATED EQUIPMENT, SOFTWARE, OR CONTENT, IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BBO SPECIFICALLY DOES NOT WARRANT (A) THAT THE SERVICES INCLUDING SECURITY SERVICES WILL BE (1) UNINTERRUPTED AND CONTINUOUS, (2) ERROR OR VIRUS FREE AND SECURE FROM THIRD PARTY INTRUSIONS, AND (3) COMPATIBLE WITH YOUR EQUIPMENT; (B) THAT YOUR SERVICES WILL BE AVAILABLE FOR THE TERM OF YOUR SERVICE AGREEMENT, OR WILL CONTINUE TO BE AVAILABLE; AND (C) THAT BBO WILL CONTINUE TO HAVE ALL NECESSARY ACCESS RIGHTS TO YOUR BUILDING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BBO ALSO DOES NOT WARRANT ANY SERVICE, EQUIPMENT, OR SOFTWARE PROVIDED BY A THIRD PARTY FOR WHICH BBO IS A RESELLER OR SALES AGENT.

BBO SHALL NOT HAVE ANY LIABILITY FOR INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES SUFFERED BY YOU OR ANY OTHER PARTY, REGARDLESS OF WHETHER OR NOT YOU OR SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BBO' LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL SERVICE FEES PAID TO BBO IN THE PRIOR THREE (3) MONTHS OF THE AGREEMENT.

THE DISCLAIMERS OF WARRANTY, LIMITATIONS OF LIABILITY AND REMEDIES SET FORTH IN THIS SECTION ALSO APPLY TO BBO' SUPPLIERS AND SUBCONTRACTORS. THE REMEDIES SET FORTH IN THIS SECTION ARE THE MAXIMUM FOR WHICH BBO AND ITS SUPPLIERS AND SUBCONTRACTORS ARE COLLECTIVELY RESPONSIBLE. UNDER NO CIRCUMSTANCES SHALL BBO OR ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR LOSS OF PROFITS, LOSS OR INACCURACY OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF BBO OR ITS SUPPLIERS OR SUBCONTRACTORS HAVE BEEN ADVISED OF THEIR POSSIBILITY. CUSTOMER COVENANTS NOT TO SUE OR OTHERWISE MAKE A CLAIM AGAINST BBO' SUPPLIERS OR SUBCONTRACTORS FOR ANY ALLEGED OR ACTUAL FAILURE, DELAY, OR NONPERFORMANCE OF THE SERVICE. SPECIFICALLY, WITHOUT LIMITATION, YOU ACKNOWLEDGE AND AGREE THAT THE "LOCAL LOOP" MAY BE PROVIDED BY AN INDEPENDENT THIRD PARTY PROVIDER, IN WHICH CASE ITS SERVICE IS INDEPENDENT OF THE SERVICE PROVIDED BY BBO. CUSTOMER AGREES THAT BBO' SUPPLIERS AND SUBCONTRACTORS ARE INTENDED THIRD PARTY BENEFICIARIES OF THE PROVISIONS CONTAINED IN THIS PARAGRAPH AND SHALL BE ENTITLED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH IN ANY ACTION BROUGHT AGAINST THEM.

YOU ALSO AGREE THAT ELECTRONICALLY STORED DATA IS HIGHLY SENSITIVE AND SUBJECT TO UNFORESEEN LOSS DUE TO A VARIETY OF CAUSES; THAT THE PROPER OPERATION OF ANY COMPUTER SYSTEM INCLUDES THE MAKING OF REGULAR BACKUPS; AND THAT BBO SHALL NOT BE LIABLE FOR ANY LOSS OF DATA IN CONNECTION WITH THE SERVICES, INCLUDING ANY RELATED INSTALLATION OR REPAIR ACTIVITY.

BBO ASSUMES NO LIABILITY WHERE ANY CLAIM ARISES OUT OF CUSTOMER BEING PROVIDED WITH A NUMBER(S) OTHER THAN THE ONE(S) REQUESTED BY CUSTOMER. BBO SHALL NOT BE LIABLE WHATSOEVER FOR THE USE, MISUSE OR ABUSE OF A CUSTOMER'S TOLL-FREE, LONG DISTANCE AND/OR INTERNATIONAL SERVICE BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, CUSTOMER'S EMPLOYEES OR MEMBERS OF THE PUBLIC WHO DIAL CUSTOMERS' TOLL FREE LONG DISTANCE NUMBER BY MISTAKE, AS WELL AS IN CASES WHERE THE CUSTOMER-OWNED PBX IS PIRATED OR HIJACKED BY THIRD PARTIES.

YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE, NONPERFORMANCE, OR UNAVAILABILITY OF THE SERVICE SHALL BE FOR BBO TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR OR RESTORE THE SERVICE, OR FOR YOU TO TERMINATE THIS AGREEMENT ACCORDING TO ITS TERMS.

**Special Disclaimer on Behalf of Building Owners and Managers.** YOU ACKNOWLEDGE AND ACCEPT THAT THE FACILITIES AND SERVICES ARE NOT BEING PROVIDED OR MAINTAINED BY THE BUILDING OWNER OR MANAGER; THAT THE OWNER OR MANAGER HAS NO RESPONSIBILITY OR LIABILITY FOR THE INSTALLATION, OPERATION, MAINTENANCE, USE, REPAIR OR REPLACEMENT OF THE FACILITIES, OR THE PROVISION, QUALITY OR SUFFICIENCY OF THE SERVICES; AND THAT BY SUBSCRIBING TO AND ACCEPTING SUCH SERVICE, YOU RELEASE THE OWNER AND MANAGER FROM ANY SUCH LIABILITY. THIS PROVISION IS EXPRESSLY INTENDED FOR THE BENEFIT OF OWNER AND MANAGER.

