HOSTING SERVICES ONLINE AGREEMENT
FOR CUSTOMERS OF COVAD VOIP and BROADBAND SERVICES

This Hosting Services Online Agreement ("**Agreement**") sets forth the terms and conditions for provision of Hosting Services ("**Hosting Services**") purchased by Customer from Covad. To the extent that the terms and conditions of this Agreement conflict with the terms and conditions of Covad's Services Agreement (if Customer is subject to Covad's Services Agreement), this Agreement shall control. Use of the Hosting Services shall constitute acceptance of this Agreement.

1.0 Provision of Hosting Services.

Subject to the terms of this Agreement, Covad will provide Customer the Hosting Services purchased by Customer (whether Customer purchases such services on-line, through Customer's SMART account, on an Order Form/or VoIP Quotation or through Covad's TeleSales department). Customer agrees to use Hosting Services purchased from Covad without the right of resale or distribution and strictly in accordance applicable laws and regulations, and Covad's Customer Policies, which are available at http://www.covad.net/legal (the "**HS Policies**"), and which are incorporated by reference into this Agreement. Covad reserves the right to change the HS Policies upon written notice (including e-mail notice) to Customer. If Customer does not agree to the changed HS Policies, Customer must terminate this Agreement without penalty by providing Covad with written notice within seven (7) days of the date of the notice of the changed HS Policies; otherwise any continued use of the Hosting Services shall be deemed to be acceptance of the changed HS Policies. If Customer adds additional Hosting Services and does not accept a new Hosting Services Agreement, such new services will be deemed Hosting Services and will be governed by the terms of this the Agreement and this Appendix. Customer shall be solely responsible for the safeguarding of its passwords and may be unable to access its files in the event any password is lost, forgotten or misappropriated. Covad and its suppliers may, from time to time and without liability, interrupt Hosting Services for maintenance and other operational reasons, and Customer shall not receive any compensation for such interruptions. Covad reserves the sole and exclusive right to determine or revise its service area, and the right to discontinue any Hosting Service without liability. Customer agrees that IP addresses are not guaranteed, transferable or provided for further distribution.

Customer is responsible for obtaining, providing and paying for all means of access (including, without limitation, dial-up, ADSL, SDSL, T1 or ISDN charges) associated with connecting to the Hosting Services. Customer is responsible for all activities and charges resulting from use of its Hosting Services account. Covad has the right to change prices, or add or delete product features of any existing or future product or Hosting Service, or change products or Hosting Services at any time upon 30 days prior notice. This right to change products or Hosting Services extends to any software supporting a product or Hosting Service. Covad has the right to discontinue products or Hosting Services and the right to remove or reassign Internet protocol ("**IP**") addresses of a Customer's web site. Except for certain products and services specifically identified as being offered by Covad, Covad does not control and accepts no responsibility for any materials, information, products, or services on the Internet. Customer assumes full responsibility and risk for use of the services and the Internet and is solely responsible for evaluating the accuracy, completeness, and usefulness of all services, products, and other information, and the quality and merchantability of all merchandise provided through the service or the Internet.

2.0 Limitations on Hosting Services.

   2.1 **Applicable Policies**. Covad's Acceptable Use Policy (the "**AUP**") and the HS Policies govern the general policies and guidelines for use of the Hosting Services and are incorporated herein by reference. Covad's Privacy Policy governs how Covad collects, stores, processes and uses information associated with your use of the Hosting Services. The AUP and the Privacy Policy are posted on Covad's Web site at www.covad.com (or such other location as Covad may specify) and may be updated from time-to-time. CUSTOMER SHOULD CAREFULLY READ THE AUP, WHICH IS INCORPORATED HEREIN BY REFERENCE. BY USING THE HOSTING SERVICES, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THE AUP AND ANY MODIFICATIONS TO THE TERMS. COVAD MAY TERMINATE CUSTOMER'S ACCOUNT FOR ANY VIOLATION (AS DETERMINED BY COVAD) OF THE AUP OR THE TERMS OF THIS AGREEMENT.

