

# MASTER CUSTOMER AGREEMENT BETWEEN MEGAGATE BROADBAND, INC. AND MEGAGATE BROADBAND CUSTOMERS

This agreement covers landline telephone, VOIP telephone, Internet services, data services, collocation and any other product offered to you by Megagate Broadband, Inc. (sometimes referred to below as "Megagate").

By conducting any transaction involving your account with Megagate, by maintaining your account, or by continuing use of any of the services that are the subject of this Agreement, you agree to be bound by the terms of this Agreement. Megagate's Agreement with you includes this Customer Agreement and any Amendments thereto, your Service Plan, applicable Tariffs, and any supplemental provisions we print or post on the Megagate website at [www.megagate.com](http://www.megagate.com). All of these documents together are a contract between you and Megagate.

**DEFINITIONS.** The following terms and definitions apply when used in this Agreement.

**Account** – any type of account you maintain with MegaGate, whether relating to telephone, Internet service, data service, collocation service, maintenance service, or any combination of the above.

**Billing Plan** – any one of several composites of features, services and charges described in our Service Plans.

**Tariff** – a publicly filed document containing regulations, rates and charges applicable to our telecommunication services.

**We, our and us** – Megagate Broadband, Inc., a Mississippi Corporation doing business as Megagate with offices in Mississippi, including employees, representatives, agents, officers and affiliates.

**You, your and yours** – the person, persons, or entity receiving any or any combination of services provided by Megagate hereunder. If the account is in the name of more than one person or entity, "you, your and yours" applies to any and all such account holders.

**I. SERVICE COMMITMENT.** We agree to provide you, as requested, with any landline telephone, Internet, data, VOIP, collocation, or other services ("Services"). Specifics applicable to each type of Service and any activation fee to be charged are set out in various Service Plans. The most current filing or version of the following tariffs do or may apply to the Service, which are specifically incorporated herein by this reference: (a) Mississippi Intrastate; (b) Mississippi Local Exchange, (c) Mississippi Access, (d) FCC Interstate, (e) FCC Access, and (f) Collocation.

By using any or a combination of Services that we provide you hereunder, you acknowledge the applicability of these tariffs to your account. You also acknowledge your awareness that such tariffs are lawfully on file with the Mississippi Public Service Commission or the Federal Communications Commission and, further, are available in our corporate offices for your inspection, by appointment, during normal business hours.

We agree to offer technical support for all services offered by Megagate.

**II. CANCELLATION AND TERM.** Services with Megagate may be terminated at any time during the term of this agreement by providing written notification to Megagate Broadband. A Megagate disconnection form may be obtained by contacting our office. However, a written request for termination of services signed by you the account holder or an agent listed with Megagate as authorized to make changes on your account will serve as sufficient written notification. Service termination shall be effective as of (a) the date Megagate receives written notification; (b) any date in the future specified in written notification. The only exception to this will be as it applies to dial-up Internet service, which is charged on a monthly basis only.

Failure to provide Megagate with written notification of disconnection, signed by either the account holder or agent of the customer that has authority to make contract decisions will not constitute a disconnection notice regardless of any verbal communication between Megagate and you the customer.

You will be responsible for service charges such as late fees, toll charges, collection costs, early termination penalties, attorney fees or non-returned equipment charges that accrue after the date this Agreement is terminated, whether by you or by us. You will remain fully responsible for payment of outstanding charges for the period during

which we provide Services to you hereunder. If you (a) fail to pay your charges when due, (b) impersonate another with fraudulent intent, or (c) violate any of the terms or conditions governing the Service, we shall have the right to discontinue Service to you temporarily or permanently. Any returned mail from your billing address may cause Service interruption. Service can be resumed on your current account as soon as we receive a valid address. Failure to receive an invoice from us does not release you from payment obligation. Billing adjustments do not release you from payment obligation. If the Service in question is terminated prior to the expiration of any term of this Agreement, you will remain responsible for early termination charges. Upon termination you will be responsible for the return of any and all leased equipment and will remain responsible for replacement value if equipment is not returned. You will pay all reasonable collection or attorney fees in the event we find it necessary to enforce, collect, preserve or protect our rights or damages under this Agreement.

This Agreement, with exceptions noted above, provides for the continual provision of Service to you. Further, certain Billing Plans require specific minimum periods of Service. (See *Service Plan*) Upon expiration of any such period of Service, this Agreement shall continue on a month-to-month basis with Megagate retaining the right to continue your current rates or, if rates for your service have been increased, to charge the increased rate.

