



PO Box 966  
Alvin, Texas 77512  
Phone (281) 765-9800  
Fax (281) 754-4436

## **SILVER AGENT AGREEMENT**

This Silver Agent Agreement (the Agreement) is entered into by and between SKL Services, Inc., a Texas corporation with offices at : Mailing - PO Box 966, Alvin Texas 77512, Accounting; 108 South Hardie Street, Alvin Texas, 77511, Corporate Office; 4105 County Road 207, East Bernard, Texas 77435, (SKL), and \_\_\_\_\_, a \_\_\_\_\_ with an office at \_\_\_\_\_ (Agent), effective upon the last date of execution by the Parties (the Effective Date). This Agreement will not be valid unless executed by Agent and countersigned subsequently by SKL.

### **1. Definitions.**

- 1.1 Sales Commission means the amount to be paid to Agent for Customers as described under this Agreement.
- 1.2 Services means Hosted VoIP (Voice over Internet Protocol) PBX and other communications services provided by SKL as set forth in Exhibit A, as such list may be amended from time to time by SKL in its sole discretion.
- 1.3 Customer means an entity from whom Agent secures a signed COA that is approved by SKL. Unless otherwise agreed to by SKL, a Customer cannot be a current SKL customer.
- 1.4 Customer Order Agreement or COA means the contract in the form established by SKL for the provision of Services by SKL to Customers.

### **2. Obligations.**

- 2.1 Agent Authority Agent shall not have authority to make any agreement or incur any liability on behalf of SKL. Agent shall not make any oral and written representations or warranties to any potential customer, Customer or any third party on behalf of SKL or with respect to the Services, except as authorized in writing by SKL. Agent shall have no authority to issue a COA or to alter the terms or pricing of a COA, including but not limited to the current Terms and Conditions of the Services provided by SKL. A COA is not valid or enforceable unless signed by an authorized representative of SKL, and Agent shall not present potential Customers with any unsigned COA
- 2.2 Agent Obligations. Agent shall familiarize itself with the characteristics, price, performance, and availability of the Services. Agent shall promote in a professional manner the Services to potential customers. Agent shall identify to SKL each potential Customer prior to approaching the potential Customer for the purpose of soliciting an order for (SKL) Services. Agent shall solicit the details of Services required by each prospective Customer and notify SKL by phone, email, or other writing of Customer's needs as soon as reasonably practicable, so that SKL can prepare and issue a COA. Agent shall present this COA to Customer for review and execution, and will return each executed COA to SKL for each entity that wishes to become a Customer and provide necessary documentation and customer approvals. Agent shall designate in writing a single point of contact for SKL regarding all matters pertaining to this Agreement.
- 2.3 SKL Obligations. SKL will promptly prepare and issue COAs to prospective Customers from whom SKL receives a solicitation through Agent. Customer will be billed by and under contract directly with SKL. SKL retains sole discretion to accept or reject, without any liability to Agent, any COA presented by Agent to SKL. SKL retains the right to require a cash deposit or other security from a Customer who does not meet SKL's credit standards. SKL reserves the right to disconnect service to any Customer as provided in the COA.
- 2.4 Customer Names. Agent shall not sell or distribute the names of Customers or any related information to any third party. Such names and related information are the property of SKL and shall be returned to SKL upon demand or the termination of this Agreement.
- 2.5 Certain Rights of Parties. Neither party shall be under any obligation to continue its business or to continue, discontinue, change, retain, sell or supply any of its services.
- 2.6 Marketing Materials. Except with respect to Web-site postings approved in writing by SKL, Agent may not use written materials to advertise or to solicit customers other than those supplied by SKL or approved in advance by SKL.
- 2.7 Non-Exclusive. This Agreement is non-exclusive, and each of SKL and Agent retains the right to enter into additional agent agreements with other entities or individuals for the sales of Services of any type.

### **3. Sales Commissions.**

- 3.1 Sales Commission. SKL shall pay Agent a Sales Commission on each COA for Service executed by a Customer during the term of this Agreement based on and in accordance with Exhibit A. Payment of the Sales Commission from SKL with respect to a COA shall not be due until the Service has been installed and SKL has received the first monthly



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recurring payment from the Customer in accordance with such COA. Thereafter, Sales Commission for a given month will be paid on the later of (i) the first day of the second following month (i.e., Sales Commissions for January 2010 will be paid on March 1, 2010) or, (ii) within 45 days of SKL's actual receipt of the Recurring Payment from such Customer for such month. For each Customer, SKL will pay eligible Sales Commissions arising out of any COA obtained by Agent in accordance with Exhibit A and the terms herein. Minimum commission to receive payment must exceed \$100.00( One hundred dollars) payment, any commission less than this amount will be forwarded to next pay period until the balance is greater than one hundred dollars.

3.2 No Sales Commission Where Agent is Customer. No Sales Commission is payable to Agent where the Customer is Agent or an affiliate of Agent. Affiliate means an entity in which Agent has a financial interest.

3.3 Disputes. Any dispute over a Sales Commission must be made in writing and within 30 days from the date payment was made or due. Otherwise, the right to dispute a Sales Commission is waived.

3.4 Taxes. SKL shall withhold from the Sales Commission any required taxes. The Agent shall be responsible for paying any federal, state and local taxes or contributions imposed or required under income tax, social security, unemployment insurance and other laws with respect to Agent or Agent's employees.

**4. Relationship of Parties.** Both parties are, and shall remain at all times, independent contractors, and nothing in this Agreement will be construed to create any other relationship.

**5. Compliance with Laws.** Each party agrees to comply with all applicable laws, rules and regulations in its performance under this Agreement.

