

TERMS AND CONDITIONS – NORCAST SERVICE AGREEMENT

TARIFFS AND ENTIRE AGREEMENT: References in the Agreement to Norcast, "we", "us" and "our" mean the Norcast Communications Corporation or its affiliates providing the services ordered herein. References in the Agreement to "you" and "your" mean customer or subscriber. The services ordered hereunder ("Service"), in whole or in part, are subject to federal and state tariffs and/or our standard published rates, terms and conditions, which are incorporated herein by reference (as if fully stated herein) (the "Terms") and we may amend the Terms from time to time without prior notice. Any discounts on the Service are based solely on the pricing set forth in the Terms and the initial term specified on the front of the Form ("Initial Term"). This Norcast Service Agreement ("Form"), together with the Terms and any applicable addendum (collectively the "Agreement"), establish the rates, terms and conditions upon which we agree to provide you Service. The Agreement sets forth the entire understanding between the parties and supersedes any prior or contemporaneous oral or written representations, offers or proposals made by us or representatives of us. The Agreement also governs any additional services or changes you may request during the term of the Agreement. In the event of any inconsistency between this Form and the Terms, the Terms shall control. Your use of our Services constitutes acceptance of the Terms and your continued use after an amendment of the Terms constitutes agreement to the modified Terms.

PROVISION AND BILLING OF SERVICE, AND PAYMENT: We will generally bill you on a monthly basis. Unless otherwise stated, all Service has a minimum period of one month. Usage charges for Service are billed in arrears. You are solely responsible for all usage charges whether or not authorized by you. Monthly recurring and non-recurring charges are billed an additional month in advance, on a prepaid basis. Billed charges include applicable taxes and tax-related regulatory surcharges and fees. At any time, we may require you to make reasonable deposits or other assurances of payment and if you fail to do so we may terminate your Service. Full payment of any invoice is due by the due date of the invoice, or as provided for in the Terms, and becomes past due thereafter. Except as otherwise provided for herein, you shall pay Norcast the amounts set forth in the monthly bill without deduction, setoff or delay for any reason. A monthly late payment fee of 1.5% (or lower as required by law) with a minimum of \$5.00 may be assessed for past due amounts. You must provide us with written notice of any disputed charges by the later of thirty (30) days after receipt of the invoice or the time period provided for in the applicable tariff. If you do not give us written notice of any disputed charges within such time period, you shall be deemed to have waived your right to dispute those charges. You hereby agree to pay all costs and expenses incurred by us in the collection of unpaid amounts, including without limitation, attorneys' fees and court costs, to the extent permitted by law.

DEMARCATON POINT: We shall determine the demarcation point for the provision of Services between the wiring that comes into your building from us and the wiring you install to hook up your telephone or telephone system. You are responsible for inside wire, including any and all costs associated therewith, from the demarcation point to your equipment.

RIGHT TO CANCEL ORDER: We will make reasonable efforts to provide you with the Service ordered under the Agreement; however, there may be circumstances in which we may be unable to provide such Service. If we determine for any reason that we cannot provide Service to you on the terms and conditions contemplated by the Agreement, we may, at our sole discretion, either (i) immediately terminate the Agreement without liability and without any further obligations, or (ii) propose different prices, terms and conditions. If you cancel your order for Service before the service begins, a charge equal to the greater of \$25.00 or the actual costs we incurred in provisioning the service prior to the cancellation will be levied upon you. However, no charge will be levied if you cancel your service within three (3) days of the date the order was placed in writing or within three (3) days of the date of written confirmation. No cancellation charge applies to orders canceled due to delays in installation that are caused by us that are ten (10) days past the promised due date.

TERM AND RENEWAL OF TERM: The Agreement is effective when signed by both parties ("Effective Date") and shall continue in effect thereafter until expiration of the term of the Service as set forth below or unless earlier terminated in accordance with the Agreement. Upon expiration of the Initial Term of the Service, unless the parties enter into a new agreement, the term will automatically renew on a month-to-month basis and your rates may be adjusted to reflect our standard published list prices until either party provides the other party at least 30 days' prior written notice of its intent to terminate the Services of Agreement.