**Voice over IP Disclaimer:** BBO's enhanced voice communications services is delivered in a manner whereby the voice communication is converted to Internet Protocol ("IP") and carried, in part, over Broadband Office's managed IP network. This service may be generically referred to as "voice over IP". It is separate and distinct from the traditional Local, Local Toll and Long-Distance services. "Service" or "Services" is defined to include Voice over IP unlimited local and nationwide direct dialed calling within the United States and certain calling and call management features or advanced features associated with the Service. For any VoIP Service traffic that is not transmitted 100% over BBO's managed IP network, and passes through any third party network, BBO shall not be responsible for the Quality of the Service (QOS) of the voice calls and/or any outages that result due to the inability to reach Broadband Office's managed IP network through the third party carrier. In addition,

911 DIALING WILL NOT FUNCTION CORRECTLY IF YOU MOVE YOUR EQUIPMENT TO A LOCATION OTHER THAN THAT PROVIDED ON THE SERVICE CONTRACT ASSOCIATED WITH THE MAIN TELEPHONE NUMBER.

YOU ACKNOWLEDGE AND UNDERSTAND THAT BBO WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 USING YOUR SERVICE OR TO ACCESS EMERGENCY SERVICE PERSONNEL DUE TO THE 911 DIALING CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS DOCUMENT.

YOU ACKNOWLEDGE AND UNDERSTAND THAT BBO WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO TERMINATE CALLS USING YOUR SERVICE. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BBO ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911 DIALING.

**Disaster Recovery/Redundancy Options Review.** BBO advises the customer to use 2 separate access type for redundancy and business continuity. The customer acknowledges that they may be prone to extended outages in the event if the customer has not implemented redundancy, and the customer has not acquired a backup access connection.

**Accuracy of Information.** Customer warrants that all information (including Telephone Numbers, LAN and LNP information) in or attached to this services agreement is accurate and will remain active until Service activation by BBO. **Customer understands that the telephone number assignments are not guaranteed, and should not be relied on before Service is activated.**

**Indemnification.** You agree, at your own expense, to defend, indemnify, and hold harmless BBO, its 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 by you or someone using your account (whether authorized or unauthorized) or any violation of this Agreement or applicable law, including, without limitation, any claims against BBO relating to the content on, or goods or services provided through, the Service, such as defamation claims, copyright claims, privacy claims, obscenity claims, etc. You acknowledge and agree that BBO takes no responsibility for the content on, or goods or services provided through, the Service.

**Tariffs.** Notwithstanding any provision to the contrary in this Agreement or accompanying Service Agreement, in the case of services governed by a tariff and/or by federal and state rules and regulations, where there is conflict between the tariff and/or rules and regulations and any provision in this Agreement or accompanying Service Agreement, and where required by law, such tariff and/or rules and regulations shall control, with the exception of NY state.

#### **Miscellaneous.**

**Assignment.** You may not assign any of your rights or obligations hereunder without the prior written consent of BBO. The sale of more than 50% of the business assets of the business of the customer is deemed as assignment. Notwithstanding the foregoing, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties' respective successors and permitted assigns.

**Independent Contractors.** Each party hereto is acting as an independent contractor and not as an agent, partner, employer, employee, or joint venture partner of the other.

**Force Majeure.** The failure of BBO to perform any obligation shall be excused as a result of any governmental actions of any kind, wars, strikes, fires, floods, acts of God, telecommunications failures, errors in the coding of electronic files, or any causes of like or different kind beyond the reasonable control of BBO.

*Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict-of-laws principles. Prior to submitting any formal complaints to governmental/regulatory/trade agencies and prior to commencing any lawsuit against BBO, you must notify BBO of your grievances and engage BBO in a good faith negotiation towards resolution. Any action to enforce this Agreement shall be brought exclusively in any Federal or State court located in Nassau County of New York.

*Amendment.* No amendment or modification of this Agreement shall be valid or binding upon the parties unless in writing and signed by each party.

*Headings.* All headings are for the convenience of the parties only and shall be given no legal effect.

*Waiver.* No failure or delay on the part of BBO in the exercise of any right or privilege hereunder shall operate as a waiver thereof or of the exercise of any other right or privilege hereunder, nor shall any single or partial exercise of any such right or privilege preclude other or further exercise thereof or of any other right or privilege.

*Entire Agreement.* This Agreement, including any associated Service Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, whether oral or written.

*Severability.* If any provision of this Agreement is held to be ineffective, unenforceable or illegal for any reason, such decision shall not affect the validity or enforceability of any or all of the remaining portions thereof.

**Notice.** Any notice to be given hereunder by you to BBO shall be in writing and effected by a nationally recognized private overnight courier, personal delivery, against receipt, or certified mail return receipt and shall be addressed to Broadband Office Solutions at the following address: 185 Great Neck Road, Suite 250, Great Neck, NY 11021, Attn.: Vice President, Operations; with a copy to your BBO Account Representative. Notice will be deemed to have been given on the day received, in the case of personal delivery and the third day from posting in the case of other allowable delivery methods. Notices to you shall be sent to either your Service e-mail address or to the Company address supplied by Customer.