



Terms and Conditions

XCast Labs, Inc. SIPTalk® VoIP Service

Last Updated 3/1/2009

I. THE AGREEMENT

These Terms and Conditions constitute the agreement (the "Agreement") between XCast Labs, Inc. ("us", "our" or "we") and the user ("you," "your", "user" or "Customer") of XCast's SIPTalk® 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 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.siptalk.com ("service web site"). The Agreement posted there supercedes 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 web site, are effective as of the date noted in the header of this Agreement, 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 or call us at the toll-free 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. Register, Confirm & Update Your Address

The vast majority of our customers have access to either basic 911 or Enhanced 911 (E911) service. Our 911 Dialing is not automatic; you must register the address where you will use the Services in order to activate 911 Dialing, and you must update that address if you are using your Service from another physical location from which you might call 911. You can check your current 911 Address or update it by using your Internet-based VoIP Control Panel (VCP), which you can access through our service web site – www.siptalk.com. You must do this for each Service phone number that you obtain.

With E911 service, when you dial 911, your telephone number and registered address are simultaneously sent to the local emergency center assigned to that location, and emergency operators have access to

the information they need to send help and call you back if necessary. Customers in locations where the emergency center is not equipped to receive your telephone number and address have basic 911 service. With basic 911, the local emergency operator answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak. As additional local emergency centers become capable of receiving our customers' information, we will automatically upgrade customers with basic 911 to E911 service. We will not give you notice of the upgrade.

If you have not given us your address, or have given us an address which is outside the US or Canada or is in an area that is not covered by the landline 911 network, you will not have access to either basic 911 or E911. In this case, your 911 call will be sent to our national emergency call center. A trained agent at the emergency call center will ask for your name, telephone number and location, and then contact the local emergency center for that area in order to send help.

In addition, if you use a WiFi handset or our SoftPhone, and have traveled away from the address you registered with us, if you have not updated that address your 911 calls will be routed to the emergency center associated with the address we have, which may be half a state or across the country from where you are. This will significantly delay you getting the help you are calling for.

You authorize us to disclose your name and address to third parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

B. Notify All Users

You should inform any household residents, guests and any other persons who may be present at the physical location where you utilize the Service of the important differences in and limitations of calling 911 with VoIP service as compared with calling 911 from a traditional landline.

C. Service Outages

911 Dialing will not function in the event of a power failure or disruption. If there is an interruption in your location's 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.

In addition, network outages or suspensions or disconnections of service by your broadband provider or ISP will also prevent all Service, including 911 Dialing, from functioning. Service outages due to disconnection of your account with us for any reason will prevent all Service, including 911 Dialing, from functioning.

Your ISP 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, which 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 disconnect the Service in accordance with this Agreement.

D. Re-Activation Required if You Change Your Number or Add or Port New Numbers

911 Dialing will 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 address of use for each changed, newly added or newly ported phone number. Use your VCP to do this, or contact customer service.

E. 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 calls to local emergency response centers and to our 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 us, 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 calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

F. Alternate 911 Arrangements

If you are not comfortable with the limitations of our 911 Dialing service, as described herein, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service. Alternate means include mobile (cell) phones and traditional telephone landlines.

III. SERVICE

A. Term

Service is offered for a term that begins on the date you sign up for your Service (the "Activation Date") and ends on the last day of that same calendar 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 terminate 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 become immediately due and payable. Expiration of the term or termination of Service does not excuse you from paying all unpaid, accrued charges due in relation to this Agreement.

B. Disconnect Fee

You may cancel the Service for any reason at any time. There is no Disconnect Fee on any of our Service Plans.

C. Money Back Guarantee

We offer a 30-day money back guarantee, applicable to one primary line per account, but which is not applicable to additional or secondary lines or other services (such as Toll-free or IP-Fax services or calls). Under terms of the Money-Back Guarantee, we will refund your activation fee and the first month of service and 911 fee. To qualify for this Guarantee, you must cancel service and return any equipment you purchased within 30 days of your Order Date. Your usage must not exceed 250 minutes within the first 30 days of service for Home Service Plans or 500 minutes within the first 30 days of service for Office Service Plans. You are responsible for any charges for minutes not included in your Service Plan, such as calls placed to international numbers or to directory assistance. Cancellation may take up to three (3) business days. Any usage you make using the Service after contacting us to cancel the Service is your responsibility. Accounts exceeding the 250 or 500 minutes of usage referred to above are not eligible for this money back guarantee.

All returned equipment must be in the original packaging with all the UPC or bar codes intact. All components, manuals and unused registration card(s) must be included. Equipment must be returned with a valid return authorization ("RA") number obtained from our Customer Support. You are responsible

for paying for return shipping of equipment. This money back guarantee will not be honored if you fail to meet all above requirements.

D. Business Use of Service and Device - Prohibition on Resale and Definition of Proper Use

If you have subscribed to one of our Unlimited Office Service Plans, the Service and Device are provided to you as a “normal” 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 Office Service 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 or to invoice you at the applicable per minute rate for all outbound calls in excess of 3,000 minutes per month, if we determine, in our sole discretion, that the Service is being used for any of these purposes.

If you have subscribed to one of our Unlimited Residential Service Plans, the Service and Device are provided to you as a residential user. 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 or to invoice you at the applicable per minute rate for all outbound calls in excess of 1,500 minutes per month, if we determine, in our sole discretion, that the Service is being used for business purposes.

