

M I T S
M A N A G E D I N F O R M A T I O N T E C H N O L O G Y S E R V I C E S
A G R E E M E N T

This **AGREEMENT** made this 1st day of June, 2008 by and between **pleasantbay.NET** (hereinafter referred to as “Provider”), having offices at 4308 Main Street, PO Box 534, Cummaquid, Massachusetts, 02637 and Small Business, Inc. (hereinafter referred to as “Client”), located at 123 Main Street, Barnstable, Massachusetts 026xx.

WHEREAS Provider will provide both on-site and remote Information Technology (IT) support services to Client, subject to the conditions set forth hereinafter below; and whereas Provider offers no guarantees or warranties, express or implied as to system availability and functionality during any diagnostic and or configuration phase of its support services and makes no warranties, expressed or implied, regarding the ability to resolve or eliminate computer-related problems; and whereas Provider will provide best efforts to apply the skills of its engineering staff to resolve computer-related hardware and networking problems, as well as consult with Client on technology related topics; and whereas Provider and Client desire to enter into this agreement for the purpose of providing certain products and/or services to or for the benefit of Client as set forth hereinafter, below.

1. TERM This agreement shall commence on the date first set forth herein above and will continue until either party hereto provides the other with written notice upon thirty (30) calendar days notice of termination.

2. SERVICES AND RESPONSIBILITIES Provider will provide the following services and Client will provide the following accommodations:

- A.** Information Technology (IT) support will be available Monday Through Friday (holidays excepted) during normal business hours (8:00 A.M. - 5:00 P.M. Eastern Time);
- B.** Support agreement Service Requests (SR's) are prioritized by severity, and then by the order in which each Service Request is received. Critical equipment outages are treated with the highest priority. Provider will make a good faith attempt to acknowledge every support Service Request within two (2) hours from receipt of Service Request, during normal business hours;
- C.** Client will be responsible to have a suitable, serviceable broadband connection (defined as cable, DSL, partial to full T-1, or greater bandwidth) and agrees to provide the necessary cooperation to allow an engineer online via an acceptable and secure Internet connection to gain remote access to Client's system(s) for the purpose of providing remote monitoring, support and troubleshooting;
- D.** Client acknowledges Provider's approval of Client's network environment prior to the signing of this contract, and Client further agrees to comply with Provider's best practices, recommendations and suggestions to upgrade Client's systems to an acceptable level;
- E.** Client agrees to provide necessary cooperation to assist Provider in providing support via telephone or remote support tools **before** an on-site service is requested;
- F.** Client will, in order to maintain security from threats via the Internet, have in place a hardware firewall protection device acceptable to Provider;
- G.** No illegal, unlicensed or "bootlegged" software will be installed, supported or serviced by Provider;
- H.** All software installations, hardware replacements, upgrades or configuration changes must be performed by Provider unless otherwise agreed in writing. An hourly fee of ONE HUNDRED TWENTY (\$120.00) dollars per hour during normal business hours with a minimum of TWO HUNDRED FORTY (\$240.00) dollars will be charged to the client for engineering time used to troubleshoot or reconfigure servers, desktop computers, laptop computers, notebook computers, routers, firewalls, managed switches, backup devices, network devices, or telephony systems that have been modified by anyone other than Provider;
- I.** Client is responsible for the cost of all hardware components, software, consumables and related costs for repair and/or replacement of equipment not covered under warranty;

J. Network cable installation, testing of network cables, and labeling of cables are **not** services that are included as part of this agreement. Wiring that is not clearly labeled will be labeled at Client's expense;

K. After-hours service is available as part of this agreement by a voice mail system that will notify Provider's "on-call" technician of any emergency technical call that is received during off-hours, including weekends and holidays. Provider's technician will make a good faith effort to assist with Client emergencies by telephone or remote support tools during off-hours. On-site, off-hour calls are billable at TWO HUNDRED (\$200.00) dollars per hour with a FOUR HUNDRED (\$400.00) dollar minimum;

L. Service Requests that cannot be completed during normal business hours (as set forth in subparagraph A. herein above) will be completed by Provider during the next available normal business day time slot. In the event that client requests that Provider continue to work after normal business hours (as set forth in subparagraph A. herein above), Client shall pay for after-hour emergency services provided at the rate of TWO HUNDRED (\$200.00) dollars per hour with a FOUR HUNDRED (\$400.00) dollar minimum;

M. In order that Client has a complete understanding of Client's data backup procedures and precautions, Client must complete the Provider's Backup Agreement annexed hereto and made a part hereof as Exhibit B indicating that Client understands proper media rotation. Provider is **not** responsible for changes made to backup sets, the media itself, daily backup confirmation, and any data not stored in Client's designated shared folder(s), Personal Information Stores (PST's) or Exchange Mailbox Stores;

N. Client must assign a primary contact to coordinate or approve the scheduling of on-site Service Requests, licensing concerns, and any other technology concerns of the Client by means of Provider's Customer Portal or by any other approved means of communication or procedure (as set forth in paragraph 13 herein below).