**6. Term and Termination.** Either party may terminate this Agreement without cause by giving to the other party written notice of such termination. Such termination shall be effective on the date specified in the notice which date shall not be earlier than 30 days following the date of the notice. Either party may terminate this Agreement by giving the other party written notice if the other party materially breaches or defaults in any of the material terms or conditions of this Agreement and fails to cure such breach or default within ten (10) days of receipt of written notice thereof.

**7. Effect of Termination.** Upon termination of this Agreement, Agent shall immediately cease all efforts to promote and market Services, and Agent shall promptly return all SKL property in Agent's possession or control, including all Customer lists and information. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other because of the termination or the expiration of this Agreement, provided that such termination or expiration complies with the terms of this Agreement. Following termination of this Agreement and only if termination was solely without cause as provided in the section titled "Term and Termination" above, Agent shall continue to receive its Sales Commission in accordance with the payment schedule set forth herein on each order installed prior to termination until the termination date given by written notice.

**8. Limitation of Liability.**

8.1 Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE USE OF THE SERVICES, WHETHER THE CLAIM IS BASED IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR IN CONTRACT, AT LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

8.2 Damages Limitation. SKL'S ENTIRE LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES FROM ANY CAUSE WHATSOEVER, REGARDLESS OF FORM OR ACTION, WHETHER IN CONTRACT, NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED COMMISSIONS OWED UNDER THIS AGREEMENT.

**9. Ownership.** SKL shall retain all right, title and interest in and to all of its copyrights, trademarks, trade secrets (including, but not limited to, customer lists, which lists shall include, but not be limited to, lists of Customers hereunder), patents, mask works and all other intellectual property including those rights embodied in the Services or its trademarks or trade names, including any improvements thereto or goodwill associated therewith.

**10. Confidentiality.** During the term of this Agreement and for five (5) years following its expiration or termination, Agent shall maintain the Confidential Information of SKL in strict confidence; provided, however, that Agent may disclose Confidential Information (i) to the extent required by law or pursuant to court or governmental agency orders and (ii) on a "need-to-know" basis under an obligation of confidentiality to its legal counsel, accountants, consultants or employees. Confidential Information means all confidential or proprietary information of or relating to SKL, including but not limited



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to customer lists, source codes, software tools, designs, schematics, plans or any other information relating to any project, work in process, future development, marketing or business plan, or financial or personnel matter, its present or future products, services, sales, suppliers, customers, employees, investors or business, including whether or not identified by such party as confidential. Confidential Information does not include information which (i) is or becomes generally known or available through no act or failure to act by the receiving party or (ii) is independently developed by the receiving party without access to the Confidential Information, as shown by the Agent’s competent written records. Customer lists generated under this Agreement shall be the Confidential Information of SKL, and not of Agent.

**11. Non-solicitation.** If SKL supplies to Agent the name of a potential Customer or Customer Agent shall not solicit or encourage the potential Customer or Customer to order a service from another service provider any service competing with a service provided by SKL. This restriction shall not apply to potential Customers and Customers who are know to Agent by other means. Agent agrees to pay liquidated damages in an amount equal to any commission or profit received or owed to Agent as a result of the transaction (s) causing a breach of this Agreement.

**12. Indemnification.** Agent agrees to defend, indemnify, and hold SKL harmless from and against any claims, losses, actions, demands or damages, including attorney’s fees, resulting from Agent’s breach of any of the provisions of this Agreement or from Agent’s misrepresentation, fraud or negligence with respect to the Services, any Customer, or a COA secured by Agent.

**13. Assignment.** Agent may not assign its rights or obligations under this Agreement without the prior written consent of SKL.

**14. Applicable Law.** This Agreement shall be governed in all respects by the laws of the State of Texas, Wharton County. Any action pursuant to this Agreement shall be brought only in a court of competent jurisdiction in the Wharton County.

This Agreement shall be governed and construed under and in accordance with the laws of the State of Texas as an Agreement made and wholly to be performed therein; and the venue for any disputes concerning this Agreement shall be the District Court of Wharton County, Texas. Both parties irrevocably submit to the jurisdiction of such court and waive any objection it may have to either the jurisdiction or venue of such court.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date set forth below and enforced under the laws of Texas, Wharton, County; the parties have entered into this Agreement as of the Effective Date.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

Company: _____	<b>SKL Services, Inc.</b>
Address: _____	
City/State/Zip _____	
By _____	By _____
Name:	Name: Jay Gubert
Title:	Title: President
Date:	Date:
Tax ID Number:	

W-9 - Request for Taxpayer Identification Number and Certification, Exhibit A – Sales Commission Schedule



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## Exhibit A

### SILVER PARTNER AGREEMENT

#### SKL Products and Service Sales Commission Schedule

##### Commission

Sales Commission for SKL Services sold to Customers approved by SKL listed below, on the terms and conditions set forth in this Agreement. SKL may from time to time add or delete services from the list below and may change the terms and price of any service offering.

##### VirtualTone Hosted PBX Solutions

##### One Time Commission

- |  |              |
|--|--------------|
| • VirtualTone Small Business (5 lines, up to 10 extensions)  | <b>\$100</b> |
| • VirtualTone Small Business+ (8 lines, up to 15 extensions) | <b>\$150</b> |
| • VirtualTone Business Class (10 lines, up to 25 extensions) | <b>\$200</b> |
| • VirtualTone Business + (15 lines, up to 40 extensions)     | <b>\$300</b> |
| • VirtualTone Enterprise (23 lines, up to 200 extensions)    | <b>\$400</b> |
| • VirtualTone Call Center (23 lines, up to 250+ extensions)  | <b>\$500</b> |