

# General Terms and Conditions

The services referenced in the Agreement ("Service" or "Services") are offered to Customer by NetCarrier Telecom, Inc. ("NetCarrier" or "Company"). The Agreement between NetCarrier and Customer sets forth the legal rights and obligations governing NetCarrier's offer, provisioning and delivery of Services and Customer's receipt and use thereof.

The Agreement in its entirety shall consist of the terms and conditions in NetCarrier's Voice and Data Master Services Agreement (MSA), NetCarrier Order Form (Exhibit A), these General Terms and Conditions of Service, any attached addendums, and any applicable tariffs available on this website (<http://www.netcarrier.com>).

The offer, provisioning, and delivery of Services are subject at all times to the receipt by Company of all required approvals or authorization from regulatory agencies having jurisdiction over the Services or the Company. If Customer receives and uses Services without an MSA or Exhibit A as described herein, Customer nevertheless shall be deemed to have accepted, and therefore will be bound by, all the applicable terms and conditions relating to the Services received and used.

THESE GENERAL TERMS AND CONDITIONS OF SERVICE AND NETCARRIER'S TARIFFS WILL BE LOCATED ON A WEBSITE OR WEBSITES ACCESSIBLE AT ALL TIMES BY CUSTOMER, AND MAY BE MODIFIED BY NETCARRIER AT ANY TIME. NETCARRIER SHALL PROVIDE CUSTOMER WITH AT LEAST THIRTY (30) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CUSTOMER SO THAT CUSTOMER MAY ELECT TO DISCONTINUE SERVICE AND AVOID THE EFFECTS OF THE CHANGES. COMPANY NOTICE MAY BE FURNISHED BY: (1) A MESSAGE INCLUDED WITH THE INVOICE; (2) A POSTCARD OR LETTER; (3) CALLING AND SPEAKING TO CUSTOMER OR LEAVING A MESSAGE; OR (4) EMAIL. CUSTOMER SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE. CUSTOMER ACCEPTS THE INCORPORATION INTO THE AGREEMENT OF APPLICABLE TARIFFS, TERMS AND CONDITIONS, AND THESE GENERAL TERMS AND CONDITIONS OF SERVICE AND ALL MODIFICATIONS MADE THERETO. CUSTOMER MAY OBTAIN A HARD COPY OF THE AGREEMENT AT ANY TIME BY CONTACTING NETCARRIER AND REQUESTING IT. THE FAILURE OF NETCARRIER TO ENFORCE THESE TERMS AND CONDITIONS, FOR WHATEVER REASON, SHALL NOT BE CONSTRUED AS A WAIVER OF ANY RIGHT TO DO SO AT ANY TIME. THE CUSTOMER AGREES THAT, IF ANY PORTION OF THESE TERMS AND CONDITIONS IS HELD INVALID OR UNENFORCEABLE, THAT PORTION WILL BE CONSTRUED CONSISTENT WITH APPLICABLE LAW AS NEARLY AS POSSIBLE, AND THE REMAINING PORTIONS WILL REMAIN IN FULL FORCE AND EFFECT. THESE TERMS AND CONDITIONS SHALL BE EXCLUSIVELY GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. THESE TERMS AND CONDITIONS SUPERSEDE ALL PREVIOUS REPRESENTATIONS, UNDERSTANDINGS OR AGREEMENTS MADE BY NETCARRIER OR ANY OF ITS REPRESENTATIVES.

**1 EQUIPMENT:** To the extent NetCarrier locates equipment on your premises, you will be liable for any loss of, or damage to, any NetCarrier facilities for any cause whatsoever unless such damage or loss is due to NetCarrier's sole negligence. Customer will be liable for any injuries to himself or herself, NetCarrier employees, or injuries of third parties, unless the injuries are due to the sole negligence of NetCarrier. You understand and agree (subject to applicable Federal, state and local laws, rules and regulations) that equipment provided by NetCarrier in conjunction with the provision of Service remains the property of NetCarrier. You agree to obtain and convey any necessary rights NetCarrier may require to gain access to any such equipment. You agree to construct, maintain, and operate any equipment you provide, which is used in conjunction with the Services in a manner which does not interfere or harm NetCarrier's facilities. NetCarrier shall not be responsible for delays or interruptions in the provision of Service resulting from incompatibility of such equipment, or resulting from improper provisioning, configuration or maintenance of such equipment. You also agree that you may not interfere with or make any modifications to any NetCarrier-provided equipment associated with the NetCarrier services described in this agreement; such services may be adversely affected.

