



TERMS AND CONDITIONS FOR SERVICES
AND/OR EQUIPMENT PROVIDED BY
XACT ASSOCIATES, LLC

November 26, 2012 REV A

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. IT IS ESPECIALLY IMPORTANT FOR YOU TO READ SECTION 10 (DISPUTE RESOLUTION) CAREFULLY, AS SECTION 10 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. YOU WILL CONTINUE TO HAVE CERTAIN RIGHTS TO OBTAIN RELIEF FROM FEDERAL OR STATE AGENCIES.

1. Definitions

"You" means the person or entity that subscribes to Services or purchases or leases Equipment and anyone who accesses the Services and Equipment provided to you.

"We," "us," "our," and "Xact" refer to the Xact legal entities providing Services to you and as identified on your bill.

"Service(s)" refer to any services you have agreed to obtain from us.

"Equipment" means any equipment or accessories you purchase or lease from us or those provided by us for use in any manner in connection with your Services. Once Equipment is delivered to you, you bear the risk of loss. For ease of reference, Services and Equipment provided by Xact shall be referred to in this document collectively as "Services."

"Service Order" means the form (whether paper or electronic, including on-line order forms), if any, in which you apply for or make changes to Services and may include the length of time you will subscribe to a Service, rate plans, access charges, fees, taxes and surcharges, choice of long distance carrier, and the Equipment you have selected.

2. Agreement and Acceptance. This Agreement incorporates by reference and you agree to be bound by the following, in this order of priority **AND INCLUDING ANY CHANGES (SEE SECTION 20 BELOW)**: 1) any applicable tariffs filed with the Federal Communications Commission ("FCC") or the relevant state public service commission; 2) The FCC or state web-posted price lists or terms and conditions (either, "price lists") posted at <http://www.XactLLC.com/terms>; 3) the product (bundle)-specific Terms and Conditions (see Section 24 herein and Your Bill Messages) and any additional agreements associated with such Products; 4) the Service Order, if any; 5) any relevant click-through agreement for the Services you received; 6) these Terms and Conditions ("Terms"); 7) the Acceptable Use Policy posted at <http://www.XactLLC.com/AcceptableUse> and 8) the Privacy Policy posted at <http://www.XactLLC.com/privacy>. You accept this Agreement when you do any of the following: (a) give us your written or electronic signature, (b) tell us orally or electronically that you accept (i.e., by clicking the "I Accept" button for on-line purchases or account changes), or (c) use any Services. If you have never used the Services before and do not wish to be bound by this Agreement, do not begin using them and notify us immediately. By accepting this Agreement, you acknowledge that you are 18 years of age or older, are competent to enter into a contract with us, and are authorized to obtain Services or make changes to an existing account. You may obtain a copy of these Terms and any product-specific Terms and Conditions by visiting <http://www.XactLLC.com/terms> or by calling a service representative at 888.747.Xact (9228). This Agreement supersedes any and all statements or promises made to you by any of our employees or agents. If you are a business customer with an existing contract, those contract terms will control.

3. Charges for Services and Taxes, Fees and Surcharges. You are responsible for paying all charges applicable to Services provided to you including, but not limited to, monthly recurring charges ("MRCs"), access charges, features, changes and moves to Services, installation charges, IP address charges, billing charges, toll, long distance, and directory assistance, and any other usage-based charges. In addition to the monthly recurring and usage-based charges, taxes, fees, surcharges, assessments and other charges apply to all Services and Equipment, including how those may change in the future. In certain service areas paper bills are available for a monthly charge. To determine whether certain taxes, fees and surcharges are applicable to Services provided to you, we are required by federal law to obtain your street address, which must be within our service area. You represent and warrant that the address you provide us to obtain Service is correct, and you acknowledge that we are relying on this information to determine which taxes, fees or surcharges are applicable to your Service. You agree to notify us if your address changes. In the event you do not provide us with a valid address or address change, you may be responsible for additional taxes, fees or surcharges and penalties associated with failure to pay taxes based on the proper address, and we may terminate your Services.

As a convenience to you, Company may include charges for third party services on your monthly bill. You should always review your bill carefully and contact the Company if you are unsure about a charge on your bill. Company also offers the ability to block third party charges from your monthly bill. This service is optional and free of charge, and if you are interested in adding a third party block to your account, call a Company representative at the number found on your statement to determine if your account is eligible. The block does not apply to Company-related Services to which you subscribe.

