

Sangoma Remote Monitoring Service (RMS)

Terms and Agreement

These Service Terms and Agreement, together with the purchase by the Customer of the remote monitoring service (RMS) (as defined in Section 2 below), are an agreement (collectively, this “Agreement”) between Sangoma US Inc., a Delaware corporation (“Sangoma”), and the individual or company identified in the Subscription (“Customer”).

In consideration of the mutual promises contained in this Agreement, Sangoma and Customer agree as follows:

1. Description.

Sangoma runs a monitoring service intended for Sangoma platforms including but not limited to FreePBX and PBXact, users which includes the features and functionality described at the Sangoma.com and FreePBX.org websites (the “Sites”) on the Subscription Date, as such features and functionality may change from time to time as provided in Section 6 (the “Service”). The Service is operated on Sangoma’s hosting servers or those of its provider(s) to enable Customer and those of its employees who have been authorized by Customer (“Authorized Users”) to access and use the Service via the web. (If Customer is an individual subscribing for personal use, the term Authorized User shall refer to him or her.)

2. Subscription and Subscription Date.

As used in this Agreement, the term “Subscription” means an online order system for the Service completed and submitted by Customer through the Site and accepted by Sangoma. “Subscription Date” refers to, as applicable, the date Customer submits its online order through the Site.

3. Term.

This Agreement shall commence on the Subscription Date and, renew monthly on the same date of each month until Customer cancels service from the Sangoma online order system.

4. Pricing and Fees.

(a) Unless the parties agree otherwise in a separately executed written agreement, fees for the Service (“Fees”) shall be based on the pricing published at the Site as of the Subscription Date for the Initial Period.

(b) Customer must be authorized to use the payment method Customer enters when creating a billing account. Customer authorizes Sangoma to charge Customer for the Service using that payment method and for any paid feature of the Service that Customer chooses to sign up for or use during the Service Period of this Agreement.

(c) Customer must keep all information in Customer's billing account current. Customer can access and modify Customer's billing account information through the online order system and may change its payment method at any time.

(d) Sangoma will notify Customer in advance, either through the Service or by email pursuant to Section 18(b), if Sangoma changes Fees that would apply to Customer in a Renewal Period. If Customer does not agree to these changes, Customer must give notice of its intent to not renew the Agreement for such Renewal Period and stop using the Service on or before the effective date of termination. If Customer fails to give notice of non-renewal, Customer's payment information on file will be charged at the new Fees thereafter.

(e) Payments for all accounts are due by credit card are due the date the invoice is posted on Customer's account. If any payment is not made when due, Sangoma may immediately suspend use and access to the Service.

(f) All Customer prepayments, if any, for the Service (monthly, yearly or otherwise) shall be deemed fully earned upon payment and are non-refundable; this includes accounts that are renewed.

(g) If this Agreement is terminated prior to monthly renewal date no partial month refund will be issued for the remaining days of the current month.

5. Taxes.

All Fees are exclusive of any applicable sales or other taxes or similar fees imposed by any government authority. Customer will (a) pay or reimburse all such taxes and fees (including any interest or penalties), if any, due, based on or measured by amounts payable by Customer under this Agreement or (b) furnish Sangoma with evidence acceptable to the government authority to sustain an exemption therefrom.

6. Service Access and Use Rights.

Subject to this Agreement, Sangoma will make the Service available to Customer and Authorized Users during the Service Period and Sangoma hereby grants to Customer, during the Service Period, a nonexclusive, nontransferable, limited right to enable Authorized Users to access and use the Service through the interface and the Site, and to access and use Sangoma's technical and operations documentation. Customer acknowledges that its and each Authorized User's access and use of the Service are subject to Sangoma's Privacy Policy, which is published at the www.sangoma.com website and incorporated into this Agreement by reference. Sangoma may delegate the performance of certain portions of the Service to third parties, but will remain responsible to Customer for delivery thereof. Sangoma may in its discretion modify, enhance or otherwise change the Service from time to time, provided that, if Customer is under a Paying Plan, such change does not adversely affect the Service as it existed at the Subscription Date.