**2 WAIVER OF RESPONSIBILITY:** ALL SERVICES PROVIDED BY NETCARRIER TELECOM, INC. (HEREAFTER KNOWN AS NETCARRIER) ARE ON AN "AS IS", "AS AVAILABLE" BASIS. NETCARRIER EXERCISES NO CONTROL WHATSOEVER OVER THE CONTENT OF THE INFORMATION PASSING THROUGH ITS SERVICES. NETCARRIER MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, FOR THE SERVICE IT IS PROVIDING. NETCARRIER ALSO DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NETCARRIER WILL NOT BE RESPONSIBLE FOR ANY DAMAGE YOU MAY SUFFER AS A RESULT OF SERVICES RENDERED OR NOT RENDERED. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON DELIVERIES, ERRONEOUS DELIVERIES, OR SERVICE INTERRUPTIONS CAUSED BY ITS OWN NEGLIGENCE OR CUSTOMER ERRORS OR OMISSIONS. USE OF ANY INFORMATION OBTAINED VIA NETCARRIER, IS AT THE CUSTOMER'S OWN RISK. NETCARRIER SPECIFICALLY DENIES ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH ITS SERVICES. FURTHER, NETCARRIER DENIES ANY RESPONSIBILITY FOR DAMAGE TO CUSTOMER'S SYSTEM HARDWARE AND/OR SOFTWARE (INCLUDING LOSS OF ANY DATA) THAT MIGHT OCCUR AS A RESULT OF ANY COMPUTER VIRUSES THAT MIGHT BE DOWNLOADED THROUGH MEANS OF ITS SERVICE OR THROUGH SOFTWARE DISTRIBUTED ON MAGNETIC OR OPTICAL MEDIA.

**3 UNLAWFUL USAGE:** You agree not to use the Service or allow the Services to be used for any illegal activities. You are responsible for all use and misuse, with or without your knowledge or consent, of the Services. You understand and agree that the use of NetCarrier's Services without payment, as well as any attempt to avoid payment for Service by fraudulent means is prohibited. You shall not use the Services to disseminate any materials which NetCarrier, in its sole discretion, deems to be offensive or inappropriate, including, but not limited to, materials which violate the rights of other parties, which are obscene or pornographic or which advocate hatred of or violence against any person or group. You shall immediately cease dissemination of any such materials upon demand by NetCarrier. You shall not disclose any information provided by NetCarrier to you, including any login names, passwords or other security devices, to any other person or entity, or allow use of the Services by or for the benefit of any other person or entity, including resale or redistribution of the Services for profit or otherwise. You shall comply with any reasonable rules imposed by NetCarrier in connection with the Services at any time hereafter immediately following your receipt of notice thereof. You agree not to use NetCarrier's Services in the course of any criminal activity. You agree not to use NetCarrier's Services in the course of any conduct that constitutes tortious activity, including but not limited to activity that constitutes defamation; fraud; false advertising; or violation of copyright, trademark, service mark, trade dress, or trade secret rights. You agree not to use NetCarrier's Services in the course of any conduct intended to harass, threaten, or abuse, or that is designed to harass, threaten or abuse, or that actually harasses, threatens, or abuses any person. You agree not to use NetCarrier's Services to distribute unsolicited commercial e-mail (UCE or SPAM). You agree not to use NetCarrier's Services to post or distribute obscene materials or other sexually explicit or violent materials, display or distribution of which is restricted by local, state, or federal law. In the event Customer participates in or carries out any mass email distribution ("SPAM") or any unsolicited commercial or residential email, Customer shall be in default of this Agreement, in which event, NetCarrier may (i) immediately terminate this Agreement and any other Service being provided to Customer, without notice; (ii) retain any prepayments for other Services and/or the License made by Customer; (iii) collect from Customer the amount of \$150.00 per occurrence for SPAM cleanups or customer complaints plus a charge of \$0.05/message or one (1) years' service charge, whichever NetCarrier deems appropriate; and (iv) the provisions of Section 3 of the MSA shall also apply.

