

**RESOLUTION 93-2019  
RESOLUTION AUTHORIZING AGREEMENT  
WITH NETCARRIER TELECOM, INC.**

**WHEREAS**, the Borough has heretofore invited and received Proposals for Telephone and Data Services for a portion of its Telephone and Data transmission needs; and

**WHEREAS**, the Purchasing Agent has recommended the acceptance of a Proposal from NETCARRIER TELECOM, INC., for such services as more particularly described within their quotation dated August 16, 2019; and

**WHEREAS**, the Borough deems it in the best interest to accept the aforesaid Proposal which is at a rate less than the other Proposals received;

**NOW THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Woodbury Heights, with the Mayor concurring, that the Proposal from NETCARRIER TELECOM, INC., for the provision of certain Telephone and Data Transmission Services as more particularly set forth in their Quotation dated August 16, 2019, is hereby accepted and authorized;

**BET IT FURTHER RESOLVED**, that the Mayor and Clerk are hereby authorized to endorse an Agreement for the aforesaid services upon terms consistent with the Quotation dated August 16, 2019.

**BOROUGH OF WOODBURY HEIGHTS**

BY:   
WILLIAM C. PACKER, MAYOR

**ATTEST:**

  
JANET PIZZI, BOROUGH CLERK

The foregoing Resolution was duly adopted by the Borough Council of the Borough of Woodbury Heights at a regular meeting held on the 21<sup>ST</sup> day of August, 2019.

  
JANET PIZZI, BOROUGH CLERK

### CERTIFICATION OF AVAILABILITY OF FUNDS

I, Victoria Holmstrom, being the Chief Financial Officer of the Borough of Woodbury Heights, do hereby certify, pursuant to the rules of the Local Finance Board of the State of New Jersey and in accordance with N.J.S.A. 40A:4-57, that there are available adequate funds for the proposed contract between the Mayor and Borough Council of the Borough of Woodbury Heights and Complete Control Services, Inc.

The money necessary to fund said contract is in the maximum amount of \$ 14,400.00 and upon approval of the contact, all funds expended shall be charged to the following:

9-01-31-440-000-303	\$4,545.00
9-01-31-440-000-304	\$2,800.00
9-09-55-502-000-373	\$6,100.00
8-01-41-745-000-334	\$ 380.00
9-01-31-440-000-308	\$ 575.00

These funds are not being certified as being available for more than the contract.



Victoria Holmstrom, CFO

Date: August 19, 2019



# NETCARRIER ORDER FORM GENERAL INFORMATION

In the interest of providing you with superior service, the completion of this questionnaire is vital. Your NetCarrier Representative(s) can assist you and/or your technical personnel in completing this form. This CIQ will stay on record with NetCarrier to be utilized when you desire to add services with NetCarrier.

Section 1 CUSTOMER ADDRESS INFORMATION	
Type of Order:	Date: 2019-08-19
Customer Moving?:	Expected Service Delivery Date:
	**Service Delivery Date is not guaranteed.
Customer Name:	Borough of Woodbury Heights
Install Address:	500 Elm Ave
Floor/Suite #:	
City, State, Zip:	Woodbury Heights, NJ 08097
Main Number:	
Fax Number:	
Billing Address:	Borough of Woodbury Heights
Floor/ Suite #:	
City, State, Zip:	
Agent/Consultant:	Tim Jennings
Phone #:	8563846000

Section 2 CUSTOMER CONTACT INFORMATION	
Name	Vikki Holmstrom
Title:	
Phone #:	856-848-2832
Email:	vikki@bwhnj.com
Contact Type:	Primary
Signer Privileges	Yes
Name	
Title:	
Phone #:	
Email:	
Contact Type:	
Signer Privileges	
Name	
Title:	
Phone #:	
Email:	
Contact Type:	
Signer Privileges	

Special Notes:	
Industry Type:	
PBX Vendor:	
Current Voice & Internet Provider	
Porting Existing Numbers?	
IT Contact Name:	
IT Company Name:	
Union Building:	

**netcarrier**

# VOICE AND DATA MASTER SERVICES AGREEMENT

**Customer Information**

Company Name: Borough of Woodbury Heights  
 Street Address: 500 Elm Ave  
 Suite Number: \_\_\_\_\_  
 City, State: Woodbury Heights, NJ  
 Zip Code: 08097  
 Contact Name: Vikki Holmstrom  
 Contact Phone: 856-848-2832  
 Contact E-Mail: vikki@bwhnj.com

