

## **Insight Business Phone Service Agreement**

**Effective March 1, 2007**

This Agreement, as it may be amended from time to time, sets forth the terms and conditions under which business customers (“Customer,” “you,” or “your”) will be provided Insight Business Phone Services (“Service(s)”). The Services and any necessary devices will be provided by the subsidiary of Insight Midwest Holdings, LLC operating in your geographic area (“Insight,” “we,” “us,” or “our”). By signing a paper copy of this Agreement or any letter of agency or work order referencing this Agreement, accepting an online version of this Agreement, or by ordering or using the Service, Customer is agreeing to be bound by all the terms and conditions of this Agreement, including those related to 911/E911 service, service interruptions, and binding arbitration, and is also agreeing to ensure that any users of Customer’s account comply with the terms of this Agreement. Customer shall be responsible and liable for any user’s use of Customer’s account.

If you do not agree to the pricing or to any of the terms and conditions contained herein, you may terminate the Services consistent with the termination provisions set forth herein. You may be subject to charges for any Services you have used prior to termination.

Insight Business Phone Services are different from Insight Phone services. **If you subscribe to Insight Phone services, your Insight Phone Services are not governed by this Agreement but by separate pricing, terms, and conditions.**

### **1. Incorporation by Reference.**

(a) The terms and conditions contained in this Agreement are in addition to, and incorporate by reference, the following: (1) Insight Communications Privacy Policy (available at <http://www.insight-com.com/privacy.asp>); (2) Insight Broadband Subscriber Agreement (available at [insightbb.com](http://insightbb.com)); (3) Insight Acceptable Use Policy (available at [http://www.insightbb.com/terms\\_conditions/default.aspx#use\\_policy](http://www.insightbb.com/terms_conditions/default.aspx#use_policy)); and (4) any service orders, work orders, letters of agency/authorization (“LOAs”) or other documentation provided to you at the time the Service is installed.

(b) The pricing information for Insight Business Phone Service is available at <http://www.insightbusiness.com>, and is incorporated by reference into this Agreement. No representation, warranty, term or condition, and no statements or agreements by any employee or agent of Insight, other than as specifically set forth in this Agreement, shall be binding on Insight.

### **2. General.**

(a) Customer represents and warrants that he/she is at least 18 years of age and is authorized to enter into this Agreement for the purchase of Insight Business Phone Service. You also represent and warrant that you have provided and will continue to provide to Insight accurate, complete, and current Customer information including, but not limited to, your legal name, address, phone number(s), and payment data (including, but not limited to, if applicable credit

card numbers and expiration dates). You agree that during the term of this Agreement you will promptly notify us if there is any change in the information that you have provided to us in accordance with the terms of this Agreement. If you fail to provide and maintain accurate information, you will be deemed in breach of this Agreement.

(b) In order to receive InsightBusiness Phone Service, any and all of Customer's accounts with Insight must be current. Customer understands and acknowledges that the nonpayment of charges associated with Insight's cable television service, broadband cable modem service, and/or Insight Business Phone Service may result in disconnection of the Services with notice as required by applicable law.

(c) Customer understands that Insight shall have the right at any time to add to, modify, or delete any aspect, feature or requirement of the Service, including but not limited to equipment and system requirements.

(d) Customer understands that Insight shall have the right to add to, modify, or delete any provision of this Agreement, the Insight Communications Privacy Policy, the Insight Broadband Subscriber Agreement, and the pricing information for Insight Business Phone at any time and without notice. An online version of this Agreement as so changed from time to time, will be accessible at <http://www.insightbusiness.com>. Except as may otherwise be required by applicable law, posting of changes to the Agreement, the Insight Communications Privacy Policy, the Insight Broadband Subscriber Agreement, or the pricing information at the online location will constitute notice to Customer of any such change. Upon any such change and notice, Customer's continued use of Insight Business Phone Service will constitute Customer's consent to such change. If Customer does not agree to any such change, Customer immediately shall stop using Insight Business Phone Service and notify Insight that he/she is terminating the subscription to Insight Business Phone Service.

(e) Customer is responsible in all respects (including payment obligations) for all use of Customer's account and all use by others of Customer's account is subject to the terms hereof. For the purposes of this Agreement, all use of Customer's account, whether or not authorized by Customer, shall be deemed Customer's use. Customer shall be responsible for ensuring that all use of Customer's account complies fully with the provisions of this Agreement.

(f) Insight will provide information to a carrier who needs the information for allocation, billing or service purposes in compliance with applicable state and federal Customer Proprietary Network Information requirements.

**3. Insight Equipment, Customer Equipment, and Insight's Access to Customer's Premises.**

(a) "Insight Equipment" shall mean all equipment, such as external cabling and related electronic devices, and any software that is installed and/or provided by Insight or its designee. Insight Equipment will at all times remain the property of Insight or its designee.

(b) To use the Services, you will need an embedded media terminal adapter (“EMTA”) that you purchase or lease from us. Customer agrees to keep the EMTA plugged into a working electrical power outlet at all times and at Customer’s expense.

(c) To use the Services, Customer must also subscribe to an Insight Business High Speed Internet package at the same business location.

