



Covad Communications Company Services Agreement

COVAD SERVICE AGREEMENT TERMS AND CONDITIONS

These Terms and Conditions contain four sections:

1. The first section is Covad's standard "**General Terms and Conditions**," which applies to all the Services and Products that Covad sells.
2. The second section is Covad's "**Integrated Access Service Appendix**." The Integrated Access Service Appendix contains specific terms and conditions that apply to any order that you, Customer, place with Covad for Covad's voice Services and Products.
3. The third section is Covad's "**Broadband Services Appendix**." The Broadband Services Appendix contains specific terms and conditions that apply to any order that you, Customer, place with Covad for Internet Access Products
4. The fourth section is Covad's "**Security Services Appendix**." The Security Services Appendix contains specific terms and conditions that apply to any order that you, Customer, place with Covad for Covad's security Services and Products, including but not limited to, anti-virus software, VPN, and firewall Services and Products.

In addition, the Customer Policies, Privacy Policies and the Acceptable Use Policies (collectively, the "**Policies**") are incorporated by reference into these Terms and Conditions; the most current version of each is available for review and printing at www.covad.net/legal.

GENERAL TERMS AND CONDITIONS

- 1.0 Services.** Covad shall use commercially reasonable efforts to provide the Services (and associated Products) (as defined below) described in each applicable web order or written Service Order or Quote (each an "**Order**"). If there is no written Order, Covad will provide the Services and/or Products in accordance with the terms of the Agreement at Covad's then prevailing retail rates. If Customer purchases additional services or products from Covad, the new services will be considered "**Services**" and the new products will be considered "**Products**," and shall be governed by the terms of this Agreement, unless a subsequent Agreement is executed between Customer and Covad. Customer shall use the Services and Products in accordance with all applicable laws, rules and regulations and in accordance with the Policies. Customer may not resell or redistribute the Services or Products. Covad and its suppliers may interrupt Services for maintenance and other operational reasons as set forth in the Policies; except as provided in the Policies, Customer shall not be entitled to receive any compensation for such interruptions. ***Covad reserves the right to change any of the Policies upon notice to Customer. If Customer does not agree to the changed Policies, Customer may terminate, without penalty, any Services that are affected by the change in the Policies by providing Covad with written notice, specifying the change in the Policies, within thirty (30) days of the date of the notice of the changed Policies; otherwise any continued use of the Services shall be deemed to be acceptance of the changed Policies.***
- 2.0 Products, Software and Limited Products Warranty.** Covad or its suppliers may deliver to Customer certain hardware in connection with the Services (collectively, "**Products**"). In addition, Covad or its suppliers may supply software (external to or embedded in the Products) and related documentation (the "**Software**"). Covad grants to Customer a personal, limited, non-transferable, revocable, non-exclusive license (without the right to sublicense or create derivative works) to use the Software during the Term solely for Customer's own internal use of the Services in accordance



with this Agreement. Customer shall not copy, modify, resell or distribute the Services, the Software or the Products, create or recreate the source code for the Products or any Software, or re-engineer, reverse engineer, decompile, disassemble or attempt in any way to disable, deactivate or render ineffective the password protection in the Products or any Software. Some software necessary to fully utilize the full functionality of the Services may require Customer to accept additional terms and conditions required by the third-party providers of such software. Covad is not responsible for the configuration of, or internal equipment for, Customer's personal computer that may be necessary to make Customer's computer or systems compatible with the Services or Products. In addition to any applicable manufacturer's warranty, any Products that Customer purchases from Covad will carry a non-transferable repair or replacement warranty of at least one (1) year. Please see the section entitled "Warranty" in the Policies for a complete description and conditions on such warranty. In addition to the Warranty Disclaimers below, Covad and its suppliers shall have no obligation or liability in connection with any equipment not purchased from Covad and configured by Covad, or for any abuse, misuse or reconfiguration (including, but not limited to, the addition of software or other devices) of any equipment by any party other than Covad. Covad reserves the sole and exclusive right to determine or revise its service area, and the right to discontinue any Service or Product without liability to Customer upon sixty (60) days prior notice to Customer.

3.0 Fees, Payments and Invoice Disputes. Customer shall pay for all Services and Products that Covad furnishes to Customer. Customer understands that not all charges may be stated in an Order; for a description of these additional charges, please see the Policies. Customer's obligation to begin paying for the Services will start on the "**Billing Start Date**" for each individual Service. Generally, the Billing Start Date for a Service is the date upon which Covad has provisioned the Service to Customer. Please see the Policies for a description of the Billing Start Date for each particular Service. Monthly service charges, upgrades/downgrades, move orders and other charges related to service changes are pro-rated for the month in which they take place. Covad shall bill Customer in arrears for non-recurring and pro-rata monthly charges (if any) and shall bill Customer in advance for the monthly fees for the Services. All payments are due within thirty (30) days of the invoice date ("**Due Date**"). If Customer has not paid the undisputed portion of an invoice by the Due Date Covad will stop taking Orders for additional Services from Customer, and if Covad has provided Customer with at least fifteen (15) days notice of such overdue amounts (a "**Payment Default**"), Covad may take any combination of the following actions: (i) suspend the unpaid Services; (ii) require a cash deposit or standby letter of credit; and/ or (iii) terminate the unpaid Services or the Agreement for breach. If Covad terminates Customer's Service(s) for a Payment Default, Customer will, in addition to amounts owed Covad, be responsible for all applicable Early Termination Fees, as defined in the Policies. For all payments not made by the Due Date, Covad may charge Customer interest on overdue amounts at the lesser of (i) 1.5% per month on the outstanding balance due or (ii) the maximum interest charges permitted under applicable law (the "**Late Fees**"). Customer will be responsible to Covad for any damages (including collection costs, reasonable attorneys' fees and court costs) that Covad incurs to collect overdue charges; customer acknowledges and agrees that it may be impracticable and/or extremely difficult for Covad to ascertain the actual amount of such damages and that Covad may charge customer a single fee that reasonably approximates fair compensation for such damages. Customer must provide all supporting documentation that Covad may reasonably request for all disputes. Customer must pay the undisputed part of the invoice by the Due Date. Covad shall review all disputes in good faith. If Covad denies a disputed amount, Customer must submit the disputed amount to Covad within ten (10) days of Covad's denial of the dispute. If Customer does not submit the disputed amounts within ten days, Covad may, without further notice, exercise any of its rights for a Payment Default as described above. An invoice will be deemed correct and payable in full unless Customer disputes it in writing within 60 days of the date of the invoice date; if Covad does not receive written notification of Customer dispute within such 60 day period, Customer agrees that Covad is entitled to all of the charges set forth in the invoice and that Customer has waived any right to dispute such charges for any reason. Except for taxes and other governmental fees and surcharges, Covad will not back bill Customer for charges incurred more than 60 days after the invoice date on which such charges should have appeared.

