

# **NETCARRIER TELECOM, INC. Consumer Services Agreement**

**THANK YOU FOR USING NETCARRIER TELECOM, INC. ("NETCARRIER") SERVICES.** In this Agreement ("Agreement"), "you" and "your" mean the customer of the NetCarrier services defined below, and "NetCarrier," "we," "our," and "us" means NetCarrier TeleCom, Inc., and any NetCarrier affiliate authorized to provide you with NetCarrier services.

**THIS AGREEMENT INCORPORATES BY REFERENCE THE PRICES, TERMS AND CONDITIONS IN NETCARRIER'S "INTERSTATE AND INTERNATIONAL RATES, TERMS AND CONDITIONS" ("RTC") AND ANY AND ALL TARIFFS AND/OR PRICE LISTS FILED WITH THE VARIOUS STATE PUBLIC UTILITY REGULATORY AGENCIES AND/OR COMMISSIONS. THE RTC AND CERTAIN STATE TARIFFS MAY BE ACCESSED FROM OUR WEBSITE AT WWW.NETCARRIER.COM.**

**BY ENROLLING IN, USING, OR PAYING FOR THE SERVICES, YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE PRICES, CHARGES, TERMS AND CONDITIONS, DO NOT USE THE SERVICES, AND CANCEL THE SERVICES IMMEDIATELY BY CALLING NETCARRIER AT 1-800-291-9699 FOR FURTHER DIRECTIONS.**

"Service" or "Services" means: (1) the NetCarrier state-to-state and international consumer telecommunications services you are enrolled in, use, or pay for that NETCARRIER provided to you under tariffs filed with the Federal Communications Commission as of July 31, 2001; (2) any new or additional NetCarrier state-to-state and international consumer telecommunications services that you enroll in, use, or pay for, after July 31, 2001; and (3) all NetCarrier local and in-state (intraLATA and interLATA) long distance services that you enroll in, use, or pay for.

The Services covered in this Agreement are subject to availability and may not be available at all locations.

## **1. CHARGES AND PAYMENT.**

**a. General.** You agree to pay us for the Services at the prices and charges listed in the RTC, tariffs and/or price lists for NetCarrier services to which you subscribe and/or use.

**b. Price Changes.** We may change the prices and charges for the Services from time to time. We may decrease prices without providing advance notice. Increases to the prices or charges for the Services listed in the RTC are effective no sooner than fifteen days after we post them on our web site at [www.NetCarrier.com](http://www.NetCarrier.com). Increases to charges that recover our costs associated with government programs are effective no sooner than three days after we post the increases on our web site.

**c. Payments.** You must pay all bills or invoices on time (on or before the due date) and in U.S. money. We do not waive our right to collect the full amount due if you pay late or you pay part of the bill, even if you write the words "Paid in Full" (or similar words) on any correspondence to us. If any portion of the payment is not received by the Company within 30 days of receipt of the bill, or if any portion of the payment is received by the Company in funds which are not

immediately available upon presentment, then a late payment charge of 1.5% per month shall be due to the Company. Late payment charges will be applied without discrimination. This late fee will be applied, unless otherwise specified in NETCARRIER's RTC and/or state tariffs or price lists.

**d. Charges and Billing.** The minimum period for which services are provided and for which rates and charges are applicable is one (1) month unless otherwise mutually agreed under contract. When a service is discontinued prior to the expiration of the minimum period, non-usage related charges for the entire minimum period are applicable, whether the service is used or not. NetCarrier will determine the format of the bill and the billing period, and may change either the bill format or billing period from time to time.

You are responsible for preventing the unauthorized use of the Services, and you are responsible for payment for any such unauthorized use.

**e. Taxes and Other Charges.** You must pay all taxes, fees, surcharges and other charges that we bill you for the Services, unless you can show documentation satisfactory to us that you are exempt. Taxes and surcharges will be in the amounts that federal, state and local authorities require or allow us to bill you. We will not provide advance notice of changes to taxes and surcharges, except as required by applicable law.