4. Billing and Payment; Rate Increases. We will bill you the recurring and installation rates you were quoted for Services or those associated with the Services you use or ordered, with increases on notice. All recurring charges are billed one month in advance. Billing at a location will begin upon the earlier of (i) the Installation Date (which may be the date administrative access to certain software-based Services is granted to Customer); or (ii) 30 days after delivery of the applicable facility and/or equipment to the Customer premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent); however, Company may choose to bill in full monthly increments with no proration for partial service periods when service either starts or ends in the middle of a billing cycle. We reserve the right to back-bill you for Services actually used but not previously billed.

Payment in full is due no later than the due date indicated on your bill and we may apply a late fee and interest and other charges (including, but not limited to, collection fees) up to the maximum amount permitted by law. Returned checks, payment by phone, paper bills and other fees due to your choice of payment method or billing receipt may also be subject to fees. You agree to pay costs and fees, including but not limited to attorney fees, we incur to collect an unpaid balance from you.

If you have authorized payment for Services by credit card or by debiting a bank account, no additional notice or consent is required before we invoice the credit card or debit the bank a count for all amounts due to us for any reason.

5. Credits and Deposits. Our agreement to provide you Services is subject to credit approval and, as such, you authorize us to ask credit-reporting agencies for credit information about you. We may, in our discretion, require you to submit a deposit as security for payment of charges. In the future, an additional deposit may be required if either the amount or number of Services is increased or your credit rating changes. Simple interest will be paid on the cash deposit for the period it is held by us and will be refunded if satisfactory credit has been established or upon termination of service (if no balance is due). We reserve the right to apply the deposit to any amount due and unpaid but the payment of a deposit in no way relieves you of paying your bills in a timely manner.

6. Termination by You

Pre-Installation. If you are a business customer and you terminate your order prior to the installation of Services, you may be required to pay a pre-installation cancellation charge equal to three (3) months of MRCs (or greater if our costs to other providers are greater than this amount). You agree that this charge is a reasonable measure of the administrative costs and other fees incurred by us to prepare for installation.

After Installation. If you cancel your Services or a portion thereof after installation, you remain liable for payment of all outstanding charges for all Services you used and



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Equipment you purchased from us prior to termination and you will be charged for the full last month of Service with no proration or credit if you terminate Services prior to the last day of your billing cycle.

Fixed Term Agreements. When you signed up with us, you may have been required to commit to a term or a minimum purchase as part of your purchase of Services. EITHER YOU OR WE MAY ELECT NOT TO RENEW YOUR SERVICE BY PROVIDING NOTICE TO THE OTHER NO LATER THAN THIRTY (30) DAYS PRIOR TO EXPIRATION OF THE FIXED TERM. IF NEITHER YOU NOR WE DELIVER A TIMELY NOTICE NOT TO RENEW, THE SERVICES WILL RENEW ON A MONTH-TO-MONTH BASIS. AS SUCH, IF YOU TERMINATE THIS AGREEMENT AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR CAUSE, YOU SHALL PAY TO US AS LIQUIDATED DAMAGES AN AMOUNT EQUAL TO 50% OF THE MRCS MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM, OR IF YOU TERMINATE OR DISCONNECT LESS THAN THE ENTIRETY OF YOUR SERVICES SUCH THAT YOUR ACTUAL USAGE AT A LOCATION FALLS BELOW ANY MINIMUM MONTHLY CHARGE ("MMC") FOR THAT LOCATION, YOU AGREE TO PAY THE MMC EVERY MONTH OR RENEWAL TERM ("LIQUIDATED DAMAGES"). YOU AGREE THAT IN THE EVENT OF TERMINATION BY YOU, THE ACTUAL DAMAGE TO COMPANY IS DIFFICULT TO ASCERTAIN AND THAT THIS TERMINATION FEE REPRESENTS LIQUIDATED DAMAGES AND NOT A PENALTY AND IS A REASONABLE ESTIMATE OF THE ACTUAL REDUCTION IN THE VALUE OF THIS AGREEMENT THAT WE WILL SUSTAIN.

Month-to-Month Agreements. If no length of time is identified on the Service Order or you were not otherwise required to commit to a term, then the term is month-to-month and you or we may terminate at any time by providing notice at least thirty (30) days prior to the effective date of termination. You remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased from us prior to termination and you will be charged for the full last month of Service with no proration or credit if you terminate Service prior to the last day of your billing cycle.