4.0 Taxes. The Services and Products may be subject to a combination of federal, state and local taxes, fees, or surcharges. Taxes/fees/surcharges may include, but are not limited to, a combination of universal service fund/telecommunications relay service surcharges, sales and use taxes, gross receipts, excise and utility users taxes, municipal occupation and license taxes, business and occupations taxes, 911 fees or taxes, franchise fees and/or surcharges (collectively, "**Taxes**").



Taxes will be applied to all Customer transactions unless Customer has provided Covad with a properly completed and timely received exemption certificate for each state and tax type for which Customer claims non-taxable status. Once Customer has provided the proper exemption certificate, Covad will cease charging applicable Taxes on Customer's next monthly invoice; Covad will not issue a refund or credit for any previously invoiced Taxes, and such back-taxes are not subject to the dispute process described in Section 3.0, above. Customer shall indemnify and hold Covad harmless (including attorneys' fees and expenses) from all third party claims, suits, demands, judgments and other actions related to Covad's reliance on Customer's exemption certificate(s). Covad may charge Late Fees on all unpaid taxes. Covad further reserves the right to charge a reasonable blended administrative fee to recoup its costs and expenses in administering such Taxes.

5.0 Term and Termination. The term of this Agreement will run from the Effective Date until the end of the term (or any continuation thereof) of each Service. The initial minimum term for each Service is set forth in the Service Order (each an "**Initial Term**"). The start date for the Initial Term of each Service varies by the type of Service but is generally the Billing Start Date; please see the Policies for a description of when each Service's Initial Term begins. After the end of a Service's Initial Term, the Service shall continue on a month to month basis, and either party can then terminate such Service upon thirty days prior notice. In addition, Covad can terminate this Agreement for cause at any time, including during the Initial Term, if (a) Customer is in Payment Default or (b) Covad determines that Customer has violated a material provision of this Agreement or Covad's then-current Acceptable Use Policy (as posted on www.covad.net/legal) or (c) Covad determines that Customer has resold or otherwise transferred the Services and/or Products in violation of the Agreement (each a "**Termination for Breach**"). If Covad terminates a Service for Breach, Customer shall pay, in addition to any amounts owed Covad through the month of termination, the applicable Early Termination Fee. If Customer elects to terminate this Agreement or any Service prior to the expiration of a Service's Initial Term, Customer must provide thirty days advance notice and must pay the Early Termination Fees for each Service that has not completed its Initial Term. The Early Termination Fees vary by Service, and are listed in the Policies but shall not exceed the fees that would have been owed through the end of such Service's Initial Term or any agreed upon renewal of the Initial Term. Customer and Covad agree that an Early Termination Fee is not a penalty but serves as an accurate approximation of the damages to Covad that result from the termination before the end of its Initial Term. Upon termination or expiration of this Agreement for any reason, Customer shall promptly pay all amounts owed through the month of termination as well as any applicable Early Termination Fees. Customer must terminate a Service or the Agreement in writing by providing Covad with at least thirty days prior written notice. Please send termination notices to disconnects@covad.com or via fax to 866-839-2887, Attn: Service Terminations.

6.0 Warranty Disclaimers. Covad provides the Services and Products on an "AS IS" basis, and Customer's use of the Services and Products is at its own risk. Covad does not make and explicitly disclaims all warranties, express or implied, including but not limited to warranties or conditions of merchantability, fitness for a particular purpose, noninfringement and title, as well as any warranties that may arise from a course of dealing, usage, or trade practice. Covad does not warrant that the Services will be error free, uninterrupted or secure from third-party attacks. The preceding disclaimers include an express acknowledgment by customer that, among other things, covad does not make any promise to customer that: (1) the services or products are fit to be sold; (2) the services or products are free from defects; (3) the services or products will perform in any specific manner or to any particular standard; or (4) the services or products can be used for a specific purpose. Customer understands and agrees that its sole and exclusive remedy for any issue or claim related to the performance or non-performance of the Services and Products are the remedies, if any, provided in Covad's Service Level Agreements (SLAs), which are contained in the Customer Policies.

