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June 12, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notification of Transfer of Subscribers from Qwest Communications Corporation and Qwest Interprise America, Inc., to Covad Communications Company and DIECA Communications, Inc., WC Docket No. 00-257*

Dear Ms. Dortch:

Pursuant to Section 64.1120(e) of the Commission's rules, 47 C.F.R. § 64.1120(e), Covad Communications Company and DIECA Communications, Inc., d/b/a/ Covad Communications ("Covad"), by their attorney, hereby respectfully notify the Commission that Covad has acquired substantially all of the out-of-region and some in-region DSL customers of Qwest Communications Corporation and Qwest Interprise America, Inc.

Covad is complying with the Commission's rules and procedures governing compliance with section 258 of the Communications Act of 1934, as amended ("Act"), including the provision of advance written notice to all affected customers. In conformity with Commission rules, Covad provides the following information:

Parties to the Transaction: The parties involved in the transaction are Qwest Communications Corporation and Qwest Interprise America, Inc., the transferors, and Covad Communications Company and DIECA Communications, Inc., the acquiring carriers.

Qwest Communications Corporation is a corporation formed under the laws of the State of Delaware. Qwest Interprise America, Inc., is a corporation formed under the laws of the State of Colorado.

Covad Communications Company is a corporation formed under the laws of the State of California. DIECA Communications, Inc., is a corporation formed under the laws of the State of Virginia.

Types of Telecommunications Services Provided to the Affected Subscribers: Transferors currently provide high-speed Internet access services to subscribers in Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia,



Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington and Wisconsin. Covad will transition these subscribers to high-speed and narrowband data services on its own national data network.

Date of Transfer of the Subscribers to Acquiring Carrier: Covad intends to start transferring the affected subscribers to its network 30 days after the date of the customer notification letter, beginning July 12, 2003, as soon thereafter as all necessary regulatory approvals have been obtained, or earlier upon receipt of customer verification in compliance with 47 C.F.R. § 64.1120(a).

Attached to this letter are (a) Covad's certification of compliance with the requirements of the Commission governing transfers of subscribers, as required under 47 C.F.R. § 64.1120(e)(1); and (b) a copy of the notice sent to the affected subscribers, as required under the rules. These notices will be customized with customer and service specific information when sent.

Please contact the undersigned if you have any questions concerning this notification.

Sincerely,

A handwritten signature in black ink, appearing to read "Praveen Goyal", written over a horizontal line.

Praveen Goyal
Senior Counsel for Government &
Regulatory Affairs
Covad Communications
600 14th St., NW
Suite 750
Washington, DC 20005
(202) 220-0400

Attachments

ATTACHMENT A
CERTIFICATION OF COMPLIANCE

CERTIFICATION OF
COVAD COMMUNICATIONS COMPANY
AND
DIECA COMMUNICATIONS, INC.,
D/B/A COVAD COMMUNICATIONS

The undersigned hereby certifies as follows:

1. I have read the foregoing document and hereby verify that the statements therein are true, complete and correct to the best of my knowledge.

2. In accordance with section 64.1120(e) of the Commission's rules, 47 C.F.R. § 64.1120(e), Covad Communications Company and DIECA Communications, Inc., d/b/a Covad Communications, will comply with the required FCC procedures for the acquisition of high-speed data customers from Qwest Communications Corporation and Qwest Interprise America, Inc., including the provision of advanced written notice to all affected subscribers.

Covad Communications

By: 

Name: Praveen Goyal

Title: Senior Counsel for Government &
Regulatory Affairs

Date: June 12, 2003.

ATTACHMENT B
CUSTOMER NOTICE



welcome.covad.com

Month Day, 2003

<Customer Name>
<Customer Address>
<City>, <State> <Zip>
<Qwest Billing Account Number>

Dear [*Customer Name*]:

Qwest is grateful for your business and has valued the opportunity to provide you DSL Internet access service. However, Qwest is currently restructuring its service offerings and will no longer provide DSL Internet access in your community.

The people of Covad Communications are very pleased to have entered into an agreement with Qwest to provide you with high-quality broadband service. [*FOR CUSTOMERS THAT CANNOT BE OFFERED BROADBAND, CHANGE "BROADBAND SERVICE" TO "dial up Internet service for \$19.95 per month"*] And we are even more pleased to welcome you aboard.

