



## Additional Terms

In addition to the terms and conditions contained in the service agreement ("Agreement") between NetCarrier, Inc. ("NetCarrier") and ("Customer") and all other schedules thereto, the following terms and conditions apply. These Additional Terms shall take precedence over any conflicting provisions contained in the Standard Terms and Conditions ("Standard Terms") or any other Agreement schedule.

### EUSA TERMS:

- A. NO WARRANTIES.** NETCARRIER DOES NOT GUARANTEE THAT SERVICE CAN BE PROVISIONED TO CUSTOMER LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE. THE PROVISIONING, PERFORMANCE AND SPEED OF THE SERVICE ARE SUBJECT TO CIRCUIT OR OTHER NETWORK FACILITY AVAILABILITY AND OTHER FACTORS, INCLUDING WITHOUT LIMITATION, LOOP LENGTH AND CONDITION, THE CONDITION OF WIRING INSIDE CUSTOMER LOCATION, COMPUTER OR DEVICE CONFIGURATIONS AND CAPABILITIES, AS NETCARRIER AS NETWORK OR INTERNET CONGESTION, AMONG OTHER FACTORS. IN THE EVENT CUSTOMER SERVICE IS NOT PROVISIONED FOR ANY REASON, NEITHER CUSTOMER NOR NETCARRIER SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN CUSTOMER OBLIGATION TO RETURN ANY EQUIPMENT PROVIDED TO CUSTOMER). NETCARRIER DO NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY NETCARRIER WILL MEET CUSTOMER NEEDS, PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE.

ADVICE OR INFORMATION GIVEN BY NETCARRIER OR ANY OF NETCARRIER'S REPRESENTATIVES, SUPPLIERS, SUBCONTRACTORS OR AGENTS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS AND SUPPLIERS, SHALL NOT CREATE A WARRANTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NETCARRIER AND EACH OF NETCARRIER AGENTS, THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS DISCLAIM, WITH RESPECT TO ALL SERVICES, ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR ARISING BY NETCARRIER OF PERFORMANCE, DEALING, NETCARRIER TRADE NETCARRIERAGE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF NETCARRIER KNEW OR SHOULD HAVE KNOWN SUCH PURPOSE) AND NON-INFRINGEMENT. CUSTOMER AGREE THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

- B. Third Party Beneficiaries.** CUSTOMER AGREES THAT ALL OF NETCARRIER RIGHTS, LIMITATIONS AND DISCLAIMERS STATED IN THIS AGREEMENT ALSO APPLY TO AND MAY BE EXERCISED OR ENFORCED BY NETCARRIER THIRD PARTY LICENSORS, PROVIDERS, SUBCONTRACTORS AND SUPPLIERS AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.
- C. Use of Service.** Customer acknowledges and agrees that Customer is solely responsible for all use of the Service (including without limitation the use of any assigned IP addresses and any secondary or sub-accounts associated with a primary account) and the manner in which the Service is used by Customer or anyone who uses the Service, with or without Customer permission. If Customer uses a wireless router or similar device, Customers are responsible for securing Customer's wireless network and for any use of the Service via Customer's wireless network. Customer may not resell, re-provision or rent the Service to

third parties (either for a fee or without charge) or allow third parties to use the Service via wired, wireless or other means. For example, Customer may not provide Internet access to third parties through a wired or wireless connection or Use the Service to facilitate public Internet access (such as through a Wi-Fi hotspot). Customer may connect multiple computers/devices within a single office location to Customer Service router to access the Service, but only through a single account and the IP address(es) obtained from NetCarrier, and only for use by Customer and Customer Company.

Customer agrees not to use, or permit others to use, the Service in ways that (i) violate any law or applicable regulation, this Agreement (ii) infringe the rights of others, or (iii) interfere with the Users, services, or equipment and software of NetCarrier network or other networks. By way of example and not limitation, Customer agree not to distribute unsolicited advertising, chain letters or other unsolicited bulk electronic mail (i.e., spam); propagate computer worms, destructive programs or denial of service attacks or viruses; Use a false identity; attempt to gain unauthorized entry to other computers, data or any site or network; distribute or store child pornography; distribute obscene or defamatory material over the Internet; or infringe copyrights, trademarks or other intellectual property rights. Customer further agrees to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Service. NetCarrier reserve the right in NetCarrier sole discretion to restrict, suspend or terminate Customer Service (or any portion thereof), with or without notice, if Use of the Service by Customer or anyone using it, in NetCarrier sole judgment, violates this Agreement, is unlawful or adversely affects or threatens NetCarrier network or service, suppliers, contractors, other Users or employees, including but not limited to, Use that is prohibited or that generates excessive Internet traffic or emails.

Customer agree to comply with the terms of service that apply to any websites or other services Customer access on the Internet and agree that the third party provider of such services (and not NetCarrier) is solely responsible for the delivery of its services(s) to Customer and Customer Use of them. Third party services include, but are not limited to, portal, music, video, auction, security, financial, gaming, storage and photography services. Customer further agree to indemnify, defend and hold NetCarrier harmless from and against any claims or liabilities that may result from Customer Use of such third party services.