Bundled Services. If you receive bundled Services and you subsequently unbundle, terminate, or disconnect any of these Services, or we disconnect any of the Services, we may adjust the rates for the remaining Service(s) to the current price.

Change in Location. A change in your service address or the location to which any Service is provided to you may constitute, at our sole discretion, termination of the Services or result in an increase in the prices you must pay for the Services.

Change to another Carrier. We may deem a request by you to port your numbers as a request by you to terminate your Agreement. If you choose to port less than all of your numbers, or you leave any Services connected, we will continue to bill you for the numbers and/or Services still connected.

7. Termination by Us. We may limit, interrupt, terminate or refuse to provide a Service if you: (a) do not honor any provision of this Agreement; (b) use a Service in a manner that adversely affects other customers or harasses them, our employees, or others; (c) use Service to engage in fraud or unlawful conduct or are suspected of doing so; (d) modify your phone or any software residing thereon from the original manufacturer specifications, including for the purpose of accessing non-Xact services; (e) use Service in a manner that is excessive or unreasonable when compared to the predominant usage patterns of other customers on a similar service plan in your geographic area (and we may also implement charges or change you to the appropriate rate plan consistent with such use); (f) resell any Service; (g) for any other reason set forth in the relevant tariffs and price lists or terms and conditions; or (h) nonpayment of any amount owed by you to us or billed by us on behalf of others, at your request, including disputed amounts that Xact determines are valid charges on your bills. We may restore such interrupted or terminated Service, in our sole discretion, following your correction of the violation and payment of any amounts due, including any restoration charge we assess for restoring your Service.

8. Personal Identifiers. We assign telephone numbers, e-mail addresses, IP addresses, and other personal identifiers in connection with the Services. You have no proprietary right to any such identifiers, and we reserve the right to change them upon notice to you. In the event that we allow you to transfer a personal identifier to another party to obtain any Services we provide you, we reserve the right, prior to honoring the request for transfer, to charge a fee for the transfer and to collect any money owed for Services.

9. Disputed Bills. You must review bills in a timely manner. To dispute a bill, you must comply with the dispute resolution provisions in Section 10 and submit your dispute, in writing, within 60 days after the date on the bill. You must pay any undisputed portion while your dispute is investigated. You accept all charges on your bill not disputed within 60 days and must pay those charges.

10. Dispute Resolution. By utilizing Xact's Services and agreeing to these Terms, you agree to the following dispute resolution procedures. ***You and Xact agree to waive any right to a trial by jury in a court of general jurisdiction and any right to participate in a class action or consolidated action regarding a dispute as defined below. Specifically, you and Xact agree to waive any right to pursue a dispute by joining a disputed claim with the disputed claim of any other person or entity or to assert a disputed claim in a representative capacity on behalf of anyone else in any lawsuit, arbitration or other proceeding.***

If you have a dispute with Xact, you should notify Xact's Customer Care department at the number listed on your invoice. If the Customer Care department is unable to resolve your dispute, you must submit your dispute to us in writing at the following address: Xact Communications, 560 E. 3rd Street, Suite 202, Lexington, KY 40508, Attn: Executive Customer Relations. You must describe your dispute and provide enough detail to allow us to understand it. You must provide any supporting documentation with your written dispute. If we have a dispute with you, we will send you a written notice to your billing address to attempt to resolve the dispute. You and Xact agree that a dispute is any claim or controversy related in any way to Xact's Services, including charges for Services, Equipment, Service Order(s) or our agreements pursuant to these Terms or any other agreements, whether the dispute arises in tort, contract, by statute or any other legal theory and whether the dispute arises under this or any prior agreement with us or arises after your Services with Xact are terminated. If you and Xact are unable to resolve the dispute after 60 days from the date of receipt of the written dispute, you agree that either you or Xact shall resolve the dispute in only one of two possible ways: (1) by seeking relief in small claims court, if appropriate under the applicable court's rules, in the city or county of the billing address reflected on your bill; or (2) by arbitration. **This Section does not prohibit you from submitting any issue you have with Xact to any federal, state or local governmental agency or public service commission which may be able to seek relief from Xact on your behalf.** If the dispute is regarding the charges for Services, you agree that if you do not seek relief in small claims court or by arbitration following the 60 day dispute period, then you will immediately begin paying the disputed amount that Xact determines is valid, plus any charges that were not paid during the 60 day dispute period, or Xact may terminate the Services.