Covad is committed to making the transition to our network as smooth as possible with a minimum of interruptions. We have developed a special package just for you, so that you can enjoy a comparable or faster broadband service at a great price. Please see the attachment to this letter for details on your customized options. And with our 30-day money-back guarantee, you've got nothing to lose by coming to Covad. Now here are our next steps.

The transition will be straightforward. **In fact, to maintain the broadband service that you currently enjoy, you need do nothing at this time.** That's right. Nothing. Covad believes in making things easier and we will prove that right from the start. Your customer account information has been provided to Covad to help in your transition. Covad will contact you shortly via U.S. mail or telephone to guide you through the process and will be available to answer any questions that you may have. If you would like to begin the transition process sooner, take advantage of Covad's \$50 Early Sign-on Bonus. Please call us at 1-877-982-6823 [*or 1-866-502-6823 for offnet TeleSoho customers, or 1-877-902-6823 for onnet customers*] or go to welcome.covad.com to learn how to start your transition now.

The new rates, terms and conditions of Covad DSL Internet access service are contained in the attachment to this notice. Our special pricing ensures that you will be receiving a great value for your DSL service. [*Eliminate for dial up*



welcome.covad.com

customers.] If there are any changes to our rates, terms and conditions, we will notify you by U.S. mail.

Until your transition is complete, your current service plan with Qwest will continue. Prior to transition, please continue to send payments to the address on your Qwest bill. If you have any customer service issues or concerns regarding your existing service, contact Qwest at 1-888-999-2656. Qwest remains responsible for handling any outstanding issues that may exist between you and Qwest prior to the transition. Accepting the transition to Covad will not result in any termination fees under your existing DSL Internet access service agreement with Qwest. In addition, you will not be responsible for any carrier change charges resulting from the transition to Covad.¹ After your account is transitioned, contact Covad at 1-888-642-6823 with any customer service questions.

Covad believes that our nationwide network is the smart choice to serve your Internet access needs. As always, however, you do have the right to explore other DSL service options and choose a different service provider. If you do so, however, it is important that you log on to welcome.covad.com/other and follow the instructions to discontinue service. Then, contact the chosen provider to make the necessary arrangements to transfer your service. Also, please check with that other provider to learn of any fees you may be charged to install your new service. If you have not made arrangements to transfer to another service provider by _____, [date 30 days after delivery of notice to be inserted] you will automatically be transitioned to Covad's nationwide DSL network.² To make this transition as easy as possible, Covad will provide you with free equipment and free professional installation.¹

We look forward to earning your trust. Covad has become one of the nation's leading broadband providers by making customer satisfaction our most important measure of success. Please contact us at 1-877-982-6823 [or 1-866-502-6823 for offnet TeleSoho customers, or 1-877-902-6823 for onnet customers] if you have any questions regarding the transition to Covad. We want you to continue to find great value in your broadband connection and in Covad, your broadband connection partner.

Thank you,

Patrick J. Bennett
EVP & General Manager
Covad Broadband Solutions

Eric Bozich
Vice President
Qwest Product Management

¹ Charges for any optional services you order from Covad may still apply.

² If you have placed a preferred carrier freeze on your DSL service, it will be lifted to transition your service to Covad. If you wish, you may then contact your local service provider to arrange a new freeze.



welcome.covad.com

COVAD SERVICE PLAN FOR _____ [INSERT CUSTOMER NAME] Soho/Surfer version

Covad has reviewed your current Qwest service plan and is pleased to offer you an incredible value for your new DSL service. Please review your customized broadband service package developed just for you.

You are currently paying \$_____ [insert applicable Qwest Rate Plan] for a 256 Kbps / 256 Kbps [insert applicable Qwest service speed if different] ADSL service from Qwest.

Covad will be able to provide you with TeleSoho [insert applicable Offered Serv Brand if TeleSurfer] 1.5 Mbps / 384 Kbps [eliminate if TeleSurfer] ADSL service for a monthly fee of \$69.95 [insert applicable Covad Pricing Plan if TeleSurfer].

You will be receiving a **faster** [change to "great" if Downgrade = "Y"] DSL service for a **lower price** [change to "comparable price" if Higher Price = "Y"]. Our download and upload speeds are up to 500% and 50% faster,* respectively, than your current Qwest service. [eliminate if downgrade = "Y"]

We will, of course, completely waive any standard upfront charges. Changing from Qwest to Covad will cost you nothing.+ In fact, you may want to take advantage of our **Early Sign-on Bonus**.