**Sales Executive Information**

Sales Executive: Tim Jennings  
 Phone: 8563846000  
 E-Mail: tjennings@telecorpinc.com  
 Quote Date: 2019-08-19  
 Quote Valid Through: 2019-09-18  
 Contract Term (months): 24

<b>Order Totals</b>	<b>Monthly</b>	<b>\$273.99</b>	<b>One-Time</b>	<b>\$0.00</b>
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Exhibit A			
500 Elm Ave Woodbury Heights, NJ 08097			
Integrated Services	QTY	Unit Price	Monthly
nCloud xStream over Fiber - "Additional Qualification Needed & Construction Fees May Apply"	1	\$0.00	\$0.00
Voice Services	QTY	Unit Price	Monthly
Analog Handoff	1	\$0.00	\$0.00
Caller ID Name (Included)	1	\$0.00	\$0.00
Direct Outward Dial Number	1	\$0.00	\$0.00
18 Lines	1	\$309.00	\$309.00
1,000 LD Min Bundle Included	1	\$0.00	\$0.00
Data Services	QTY	Unit Price	Monthly
nCloud xStream over Fiber 75/75Mb w/ 5 Static IPs	1	\$124.99	\$124.99
Customer Loyalty Discount	1	\$-160.00	\$-160.00
Calling Rates	QTY	Unit Price	Rate/Min
Local Calling Rate	1	\$0.0000	\$0.0000
LD Overage Calling Rate	1	\$0.0280	\$0.0280
Site Total	Monthly	\$273.99	One-Time \$0.00

Customer:

DOC6565862213

RFQ#: 4306272843

NetCarrier:

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# VOICE AND DATA MASTER SERVICES AGREEMENT

## Customer Information

Company Name: Borough of Woodbury Heights  
Street Address: 500 Elm Ave  
Suite Number: 0  
City, State: Woodbury Heights, NJ  
Zip Code: 08097  
  
Contact Name: Vikki Holmstrom  
Contact Phone: 856-848-2832  
Contact E-Mail: vikki@bwhnj.com

## Sales Executive Information

Sales Executive: Tim Jennings  
Phone: 8563846000  
E-Mail: tjennings@telecorpinc.com  
  
Quote Date: 2019-08-19  
Quote Valid Through: 2019-09-18  
  
Contract Term (months): 24

## Exhibit B

500 Elm Ave, Woodbury Heights, NJ 08097			
Managed Equipment	QTY	Unit Price	Monthly
Managed Router	1	\$0.00	\$0.00
Site Total	Monthly	\$0.00	One-Time \$0.00

## TERMS

1) **SERVICES PROVIDED.** In this Agreement, "you" and "your" mean the customer of NetCarrier Telecom, Inc. or NetCarrier's affiliated companies (collectively "NetCarrier"). Subject to the terms and conditions of this Master Services Agreement, your Voice and Data Service Agreement, attached hereto as Exhibit A, and applicable product information including prices, terms and conditions of service, and General Terms and Conditions of Service, available on NetCarrier's website ([www.netcarrier.com](http://www.netcarrier.com)) (together, the "Agreement"), NetCarrier will provide interstate telecommunications services to you.

This Agreement governs state-to-state long distance services, interexchange services, intraLATA services, interLATA services and Internet access services provided to you by NetCarrier ("Service" or "Services"), and does not apply to calls made by dialing a 10-10-XXX number or cable television. You agree not to resell the Services; the Services are provided by NetCarrier solely for end user use. As used herein the term "Services" includes all work performed and goods or services provided by NetCarrier to or for the Customer. All Services are provided subject to the availability of necessary and suitable facilities. BY ENROLLING IN, USING, OR PAYING FOR NETCARRIER'S SERVICES, YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS IN THIS AGREEMENT.

2) **CHARGES FOR SERVICES.** You agree to pay NetCarrier for the Services NetCarrier provides at the prices set forth in Exhibit A. NetCarrier may change prices at any time provided it is required to cover NetCarrier's costs associated with changes in government taxation and tariff programs (such as the Universal Service Fund). NetCarrier reserves the right to adjust MRC rates if there is a significant drop in anticipated minute usage. NetCarrier will invoice you for Services one (1) month in arrears for usage and installation fees and one (1) month in advance for line charges. Invoices are due and payable upon receipt. Any invoices not paid within thirty (30) days following the date of the invoice shall be deemed past due and assessed a finance charge in the amount of one and one-half percent (1.5%) of the outstanding balance per month or such lesser maximum charge as permitted by applicable law.

