

Digital Phone @ Home Terms and Conditions

This is an agreement ("Agreement") for Digital Phone @ Home and related services and/or features ("Service") between you and PNG Telecommunications, Inc. d/b/a CrossConnect™ ("CROSSCONNECT"). The words "we", "us", "our" or "CROSSCONNECT" refers to CROSSCONNECT. The words "you" "your" or "Customer" refers to the person who is completing this Agreement. This Agreement explains the terms and conditions upon which we agree to provide you Service or products and you agree to accept these terms and conditions with the Service or products provided by us. You represent that you are at least eighteen (18) years of age and have the legal capacity to accept this Agreement.

1. EMERGENCY SERVICES

EMERGENCY SERVICE IS PROVIDED THROUGH ENHANCED ("E911"), BASIC 911 OR VIA A NATIONAL EMERGENCY CALL CENTER DEPENDING ON YOUR LOCATION. IN ORDER FOR ANY EMERGENCY SERVICE TO BE PROVIDED TO YOU, UPON SIGNUP YOU MUST PROVIDE US WITH THE CORRECT PHYSICAL ADDRESS WHERE YOU WILL BE USING THE SERVICE. IF THE LOCATION OF YOUR SERVICE CHANGES, YOU MUST UPDATE YOUR ADDRESS WITH US IN ORDER FOR EMERGENCY CALLS TO BE ROUTED TO THE CORRECT EMERGENCY CENTER. EMERGENCY SERVICE WILL NOT FUNCTION WITH THE LOSS OF ELECTRICAL POWER OR INTERNET CONNECTIVITY OR IF YOUR PHONE SERVICE IS TERMINATED. CROSSCONNECT IS NOT LIABLE FOR ANY CLAIM FOR DAMAGES WHATSOEVER, INCLUDING ANY CLAIM FOR INJURIES, DEATH OR LOSS TO PERSONS OR PROPERTY INCURRED BY ANY PERSON AS A RESULT OF ANY ACT OR OMISSION OF CROSSCONNECT EITHER IN CONNECTION WITH DEVELOPING, ADOPTING, IMPLEMENTING, MAINTAINING OR OPERATING ANY EMERGENCY 911 OR E911 SYSTEM OR IN THE IDENTIFICATION OF OR THE PROVISION TO ANY EMERGENCY 911 OR E911 SYSTEM OF THE TELEPHONE NUMBER, ADDRESS, NAME, LOCATION OR OTHER INFORMATION OF ANY PERSON ACCESSING OR ATTEMPTING TO ACCESS AN EMERGENCY 911 OR E911 OR SIMILAR SYSTEM. YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS WILL BE YOUR ACKNOWLEDGMENT THAT CROSSCONNECT HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CROSSCONNECT ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, INCLUDING 911 OR E911 DIALING OR ACCESS EMERGENCY SERVICE PERSONNEL.

2. Term and Changes to the Agreement. You agree that your obligation to pay for all Services shall commence on the date that CROSSCONNECT makes the Services available. Since there is no service term, you will continue on a month-to-month basis. **You agree that we may make changes to these Terms and Conditions at any time upon thirty (30) days written notice to you.** You agree that if you use the Service after the effective date of the changes as stated in the notice, then you have accepted the new Terms and Conditions of the Service. If you do not accept the changes, then do not use the Service after the effective date and inform us in writing at the address in Section 15 or call us at 1-800-897-4440 to cancel your Service.

3. Activating Your Service. Prior to activating your Service, you agree that we may check your credit and verify your identity. Your Service is subject to credit approval prior to activating your Service and continuing credit approval while you are using our Service. You agree to provide us with accurate billing information, including your name, home address and telephone number. You agree to report any changes to this information to us within thirty (30) days of any change. You agree that you may be required to make a prepayment on your account if your credit has not been established to our satisfaction or if your credit or payment history becomes unsatisfactory to us. You agree that if you fail to provide the requested prepayment within two (2) business days of our request, you will be deemed in breach of your obligations under this Agreement and that shall entitle us to suspend or terminate your Service immediately and without notice pursuant to Section 10. Upon activation of your Service, you will be charged a nonrefundable activation fee. This fee will be on your first monthly invoice. Please see below Section 5(b) First Bill.