   2.2 **Monitoring**. Covad and its suppliers have no obligation to monitor the Hosting Services, but may do so and disclose information regarding use of the Hosting Services for any reason if Covad or its suppliers, in their sole discretion, believes that it is reasonable to do so, including to: (i) satisfy laws, regulations, or governmental or legal requests; (ii) operate the Hosting Services properly; or (iii) protect itself and its other users and customers. 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, believes that such content infringes another party's property rights, is illegal or violates Covad's AUP. ***In addition, Covad may disconnect Customer's Hosting Service if Covad believes that Customer is in violation of the AUP.***

   2.3 **Material and Product Requirements**. Customer must ensure that all material, content and data placed on Covad's or its suppliers' equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by Covad. If Customer's material is not "server-ready," Covad may reject such material.

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Use of certain of the Hosting Services requires a certain level of knowledge in the use of Internet languages, protocols and software. This level of knowledge varies depending on the anticipated use and desired content of your Web site. Customer must have the necessary knowledge to create and maintain a Web site; Covad does not provide training or customer support for Web site design or operation. Covad will make no effort to validate any of material, content or data for correctness, legality or usability.

3.0 Bandwidth, Storage, and E-Mail Usage. For Hosting Services, Customer may not exceed the bandwidth, storage and E-mail usage limits associated with the Hosting Service that Customer has purchased from Covad. If Customer uses any bandwidth or storage space in excess of the stated number of megabytes or exceeds E-Mail storage and attachment size limitations, Covad may, in its sole discretion, assess Customer with additional charges, suspend the Hosting Service, or terminate this Agreement. If Covad elects to take any corrective action, Covad will not refund any unused pre-paid fees. Customer's use of its account and access to such account is Customer's responsibility. Customer is responsible for any unauthorized access to its account resulting in bandwidth, storage and/or E-mail usage exceeding the limits in the Order Form and resultant charges and for any violation of the AUP or this Agreement.

4.0 Security. Customer is solely responsible for any security breaches affecting servers or accounts under its control. If Customer's server or website is responsible for or involved in an attack on, or unauthorized access into, another server or system, Covad will suspend or terminate Customer's Hosting Services immediately and without notice. Customer will pay any charges resulting from the cost to correct security breaches affecting Covad or any of its other customers.

5.0 Domain Name Registration. As part of the Hosting Services, Customer may provide Covad with a registered domain name or names, or Covad may register domain name(s) that Customer selects if the domain name is available for registration and does not violate any Network Solutions' or other registration services' policies, or any law or regulation. Upon registering Customer's domain name, Customer agrees to be bound by the terms of Network Solutions' then current domain name policy, available at http://www.networksolutions.com/en_US/legal/static-service-agreement.jhtml and the policies of the national DNS registration authorities. Customer agrees to pay Covad the fees set forth in Customer's Order and/or the HS Policies for registering and maintaining the domain name(s). If any dispute or cause of action arises out of or is related to Customer's domain name used in connection with the Hosting Services, then upon Customer's request, Covad may attempt to register with Network Solutions or other registrar an alternative domain name Customer chooses and will charge Customer an additional fee for registering such name. Covad will not refund any fees Customer paid with respect to the registration of a domain name Customer is unable to use. *If Customer has canceled Covad's Access Broadband Services, VoIP Services and/or Hosting Services, Covad will maintain Customer's domain name through the end of the term for which it was registered but Covad will NOT renew it. It is Customer's sole responsibility to transfer its domains to its new provider and to provide for any renewals.* Customer will be responsible for payment to Covad of any fees or charges set forth in Customer's order and/or the HS Policies in connection with such automatic renewals.

6.0 Intellectual Property Rights.

6.1 License Grant to Covad. Customer grants to Covad and its suppliers a non-exclusive, worldwide, and royalty-free license for the term of this Agreement to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Customer's content as necessary for the purposes of rendering and operating the Hosting Services under this Agreement. Customer expressly: (a) grants to Covad and its suppliers a license to cache materials distributed or made available for distribution via the Hosting Services, including content supplied by third parties, and (b) agrees that this caching is not an infringement of any of Customer's intellectual property rights or any third party's intellectual property rights.

