

ATOMAMPD, LLC

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the “Agreement”) is entered into this DATE, (the “**Effective Date**”), by and between AtomAMPD, LLC, an Illinois Limited Liability Company (the “Company”) and Customer. AtomAMPD, LLC, will be providing services through its brand VOIP Defender, a division of the Company and therefore referred to hereinafter, collectively and interchangeably as the “Company”.

RECITALS

The Company provides a product which is a business office phone system built on top of the Company’s proprietary software called “AtomOS”. To serve this product, the Company provides hardware, software and phone service (SIP trunking).

The Customer desires to utilize the Company’s product and services by means of a monthly fee-based Service Agreement (the “Agreement”), which is attached hereto and incorporated herein and hereinafter referenced as the “Service Agreement” or “Agreement”. In so doing, and upon signing the Agreement, the Customer agrees to be bound by the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth in this Agreement, the parties, intending to be legally bound, hereby agree as follows.

DEFINITIONS

“Customer Point of Contact” means the Customer-appointed staff member responsible for coordinating all aspects of the installation and for serving as the key point of contact in the event of support questions or concerns as well as for coordinating activities associated with the installation. Serves as the lead resource for submitting requests for support to Company Support through its support system.

“Company Service and Support Specialist” is the Company representative who is the appointed Company contact for the Customer and who is the contact managing installation and providing oversight and guidance for support.

“Commencement Date” is the date on which services provided by the Company begin and billings for said services will begin on this date.

INSTALLATION TERMS AND REQUIREMENTS

INSTALLATION TERMS: Upon signing, and according to a mutually satisfactory delivery and installation data and time, Company will deliver and install the equipment listed in EXHIBIT A. During the course of the installation the Company will train and instruct Customer identified personnel including the Customer’s key “Point of Contact” in the use and maintenance of the equipment. The installation will be conducted by the Company “Service and Support Specialist” in a mutually agreed upon time frame. This time frame will be included in EXHIBIT C. The Customer commits to have required personnel on site during the scheduled time which will be mutually agreed upon. In the event, Customer personnel are not available at the scheduled time, the Customer shall be responsible for payment of a rescheduling fee as set forth in Exhibit B.

The Customer commits to appoint a “Point of Contact” who will fulfill the responsibilities set forth in the Definitions above and designated in Exhibit C.

Company Initial_____

Customer Initial_____

1. Location. By establishing an account, you agree that (i) you are the owner or have express written permission by the owner of the location which will use our service(s); (ii) you will not use the account for any unlawful purpose(s) and that, neither the setting up of an account, nor the use you make of the service(s) offered by Company, will infringe upon the legal rights of others; and (iii) you will setup and maintain a current and accurate account with the Company. Failure to properly setup or provide accurate and timely information about your account may result in the cancellation of your account and any Company service(s) associated with that account. Please be advised, that we will suspend, cancel, modify, or transfer your account or service(s) associated with your account to comply with any order of a court or other tribunal.

2. Account Transfers. Company accounts are non-transferable. You agree that: (i) accounts will remain under the ownership of Customer set forth herein; and (ii) accounts whether having been used or not to purchase our service(s) may not be re-sold, leased, rented or licensed to another party.

3. AtomOS Management Console. You agree that the safeguarding of your User Name and Password from any unauthorized use is your sole responsibility. In no event will the Company be held liable or responsible for any unauthorized use or misuse of your account, User Name or Password. In the event that you make changes that cause or require a need for the Company's support services you will be billed in accordance with the schedule set forth in Exhibit B.

4. Security. Our services are provided through a web-based interface using HTTPS communication technology. This allows all transmissions to support encryption and travel across a secure server.

5. Service Modifications. You authorize us to notify you as our customer of the modification(s) to any services which may become available from and after the Effective Date. You will be notified by e-mail from us at: sales@voipdefender.com or by postal service to the then current address provided by you.

6. Scope and Structure. This Agreement and Exhibits establish general terms and conditions, which apply to Services, provided by Company. Each Service Agreement issued and accepted hereunder shall be subject to all of the terms of this Agreement.

7. Term. This Agreement shall begin on the Commencement Date as set forth in Exhibit C and shall continue until the "Expiration Date" which is THIRTY-SIX (36) months from the Commencement date provided, however in the event that:

- a. Customer is not then in default and Customer elects to automatically renew the Agreement at Company's then current prices or otherwise negotiated prices for successive thirty-six (36) month terms, Customer shall give written notice to Company at least sixty (60) days prior to the end of the then current Term of its election to terminate the Agreement, or
- b. On the Expiration Date, the parties are in active discussions for additional services that then may be offered by Company, the Term shall extend for an additional period as may be reasonably necessary for the parties to conclude their discussions and execute an Agreement, but in no event longer than six (6) weeks.

8. Services. All Services provided hereunder shall be subject to the provisions of this Agreement and all Exhibits.

9. Fees and Payment. Recurring Fees are set forth on EXHIBIT B.

- a. **Invoicing and Payment.** Billing shall commence on the Commencement Date of this Agreement. Subsequent invoices for Services shall be mailed on the FIRST of each month. Customer shall pay all amounts owed under the Agreement within 15 days from the invoice

Company Initial_____

Customer Initial_____

date as shown on each invoice which is the 1st of the month (“Due Date”). An amount is considered delinquent if not paid on or by the fifteenth (15th) calendar day of the month. Other than for payments properly disputed in good faith, Company reserves the right to charge interest on delinquent amounts at one and one-half percent (1.5%) per month or \$20 per month whichever is greater (“Late Fee”). The Late Fee shall be assessed on the twentieth (20th) calendar day of the month for which payment is due and every first (1st) day of subsequent months until Customer has paid outstanding balance in full. For example, payment of \$165 is due and not paid. On the 20th, the payment due is \$185. The following month, if not paid, this amount shall continue to increase in \$20 increments until the outstanding balance is paid in full.

