

# Terms and Conditions – Updated 4/1/2006

ITS Omnicom OmniTalk™ VoIP Service

## I. THE AGREEMENT

These Terms and Conditions constitute the agreement (the “Agreement”) between ITS Omnicom (“us,” “our” or “we”) and the user (“you,” “user” or “customer”) of ITS Omnicom’s OmniTalk residential and business communications services and any related products or services (“Service”). For purposes of the Agreement, “you” means the customer, defined as either (i) the person identified in our account records as responsible for payment of all charges; or (ii) any other person with actual or apparent authority to represent that person or to use the service(s).

BY ENROLLING IN, USING, OR PAYING FOR THE SERVICE(S), YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE PRICES, CHARGES, TERMS AND CONDITIONS, DO NOT USE THE SERVICES, AND CANCEL THE SERVICES IMMEDIATELY BY CONTACTING US AT THE ADDRESS ON YOUR EMAIL PURCHASE CONFIRMATION OR YOUR INVOICE FOR FURTHER INSTRUCTIONS.

The Agreement governs the Service and any devices, such as the Analog Telephone Adapter (“ATA”) or any other IP connection device (“Device” or “Equipment”), used in conjunction with the Service. By activating the Service, you acknowledge that you have read and understood, and that you agree to, the terms and conditions of the Agreement, and you represent that you are of legal age to enter the Agreement and become bound by its terms.

We may change the Terms and Conditions of the Agreement from time to time. Notices will be considered given and effective on the date posted at [www.Omni-Talk.com](http://www.Omni-Talk.com) (“service website”). The Agreement posted there supersedes all previously agreed-to electronic and/or written Terms and Conditions.

The rates and charges for the Service, which may be found at the service website, are effective as of April 1, 2006, and are subject to change. For the most current rates and charges, the most current version of the Agreement, or if you have questions about your Service, please visit our service website (see Rates and Terms & Conditions links) or call us at the tollfree number listed on the first page of your invoice. All copyrights and service marks are our exclusive property of unless otherwise specifically attributed otherwise.

## II. EMERGENCY SERVICES - 911 DIALING

**A. Possible Non-Availability of Traditional 911 or E911 Dialing Service.** The

Service does not support traditional 911 or E911 access to emergency services in all locations. Where we do not offer traditional 911 or E911 access, we offer a feature known as "911 Dialing" which is a limited emergency calling service available only on certified Devices or Equipment. The 911 Dialing feature cannot be used in conjunction with a Softphone or Virtual Number. Our 911 Dialing feature is not automatic; you must take the steps, as described in this Agreement and on our website, to register the address where you will use the Services in order to activate the 911 Dialing feature. You must do this for each Service phone number that you obtain. The 911 Dialing feature of the Service is different in a number of important ways from traditional 911 or E911 service as described on our website page for 911 Dialing under "Features," and below. You shall inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service of (i) the non-availability of traditional 911 or E911, and (ii) the important differences in and limitations of the Service's 911 Dialing feature as compared with traditional 911 or E911 dialing. The documentation that accompanies each Device that you purchase should include a sticker concerning the potential non-availability of traditional 911 or E911 dialing (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each Device, to place the 911 Sticker on each Device that you use with the Service. If you did not receive a 911 Sticker with your Device, or you require additional 911 Stickers, please contact our customer care department at 1-800-878-4487.

**B. Registration of Physical Location Required.** For each phone number that you use for the Service, you must register with us the physical location where you will be using the Service with that phone number. When you move the Device to another location, you shall register your new location. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your old address. You will register your initial location of use when you subscribe to the Service. Thereafter, you may register a new location by following the instructions from the "911" registration link on your web-based Service Control Panel page. For purposes of the 911 Dialing feature, you may only register one location at a time for each phone line you use with the Service.

**C. Confirmation of Activation Required.** Your 911 Dialing feature will not be activated for any phone line that you are using with the Service, unless and until you receive a confirmation from us that the 911 Dialing feature has been activated for that phone line.

**D. How Emergency Personnel are Contacted.** We contract with a third party to use the address of your registered location to determine the nearest emergency response center and then forward your call to that center. When the center receives your call, the operator may not have your address or your phone number. You must therefore be ready to provide your address and phone number in order to get help. You hereby authorize us to disclose your name and address to third-party

service providers, including, without limitation, call routers, call centers and public service answering points, for the purpose of dispatching emergency services personnel to your registered location.

**E. Service Outages.**

(a) Service Outages Due to Power Failure or Disruption. 911 Dialing will not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.