Regarding arbitration, you and Xact specifically agree to finally resolve all disputes not filed in small claims court by arbitration that will be final and binding on both you and Xact, subject to any exceptions required by applicable law. ***The following provisions shall apply to arbitration:***

a. Notice: If you want to arbitrate a dispute with Xact after expiration of the 60 day dispute period noted above, you must file a claim with the American Arbitration Association ("AAA"). Click here <http://www.XactLLC.com/ArbitrationNotice> for a form that you may, but are not required, to use. The claim must include a description of the dispute, a brief outline of previous efforts to resolve the dispute, all supporting documentation and a proposed resolution. A copy of the claim and proof of payment of the filing fee, such as a copy of the check or money order, should be sent to Xact at: 560 E. 3rd Street, Suite 202, Lexington, KY 40508, Attn: Legal Department ("Arbitration Notice Address"). Xact will reimburse you for the filing fee if your claim does not exceed \$75,000. If Xact wants to arbitrate a dispute with you after expiration of the 60 day dispute period noted above, Xact will send a copy of its claim to your billing address.

b. Applicable Law: The interpretation and enforceability of the arbitration provisions, and whether a dispute is subject to arbitration, is subject to the Federal Arbitration Act



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("FAA") only and not state law.

c. Applicable Rules: Xact and you agree that the arbitration will be conducted by the AAA. The rules governing the arbitration proceeding will be the current Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes ("AAA Rules") from the American Arbitration Association. The AAA rules are at www.adr.org or can be obtained by calling 1.800.778.7879.

d. Method of Arbitration: If your claim is for \$10,000 or less, Xact agrees that you may choose whether the arbitration will be conducted solely on the written documents submitted, by telephone or in person in the city or county of the billing address reflected on your bill. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA rules. The written documents can be the notice to arbitrate that either of us send to the other regarding arbitration and referenced above.

e. Arbitration Costs and Attorney Fees: If you properly file a claim with AAA pursuant to these arbitration provisions, and the amount of your dispute does not exceed \$10,000, Xact agrees to pay for all AAA filing, administrative and arbitrator fees ("Arbitration Costs") and your reasonable attorney's fees (with reasonable hourly rates and expenses to be determined by the location of the arbitration) ("Attorney Fees") incurred by you regardless of the decision of the arbitrator, unless your claim is found to be frivolous or improper (as set forth in the Federal Rules of Civil Procedure Rule 11) by the arbitrator. A portion of the payment of Arbitration Costs may be in the form of reimbursement, as you may be required to place a deposit when your notice of arbitration is filed. If the claim is found to be frivolous or improper, the AAA Rules will apply regarding payment of Arbitration Costs. If your dispute exceeds \$10,000 but not \$75,000, Xact agrees to pay all the Arbitration Costs and 50% of your Attorney Fees. For disputes of \$75,000 or more, the AAA rules regarding Arbitration Costs will apply. However, Xact agrees to pay 50% of the Arbitration Costs, and each party will pay its own Attorney Fees incurred for disputes of \$75,000 or more. Notwithstanding the foregoing, if your claim is found to be frivolous or improper (as set forth in the Federal Rules of Civil Procedure Rule 11) by the arbitrator, Xact will have no obligation to pay any of your Attorney Fees. If Xact disputes the reasonableness of any Attorney Fees, you agree that the presiding arbitrator shall determine what is a reasonable fee and his/her decision regarding Attorney Fees will be binding on both you and Xact. In no event shall Xact be entitled to an award of its Attorney Fees.

f. Awards: If the arbitrator's award is in your favor and is greater than the value of Xact's last settlement offer made to you prior to selection of the arbitrator, Xact will pay you the amount of the arbitrator's award or \$3,000, whichever amount is greater. Xact also will pay your attorney's reasonable fees, including expenses, or \$2,500, whichever amount is greater.

g. Injunctive relief: If you seek declaratory or injunctive relief in the arbitration, the arbitrator may award such relief only to the extent necessary to provide relief warranted by your individual claim.

h. Consolidation: The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

i. Confidentiality: Any arbitration shall remain confidential. During the arbitration, the amount of any settlement offer made by Xact or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Xact is entitled. Neither you nor Xact may disclose the existence, content or result of any arbitration or award, except as may be required by law, or to confirm and enforce an award.