(d) You acknowledge that Insight Equipment and the EMTA is merely a means for us to provide you the Services and that we may remove or change the Insight Equipment or a leased EMTA at our discretion. You agree not to use Insight Equipment or the EMTA, if leased, for any purpose other than to use the Services in accordance with this Agreement. Insight will repair and maintain all Insight Equipment during the term of this Agreement. You agree that you will not allow anyone other than Insight employees or agents to service, rearrange, disconnect, remove, or otherwise interfere with the Insight Equipment or any leased EMTA. You agree not to sell, transfer, lease, encumber, or assign all or any part of the Insight Equipment or EMTA, if leased, to any third party. If any Insight Equipment or part thereof, or any leased EMTA is lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned, you agree to pay Insight the full manufacturer’s suggested retail price for the replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Insight Equipment or part thereof, or any lease EMTA together with any incidental costs incurred by Insight relating to the replacement of the Insight Equipment or leased EMTA.

(e) In order to use the Services, you are required to provide certain equipment such as a phone handset or equivalent, inside phone wiring and outlets, and an electrical power outlet (“Customer Equipment”). Insight shall not be responsible for the installation, operation or maintenance of any Customer Equipment and any other equipment not provided by Insight. Customer is responsible for ensuring that any Customer Equipment and any equipment not provided by Insight that is connected to Insight Equipment and facilities are compatible with the Insight Equipment and facilities.

(f) Customer authorizes Insight and its employees, agents, contractors, and representatives to enter the premises at which you will use the Services (“Premises”) in order to install, maintain, inspect, repair and remove the Insight Equipment and the Service. All such access will occur at a time agreed to with Customer. Customer warrants that Customer is the owner of, or a tenant in, the Premises, and that Customer has the authority to enter into this Agreement. If Customer is not the owner of the Premises, upon request, Customer will supply Insight with the owner’s name and address, evidence that Customer is authorized to grant access to the Premises on the owner's behalf and (if requested by Insight) written consent from the owner of the Premises. Customer shall be responsible for payment of all service charges for visits by Insight employees, agents, contractors or representatives to the Premises if the reason for the service visit results from equipment or facilities not provided by Insight. Insight is not liable for damages to a Premises resulting from the furnishing of Service, including the installation or removal of Insight Equipment or facilities and wiring, unless damage is caused directly by Insight’s negligence.

(g) The Insight Equipment and EMTA, if leased, will at all times remain the property of Insight or its designee. Customer acknowledges that the Insight Equipment is merely a means through which the Service is provided by Insight and may be removed or changed by Insight at

its discretion as it deems appropriate, including through “downloads” to the Insight Equipment or otherwise. Customer agrees not to use the Insight Equipment or the EMTA for any purpose other than to use the Service pursuant to this Agreement.

(h) You agree **not** to relocate Insight Equipment or the EMTA after installed by Insight. At your request, we may relocate the Insight Equipment or the EMTA within the Premises for an additional charge, at a time agreeable to you and to us. If you change business locations, you must contact Insight for information on whether the Insight Equipment, the EMTA and the Services may be transferred to your new business location and what the relocation will cost. If you wish to disconnect the Services, you must contact Insight.

(i) Insight shall have the unrestricted right, but not the obligation, to upgrade the firmware in the EMTA or any Insight Equipment at any time that Insight, in its sole discretion, determines it is necessary or desirable. Customer assumes all responsibility for any degradation in or problems from the failure to upgrade.

#### **4. Limitations of 911/E911.**

(a) **CAREFULLY READ THE INFORMATION BELOW.** By utilizing the Services, Customer acknowledges and accepts any and all limitations of 911/E911 and agrees to convey these limitations to all persons who may have occasion to utilize the Services. As a condition of receiving the Services, you will be required to affirm that you have been informed of these limitations. **If you have additional questions about 911/E911, call Insight at 1 800 956-4401.**

(b) **LIMITATIONS OF 911/E911.** Customer acknowledges that the Services include 911/E911 functionality that may differ from the 911/E911 functionality provided by other providers and therefore may have certain limitations. These limitations include, but are not limited to, relocation of the Service, the EMTA or Insight Equipment by Customer without prior approval of Insight, use by the Customer of a telephone number that does not correspond to Customer’s geographic location, Internet or broadband connection failure, loss of electrical power, and delays in placing Customer’s location information in the appropriate 911/E911 databases.

(c) In order for your 911/E911 calls to be properly directed to emergency services, Insight must have your correct Service address. Customer agrees that they shall not, nor shall any other person, move the EMTA, the Insight Equipment and/or the Services to a different address without Insight’s prior approval. Customer acknowledges that if they move the Insight Equipment, the EMTA, and/or Services to a different address without Insight’s prior approval 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address, and/or the Services (including 911/E911) may fail altogether. Therefore, you must call 1 800 956-4401 before you move the Services and/or the EMTA to a new address. Insight will need several business days to update your Service address in the E911 system so that your 911/E911 calls can be properly directed. Please be aware that all changes in Service address require Insight’s prior approval.

(d) As discussed in Section 5 below, Insight uses the electrical power in your home. If there is an electrical power outage, 911 calling may be interrupted if the battery backup in the associated EMTA is not installed, fails, or is exhausted after several hours. Furthermore, calls,

including 911 calling, may not be completed if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

(e) Insight will provide you with a sticker regarding the limitations of 911/E911 that must be placed on or near the EMTA and telephone handsets used to access the Service. By utilizing the Service, Customer acknowledges that it has received the sticker and placed them in the appropriate locations.