(b) Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or ISP Service. Service outages or suspensions or terminations of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.

(c) Service Outage Due to Suspension or Termination of Your Account. Service outages due to suspension or termination of your account will prevent the Service, including 911 Dialing, from functioning.

(d) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts. Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that we are not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of Service, including 911 Dialing, that may result. In the event you lose Service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement.

(e) Other Service Outages. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

**F. Re-Activation Required if You Change Your Number or Add or Port New Numbers.** 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

**G. Network Congestion, Reduced Speed for Routing or Answering 911 Dialing Calls.** There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

**H. Possible Lack of Automatic Number Identification.** It may or may not be possible for the local emergency personnel to automatically obtain your phone number when you use 911 Dialing. Our system is configured to send the automatic number identification information; however, one or more telephone companies, not us, route the traffic to the emergency response center and that center may not be capable of receiving and passing on that information. As a result, the operator who answers your 911 Dialing call may not be able to automatically obtain your phone number and call you back if the call is not completed or is not forwarded, is dropped or disconnected, if you are unable to tell the operator your phone number, or if the Service is not operational for any reason.

**I. No Automated Location Identification.** In most service areas, it is not possible at this time to transmit to the local emergency response center the address that you registered for 911 Dialing. You will need to state the nature of your emergency promptly and clearly, including your location (and possibly your telephone number), as the operator will not have this information. Emergency personnel will not be able to find your location if the call is not completed or is not forwarded, is dropped or disconnected, if you are unable to tell the operator your location, or if the Service is not operational for any reason.

**J. Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither we nor our officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless, our officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

**K. Alternate 911 Arrangements.** If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or terminating the Service.

### **III. SERVICE**

#### **Term**

Service is offered for a term that begins on the date that we activate your Service (the "Activation Date") and ends on the last day of that same calendar month or the last day of the term entered into.

**Month-to-month:** Subsequent terms of this Agreement automatically renew on a calendar monthly basis without further action by you unless you give us written notice of non-renewal at least fifteen [15] days before the end of the month in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate the Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term plus any unbilled charges, all of which immediately become due and payable. You may cancel the Service for any reason at any time. There is no disconnect fee.

**Yearly Agreements:** Expiration of the term or termination of Service does not excuse you from paying all unpaid, accrued charges due in relation to the Agreement. Upon expiration of the initial term, the service will continue on a month-to-month basis at the existing rates unless or until a new term arrangement is entered into.

#### **Business Use of Service and Device - Prohibition on Resale and Definition of Proper Use**

If you have subscribed to one of our Business Plans, the Service and Device are provided to you as a business user. This means that you are not to resell or transfer the service or device to any other person for any purpose. You agree that subscribing to the Business Plan does not confer the right to use the service for *auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting*. We reserve the right to immediately terminate, modify or upgrade your Service, if we determine, at our sole discretion, that the Service is being used for any of these.

If you have subscribed to one of our Residential Plans, the Service and Device are provided to you as a residential user only. This means that you are not to use the Service for business purposes, including, but not limited to *auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or making more than fifty percent (50%) of your calls during weekday, daytime hours (Monday through Friday, 8AM to 6PM your local time)*. We reserve the right to immediately terminate, modify or upgrade your Service, if we determine, in our sole discretion, that the Service is being used for business purposes.

#### **E. Notice of Rate Changes**

It may be necessary to change the prices and charges for the Services from time to time due to industry or network circumstances. We may increase or decrease prices and rates without providing advance notice. Changes to any rates, charges,

terms or conditions in the Agreement will be published at our service web site and will be immediately incorporated by reference into this Agreement.

#### **F. Rounding Policy**

For billing purposes, the length of each metered call is rounded as described in each Calling Plan. If the computed charge for a call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charges for taxes and surcharges include a fraction of a cent, the fraction is rounded up to the nearest whole cent.

#### **G. Calls to International Mobile Telephones; International Special Services Calls**

Our advertised rates for international calls are generally the rates charged for calls to landline telephones. Calls to international cellular (mobile) telephones, or to international telephone numbers considered to be special services calls, are charged a different (usually higher) rate than calls to landline telephones in that same country or jurisdiction. The rates you will be charged for such calls are set forth in the calling plan rate tables and are typically designated by a “mobile” or “special services” notation.