j. Exceptions: Nothing in this Section shall prevent Xact from issuing notices, including take-down notices for alleged trademark or copyright infringement pursuant to the Digital Millennium Copyright Act, or termination of service pursuant to Xact's Acceptable Use Policy for your abuse of your internet access services. Nothing in this Section shall prohibit Xact from filing a lawsuit in a court of general jurisdiction to collect outstanding balances for unpaid Services or Equipment, or any other type of charge owed on your account, or for the theft of any Services or Equipment by you. This Section is intended to resolve outstanding disputes between us and not to collect a debt owed by you to Xact.

k. Limitation of Liability: This Section is subject to the Limitation of Liability Section in these Terms and Conditions.

l. Limitations Period: Any dispute must be brought by you or Xact within two years after the date the basis for the claim or dispute first arises.

Notwithstanding any provision in these Terms and Conditions to the contrary, you and Xact agree that if Xact makes any future change to this arbitration provision (other than a change to the notice addresses), you may reject any such change by sending Xact written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any such change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

If the provisions concerning the waiver of the class or consolidated actions, or the provisions regarding mandatory arbitration, are deemed unenforceable or void as a matter of law, you and Xact agree that all claims will be brought in a court of general jurisdiction and not resolved through arbitration. **YOU AND XACT WAIVE, THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR THE SERVICES PROVIDED BY US.**

11. Services Provided by Third Parties. The Services will be provided either by us or by our third party vendors or contractors. We reserve the right to change or modify the source of any Services provided to you without notice.

12. Company Provided and Owned Equipment. Any Equipment installed by us on your premises that is not the subject of a sale or lease to Customer (such as the CSU/DSU interface cards, Channel Bank and router, if applicable) shall remain at all times our property. It shall remain in good condition, less normal wear and tear. If we do not have access to your premises within 30 days after Services are terminated, you shall reimburse us for the full purchase price of the equipment as well as any attorney's fees and costs.

13. Disconnection of Current Provider; Special Construction; Third Party Charges. You are solely responsible for disconnecting Services with your current service provider and we are not responsible for any charges assessed against you by such provider. You shall pay all charges if we or a third party provider is required to extend the demarcation point or undertake special construction for you. Unless we specifically agree in writing to undertake equipment installation and maintenance work, you are responsible for all charges assessed by your phone system vendor and other third parties in connection with the Services and we shall have no responsibility for maintenance or repair of same.

14. Access to Third Party Services. You agree that the telephone line on which your Services are activated may not be used to access any third-party services equivalent to Services we provide or can make available, even if you declined to purchase such Services from us. Your telephone line contains programming designed to enable access to our Services only. You may not use any manual or electronic means to circumvent any restrictions placed on your telephone line to modify without authorization any programming supplied by us.

15. Privacy and Customer Proprietary Network Information. You authorize us to monitor and record communications to us regarding your account or the Services for purposes of quality assurance. For on-line orders, we may implement reasonable procedures including, but not limited to, validating information provided by you or restricting the amount of Services purchases online. We reserve the right to cancel or reject on-line orders at any time for security or privacy reasons.



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To provide Services to you, we maintain certain customer proprietary network information ("CPNI"). CPNI includes information that relates to the quantity, technical configuration, type destination, location and amount of use of any telecommunications service we provide to you, and which we obtain because of the carrier-customer relationship between us. CPNI also includes information contained in your bill. We may use and share your CPNI without your permission for the following purposes:

- To initiate, render, bill and collect for your Services
- To protect the rights or property of us or other customers or carriers from fraudulent, abusive, or unlawful use of or subscription to the Services you get from us;
- To provide information telemarketing, referral, or administrative services to you when you call us if you give us permission to do so;
- To provide call location information regarding the user of a wireless mobile service to certain other parties in an emergency situation.
- To provide information requested by law enforcement or a third party pursuant to a subpoena or other method of requesting information. We will not give you notice of any subpoena or court or administrative orders related to your account, IP address, contact information or use of Services unless required to do so by law.

If you do not want us to provide your information to other Xact entities, please notify us by calling Support at 888.747.Xact (9228).

When you view your account information or shop for Services on-line, you agree that we may display your CPNI on-line after proper verification by you to fill orders or allow you to make account changes.