You agree to pay NetCarrier any and all costs and expenses (including reasonable attorneys' fees) associated with the collection of any amounts due. NetCarrier reserves the rights (subject to applicable state law): (a) to charge you return check charges, and (b) to charge you a fee to reactivate Service where Service was interrupted due to your actions or failure to make required payment. You may terminate Service at any time, with a sixty (60) day notice to NetCarrier, but shall remain liable for charges incurred before termination and any other early termination fees that may have been agreed upon. NetCarrier accepts payment in the form of a check, money order, or wire transfer only.

Full Billing shall commence upon Service Activation OR at the period following (60) days from execution of this agreement. Service Activation shall be defined as the ability to generate or receive voice and/or data traffic from Customer location. Circuit Billing will be retroactive to date of circuit delivery. If Customer has modem devices (fax, credit card machine, modem, etc.) which are deemed incompatible with NetCarrier's technology, NetCarrier will provide a custom solution using additional CPE(s) or copper POTS lines. Customer will incur additional monthly fees based on the nature of the solution.

International calls made to mobile numbers are not part of any special pricing agreements. Should Customers' account become delinquent (is in excess of 60 days from date of invoice) NetCarrier reserves the right to suspend service. Customer will continue to be billed for the MRC and any applicable taxes during the suspension. One (1) hour will be provided during installation, at Customers' site, for LNP purposes. Customer will be billed \$95.00 per 30 minute increments for delays not caused by NetCarrier.

Customer:

DOC6565862213

NetCarrier:

RFQ#: 4306272843

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# VOICE AND DATA MASTER SERVICES AGREEMENT

**COPPER (If Applicable):** Due to the decommissioning of copper facilities if at any point during the length of the term of this Agreement, NetCarrier is notified that Customer services will be effected, NetCarrier will notify Customer. NetCarrier will propose alternative solutions to Customer for contracted services that may come with an increased monthly recurring charge. If Customer elects not to accept NetCarrier proposed solution NetCarrier will release Customer from contractual obligations and not impose early termination fees as explained in Section 3 of this Agreement.

**EQUIPMENT PURCHASES (If Applicable):** Customers that purchase equipment from NetCarrier in conjunction with the Service provided in Exhibit A shall be billed in the following manner: Customer will be invoiced by NetCarrier the first of the month following contract signature with seventy five percent (75%) of total equipment charges become due upon. The remaining twenty five (25%) will be carried forward on invoices payable on the invoice following Customer activation. NetCarrier will not proceed with Customer installation until payment is remitted for the initial 75%.

**BROADBAND CUSTOMERS:** NetCarrier is providing Broadband Access loops as a pass through. Broadband Access providers may increase or decrease charges at any time, and such increases or decreases will be passed on to Customer without prior notice.

**3) SERVICE DISCONNECTION; AGREEMENT TERMINATION.** NetCarrier reserves the right to disconnect Service immediately without incurring liability in the following instances: (i) for non-payment for any sum due NetCarrier for more than thirty (30) days after the issuance of a valid invoice; (ii) for violations of this Agreement or applicable law; (iii) where required by reason of any order or a court, public service commission or federal regulatory body; (iv) when necessitated by conditions beyond NetCarrier's reasonable control; (v) where reasonably necessary to prevent harm or interference to NetCarrier's network; or (vi) temporarily for routine maintenance.

NetCarrier may terminate this Agreement immediately upon any breach of this Agreement by you. All Services shall be discontinued upon the effective date of any termination of this Agreement by NetCarrier. You shall not be entitled to any refund for prepaid Services in the event of rightful termination of this Agreement by NetCarrier. In the event of a termination of this Agreement by NetCarrier, NetCarrier shall be entitled to accelerate and demand immediate payment of all amounts owing by you hereunder for the balance of the then current term of this Agreement. In the event of termination by either NetCarrier or Customer, NetCarrier may require the immediate return of all NetCarrier supplied equipment.

NetCarrier shall also have all other rights and remedies available under applicable laws; (vii) if a Customer termination occurs after contract signature but prior to local number portability (LNP), Customer shall pay to NetCarrier 100% of contracted charges stated in Exhibit A for the length of the contract term; (viii) if a Customer termination occurs after LNP but prior to the end of the contract term, Customer shall be responsible for one hundred percent (100%) of the monthly service charge for the remainder of the term. If Customer termination occurs after the initial term, and is in a period of automatic renewal, as stated in Paragraph 5, then Customer shall pay to NetCarrier fifty (50%) percent of the monthly service charge for the remainder of the term, or one month's service charge, whichever is greater.