Customer acknowledge and agree that the reliability, availability and performance of data or services accessed through the Internet or other services connected or linked to the Service are beyond NetCarrier control and are not in any way warranted or supported by NetCarrier, NetCarrier subcontractors or suppliers. Customer also agrees to provide NetCarrier with the access and support required to allow NetCarrier to implement, maintain and provide the Services. NetCarrier may take any action NetCarrier deem appropriate, in NetCarrier sole discretion, to maintain the high quality of NetCarrier Service and to protect others and ourselves. In addition, Customer agrees that Customer Use of the Service and the Internet is solely at Customer own risk.

- D. Entry to Customer Service Location/Installation.** Customer agrees to allow NetCarrier, including NetCarrier's suppliers and subcontractors, to enter Customer's business during normal business hours by appointment to perform necessary activities related to the installation, inspection, repair, replacement or disconnection of NetCarrier Service and equipment. Customer will allow NetCarrier to make attachments and connections that are necessary to provide Service to Customer. If Customer is not the owner of the premises to be entered, Customer must supply proof that Customer is authorized to allow work to be done on such premises. Customer shall be responsible for ensuring a legally authorized representative is present for the duration of installation or repair. In the event that a Representative arrives at the Customer location and the Customer representative is not available, Customer agrees to pay a CNR (Customer Not Ready) charge of \$200. A Technician will install the ONT and a RJ45 Jack. The installation includes up to 100 feet of CAT5 or CAT6 wiring between the ONT and RJ45 Jack. If more than 100 feet of wiring is necessary, additional charges will apply. The Jack and wiring are warranted for 30 days after installation. If maintenance or repair of the Jack and inside wiring between the ONT and Jack is requested, it will be subject to time and material charges.
- E. Indemnification.** Customer agree to indemnify NetCarrier and hold NetCarrier harmless for any damages, costs, liabilities and attorneys' fees NetCarrier incur from any claim arising from Customer Use of the Services, or the Use of Customer Service by others, including without limitation, violation of the copyrights, trademarks or other intellectual property rights of others, Customer combination of the

Services with other products or services not provided by NetCarrier, any modification of the Services, or any breach of this Agreement by Customer. In such event, Customer agrees to conduct the defense and have control of the litigation and settlement, if any. However, Customer agrees not to acquiesce to any judgment or enter into any settlement that adversely affects NetCarrier rights or interests without NetCarrier prior written consent. As the indemnifying party, Customer may not settle any claim under this section which includes an admission of criminal liability or the payment of a settlement amount without the prior written permission of the indemnified party.

**F. Providing Information about Customer in Response to Legal Process.** NetCarrier reserve the right to provide information about Customer account and Customer Use of the Service to NetCarrier suppliers as well as to any other third parties as required or permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include, but is not limited to, providing information about Customer account, usage of Service and monitoring of the network consistent with applicable law. NetCarrier may also report any facts or circumstances reported to NetCarrier or that NetCarrier discover from which it appears there may be a violation of the child pornography laws. NetCarrier reserve the right to report any appropriate information including the identity of Users, account information, images and other facts to law enforcement and the National Center for Missing and Exploited Children.

**G. Equipment; Service Changes, Performance; Backup and Maintenance.**

(i) **Equipment.** Customer are solely responsible for obtaining, installing, configuring, and maintaining suitable equipment and software, including without limitation any necessary system or software updates, patches or other fixes, which are or may become necessary to access the Service, and to operate Customer computer. The preceding obligations apply regardless of whether NetCarrier or a third party provided the software or hardware to Customer. Only the manufacturer's warranties included with any hardware or software provided by NetCarrier shall apply. Hardware (routers or other equipment) provided is new or fully inspected and tested return unit under full warranty.

(ii) **Service Performance.** Customer understand that fiber bandwidth is provided on a per line basis, and that the speed and bandwidth available to each computer or device connected to the network will vary depending upon the number and types of computers or devices using the Service and the type of Use (e.g., streaming media or downloading larger files), as well as based on network congestion and the speed of servers Customer access on the Internet, among other factors. The speed of the Service will vary based on network or Internet congestion, Customer computer configuration the condition of the wiring inside Customer location, among other factors. NetCarrier and NetCarrier suppliers reserve the right, at any time, with or without prior notice to Customer, to restrict or suspend the Service to perform maintenance activities and to maintain session control.

(iii) **Monitoring System Performance.** NetCarrier may measure and monitor the performance of Customer Internet connection and usage levels in order to maintain and improve the level of Service. Customer agrees to permit NetCarrier to access Customer computer's settings in the event Customer request and NetCarrier agree to provide customized technical support. Customer agrees to permit NetCarrier to access Customer computer and equipment and to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service. Customer also consent to NetCarrier monitoring of Customer Internet connection and network performance, and to NetCarrier accessing and adjusting Customer computer and settings, as they relate to the Service or other services, which NetCarrier may offer from time to time.