**(f) YOU ACKNOWLEDGE AND AGREE THAT INSIGHT AND ITS DESIGNATED AGENTS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS INSIGHT AND ITS DESIGNATED AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR ANY USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911.**

**5. Service Interruptions.**

(a) Customer acknowledges that Insight does not have its own power source and will not be available without an independent power supply. Customer also acknowledges that, under certain circumstances, including if the electrical power and/or Insight's cable network or facilities are not operating, Insight Business Phone Service, including the ability to access emergency services, will not be available.

(b) Customer acknowledges that the performance of the battery backup is not guaranteed for, but not limited to, the following reasons: (i) the battery may not have been properly installed in the EMTA; (ii) the battery may have been removed from the EMTA; (iii) the battery may fail; (iv) the battery may provide power for only a limited time; or (v) the battery may be exhausted. If the battery backup does not provide power, the Services will not function until normal power is restored. You also understand and acknowledge that you will not be able to use online features of the Services, to the extent available, under certain circumstances including, but not limited to, the interruption of your Internet or broadband connection.

(c) Insight shall have no liability for interruption of the Services due to circumstances beyond its control including, without limitation, acts of God, flood, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, or weather.

(d) Insight shall have the right to make necessary repairs or changes in its facilities at any time and has the right to temporarily suspend or interrupt the Service for the purpose of making necessary repairs, changes or upgrades in its system.

**6. Incompatibility of the Services with Certain Equipment, Services, and Activities.**

(a) Customer acknowledges that Insight Business Phone Service may not be compatible with security systems and that, in order to maintain any necessary alarm monitoring functions, Customer may be required to maintain a telephone connection through a local exchange carrier. In the event that Insight installs and configures Insight Business Phone Service to operate with Customer's security system, Customer expressly acknowledges that it must contact the provider of its alarm monitoring services in order to test the compatibility of the alarm monitoring services with Insight Business Phone Service.

(b) Customer acknowledges that Insight Business Phone Service may not be compatible with certain other equipment, including certain makes or models of medical monitoring devices, fax machines, dial-up modems, rotary-dial telephone handsets, pulse-dial telephone handsets, private branch exchange ("PBX") equipment, answering machines, and Caller ID units.

(c) Customer acknowledges that the Services may not support casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling; 311, 511; other; other x11 calling (other than 411, 611, 711, and 911); other non-traditional call types; and Customer may be unable to receive calls from correctional facilities and privately owned pay phones.

(d) By accepting this Agreement, Customer waives all claims against Insight for interference, disruption, or incompatibility between the Insight Equipment, the EMTA or the Services and any other service, systems, or equipment. In the event of such interference, disruption, or incompatibility, your sole remedy shall be to terminate the Services in accordance with the provisions set forth in this Agreement.

## **7. Limits on Your Use of the Services.**

(a) Insight Business Phone Service as offered and provided under this Agreement is a business service offered for the reasonable commercial use of the subscriber only. Customer will not resell or redistribute, or permit another to resell or redistribute, (whether for a fee or otherwise) the Service, or any portion thereof, or otherwise charge others to use the Service, or any portion thereof. Customer agrees not to use the Service, the Insight Equipment or the EMTA for any enterprise purpose whether or not the enterprise is directed toward making a profit including, but not limited to, auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, call center services, medical transcription, or any other use that results in excessive usage inconsistent with normal small business calling patterns, as determined solely by Insight. Insight reserves the right to, in its sole discretion but upon notice as required by applicable law, (1) disconnect any prohibited transmissions or uses, (2) terminate the Service, or (3) impose additional charges in the event of a violation of the foregoing use restrictions or in the event of an excessive number of calls during a fixed period, heavy usage during business hours, heavy usage concentrated over consecutive dates, or usage that may be deemed by Insight to be above normal small business usage.

(b) Customer agrees to ensure that all uses of the Insight Equipment, the EMTA and/or the Services installed at the Premises are legal and appropriate and comply with all applicable laws, regulations, and instructions for use. Customer agrees that the Insight Equipment, the EMTA and/or the Services shall not be used, by Customer or by any other person authorized by Customer or not, for any unlawful purpose or for any use as to which Customer or any other

person or user has not obtained all required governmental approvals, authorizations, licenses, consents and permits. Insight reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to you or users (*e.g.*, voicemail), if Insight, in its sole discretion and without any liability, (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with Insight's ability to provide the Services to you or others, (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use, or (iv) determines that the Services are being used to frighten, abuse, torment or harass another. Insight's action or inaction under this Section 7 shall not constitute review or approval of your or any other users' use or information.

(c) Customer agrees that there will be no abuse or fraudulent use of Insight Equipment, the EMTA and/or the Services and Insight reserves the right to act immediately and without notice to terminate or suspend the Services, if Insight, in its sole discretion and without any liability, (i) determines that such action is necessary to prevent or protect against abuse or fraud or to otherwise protect its employees, agents, representatives, facilities, assets or Services. Abuse, prohibited hereunder, shall include any actions or pattern of behavior by Customer that is intended to vex, harass, threaten, or annoy Insight, its employees, agents, representatives or contractors, or to otherwise disturb or interrupt Insight's operations. Fraudulent use, prohibited hereunder, shall include (i) rearranging or tampering with Insight Equipment or facilities, (ii) using the Service to gain access to another person's calling capabilities or information on an unauthorized basis, (iii) using fraudulent means or devices, tricks, schemes, false or invalid numbers or information, false representation, false credit devices to defraud or mislead callers; or (iv) refusing to provide or providing false information to Insight regarding the Customer's identity, address, credit worthiness, current or past use of telecommunications services.