#### **4 TOLL FRAUD, CHARGES AND LIABILITIES**

Customer is responsible for all Charges incurred for all calls placed by or through Customer telecommunications equipment by any person, even if such Charges are incurred by fraud or without Customer knowledge. Customer is responsible for controlling access to and the use of Customer telecommunications equipment, including equipment managed by a customer vendor, and related facilities. NetCarrier shall have no liability for fraudulent calling made over such telecommunications equipment and facilities. As a preventative measure NetCarrier may block International, Non-Continental U.S. and Interstate Long Distance access if possible fraudulent use of customer telecommunications equipment is detected. However, NetCarrier does this only as a courtesy and

assumes no liability or responsibility for any fraudulent use of customer telecommunications equipment or for the monitoring of customer telecommunications equipment as a result of this courtesy. All charges due from Customer are payable to NetCarrier in immediately available U.S. dollars. We also reserve the right to establish a credit limit for International, Non-Continental U.S. and Interstate Long Distance calling. The default limit for commercial service is \$100.00 for International Calls (including non-Continental U.S.) and \$500.00 for Interstate Calls unless otherwise defined in the Customer Service Agreement or by written Addendum to the agreement between Customer and NetCarrier. Exceeding this limit, whether by intent or as a result of fraudulent use of Customer facilities and equipment, can result in termination without prior notice of those specific services until Customer has paid the full amount owed for those services. NetCarrier has the right to make changes to these conditions at any time and without prior notice so long as they are consistent with applicable laws and regulations.

**International Calling – Standard** - As a feature of all NetCarrier Voice Services, the 'International Calling – Standard' setting will automatically prevent outbound calling to the following countries:

<b>Blocked Countries</b>		
Azerbaijan	Latvia	Senegal
Congo	Libya	Sierra Leone
Cuba	Macedonia – Federal Republic	Slovenia
Djibouti	Monaco	Somalia
Eritrea	North Korea	Tuvalu
Guinea	Principe and Sao Tome	Zimbabwe
Ivory Coast	Bosnia/Herzegovina	Chad
Burkina Faso	Iridium	Estonia
Maldives	CAR	Belarus
Vanuatu	Kiribati	Inmarsat
Anguilla		

**5 USE OF SERVICE:** NetCarrier services may only be used for lawful purposes. Transmission of any material or communication in violation of any US or state or local law, rule or regulation is strictly prohibited. This includes, but is not limited to copyrighted or trademarked material; material legally judged to be threatening or obscene; material protected by trade secret; phone calls intended to be threatening, harassing or abusive or material which violates a legally protected privacy right of an individual.

**5 PRIVACY:** The customer is responsible for the security and privacy of his/her/its account, including, but not limited to, voice communications, passwords, email content, personal information used for e-commerce, on-line product registrations or on-line subscriptions of any type, file data, and any form of computer or phone system intrusion. **NETCARRIER CAN NOT GUARANTEE THE SECURITY, INTEGRITY, OR PRIVACY OF ANY INFORMATION WHICH PASSES THROUGH ITS SERVICES, BUT WILL TAKE ALL REASONABLE STEPS TO SAFEGUARD THE PRIVACY OF ITS CUSTOMERS AND ANY INFORMATION RELATING TO THEIR ACCOUNTS.** An aspect of online privacy concerns

