



**VANBELKUM  
MASTER AGREEMENT FOR SERVICES**

**RECITALS**

WHEREAS VanBelkum is in the business of providing managed phone system, communication recording, dictation workflow, real-time networking applications, and related information technology ("IT") and software development services for its customers, and

WHEREAS the Customer would like to engage VanBelkum to provide such services, and

WHEREAS VanBelkum desires to be so engaged, for the provision of services and products in accordance with the terms and conditions contained in this Agreement and the Ancillary Agreements described herein that in the future will be entered between VanBelkum and Customer.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

Subject to the various terms and conditions set forth herein, during the term of this Agreement, Customer engages VanBelkum, and VanBelkum hereunder accepts such engagement to provide the Services as defined below. The specific nature of the Services to be provided are defined in one or more Ancillary Agreement that may be entered between the parties from time to time. The Ancillary Agreements shall be made a part of and incorporated by reference into this Agreement and the terms and conditions set forth herein shall be a part of and incorporated by reference in any Ancillary Agreement entered between the parties.

**1. *Services.*** During the Term (as defined below) of this Agreement, VanBelkum shall perform services and provide products and equipment to Customer as set forth in separate written sub-agreements or quotes entered between the parties, that may be referred to by VanBelkum as (1) Product Services Agreements ("PSA") for (a) "Managed Services" or (b) "Support Services"; and (2) "Quotes", that will outline what services or products are to be provided to the Customer by VanBelkum (the "Services") and applicable terms for the Services. The various PSA's and Quotes are defined as the "Ancillary Agreements" as that term is used in this Agreement. In the event any term of this Agreement and any term in an Ancillary Agreement are inconsistent, the term of the Ancillary Agreement shall prevail.

**2. *Payment.*** The Customer shall pay VanBelkum for the Services according to the rates and fee schedules in the Ancillary Agreements. The Customer will pay each invoice submitted to it by VanBelkum as defined in the Ancillary Agreement. If the payment term is not specified in an Ancillary Agreement, the Customer will pay each invoice submitted to it by VanBelkum upon receipt of invoice.

**3. Non-Payment and Billing Disputes.** In the event Customer disputes any billing invoiced by VanBelkum, Customer shall notify VanBelkum in writing. No charges may be disputed more than thirty days (30) after the date such charges are invoiced and if not disputed within that time, the charge shall be deemed undisputed by Customer. Payment of an invoice shall not prejudice Customer's right to dispute charges, so long as they are disputed in the manner and within the time specified in this section. The parties will cooperate in good faith to resolve any such disputes within a sixty (60) day period after the dispute is submitted to VanBelkum. If Customer does not make payment of undisputed invoiced charges within the thirty (30) day period specified above, VanBelkum may invoice the Customer the following:

A Late Fee as defined in the Ancillary Agreement may be charged to Customer if full payment is not received within 10 days from the invoice date, and

Interest not to exceed 1.5% monthly, may be charged on the unpaid balance of any invoice or undisputed charge not paid within thirty (30) days after the original invoice date. If the interest rate exceeds the maximum rate allowable by law, then the interest chargeable shall be equal to the maximum rate allowed by law.

If a Customer's Ancillary Agreement for Managed Services includes payment by some form of Credit Terms as provided for in the Ancillary Agreement with VanBelkum and Customer does not make payment of undisputed invoiced charges within the thirty (30) day period specified above, VanBelkum may suspend Service after VanBelkum has given Customer written notice and fifteen (15) days to cure the nonpayment. Following suspension of Service for nonpayment, VanBelkum is not required to reinstate Service to Customer until: 1) Customer has paid in full all charges then due, including any late fees and interest charges; and 2) only after the Customer provides to VanBelkum satisfactory assurance (such as a deposit) of Customer's ability to pay for Service and Customer's advanced payment for the cost of reinstating Service. If Customer fails to timely cure the nonpayment, Customer will be deemed to have canceled the Service as of the effective date of the suspension and be in default of this Agreement. A Late Fee as defined in the Ancillary Agreement may be charged to Customer if full payment is not received within 10 days from the invoice date. A Late Fee may also be charged after 30 days from the invoice date if not paid in full. If a Late Fee is not defined in the Ancillary Agreement, the fee will be Thirty Dollars (\$30 USD). Interest not to exceed 1.5% monthly, may be charged on the unpaid balance of any invoice or undisputed charge not paid within thirty (30) days after the original invoice date. If the interest rate exceeds the maximum rate allowable by law, then the interest chargeable shall be equal to the maximum rate allowed by law.