With Covad, you will get:

- **\$50 CASH BACK Early Sign-on Bonus # if you call us at 1-866-502-6823 [or 1-877-902-6823 for onnet customers] and begin your transition before June 29, 2003.**
- **FREE equipment**
- **FREE standard professional installation**
- **FREE 24 x 7 x 365 live customer support**
- **Satisfaction Guaranteed – if you are not totally satisfied with Covad, just call us within 30 days after installation and we'll refund the charges that you have incurred+ and cancel your service without further obligation.**

When you add it all up, you'll be saving \$_____ [insert \$ Savings (add up 12 months of MRC savings, equipment charge, and professional installation charge)] over a one-year service agreement.

Remember, we want to make your transition to Covad as smooth as possible. We will be contacting you shortly to guide you through the transition process. Although we will do our best to provide you with the Covad service identified above, if we are unable to do so for unforeseen reasons, we will advise you of your best options. In the meantime, if you have any questions or would like to start the transition earlier, please call us at **1-866-502-6823 [or 1-877-902-6823 for onnet customers]** or go to **welcome.covad.com**. Thank you for your continued business.

* Note that ADSL is a best effort DSL technology, so speed is not guaranteed.

+ Charges for any optional services you order from Covad may still apply.

Refer to welcome.covad.com for terms and conditions.



welcome.covad.com

COVAD SERVICE PLAN FOR _____ [INSERT CUSTOMER NAME] TeleSpeed version

Covad has reviewed your current Qwest service plan and is pleased to offer you an incredible value for your new DSL service. Please review your customized broadband service package developed just for you.

You are currently paying \$_____ [insert applicable Qwest Rate Plan] for a _____ [insert applicable Qwest service speed] ADSL service from Qwest.

Covad will be able to provide you with _____ [insert applicable Offered Serv Brand (Covad service speed)] SDSL service for a monthly fee of \$_____ [insert applicable Covad Pricing plan].

You will be receiving a **faster** [change to "great" if Downgrade = "Y"] DSL service for a **lower price** [change to "comparable price" if Higher Price = "Y"]. Our service speed is up to _____% [insert % Faster (calculated figure)] faster than your current Qwest service. [eliminate if Downgrade = "Y"] And unlike Qwest's rate adaptive [eliminate for onnet] DSL service, your Covad _____ [insert applicable Offered Serv Brand (Covad service speed)] connection speed to our network is backed by industry leading SLAs.

We will, of course, completely waive any standard upfront charges. Changing from Qwest to Covad will cost you nothing.* In fact, you may want to take advantage of our **Early Sign-on Bonus**.

With Covad, you will get:

- **\$50 CASH BACK Early Sign-on Bonus** # if you call us at 1-877-982-6823 [or 1-877-902-6823 for onnet customers] and begin your transition before June 29, 2003.
- **Service Warranties** - we know that you need broadband for mission critical applications, so we back up our service with industry leading SLAs on installation time, service uptime, and network performance.
- **FREE equipment**
- **FREE standard professional installation**
- **FREE 24 x 7 x 365 live customer support**
- **Satisfaction Guaranteed** – if you are not totally satisfied with Covad, just call us within 30 days after installation and we'll refund the charges that you have incurred* and cancel your service without further obligation.

When you add it all up, you'll be saving \$_____ [insert \$ Savings (add up 12 months of MRC savings, equipment charge, and professional installation charge)] over a one-year service agreement.

Remember, we want to make your transition to Covad as smooth as possible. We will be contacting you shortly to guide you through the transition process. Although we will do our best to provide you with the Covad service identified above, if we are unable to do so for unforeseen reasons, we will advise you of your best options. In the meantime, if you have any questions or would like to start the transition earlier, please call us at **1-877-982-6823**

+ Charges for any optional services you order from Covad may still apply.

Refer to welcome.covad.com for terms and conditions.



welcome.covad.com

[or **1-877-902-6823** for onnet customers] or go to **welcome.covad.com**. Thank you for your continued business.