focus on the protection of 'customer identifiable' information which an individual or another customer reasonably expects to be kept private. 'Customer identifiable' information means information which can be associated with a specific entity or individual, including, by way of example, a customer's name, e-mail address, phone calls and information about on-line activities which can be directly linked to him or her. NetCarrier collects such information, for example, in the account set-up process in order to properly establish the account, render the customer bills and to offer services. Web-sites, maintained by third parties frequently ask visitors to supply information about themselves and their interests. NetCarrier will not sell, trade, or disclose to third parties any customer identifiable information or customer network proprietary information derived from the registration for or use of NetCarrier's online or voice services, without the consent of the customer, valid legal process (such as a subpoena, court order or search warrant), in connection with NetCarrier's corporate activities, or in the case of imminent physical harm to the customer or others. NetCarrier's servers automatically gather the following information: time of call initiation, length of call, number called, and server port connected. NetCarrier does not use that information except in the aggregate. NetCarrier has implemented technology and security features and these strict policy guidelines to safeguard the privacy of customer identifiable information from unauthorized access or improper use, and will continue to enhance its security procedures. NetCarrier will not read or disclose to third-parties private e-mail communications that are transmitted using NetCarrier's services, except as required to operate the e-mail service or as otherwise authorized by law. NetCarrier may also use customer identifiable information to investigate and help prevent potentially unlawful activity or activity that threatens NetCarrier's network or the Internet or otherwise violates the customer agreement for that service. NetCarrier honors requests from customers for account information, such as billing information, and will correct any such information which may be inaccurate. Customers may verify that appropriate corrections have been made. NetCarrier, along with many other Data and Web-content providers, recognizes that children may not be able to make informed choices about personal information requested on-line. NetCarrier encourages children to seek the consent of their parents or other guardians before providing any information about themselves or their households to anyone on the Internet, and urges parents and guardians to take an active role in protecting the privacy and security of children and preventing the inappropriate use of information about children. Users should also be aware that non-personal information and data may be automatically collected through the standard operation of NetCarrier's and various web-sites' servers or through the use of 'cookies'. Cookies are small files a web-site can use to recognize repeat users, facilitate the user's ongoing access to and use of the site and to allow a site to track usage behavior and compile aggregate data that will allow content improvements and targeted advertising. Cookies are text files; they are not programs which come onto a user's system and damage files. Commonly, cookies work by assigning a unique number to the user that has no meaning outside of the assigning site. Users should be aware that NetCarrier cannot control the use of cookies or the resulting information by third parties hosting data on NetCarrier servers, advertisers, or the operators of various web-sites and their advertisers. If a user does not want information collected through the use of cookies, most browsers contain features which allows the user to deny or accept the cookie feature. Users should know, however, that certain features contained on certain web-sites (such as customized information) is not available without the use of cookies. NetCarrier will keep this policy current and will inform you of any changes by posting the same on its Web-Site. NetCarrier reserves the right to change this policy at any time, by notifying users of the existence of this new privacy and data security statement. This Statement and the policies expressed herein are not intended to and do not create any contractual or other legal rights in or on behalf of any user or other third party.

**6 FORCE OF MAJEURE:** You agree that NetCarrier shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion, or other catastrophes; any law, order, regulation, action or request of a Federal, state or local governmental authority or of any civil or military authority; national emergencies; unavailability of rights-of-way or materials; power failures; or strikes, lock-outs or other labor difficulties.

**7 LIMITATION OF LIABILITY:** You agree that your exclusive remedy and NetCarrier's sole liability for any interruption or failure of any Service furnished pursuant to this Agreement shall be limited to NetCarrier's issuing service credits to you, the amount of which shall in no event exceed the actual charges you incurred for the interrupted Service. NetCarrier shall not be liable for any Service

interruption caused by or any act or omission of any other carrier furnishing any portion of the Services or any entity furnishing to NetCarrier or to NetCarrier's customer's facilities or equipment used for or with the Services NetCarrier offers. NETCARRIER'S LIABILITY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO NETCARRIER UNDER THIS AGREEMENT. NETCARRIER SHALL HAVE NO LIABILITY FOR ANY LOSS OF DATA OR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES ARISING FROM ANY SERVICES PROVIDED HEREIN OR ANY INTERRUPTION FAILURE OF ANY SUCH SERVICE, EVEN IF NETCARRIER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR REASONABLY FORESAW SUCH DAMAGES. NETCARRIER MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING AND NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO ANY SERVICE, FACILITIES OR EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT. The damages excluded hereby specifically include damage to your own computer systems, loss or theft of your information, costs incurred you to third parties, and loss of business or profits by you. NetCarrier assumes no responsibility for the availability or performance of any systems or related facilities under the control of other entities, even if NetCarrier has acted as your agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or non-pre-emptibility as may be provided by the other entities. You acknowledge and accept the reasonableness of the foregoing disclaimer and limitations of liability. No cause of action under any theory which accrued more than one (1) year prior to the institution of a legal proceeding alleging such cause of action may be assessed by your agent against NetCarrier. For purposes of this Agreement, all references to you and NetCarrier include their respective affiliates, agents, officers, directors, shareholders and employers.

**8 BILLING DISPUTES:** NetCarrier shall not be liable for any billing adjustment or refund of charges unless you have notified NetCarrier in writing, which needs to include the basis of any claim, within 30 days of the invoice in question's invoice date. Customer shall remit the full amount invoiced by the normal due date. If the Customer is deemed to have a legitimate dispute, the appropriate credit will be applied at the time of the dispute resolution.

**9 INDEMNIFICATION:** You agree that NetCarrier is not responsible for any third-party claims against NetCarrier that arise out of your use of the Service. You agree to indemnify and hold NetCarrier, its officers, employees, shareholders, agents and affiliates harmless against: (i) any claim for loss or injuries not directly attributable to the Services; (ii) claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content and communications transmitted over NetCarrier's facilities; (iii) claims for patent infringement arising from combining or connecting NetCarrier's facilities with your apparatus, systems or equipment; and (iv) all other claims arising out of your acts or omissions in any Service provided by NetCarrier.