7.0 Limitations on Liability. Under no circumstances will either Covad or Covad's suppliers be liable under any contract, tort, negligence, strict liability or other theory for any incidental, consequential, indirect, exemplary, punitive or special damages of any nature, or for any lost revenues, lost profits or loss of business or potential business, in each case whether or not such losses were foreseeable by Covad or its suppliers. In no event will Covad's or its suppliers cumulative liability exceed the lesser of (a) \$1,000 or (b) fees paid by Customer to Covad for the Services through the month in which the claim arose even if Covad is informed of the possibility of such damages. In addition and not in limitation of any other disclaimer or limitation of liability contained in the Agreement, Covad and its suppliers will not be responsible for any damages, losses, expenses or costs that Customer



suffers as a result of the Services or Products, including but not limited to: (i) any interruption or failure of the Services or Products; (ii) the downloading or use of any information, data, software or materials obtained via the Services or from the Internet; (iii) any failure to complete a transaction on the Internet or while using the Services; (iv) any loss or corruption of data; (v) any interruption or failure of a third party's services, software, equipment or network; (vi) any unauthorized use of, or modification to, the Products or Services or the combination of the Products and/or Services with other services or products; (vii) viruses, worms, Trojan horses or other noxious data or software; or (ix) any unauthorized access, alteration, theft or destruction to Customer's data, personal information, computers, network, phone system, programs or websites by a third-party.

8.0 Confidentiality. Customer acknowledges that the Products and any Software provided are the Confidential Information of Covad and shall be treated as strictly confidential by Customer. Customer shall not remove, erase, tamper with or fail to preserve any copyright, trademark, or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in the Products or any Software.

9.0 Monitoring. Covad and its suppliers have no obligation to monitor the Services, but may do so and disclose information regarding Customer's use of the Services if Covad or its suppliers, in their sole discretion, believes that it is commercially reasonable to do so, including: (i) to satisfy laws, regulations, or governmental or legal requests; (ii) to operate the Services or its network more efficiently; (iii) to enforce the Acceptable Use Policy; (iv) to protect its network or the use of its network by other customers and end users or (v) in any other manner that does not violate Covad's Privacy Policies. Covad may immediately remove Customer's material or information from Covad's or its suppliers' servers, in whole or in part, if Covad, in its sole and absolute discretion, determines that such content infringes another party's property rights, is illegal or if such content otherwise violates Covad's Acceptable Use Policy.

10.0 Privacy. By entering into this Agreement, Customer agrees that Covad and its vendors may collect, retain and use Customer's personal information, including Customer's name, address, e-mail address, and payment details. Customer's personal information will be used primarily to provide services and product functionality to Customer. Covad and its vendors may also use Customer's personal information for additional marketing communication with Customer, subject to Customer's decision not to accept such communications from Covad or its vendors and subject to applicable laws. Covad engages other companies and individuals ("**subcontractors**") to perform functions on its behalf, such as payment processing, order fulfillment, marketing and advertising programs and customer service. Covad may share Customer's information with such subcontractors in order to perform these and other functions, but such subcontractors may not use Customer's personal information for other purposes, unless Customer agrees. By entering into this Agreement, Customer agrees to the transfer of its personal information within the United States, for the purposes stated above. For more detailed information on the collection, use and transfer of your personal information, and for information on how to opt out of or unsubscribe from the communications described above, please read the Covad Privacy Policy on Covad's website (www.covad.com).

11.0 Choice of Law; Binding Arbitration. The parties agree to all of the following: (1) the laws of California and the United States shall govern this Agreement and any dispute between the parties to this Agreement ("**Disputes**") without regard to any conflict of law provisions; (2) binding arbitration in San Francisco, California by the American Arbitration Association and under its rules shall be the sole and exclusive forum for resolution of Disputes; (3) any party enforcing compliance of the arbitration agreement and/or prevailing in arbitration is entitled to its costs and expenses including attorneys' fees; (4) the arbitrator's decision will be final and entered into any court of competent jurisdiction; and (5) the Federal Arbitration Act shall govern the arbitration agreement.

12.0 Force Majeure/Price Change. Covad shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Covad's reasonable control. If any of the prices charged to Covad by any of its suppliers increase (for example, do to changes to governmental rules, laws or regulations or pursuant to new decisions or orders issued by applicable regulatory bodies) Covad reserves the right to increase the price charged to Customer and/or change the terms of service hereunder, effective thirty (30) days following notice to Customer. If Customer does not agree to accept the new pricing and/or revised terms, Customer may terminate the affected Services without penalty within thirty days of the date of such notice. Any continued



use of the Services thirty days after the notice date shall be deemed acceptance of the new prices and/or terms.

- 13.0 Remedies.** All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 14.0 Indemnification.** Customer shall indemnify and hold Covad harmless (including attorneys' fees and expenses) from all third party claims, suits, demands and other actions related to Customer's use of the Services that violates (a) any applicable law, rule or regulation or (b) the Agreement or (c) the Policies. Covad shall indemnify and hold Customer harmless (including attorneys' fees and expenses) from all third party claims, suits, demands and other actions directly resulting from Covad's reckless acts or willful misconduct during the physical installation process of any Covad provided and installed Product that directly results in (a) personal injury or death or (b) the damage or destruction of tangible personal property.
- 15.0 No Assignment.** Customer may not assign this Agreement without the prior written consent of Covad, which consent shall be at Covad's sole discretion. Covad may assign this Agreement upon fifteen days prior notice to Customer.
- 16.0 Severability.** If any provision of this Agreement is held to be invalid or unenforceable under any circumstances, its application in any other circumstances and the remaining provisions of this Agreement shall not be affected.
- 17.0 Notices.** Notices to Customer may be sent to the facsimile number, email address or physical address listed on the Service Order, to any contact information subsequently provided to Covad, or to the address given in the introductory paragraph of this Agreement. Customer consents to receiving all notices hereunder through electronic means. All notices to Covad must be in writing and must be sent to Covad Communications, ATTN: Customer Billing Department, 110 Rio Robles, San Jose, California, 95134-1813.
- 18.0 Survival.** All remedies, rights to payment, indemnification, and the provisions of Sections 2.0 through 8.0 and 10.0 through 18.0 shall survive any termination of this Agreement.