Notwithstanding the foregoing, you may terminate individual services at a given location without penalty in the event that MegaGate fails to provide the agreed upon services at said location according to the service commitment. You must provide MegaGate with a thirty-day notice in the event that you elect to terminate services according to this provision

**III. BILLING AND PAYMENT TERMS.** Before we begin your Service, we may require one, or a combination, of the following: (a) prepayment of the first and last month's charges for Service (last-month charges to be a non-interest bearing payment); (b) security deposit, as determined by Megagate, (c) prepayment of all applicable connect/programming charges. (See *Service Plan*) You acknowledge receipt of a copy of your Service Plan herewith. We agree to give you thirty (30) days written or electronically mailed notice of any increases in rates. You agree to pay the rates set out in your Service Plan or any amendment thereto. Landline charges are charged by us pursuant to your Service Plan and/or filed tariffs. However, you will have (15) fifteen days from date of mailing of any rate increase notice to notify us of cancellation of this Agreement due to the rate change. Should no written cancellation (via postal, email, or facsimile mail) be received by us, you understand and agree to be bound by the higher rate, beginning in the next billing cycle.

You will pay recurring charges on a monthly basis, due in advance. Accounts will be charged a prorated fee for the period beginning on the date your account is opened and terminating on the last day of the billing cycle. Thereafter, you will be invoiced for service one month in advance on the first day of the billing cycle, according to the Service Plan selected. All measured usage (i.e. toll calls) will be billed in arrears.

We will bill you on a monthly basis. Payments are due at the time of billing. If any payment is not made by the past due date, your account will become delinquent and a monthly late charge will accrue on any unpaid balance. If any of your checks are returned to us and marked unpaid, we will charge a return check fee to your account. If you have given us your credit card account or bank draft information, such charges will be charged to the credit card or bank account you provide. All late fees and returned check fees are billed at the filed tariff rates.

You are responsible for all sales, use, value added, personal property, or other governmental tax, governmental levy, and/or government mandated contribution imposed on the goods or services billed to your Account(s), other than taxes based on our net income or profits.

Megagate makes every effort to insure the accuracy of our bills but we also asks that you inspect your bill to assure that you are paying the correct amount for the services you receive. Megagate will review and enter appropriate credits or changes for a mistake in a bill that is brought to our attention within three months of the bill being sent to you. After the three-month period of time, credits or corrections will be made only when fraud on the part of the Company can be proven.

**IV. AMENDMENT TO CUSTOMER AGREEMENT.** We may change the Customer Agreement, including any Service Plan and charges to be applied to your account, at any time. Before a change is made, we will mail you notice of the change to any address shown on our records or make the notice available with the periodic statement of your account. However, we will not be required to give you notice if the change will be to your benefit (such as a decrease in applicable charges). If there is more than one person on the account, we will only send the notice of change to one of you. By continuing to maintain your account with Megagate, you agree to the changes. Further,

you acknowledge and are aware that our current Customer Agreement, Service Plans, and amendments to either, are available at our offices.

**V. LIMITATIONS OF SERVICE.** The Service provided by us to you under this Agreement is subject to transmission limitations of our Internet, landline, and other telecommunications systems and could be interrupted temporarily in order to implement equipment modifications, make repairs, or by similar activities that may be necessary or helpful to the operation of our telecommunication systems. In addition, such Service could be interrupted by weather or environmental factors over which we have no control. Also, calls to and from the Public Switched Telephone Network require use of facilities provided by the interconnecting carriers, the quality of which cannot be controlled by us.

**VI. CUSTOMER REMEDY, INDEMNITY AND ARBITRATION.** If you become dissatisfied with the Service provided hereunder or any terms, conditions, rules, policies, guidelines or practices, your sole and exclusive remedy will be to terminate this Agreement and discontinue using our Service by canceling your Account, effective at the end of the Term (see CANCELLATION AND TERM, above).

UNDER NO CIRCUMSTANCES SHALL MEGAGATE BROADBAND, INC., ITS EMPLOYEES, AFFILIATES, AGENTS, SERVANTS, SUBSIDIARIES, OFFICERS OR COUNSEL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES THAT MAY RESULT IN ANY WAY FROM (A) ANY USE OF CUSTOMER'S ACCOUNT OR SERVICES; (B) CUSTOMER'S INABILITY TO USE THE SERVICES; (C) ACCESS TO THE INTERNET OR ANY PART THEREOF; (D) CUSTOMER'S RELIANCE ON OR USE OF INFORMATION, SERVICES OR MATERIAL PROVIDED THROUGH THE INTERNET AND/OR THROUGH ANY TELECOMMUNICATION SERVICES; OR (E) MISTAKE, OMISSION, INTERRUPTIONS, DELETIONS OF DATA, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, EXCEPT TO THE NARROW EXTENT PROVIDED WITHIN ANY TARIFF THAT DOES OR MAY APPLY.