**10 LIMITS OF CONNECTIVITY:** Any access to other networks connected to NetCarrier must comply with the rules appropriate for that other network. Use of NetCarrier itself may be for any lawful purpose. Use of NetCarrier for lawful commercial purposes is both permitted and encouraged. Connectivity is provided for the customer/organization only.

**11 TECHNICAL SUPPORT:** NetCarrier may provide technical assistance for software, voice services and hardware sold and supported by NetCarrier. This may include the installation and setup of any program or hardware purchased through NetCarrier necessary to access its service. It is, however, the customer's ultimate responsibility to work with the manufacturer of its software, operating system, phone systems and hardware to resolve any installation or operation problems. NetCarrier will assist customers when and where possible, but makes no warranties or guarantees that technical assistance will be provided. Contact NetCarrier for more information on supported products. **NETCARRIER MAKES NO GUARANTEES OR WARRANTIES ON THE FREE SOFTWARE IT DISTRIBUTES THROUGH THE MAIL OR THAT IT MIRRORS ON-LINE. THIS SOFTWARE IS PRODUCED AND MANUFACTURED BY THIRD PARTY SOFTWARE VENDORS AND NETCARRIER DISTRIBUTES THIS SOFTWARE "AS IS". THE CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS NETCARRIER FROM ANY CLAIMS, LIABILITIES AND EXPENSES RESULTING FROM THE CUSTOMER'S USE OR MISUSE OF THIS SOFTWARE.**

**12 PROHIBITION OF SERVICE RESALE:** Resale of direct IP connectivity or voice services to other individuals or organizations is prohibited unless otherwise stated in writing by NetCarrier. Unless otherwise agreed to in writing by both parties, the network connection that a customer is purchasing from NetCarrier is strictly for private/commercial use. The customer is not permitted to resell, loan or share with others the connection in any way.

**13 DIAL UP CONNECTIONS:** The customer may not use any device or program that causes the connection to remain established (forced) during the customer's absence from direct interactive operation of customer's computer or other network connection device. In short, the customer may stay connected as long as he/she is interacting with the connecting device, forced connections are not permitted. NetCarrier reserves the right to disconnect any dial-up connection that has been on-line for more than six (6) hours of continuous use, whenever it appears that a connection is forced or unattended, for required maintenance purposes or for any other reason NetCarrier deems appropriate and/or necessary. NetCarrier also reserves the right to disconnect a user if that user exceeds the number of simultaneous connections that he/she are permitted. NetCarrier also reserves the right, at its discretion, to suspend the customer's dial-up privilege upon repeated violations of the above rules or terminate service without reimbursement. **IT IS THE RESPONSIBILITY OF THE CUSTOMER TO VERIFY THAT THE PHONE NUMBER GIVEN FOR DIAL-UP ACCESS IS AN EXCHANGE LOCAL TO THE CUSTOMER. NETCARRIER ASSUMES NO LIABILITY FOR TOLL CHARGES THAT THE CUSTOMER MAY ACCRUE AS A RESULT OF DIALING AN ACCESS NUMBER OUTSIDE THE CUSTOMER'S LOCAL CALLING AREA.**

**14 DEDICATED CONNECTIONS:** The customer may use a commercial dedicated connection to NetCarrier for internal use only, unless otherwise agreed upon in writing. Usage of commercial dedicated connections to NetCarrier include, but are not limited to, Intranet and Internet applications dealing with sales, marketing and operational functions of the company. Under these terms and conditions, a company may not resell Internet access, Web site hosting or email accounts to other individuals or companies. NetCarrier does have reseller programs available. Contact NetCarrier for details.