(d) Customer agrees it will not service, alter, modify, or tamper with Insight Equipment, a leased EMTA or with the Services, or permit any other person (not expressly authorized by Insight) to do so.

(e) Except as specifically provided below, Customer agrees that the EMTA and the Services will only be used at the service address appearing in our records. You understand and acknowledge that if you attempt to install or use the Insight Equipment, the EMTA or the Services at another location, the Services, including but not limited to 911/E911, may fail to function or may function improperly. If you move the Insight Equipment, the EMTA or the Services to another location without seeking prior approval from Insight, you do so in violation of this Agreement and at your own risk. Certain features of the Services may not be accessible from locations other than your service address appearing in our records. If you violate any of the restrictions in this Section 7, Insight reserves the right to terminate the Services immediately and without notice, leaving you responsible for all outstanding charges, which immediately become due and payable.

(f) You will be liable for all use of the Services using your EMTA and for any and all stolen Services or unauthorized use of the Services. You agree to notify us immediately in writing or by calling our customer service line during normal business hours if you become aware at any

time that the Insight Equipment or the EMTA is stolen or that your Services are being stolen or used without your authorization. If you fail to notify us in a timely manner, your Services may be terminated without notice, with additional charges to you.

## **8. Telephone Number(s).**

(a) If you are switching to Insight Business Phone Service from another service provider, you may transfer your existing phone number (if any) to our Service, provided that the following conditions apply: (i) you request the phone number transfer when you place your order for our Service and complete Insight's Letter of Agency/Authorization ("LOA"); (ii) your current service provider releases your existing phone number, at our request, without delay and without imposing non-industry-standard charges on us; and (iii) transfer of your existing phone number to our Service would not, in our view, violate applicable law or our processes and procedures.

(b) By completing Insight's LOA, Customer acknowledges that it is authorizing Insight or its designated agent to change your local, toll, and long distance service provider to Insight and to access your existing account records to process that request. Customer acknowledges and understands that by selecting Insight and completing the LOA, Insight will be Customer's only provider for local, toll, and long distance calling.

(c) To transfer your phone number from Insight to another service provider, you must place the order to transfer the Services through your new service provider (and not through Insight). Insight will release your phone number to your new service provider, provided that: (i) your new service provider submits a properly completed transfer request to Insight; (ii) your new service provider will accept transfer of the phone number without delay or charge to Insight; and (iii) transfer of your existing phone number to the new service provider would not, in our view, violate applicable law or our processes and procedures.

(d) If Insight determines that your telephone number assignment does not conform to applicable industry guidelines, our internal policies, and/or the law, we reserve the right, with prior notice to you, to change the telephone number, without liability.

## **9. Billing and Payment.**

(a) Customer agrees to pay all charges associated with the Services including, but not limited to, installation charges, monthly service charges, charges for the EMTA, charges for the use of Insight Equipment, charges for service calls, and any other charges. The current applicable schedule of charges and fees is available at <http://www.insightbusiness.com>. You also agree to pay any and all applicable federal, state, and local taxes (however designated) in connection with the sale, installation, use or provision of the Services, whether we or our affiliates pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from you. Insight also reserves the right to impose on you any fees or payment obligations in connection with the Services imposed by any governmental or quasi-governmental bodies in connection with the sale, installation, use or provision of the Services.

(b) We may change any of the charges associated with the Services at any time at our discretion. We may decrease the charges with or without advance notice and we may increase

the charges for the Services after we post them on our schedule of charges and fees available at <http://www.insightbusiness.com>. Taxes and other governmental-related fees and surcharges may be changed with or without notice. You will also be responsible to pay any fees, payment obligations, and taxes that become applicable retroactively.

(c) The Insight Business Phone calling plans are billed as a flat monthly fee. The flat monthly fee, however, may not include certain call types. These call types will instead be charged on a per-call basis (*e.g.*, operator services) or a measured basis (*e.g.*, international calls). For billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine) and ends when one of the parties disconnects the call. Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. However, some providers (*e.g.*, those involved in calls to foreign countries) charge for a completed call when the called party's line rings or after a certain number of rings. If such a provider charges Insight, its affiliates, or suppliers as if your call were answered by the called party, Insight will charge you for a completed call. Consult the pricing information available at <http://www.insight-com.com> for information on per-call charges.

(d) Subject to the limitations set forth in Section 6, the Services may allow you to access "dial-up" Internet service providers, other enhanced service providers (*e.g.*, information services accessible through 800, 888, and 877 numbers), and other third party providers. You acknowledge that you may incur charges with such providers that are separate and apart from the amounts charged by us. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. In addition, you are solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

(e) Insight will bill you monthly, in advance, for Service charges, equipment charges, and other recurring fees. You will be billed for installation and other one-time charges, measured and per-call charges, and for all other charges, according to our billing policies then in effect. Your Insight invoice may also contain charges for other services provided by us or our subsidiaries or affiliates. If you make partial payment of any invoice, we will apply that payment to the outstanding charges in the amounts and proportions that we determine. However, if we accept any partial payment from you, we do not waive our rights subsequently to collect the full balance owed to us.

(f) You agree to pay Insight all fees or charges for the Services, including any late fees and related fees, charges, and assessments related to late payments or non-payments. You may be charged such fees, charges, and assessments (i) if for any reason Insight does not receive from you any required payment for the Services by the date on which the payment is due; or (ii) if you pay less than the full amount due for the Services.