INTEGRATED ACCESS SERVICES APPENDIX

- 1.0 Description of Integrated Access Services.** Please see the Policies for a description of Covad's Integrated Access (IA) Service. The terms set forth in this Integrated Access Services Appendix are applicable only to Covad's Integrated Access Services. To the extent that the terms and conditions of this Integrated Access Service Appendix conflict with the terms and conditions of the General Terms and Conditions, this Appendix shall control for Integrated Access Services.
- 2.0 Service Level Agreement.** Covad's goal is to provide 100% Integrated Access Service availability. Covad will use **commercially reasonable** efforts to avoid unanticipated service interruptions and to minimize any Integrated Access Service disruptions caused by Covad. Please see the Policies for a description of the Integrated Access Service Level Agreement ("**SLA**"), which is Customer's sole and exclusive remedy for any issue related to the performance or lack of availability of the Integrated Access Services. Customer will not be entitled to SLA credits for any other Service (including Covad Broadband Services) for service related issues of the Integrated Access Service.
- 3.0 Predictive Dialers and Other Abuse of Integrated Access Service.** Under no circumstances may Customer use predictive dialers, similar automated calling techniques or other abusive or deceptive practices. Covad reserves the right to either terminate this Agreement and the underlying Integrated Access Service as a Termination for Breach or automatically charge Customer pursuant to Covad's measured plan service or by the minute (depending on the type of Integrated Access Service) if Covad determines (in its reasonable discretion) that Customer is using a predictive dialer application or is otherwise abusing a Covad fixed rate plan.



4.0 Pricing Adjustments. Customer acknowledges that the fees on an Order (sometimes referred to as a Quote) are volume dependent and are based on data provided by Customer at the time that Customer places its Order with Covad. Customer's actual fees may be different from those set forth on the Order depending on the exact Integrated Access Services that Covad actually installs for Customer or that Customer orders at a different date. In such event, Covad may automatically begin billing Customer at the standard fees set forth on the Quote or on the Covad Standard Price List and/or Covad Domestic Minutes Rate Sheet, each located at www.covad.net/legal. Covad's pricing rates for international calls are set forth on the International Rate Sheets located at www.covad.net/legal. The pricing set forth on any of these rate sheets may be updated from time to time by Covad upon thirty (30) days notice, which notice Covad may send by email or by posting a new rate sheet at the web locations described in this section.

5.0 Service Provisioning and Support. Customer will grant, or otherwise secure from its landlord, timely, reasonable and safe access to Customer's premises and network interface device ("NID") for Covad (or its third-party contractors) to install, activate and support the Integrated Access Services. **Covad will use its commercially reasonable efforts to activate Integrated Access Service by the installation date that Customer requests in its Order but Covad, under no circumstances, warrants or otherwise guarantees that it will install the ordered Services by or on such date.** As a result, Customer should not terminate its existing telecommunication services or plan to move into new office space until Covad has completed the activation of the Integrated Access Services. Customer is responsible for canceling any communications services that the Integrated Access Service will replace and for any and all charges related to those services. Only Covad technicians may install and/or complete delivery of the Integrated Access Services. Customer is solely responsible for configuring its PBX and related telephony equipment with Covad's IA Service. Please see Policies for more details on installation procedures and for a list of supported PBX and Key System equipment.

6.0 Warranty Disclaimer and Important 911 Information.

This section contains important information on the availability and functionality of 911 services. Please read it carefully.

Customer's only remedies for Integrated Access Service performance issues or failure of the Integrated Access Services to perform are (a) the SLA credits described in the Policies and (b) Customer's ability to disconnect the Integrated Access Services.

Customer acknowledges and understands that 911 and E911 Integrated Access Services will not be available to it under the following circumstances: (A) the telephone device to which a particular telephone number has been assigned is moved to a location outside the premises where the telephone device was originally installed; (B) there is an outage, degradation or other disruption of power at the Customer's location; (C) there is outage, degradation or other disruption of the broadband Internet connection, whether such connection is provided by Covad or another provider; or (D) an outage, degradation or other disruption in Covad's managed data network. Under any circumstance, including those enumerated in items (A) through (D), above, Customer acknowledges and agrees that Covad will not be liable for any delay or inability to dial 911 using Covad Integrated Access Services, and Customer further agrees to defend, indemnify and hold harmless Covad, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services through Covad to Customer in connection with Covad's Integrated Access Services, from any and all claims, losses (including loss of profits or revenue), damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) by, or on behalf of, Customer or any third party or user of Covad's Integrated Access Services relating to the delay or non-availability of 911 or E911 dialing. Covad's suppliers will not be liable to Customer for any damages for any reason and will be considered a third-party beneficiary to this clause.