#### **H. Timing of Calls**

Generally, timing of metered calls begins when the called party or an automated answering device (such as an answering machine or a facsimile machine) answers the call, and ends when one of the parties disconnects from the call. However, some foreign carriers (with whom we must interconnect in order to terminate calls to foreign countries) designate a call as “answered” when the called party’s line rings or after a certain number of rings, and will charge us for a completed call. In these situations, we will charge you for these calls as if they were answered by the called party.

#### **I. Use of Service and Device by Customers Outside the United States and Canada**

We provide the Service and Equipment to you for use of the Service within the United States and Canada and for placing calls to other countries. If you take or send the Equipment to a country other than the United States or Canada and the Service is used by you or another party from there, you/they do so at your/their own risk, including the risk that such activity violates local laws in the country where you/they do so. You are liable for any and all use of the Service and/or Device by any person making use of the Service or Device provided to you by us.

#### **J. Loss of Service Due to Power Failure**

The Service does not function without power. Should there be an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require you to reset or reconfigure equipment before using the Service.

#### **K. Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software**

The Service and Device and any firmware or software used to provide the Service

or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our service website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") belonging to us are and shall remain our exclusive property, and nothing in this Agreement shall grant you the right or license to use such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and that the Device is exclusively for use in connection with the Service. If you decide to use the Service through an interface device not provided by us, which we reserve the right to prohibit in particular cases or generally, you promise that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Service and you will indemnify and hold us harmless against any and all liability arising out of your use of such interface device with the Service.

#### **L. Tampering with the Device**

You agree not to change the electronic serial number or equipment identifier of the Device, or to perform a factory reset of the Device, without express permission from us. We reserve the right to terminate your Service should you tamper with the Device, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus any applicable disconnect fee, all of which immediately become due and payable.

#### **M. Theft of Service**

You agree to notify us immediately, in writing, by electronic mail or by calling the customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen or used fraudulently. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft or fraudulent use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. You are liable for ALL use of the Service, including the use of a Device stolen from you and any and all stolen Service or fraudulent use of the Service.

#### **N. Number Transfer on Service Termination**

We may, solely at our discretion, release any telephone number that was ported to us by you and used in connection with your Service provisioned by us to a new provider of service to you under the provisions of the Local Number Portability (LNP) policies of the FCC, if such new service provider is able to accept such number, upon your termination of the Service, and provided (i) your account has been terminated; and (ii) your account with us is completely current including payment for all charges and applicable disconnect fees; and (iii) you request the

transfer upon terminating your account. You will not be able to port away any Service number if you cancel within ninety days of the Activation Date.

**O. Service Distinctions**

You acknowledge and understand that the Service is not a telephone service. Important distinctions exist between telephone services and this enhanced Service offering provided by us. The Service is subject to different regulatory treatment than phone service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

**P. Collect Call and Operator Services**

We do not offer collect calls, operator services or calls to 900 numbers via this Service.

**Q. International Services**

Foreign Carrier Restrictions. Foreign carriers or regulatory agencies may impose, upon the portion of the end-to-end international service or facilities they provide, certain limitations or restrictions that may limit your ability to use the Service. You must conform to any limitations or restrictions imposed by the foreign carriers or agencies.

**R. Surcharges**

In addition to surcharges that may be found in the applicable Calling Plan, we may adjust rates and charges, or impose additional rates and charges required or permitted by governmental or quasi-governmental authorities to collect from others or pay to others in support of statutory or regulatory funds or programs ("Governmental Charges").

**S. Taxes**

All taxes, tax-like charges, and tax-related surcharges are referred to collectively as "Taxes." We may elect to impose and collect such Taxes, unless otherwise constrained by court order or direction. You agree to pay all Taxes charged on your invoice. If we have collected Taxes and a challenged Tax is found to have been invalid and unenforceable, we, in our sole discretion, will either reduce service rates for a fixed period of time in the future in order to flow-through to you an amount equivalent to the invalid amounts collected, or we will credit or refund such amounts to affected customers (less reasonable administrative costs), if the amounts collected were retained by us or if they were delivered to the jurisdiction and returned to us, or we will negotiate an arrangement with the jurisdiction to provide a future benefit for customers in that jurisdiction.

If you provide us with a duly authorized tax exemption certificate, we will exempt you in accordance with law, effective from the date we receive the certificate.

**IV. RESTRICTIONS ON THE USE OF SERVICE**

**A.** We offer our services subject to availability of facilities, limitations of service offerings, and the provisions of this Agreement.