7. Service Level Commitment.

Excluding scheduled maintenance windows, Sangoma will use commercially reasonable efforts to maintain 99.8% availability of the hosted portion of the Service for each calendar month during the term of this Agreement. The Service will be deemed “available” so long as Authorized Users are able to login to the Service interface and access monitoring data.

8. Support.

Subject to this Agreement, if Customer is under a Paying Plan, Sangoma will provide ticketing level support from <https://support.sangoma.com> (“Support”). Although no response times are guaranteed, Sangoma will use commercially reasonable efforts to respond to such support requests within 48 hours.

10. Restrictions and Limitations.

(a) Sangoma has implemented commercially reasonable, industry-standard technical and organizational measures designed to secure Customer Data from accidental loss and from unauthorized access, use, alteration or disclosure. Sangoma does not represent, and, except as expressly set forth herein and the Privacy Policy as found at www.sangoma.com, expressly disclaims, that it meets the standards for operational compliance or certification in any specific area, including any government or industry-association requirements.

(b) Customer will use commercially reasonable efforts to ensure, through proper instructions and enforcement actions, that all access to and use of the Service by Customer or Authorized Users’, or otherwise through Customer’s facilities, equipment, identifiers or passwords, will conform to this Agreement and will be made and used solely for proper and legal purposes, and will be conducted in a manner that does not violate any law or regulation, the rights of any third party or this Agreement. Customer is solely responsible for tracking and for ensuring the security and confidentiality of all user identifiers and passwords. Sangoma has no liability with respect to any use or misuse of such identifiers or passwords, and any use thereof other than as provided in this Agreement will be considered a breach of this Agreement by Customer.

(d) Without limiting the generality of Sections 10 and 12, no provision of this Agreement includes the right to, and Customer will not, directly or indirectly: (i) attempt to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (ii) take any action that imposes, or may impose at Sangoma’s discretion, an unreasonable or disproportionately large load on Sangoma’s infrastructure; (iii) knowingly upload invalid data, viruses, worms, or other software agents through the Service; (iv) enable any person or entity other than Authorized Users to access and use the Service or Technology (as defined in Section 12(b)); (v) modify or create any derivative work based upon the Service or Technology; (vi) engage in, permit or suffer to continue any copying or distribution of the Service or Technology; (vii) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software that is part of the Service or Technology that is not explicitly licensed differently; (viii) access the Service in order to build a competitive solution or to assist any third party to build a competitive solution; (ix) remove, obscure or alter any proprietary notice related to the Service or Technology; or (x) engage in, permit or suffer to continue any use or other activity that is not expressly authorized under this Agreement by any person or entity within Customer’s control (“Unauthorized Use”). In the event Customer violates any of the terms set forth in this Section, in addition to any other

remedies available at law or in equity, Sangoma will have the right, in its discretion, to immediately suspend Customer's and Authorized Users' use and access to the Service.

11. Rights Grants to Sangoma.

In order to provide and support the Service for the benefit of Customer, Customer hereby grants Sangoma a worldwide, non-exclusive, royalty-free license during the Service Period to use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, and archive the data metrics and RMS configuration sent to the RMS servers. Customer agrees that, so long as no Customer Confidential Information is publicly disclosed, Sangoma may: (i) use Customer Data to refine, supplement or test Sangoma's product and service offerings; (ii) include aggregated and anonymized Customer Data in any publicly available reports, analyses and promotional materials; and (iii) retain anonymized, non-attributable Customer Data following any termination of this Agreement for use in connection with the foregoing.

12. Proprietary Rights.

(a) Subject only to the limited rights expressly granted in this Agreement, as between Customer and Sangoma, Customer shall retain all right, title and interest in and to the Customer Data and all intellectual property rights therein. Customer is solely responsible, and Sangoma assumes no liability, for the Customer Data that Authorized Users or other third parties post, send or otherwise make available over or through the Service.