E. Notice of Rate Changes

We may change the prices and charges for the Services from time to time. We may increase or decrease prices and rates without providing advance notice. Changes to any rates, charges, or 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 Rate Plan. Currently all calls on any of our Plans are billed in 60 second (whole minute) increments following an initial 60 second period. 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 or International Special Services Numbers

When calling to many countries other than US and Canada, there is a wide variation in cost between calling landline numbers and mobile (cell phone) numbers. Calls to both international mobile (cell) phones and international special services numbers are charged a different (usually significantly higher) rate than calls to landline numbers in that same country. The rates you will be charged for such calls are set forth in your Rate Plan and are typically designated by a “mobile” or “special services” notation after the country name (e.g., France Mobile as opposed to France).

H. Additional Charges for non-US Service Numbers

For all new or ported Service Numbers that are not US telephone numbers, there is an additional cost for both activation and monthly recurring charge for the service. These additional costs vary by country, and will show up on your invoice clearly marked.

I. Timing of Calls

Generally, timing of metered calls begins when the called party or an automated answering device (such as an answering machine, a PBX auto-attendant 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.

J. 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, which may include placing calls to other countries. If you take or send the Equipment to a country other than the US or Canada or you use our Service in conjunction with a Softphone application running on a computer outside the US 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.

K. 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. In particular, you will not be able to call 911 using the Service during a power outage.

L. 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.

M. 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 immediately 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.

N. Theft of Service

You agree to notify us immediately, in writing, by electronic mail or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and/or your VoIP phone 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 using a Device stolen from you and any and all stolen Service or fraudulent use of the Service.

O. Number Transfer on Service Termination

We will, as required by the FCC, release any telephone number that was either provided by us to you or ported to us by you and used in connection with your Service 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

any applicable disconnect fees.

P. Service Distinctions

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

Q. Collect Calls, Operator Services, 900 Calls, x11 Calls

We do not offer collect calls, 0+ or operator assisted call, or calls to 900 numbers via this Service. The Service does not support 311 or 511 services.

R. Ownership and Risk of Loss

You will own the Device and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped to you until the time (if any) when it is returned to us in accordance with this Agreement. We offer a 180-day warranty against manufacturing defects on all Devices we offer and will replace any faulty equipment that is returned to us within that period of time. This warranty covers manufacturing defects only, and specifically does NOT cover damage that results during shipping, from misuse or abuse, or was caused by electrical surges or lightning strikes.

S. No Directory Listing

The phone numbers you obtain from us will not be listed in any telephone directories. Phone numbers transferred from your local phone company may, however, continue to be listed. As a result, someone with your phone number may not be able to utilize a reverse directory to look up your address.

T. Surcharges and Governmental Fees

In addition to surcharges that may be found in the applicable Service Plan, we may adjust the per minute rates or impose additional fees or charges in order to recover amounts it is 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").

U. Taxes and Tax Exemption

All taxes, tax-like charges, and tax-related surcharges are referred to collectively as "Taxes". We calculate and collect all such Taxes that we believe are mandated by federal, state and local laws to apply to VoIP services. You agree to pay all Taxes charged on your invoice.

If you provide us with a duly authorized tax exemption certificate, we will exempt you as required by law, effective from the date we receive your certificate. If you are required by the laws of any foreign tax jurisdiction to withhold income or profit taxes from a payment, within 90 days of the withholding, you will provide us with official tax certificates documenting remittance of the taxes. The tax certificates will be in a form sufficient to document qualification of the taxes for the foreign tax credit allowable against our U.S. corporate income tax, and will be accompanied by an English translation. Upon receipt of the tax certificate, we will issue you a credit for the amounts represented thereby.

IV. RESTRICTIONS ON THE USE OF SERVICE

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

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, when that country has prohibited such an offering by statute or regulatory decision.

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.

We may, without notice (consistent with governing laws or regulations), block traffic to or from specific countries, country codes, cities, regions, local telephone exchanges ("NXX exchanges"), individual telephone numbers, groups or ranges of individual telephone numbers, 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

You must provide us with a valid credit card number when the Service is activated. 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, including but not limited to: activation fees and monthly Service Plan fees, advanced feature charges, equipment purchases and shipping and handling charges. Any charges not included in your Service Plan and any additional usage charges are billed in arrears 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. Your payment is due and payable 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 are late in paying, we have the right to charge you a late fee of 1.5% per month, 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.

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 non-payment of account charges. Termination of Service for declined or expired card, reversed charges or non-payment 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 attorney's fees.

You are responsible for payment of all charges for services furnished to you and 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.

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 or your Invoice.

If we hire a collection agency to collect, or attempt to collect, any charges you owe 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.

If our billing system cannot bill 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.

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

If you cancel your Service after the 30-day Money-Back Guarantee period, there is no cancellation fee, but you will not receive any refund, and you may not be able to use the Device or Equipment with any other VoIP service. Cancellation may take up to three business days, and your credit card will be charged for any usage after you contacted us to cancel your Service.

B. By Us

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 non-payment or possible fraud;
- d. You have been given written notice (including email notification) by us of any past due amount (which remains unpaid, in whole or in part) for any of our 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.

VII. LIABILITY

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.

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.

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 HAS 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.

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.

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.

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"). 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 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 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. 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, on-line, 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 attorney's 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 without our written permission. 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 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 financial liability or obligation you have to us under this Agreement will 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.

J. No Third Party Beneficiaries

No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.