TERMS AND CONDITIONS

1.0 Services. Subject to the terms and conditions of the Agreement, Covad shall provide the Services purchased by Customer (whether Customer purchases such Services on-line, on an Order Form or through Covad's TeleSales department) ("**Services**"). Use of the Services shall constitute acceptance of this Agreement. Customer shall use the Services without the right of resale or distribution, and strictly in accordance with the applicable law and the Acceptable Use Policy and the Customer Policies, which are available at www.covad.net/legal (collectively, "**Policies**" and which form a part of this Agreement). Covad reserves the right to change the Policies upon notice to Customer. If Customer does not agree to the changed 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 Policies; otherwise any continued use of the Services shall be deemed to be acceptance of the changed Policies. If Customer adds additional services on-line or on an additional Order Form and does not accept a new Agreement, such new services will be deemed Services and shall be governed by the terms of this Agreement. If Customer is an individual, Customer represents and warrants he or she is at least 18 years old. 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 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 Service or Product without liability. Customer agrees that IP addresses are not guaranteed, transferable or provided for further distribution.

2.0 Products and Customer Equipment. Covad may deliver to Customer certain software, hardware and documentation, including but not limited to CPE defined below (collectively, "**Products**"). Covad grants to Customer a personal, non-transferable, non-exclusive, license to use the software and documentation during the Term solely for Customer's own internal use of the Services in accordance with this Agreement. Covad will use commercially reasonable efforts to supply and configure the Covad supplied equipment external to Customer's personal computer (referred to as "**Customer Premises Equipment**" or "**CPE**") to allow Customer to use the Services, unless Customer has chosen to supply its own Covad-qualified CPE subject to the Customer Provided CPE Addendum. Covad is not responsible for the configuration of, or internal equipment for, Customer's personal computer that may be necessary to make such computer compatible with the Services. For any CPE that Customer purchases through Covad, Covad may supply new or recertified equipment. On new and recertified equipment purchased by Customer through Covad, Covad will provide a one (1) year warranty from the day the Customer's order is closed (the "**Billing Start Date**" as defined in the Policies). At Covad's discretion, any equipment Covad supplies as replacement equipment (e.g., for warranty purposes) may be new, recertified or refurbished. Any equipment supplied as replacement equipment will carry the remainder of the one (1) year warranty described above. If the CPE malfunction is the result of Customer's abuse, misuse or reconfiguration of CPE or equipment, Covad will charge Customer for the Field Service Technician visit (if applicable) at the rates set forth in the most current version of the Customer Policies and the cost of any replacement equipment. After expiration of the one (1) year warranty period, Covad will replace such malfunctioning CPE, and Customer will be responsible for the cost of the CPE and the Field Service Technician visit (if applicable), each as set forth in the Customer Policies. Covad may also provide any Product or CPE upgrades at no expense to Customer, and Customer shall use all such upgrades provided by Covad. Covad and its suppliers shall have no obligation or liability in connection with any

equipment not purchased through Covad and configured by Covad, or for any abuse, misuse or reconfiguration (including, but not limited to, the addition of software or other devices on the CPE) of any equipment by any party other than Covad.

3.0 Setup. Services are provided over a permanent virtual circuit ("**Customer Circuit**") to Customer's premises. If Customer orders TeleSpeed or TeleXtend Internet services, "**Installation**" will be deemed to have occurred when: (i) Covad can verify connectivity of the service ordered between the CPE and the Covad DSLAM or other network equipment; and (ii) Covad can verify Internet connectivity from a host on the Customer's network to a host on the Internet, through a ping test or another applicable connectivity test. **If Customer orders TeleSoho or TeleSurfer Internet Services, Covad "Installation" will be deemed to have occurred 5 days after the Customer's LEC confirms that the DSL capable loop has been delivered, or when Covad detects traffic on the Customer Circuit, whichever comes first.** If Covad is unable to successfully install a Service that Customer had originally ordered, Covad will allow Customer to accept a lower speed Service, if available, or Customer may decline the Customer Circuit without a Termination Fee. If Customer declines the Customer Circuit and, if Customer has ordered only that particular service, Customer and/or Covad may terminate this Agreement. Customer will be responsible for any additional, unforeseen construction costs including, without limitation, inside wiring administration and special installation costs. Covad shall obtain Customer's consent before incurring any such special costs.

4.0 Dial-Up Access. In addition to the Dial-Up Access Service option, all TeleXtend, TeleSpeed, TeleSoho, and TeleSurfer Internet Services (other than TeleSurfer Link) include a limited amount of usage for dial-up Internet access, as described in the Customer Policies. If Customer exceeds the usage threshold for Customer's plan, Customer will be billed at the rates set forth in the Customer Policies. Local dial-up numbers may not be available in all areas, and Customer is solely responsible for determining if use of a particular dial-up number will cause Customer to incur long-distance, toll or other charges. 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. After installation, TeleSurfer Link Customers will be charged for any dial-up usage in accordance with the fees in the Customer Policies.