7.0 Covad Provided Equipment. Covad will supply and configure the necessary equipment external to Customer's PBX or Key System (referred to as "**Customer Premises Equipment**" or "**CPE**") to allow Customer to use the Integrated Access Services for the fees set forth in the Order, as more fully described in the Policies.. Customer must purchase and use only Covad provided CPE with the Integrated Access Services.

Customer may not use any CPE other than Covad-provided CPE in connection with the Integrated Access Services. In addition, **Customer may not change the settings on Covad-provided CPE without Covad's express written consent.**

BROADBAND SERVICE APPENDIX

NOTE: THIS APPENDIX APPLIES TO ANY INTERNET ACCESS SERVICE

- 1.0 Services.** The terms set forth in this Broadband Services Appendix are applicable only to Covad's broadband Services. To the extent that the terms and conditions of this Broadband Services Appendix conflict with the General Terms and Conditions, the terms of this Appendix shall control for Covad's broadband Services. Please see the Policies for a description of each broadband Service.
- 2.0 Setup.** Please see the Policies for a description of when Covad deems each Service delivered. Customer will be responsible for any additional unforeseen construction or wiring expenses, including without limitation, loop conditioning, expedite fees, special construction charges and additional inside wiring fees. Covad shall obtain Customer's consent, either verbally or in writing, before incurring any such special costs.
- 3.0 Dial-Up Access.** In addition to the Dial-Up Access Service option, broadband Services may include a limited amount of dial-up Internet access, as described in the Policies. If Customer exceeds the usage threshold for Customer's plan, Customer will be billed at the rates set forth in the Policies. Customer shall be solely responsible for all long-distance, toll or other charges related to dial-up Internet access. Dial-up Services may only be used in the United States on a single machine.
- 4.0 Upgrades and Downgrades.** Customer may upgrade to a higher grade of service without an upgrade charge as long as Customer is upgrading within the same class of technology (e.g., ADSL to ADSL or T1 to T1 technology (note that TeleSoho Dedicated Loop is not considered to be within the same class of technology as other ADSL services for upgrade/downgrade purposes)). However, Customer will be responsible for any additional installation and equipment charges, and/or any applicable Disconnection Fees for the original service that are necessary to effect the upgrade. Likewise, Customer may downgrade without a downgrade charge provided they are downgrading within the same class of technology. However, additional installation and equipment charges will apply if necessary to affect the downgrade request. In addition, if the Customer has not met the Minimum Term of the existing service before downgrading, Customer will be responsible for any applicable Early Termination Fees, as described in the General Terms and Conditions and Customer Policies. *Please note that Customer may not be able to upgrade or downgrade Customer's DSL or T1 Service if Customer is using Covad's legacy VoIP Services (upgrades and downgrades are not supported for the Integrated Access Service).*
- 5.0 Service Level Agreement Customer's Sole Remedy for Service Related Issues.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY SERVICE RELATED CLAIM WILL BE AS SET FORTH IN COVAD'S STANDARD SERVICE LEVEL AGREEMENT (SLA), WHICH IS CONTAINED IN THE POLICIES AND WHICH ONLY APPLIES TO CERTAIN OF COVAD'S BUSINESS SERVICES. ALL ADSL SERVICES ARE "REASONABLE COMMERCIAL EFFORTS" SERVICES AND ARE NOT SUBJECT TO THE SLA OR ANY PERFORMANCE GUARANTEES AND CUSTOMER SPECIFICALLY RECOGNIZES THAT THE PRICING FOR SUCH ADSL SERVICES REFLECTS THIS.

Customer Provided CPE for TeleSpeed and TeleXtend Services. In certain circumstances, Customer may provide its own CPE in accordance with the terms set forth in the Policies ("**Customer Provided CPE**"). Any Customer Provided CPE must comply with Covad's CPE guidelines, which Covad may revise at any time. If the Customer Provided CPE is not compatible with Covad's network, Customer may either purchase compatible CPE from Covad (at Covad's then prevailing retail rates for such equipment and installation services) or disconnect its Service and pay Covad the applicable Early Termination Fees. As more fully described in the Policies, Customer is responsible for the setup, monitoring, management and functioning of all Customer Provided CPE. Customer will not be eligible for any SLA credits if Covad determines in its sole judgment that the SLA violation was related to Customer Provided CPE.

In addition to the warranty disclaimers elsewhere in this Agreement, Covad explicitly disclaims **any and all** warranty, maintenance and repair responsibility for Customer Provided CPE. Any



warranty claims, maintenance, or repairs for Customer-provided CPE will be the sole responsibility of Customer.

6.0 Phone Company Release for All Shared Line ADSL Broadband Services. Customer authorizes Covad and its agents to order services on its behalf in connection with provisioning Shared Line ADSL Internet Services, including, without limitation, changes to and maintenance on, removing, adding to, or rearranging such services (the "**Authorization**"). Customer agrees that Covad and its agents may deal directly with Customer's local telephone company on all matters pertaining to such Services, including accessing Customer's customer service records. In particular, Customer recognizes that Covad cannot provision any of its Shared Line ADSL Services on Customer's telephone line if Customer currently has a third-party's DSL service provisioned over such telephone line. Customer hereby authorizes Covad to request that Customer's local telephone company disconnect any existing third-party DSL services that are currently provisioned on Customer's telephone line. Customer hereby indemnifies Covad, its agents and Customer's telephone company from any third party claims arising out of such disconnection. This Authorization will remain in effect until this Agreement is terminated. The indemnification obligation will survive any termination of the Agreement.