Customer terminations, as outlined above in lines vii and viii, are to be paid to NetCarrier in one payment, representing the remaining term, within thirty (30) days of termination. In addition, any favorable discount rate proffered to Customer in connection with any other service agreement between Customer and NetCarrier shall be invalidated, null and void. In the event Customer's acts or omissions which form the basis of a termination by NetCarrier hereunder also violate any law or industry standard, Customer shall also indemnify NetCarrier for any fine or penalty or other damages assessed against or incurred by NetCarrier as a result thereof. Customer may terminate this Agreement without incurring early termination fees if NetCarrier is in material breach of this Agreement if Customer provides written notice of such material breach to NetCarrier; NetCarrier's material breach is directly attributable to causes directly within NetCarrier's control; NetCarrier cannot reasonably cure the breach within 15 business days of receiving Customer's written notice of material breach; and Customer's account with NetCarrier is current (no balance older than 30 days).

If NetCarrier, in its sole discretion, deems Customer to be an abuser of the unlimited local or unlimited domestic calling plans (examples of which include but are not limited to: Use of unlimited products for automated or predictive dialers, call center environments, or any electronic device that promotes heavy, short-duration call traffic), NetCarrier may impose a surcharge of \$0.02/minute on inbound/outbound calls or may disconnect service with ten (10) days written notice to Customer. Customer shall be liable for any applicable early termination charges.

**4) CUSTOMER MOVES.** In the event that a customer moves within NetCarrier's service area, a fee per circuit will be charged to cover administrative costs and circuit installation fees for customers' new facility. If NetCarrier incurs any charges from its circuit vendor because of the disconnection of the original circuit, including but not limited to early termination fees, NetCarrier reserves the right to invoice customer to re-coup those expenses. If customer moves to a location outside NetCarrier's service area, NetCarrier will view that as a customer cancellation and will apply charges per paragraph 3.

**5) TERMS OF AGREEMENT; RENEWAL.** This Agreement shall commence upon signature execution by both parties. Term length as stated in Exhibit A begins on the date of Service activation by NetCarrier. This Agreement shall be automatically renewed on each anniversary of the date of installation, for a period of twelve (12) months, unless either party give the other at least sixty (60) days written notice of cancellation prior to an anniversary date. In the event that this Agreement ever goes to a month to month state, any negotiated product discounts shall be lost and Customer shall pay NetCarrier the standard Tarriff rates for products listed in Exhibit A. Contract cancellations require thirty (30) days written notice on month to month term.

**6) CREDIT CHECK/DEPOSIT.** NetCarrier reserves the right to verify your credit as a condition of provisioning Service. NetCarrier reserves the right to collect a deposit from you, not to exceed three (3) months services or place a credit limit on your account. Any such deposits shall be returned upon termination of Service and satisfaction of all outstanding invoices or after one (1) year if you have not been delinquent on any payment due during that time.

Customer:

DOC6565862213

NetCarrier:

RFQ#: 4306272843

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**netcarrier**

# VOICE AND DATA MASTER SERVICES AGREEMENT

7) MISCELLANEOUS.

- a) 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."
- b) 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.
- c) 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.
- d) Cancellation of Contract. For any reason, Customer has the ability to cancel this contract by sending written notice to NetCarrier no later than three (3) days from the date of this agreement.
- e) Voice products require that NetCarrier provides at least twenty (20%) percent of "Customer's" local phone traffic.
- g) NetCarrier recommends that all alarm lines utilize a battery backup device.

8) DEMARK EXTENSION. Customer should be aware that before Service can be initiated a "Demark Extension" may be required. A Demark Extension refers to the cabling required from the termination point designated by the local exchange carrier (Verizon, for example) for connection to its network and the Customer's equipment. NetCarrier has no control over whether a Demark Extension is required. Unfortunately, whether a Demark Extension is required cannot be determined in advance of installation by NetCarrier. If it is, a separate fee will be charged. If NetCarrier provides the Demark Extension it will charge you \$260.00 for the first hour (or portion thereof) and \$95.00 for each thirty minute period (or portion thereof) thereafter, plus required materials. This charge is in addition to those set forth in Exhibits A and/or B (if applicable). If it is necessary for NetCarrier to sub-contract for the Demark Extension, NetCarrier will bill Customer at its costs.

**Customer Acceptance**

Name: William C. Packer

Title: Mayor

Authorized Signature

Date: 08/21/19

**NetCarrier Acceptance**

Name:

Title:

Authorized Signature

Date:

Customer:

DOC6565862213

RFQ#: 4306272843

NetCarrier:

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In addition to the terms and conditions contained in the service agreement ("Agreement") between NetCarrier Communications, 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.