16. Theft and Fraud. If your Services are lost or stolen or fraudulently used, then you are responsible for all usage incurred before we receive notice from you of such loss or theft. If we choose to pursue investigation or prosecution of the loss or theft, you agree to cooperate in the investigation of fraud or theft and to provide us with such information and documentation as we may request (including affidavits and police reports).

17. LIMITATION OF LIABILITY. FOR PURPOSES OF THIS SECTION, DISCLAIMER OF WARRANTIES AND EMERGENCY/CRITICAL LINES SECTIONS, "OUR" OR "WE" INCLUDES XACT'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS AND ANY ENTITY ON WHICH BEHALF THE COMPANY RESELLS SERVICES. UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY ACCIDENT OR INJURY CAUSED BY SERVICES, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE OR FOR ANY SERVICE INTERRUPTIONS, DELAY OR FAILURE TO PERFORM UNDER THIS AGREEMENT DUE TO CAUSES BEYOND OUR REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO, STRIKES, LOCKOUTS, OTHER LABOR UNREST, CABLE CUTS OR COMMON CARRIER DELAYS. YOU AGREE THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF BOTH YOU AND US TO LIMIT OUR LIABILITY AS PROVIDED HEREIN.

DATA SERVICES. YOU ACKNOWLEDGE THAT THE INTERNET IS A VOLATILE ENVIRONMENT AND WE ARE NOT LIABLE FOR CONFIDENTIAL INFORMATION STORED ON OR TRAVERSING OUR NETWORK. YOU MUST TAKE ALL APPROPRIATE PRECAUTIONS TO SECURE CONFIDENTIAL INFORMATION INCLUDING ENCRYPTING IF YOU DEEM NECESSARY.

18. DISCLAIMER OF WARRANTIES. SERVICES ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BROADBAND SPEEDS, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY COMPANY'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.

19. Emergency/Critical Lines. CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES MAY NOT PROVIDE ACCESS TO 911 OR TRANSMIT THE LOCATION OR EXTENSION IF CUSTOMER ATTEMPTS TO ACCESS 911 IN AN EMERGENCY. Examples include voice over Internet protocol (VoIP), Centrex, and private branch exchange. Additionally, because T1s and VoIP can cease operating during a power outage, you should have a basic business or copper line for elevator, alarm, E911 and other critical functions. By proceeding with use of Services, you assume all responsibility and risk of harm, loss, or damage in the event that 911 access fails, is not possible, or does not provide the address, correct address, extension or other information to emergency authorities.

20. Changes to these Terms and Conditions. We may change these Terms, including any change in any charge or fee, or the imposition of a new charge or fee, at any time if we give you notice of the change. If we make a change to these Terms and Conditions that is material and you do not wish to accept such material change, you may terminate the affected Service by giving us 30 days notice, in which case you will not be subject to an early cancellation fee. You will, however, still be responsible for all charges for Services provided before you terminated your Agreement. A material change is ONLY a change that (a) terminates or substantially reduces the availability of a Service for you or (b) results in the increase of any charge by more than 10% of the monthly access charge for that Service. Material changes in your Service DO NOT include the increase in, or imposition of: (1) any charge required to be collected by any governmental authority, such as taxes or surcharges, or (2) any charge not prohibited by any governmental authority to recoup our expense incurred to comply with a governmental requirement.

As noted in Section 10, if Xact makes future changes to the arbitration provision in that Section (other than a change to the notice addresses), you may reject this change by sending Xact written notice within 30 days of the change to the Arbitration Notice Address. By rejecting the change, you agree that you will arbitrate any dispute between us in accordance with the language in Section 10 existing prior to the change.

21. Applicable Law. Your Agreement and our provision of Services to you are subject to (a) the laws of the state identified in the billing address that you have provided us and (b) any applicable federal laws including, but not limited to, the Federal Arbitration Act, 9 U.S.C. § 1 et seq. In the event of an inconsistency between any governmental requirement and these Terms regarding the provision of a Service that is subject to the governmental requirement, the provisions of the governmental requirement will apply to the extent necessary to avoid the inconsistency.

22. Assignment. We may assign this Agreement to another entity without any advance consent from or notice to you. You may not assign this Agreement without our consent.

23. No Waiver, Severability. If we do not enforce any right or remedy available under this Agreement, that failure is not a waiver. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in force.