4. Charges and Rates

a. Charges for Service. You agree to pay all the charges for your Services. Rates and charges for those Services shall be those in effect as of the date that CROSSCONNECT accepts your order for the plan that you chose. You agree that your monthly charges and calling plan are subject to change upon thirty (30) days written notice to you. You may choose from one of the three plans available: the Basic Plan, the Unlimited Plan and the Unlimited Plan Plus.

- i. **The Basic Plan.** The Basic Plan includes unlimited Local calls and one hundred (100) minutes per month of Domestic Long Distance calling to the contiguous forty-eight (48) states. You agree that you will be charged for all calls to Alaska, Hawaii and International destinations at our per minute current rates which are subject to change immediately and without notice to you. You also agree that in any month, once you have used one hundred (100) minutes of Domestic Long Distance calling, any minutes of Domestic Long Distance calling beyond the one hundred (100) minute limit will be charged to you at our per minute current rates which are subject to change immediately and without notice to you. Please call us at 1-800-897-4440 for our current rates for Domestic and Extended Domestic Long Distance and International calling. Service availability is subject to the availability of facilities to and in the particular countries.
- ii. **The Unlimited Plan.** The Unlimited Plan includes unlimited Local calls and unlimited Domestic Long Distance calling to the contiguous forty-eight (48) states and Canada. You agree that you will be charged on a per minute basis for all calls to Alaska, Hawaii and International destinations (other than Canada) at our current rates which are subject to change immediately and without notice to you. Please call us at 1-800-897-4440 for our current Extended Domestic and International calling rates. Service availability is subject to the availability of facilities to and in the particular countries.
- iii. **The Unlimited Plus Plan.** The Unlimited Plus Plan includes all of the unlimited calling of the Unlimited Plan plus unlimited calls to select International destinations. A list of the included International destinations can be found on the Customer Portal at www.crossconnect.cc or you can call us at 1-800-897-4440. The list of included International destinations is subject to change without notice to you. The Unlimited Plus Plan does not include Extended Domestic Long Distance calling (calls to Alaska and Hawaii), International mobile or International special numbers. You agree that for all destinations (including Alaska, Hawaii, International mobile or special numbers) not included in the Unlimited Plus Plan, you will be charged on a per minute basis at our current Extended Domestic and International rates which are subject to change immediately and without notice to you. For our current Extended Domestic and International calling rates, contact us at 1-800-897-4440. Service availability is subject to the availability of facilities to and in the particular countries.

b. Additional Line Charges. You may choose to have an additional line for which you agree to pay an additional monthly charge. The additional line will have all of the standard features except for Voicemail and you may make unlimited Local calls. You agree that you will

be charged on a per minute basis for all Domestic and International calls made on the additional line at our current rates which are subject to change immediately and without notice to you. Please call us at 1-800-897-4440 for our current Domestic and International calling rates. Service availability is subject to the availability of facilities to and in the particular countries.

c. Taxes and Surcharges. Your monthly charges do not include taxes, surcharges, access or access related charges. You agree to pay all charges for federal, state, and where applicable local taxes we bill you. You also agree to pay any surcharges, access fees, governmental fees and similar fees such as fees for Universal Service and other Regulatory fees that we bill you. These charges are subject to change immediately and without notice. You agree to pay a Compliance Cost Recovery Fee which is designed to help us recover costs associated with complying with certain federal and state regulations. You also agree to pay an Emergency 911 Service Fee which is designed to help us recover our costs associated with providing you a nationwide emergency 911 service in compliance with FCC regulations. The Compliance Cost Recovery Fee and the Emergency 911 Service Fee are subject to change upon thirty (30) days written notice and are not a government mandated tax or surcharge.