(g) If we are required to use a collection agency or attorney to collect money owed by you or to assert any other right that we may have against you, you agree to pay the reasonable costs of such collection or other action. These costs include, but are not limited to, any collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

(h) You authorize Insight to make inquiries and to receive information about your credit history from others, to enter this information in your file, and to disclose this information concerning you to appropriate third parties for reasonable business purposes.

(i) Subject to applicable law, you must contact Insight within sixty (60) days of the date on the bill to dispute charges or request a billing credit.

(j) Should you wish to resume the Services after a suspension of the Services, we may require you to pay a restoral or reconnection fee, as applicable. Should you wish to reinstate the Services after disconnection of the Services, we may require you to pay a new installation fee and/or service activation fee, as applicable. Restoral, reconnection, and re-initiation of the Services are subject to our credit policies.

(k) In addition to Insight Business Phone Service, Insight currently delivers or may hereafter deliver one or more other products or services to a Customer. Insight is authorized, to the fullest extent and as permitted by applicable law, to setoff and apply any and all payments (including portions thereof or partial payments) or deposits at any time received by Insight from Customers with respect to the Insight Business Phone Service or of such other services against any and all of the obligations of a Customer to Insight irrespective of the type of service. Insight shall have sole discretion in determining the order of priority for the application of such payments among the accounts for such services, subject to applicable law. For purposes of the foregoing, a "Customer" shall be deemed to include all accounts for any such services at a single address. The rights of Insight hereunder are in addition to other rights and remedies that it may have.

## **10. Termination.**

This Agreement will remain in effect until canceled by either party as provided below.

(a) **Termination by Customer.** Customer may terminate this Agreement for any reason at any time by providing Insight with at least twenty-four hours advance notice. Customer may provide notice by calling or delivering a written termination notice to Insight's customer service department during normal operating hours. Disconnect and other termination fees and charges may apply depending on Customer's subscription terms as may be set forth in the applicable Insight Business Telephone Service Order Form executed by Customer, including subscriptions for fixed time or as part of a promotion or special rate. In the event of such a termination, any applicable fees and charges will accrue through the Term set forth in the Insight Business Telephone Service Order Form.

(b) **Termination by Insight.** Insight may terminate this Agreement immediately at any time, without prior notice, if (i) Customer or any other user of the Service fails to fully comply with the terms of this Agreement, its components, and any documents incorporated by reference; (ii) Customer or any other user of the Service fails to fully comply with any terms or conditions applicable to other services the Customer receives from Insight; or (iii) for any other reason (with or without cause). If Insight terminates this Agreement due to a violation of this Agreement or Insight's policies, Customer may be subject to additional fees and charges, including disconnect and termination fees, and we may also exercise other rights and remedies.

In the event Insight terminates the Service for any reason other than for a violation of this Agreement or Insight's policies, any fees and charges will accrue through the date of termination and any prepaid monthly service fees for Service not received will be refunded.

(c) **Customer Obligations Upon Termination.** Customer agrees that upon termination of this Agreement:

(i) Customer immediately will cease use of the Service and the Insight Equipment.

(ii) Customer will pay in full for Customer's use of the Service and the Insight Equipment up to the later of the effective date of termination of this Agreement, the date on which the Service, the EMTA and the Insight Equipment have been disconnected and any leased EMTA and Insight Equipment have been returned to us upon our request, or the date of the expiration of Term as set forth in the applicable InsightBusiness Telephone Service Order Form executed by Customer. Customer agrees to pay on a pro-rated basis for any use by Customer of the Service, any leased EMTA or Insight Equipment for a part of a month.

(iii) Customer shall return to Insight the Insight Equipment and/or leased EMTA, by any method reasonably requested by Insight, within ten (10) days after termination of the Agreement.

(iv) Upon Insight's request, Customer will permit Insight, its employees, agents, contractors, and/or representatives, to access Customer's Premises during regular business hours to remove the Insight Equipment and/or any leased EMTA. Such removal will be conducted at an agreed to time; and Customer will ensure the return of all Insight Equipment and/or leased EMTA to Insight. If any Insight Equipment or leased EMTA is not returned, is returned damaged or is only partially returned, Customer agrees that Insight may charge Customer the full manufacturer's suggested retail price for a replacement of any such Insight Equipment or leased EMTA, including any incidental costs incurred by Insight relating to the Insight Equipment or EMTA replacement, to Customer's account or Customer's credit or debit card on file with Insight (if applicable).

(d) **Retention of Rights.** Nothing contained in this Agreement shall be construed to limit Insight's rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Insight and its suppliers reserve the right to delete all Customer's data, files, electronic messages or other Customer information that is stored on Insight's or its suppliers' servers, networks or systems. In addition, Customer may be required to forfeit his/her account user name and all e-mail, IP and web space addresses used in connection with the Service. Insight shall have no liability whatsoever as the result of the loss of any such information, data, names or addresses.

(e) **Survival.** All representations, warranties, indemnifications and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such

termination or which relate to the period prior to termination (including legal conditions, payment, and our rights and the rights of others).

(f) **Use of 911/E911 Upon Termination.** Customer acknowledges and understands that Insight Business Phone Service including 911/E911, as well as any online features of the Services, where we make those features available, will be disabled if your account is suspended or terminated.