**B.** Services provided by us under the Agreement will not be used: (1) For any



unlawful purpose; (2) For making telephone calls that use automatic dialing devices and terminate into electronic information services, pay-per-call services, or other domestic or international audiotext services; or (3) For international call-back offerings using uncompleted call signaling to any country that prohibits such an offering by statute or regulatory decision.

**C.** We may (1) deny, for any lawful reason, your request for Service, or (2) limit or allocate the facilities available to or utilized by any Service, if necessary, to manage our network in an efficient manner; meet reasonable service expectations; furnish service to existing and future customers based on forecasted customer requirements; or for any other lawful reason.

**D.** We may, without notice (consistent with governing laws or regulations), block traffic to or from specific countries, country codes, cities, city codes, local telephone exchanges ("NXX exchanges"), individual telephone stations, groups or ranges of individual telephone stations, or calls using certain customer authorization codes, whenever we deem it necessary to take such action to prevent (1) the unlawful use of Service; (2) nonpayment for Service; (3) the use of Service in violation of this Agreement; or (4) network blockage or the degradation of Service furnished to you or other customers.

## **V. PAYMENT OBLIGATIONS**

**A.** You must provide us with a valid credit card number when the Service is activated for any residential or business product. If the credit card expires, you close your credit card account or your billing address changes, or the credit card is cancelled and replaced because of loss or theft, you must advise us immediately. We will invoice all charges on a monthly basis, in advance, to your credit card (unless you are paying by automatic bank debit) including but not limited to: activation fees and monthly Service fees, advanced feature charges, equipment purchases and shipping and handling charges. Any charges not included in your rate plan and any additional usage charges are billed after each billing period. If we change our rates, recurring monthly charges affected by such change will be assessed at the new rate for the full billing period during which the new recurring charge rate became effective.

**B.** We may terminate your Service at any time, in our sole discretion, if any charge to your credit card on file with us is declined or reversed, your credit card expires and you have not provided us with a valid replacement credit card or in case of any other nonpayment of account charges. Termination of Service for declined or expired card, reversed charges or nonpayment leaves you fully liable for all charges accrued before termination and for all costs incurred by us in collecting such amounts, such as (but not limited to) collection costs and attorneys' fees.

**C.** You are responsible for payment of all charges for Services furnished to you and to anyone authorized by you to use your Service. This responsibility is not changed by virtue of any use, misuse or abuse of your Service undertaken or caused by third parties.

**D.** You must promptly notify us of any change in your invoicing address or, if applicable, in the credit card or bank account used for payment by e-mailing us at the address listed on your Welcome Email and on your Invoice.

**E.** We will invoice you for Services on a monthly basis, in advance, and all payments are due and payable by you within ten (10) days from the invoice date (the “Due Date”). Amounts not paid within twenty (20) days of the invoice date will be considered past due. If you make any late payments, and we bill you for the Services, we will charge you a late fee of 1.5%, which we apply to that period's charges and any outstanding charges and late payment charges that remain unpaid at the time of the next bill. If the state law where you receive the services requires a different rate, we will apply that rate.

**F.** If we become concerned at any time about your ability to pay for services, we may require that you pay its charges within a specified number of days or even prepay and that you make such payments in cash or the equivalent of cash.

**G.** If we hire a collection agency to collect, or attempt to collect, any charges owed us, you will be liable for an additional payment equal to 35% of the charges owed, where permitted by applicable law. If we incur any fees or expenses, including attorneys’ fees, in collecting, or attempting to collect, any charges owed other than by hiring a collection agency, you will be liable to us for the payment of all such fees and expenses reasonably incurred.

**H.** If billing systems or other support is not available for a service, feature, surcharge, tax or other charge element at the time of service provision, we will bill for that service, feature, surcharge, or other charge element as soon as we are capable of doing so.

**I.** No Credit Allowances for Interruption of Service. You acknowledge and agree that the Service is provided “as is.” Credit allowances for interruption of Service, including international calling services, will not be provided.

## **VI. CANCELLATION OF SERVICE**

### **A. By You**

1. If you cancel your Service after any applicable term has expired, there is no cancellation fee.
2. If you cancel your Service, you may not be able to use the Device or Equipment with any other VoIP service.
3. Cancellation may take up to two business days.
4. Your credit card will be charged for any usage after you contacted us to cancel your Service.