(b) As used in this Agreement, "Technology" means any and all know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, computer programs, libraries, user manuals, documentation, products or other technology and materials of any kind, or any enhancement thereto, used by Sangoma in connection with the performance of the Service or the Support, or made available by Sangoma to Customer, any Authorized User or any third party in connection with the Service or the Support. Without limiting the foregoing, Technology includes the products, services and technology makes available through the Site, the Agents, the Service interface and any Sangoma branded or co-branded websites (including sub-domains, widgets and mobile versions).

(c) The Service and Technology constitute or otherwise involve valuable intellectual property rights of Sangoma and all right, title and interest in and to the foregoing shall, as between the parties, be owned by Sangoma. No title to or ownership of the Service or Technology, or any intellectual property rights associated therewith, is transferred to Customer, any Authorized User or any third party under this Agreement. Sections 6 set forth the entirety of Customer's limited rights to access and use the Service and Agents and to make the Service and Agents available to Authorized Users. Except with respect to certain of the Agents, in no event shall Customer be entitled to access or review any object code or source code. Sangoma reserves all rights to the Service and Technology not otherwise expressly granted herein.

13. Confidentiality.

(a) As used in this Agreement, “Confidential Information” means any information that is proprietary or confidential to the Discloser (as defined below) or that the Discloser is obligated to keep confidential (e.g., pursuant to a contractual or other obligation owing to a third party). Confidential Information may be of a technical, business or other nature. However, Confidential Information does not include any information that: (i) was known to the Recipient (as defined below) prior to receiving the same from the Discloser in connection with this Agreement; (ii) is independently developed by the Recipient; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes part of the public domain through no fault or action of the Recipient.

(b) Each party reserves any and all right, title and interest (including any intellectual property rights) that it may have in or to any Confidential Information that it may disclose to the other party under this Agreement. The party that receives any Confidential Information (the “Recipient”) of the other party (the “Discloser”) will protect Confidential Information of the Discloser against any Unauthorized Use or disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature against Unauthorized Use or disclosure, but in no event will use less than a reasonable standard of care to protect such Confidential Information; provided that the Confidential Information of the Discloser is conspicuously marked or otherwise identified as confidential or proprietary upon receipt by the Recipient or the Recipient otherwise knows or has reason to know that the same is Confidential Information of the Discloser. The Recipient will use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This Section will not be interpreted or construed to prohibit: (i) any use or disclosure which is necessary or appropriate in connection with the Recipient’s performance of its obligations or exercise of its rights under this Agreement or any other agreement between the parties; (ii) any use or disclosure required by applicable law, provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information; or (iii) any use or disclosure made with the consent of the Discloser. In the event of any breach or threatened breach by the Recipient of its obligations under this Section 13(b), the Discloser will be entitled to injunctive and other equitable relief to enforce such obligations. The obligations of confidentiality shall survive expiration or termination of this Agreement.

14. Early Service Termination.

Sangoma may terminate this Agreement immediately upon notice to Customer (i) if Customer breaches any provisions of Section 6 or 10, (ii) in order to comply with applicable laws or regulations, (iii) if Customer defaults in the timely payment of any amounts due Sangoma under a Paying Plan.

15. Effect of Expiration.

(a) Upon expiration of this Agreement: (i) any and all rights granted to Customer with respect to the Service and Technology, and except as set forth in Section 11 any and all rights granted to Sangoma with respect to the Customer Data, will terminate on the effective date of termination; (ii) Customer will return to Sangoma any and all Confidential Information of Sangoma in the possession or control of Customer; (iii) subject to Section 15(b), Sangoma will return to

Customer any and all Confidential Information of Customer in its possession or control; (iv) Sangoma will have no obligation to provide the Service to Customer or Authorized Users after the effective date of the termination; and (v) Customer will pay to Sangoma any amounts payable for Customer's and Authorized User's use of the Service through the effective date of the termination, together with all other amounts in accordance with Section 4. This Section 15 and Sections 4, 5, 10 through 13 and 16 through 18 shall survive the expiration or earlier termination of this Agreement.