**15 INDIVIDUAL PERSONAL HOME PAGE HOSTING:** Individual user home pages may only be used for personnel/entertainment purposes. The sale of products or services are strictly forbidden on these home pages. In the event NetCarrier determines that the customer is using a personal home page for commercial use, NetCarrier may, at its discretion, suspend or terminate the individual's usage of his/her home page. User home pages may not contain any material in violation of any US or state regulations. This includes, but is not limited to, copyrighted material or material protected by trade secret, and any material deemed to be threatening or obscene by NetCarrier management. This also includes any material deemed to be pornographic, any material which relates to or promotes hate group activities, themes, or propaganda, or any material which defames any civic, ethnic, or religious affiliation. **THE CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS NETCARRIER FROM ANY CLAIMS RESULTING FROM THE CUSTOMER'S USE OF SUCH MATERIALS OR ANY DAMAGES INCURRED TO THE CUSTOMER OR ANOTHER PARTY. VIOLATION OF THIS POLICY WILL RESULT IN THE IMMEDIATE REMOVAL OF THE CUSTOMER'S HOME PAGE PRIVILEGES.** Individual personal Home page traffic is limited to 100 megabytes per month, total of all protocols. Any account exceeding this rate will be considered as a commercial site and will be required to purchase a commercial Web account in order to continue the Web hosting service. There is no charge for initial account setup. However, any subsequent customer requested changes or modifications to personal home pages or to any account setup parameter (including: name changes for dial-in, web page name or email name) that require NetCarrier intervention are subject to a \$21.00 fee per occurrence.

**16 COMMERCIAL WEB SITE HOSTING:** Commercial Web sites have no restrictions as to usage except that the business conducted on the Web site adhere to applicable Local, State and Federal regulations and that the information presented adhere to the terms and conditions stated in paragraphs 4, 5 and 13 above. Before Web site privileges are granted, NetCarrier reserves the right to inquire as to the usage of the Web site in order to establish projected traffic to and from the site. All standard commercial Web sites are limited to a maximum monthly traffic rate of 1,000 megabytes/month, total for all protocols. If traffic exceeds this limit, NetCarrier reserves the right to

either throttle usage or require additional compensation commensurate with the actual traffic rate. There is no charge for initial account setup, unless otherwise quoted at the time of contract initiation. However, any subsequent customer requested changes or modifications to commercial Web sites or to any account setup parameter (including: name changes for dial-in, web page name or email name(s)) that require NetCarrier intervention are subject to a \$50.00 fee per occurrence.

**17 VOICE SERVICES:** The customer may use a voice services connection to NetCarrier for internal use only, unless otherwise agreed upon in writing. Usage of commercial voice services connections to NetCarrier include, but are not limited to, voice communications dealing with sales, marketing and operational functions of the company. Under these terms and conditions, a company may not resell voice services provided by Netcarrier to other individuals or companies. NetCarrier does have reseller programs available. Contact NetCarrier for details.

**18 BILLING AND PAYMENTS:** Billing for service is in advance of the following term. Billable voice calls made by Customer are for the month previous. We reserve the right to pass through percentage increases for any third party provided services without prior notice. Payment of bills may be by cash, check or credit card, but not Debit Cards for residential Internet service. Payment of bills may be by cash, check or credit card for commercial or residential Voice service. When a MasterCard or Visa Credit Card is used for commercial service payment, the customer will be assessed a "swipe" percentage charge on the amount paid equal to the current rates charged by the credit card issuer. NetCarrier does not accept American Express or Discover for payment. NetCarrier will not be held responsible for customer bank overdrafts in cases where a customer uses a Debit Card in lieu of a Credit Card or ACH payments online. Customer will be responsible for any bank fees assessed by NetCarrier's bank or payment processor caused by a debit card or ACH payment not being honored. If payment is made by cash or check, payment is due on receipt of invoice or phone notification. Payments by credit card for residential Internet service shall be renewed automatically unless the customer notifies NetCarrier that they wish to terminate the service or change to one of NetCarrier's other payment plans. Payments by credit card for commercial or residential voice service to avoid a suspension of service will be subject to a Pay by Phone convenience fee. Payments by check will not be accepted for terms less than three (3) months for residential Internet service. Accounts are considered in default if payment is not received within seven (7) days after the expiration of the previous term for Internet only service or by the last day of the invoiced month for voice services. Once the account goes into default, all services will be suspended. If the customer wishes to restore his/her service, all outstanding payments must be made and a fee of \$15.00 will be assessed to re-establish the service for residential Internet only service and \$300.00 for all Voice or Data commercial services. All payments for service are for the full term of the service whether or not the customer uses the service during that term. NetCarrier performs good faith in resolving past due accounts often giving its customers the benefit of the doubt. In good faith we may choose to NOT terminate service while waiting for payment. It is the responsibility of the customer to make immediate payment arrangements. If payment is not received within 30 days of account cancellation then NetCarrier will perform collection through Small Claims or a local circuit court. NetCarrier may also elect to arbitrate through the Better Business Bureau. In many instances it may be referred to a collection agency. If a claim cannot be resolved in a reasonable manner and the claim is presented to either a collection agency or Small Claims court, then the customer will be responsible to pay all costs of collection, reasonable attorney fees and court costs, if necessary. Any Internet access or usage of any voice service or service component requires payment for service. Use of service without payment is considered theft of service in all circumstances. Unsuccessful collection attempts will be referred to the authorities for criminal prosecution.