You agree to indemnify and hold us harmless from any and all liabilities, costs and expenses, including reasonable attorney fees, related to or arising out of use of the Services provided from hereunder by you or those who use such Service through your account, including use of Internet services and the placement or transmission of any message, information, software or other materials on the Internet by you or by those who have access to Internet services through your account.

**VII. ACCEPTABLE USE POLICY.** Any conduct by you that, in our sole discretion, restricts or inhibits any other customer from using or enjoying our Services will not be permitted. You agree to use these services solely for lawful purposes. You are prohibited from posting on or transmitting through our Service any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, profane, hateful, or racially, ethnically, or otherwise objectionable material of any kind, including but not limited to any material which encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law. We reserve the right to suspend or terminate those whose actions are in violation of acceptable on-line conduct, the determination of which resides in our sole discretion.

We reserve the right to prohibit conduct, communication, or Content (defined below), which we deem in our sole discretion to be harmful to individual customers, to violate our or other third parties' rights or to violate applicable law. Notwithstanding the foregoing, neither we nor our information providers have the practical ability to restrict conduct, communication, or Content which might violate this Agreement prior to transmission through our service, nor can they or we ensure prompt editing or removal of questionable Content after on-line posting. Accordingly, neither we nor any information provider shall assume liability for any action or inaction with respect to conduct, communication, or Content, on the services provided herein.

You may not use our Service to gain unauthorized access to information that is proprietary either to us or another. You may not use our system to send unsolicited emails known as "SPAM" mail.

MegaGate Unlimited Long Distance calling is not for use by formal or informal call centers. MegaGate Broadband, Inc. reserves the right to discontinue and back bill any customer found to be using MegaGate Unlimited Long Distance calling for call center purposes.

**VIII. FILE AND MESSAGE RETENTION.** You are responsible for retention of all files, information, data and other materials as may be necessary for reconstruction of any files, information, material or messages lost or misplaced by us.

**IX. THIRD-PARTY TRANSACTIONS AND SERVICES.** You may order and purchase merchandise or services from other Customers and users of our services who are not affiliated with us. All transactions concerning third-party goods or services, including, but not limited to, purchase terms, payments terms, warranties, guarantees, maintenance and delivery, are solely between such merchant and you. We make no warranties or representations whatsoever with regard to any good or service provided by any merchant. We shall not be a party to any transaction between you and a Merchant, or be liable for any cost or damage arising either directly or indirectly from any action or inaction of any Merchant.

**X. INTERNET SERVICE PASSWORD AND SECURITY.** You are responsible for maintaining the confidentiality of your password(s) and are liable for any harm resulting from disclosing or allowing disclosure of any password. We will not be liable to any third parties who may be damaged as a result of the password disclosure or for the actions of the person to whom the password was disclosed. In the event of a breach of security, you will remain liable for any unauthorized use of the Internet service provided hereunder until you notify us of such use.

**(a) Breach of Firewall:** Your network (if applicable) may be protected from malicious Internet based attacks by a security protection device called a "firewall". This firewall may be provided and maintained by Megagate Broadband or by another provider of your choice. A firewall protects from unauthorized access to your network but does not protect from malicious application abuse as a result of applications that enter your network via normally authorized routing (i.e., virus embedded in email). Protection from such malicious applications must be provided by either additional services within your firewall or by other means. **THESE SERVICES AND OR MEANS ARE NOT INCLUDED IN STANDARD FIREWALL PROTECTION AND MUST BE PURCHASED SEPARATELY.**

In the event that you choose a firewall provider other than Megagate, you agree and understand that Megagate will turn off all security measures and has no control or responsibility for any functionality of said firewall.

In the event that you choose Megagate to provide your firewall service, you understand that Megagate will employ industry accepted firewall configuration practices in cooperation with you in order to best protect your network and meet your service needs. Should you request that Megagate employ a non-standard configuration, you accept and understand that Megagate is not responsible for the consequences of such configurations.