**11. No Warranties; Limitation of Liability and Indemnification.**

(a) **DISCLAIMER OF WARRANTIES.** INSIGHT, ITS AFFILIATES AND THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING THE SERVICE, THE EMTA OR THE INSIGHT EQUIPMENT, INCLUDING WARRANTIES: (i) OF TITLE OR NONINFRINGEMENT; (ii) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (iii) OF UNINTERRUPTED USE; (iv) OF OPERATION WITHOUT DELAY OR WITHOUT ERROR; (v) OF TRANSMISSION OF COMMUNICATIONS IN UNCORRUPTED FORM; (vi) OF ADEQUACY OR SUITABILITY OF THE SERVICE; (vii) OF COMPATIBILITY WITH ANY PARTICULAR OPERATING SYSTEM, PLATFORM, EQUIPMENT OR SOFTWARE; (viii) OF SPEED OR UNCORRUPTED FORMATS; OR (ix) WARRANTIES IMPLIED OR RESULTING FROM COURSE OF DEALINGS OR COURSE OF PERFORMANCE, REPRESENTATIONS, OR ENDORSEMENTS, TO THE MAXIMUM EXTENT PERMITTED BY LAW. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED.

(b) CUSTOMER'S SOLE REMEDY FOR ANY SERVICE INTERRUPTION SHALL BE LIMITED TO A PRORATED CREDIT UPON REQUEST ONLY IN THE EVENT OF COMPLETE FAILURE OF THE SERVICE DUE TO A TECHNICAL MALFUNCTION BEYOND THE CONTROL OF INSIGHT FOR TWENTY-FOUR (24) CONSECUTIVE HOURS OR MORE. TO QUALIFY FOR SUCH CREDIT, CUSTOMER MUST REQUEST THE CREDIT FROM INSIGHT WITHIN THIRTY (30) DAYS OF THE FAILURE. CREDITS SHALL BE APPLIED ONLY AGAINST FUTURE FEES PAYABLE BY CUSTOMER FOR THE SERVICE. NEITHER INSIGHT, ITS AFFILIATES NOR THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE OR THE EMTA WARRANT THAT ANY DATA OR FILES SENT BY OR TO CUSTOMER WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME.

(c) NO INFORMATION, ORAL OR WRITTEN STATEMENTS, SERVICE DESCRIPTIONS OR ADVICE GIVEN OUTSIDE OF THIS AGREEMENT BY INSIGHT, ITS AFFILIATES, EMPLOYEES, AGENTS OR SUPPLIERS SHALL CREATE ANY EXPRESS OR IMPLIED WARRANTY.

(d) **YOUR RESPONSIBILITY AND LIABILITY.** YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICE OR THE EMTA.

INSIGHT, ITS AFFILIATES AND THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE OR THE EMTA SHALL NOT UNDER ANY CIRCUMSTANCES OR LEGAL THEORY HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES, SUCH AS, BUT NOT LIMITED TO LOSS OF PROFITS, EARNINGS, BUSINESS OPPORTUNITIES, PERSONAL INJURY (INCLUDING DEATH), LEGAL FEES AND EXPENSES, INCLUDING INVESTIGATION FEES) TO YOU OR ANYONE ELSE USING YOUR SERVICE: (i) RESULTING DIRECTLY OR INDIRECTLY OUT OF THE USE OR INABILITY TO USE THE SERVICE, THE EMTA OR THE INSIGHT EQUIPMENT; (ii) ARISING IN CONNECTION WITH THE INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE SERVICE, THE EMTA OR THE INSIGHT EQUIPMENT; (iii) ARISING FROM RELIANCE BY YOU OR BY ANY USER OF YOUR SERVICE ON THE INSIGHT EQUIPMENT, THE EMTA OR THE SERVICE; (iv) ARISING IN CONNECTION WITH OR RESULTING FROM, WITHOUT LIMITATION, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE FAILURE OR MALFUNCTION, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, LOSS OF CALL DETAIL, EMAIL, VOICEMAIL OR OTHER INFORMATION OR DATA OR FAILURE OF PERFORMANCE OF THE INSIGHT EQUIPMENT, THE EMTA OR THE SERVICE; OR (v) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING RELATING TO THE INSIGHT EQUIPMENT, THE EMTA, SERVICE OR SOFTWARE, OR THE INFRINGEMENT OF THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

(e) IF YOU LIVE IN A STATE WHOSE LAWS PREVENT YOU FROM TAKING FULL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICE, OUR LIABILITY IS LIMITED TO THE GREATEST EXTENT ALLOWED BY LAW. IN NO EVENT SHALL INSIGHT'S LIABILITY OR THE LIABILITY OF THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE EXCEED (1) FOR INJURY TO PROPERTY OR PERSON CAUSED BY OUR WILLFUL OR GROSS NEGLIGENCE, THE AMOUNT OF DIRECT DAMAGES TO THE PROPERTY OR PERSON, OR (2) FOR ALL OTHER CLAIMS, ACTIONS OR DAMAGES PERMITTED UNDER THIS AGREEMENT, OUR SERVICE CHARGES DURING THE AFFECTED PERIOD.