O. Software upgrades that require multiple installation disks or on-site presence; server migrations; workstation/server additions, transfers, replacements; serial number management; software license & media management; or relocation of a network are **not** services that are included as part of this agreement unless otherwise stipulated by the conditions of the chosen Plan annexed hereto as part of Exhibit A.

P. Client understands that a unique remote support session constitutes fifteen minutes or less. If a unique problem cannot be remedied or diagnosed within fifteen minutes, then an on-site service call must be scheduled, unless otherwise agreed upon by both parties.

3. RETURN OF MERCHANDISE If it is necessary to return any merchandise, the following procedures and conditions will be followed and adhered to by the parties hereto:

A. Prior to the return of any merchandise the Client must submit to the Provider's Service Desk for approval prior to the return of any product. Return Merchandise Authorization (RMA) will not be unreasonably withheld by Provider but is dependant upon each manufacturer's return policy;

B. No return will be accepted without an RMA number. All requests for an RMA must be requested within thirty (30) days of the warranty expiration date in order to be considered. Any opened items returned are subject to a restocking charge up to the total cost of the product. Any custom or special order items and discontinued merchandise **cannot be returned**. All defective products, unless otherwise stated, will be returned to the manufacturer in accordance with the manufacturer's warranty policy. Any returned merchandise must be returned to and received, Free On Board (FOB) at the offices of Provider (119 Misty Meadow Lane, Unit 8, North Chatham, Massachusetts, 02650) no later than seven (7) business days from the date of the RMA issuance;

C. Client is responsible for retaining all manufacturers' boxes, packing materials, serial numbers, manuals and CDs, as well as receipts for proof of purchase. All products returned must include all manufacturer's packaging with all hardware, software, manuals, cables & etc., shipped FOB, insured to Provider;

D. Provider reserves the right to have Provider's technical support specialist verify all defective products.

4. WARRANTY Nothing herein to the contrary notwithstanding and except as expressly stated in this agreement provider does not make, and hereby disclaims any and all expressed or implied warranties, including, but not limited to, warranties of merchantability, fitness for particular purpose, non-infringement and title and any warranties arising from a course of dealing, usage or trade practices.

A. Product warranties, if any, are provided by the respective manufacturer(s) or publisher(s) of the respective products and not by Provider. Provider's sole obligation is to act on behalf of Client to assist in the satisfaction of the manufacturer's or publisher's warranty;

B. Provider hereby warrants that any products or materials to be installed by Provider 's technicians will be installed in a good and workmanlike manner, consistent with generally

prevailing and accepted industry standards for comparable services, and in compliance with the requirements of this agreement.

5. LIMITATION OF LIABILITY In the event any services provided by Provider for Client are proven to be defective, the liability of Provider to Client shall be limited to the repair or replacement of defective work by Provider. Provider shall not be liable for any incidental or consequential damages, including (without limitation) lost profits, lost business, lost data, attorney's fees or any other damages. Provider shall repair or replace its work within a reasonable time after Client notifies Provider in writing of such defect in Provider services. Provider shall have no liability to Client, if any person (including Client or Client's agents) alters the work performed by Provider in any manner. Due to the number of hardware/software combinations and interactions beyond the control of Provider, Provider cannot guarantee that Client's system(s) will always run trouble-free nor can Provider guarantee that every solution will be 100% effective. Provider shall not be liable to Client for any problems caused by manufacturers of hardware or software or by third parties, and Provider's liability hereunder is limited to errors made by Provider.

In no event shall Provider be liable to Client, any employee, agent, servant or seller of Client, or any third party, for any loss of profit, loss of business, direct or indirect, incidental, special, consequential, exemplary, and/or punitive damages arising out of or related to this agreement, even if provider has been advised thereof. Provider's liability to Client hereunder shall in no event exceed the total amount paid by Client to Provider for the three (3) months immediately preceding the event alleged to have caused damage and/or harm and/or injury.