**19 CUSTOMER INITIATED CANCELLATION OF RESIDENTIAL DIAL UP SERVICE:** The customer may cancel his/her Residential Basic 56K Dial up Internet Access Service with NetCarrier at any time and is entitled to a refund of payment under the following rules. Cancellations can only be made by the person whose name appears on NetCarrier's account records (the person who established the account) or his/her legal representative. (1) No requests for cancellations will be accepted through voice mail or email. Requests will only be accepted through direct interaction (phone call or in person) with authorized NetCarrier personnel. Upon cancellation, the customer will be assigned a cancellation number. This cancellation number is the customer's proof of cancellation and will be used for reference in any and all subsequent correspondence regarding billing, refunds or the cancellation itself. (2) No

partial month or pro-rated refunds will be made. (Example: If termination is requested with 2 months and 3 weeks of service remaining on the term, only two months of service will be refunded). (3) If a customer received a rate discount for long term service and then cancels before that term expires, the discounted rate will be invalidated and the customer's charged rate will revert to the standard month-to-month rate in effect at the time of account initiation. In this case, the customer's refund will consist of the difference between his/her term payment and the number of months and/or partial months of use times the effective month-to-month rate. (4) If a customer terminates service after payment has been rendered (credit card charged or check deposited) and prior to that term's expiration, the customer will be assessed a \$7.00 fee for refund processing costs. This fee will be subtracted from any refund due the customer. Customers paying on a monthly basis will receive no refund, instead, service will be continued until the next scheduled payment date, at which time the account will be automatically terminated. (5) Any promotion for free service offered to customers who sign up for long term accounts will be null and void if the service is canceled before the term expires. In essence, any free service used for promotion is applied at the end of the term, not the beginning.

**20: NetCarrier INITIATED SUSPENSION OR TERMINATION: NETCARRIER RESERVES THE RIGHT TO SUSPEND OR CANCEL THE SERVICE AND REFUND PAYMENT (AT NETCARRIER'S OPTION) OF ANY CUSTOMER WHO VIOLATES THE TERMS AND CONDITIONS CONTAINED HEREIN. NETCARRIER ALSO RESERVES THE RIGHT TO SUSPEND OR CANCEL SERVICE TO A CUSTOMER AT ANY TIME AND WITHOUT NOTICE FOR ANY REASON INCLUDING, BUT NOT LIMITED TO, DELINQUENT PAYMENT FOR SERVICES RENDERED OR IF THE CUSTOMER ENGAGES IN ANY ACTIVITY WHICH MAY BE HARMFUL TO NETCARRIER, ITS EMPLOYEES, ITS CUSTOMERS, VENDORS, BUSINESS RELATIONSHIPS OR ANY OTHER USER OF THE INTERNET OR IF NETCARRIER DETERMINES IN ITS SOLE DISCRETION THAT ITS NETWORK IS OR MAY BE ADVERSLY AFFECTED AS A RESULT OF ACTIONS TAKEN OR NOT TAKEN BY A CUSTOMER. FURTHER, NETCARRIER MAY SEEK, AT ITS DISCRETION, DAMAGES FROM AND/OR THE PROSECUTION OF, ANY PERSON BUSINESS OR ORGANIZATION WHICH ENGAGES IN SUCH HARMFUL ACTIVITY.**

## **21 GENERAL TERMS:**

**21.1. Taxes:** In addition to the prices set forth in the Sales Order Form and on NetCarrier's web site and to the extent allowed by law, you agree to pay any and all applicable Federal, state or local taxes, or franchise, license or regulatory fees that might be assessed by any regulatory body from time to time;

**21.2. Waiver:** No waiver of any breach of this Agreement will be deemed a waiver of any future breach;

**21.3. Governing Law:** This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Pennsylvania without regard to the conflicts of law principles thereof;

**21.4. Assignment/No Third Party Rights:** You agree that NetCarrier may assign this Agreement without notifying you. You may not assign this Agreement, or any interest herein or part hereof, by operation of law or otherwise, without the express written consent of NetCarrier. This Agreement does not provide any third-party with any remedy, right or claim;