6.2 Warranties and Representations to Covad. Customer warrants, represents, and covenants to Covad that Customer: (a) is at least 18 years of age (if he is a natural person); (b) possesses the legal right and ability to enter into this Agreement; (c) will use the Hosting Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) will be financially responsible for the use of its account; (e) has acquired or will acquire all authorization(s) necessary for hypertext links to third-party Web sites or other content; (f) has verified or will verify the accuracy of materials distributed or made available for distribution via the Hosting Services, including Customer's content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (g) content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

6.3 Covad Materials and Intellectual Property. All materials, including any computer software (in object code and source code form), data or information that Covad or its suppliers or agents develop or provide under this Agreement, and any know-how, methodologies, equipment, or processes Covad uses to provide the Hosting Services to Customer, including all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto will remain Covad's or its suppliers' sole and exclusive property. Covad will also maintain and control ownership of all IP numbers and addresses that Covad may assign to Customer. Covad may, in its sole discretion, change or remove any and all IP numbers and addresses. During the term of this Agreement, Covad grants to Customer a non-exclusive, personal, non-transferable license to access and use the Hosting Services solely on and as part of Covad's and its suppliers' web site and servers. Covad may modify the Hosting Services at any time for any reason and may provide modified versions of the Hosting Services to Customer.

6.4 Confidential Information. Customer acknowledges and agrees that the Hosting Services constitute confidential and proprietary information of Covad and its licensors and embodies trade secrets and intellectual property of Covad and its licensors protected under United States copyright and other laws and international treaty provisions. Customer further acknowledges that all right, title, and interest in and to all parts of the Hosting Services, including, without limitation, associated intellectual property rights, are and shall remain with Covad and its licensors. Customer shall not, and shall cause its employees and agents not to, disclose or transfer any portion of the Hosting Services to any third party. Customer further agrees not to translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, sublicense, distribute, remarket or otherwise dispose of any portion of the Hosting Services. Customer hereby acknowledges that, if Covad or its licensors at any time or from time to time performs any customizations or modifications to Hosting Services, all rights and interests to such customizations or modifications shall be the sole property of Covad or its licensors.

7.0 Fees, Payments and Taxes.

Customer shall pay for all Hosting Services that Covad furnishes to Customer at the applicable prices set forth in Customer's order (including web-based orders) and/or the HS Policies. Such fees and charges shall include, without limitation, the fees for email storage and boxes, web site storage, data transfer, web hosting, domain registration and charges by any and all third parties whose materials are included as part of the order. Covad reserves the right to change the amount of, or basis for determining, any fees or charges and institute new fees and charges upon 30 days' prior notice to Customer. Upon Installation (as defined below), Customer shall pay all upfront fees and the pro-rata portion of the first month of all monthly recurring fees for Hosting Services for which Installation has occurred. Unless otherwise specified, recurring charges are billed one month in advance and non-recurring charges are billed in arrears. "**Installation**" will be deemed to have occurred upon either of the following, whichever is applicable: (i) if Customer is an existing Covad customer with Covad Access Services ("**Access Services**" and collectively with Hosting Services, the "**Services**"), upon the order date of the Hosting Services,   or (ii) if Customer is a new Covad customer and is ordering both Access Services (and/or VoIP Services) and Hosting Services, upon Installation of the Access Services (as defined in the Services Agreement). Covad shall bill Customer in advance for the Hosting Services on the monthly anniversary date described below ("**Anniversary Date**").   The Anniversary Date for Hosting Services will be the same as the Anniversary Date for Access and/or VoIP Services so that all Services are set forth in one bill. If Customer selects either the credit card billing or electronic funds transfer option, Covad will automatically debit such account on the date amounts are due. If Customer selects the paper invoice option, all payments are due within thirty (30) days of the invoice date, and if Customer fails to pay any bill when due, Covad shall have the right to: (i) debit the Customer's credit card for the overdue amounts; or (ii) terminate the unpaid Hosting Services or this Agreement for breach if Customer has not paid the overdue amounts within fifteen (15) days of receipt of notice of such overdue amounts. For all late payments, Customer may pay interest on overdue amounts at the lesser of (i) interest at the rate of 1.5% per month on the outstanding balance due; or (ii) the maximum interest charges permitted under applicable law. Returned checks may be charged a $25.00 processing fee. The set-up fees are nonrefundable, and Covad does not issue pro rata refunds for fees paid in advance, except in connection with Covad's thirty (30) day satisfaction guarantee described in the following paragraph.