You understand and agree that no firewall is impenetrable but best industry practices are designed by professionals to protect against attacks in as much as is technologically possible. In the unlikely event that your network incurs a security breach, you and Megagate agree to work together to resolve the breach quickly and reconfigure your firewall to the latest industry standards of protection. Customer and Megagate both agree and understand that inasmuch as either party is following best industry practices neither party may hold the other liable for any security breach.

**XI. CUSTOMER SOLELY RESPONSIBLE FOR LONG DISTANCE, AREA CALLING CHARGES, OR ANY OTHER MINUTE OF USE CHARGES.** You understand that in no event will we be responsible for your long distance, area calling, or any other minute of use charges incurred in obtaining or attempting access to the Internet. Rather, you are solely and exclusively responsible for such charges.

**XII. EQUIPMENT.** Except for equipment specifically described in your Service Plan(s) or any amendments thereto, you are responsible for obtaining, servicing, and programming all equipment on your premises, including but not necessarily limited to telephone and computer equipment, or other devices necessary to access the services provided herein.

**XIII. EQUIPMENT LEASE.** Equipment that is provided by Megagate is considered leased and Megagate retains the ownership rights to equipment. Megagate will provide all maintenance on equipment to insure proper function. You accept full responsibility for equipment if damaged by misuse, accident, vandalism, abuse or any negligence on the part of the customer to provide a safe environment for the equipment, and customer agrees to pay for the replacement of equipment should such damage be determined. Megagate has no responsibility for technical support for customer-owned equipment.

It is the customer's responsibility to return leased equipment to Megagate upon cancelation. You acknowledge that you will be invoiced for the full retail value of unreturned equipment. Equipment must be returned in a timely manner for you to be fully credited for the cost of the equipment as listed in the schedule below. You also acknowledge that you will be responsible for any damage to the leased equipment while in your possession.

Returns in 2 weeks = full credit  
Returns in 30 days = 75% credit  
Returns in 45 days = 50% credit  
Returns in 60 days = 25% credit  
Returns over 60 days = NO CREDIT

**XIV. TAXES, FEES, ETC.** Customer shall pay all taxes, fees and /or any other assessments related to the possession or use of leased equipment.

**XV. MISCELLANEOUS PROVISIONS.**

- (a) **NON-WAIVER OF TERMS.** Neither failure on our part to insist, nor a delay in insisting on compliance with the provisions of our Agreement with you shall operate as a waiver of that provision, then or at a late date. Neither the course of conduct between us nor trade practice shall act to modify any provision of this Agreement.
- (b) **WHAT LAW APPLIES.** This Agreement and all transactions under this Agreement will be governed by the laws of the State of Mississippi, except with regard to its conflicts of law rules.
- (c) **SEVERABILITY.** In the event that any portion of this Agreement is held to be unenforceable in a court of law or equity, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of this Agreement shall remain in full force and effect. The paragraph headings herein are provided only for reference and shall have no effect on the construction or interpretation of this Agreement
- (d) **ADDRESS CHANGES.** You agree to notify us as soon as possible of any change in your mailing address.
- (e) **AUTHORIZATION.** You authorize us to verify your credit and/or employment history and to regularly answer questions and provide information about our experience with you to credit bureaus and others, except as prohibited by federal law.
- (f) **ASSIGNMENT.** We can assign all or part of our rights or duties under this Agreement without notifying you. If we do that, we have no further obligations to you. You may not assign this Agreement or the services without our prior written consent.
- (g) **ENTIRE AGREEMENT.** This Agreement and any amendments thereto, your Service Plan(s), any applicable Tariffs, and any supplemental provisions we print or post on the Megagate website at [www.megagate.com](http://www.megagate.com) constitute the entire agreement between us and supersedes all prior agreements, understandings, statements or proposals, and representations, whether written or oral. No written or oral statement, advertisement, or service description not expressly contained in this Agreement and any amendments thereto, your Service Plan(s), applicable Tariffs, and any supplemental provisions we print or post on the Megagate website at [www.megagate.com](http://www.megagate.com) will be allowed to contradict, explain, or supplement it. Neither you nor we are relying on any representations or statements by the other party or any other person or entity that is not included in this Agreement.

**AGREED:**

Customer: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized CUSTOMER Signature)

\_\_\_\_\_  
(Printed Name and Title)

Date: \_\_\_\_\_

**AGREED:**

Megagate Broadband, Inc.

By: \_\_\_\_\_  
(Authorized Agent or Rep. of Megagate)

\_\_\_\_\_  
(Printed Name and Title)

Date: \_\_\_\_\_