**4. Credit Approval and Deposit.** Customer will provide VanBelkum with credit information as requested, and delivery of Service is subject to credit approval. VanBelkum may require Customer to make a deposit (which will not exceed Customer's estimated charges for two months' service) as a condition to VanBelkum's acceptance of any customer order, or as a condition to VanBelkum's continuation of Service. All deposits held by VanBelkum will not be interest bearing.

**5. Term and Termination.** This Agreement shall commence on the Effective Date and shall continue for an initial term of three (3) year(s) ("Initial Term"). The Initial Term shall be extended for consecutive one-year periods unless either party provides written notice of its intent to terminate this Agreement as provided to the other not less than 60 days before the end of the then-current Term. The Initial Term and any period extending Initial Term shall constitute the "Term" as used in this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement (1) on mutual written agreement of the parties, (2) on the occurrence of any breach of this Agreement or any Ancillary Agreement that is not cured within 30 days after receipt of written notice of the breach, or (3) if either party is declared bankrupt or insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed or any proceedings are commenced, voluntarily or involuntarily, by or against either party under any bankruptcy or similar law. If this Agreement or any Ancillary Agreement is terminated, the obligations of VanBelkum to the Customer shall terminate, and Customer shall be obligated to pay VanBelkum any earned and unpaid compensation to VanBelkum for Services performed before the termination date.

**6. Independent Contractor.** The relationship between the parties is that of independent contracting parties. Nothing contained in this Agreement, any Ancillary Agreement or the course of conduct between the parties will be considered to form a partnership, employment relationship, or any other relationship except that of independent contractor. In performance of the Services under this Agreement or an Ancillary Agreement, VanBelkum is an independent contractor with the authority to control and direct the performance of the Services.

**7. Limitation of Liability.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VANBELKUM DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. IN ADDITION, VANBELKUM DISCLAIMS LIABILITY FOR ANY LOST PROFITS, CLAIMS MADE AGAINST THE CUSTOMER BY THIRD PARTIES, AS WELL AS ANY INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, DAMAGES DUE TO DELAY IN SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL VANBELKUM, ITS AFFILIATES OR AGENTS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT WHETHER FOR, AMONG OTHER THINGS, BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM, AND WHETHER LIABILITY IS ASSERTED FOR, AMONG OTHER THINGS, A BREACH OF CONTRACT OR TORT, WHETHER OR NOT VANBELKUM HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. No action, regardless of form, arising out of this Agreement, may be brought against VanBelkum more than one year after the cause of action accrues. VanBelkum's entire liability to the Customer, arising out of or in connection with any Services provided under this Agreement or any Ancillary Agreement shall not exceed the fees actually paid to VanBelkum by the Customer. In the case that Services provided are recurring monthly services, VanBelkum's liability hereunder shall in no event exceed an amount equal to the average monthly recurring charge paid by Customer for services under this agreement, or in the case that the claim pertains to a particular service, the average monthly recurring charge paid by Customer for the

particular service to which the claim pertains (the "affected service"), such average monthly charge to be calculated during the period from execution of the agreement. Customer hereby waives any claim that these exclusions deprive it of an adequate remedy or cause this Agreement to fail of its essential purpose. Except as specifically set forth in any applicable "Service Level Guarantee" provided by VanBelkum to Customer in writing in an Ancillary Agreement, the foregoing sets forth Customer's exclusive remedy for breach of this Agreement by VanBelkum. Some states do not allow the exclusion of incidental or consequential damages, and therefore certain provisions hereof may not apply to customers located in those states. The provisions of this section allocate the risks between VanBelkum and Customer and VanBelkum pricing reflects the allocation of risk and limitation of liability specified herein.