If Customer cancels its order for Hosting Services within thirty (30) days of the order date by providing appropriate notice to Covad as described below in "Term and Termination," Covad will refund all hosting fees paid by Customer other than fees for domain name registration.

Customer shall be responsible for and shall pay all applicable federal, state and local taxes, fees, charges, surcharges or other similar exaction (hereinafter called "**taxes**") imposed on or with respect to the Hosting Services that are the subject of this Agreement whether such taxes are imposed directly upon Customer or upon Covad. For purposes of this Section, taxes do not include any taxes that are imposed on or measured by the net income of Covad. Customer acknowledges that the applicable taxes may vary from month to month.

8.0 Term and Termination. This Agreement will become binding and effective upon the earlier of Customer's acceptance or Customer's first payment for Hosting Services, and shall continue on a month-to-month basis until such time as

terminated in accordance with the terms hereof. Covad may terminate the Agreement and Customer's subscription to the Hosting Services at any time for any reason or for no reason upon 30 days prior notice. Covad may immediately restrict, suspend or terminate without notice Customer's access to and use of the Hosting Services upon any breach of this Agreement. Upon and after termination or suspension, Covad will not be obligated to provide Customer with access to any stored e-mail or content related to Customer's account. Customer may terminate the agreement and Customer's subscription to the Hosting Services at any time by providing notice to Covad as described below. Customer must provide Covad with its notice of termination by accessing Customer's account manager (i.e., SMART) and clicking on the "Cancel Service" button located on the appropriate page of SMART. Any notice of termination will be effective upon Covad's receipt of notice. If the Agreement expires or is terminated for any reason, Covad is not liable to Customer because of the expiration or termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with your business, or for any other reason whatsoever flowing from the termination or expiration. If Customer terminates this Agreement, Covad will not relieve Customer of any obligations to pay fees and costs accrued before the termination date or any other amounts Customer owes to Covad under this Agreement.

9.0 <u>**Disclaimers**</u>. **THE HOSTING SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE THEREOF IS AT ITS OWN RISK. COVAD DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES OR CONDITIONS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. COVAD DOES NOT WARRANT THAT THE SERVICES WILL PERFORM AT A PARTICULAR SPEED, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY HOSTING SERVICE RELATED CLAIM WILL BE AS SET FORTH IN COVAD'S STANDARD SERVICE LEVEL AGREEMENT (SLA), WHICH IS CONTAINED IN THE CUSTOMER POLICIES AND WHICH ONLY APPLIES TO TELESPEED AND TELEXTEND SERVICES.**

10.0 <u>**Limitation on Liability**</u>. **UNDER NO CIRCUMSTANCES SHALL EITHER COVAD OR ITS SUPPLIERS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY NATURE, OR FOR ANY LOST REVENUES, LOST PROFITS OR LOSS OF BUSINESS REGARDLESS OF THE CAUSE OF ACTION, AND WHETHER OR NOT FORESEEABLE. IN NO EVENT SHALL COVAD'S OR ITS SUPPLIERS' CUMULATIVE LIABILITY EXCEED THE FEES PAID BY CUSTOMER THROUGH THE MONTH IN WHICH THE CLAIM AROSE EVEN IF COVAD IS INFORMED OF THE POSSIBLITY OF SUCH DAMAGES. IN ADDITION, COVAD AND ITS SUPPLIERS WILL NOT BE RESPONSIBLE FOR ANY DAMAGES, LOSSES, EXPENSES OR COSTS THAT CUSTOMER SUFFERS AS A RESULT OF: (I) ANY INTERRUPTION OR FAILURE OF THE SERVICES; (II) THE DOWNLOADING OR USE OF ANY INFORMATION, DATA OR MATERIALS OBTAINED VIA THE SERVICES OR FROM THE INTERNET; (III) ANY FAILURE TO COMPLETE A TRANSACTION ON THE INTERNET OR USING THE SERVICES OR ANY LOSS OF DATA DUE TO DELAYS, NON-DELIVERIES, MIS-DELIVERIES, OR SERVICE INTERRUPTIONS; (IV) ANYTHING BEYOND THE REASONABLE CONTROL OF COVAD, INCLUDING BUT NOT LIMITED TO ANY INTERUPTION OR FAILURE OF A THIRD PARTY'S SERVICES, SOFTWARE, EQUIPMENT OR NETWORK; (V) ANY UNAUTHORIZED USE OR MODIFICATION OF SERVICES OR COMBINATION OF SERVICES WITH OTHER SERVICES OR EQUIPMENT; (VI) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (VII) THE ATTEMPT BY UNAUTHORIZED USERS (E.G., HACKERS) TO OBTAIN ACCESS TO CUSTOMER'S DATA, WEB-SITE, COMPUTERS, OR NETWORKS.**