(f) **YOUR AGREEMENT TO INDEMNIFICATION.** MISUSE OR CERTAIN USE OF THE SERVICE, THE EMTA, AND/OR THE INSIGHT EQUIPMENT MAY RESULT IN CLAIMS BY THIRD PARTIES AGAINST INSIGHT. AS A PRACTICAL MATTER, WE CANNOT MONITOR OR CONTROL THE ACTIVITIES OF CUSTOMERS OR OTHER USERS OF YOUR SERVICE TO PREVENT THESE CLAIMS. CUSTOMER AND EACH OTHER USER OF THE SERVICE, , THE EMTA, AND/OR THE INSIGHT EQUIPMENT JOINTLY AND SEVERALLY, AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS INSIGHT, ITS AFFILIATES AND THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE, THE EMTA AND/OR THE INSIGHT EQUIPMENT, FROM ANY AND ALL

CLAIMS, SUITS, PROCEEDINGS, INVESTIGATIONS, LIABILITIES, JUDGMENTS, LOSSES, DAMAGES, EXPENSES OR COST (INCLUDING ATTORNEYS' FEES AND INVESTIGATION EXPENSES) THAT DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF OR RELATE TO: (i) ANY VIOLATION OR BREACH OF THIS AGREEMENT BY THE CUSTOMER OR ANY USER OF THE SERVICE; (ii) THE USE OF THE SERVICE, THE EMTA AND/OR INSIGHT EQUIPMENT; (iii) INFRINGEMENT OR VIOLATION OF ANY PERSON'S PROPERTY, CONTRACTUAL OR OTHER PROPRIETARY RIGHTS, INCLUDING COPYRIGHT, PATENT TRADE SECRET AND TRADEMARK RIGHTS; (iv) ANY CLAIMS FOR LIBEL, SLANDER, INVASION OF PRIVACY ARISING FROM THE USE OF THE SERVICE, THE EMTA OR INSIGHT EQUIPMENT, OR (v) ANY CLAIMS OR DAMAGES ARISING OUT OF THE LACK OF 911/E911 OR DIALING ASSOCIATED WITH A HOME SECURITY OR MEDICAL MONITORING SYSTEM.

(g) The limitations in this Section 11 also shall apply when Insight makes available an option to list your name, address, and/or telephone number in a published directory or directory assistance database, and one or more of the following conditions occurs: (i) you request that your name, address, and/or telephone number be omitted from a directory or directory assistance database, but that information is included in either or both; (ii) you request that your name, address, and/or telephone number be included in a directory or directory assistance database, but that information is omitted from either or both; or (iii) the published or listed information for your account contains material errors or omissions. If any of these conditions apply, then the total liability of Insight and its designated agents shall not in the aggregate exceed the monthly charges, if any, which you have actually paid Insight to list, publish, not list, or not publish the information for the affected period. You shall hold Insight and its designated agents harmless against any and all claims for damages caused or claimed to have been caused directly or indirectly, by the errors and omissions in i-iii above.

(h) Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use our affiliates, third parties or designated agents to provide components of the Services, including without limitation their services, equipment, and infrastructure. The limitations of liability set forth in this Section 11 apply to any acts, omissions, and negligence of Insight, its affiliates, designated agents, or third party providers which, but for that provision, would give rise to a cause of action in contract, tort, or any other legal doctrine.

(i) **SOLE REMEDY.** Customer's sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Some states do not allow the exclusion or limitation of implied warranties, and some states do not allow the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such states, the liability of Insight and its affiliates is limited to the maximum extent permitted by law.

## **12. Dispute Resolution.**

In the event that a legal dispute arises concerning this Agreement, please be aware that these rules apply:

(a) **Arbitration for Resolution of Disputes.** IT IS IMPORTANT THAT YOU READ THIS ENTIRE SECTION CAREFULLY. THIS SECTION PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION. YOU continue to have CERTAIN RIGHTS TO OBTAIN RELIEF FROM a federal or state REGULATORY agency.

(b) **Binding Arbitration.** The arbitration process established by this section is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§1-16. The FAA, not state law, shall govern the arbitrability of all disputes between Insight regarding this Agreement and the Service. You have the right to take any dispute that qualifies to small claims court rather than arbitration. However, all other disputes arising out of or related to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration, unless provided otherwise in this Agreement. This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a small claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect. The provisions of this section shall survive termination, amendment or expiration of this Agreement.

(c) **The Arbitrator.** A single arbitrator will be selected in accordance with the rules of the American Arbitration Association (the “AAA”). The arbitration will be conducted under the applicable procedures and rules of the AAA that are in effect on the date the arbitration is filed unless this Section is inconsistent with those procedures and rules, in which case, this Section will prevail. These procedures and rules may limit the amount of discovery available to Customer or Insight. The arbitrator will apply applicable statutes of limitation, will honor claims of privilege recognized by law, and will take reasonable steps to protect customer account information and other confidential or proprietary information, including the use of protective orders to prohibit disclosure outside the arbitration, if requested to do so by Customer or Insight. The arbitrator will make any award in writing, but need not provide a statement of reasons unless requested by a party. Upon a request by Customer or Insight, the arbitrator will provide a brief statement of the reasons for the award. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties.

(d) **Amount of Dispute.** The arbitration of any dispute involving \$10,000 or less shall be conducted in accordance with the Consumer Arbitration Rules of the American Arbitration Association (“AAA”), as modified by this Agreement, which are in effect on the date a dispute is submitted to the AAA. The AAA’s Commercial Arbitration Rules and fee schedules will apply to any disputes in excess of \$10,000. You have the right to be represented by counsel in arbitration. In conducting the arbitration and making any award, the arbitrator shall be bound by and strictly enforce the terms of this Agreement and may not limit, expand, or otherwise modify its terms.