- b. **Disputed Payments.** In the event Customer in good faith disputes any fees invoiced Customer shall notify Company in writing of any such disputed amounts on or before the Due Date, identifying in reasonable detail its reasons for the dispute and the nature and amounts of the dispute. All amounts not timely and appropriately disputed shall be deemed final and not be subject to further dispute. Company shall review the amounts in dispute within ten (10) business days after its receipt of such notice and notify Customer of its findings. The following provisions shall apply:
 - i. If Company determines that Customer was billed in error, a credit for the amount billed incorrectly shall be made to the next invoice, or
 - ii. If Company determines that the amount was billed correctly, Customer shall pay the amount by the Due Date of the next invoice and all applicable late fees will be assessed.
- c. **Suspension of Services.** If payment in full for Services performed under the Agreement (other than for payments properly disputed in good faith) is not received on or before the Due Dates or in the event of consistently late payments (in excess of two (2) months), Company shall have the right, to suspend Services until such time as Customer has paid such fees in full, including any late fees. Following such payment, Company shall reinstate the Services provided that Customer prepays two (2) months of fees prior to reinstatement.
- d. **Termination of Services.** If payment in full for Services performed under this agreement is not received within 90 days after the due date the Company may at its own discretion terminate this agreement.

10. **Indemnification.** Except to the extent attributable to the negligence or willful misconduct of Company, its agents, representatives, subsidiaries, related entities, trustees, officers, directors, insurers, fiduciaries, agents, counsel and employees, Customer shall indemnify and hold Company harmless from and against any and all loss, liability, damage and expense (including reasonable attorneys’ fees) arising out of any demand, claim, suit or judgment for damages to any property or injury to or death of any person which may arise out of or be caused by any act or omission of Customer.

Except to the extent attributable to the negligence or willful misconduct of Customer, Company shall indemnify and hold Customer harmless from and against any and all loss, liability, damage and expense (including reasonable attorneys’ fees) arising out of any demand, claim, suit or judgment for damages to any property or injury to or death of any person which may arise out of or be caused by any act or omission of Company.

11. **Limitation of Liability.** You agree that our entire liability, and your exclusive remedy, with respect to any VoIP Defender service(s) provided under this Agreement and/or for any breach of this Agreement is solely limited to the amount you paid for such service(s). The Company shall not be liable for any damages

Company Initial_____

Customer Initial_____

resulting from the use or inability to use any of the Company services or for the cost of procurement of substitute services.

12. Termination. Either party in accordance with the following may terminate this Agreement prior to termination date for the following reasons:

- a. **Default.** If either party is in breach of this Agreement the other party shall give the breaching party thirty (30) days' notice in writing of such breach. If the breach has not been cured to the non-breaching party's reasonable satisfaction within the thirty (30) day period, then the non-breaching party may terminate this Agreement effective at the end of said thirty (30) day period without further notice to the breaching party. Notwithstanding the foregoing, failure of Customer to pay any undisputed amounts due under this Agreement shall be treated as set forth
- b. **Insolvency.** This Agreement may be terminated for cause by either party in the event that the other party shall become insolvent; admits in writing its inability to pay its debts as they mature; or ceases to function as a going concern or to conduct its operations in the normal course of business.
- c. **In event of termination.** Customer will promptly return in its entirety all of the Company's property in full working order, in the same condition as when delivered and in the original packaging as provided by Company; Customer will be charged full retail value of any property of the Company that is not returned within 72 hours of termination.

13. Force Majeure. Neither party shall have any claim or right against the other for any failure of or delay in performance by such other party if the failure or delay is caused by or the result of causes beyond the reasonable control of such other party, including but not limited to, acts of God, fire, flood, hurricane, or other natural catastrophes, terrorist actions, laws, orders, policies, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof; or any civil or military authority, national emergency, insurrection, riot or war; inability to obtain circuits or equipment, material or other supplies, telecommunications infrastructure, viruses, Internet hackers, denial of service attacks, actions and omissions of third parties, default of or failure to perform by subcontractors, or other similar occurrence beyond the control and without the fault or negligence of the affected party. Any such delay or failure shall suspend the affected Services Agreement until the delay or failure ceases, and the Agreement shall be deemed extended accordingly. Notwithstanding the foregoing, if the excusable delay exceeds sixty (60) days, either party may terminate any affected Services Agreement immediately upon written notice.

14. Disclaimer of Warranties. Customer assumes total responsibility and risk for Customers use and its end users' use of the services and equipment provided by Company. Company acknowledges that the Internet is accessible by persons who may attempt to breach the security of Company's or Customer's network facilities. Company has no control over and expressly disclaims any liability or responsibility whatsoever for service interruptions attributable to Company's network, any Company equipment failures, or any other such causes. Company makes no warranty that the services/equipment shall be error free or free from technical failure or interruption due to any number of factors, including but not limited to, periodic system maintenance, scheduled or unscheduled, or that it is compatible with any particular hardware or software not specified by Company's Installation and System Requirements.

- a. EXCEPT AS SPECIFICALLY SET FORTH HEREIN IN EXHIBIT A THE SERVICES AND EQUIPMENT PROVIDED BY THE COMPANY ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING BUT NOT
- b. LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Company Initial_____

Customer Initial_____

COMPANY:

AtomAMPD, LLC

By: _____

Name: _____

Title: _____

CUSTOMER:

[Company Name]

[Contact Name]

By: _____

Name: _____

Title: _____