5. Billing.

a. Bill Cycle. You agree that you will be billed monthly, generally beginning when your Service began. Billing cycles may change from time to time without notice. Monthly charges and fees are usually invoiced one billing cycle in advance. Other charges such as any international usage charges are generally invoiced soon after they are incurred.

b. First Bill. Your first bill, among other things, may contain the following:

- i. A nonrefundable porting fee;
- ii. The monthly charge for the next bill cycle and possibly a prorated amount for the current month;
- iii. The nonrefundable activation fee;
- iv. A shipping and handling fee for the equipment we provide to you; and
- v. Any applicable taxes and surcharges.

c. Payment. You agree to pay all monthly fees, usage, taxes and surcharges we bill you, even if you were not the user of your phone and did not authorize its use. You agree that payment is due in full in U.S. dollars by the due date as stated on your bill. If you agree to pay your bill by an automatic withdrawal from a banking institution or credit account, you agree that we may request payment from the account for the full invoice amount without additional authorization from you. You agree that an additional fee may be imposed for certain methods of payment. You agree to pay a "Returned Check Fee" up to the maximum allowed by your state for any check returned for insufficient funds. You agree if we do not receive your payment in full by the due date, we may charge you a late fee of the lesser of one and one half percent (1 ½%) per month or the maximum fee allowed by law of the unpaid balance.

d. Nonpayment and Suspension. You agree that if your bill is not paid in full by the due date, we may immediately and without notice suspend or terminate your Service pursuant to Section 10.

e. Disputed charges. Please contact us at 1-800-897-4440 if you believe that you have been charged incorrectly. You agree to submit all disputes to us within thirty (30) days of the invoice date of the invoice in question. You agree that if you do not submit your dispute before the end of the thirty (30) day period, then you shall be deemed to have waived the right to dispute the invoice. You agree to submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation to the address in Section 15. The parties will use good faith efforts to resolve the dispute within thirty (30) days from the due date of the invoice in question. If, at the end of the thirty (30) day period, the dispute is not resolved, either party may commence arbitration in accordance with Section 16 of this Agreement.

f. Adjustments. You agree that we may make billing adjustments for Services for the greater of one hundred and eighty (180) days after the date of the invoice or the date an unbilled charge was provided by CROSSCONNECT or any period allowed by law, government rule or regulation.

6. Number Porting. You may elect to port an existing Telephone Number ("TN") to us for use with the Service. We will support all valid requests and will cooperate with you to port any TNs in accordance with our standard operating procedures. You agree to pay a fee to us for porting your number which will appear on your first bill. Please see above Section 5(b) First Bill. You hereby represent and warrant to us that you have all necessary rights and authority necessary to port any TNs and you hereby agree to indemnify, defend, and hold harmless CROSSCONNECT, its Affiliates, and their officers, directors, employees and agents from and against any third party claim related to or arising out of any porting.

7. Use of Service.

a. No Abuse. You agree not to use our Service in an abusive, unlawful or fraudulent manner. You agree not to resell or lease any Services purchased hereunder. You agree to be responsible for all use of our Services and all charges including but not limited to the use by children or minors. You agree that if we suspect that you are using the Service in an abusive, unlawful or fraudulent manner, we may immediately and without notice suspend or terminate your Service pursuant to Section 10. Abuse shall also include if your use of the Unlimited Plan or Unlimited Plus Plan in any one month is unreasonable in CROSSCONNECT's sole discretion. You agree that such abuse will allow CROSSCONNECT upon notice to you, to move your account to another plan and charge you a per-minute charge for any Long Distance or International calling.

b. No Mass Call Events. You agree that you shall not use the Services:

- i. To provide any mass call events or voice content related services including, without limitation, chat lines or party lines;
- ii. In conjunction with the use of mass communications equipment of any kind; and
- iii. In conjunction with a call center, or use of the Service for call back, call sell, fax blasting, predictive dialing, telemarketing, debit card services or any other high volume applications.

d. Acceptable Use Policy. You agree to be responsible for adhering to CROSSCONNECT's Acceptable Use Policy ("AUP") while using the Service. The terms of which are made available for viewing over the Internet at www.powernetglobal.com.

e. Equipment.

- i. **Customer Responsibilities.** You agree to be responsible to provide an uninterrupted power supply including backup power or alternative service. You understand that any power interruption will result in a loss of voice and data service including 911, E911 and similar emergency services. You agree that CROSSCONNECT is not responsible for the installation, operation, maintenance, compatibility or performance of any third party service, broadband, software or hardware. If such third party

service, broadband, hardware or software impairs operation of the Service, you agree to remain liable for payment of all charges for the Service. You agree that CROSSCONNECT shall not be held responsible or liable for any defects or failure in your Service, computer, software, files, data, broadband and peripherals or any other equipment or connectivity arising from or caused by any equipment or service which is not a part of CROSSCONNECT's network.