(e) **No Class Action or Consolidated Proceedings.** NO DISPUTE MAY BE JOINED

WITH ANOTHER LAWSUIT, OR IN AN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON. All parties to the arbitration must be individually named. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, CUSTOMERS OR OTHER PERSONS SIMILARLY SITUATED. Customer understands and acknowledges that by consenting to submit claims to arbitration pursuant to this Agreement, Customer may be forfeiting his or her right to share in any class action awards. This Section will not apply to any individual claims filed by Customer in a lawsuit prior to the effective date of this Agreement, nor to the claims of a class certified prior to the effective date of this Agreement. This Section will apply to all other claims, including class claims where a class has not yet been certified, even if the facts and circumstances upon which the claims are based occurred or existed before the effective date of this Agreement.

(f) **Limitation of Available Damages.** THE ARBITRATOR MAY NOT AWARD DAMAGES THAT ARE NOT EXPRESSLY AUTHORIZED BY THIS AGREEMENT AND SUPPORTED BY ADMISSIBLE EVIDENCE, AND MAY NOT AWARD PUNITIVE DAMAGES OR ATTORNEYS' FEES, UNLESS SUCH DAMAGES ARE EXPRESSLY AUTHORIZED BY A STATUTE. YOU AND INSIGHT BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES THAT ARE EXCLUDED UNDER THIS AGREEMENT. NOTHING IN THIS AGREEMENT LIMITS THE ARBITRATOR'S AUTHORITY TO AWARD DAMAGES THAT ARE THE DIRECT RESULT OF INSIGHT'S WILLFUL MISCONDUCT. Notwithstanding the limitations set forth in this subsection, should it become necessary to resort to court proceedings to enforce a party's compliance with the dispute resolution and arbitration process set forth herein, and the court directs, orders or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorneys' fees, incurred by the party requesting such enforcement shall be reimbursed by the non-complying party to the requesting party. This Section does not prevent either party from seeking interim injunctive relief from a court in order to preserve the status quo or to protect assets until the arbitration has been commenced and the arbitrator has an opportunity to consider the matter of interim relief.

(g) **Arbitration Information and Filing Procedures.** Before Customer submits a dispute to arbitration or to small claims court, the Customer must first contact our customer account representatives at the customer service number on your Insight bill for the Insight Phone Service and give us an opportunity to resolve the dispute. Similarly, before Insight takes a dispute to arbitration, we must first attempt to resolve it by contacting you. If the dispute cannot be satisfactorily resolved within sixty (60) days from the date you or Insight is notified by the other of a dispute, then either party may then contact the AAA in writing at AAA Service Center, 335 Madison Avenue, 10th Floor, New York, NY 10017 and request arbitration of the dispute. Information about the arbitration process and the AAA's Arbitration Rules and its fees are available from the AAA on the Internet at <http://www.adr.org/>. The arbitration will be based only on the written submissions of the parties and the documents submitted to the AAA relating to the dispute, unless either party requests that the arbitration be conducted using the AAA's telephonic, on-line, or in-person procedures. Additional charges may apply for these procedures.

Any in-person arbitration will be conducted at a location that the AAA selects in the state of your primary residence. Any arbitration shall remain confidential. Neither you nor Insight may disclose the existence, content or results of any arbitration or award, except as may be required by law, to confirm and enforce an award, or to the party's attorneys and/or accountants.

(h) **Fees and Expenses of Arbitration.** Customer must pay the applicable AAA filing fee when submitting a written request for arbitration to the AAA. The AAA's filing fee and administrative expenses for a document arbitration will be allocated according to the AAA's Rules. If you elect an arbitration process other than a document (or "desk") arbitration, you must pay your allocated share of any higher administrative fees and costs for the process you select. Unless applicable substantive law provides otherwise, each party will pay its own expenses to participate in the arbitration, including attorneys' fees and expenses for witnesses, document production and presentation of evidence. The prevailing party may, however, seek to recover the AAA's fees and the expenses of the arbitrator from the other party.

(i) **Limitation of Claims.** ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.

(j) **Governing Law.** NEW YORK LAW (EXCLUDING ITS CHOICE OF LAW RULES) WILL APPLY TO THE CONSTRUCTION, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT.

(k) **Authorized Claims.** Insight and third parties who contribute to the Services may bring claims against you for violations of this Agreement.

(l) **Controlling Text.** The words of this Agreement, not the conduct between us or any trade practice, will control what the Agreement means.

(m) **Enforcement of the Agreement.** Insight's decision not to enforce a particular provision of this Agreement does not mean that we waive the right to enforce it. We will only waive such a right in writing.

### 13. **Assignment.**

Insight may assign its rights and obligations under this Agreement, without notice, to (i) any affiliate of Insight; (ii) to any party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of Insight or any Insight affiliate; or (iii) to any person or entity purchasing or otherwise acquiring the broadband distribution system or video distribution system serving the Premises. This Agreement may not be assigned or transferred by Customer without Insight's prior written consent.

### 14. **Entire Agreement; Interpretation; Severability; Waiver.**

This Agreement and any document incorporated by reference constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and

supersede and replace any and all prior written or verbal agreements. In the event that any portion of this Agreement, and/or its components, is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Insight's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

**15. Hindrances Beyond Insight Control.**

Insight shall not be responsible for performance of its obligations hereunder where delayed by war, riots, embargos, strikes, interruptions in communications services, acts or omissions of its vendors or suppliers or other third parties, accidents, acts of God, terrorism, or any other event beyond Insight's control.