SECURITY SERVICES APPENDIX

NOTE: THIS APPENDIX APPLIES TO ANY SECURITY, FIREWALL OR VPN SERVICE

- 1.0 Basic Agreement and Definitions:** Covad will sell to Customer and Customer will purchase the security services (each a "**Security Service**") that Customer has ordered through Covad's website, a Covad authorized sales channel or through Covad's telesales department, subject to the terms and conditions of the Agreement and this Security Services Appendix. A description of the different Security Services is included as Exhibit A to this Security Services Appendix. Use of the Security Services by Customer constitutes Customer's acceptance of the Agreement and the terms and conditions contained in this Appendix. All of Covad's Security Services are provided by third party vendors and may be subject to each vendor's additional terms and conditions. Exhibit A lists any special terms and conditions that are applicable to a particular Security Service, including any minimum term commitment or early termination fees. If the Security Services entail any software, "**Software**" means (a) all of the contents of the files, disk(s), CD-ROM(s) or other media (including electronic media) with which this Agreement is provided or such contents as are hosted by Covad or its vendors, including but not limited to (i) Covad or its vendors computer information or software; (ii) related explanatory materials in printed, electronic, or online form ("**Documentation**"); and (b) upgrades, modified or subsequent versions and updates (including DAT file (virus signature) updates and firmware upgrades (collectively "**Updates**"), if any, licensed to you by Covad or its vendors as part of a maintenance contract or service subscription. "**Use**" or "**using**" means to access, install, download, copy or otherwise benefit from using the Security Services. "**Permitted Number**" means one (1) unless otherwise indicated under a valid license (e.g., volume license) granted by Covad or its vendors. "**Computer**" means a device that accepts information in digital or similar form and manipulates it for a specific result based upon a sequence of instructions. Unless Customer accepts a new agreement from Covad, any additional Security Services Customer orders from Covad will be governed by the terms of the Agreement and this Appendix.
- 2.0 License Grant.** Subject to the payment of the applicable license fees and taxes, and subject to the terms and conditions of this Agreement, Covad (or its vendors, as applicable) hereby grants to Customer a non-exclusive, non-transferable license to use the purchased Security Services and any related Software and Documentation subject to any restrictions or usage terms specified on in this Agreement and any vendor licensing agreement (the "**License**"). Some third party materials included in the Security Services or related Software may be subject to other terms and conditions, which are typically found in a "Read Me" file or "About" file in the applicable Security Service and/or related Software.
- 3.0 Term.** Customer shall purchase each Security Service for the term specified in the online ordering form, Exhibit A or, if none is specified in either the online ordering form or Exhibit A, one year from the date of purchase. This Agreement will terminate automatically if Customer fails to comply with any of the limitations or other requirements described in this Agreement. Upon any termination or expiration of this Agreement, Customer must cease use of the Security Services and related Software and destroy all copies of the Software and the Documentation.

- 4.0 Updates.** The License granted to Customer is limited to the version of the Security Service (and applicable Software) delivered by Covad or its vendor and does not include Updates, unless a separate maintenance contract is purchased or, alternatively, Customer has purchased a service subscription that entitles Customer to Updates as described in the Documentation or Exhibit A. Customer understands that it is Customer's sole responsibility to properly configure such subscription Security Software, and if Customer does not properly configure certain of the Security Software, the Software will not receive automatic updates and, as a result, Customer's equipment will not receive the most up to date protection. Please call Covad's customer service with any questions regarding the proper set up of the Security Software. After the specified maintenance period or service subscription period has expired, Customer has no further rights to receive any Updates without purchase of a new license to the Security Service (and related Software.)
- 5.0 Ownership Rights.** The Security Services and any related Software is protected by United States' and other countries' copyright laws, international treaty provisions and other applicable laws in the country in which it is being used. Covad's vendors own and retain all right, title and interest in and to the Security Services and related Software, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Customer's possession, installation, or use of the Security Services and related Software does not transfer to Customer any title to the intellectual property in such Security Services or Software, and Customer will not acquire any rights to the Security Services or Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.
- 6.0 Restrictions.** Customer may not sell, lease, license, rent, loan, resell or otherwise transfer, with or without consideration, the Security Services, Software or Documentation. If Customer enters into a contract with a third party in which the third party manages Customer's information technology resources ("**Managing Party**"), Customer may transfer all of Customer's rights to use the Security Services and related Software to such Managing Party, *provided that* (a) the Managing Party only uses the Software for Customer's internal operations and not for the benefit of another third party; (b) the Managing Party agrees to comply with the terms and conditions of this Agreement and any related vendor agreement or license, and (c) Customer provides Covad (and, if required by a vendor, such vendor) with written notice that a Managing Party will be using the Security Services or Software on Customer's behalf. Customer may not permit third parties to benefit from the use or functionality of the Security Services or Software via a timesharing, service bureau or other arrangement. Customer may not reverse engineer, decompile, or disassemble the Security Services or Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. Customer may not modify, or create derivative works based upon, the Security Services or Software in whole or in part. Customer may not copy the Security Services or Software or Documentation unless as expressly permitted by the applicable vendor license. Customer may not remove any proprietary notices or labels on the Security Services, Software or Equipment. All rights not expressly set forth hereunder are reserved by Covad and its vendors.
- 7.0 Limited Warranty.** Covad warrants that for thirty (30) days from the date of original purchase the physical medium on which the Security Services or Software is contained or any applicable Equipment provided by Covad, will be free from defects in materials and workmanship.
- 8.0 Customer Remedies.** Covad's and its vendors' entire liability and Customer's exclusive remedy for any breach of the foregoing warranty shall be, at Covad's option, either (i) return of the purchase price paid for the License granted hereunder, if any, or (ii) replacement of the defective media in which the Security Services and/or Software is contained (or the replacement or repair of any applicable Equipment). Customer must return the defective media to Covad at Customer's expense with a copy of Customer's receipt. This limited warranty is void if the defect has resulted from accident, abuse, or misapplication. Any replacement media will be warranted for the remainder of the original warranty period.
- 9.0 Notice to United States Government Customers.** The Security Services and any accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.