- ii. **Customer Provided Broadband Service.** You understand that the Service is not compatible with all broadband services. Some broadband providers provide modems that prevent the transmission of communication using this Service. CROSSCONNECT disclaims any express or implied warranties regarding the compatibility of the Service with any particular broadband service. You also understand that the Service may not function correctly with certain versions of TiVo, satellite systems and medical monitoring systems.
- iii. **CROSSCONNECT Provided Equipment.** You agree that all new or refurbished equipment provided by CROSSCONNECT for provision of the Service to be located at the Customer's premises ("Equipment") will remain the property of CROSSCONNECT and you shall keep it free and clear of any encumbrances, liens, or anything else that would impair CROSSCONNECT's ownership of the equipment (a "Lien"). You agree to waive and release any Lien on the Equipment, and further agree to indemnify, defend, and hold harmless CROSSCONNECT and its respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, or resulting from, labor, materials, services or supplies furnished by subcontractors or suppliers and from all Liens. You agree to take such action as is necessary to protect the Equipment and to maintain the Equipment in good working order. You agree to fully compensate CROSSCONNECT for the replacement cost of any Equipment that is lost or damaged. You agree to comply with all instructions and requirements of CROSSCONNECT regarding the care and use of the Equipment.
- iv. **Return of Equipment.**
 1. **Cancellation or Termination.** If you want to cancel your Service, see Section 10 for instructions on how to cancel your Service. Once you receive your RMA number from us, see Section 10, you agree to immediately return to CROSSCONNECT all Equipment obtained by you in connection with CROSSCONNECT. You understand that your RMA number must be visible on the box in order for us to accept your Equipment. You agree to return the Equipment and power cord in the original box and in good working order within seven (7) business days. If you do not return all such items or the Equipment is not in good working order, you agree to promptly pay to CROSSCONNECT an Equipment Cost Recovery Charge.
 2. **Defective.** If your Equipment becomes defective, call 1-800-897-4440 to report the trouble. If the trouble cannot be remedied over the phone, you will be given a RMA number to place on the box to ship the Equipment back to us. You understand that in order for us to accept the Equipment, the RMA number must be visible on the box. You understand that you will be immediately shipped new or refurbished Equipment, which is in CROSSCONNECT's sole discretion. You agree to return the Equipment and power cord in the original box. If you do not return all such items, you agree to promptly pay to CROSSCONNECT an Equipment Cost Recovery Charge.
- f. **Security Measures.** You agree to be solely responsible for establishing and maintaining adequate security measures including but not limited to maintaining codes, passwords, encryption or other features necessary to restrict access to your computers, network, servers, or other equipment used by the Services.
- g. **Unpermitted Use of Service.** You agree not to alter the firmware, software, or any electronic data stored on the Equipment without the express written consent of CROSSCONNECT. You agree not to change the electronic serial number or equipment identifier or perform a factory reset of the Equipment without our prior written consent. You agree not to attempt to hack or otherwise disrupt the Services or make use of the Services in any way that is inconsistent with its intended purpose. You agree to contact CROSSCONNECT immediately if the Equipment is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. Until such time as CROSSCONNECT receives notice of the theft, fraudulent use or unauthorized use, you agree to be liable for all use of the Service using the Equipment and all stolen, fraudulent or unauthorized use of the Service.
- h. **Letter of Authorization ("LOA").** You agree to complete and maintain an accurate LOA that is true, and does not contain any misleading statements and is not missing any information the absence of which would make the information provided by or statements made by you in the LOA misleading.
- i. **Breach of Section 7 - Use of Service Warranties.** You agree that any breach by you of this Section 7's Terms and Conditions will constitute a material breach of this Agreement and CROSSCONNECT may suspend or terminate your Service immediately and without notice pursuant to Section 10. If you breach any of this Section 7's Terms and Conditions, you agree to be solely liable for and will indemnify, defend and hold CROSSCONNECT and its respective officers, directors, employees, contractors and agent harmless from all claims, demands, costs, damages, losses, liabilities and expenses of any nature arising from such breach, including indirect, special, incidental, consequential, punitive or reliance damages and any costs including attorneys' fees associated with enforcing any of these provisions.
- j. **No Third Party Calls.** You agree not to send any calls that would incur any third party charges including but not limited to 800 collect, third party, 900/976 or credit card calls. You understand that CROSSCONNECT will reject any such calls.