**8. Taxes, Benefits, and Expenses.** VanBelkum is responsible for all expenses connected with the performance of the Services to the Customer under this Agreement. VanBelkum shall be solely responsible to pay all applicable federal, state, and local taxes and to file all related returns and reports in connection with the performance of Services to the Customer under this Agreement. VanBelkum acknowledges that the Customer has no obligation to and will not withhold taxes of any kind or nature with respect to the Services performed by VanBelkum. VanBelkum shall indemnify and hold the Customer harmless to the extent of any obligation of the Customer to pay any taxes, whether income or otherwise, including any withholding taxes, social security taxes, unemployment taxes, or disability insurance or similar items in connection with any payments made to VanBelkum by the Customer.

**9. Insurance.** VanBelkum shall purchase and maintain throughout the Term statutory worker's compensation and commercial general liability insurance covering bodily injury, property damage, premises operations, completed operations, and contractual liability, each of which insurance policies shall have limits reasonably satisfactory to Customer. VanBelkum shall also maintain automobile insurance coverage on the vehicle(s) its employees use in the course of the performance of Services to the Customer under this Agreement. VanBelkum shall maintain coverage without interruption from the Effective Date of this Agreement until the date of termination of this Agreement; *provided, however*, the coverage provided under all policies must be issued on an occurrence basis. Additionally, if requested by the Customer, VanBelkum shall furnish the Customer with a copy of its certificates of insurance.

**10. Confidentiality.** During the Term of this Agreement each party will have access to certain information of the other concerning such party's business including information or data designated as confidential or proprietary or which reasonably ought to be considered as confidential and proprietary from its nature or from the circumstances surrounding its disclosure including but not limited to a party's product information, plans, specifications, services, technical data, computer code, software, trade secrets, inventions, processes, financial information and data, customer lists and customer information. All such information shall be deemed "Confidential Information." Each party shall use the Confidential Information of the other solely to perform this Agreement, and all Confidential Information shall remain the sole property of the respective parties. With regard to Confidential Information, the parties shall use the same care as it uses to maintain the confidentiality of its own confidential information, which shall be no less than reasonable care, and shall not make

disclosure of the Confidential Information, during the Term of this Agreement or any time after the Agreement is terminated, to any third party without the written consent of the other party, except to employees, consultants or agents to whom disclosure is necessary for the performance of this Agreement and who are bound by a duty of confidentiality. Information shall not be deemed confidential if it (1) is known to the receiving party prior to receipt from the disclosing party as reasonably evidenced by such party; (2) becomes known to the receiving party from a source other than one, to receiving party's knowledge, who is under an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be confidential other than by a breach of the receiving party; (iv) is independently developed by receiving party other than by a breach of this Agreement.

**11. Nonsolicitation.** Customer shall not, during the Term of this Agreement and for a period of one (1) year thereafter, directly or indirectly solicit, employ, offer to employ, nor engage as a consultant, any employee of VanBelkum with whom Customer had contact pursuant to this Agreement. We incur considerable effort and expenses in recruiting and training our professional staff. If the Customer or its affiliates do hire one of our professionals, it will pay the Company the sum of One and a half times (150%) employee's previous annual income per employee hired.

**12. Indemnification.** Customer agrees to defend, indemnify and hold VanBelkum and its affiliates, and their respective officers, directors, shareholders, members, employees, agents and other representatives harmless from any and all liabilities, damages, costs and expenses, including reasonable attorneys' fees, related to or arising from: (a) any breach of this Agreement by Customer or its employees, agents, affiliates or contractors; (b) the use of the Services or the internet or the placement or transmission of any materials on the Internet by Customer or its employees, agents, affiliates or contractors, including but not limited to any Customer electronic data; (c) acts or omissions of Customer, its employees, agents, affiliates or contractors in connection with the installation, maintenance, presence, use or removal of equipment or software not provided by VanBelkum in connection with the provision of the Services; (d) claims for infringement of any third party proprietary right, including copyright, patent, trade secret and trademark rights, arising from the use of any services, equipment and software not provided by VanBelkum.