### **B. By Us**

1. We reserve the right to discontinue furnishing Services, cancel your account, and/or block your access to our network, without incurring any liability, immediately and without notice if we deem that such action is necessary to prevent or to protect against fraud or to otherwise protect our personnel, agents, facilities, or services. Without limitation, we may take such actions if:

- a. You refuse to furnish information or furnish false information that (i) is essential for billing; or (ii) pertains to your creditworthiness, your past or current use of common carrier communications service, or your planned use of such service;
- b. You indicate that you will not comply with a request for security for the payment for services;
- c. Your service usage charges exceed established parameters based on your history of usage, which may indicate a likelihood of nonpayment or possible fraud;
- d. You have been given written notice by us of any past due amount (which remains unpaid, in whole or in part) for any of our services or an affiliated carrier's service to which you either subscribe or had subscribed or used;
- e. You either refuse to pay when billed for Service or indicate to us or an entity billing on our behalf that you do not intend to pay for Service used by you;
- f. You use, or attempt to use, Service with the intent to avoid the payment, either in whole or in part, of the charges for the Service by (i) using or attempting to use service by rearranging, tampering with, or making connections to Service in an unauthorized manner; or (ii) using tricks, schemes, false or invalid numbers, false credit devices or other fraudulent means or devices;
- g. You act, or fail to act, in a manner that hinders or frustrates any investigation by us or others having legal authority to investigate your legal obligations;
- h. Your telephone equipment fails to pass back to us the appropriate signal to start and stop billing for a call;
- i. You were previously provided with notice of breach of contract, took corrective action, but thereafter engage in the same breach activity; or
- j. You act in a manner that is threatening, obscene, harassing or abusive to our personnel.

2. We reserve the right to discontinue furnishing services, cancel your account and/or block your access to our network, without incurring any liability, immediately upon written notice to you if:

- a. Any invoice charges remain outstanding and owed by you after the 20th day from the date of the invoice notifying you of the charges; or
- b. You fail to comply with a request by us for security for the payment for services.

3. The discontinuance of service(s) by us pursuant to these provisions does not relieve you of any obligation to pay for charges due and owing for service(s) furnished up to the time of discontinuance.

## **VII. LIABILITY**

A. We will not be liable for: (i) any failure of performance due to causes beyond our control, including, but not limited to, acts of God, fires, floods or other catastrophes; national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppages or other labor difficulties; and any law, order, regulation or other

action of any governing authority or agency thereof; or (ii) delayed installation of our facilities or commencement of service.

B. With respect to any other factual allegation, legal claim, or dispute by you or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair, interruption or restoration of any service or facilities offered by us, our liability, if any, will be limited as follows:

1. With respect to the routing of calls by us to public safety answering points or municipal emergency service providers, our liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by you as the direct result of our action, or failure to act, in routing the call, or (b) the sum of \$1,000.00.

2. With respect to the provisioning of, or any error or omission in, data, information, or content furnished in connection with any service provided by us, for example, Directory Assistance, our liability will be limited to the lesser of: (a) the amount of actual money damages proven by you to have been incurred as the proximate result of your reliance on such data, information or content; or (b) \$100.00.

C. IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES) BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT. THIS SECTION SURVIVES TERMINATION OF THIS AGREEMENT.

D. We will be indemnified, defended, and held harmless by you against all claims of loss or damage arising from the use of Service furnished by us, including:

1. Allegations or claims for libel, slander, invasion of privacy or infringement of copyright arising out of the material, data, information or other content transmitted via our Service; and

2. All other allegations and claims arising out of any intentional act or omission by you or others authorized by you to use the Service, in connection with any Service provided by us.

E. WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ABOUT OUR SERVICES AND DISCLAIM ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NONINFRINGEMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON OUR BEHALF AND

YOU MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY BY US.

F. We will not be liable for any act or omission of any other company or companies furnishing a portion of the service, or from any act or omission of a third party, including those vendors participating in our offerings made to you, or for damages associated with service, or equipment that it does not furnish, or for damages that result from the operation of customer provided systems, equipment, facilities or services that are interconnected with our services.

## **VIII. DISPUTE RESOLUTION**

IT IS IMPORTANT THAT YOU READ THIS ENTIRE SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

### **A. Binding Arbitration**

The arbitration process established by this section is governed by the Federal Arbitration Act ("FAA"), 9 USC Sections 1-16. Both you and we have the right to take any dispute that qualifies to Small Claims court rather than arbitration. All other disputes arising out of or related to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration. This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a Small Claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect. The arbitration of any dispute involving \$10,000 or less shall be conducted in accordance with the Consumer Arbitration Rules of the American Arbitration Association ("AAA"), as modified by this Agreement, which are in effect on the date a dispute is submitted to the AAA. The AAA's Commercial Arbitration Rules and fee schedules will apply to any disputes in excess of \$10,000. You have the right to be represented by counsel in an arbitration. In conducting the arbitration and making any award, the arbitrator shall be bound by and strictly enforce the terms of this Agreement and may not limit, expand, or otherwise modify its terms. The arbitrator may not award punitive, exemplary or similar damages. The parties agree that an award of such damages will be void if issued.