6. PLAN CHOICE AND PAYMENT Provider offers more than one service plan agreement. The plans offered are annexed hereto as Exhibit A. The charges and costs for each plan are, likewise, annexed hereto as part of Exhibit A. Client hereby agrees to purchase the _____ Plan at the total monthly charge of \$ _____ .00 each per the total number _____ workstations and \$ _____ .00 each per the total number _____ servers. Client also agrees to purchase the MITS Backup & Disaster Recovery Plan at \$10 each per month per _____ workstations, and \$50 each per month per _____ 0 number of servers. Provider retains the right to remotely audit the number of workstations and servers monitored at any time, and upon discovery of more or less workstations or servers in use, the provider will apply appropriate changes to monthly charges.

Client will pay Provider **in advance** for services by: (initial one)

Credit Card Type: _____

Credit Card # _____

Exp. Date: ____ / ____ / 20 ____

Name on Card: _____

Street Address: _____

City: _____

State: _____

ZIP: _____

_____ Check

_____ C.O.D.

Past due balances (defined as one day or more overdue) bear interest at the rate of 1.5% per month. Accounts more than one (1) day past due must be paid in full prior to ongoing support.

A \$25.00 service charge will be paid to Provider by Client for any returned checks.

Client agrees to be responsible for and pay all costs of collection, including but not limited to reasonable attorney fees, suit monies and costs.

Any fees, costs, charges, or expenses not covered by the above chosen plan will be billed in accordance with Provider's standard service rates and flat-rate pricing attached hereto as Exhibit D and Exhibit E respectively.

7. CONFIDENTIALITY Confidential information shall be deemed to include all information, materials and data disclosed or supplied by either party hereto to the other party hereto that the disclosing party designates to be of a confidential nature. If disclosed in written or tangible form or electronically, confidential information shall be identified as such by the disclosing party at the time of the disclosure and designated as "Confidential". The designation "Confidential" shall be deemed to be modified by and in accordance with all applicable Federal and States Statutes and regulations.

If disclosed orally or visually, confidential information shall be identified as such by such by the disclosing party at the time of disclosure and designated as "Confidential" in a concurrent written memorandum. "Confidential" information shall not be disclosed without prior written consent of the disclosing party hereto. Provider confirms that from time to time it will be given access to the Client's data for the purpose of maintaining and/or repairing same and further confirms that, in the event that Provider becomes, therefore, privy to any information confidential to clients of Client, or of Client's proprietary information, Provider shall keep such information strictly confidential.

8. NON-SOLICITATION PROVISIONS/SERVICES During the term of this agreement and for a period of twelve (12) months thereafter, Client agrees not to directly or indirectly, solicit, recruit or employ any employee of Provider without the prior written consent of the owner of Provider. Client acknowledges that failure to honor this non-solicitation provision would result in Provider suffering irreparable harm for which there would be no adequate remedy at law. Provider hereby agrees that it will not solicit, hire or retain, in any capacity whatsoever, either directly or indirectly any of Client's employees without written consent from Client.

9. NO ORAL MODIFICATION No modification, amendment or waiver of any of the provisions of the terms and conditions hereof shall be effective unless made in writing specifically referring to this agreement and its terms and conditions and duly signed by each party hereto.

10. SUCCESSORS AND ASSIGNS This agreement shall benefit and be binding upon the parties hereto and their respective heirs, successors and assigns.

11. CONSTRUCTION The within agreement shall be construed in accordance with the laws of The Commonwealth of Massachusetts. Although the within agreement has been drafted by the attorney for Provider, that fact shall not be construed to result in this agreement being construed against the Provider. Client acknowledges that he/she/it has been encouraged to seek the advice of independent competent counsel. Each of the parties hereto agree that they have both read and understood the terms hereof.

12. SEVERABILITY If any provision hereof is determined, by a court of competent jurisdiction, to be void and/or unenforceable, such determination shall not invalidate the remaining provisions hereof, which remaining provisions shall be fully binding and enforceable.

13. COMMUNICATION AND PROCEDURES Client acknowledges receipt of and agrees to comply with Provider's written procedures for communication and exchanges annexed hereto and made a part hereof as Exhibit F by and between the parties hereto.

14. TERMS Annexed hereto and made a part hereof as Exhibit C is a Glossary of Terms.

13. STATUS The status of Provider under this agreement shall be that of an independent contractor and not that of an agent or employee. Provider has no authority to enter into contracts or agreements on behalf of Client. This Agreement does not create a partnership between the parties. Client recognizes and agrees that this Agreement is non-exclusive and that Provider is free to contract with and work for any number of persons or firms while this Agreement is in force.

ACCEPTED AND AGREED ON THE DAY, DATE AND YEAR ABOVE FIRST WRITTEN.

pleasantbay.NET

CLIENT

By _____
PROVIDER

By _____