**f. Credit Check and Deposits.** You give us permission to obtain your credit information from consumer credit reporting agencies at any time. If we bill you for the Services and we determine that you may be a credit risk for (1) unsatisfactory credit rating; (2) insufficient credit history; (3) fraudulent or abusive use of any NETCARRIER services within the last five years; or (4) late payments for current or prior bills, we may require a deposit (or an advance payment as permitted by state law) to ensure payment for the Services. The amount of the deposit will be no more than any estimated one-time charges required for the Services, plus three months of the estimated average per-minute charges and/or monthly fees for the Services. We will pay simple interest on your deposit at the annual rate established under the state law where you receive the Services. If you fail to pay for the Services when due, we may use the deposit to offset the amount due without giving notice to you. If you pay undisputed bills by the due date for twelve consecutive billing months, we will credit the deposit to your account. If a credit balance remains on your account, we will refund or credit that amount.

**g. Credit Limits.** If we bill you for the Services, we may set a credit limit based on your payment history or your credit score from consumer credit reporting agencies. If we do this, we will notify you of your initial credit limit and all changes to your credit limit. If you exceed your credit limit, we will restrict your access to the Services, including direct-dialed, operator-assisted, and calls requiring a 900 or 976 prefix. Access to emergency services (9-1-1) will not be affected by this restriction. If you fail to make timely payments, we may also lower your credit limit.

## **2. SUSPENDING AND CANCELING THE SERVICES.**

**a. Your Cancellation of the Services.** If you use more than one Service, you may change or cancel individual Services by calling the NetCarrier customer service number on your NetCarrier bill, subject to the applicable terms and conditions set forth herein. This Agreement remains in effect for any Services that you continue to be enrolled in, use, or pay for. If you want to cancel all of the Services, discontinue your use of all the Services and call the customer service number on your NetCarrier bill for further instructions.

**b. Fraudulent Use.** You may not use the Services for any unlawful, abusive, or fraudulent purpose, including, for example, using the Services in a way that (1) interferes with our ability to provide Services to you or other customers; or (2) avoids your obligation to pay for the Services. If NetCarrier has reason to believe that you or someone else is abusing the Services or using them fraudulently or unlawfully, we may immediately suspend, restrict, or cancel the Services without advance notice.

**c. Failure to Pay.** Upon advance notice, we may suspend, restrict, or cancel the Services and this Agreement, if you do not make payments for current or prior bills by the required due date, including payments for late fees or any other required additional charges.

**d. Other.** NetCarrier may from time to time discontinue certain Services, subject to applicable law and regulation.

**e. Outstanding Charges.** If Services are suspended, restricted, or cancelled, any usage charges will accrue through the date that NetCarrier fully processes the suspension, restriction or cancellation. Monthly charges billed in advance will accrue to the end of the monthly service period. You must pay all outstanding charges for these Services, including payment of any bills that remain due after the date of cancellation. Subject to Section 6, you must reimburse us for any reasonable costs we incur, including attorneys' fees, to collect charges owed to us. If you want us to renew the Services, we may require that you pay a deposit.

### **3. INDEMNIFICATION.**

**YOU AGREE THAT WE ARE NOT RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES. FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES, UNLESS SUCH CLAIMS ARE BASED ON OUR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS PROVISION WILL CONTINUE TO APPLY AFTER THE AGREEMENT ENDS.**

**YOU ALSO AGREE THAT NO THIRD PARTY PROVIDER OR THEIR DIRECTORS, OFFICERS OR EMPLOYEES THAT ARE DIRECTLY OR INDIRECTLY ASSOCIATED WITH US IN THE PERFORMANCE OF OUR SERVICES SHALL BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, PUNITIVE OR OTHER DAMAGES, ARISING OUT OF A SERVICE FAILURE.**

#### 4. LIMITATIONS OF LIABILITY.

Except as provided otherwise in its RTC or applicable state tariffs or price lists, NetCarrier shall not be liable to the Customer or any other person, firm or entity for any failure of performance of its Services if such failure is due to any cause or causes beyond the reasonable control of NETCARRIER. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, or preemption of existing services to restore service in compliance with the Rules and Regulations of the Federal Communication Commission or State regulatory agencies.