TERMINATION: We may suspend or terminate your Service or the Agreement in accordance with our rights in the Agreement and our normal business practices without liability and without waiving any other legal or equitable rights that we may have. We may declare you in breach of the Agreement if your account is not paid current or if you fail to meet any other obligation contained in the Agreement. We may terminate the Agreement at any time without liability upon 30 days' prior written notice. You may terminate the Agreement at any time without liability before the expiration date of the Initial Term if you sign a new agreement with us for an equal or greater monthly revenue and/or term. Upon termination of the Agreement at any time without liability before the expiration date of the Initial Term if you sign a new agreement with us for an equal or greater monthly revenue and/or term. Upon termination of the Agreement for any reason, it is your responsibility to switch to a new carrier if you want service continued and you shall be responsible for any and all outstanding charges owed to us as of the date of discontinuance of Service, including but not limited to, early termination fees. You shall also be liable for all charges incurred during the transition to a new carrier.

EARLY TERMINATION FEES: If you cancel, disconnect or terminate a Service after it is installed but before the expiration of the Initial Term for that Service, you will be required to pay an early termination fee(s) as follows:

Service Type	Term	Early Termination Fee
Local T-1s and PRIs	Each Service has its own term. The Initial Term begins when the service is installed and shall continue for the duration as specified on the front of this Form.	50% of the balance of the total billing payable during the life of the term
Norcast & PowePipe Integrated Services	Each Service has its own term. The Initial Term begins when the service is installed and shall continue for the duration as specified on the front of this Form.	50% of the balance of the total billing payable during the life of the term
All other voice circuits (i.e., analog business lines)	Each Service location has its own term. The Initial Term begins when the service is first installed and shall continue for the duration as specified on the front of this Form.	\$75.00 x remainder of initial term, per service location. Applies only if all services at a location are disconnected.

You agree that it would be extremely difficult and impractical to calculate the damages for early termination and that the above early termination fees are liquidated damages and are not imposed as a penalty.

LIMITATION OF LIABILITY; NO SPECIAL DAMAGES; DISCLAIMER OF WARRANTIES: THE ENTIRE LIABILITY OF US AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ALL CLAIMS OR DAMAGES OF WHATEVER NATURE ARISING FROM OR IN ANY WAY RELATED TO THE AGREEMENT OR PROVISION OF SERVICE (INCLUDING THE FAILURE TO PROVIDE SERVICE), INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAY, TORTIOUS CONDUCT, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, WHETHER SUCH DAMAGES ARE ASSERTED IN AN ACTION BROUGHT IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR PURSUANT TO SOME OTHER THEORY (INCLUDING DECEPTIVE TRADE PRACTICE CLAIMS) AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN, KNOWN OR UNKNOWN BY US, SHALL BE LIMITED TO A CREDIT IN AN AMOUNT EQUAL TO THE PROPORTIONAL MONTHLY CHARGES TO YOU FOR THE PERIOD OF SERVICE DURING WHICH ANY MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR, OR DEFECT IN THE SERVICE OR EQUIPMENT, OR ANY OTHER EVENT OR ACTION GIVING RISE TO ANY CLAIM, OCCURS. THIS LIMITATION OF LIABILITY APPLIES TO ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, COSTS OR ATTORNEYS' FEES ARISING IN WHOLE OR IN PART, FROM WARRANTIES, EXPRESS OR IMPLIED, DEFECTS IN MATERIALS, WORKMANSHIP OR DESIGN, NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR ANY OTHER BASIS OF LIABILITY FOR US. YOU ARE SOLELY RESPONSIBLE FOR ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, AND EXPENSES ARISING OUT OF USE OF THE SERVICES BY YOU, YOUR USERS, OR ANY OTHER PERSON OR ENTITY USING THE ACCOUNT WITH OR WITHOUT YOUR KNOWLEDGE OR CONSENT. SOME JURISDICTIONS MAY NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY, AND WE LIMIT OUR LIABILITY IN SUCH JURISDICTION ONLY TO THE DEGREE ALLOWED BY APPLICABLE LAW. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, WE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES, GOODWILL OR COSTS TO COVER), WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF OUR EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER WE HAVE BEEN INFORMED OF THE POSSIBILITY OF LIKELIHOOD OF SUCH DAMAGES. WE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