10.0 Export Controls. Customer is advised that the Security Services are of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. Customer agrees not to directly or indirectly export, import or transmit the Security Services to any country, end user or for any use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government). Customer represents that neither the United States Bureau of Industry and Security nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer export privileges. Customer agree not to use or transfer the Security Services for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the United States Government by regulation or specific written license. Additionally, Customer agrees not to directly or indirectly export, import or transmit the Security Services or Documentation contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.

11.0 High Risk Activities. The Security Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including, without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Security Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High Risk Activities**"). Covad expressly disclaims any express or implied warranty of fitness for High Risk Activities.

12.0 Additional Warranty Disclaimers and Limitations on Covad's Liability to Customer:

- a. Except for the limited warranty set forth herein, THE SECURITY SERVICES, EQUIPMENT AND SOFTWARE ARE PROVIDED "AS IS" AND COVAD MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW. COVAD, ITS VENDORS, AND SUPPLIERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE SECURITY SERVICES, SOFTWARE AND/OR EQUIPMENT TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SECURITY SERVICES, SOFTWARE AND/OR EQUIPMENT. WITHOUT LIMITING THE FOREGOING PROVISIONS, COVAD MAKES NO WARRANTY THAT THE SECURITY SERVICES, SOFTWARE OR EQUIPMENT WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SECURITY SERVICES, SOFTWARE AND OR HARDWARE WILL MEET CUSTOMER'S REQUIREMENTS.
- b. **Limitation of Liability.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL COVAD OR ITS VENDORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON FOR LOSS OF PROFITS, LOSS OF GOODWILL OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR NEGLIGENCE, GROSS NEGLIGENCE OR RECKLESSNESS OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, DATA, INFORMATION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY OTHER DAMAGE OR LOSS. IN NO EVENT SHALL COVAD OR ITS VENDORS OR SUPPLIERS BE LIABLE FOR ANY DAMAGE IN EXCESS OF THE PRICE PAID FOR THE SECURITY SERVICES, IF ANY, EVEN IF COVAD OR ITS VENDORS OR SUPPLIERS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This limitation shall not apply to liability for death or personal injury to the extent that applicable law prohibits such limitation. Furthermore, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply. COVAD is acting on behalf of its VENDORS AND SUPPLIERS for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

13.0 Customer Liability: CUSTOMER IS LIABLE TO COVAD AND ITS THIRD PARTY VENDORS FOR ANY DAMAGES THAT RESULT FROM CUSTOMER'S WILLFUL OR NEGLIGENT VIOLATION OF THIS AGREEMENT, BREACH OF THE ACCEPTABLE USE POLICY OF COVAD, AND/OR THE ACCEPTABLE USE POLICY OF THIRD PARTY VENDORS.

- 14.0 Additional Acceptable Use Policies:** In addition to Covad's standard AUP, Customer shall not knowingly use Covad's or Third Party vendors' system in any way that violates Federal, State, Local or International Law. This prohibits, but is not limited to, any actions that Covad or its vendors deem to be threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files. In the event the Customer is in breach of this policy, Covad will notify the Customer in writing. Customer will have 5 business days from notification to resolve the situation. If still unresolved, Covad reserves the right to immediately suspend or terminate Customer's account without additional notification. In the course of monitoring individuals improperly using the Security Service or through applicable law enforcement requests, or in the course of system maintenance, the activities of authorized Customers may be monitored.
- 15.0 Equipment (Only Applicable to Security Services that use Covad-provided Equipment):** Unless Customer has purchased any applicable Equipment from Covad (as set forth in [Exhibit A](#)), (i) any Equipment that is provided to Customer by Covad for Customer's use of the Security Services (if any) is only for the duration of the Term; (ii) Covad agrees that it or its vendors shall service the Equipment in accordance with its Policies (iii) Customer agrees (a) to use the Equipment only for the purpose of receiving the Security Services ordered from Covad and for no other purpose; (b) to prevent any connections to the Equipment that are not expressly authorized by Covad; (c) to prevent tampering, alteration or repair of the Equipment by any person other than Covad or Covad's authorized personnel; and (d) to assume complete responsibility for improper use, damage or loss of such Equipment regardless of cause. Customer authorizes Covad and its employees, agents, contractors, representatives, and vendors to enter Customer's premises, with reasonable notice during normal business (or as otherwise authorized by Customer), in order to install, maintain, repair and/or remove any Equipment, as applicable, provided to Customer by Covad under this Agreement and/or to perform the agreed Security Services. Upon contract termination or expiration without renewal, Customer must return the Equipment to Covad in the same condition, except for normal wear and tear, that it was provided and will be responsible for any damaged or unrecoverable hardware. Customer will be given two weeks to return all Equipment. If hardware is not returned within the two week grace period, billing will resume and will continue until all hardware is returned to Covad and Customer will be back billed for the period of time in which Customer failed to return the equipment.
- 16.0 Testing Authorization.** Customer acknowledges that to provide Security Services, Covad or its vendors may periodically scan Customer's network with various vulnerability assessments tools. Customer grants Covad and its vendors' authorization to perform this vulnerability testing as needed in order to provide the Security Services described in this Agreement.
- 17.0 Privacy.** By entering into this Agreement, Customer agrees that Covad and its vendors may collect, retain and use Customer's personal information, including Customer's name, address, e-mail address, and payment details. Customer's personal information will be used primarily to provide services and product functionality to Customer. Covad and its vendors may also use Customer's personal information for additional communication with Customer, subject to Customer's decision not to accept such communications from Covad or its vendors and subject to applicable laws. Covad engages other companies and individuals ("**subcontractors**") to perform functions on its behalf, such as payment processing, order fulfillment, marketing programs and customer service. Covad may share Customer's information with such subcontractors in order to perform these and other functions, but such subcontractors may not use Customer's personal information for other purposes, unless Customer agrees. By entering into this Agreement, Customer agrees to the transfer of its personal information to the United States, for the purposes stated above. For more detailed information on the collection, use and transfer of your personal information, and for information on how to opt out of or unsubscribe from the communications described above, please read the Covad privacy policy on Covad's website (www.covad.com) as well as the privacy policy of any underlying vendor of the Security Services.
- 18.0 Audit for Volume Licenses.** Covad (and its vendors) reserves the right to periodically audit Customer to ensure that Customer is not using any Security Service or Software in violation of this Agreement. During standard business hours and upon prior written notice, Covad (or its vendors) may visit Customer, and Customer will make available to any records pertaining to the Security Services or Software. The cost of any requested audit will be solely borne by Covad, unless such audit discloses an underpayment or amount due to Covad in excess of five percent (5%) of the initial license fee for the Security Services or Software or Customer is using the Security Services or Software in an unauthorized manner, in which case Customer shall pay the cost of the audit.