With respect to any claim or suit, NetCarrier's liability, if any, shall not exceed an amount equal to the charge applicable under its RTC or state tariffs or price lists to the period during which services were affected. For those services with monthly recurring charges, NetCarrier's liability is limited to an amount equal to the proportionate monthly recurring charges for the period during which service was affected.

NetCarrier is not liable for any act or omission of any other company or companies furnishing a portion of the service, facilities or equipment associated with such service.

The Customer is responsible for taking all necessary legal steps for interconnecting the Customer provided terminal equipment with NetCarrier's facilities. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection.

All or a portion of the service may be provided over facilities of third parties, and NetCarrier shall not be liable to Customer or any other person, firm or entity in any respect whatsoever arising out of defects caused by such third parties.

**NETCARRIER SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF ANY DEFECTS OR ANY OTHER CAUSE. THIS WARRANTY AND THESE REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

With respect to the routing of calls by NetCarrier to public safety answering points or municipal emergency service providers, the Company's liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by the Customer as the direct result of NetCarrier's action, or failure to act, in routing the call, or (b) the sum of \$1,000.00.

In the event parties other than Customer (e.g., Customer's customers) shall have use of the service directly or indirectly through Customer, then Customer agrees to forever indemnify and hold NetCarrier harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties arising out of or relating to any defects.

## **5. WARRANTIES.**

**EXCEPT AS THIS AGREEMENT EXPRESSLY STATES, WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICES AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE ALSO MAKE NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. WE DO NOT AUTHORIZE ANYONE, INCLUDING, BUT NOT LIMITED TO, NETCARRIER EMPLOYEES, AGENTS OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT.**

## **6. DISPUTE RESOLUTION.**

**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.**

**a. Binding Arbitration.** The arbitration process established by this section is governed by the Federal Arbitration Act (“FM”), 9 U.S.C. §§ 1-16. You have the right to take any dispute that qualifies to small claims court rather than arbitration. 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. 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 6. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect.

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 an 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.

**NO DISPUTE MAY BE JOINED WITH ANOTHER LAWSUIT, OR IN AN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON, OR RESOLVED ON A CLASS-WIDE BASIS. THE ARBITRATOR MAY NOT AWARD DAMAGES THAT ARE NOT EXPRESSLY AUTHORIZED BY THIS AGREEMENT AND MAY NOT AWARD PUNITIVE DAMAGES OR ATTORNEYS’ FEES UNLESS SUCH DAMAGES ARE EXPRESSLY AUTHORIZED BY A STATUTE. YOU AND NETCARRIER BOTH WAIVE ANY CLAIMS FOR AN AWARD OF DAMAGES THAT ARE EXCLUDED UNDER THIS AGREEMENT.**

**b. Arbitration Information and Filing Procedures.** Before you take a dispute to arbitration or to small claims court, you must first contact our customer account representatives at the customer service number on your NetCarrier bill for the Services, or write to us at NetCarrier America, 2704 Alternate U.S. 19, N., Palm Harbor, FL 34683, and give us an opportunity to resolve the dispute. Similarly, before NetCarrier takes a dispute to arbitration, we must first attempt to resolve it by contacting you. If the dispute cannot be satisfactorily resolved within sixty days from the date you or NetCarrier is notified by the other of a dispute, then either party may then contact the AAA in writing at AAA Service Center, 134555 Noel Road, Suite 1750, Dallas, Texas 75240-6620 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 [www.adr.org](http://www.adr.org), or by contacting us at [www.NetCarrier.com](http://www.NetCarrier.com) or NetCarrier, America, 2704 Alternate U.S. 19, N., Palm Harbor, FL 34683. 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 NetCarrier may disclose the existence, content or results of any arbitration or award, except as may be required by law, or to confirm and enforce an award.

**ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.**

**c. Fees and Expenses of Arbitration.** You must pay the applicable AAA filing fee when you submit your 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, except that for claims of less than \$1,000, you will only be obligated to pay a filing fee of \$20 and we will pay all of the AAA's other costs and fees. 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.

## **7. MISCELLANEOUS.**

**a. No Third Party Rights.** This Agreement does not provide any third party with a remedy, claim, or right of reimbursement.

**b. Acts Beyond Our Control.** Neither you nor we will be responsible to the other for any delay, failure in performance, loss or damage due to fire, explosion, power blackout, earthquake, volcanic action, flood, the weather elements, strike, embargo, labor disputes, civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond our reasonable control, except that you must pay for any Services used.

**c. Assignment.** We can assign all or part of our rights or duties under this Agreement without notifying you. If we do that, we have no further obligations to you. You may not assign this Agreement or the Services without our prior written consent.

**d. Notices.** Notices from you to NetCarrier must be provided as specified in this Agreement. Notice from you to NetCarrier made by calling NetCarrier is effective as of the date that our records show that we received your call.

NetCarrier's notice to you under this Agreement will be provided by one or more of the following: posting on our web site, recorded announcement, bill message, bill insert, newspaper ad, postcard, letter, call to your billed telephone number, or e-mail to an address provided by you.

**e. Separability.** If any part of this Agreement is found invalid, the rest of the Agreement will remain valid and enforceable.

**f. Governing Law.** This Agreement will be governed by the law of the State of New York, without regard to its choice of law rules, except that the arbitration provisions in Section 7 will be governed by the Federal Arbitration Act. This governing law provision applies no matter where you reside, or where you use or pay for the Services.

**g. Entire Agreement.** This Agreement (which incorporates by reference the NetCarrier's RTC and all applicable state tariffs and/or price lists) constitutes the entire agreement between us and supersedes all prior agreements, understandings, statements or proposals, and representations, whether written or oral. This Agreement can be amended only as provided in Section 8 below. No written or oral statement, advertisement, or service description not expressly contained in the Agreement will be allowed to contradict, explain, or supplement it. Neither you nor NetCarrier is relying on any representations or statements by the other party or any other person that are not included in this Agreement.

**h. Staff Tariffs, Price Lists, and Rules.** For local and in-state service for which there is specific language in state tariffs, price lists or state rules that conflict with this agreement, the state tariff, price list, or state rules apply.

## **8. CHANGES TO THIS AGREEMENT.**

This Agreement may only be changed in the manner provided for in this Section 8. We may change this Agreement, including the incorporated NetCarrier RTC, from time to time. If we make any changes to the prices or charges, we will comply with our notice commitments described in Section 1 of this Agreement. With respect to all other changes to this Agreement, we will notify you of the changes, and they will be effective no sooner than ten days after we post them at [www.NetCarrier.com](http://www.NetCarrier.com). You may also request a copy of the revised Agreement, including revised NetCarrier Terms and Conditions for the services you are enrolled in, by calling NetCarrier toll free at 888-575-4754.

**IF YOU CONTINUE TO BE ENROLLED IN, USE, OR PAY FOR THE SERVICES AFTER ANY CHANGES IN THE PRICES, CHARGES, TERMS OR CONDITIONS, YOU AGREE TO THE CHANGES.**

**9. ENROLLMENT IN ANOTHER NETCARRIER SERVICE.**

To enroll in an additional Service, or to switch from your existing Service to a different Service, you must notify us by: (1) returning an enrollment form provided in NetCarrier marketing materials; (2) calling the NetCarrier customer service number on your NetCarrier bill; (3) calling the NetCarrier customer service number provided in NetCarrier marketing materials; or (4) going to our web site at [www.NetCarrier.com](http://www.NetCarrier.com) and following any further instructions provided for enrollment. The terms and conditions of this Agreement, including those in the incorporated NetCarrier Terms and Conditions, will apply to the new or additional NetCarrier Service.

**BY ENROLLING IN, USING, OR PAYING FOR THESE NEW OR ADDITIONAL SERVICES, YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS IN THIS AGREEMENT.**