(b) Sangoma's only obligation with respect to any electronic information transmitted or received by Customer or Authorized Users in relation to Customer's and Authorized User's use of the Service is, upon Customer's request, to delete or destroy within 60 days the RMS data metrics that is stored.

16. Representations and Indemnities.

(a) Customer hereby represents and warrants to Sangoma that Customer has the authority to enter into and perform this Agreement and the Customer's entering into this Agreement, and performance of its obligations and exercise of its rights under this Agreement, do not and will not violate any applicable laws, regulations or orders.

(b) Customer hereby represents, warrants and covenants that, without limiting the foregoing: (i) Customer or its licensors owns all right, title and interest in and to Customer Data; (ii) Customer has all rights in Customer Data necessary to grant the rights contemplated by this Agreement; and (iii) Customer has obtained any necessary third-party approvals, including without limitations applicable vendors and licensors, in relation to third-party content to be used by Customer in connection with the Service or will obtain such approvals prior to such use.

(c) Customer agrees to defend, indemnify and hold harmless Sangoma and its employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) arising out of or related to: (i) Customer's and Authorized Users' use of and access to the Service; (ii) Customer's or an Authorized User's violation of any term of this Agreement; (iii) Customer's or an Authorized User's violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (iv) Customer's or an Authorized User's violation of any law, rule or regulation; (e) any claim or damages that arise as a result of any Customer Data; or (v) any other party's access and use of the Service with provided identifier(s) and password(s).

(d) Sangoma agrees to defend, indemnify and hold harmless Customer, if under a Paying Plan, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) arising out of or related to: (i) Sangoma's breach of any representation, warranty or obligation in this Agreement or (ii) Sangoma's violation of any law, rule or regulation. In addition, if the Service or Technology becomes the subject of a claim of infringement of a U.S. copyright or patent, Sangoma will indemnify Customer, if under a Paying Plan, against such claim provided that Customer gives Sangoma prompt written notice of the claim, allows Sangoma to direct the defense and settlement of the

claim, and cooperates with Sangoma as necessary, at Sangoma's expense, for defense and settlement of the claim. If the Service or Technology becomes, or, in Sangoma's opinion is likely to become, the subject of such a claim, Sangoma shall have the right to obtain for Customer the right to continue using the Service or Technology, replace or modify the Service or Technology so that it becomes non-infringing, or terminate the rights granted hereunder to such Service or Technology with refund to Customer of any fees paid for such Service and Technology (less a reasonable charge for the period during which Customer has had available to it the use of such Service and Technology). Sangoma will have no liability for any infringement claim to the extent it (1) is based on modification of the Service or Technology other than by Sangoma; (2) results from failure of Customer to use any updated version of Service or Technology provided by Sangoma to Customer; (3) is based on the combination or use of the Service or Technology with any other software, program or device not provided by Sangoma if such infringement would not have arisen but for such use or combination; (4) results from compliance by Sangoma with designs, plans or specifications furnished by Customer; or (5) results from Customer's operation of the Service or Technology in a manner that is inconsistent with its intended use. THE FOREGOING STATES SANGOMA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT. IF UNDER A FREE PLAN, CUSTOMER ACKNOWLEDGES THAT THIS SECTION 10(e) SHALL BE DEEMED DELETED AND OF NO FORCE OR EFFECT.

(f) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE, TECHNOLOGY, SUPPORT AND ALL OTHER ITEMS PROVIDED IN CONNECTION THEREWITH ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. SANGOMA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY ERROR, DEFECT, DEFICIENCY, INFRINGEMENT OR NONCOMPLIANCE IN THE SERVICE, TECHNOLOGY, SUPPORT OR ANY OTHER ITEMS PROVIDED BY, THROUGH OR ON BEHALF OF SANGOMA UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE).