8. Number Transfer on Termination. Upon termination of the Services, CROSSCONNECT agrees to release to your new service provider the telephone number(s) that you used in connection with the Service as long as your: (1) New service provider is able to accept such number(s); (2) Account has been properly terminated; (3) Account is completely current; (4) Equipment has been returned in good order or you have paid the Equipment Cost Recovery Charge; and (5) Request for the transfer was made upon terminating your account.

9. Relocation of Service. If you request to relocate the Service to a new location, then you agree to request such move in writing to the address in Section 15 at least six (6) weeks in advance of the change over date. You understand that if such new location is not within CROSSCONNECT's service area and Service ceases at the prior location then the Agreement will be deemed terminated by you.

10. Termination of Service. You agree we may terminate your Service as described in Sections 3, 5(d), 7(a), and 7(i) in this Agreement immediately and without notice to you (i.e. if we suspect fraud, abuse or unlawful activity or nonpayment of charges when due). You agree we may terminate your Service and/or suspend your Service for any other breach of this Agreement or for any other business or governmental reason with notice to you. You may cancel your Service at any time with prior notice to us. To notify us of your cancellation, please call us at 1-800-897-4440. You understand that until you notify us by calling us at the number above, your Service will not be terminated and you will continue to be responsible to pay for continuing charges. You also understand that if you return your equipment that it will not be accepted by us until you have called to cancel and received a RMA number and placed that RMA number on the box. See Section 7(e)(iv)(1) for specifics of returning the Equipment. If any Service is terminated or

cancelled for any reason before the end of your current billing cycle, you agree we will prorate the monthly charge and usage charges to the date of termination.

11. Limitation of Liability; Disclaimer of Warranties. YOU AGREE THAT IN THE EVENT OF ANY BREACH OF THESE TERMS AND CONDITIONS OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER CROSSCONNECT NOR ANY OF CROSSCONNECT'S SUPPLIERS SHALL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF CROSSCONNECT OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT CROSSCONNECT MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR ITS PERFORMANCE UNDER THESE TERMS AND CONDITIONS. YOU UNDERSTAND THAT CROSSCONNECT DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU UNDERSTAND THAT NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE OR EQUIPMENT. YOU UNDERSTAND THAT WE DO NOT PROMISE ERROR-FREE OR UNINTERRUPTED SERVICES AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS.

- a. **Limitations.** You agree that we are not liable for any damages arising out of or in connection with any:
 - i. Act or omission by you, another person or company;
 - ii. Failing to provide Services or problems with your Services or equipment;
 - iii. Accidents or any health-related claims allegedly arising from the use of the Services or any equipment; or
 - iv. Failure or interruption in attempting to access emergency services from the provided equipment or our Service.
- b. **Force Majeure.** You agree that CROSSCONNECT shall not be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond CROSSCONNECT's reasonable control.
- c. **Damages.** If we are found to be liable to you for damages, you agree that any such damages shall not exceed the pro-rated monthly recurring charge for your Services during the affected period.

12. SECURITY AND OTHER ALARM SYSTEMS. YOU AGREE THAT THE SERVICE MAY NOT BE COMPATIBLE WITH YOUR SECURITY AND FIRE ALARM SYSTEMS. YOU UNDERSTAND THAT CROSSCONNECT STRONGLY RECOMMENDS THAT YOU MAINTAIN A TELEPHONE CONNECTION THROUGH YOUR LOCAL EXCHANGE CARRIER IN ORDER TO USE ANY ALARM MONITORING FUNCTIONS. YOU AGREE THAT YOU ARE RESPONSIBLE FOR CONTACTING THE ALARM MONITORING COMPANY REGARDING YOUR ALARM SERVICE. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CROSSCONNECT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, INCLUDING FAILURE OR PROBLEMS WITH YOUR SECURITY AND FIRE ALARM SYSTEMS.