(iv) **Changes to Service.** NetCarrier reserve the right to change the Service (or any part thereof) at any time with or without notice to Customer, including but not limited to available speeds and speed combinations, features, configurations, usage structure or levels, pricing methodology and other terms. If such a change materially and adversely affects Customer current access, usage or cost of Service, and NetCarrier cannot reasonably mitigate its impact, then as Customer sole and exclusive remedy, Customer may terminate the Service without further obligation.

**H. IP Addresses.** If NetCarrier deem it necessary, Customer may be required to renumber the IP addresses assigned to Customer by NetCarrier. Upon expiration, cancellation or termination of Service at Customer Service location for any reason, Customer agree to return to NetCarrier any IP addresses or address blocks that NetCarrier assigned to Customer.

- I. **Limitation of Liability.** IN NO EVENT SHALL NETCARRIER, NETCARRIER THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE TO CUSTOMER FOR (A) ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OR DAMAGE TO DATA ARISING OUT OF THE USE OR INABILITY TO USE SERVICES, EVEN IF NETCARRIER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY.
- J. **Limitation of Damages.** NETCARRIER AGGREGATE LIABILITY TO CUSTOMER FOR ANY CAUSE OF ACTION OR CLAIM WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY NON-INSTALLATION, SECURITY BREACH, DELAY, FAILURE OR DISRUPTION OF SERVICES PROVIDED, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL NOT EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL TAXES) CUSTOMER HAVE PAID TO NETCARRIER FOR THE SERVICE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHEN SUCH CLAIM AROSE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN THESE JURISDICTIONS NETCARRIER LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**K. Acceptable Use Policy**

(i) **General Policy:** NetCarrier reserve the sole discretion to deny or restrict Customer Service, or immediately to suspend or terminate Customer Service, if the Use of Customer Service by Customer or anyone using it, in NetCarrier sole discretion, violates NetCarrier policies or those of NetCarrier subcontractors or vendors, is objectionable or unlawful, interferes with the functioning or any other person's Use of the Internet, NetCarrier network, or the networks of NetCarrier subcontractors or vendors, or violates the terms of this Agreement or applicable law.

(ii) **Specific Examples of AUP Violations.** The following are examples of conduct which may lead to termination of Customer Service. Without limiting the general policy in Section K(i), it is a violation of the Agreement to: (a) access without permission or right the accounts or computer systems of others, to spoof the URL, DNS or IP addresses of NetCarrier, or subcontractors or suppliers, or any other entity, or to penetrate the security measures of NetCarrier or NetCarrier subcontractors or suppliers or any other person's computer system, or to attempt any of the foregoing; (b) transmit uninvited communications, data or information, or engage in other similar activities, including without limitation, "spamming", "flaming" or denial of service attacks; (c) intercept, interfere with or redirect email or other transmissions sent by or to others; (d) introduce viruses, worms, harmful code or Trojan horses on the Internet; (e) engage in conduct that is defamatory, fraudulent, obscene or deceptive; (f) generate excessive amounts of email or other Internet traffic; (g) Use the Service in any fashion for the transmission or dissemination of images containing child pornography or in a manner that is obscene, sexually explicit, cruel or racist in nature or which espouses, promotes or incites bigotry, hatred or racism; or (h) download or Use the Service in countries prohibited by applicable law.

(iii) **Copyright Infringement/Repeat Infringer Policy.** Neither Customer or anyone using the Service may store any material or Use NetCarrier systems or servers (or systems or servers of NetCarrier subcontractors or suppliers) in any manner that constitutes an infringement of any intellectual property rights of NetCarrier, NetCarrier subcontractors or suppliers, or any other third party, including under U.S. copyright law. Customer understand and agree that any and all Use of the Service is subject to such measures (including without limitation suspension and/or termination of Service) as NetCarrier may implement in NetCarrier discretion from time to time to ensure compliance with intellectual property rights, U.S. copyright law, and other applicable laws. These policies are in addition to and do not affect or modify any other rights NetCarrier or NetCarrier subcontractors or suppliers may have under law or contract. If Customer believe that copyrighted material has been Used in violation of this policy or otherwise been made available on the Service in a manner that is not authorized by the copyright owner, its agent or the law, please contact NetCarrier.

(iv) NetCarrier and NetCarrier's subcontractors and suppliers may, but are not required to, monitor Customer compliance, and the compliance of other subscribers and Users, with the terms, conditions or policies of this Agreement. Customer acknowledge that NetCarrier and NetCarrier subcontractors and suppliers shall have the right, but not the obligation, to pre-screen, refuse, move or remove any content available on the Service, including but not limited to content that violates the law or this Agreement.

- L. NetCarrier in NetCarrier's sole discretion from time to time may update and/or modify the Terms of this Agreement by providing notice to Customer and/or by posting changes on NetCarrier's website at [www.netcarrier.com](http://www.netcarrier.com) or any successor location on NetCarrier's website.