**13. Force Majeure.** If either party is prevented or delayed in the performance of any of its obligations under this Agreement due to Force Majeure (defined below), that party will provide written notice to the other party specifying the nature and expected duration of the Force Majeure. The performance of the party invoking Force Majeure with respect to any obligation will be excused and the time for performance extended, but only for the period of delay or inability to perform due to Force Majeure. If the total of any period of delay or inability to perform due to Force Majeure asserted by either party during the Term equals or exceeds 30 consecutive days, the other party will have the right, at its option, to either terminate this Agreement by written notice or to continue to excuse the first party's performance for the period of any delay or inability to perform due to Force Majeure. As used in this Agreement, "Force Majeure" shall mean any act of God, fire, casualty, flood, war, strike, lockout, labor trouble, or any other circumstances beyond the reasonable control of the party asserting it that prevents or delays the performance of any of its obligations under this Agreement.

**14. Assignment.** The rights and obligations conferred under this Agreement may not be assigned by either party without the prior written consent of the other party. Any attempted assignment in violation of this is null and void.

**15. Notices.** Any notice required or permitted to be given under this Agreement must be in writing and may be delivered in person, by registered mail, or by overnight courier addressed to the respective party at the address set forth in the introduction of this Agreement or a changed address as may be given by a party to the other by written notice. Any notice will be considered to have been given when personally delivered or five business days after the date of mailing or one business day after the date of forwarding if sent by overnight courier.

**16. Binding Agreement; Successor. Amendment.** This Agreement will be binding on, inure to the benefit of, and be enforceable by the successors and assigns of the parties; provided, however, that no assignment of this Agreement will be effective without the express written consent of the other party. Neither this Agreement nor any Ancillary Agreement entered by the parties may be amended unless in writing signed by both parties.

**17. Governing Law.** This Agreement is a contract made under, and shall be governed by and construed in accordance with, the laws of the State of Michigan without giving effect to its choice-of-law principles. The parties agree that any legal or equitable action or proceeding with respect to this Agreement or the transactions contemplated by it shall be brought only in any court sitting in Kent County, Michigan, or the Western District Court of the United States sitting in Kent County, Michigan, and each of the parties submits to and accepts generally and unconditionally the exclusive jurisdiction of those courts with respect to it and its property and irrevocably consents to the service of process in connection with any action or proceeding by personal delivery or by the mailing by registered or certified mail, postage prepaid to its address first set forth above. Nothing in this Agreement shall affect the right of any party to serve process in any other manner permitted by law. Each party irrevocably waives any objection to the laying of venue of any action or proceeding in the above described courts.

**18. Cost of Enforcement.** Each party shall pay all costs and expenses, including reasonable attorney fees, incurred by the other party in enforcing the provisions of this Agreement or in recovering any claims or damages arising from a breach of this Agreement if the other party is successful in its action.

**19. Waiver.** The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of any term or obligation or be deemed a waiver of any subsequent breach.

**20. Survival.** The provisions of Sections 8 and 9 shall survive the termination of this Agreement or any relationship between the parties for the period set forth in that Section, and if not set forth, indefinitely.

**21. Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision is invalid and unenforceable as written, that provision will be deemed modified in a manner consistent with the intent of the original provision, so as to make it valid and enforceable. This Agreement, and the application of the provision to persons or circumstances other than those with respect to which it would be invalid or unenforceable, shall not be affected.

**22. Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all other agreements and understandings, both written and oral, of the parties relating to the subject matter of this Agreement.

**23. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic transmission, and an electronic version of this Agreement or of a signature of a party will be effective as an original.

**24. Definitions.** In addition to the terms defined above in this Agreement or specifically defined in an Ancillary Agreement, the following terms as used in this Agreement or any Ancillary Agreement have the following meaning and each definition shall be equally applicable to the singular and plural forms of the term defined:

"**Ancillary Agreement**" has the meaning set forth in Section 1 of this Agreement.

"**Agreement**" has the meaning set forth in the first paragraph of this Agreement.

"**Affiliate**" means, as to either party, any other person or entity controlled by, controlling or under common control with same, and "control" means the power to manage or direct the affairs of the person or entity in question, whether by ownership of voting securities, by contract, or otherwise.

Any term defined in the Agreement or in any Ancillary Agreement shall have the same meaning in both the Agreement and Ancillary Agreements, unless otherwise provided for in writing.

The parties have executed this Agreement as of the Effective Date.