11.0 <u>**Additional Terms**</u>.

  11.1 Third Party Providers. In order to access and use the Hosting Services, Customer will be required to have an Internet access service. Customer may have to agree to and execute agreements with third party providers who may charge Customer fees and charges which are in addition to the fees and charges imposed by Covad. In addition, Customer may subscribe to Covad access services offered under separate agreements, including, but not limited to, the Services Agreement. This Agreement does not in any way modify the terms of such agreements.

  11.2 Indemnification. Customer shall indemnify and hold Covad harmless against all third party claims, demands, suits, actions, judgments, losses, costs, damages (direct, indirect and consequential), attorney's fees and expenses that Covad or suppliers may sustain or incur by reason of any breach or alleged breach of any term or condition of this Agreement and for any act or omission of Customer or its clients that are in any way related to the Hosting Services.

  11.3 Investigation of Violations. Covad may investigate any reported violation of this Agreement, or its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its and its suppliers' systems, facilities, customers or third parties. Covad will not access or review the contents

of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process or as set forth herein.

11.4 Choice of Law and 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. .

11.5 Force Majeure. Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond such party's reasonable control, including but not limited to acts of God, war, terrorist acts, insurrection, riot, embargoes, acts of civil or military authorities, changes in governmental laws, rules, regulations or orders, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials.

11.6 General. The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint-venturers or agents. 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. 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. Except as expressly provided herein, no modification to this Agreement shall be effective unless in writing and signed by an authorized representative of Covad. Any waivers or amendments shall be effective only if made in writing. 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 effected. Notices to Customer may be sent to the facsimile number, email address or address listed on the Order Form. Customer consents to receiving all notices hereunder by electronic means. Notices to Covad should be sent to Covad Communications, ATTN: Finance/Billing, 110 Rio Robles, San Jose, California 95134. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to any of the subject matter of this Agreement. . The provisions of Sections 6 through 11 shall survive any termination of this Agreement.

11.7 Export Control. Customer agrees not to export or re-export any portion of the Hosting Services outside of the United States. Customer further agrees to comply with all United States and other applicable laws, rules and regulations relating to the export, re-export or transshipment of the Hosting Services.

COVAD

Custom Domain Hosting Services (Charges do not apply to vPBX Unlimited Advantage or PBXi Customers)

Hosting Services	One-Time Setup Fee	Monthly Fee	Monthly Bundle Discount*
Business- Class Email (10 Email boxes, 100 MB storage/box)	$10	$4.50	$0
Basic Web Hosting (30 Email boxes, 100 MB storage/box, 1 GB web space, 60 GB web transfer/mo)	$15	$9.50	$0
Enhanced Web Hosting (40 Email boxes, 100 MB storage/box, 2 GB web space, 100 GB web transfer/mo)	$35	$29.50	$5 per hosting plan
Premium Web Hosting (60 Email boxes, 100 MB storage.box, 4 GB web space, 200 GB web transfer/mo)	$55	$49.50	$10 per hosting plan
Additional Email boxes	N/A	$1.50 per box	N/A
Additional Email storage		$5 per 50 MB	
Additional Web site storage		$5 per 50 MB	
Domain Name Registration (.com, .net, .org)	$20 per year	N/A	
Domain Name Registration (.biz, .info)	$35 for 2 years	N/A	

* Applies when Hosting Services package is bundled with VoIP Services