1) **Quality of Service.** NetCarrier shall make no warranties for voice quality using a third party bandwidth provider. It is the sole responsibility of the Customer to ensure that sufficient bandwidth (measured instantaneously), QoS (Quality of Service), low latency (<75ms), and Jitter is available at all times for VoIP based services (SIP, MGCP, etc). If the integrity of such voice traffic becomes compromised outside of NetCarrier's core network, NetCarrier shall not be responsible, and any contractual obligations in this Agreement shall not be waived. These limitations are not applicable to NetCarrier's VoIP engineered bandwidth products.

2) **E-911.** Service may be limited or unavailable under the following circumstances, including but not limited to: Physical location change or relocation of CPE, During an Internet service outage, Use of a non-native or non-registered telephone number, or If the registered location has been changed but the 911 database update has not yet completed. Emergency calls are routed to the PSAP for your designated emergency response location. If your physical location or out-pulsed TN differs from your designated location or TN required, emergency service may be delayed or unavailable. You agree to notify all of your users of the VOIP 911 limitations and to place warning labels (available from us) on or near your phones. Please see our terms and conditions for more information about our 911 service.

a) **911 Mobility.** It is the Customer's responsibility to ensure that end users have access to 911 services. NetCarrier's VOIP product DOES NOT support E-911 mobility. It is Customer's responsibility to notify NetCarrier of any registered address changes for end users on your PBX.

3) **Power over Ethernet.** NetCarrier recommends the use of Power-over-Ethernet (PoE) switches to power the IP Phones. PoE switches are capable of supplying power to the IP Phones directly over the Ethernet cabling and eliminate the need for separate AC Power Adapters at each IP Phone location. Also PoE switches simplify the task of providing an Uninterruptible Power Supply (UPS) to the IP Phones by centralizing the UPS functionality.

4) **LAN Requirements.** It is Customer's responsibility to ensure that wiring for Customer's LAN shall be CAT5 cable or better throughout the network. This includes any uplinks from the Ethernet switches or from a firewall to the NetCarrier supplied CPE. All terminated ends of the cables, whether RJ-45 or punch down, must be checked by Customer to ensure there are no loose or frayed connections. Roundtrip latency is a measure of the roundtrip time elapsed between the sending of a message to a remote point and the return of that message from that remote point. Customer must ensure that Customer's LAN shall contribute no greater than 15 ms to the total roundtrip latency between any given IP Phone on the customer's LAN and NetCarrier. Network Jitter is a measure of the variability in the roundtrip latency across a series of measurements. The customer's LAN shall contribute no greater than 15 ms to the total network jitter between any given IP Phone on the customer LAN and NetCarrier. Packet loss is a measure of the percentage of IP packets lost in a data transaction. The customer's LAN shall lose no greater than 0.25% of all packets transmitted.

5) **Ethernet.** The customer's LAN and network elements must operate in accordance with IEEE Ethernet Specification 802.3u (100Base-T, Full Duplex). Ethernet switches and routers shall operate with spanning tree disabled. Edge switches shall be cascaded directly to a core switch (no daisy-chaining of switches) or connect via a high speed Gigabit uplink.

6) **NAT/PAT.** Internal LAN addresses shall be non-routable (private) and shall use a single level of Network Address Translation (NAT) protocol to map public IP addresses to the private IP addresses. If the customer is already using NAT protocol, their NAT protocol translation device shall be able to do Port Address Translation (PAT) in conjunction with NAT. If the customer does not currently have a NAT translation device, or if their current device does not support PAT, then the NetCarrier supplied CPE can perform the NAT/PAT functions for the customer. Multiple levels of NAT shall not be supported.

Borough of Woodbury Heights

Signature:

Name: William C. Packer

Title: Mayor

Date: 08/21/19





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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 WELL 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 DOES 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 COURSE OF PERFORMANCE, DEALING, CUSTOM OR TRADE USAGE, 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 NONINFRINGEMENT. CUSTOMER AGREES 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.

B. 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: 

\${order\_docs.id}

NetCarrier: \_\_\_\_\_

\${order\_docs.created\_on}

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RFQ #: \${tracking\_number}



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.

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(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 other person's computer system, or to attempt any of the foregoing; (c) intercept, engage in other similar activities, including without limitation, "spamming", "flaming" or denial of service attacks; (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.

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(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.

**Customer Acceptance:**

Name: William C. Packer

Title: Mayor

Authorized Signature

Date:

8/21/19

**NetCarrier Acceptance:**

Name:

Title:

Authorized Signature

Date:

Customer:

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