**21.5. Severability:** If any provisions of this Agreement are declared to be illegal, invalid or unenforceable as a matter of law, the same shall not invalidate this Agreement, which shall be construed as if not containing such provision, and the rights and obligations of the parties shall be construed and enforced as if a commercially reasonable provision had been substituted in place hereof;

**21.6. Survival:** The provisions of this Agreement which may by their nature survive the termination or expiration of this Agreement, including without limitation, Sections 3 and 4 of the General Terms and Conditions of Service, and Section 3 of the Voice and Data Master Services Agreement, shall survive;

**21.7. Relocation:** Customer shall be responsible for all costs of relocation of service once installed by NetCarrier, its vendors, and/or its agents. Customer shall provide reasonable access to its premises to NetCarrier, its vendors and/or its agents to perform acts in accordance with this Agreement.

**21.8. IP Addresses:** Any Internet addresses allocated by NetCarrier to Customer shall remain the property of NetCarrier upon the expiration or sooner termination of this Agreement, provided however, that Customer shall be permitted to continue to use any such addresses for a period of sixty (60) days after the date Service ceases, as such date is determined by NetCarrier.

**21.9. Miscellaneous:** You agree to the following additional terms: (i) You understand that



unauthorized use of the Services is illegal and may be punishable by law; (ii) You agree that NetCarrier is not responsible for poor quality of service caused by equipment not owned or installed by NetCarrier; (iii) You understand and agree that installation of Services may be done by an independent contractor and that, due to adverse weather or technical complications, the installation may have to be rescheduled. NetCarrier is not liable if the installation date has to be changed; (iv) You agree that NetCarrier will not be responsible for any minor accessing inappropriate adult materials; (v) You understand that NetCarrier may, in compliance with applicable law and at the direction of law enforcement personnel, permit law enforcement personnel to monitor the content of information passing through its Service or stored on its systems, regardless of origin; however, NetCarrier is not otherwise responsible for and shall not monitor such information. Access to other networks through use of the Services must comply with the rules appropriate for that network; (vi) You agree that the use of any information, programs or data obtained from use of the Service is at your own risk. NetCarrier specifically denies any responsibility for the accuracy or quality of information obtained from or through the use of the Services; (vii) Transmission of any material in violation of any law, including intellectual property law, is prohibited; (viii) You are responsible for canceling promotional offers at the end of the term or the monthly prevailing price will take effect; (ix) You must notify NetCarrier in writing and in accordance with contractual obligations to cancel any and all Services. This can be done via letter, fax at 215-257-4916 or email sent to cancellations@corp.netcarrier.com.

**21.10. Exhibits and Schedules:** Any exhibits and schedules attached to this Agreement are an integral part hereof and are hereby incorporated and included in the term "this Agreement."

**21.11. Headings:** Headings in this Agreement are included herein for convenience of reference only, shall not constitute a part of this Agreement for any other purposes and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

**21.12. Entire Agreement; Successors and Assigns; Time of the Essence:** This Agreement contains the entire terms of the Agreement with respect to the Services, and no representations, inducements, promises or agreements between the parties not set forth herein shall be of any force or effect. This Agreement shall be binding upon and shall inure to the benefit of you and NetCarrier and NetCarrier's successors and assigns, whether so expressed or not. Time is of the essence under this Agreement.

**21.13. Notices:** All notices required or permitted hereunder shall be in writing and made by hand delivery or by addressing the same to the party to whom directed at the following addresses by registered or certified mail, return receipt requested, or by facsimile or e-mail with written confirmation of receipt addressed as set forth below:

If to NetCarrier:  
NetCarrier Telecom  
4000 North Cannon Avenue  
Lansdale, PA 19446

If to Customer:  
As stated in Exhibit A of NetCarrier MSA.

Any party may change the address or fax or e-mail destination to which notices are to be sent by a notice directed to the other party in the manner aforesaid. Unless otherwise specifically provided, all notices hereunder shall be effective as follows: (a) all notices given by mail, as aforesaid, shall be deemed delivered on the third (3rd) business day after the date on which the same are deposited in a United States Post Office general or branch, or an official mail depository, maintained by the U.S. Postal Service, enclosed in a registered or certified prepaid wrapper, with postage prepaid, addressed as above provided; and (b) all notices given by facsimiles or e-mail, as shown above, shall be deemed delivered on the next business day following confirmed transmission. Notwithstanding the foregoing, any notice of change of address shall be deemed served when received.