NO DISPUTE MAY BE JOINED WITH ANOTHER LAWSUIT, OR IN AN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON, OR RESOLVED ON A CLASS-WIDE BASIS. THE ARBITRATOR MAY NOT AWARD DAMAGES THAT ARE NOT EXPRESSLY AUTHORIZED BY THIS AGREEMENT AND MAY NOT AWARD PUNITIVE DAMAGES OR

ATTORNEYS' FEES UNLESS SUCH DAMAGES ARE EXPRESSLY AUTHORIZED BY A STATUTE. YOU AND WE BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES THAT ARE EXCLUDED UNDER THIS AGREEMENT.

### **B. Arbitration Information and Filing Procedures**

Before you take a dispute to arbitration or to Small Claims court, you must first contact our Customer Care Department at the customer service number on your invoice for the Services, or write to us at the address on your invoice and give us an opportunity to resolve the dispute.

You must describe your dispute and provide us with any supporting documentation. Likewise, if we have a dispute with you, we will notify you by email sent to your billing address and attempt to resolve it before pursuing arbitration.

If the dispute cannot be satisfactorily resolved within sixty days from the date you or we are notified by the other of a dispute, then either party may then contact the AAA in writing at the AAA Service Center nearest to you and request arbitration of the dispute. Information about the arbitration process and the AAA's Arbitration Rules and its fees are available from the AAA on the Internet at [www.adr.org](http://www.adr.org). The arbitration will be based only on the written submissions of the parties and the documents submitted to the AAA relating to the dispute, unless either party requests that the arbitration be conducted using the AAA's telephonic, online, or in-person procedures. Additional charges may apply for these procedures. Any in-person arbitration will be conducted at a location that the AAA selects in the state of your primary residence. Any arbitration shall remain confidential. Neither you nor we may disclose the existence, content or results of any arbitration or award, except as may be required by law, or to confirm and enforce an award. Judgment of the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.

### **C. Fees and Expenses of Arbitration**

Each party must pay its own expenses associated with any arbitration, including its attorneys' fees. If you file a request for arbitration, you will have to pay a filing fee in accordance with the AAA fee schedule. Under AAA rules, some costs such as the arbitrator's fees and expenses will be allocated between the parties. In addition to the procedures described in this Section for resolving a dispute, you may also have the right to file a complaint with an appropriate federal or state regulatory agency.

## **IX. MISCELLANEOUS PROVISIONS**

### **A. Entire Agreement.**

These Terms and Conditions constitute the entire Agreement between you and we,

and supersede any and all prior agreements, oral or written, concerning the subject matter. If there is any inconsistency or conflict between the terms of any calling plan, promotion and/or authorized written communications you have received and the provisions of this Agreement, the provisions of this Agreement will control.

**B. No Obligation to Assist in Switching Carriers.**

If you either voluntarily cancel your account with us or if we cancel your service for any reason set forth above, we will have no obligation whatsoever to assist you in any respect in switching from us to another carrier.

**C. Assignment.**

You may not modify or assign this Agreement. In our sole discretion, we may assign this Agreement.

**D. No Waiver of Rights.**

If either party fails to enforce any right or remedy under this Agreement, that does not waive the right or remedy for any other breach or failure.

**E. Binding Effect.**

This Agreement is binding upon you and us and upon, respectively, your and our agents and heirs.

**F. Severability.**

If any part or provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, then that part or provision will be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining parts or provisions of this Agreement.

**G. Governing Law.**

This Agreement is governed by and construed under the laws of the State of California and applicable federal law, without regard to its choice of law principles, except that the arbitration provisions in Section VIII shall be governed by the Federal Arbitration Act. This governing law provision applies no matter where you reside, or where you use or pay for the services.

**H. Survival.**

Any liability or obligation of a party to the other party under the provisions of Sections I, IV, V and VII as applicable, will, in each case, survive cancellation or termination of this Agreement.

**I. Headings of No Force or Effect.**

Headings in this Agreement are for reference only and have no effect on the meaning of any provision.