17. Limitations of Liability.

(a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, DIRECTORS, EMPLOYEES OR ITS VENDORS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE SERVICE OR THE SUPPORT; PROVIDED, HOWEVER, THAT SUCH LIMITATIONS SHALL NOT APPLY TO: (I) DAMAGES ARISING OUT OF A PARTY'S FAILURE TO COMPLY WITH ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 13; (II) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 16(d) OR 16(e) (AS APPLICABLE); OR (III) CUSTOMER'S PAYMENT OBLIGATIONS TO SANGOMA.

(b) UNDER NO CIRCUMSTANCES WILL SANGOMA BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR CUSTOMER'S ACCOUNT(S) OR THE INFORMATION CONTAINED THEREIN. SANGOMA ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM CUSTOMER'S OR AUTHORIZED USERS' ACCESS TO AND USE OF THE SERVICE OR SUPPORT; (III) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (IV) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (V) CUSTOMER DATA OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. EXCEPT FOR THEIR RESPECTIVE INDEMNITY AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY, THEIR AFFILIATES, DIRECTORS, EMPLOYEES, OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY AUTHORIZED USER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE FEES CUSTOMER PAID TO SANGOMA HEREUNDER.

(c) THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

18. Miscellaneous.

(a) Customer may not delegate, assign or transfer this Agreement or any of its rights and obligations under this Agreement and any attempt to do so shall be void.

(b) Sangoma may send Customer information about the Service, additional information and any information the law requires Sangoma to provide. Customer acknowledges and agrees that Sangoma may provide notices to Customer by email at the address Customer specified in its Subscription or by access to a website that Sangoma identifies. Notices emailed to Customer will be deemed given and received when the email is sent. If Customer does not consent to receiving notices electronically, Customer and its Authorized Users must stop using the Service. (Please note that these provisions relate to the customer business relationship and are distinct from marketing and similar emails covered by the "Opt-Out" provisions of the Privacy Policy.) Customer may provide legal notices to Sangoma via registered mail, return receipt requested, to any US address as found at www.sangoma.com. Customer must specify in all such notices that the notice is being given under this Agreement.

(c) The Service is provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with

the same rights and restrictions generally applicable to the Service. If Customer or any Authorized User is using the Service on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer and its Authorized Users must immediately discontinue use of the Service. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

(d) In connection with this Agreement, Customer will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Customer is solely responsible for compliance related to the manner in which Customer chooses to use the Service, including the transfer and processing of Customer Data.

(e) In the event of a security breach of the RMS Sangoma service a notice will be sent out to all current customers as reasonably possible by Sangoma via email to the Customer. Sangoma uses standard IP encryption protocols such as but not limited to SSL, TLS and HTTPS to transfer data and information and to push changes between the RMS agent and RMS service hosted in the Sangoma datacenters and providers. Data Metrics from RMS agent that is sent to the RMS service can be found at wiki.sangoma.com and can change between versions of RMS.

(f) Sangoma shall have no liability to Customer, Authorized Users or third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control, including without limitation acts of God or nature, fires, floods, strikes, civil disturbances or terrorism or interruptions in power, communications, satellites, the Internet or any other network that are beyond its reasonable control.

(g) This Agreement shall be governed by and interpreted under the internal laws of the State of Delaware. The parties agree that the any dispute arising under this Agreement shall be subject to the exclusive jurisdiction of the Circuit Court for the State of Delaware, exclusive of its conflict of law provisions.

(h) This Agreement, inclusive of the Subscription and Privacy Policy, is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. In the event any information posted on the Site from time to time conflicts with any provision of this Agreement, the applicable provision of this Agreement shall control. Any terms and conditions of any other instrument issued by Customer in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect. Any affiliate of Customer shall be deemed a third party for purposes of this Agreement. This Agreement may be modified only by a written instrument duly executed by authorized representatives of the parties. Any waiver by either party of any condition, term or provision of this Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