5.0 Monitoring. Covad and its suppliers have no obligation to monitor the Services, but may do so and disclose information regarding use of the Services 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 Services properly; or (iii) protect itself and its other users and customers. Covad may immediately remove Customer's material or information from Covad's 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 that such content violates Covad's Acceptable Use Policy. In addition, Covad may disconnect Customer's service if Covad determines that Customer is in violation of the Acceptable Use Policy, and Customer will be responsible for any applicable Termination Fees.

6.0 Fees and Payments. Customer shall pay for all Services and Products that Covad furnishes to Customer at the applicable prices set forth in Customer's order. Customer shall also pay any repair, telephone charges and charges for inspection, installation or repair of wiring performed on Customer's premises for the additional charges set forth in the Customer Policies. Upon Installation (as defined in Section 3), Customer shall pay

all upfront fees and the first month of all monthly fees for Services for which Installation has occurred. Covad shall bill Customer in advance for the Services on the monthly anniversary date of the Effective Date of this Agreement (“**Anniversary Date**”). For the purposes of TeleSurfer and TeleSoho billing, Covad will begin billing Customer five (5) days after verifying with the Customer’s LEC that the DSL capable loop will be provided, or when traffic is detected on the Customer Circuit, whichever comes first. 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. (Note: Customer may only use a credit card or electronic funds transfer to purchase TeleSurfer services). If Customer selects the 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 Services or the Agreement for breach if Customer has not paid the overdue amounts within fifteen (15) days of receipt of notice of such overdue amounts, and Customer shall be responsible for all applicable Termination Fees. 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.

7.0 Taxes. 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 Services and/or Products 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.

8.0 Term and Termination. The term of this Agreement will run from the Effective Date until the end of the Minimum Term from the last Installation of a Service. The Services and the obligation to pay for such Services will continue after the end of their respective Minimum Terms on a month-to-month basis, unless either party terminates the Agreement or cancels such Service by providing at least thirty (30) days prior written notice. Either party may terminate this Agreement or a particular Service at any time by providing at least thirty (30) days prior written notice, except that if Customer terminates this Agreement prior the end of the Minimum Term of any of the Services or cancels a particular Service prior to the end of its Minimum Term, or if Covad terminates a Service or this Agreement for cause prior to the end of a Service’s Minimum Term, Customer will be responsible for all applicable termination and/or disconnection fees as described in the Customer Policies (“**Termination Fees**”). *The Termination Fees for TeleSurfer and TeleSoho Internet Services are \$250.00 per line, and the Termination Fees for TeleSpeed and TeleXtend Internet Services are \$500.00 per line.* Customer may upgrade to a higher grade of service without an upgrade charge. However, Customer will be responsible for any additional installation and equipment charges that are necessary to effect the upgrade. Likewise, Customer may downgrade without a downgrade charge provided that Customer has met the Minimum Term. However, additional installation and equipment charges will apply if necessary to effect the downgrade request.

9.0 Disclaimers. **THE SERVICES AND PRODUCTS 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 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 TELEXEND SERVICES.

10.0 Limitation on Liability. 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 POSSIBILITY 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 OR PRODUCTS; (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 INTERRUPTION OR FAILURE OF A THIRD PARTY’S SERVICES, SOFTWARE, EQUIPMENT OR NETWORK; (V) ANY UNAUTHORIZED USE OR MODIFICATION OF SERVICES OR PRODUCTS OR COMBINATION OF SERVICES OR PRODUCTS WITH OTHER SERVICES, PRODUCTS 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 Confidentiality. Customer acknowledges that the Products contain proprietary and confidential information of Covad and its suppliers. Customer agrees to not disclose the Products to third parties without the prior written consent of Covad and the suppliers identified to Customer in Covad’s response to such notice. Customer shall not copy, modify, resell or distribute the Products, create or recreate the source code for the Products, or re-engineer, reverse engineer, decompile, disassemble or attempt in any way to disable, deactivate or render ineffective the password protection in the Products. 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.