13. Integration. You agree that these Terms and Conditions and any Orders or Attachments supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and covenants and all inducements to the making of this Agreement whether written or oral or whether made before execution of this Agreement.

14. Indemnification. You agree to defend, indemnify and hold harmless CROSSCONNECT and its respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, resulting from or based upon any complaint, claim, action, proceeding or suit to the extent that such claim arises out of any violation of this Agreement by you.

15. Notices. You agree that all notices to be sent to you pursuant to this Agreement shall be in writing and sent by electronic mail ("email") to the email address associated with your account (if available), and/or US mail or private courier. You agree that any email notice shall be deemed delivered when sent and that notices sent via U.S. mail or courier shall be deemed delivered two (2) days after the date sent. You agree that all written correspondence to CROSSCONNECT should be directed to Customer Service, CROSSCONNECT Communications, 100 Commercial Dr., Fairfield, OH 45014.

16. Arbitration. The parties desire to resolve disputes arising out of or relating to this Agreement without litigation.

Therefore, except for an action seeking a temporary restraining order or an injunction relating to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

All discussions and correspondence among you and us shall be treated as confidential information developed for the purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the agreement of the parties.

The parties acknowledge that this Agreement is made pursuant to a transaction in interstate commerce, and that any arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1, et seq. You agree that the arbitration shall be administered by the American Arbitration Association ("AAA"). You may contact the AAA by telephone at 1-800-778-7879, by email at Websiteemail@adr.org, or by mail at 335 Madison Avenue, Floor 10, New York, New York 10017. Any court with jurisdiction may enter judgment upon the award rendered by the arbitrator. The parties agree that any arbitration will be held in Hamilton County, Ohio. The parties agree that the arbitration shall proceed *ex-parte* in the event that a party, after being duly notified refuses to participate in the arbitration. The parties agree that the prevailing party shall be entitled to reasonable costs and attorney's fees. Notwithstanding the above, we each agree that if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due amounts and any interest or cost of collection permitted by law or the Agreement.

Notwithstanding the above, **YOU UNDERSTAND THAT YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION if: (a) your claim qualifies, you may initiate proceedings in small claim court; or (b) YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN THIRTY (30) DAYS FROM THE DATE YOU ACTIVATED THAT PARTICULAR SERVICE ("Opt Out Deadline").** You may opt out of these arbitration procedures by calling 1-800-897-4440. You agree that any opt-out received after the Opt Out Deadline will not be valid and you must pursue your claim in arbitration or small claims court.

17. Waiver and Amendment. You agree that the failure of CROSSCONNECT to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision.

18. Choice of Law. You agree that this Agreement shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of Ohio, without respect to the state's conflict of laws provisions. You acknowledge and agree that any action to enforce or interpret the terms of

this Agreement or relating to the Services to be provided by CROSSCONNECT shall be instituted and maintained only in Hamilton County, Ohio. You hereby consent to the jurisdiction and venue of such court and waive any objection to such jurisdiction and venue.

19. Survival. You agree that no termination of this Agreement shall affect the rights or obligations of either party with respect to payment or with respect to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, including without limitation, indemnification, limitation of liability, governing law and forum selection.

20. Severability. You agree that if any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then the provision shall be deemed modified to the minimum extent necessary to be valid.

21. Assignment. You agree that CROSSCONNECT may assign its rights and duties at any time to any party without notice to you. You agree that you may not assign this Agreement without the prior written consent of CROSSCONNECT.

22. Costs and Attorneys' Fees. You agree that if a proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement or the Services, the prevailing party shall be entitled to recover reasonable attorney's fees and other reasonable costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.

23. CLASS ACTION WAIVER. WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDING, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. You agree that if a court or arbitrator determines in an action between you and us that this waiver is unenforceable, the arbitration agreement will be void as to you. If you chose to pursue your claim in court by opting out of the arbitration provision as specified above, this Class Action Waiver provision will not apply to you. You agree that neither you, nor any other customer, can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt out requirements above.

24. JURY TRIAL WAIVER. If a claim proceeds in court rather than through arbitration, **WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.**