**EXHIBIT A:
DESCRIPTION OF SECURITY SERVICES
AND SERVICE-SPECIFIC TERMS**

I. McAfee Total Protection for Small Business (Anti-Malware Software)

- A. **DESCRIPTION:** McAfee Total Protection for Small Business software (the “**Anti-Malware Service**”) delivers comprehensive real-time intelligent protection for desktops and servers. The Anti-Malware Service employs a single, hosted software solution that is engineered to help protect against virus, spyware, phishing attacks and identity thefts.
- B. **TERMS & CONDITIONS UNIQUE TO COVAD ANTI-MALWARE SERVICE:**
- **Minimum Subscription Term:** Month-to-month.
 - **Cancellations:** Customer may cancel the Anti-Malware Service at any time by providing written notice to Covad. Covad will not provide refunds for partial month service.
 - **Early Termination Fee:** None
 - **Software Delivery:** Software for the service shall be distributed through electronic downloads only; Customer must click on a download URL provided by Covad.
 - **Technical Support:** Third party vendor (McAfee) will provide Tier 1, 2 and 3 support.
 - **Grant Number:** Customers will receive a grant number from McAfee to call into McAfee’s technical support. Customer must keep its grant number in a safe place and have it available for any support issues.

II. Covad Virtual Private Network (VPN) and Firewall Security Services

- A. **DESCRIPTION:** Covad’s Virtual Private Network (VPN) and Firewall Security Services (“**Managed Security Services**”) provide network protection and communications between company sites through an encrypted IPSec VPN tunnel. The Managed Security Services are provided through a Covad-supplied dedicated device, which Covad pre-configures prior to delivery. Once installed, Covad provides 24x7x365 support, 24x7x365 uptime monitoring, ongoing configuration management and reporting.
- B. **TERMS & CONDITIONS UNIQUE TO COVAD MANAGED SECURITY SERVICES:**
- **Minimum Subscription Term:** One year from the Billing Start Date; month to month thereafter.
 - **Cancellations:** Customer may cancel the Managed Security Services at any time by providing written notice to Covad. Covad will not provide refunds for partial month service.
 - **Early Termination Fee for Disconnections within the Minimum Subscription Term:** Early Termination Fees are on a per-device basis and are \$500.00 per device. *Note that if Customer cancels its underlying Covad Broadband Service, the Security Services will also be automatically terminated and any applicable early termination fees will apply for those services.*
 - **30 Day Cancellation Provision:** If Customer terminates the Managed Security Services within thirty days from the Billing Start Date, Covad will waive the Early Termination Fees **if** Customer returns each device, at Customer’s expense and risk of loss, in its original condition and packaging in accordance with Section 15 of the Appendix. If Customer fails to return the device(s), Covad will charge the Early Termination Fee for each device not returned in accordance with these provisions.
 - **Software Delivery:** Software for the Managed Security Services shall be distributed through electronic downloads only; Customer must click on a download URL provided by Covad.
 - **Technical Support:** Managed Security Services have a dedicated support number: 720-670-3230.
 - **Configuration Changes / Charges:** The Managed Security Services come with three (3) configuration changes during year of service, measured from the Billing Start Date. Configuration charges in excess of three per year shall be charged the following fees:

Type of Configuration Change	Targeted Times	Fee Per Change Request as of November 2007*
High Priority	1 hour response time; 4 hours to effect the configuration change	\$120.00
Standard Priority	4 hour response time; 1 business day (24 hours) to effect the configuration change	\$100.00

* Configuration Change Fees are subject to change. The most current Configuration Change Fees can be found in the Covad Customer Policies.