12.0 Choice of Law and Binding Arbitration. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. Any waivers or amendments shall be effective only if made in writing. 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. Binding arbitration shall be the sole and exclusive remedy for resolution of Disputes between the parties. Such Dispute shall be submitted for arbitration in San Francisco, California under the rules of the American Arbitration Association (“AAA”). The arbitrator’s decision will be final and entered into any court of competent jurisdiction. The prevailing party will be entitled to recover its attorney’s fees and costs in connection with such arbitration. Should either party bring a Dispute in a forum other than AAA, the arbitrator may award the other party its reasonable costs and expenses, including attorneys’ fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this Dispute resolution provision. **Customer understands that Customer would have had a right to litigate Disputes through a court, and that Customer has expressly and knowingly waived that right and agreed to resolve any Disputes through binding arbitration.** This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.* For the purposes of this section, the term “Dispute” means any dispute, controversy, or claim arising out of or relating to (i) this Agreement, its interpretation, or the breach, termination, applicability or validity thereof. “Covad” includes its subsidiaries, affiliates, directors, officers, employees, beneficiaries, agents or assigns; the term “Customer” means you, the original account holder, its agents, employees, directors, officers, beneficiaries, or heirs. Under California Civil Code Section 1789.3, if Customer is a resident of California, Customer is entitled to the following specific consumer rights information: the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA 95814 or by telephone at 916-445-1254.

13.0 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, changes in governmental laws, rules, regulations or orders, war, terrorist acts, insurrection, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. Customer acknowledges that certain of Covad’s suppliers establish the prices charged to Covad based on governmental laws, rules, regulations, orders and decisions. If any of the prices charged to Covad by any of its suppliers increase as a result of 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, effective thirty days following notice to Customer. If Customer does not agree to accept the new pricing, Customer may terminate the Agreement 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.

14.0 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. 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 through electronic means. Notices to Covad should be sent to Covad Communications, ATTN: Sales Operations, 3420 Central Expressway, Santa Clara, California, 95051. The Order Form, the Policies and these Terms and Conditions contain the entire understanding of the parties with regard to this matter and supersede any prior written or oral communications between the parties with respect to the subject matter of this Agreement. The provisions of Sections 6, 7, and 9, 10, 11, 12 and 14 shall survive any termination of this Agreement.

15. Customer Provided CPE for TeleSpeed and TeleXtend Internet Services. Customer ordering TeleXtend or TeleSpeed services may provide its own CPE; *provided that* such CPE is compatible with the Covad network. Covad will periodically publish guidelines for determining the compatibility of CPE with the Covad network, a copy of which can be obtained from Covad’s Customer Support Center by calling 1-888-64-COVAD. ***Covad may change the guidelines for compatibility with Covad’s retail offerings at any time.*** Customer agrees to the following terms and conditions related to such Customer-provided CPE:

a) **Compatibility:** Customer is solely responsible for ensuring that Customer-provided CPE complies with the compatibility guidelines published by Covad. If Customer determines after installation that such CPE is not compatible with the Covad network, Customer may: (i) disconnect the order, in which case Customer will be liable for all applicable Termination Fees that may apply; or (ii) request that Covad provide a Covad CPE, in which case Covad will charge Customer Covad’s then-standard fee for such CPE and charge Customer for the Field Service Technician dispatch for the setup of such Covad-provided CPE, each as set forth in the Customer Policies.

b) **Provisioning:** Customer is solely responsible for ensuring the proper functioning of Customer-provided CPE. The Covad Field Service Technician will not provide any assistance in the setup or configuration of Customer-provided CPE at the time of installation. If, at the time of installation, Customer requests that Covad supply Customer with a Covad CPE, the Field Service Technician will supply and configure a Covad CPE, and Covad will bill Customer the then standard fees for such CPE.

c) **Management of CPE:** Customer is solely responsible for the management of Customer-provided CPE. Covad’s Customer Support Center will not provide any assistance with the configuration or maintenance of Customer-provided CPE. If Covad dispatches a Field Service Technician in response to a trouble ticket ultimately determined by Covad to be the result of the Customer-provided CPE, Covad will charge Customer for the Field Service Technician dispatch.

d) **Warranty Disclaimer:** In addition to the warranty disclaimers elsewhere in this Agreement, Covad explicitly disclaims **any and all** warranty or maintenance responsibility for Customer-provided CPE. Any warranty claims, maintenance, or repairs for Customer-provided CPE will be the sole responsibility of Customer. However, if Customer had initially purchased such CPE through Covad or one of Covad’s ISP partners, Covad will honor any remaining warranty pursuant to the terms of this Agreement.

e) **Service Level Agreement:** Customer will not receive credits according to the Service Level Agreement for TeleXtend or TeleSpeed services if Customer-provided CPE is determined by Covad to have contributed to the event for which Customer is requesting SLA credits.