THE SERVICES PROVIDED BY NORCAST AND ANY EQUIPMENT OWNED BY NORCAST AND USED BY CUSTOMER ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NORCAST, ITS EMPLOYEES, AGENTS, SUPPLIERS, VENDORS AND DISTRIBUTORS MAKE NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, VALIDITY, OR SPEED OF THE DATA AND/OR INFORMATION AVAILABLE OR TRANSMITTED VIA ITS SERVICES ON ITS SYSTEMS, OR RESIDING ON OR PASSING THROUGH ITS INTERCONNECTING NETWORKS, OR THAT THE SERVICES WILL BE COMPLETELY SECURE, UNINTERRUPTED OR ERROR FREE. ACTUAL DATA TRANSMISSION SPEEDS EXPERIENCED MAY VARY BASED ON FACTORS OUTSIDE OUR CONTROL INCLUDING, BUT NOT LIMITED TO TRAFFIC ON THE INTERNET, THE PERFORMANCE OF THIRD PARTY SERVERS HOSTING WEB SITES YOU VISIT, THE DISTANCE BETWEEN CUSTOMER'S PREMISES AND THE TELEPHONE COMPANY SERVING OFFICE, AND THE CONDITION OF YOUR LINE.

WE ARE NOT RESPONSIBLE FOR TERMINATION CHARGES OF OTHER CARRIERS: In selecting our Service, you understand that you are canceling any services currently provided by your existing service provider(s) and that our Service may differ from the services currently provided by your existing service provider(s). You further acknowledge that you may be assessed termination or other charges by your existing service provider(s) based upon the terms and conditions that apply to such service. Payment of such termination or other charges shall be your sole responsibility. **YOU ARE SOLELY RESPONSIBLE FOR DISCONNECTING YOUR EXISTING SERVICES WITH YOUR EXISTING PROVIDER(S).**

TOLL-FREE NUMBERS: You are responsible for all usage on your toll-free (e.g., 8xx) numbers (including without limitation, charges for incomplete and wrong number calls). You shall defend and indemnify us from all liabilities related to your toll-free numbers. We shall have no liability to you or any Third Party with respect to any premature or incorrect publication or advertisement of a toll-free number. Requests to toll-free numbers are controlled by an independent third party based on number availability at the time an order is submitted to such third party. We do not guarantee the availability of any requested toll-free number and are not bound by verbal confirmations to you of toll-free number availability. You may not reserve or activate a toll-free for the primary purpose of selling, brokering, bartering or releasing the toll-free number for a fee or other consideration. You are subject to any toll-free service policies, guidelines, and procedures implemented by us from time to time.

TELEPHONE NUMBERS: We do not guarantee the availability of any requested telephone number. You have no proprietary interest in any telephone number, but you do have a qualified control interest in your active telephone numbers. If, upon cancellation of our telephone service, you do not submit a written request for the appointment of a new responsible organization or service provider for your telephone numbers within 20 days after such cancellation, you release all rights to use or control such telephone numbers.

TELECOMMUNICATIONS FACILITIES AND INTERNET ACCESS: Service will, at our sole option, be provided via telecommunications facilities owned by us, via telecommunications facilities leased from one or more other telecommunications carriers or via a combination of the foregoing, provided our ability to provide such Service is not materially impaired. Without limiting the generality of the foregoing, you authorize us to convert Service being provided solely through the facilities of one or more other carriers (i.e. resale service) to Service being provided in whole or in part over our facilities (i.e., facilities-based service). If we are offering hereunder a particular speed for our Internet access services, we may select, at our sole discretion, the delivery method of such access services.

EQUIPMENT: The Service ordered hereunder may require us to install certain equipment on your premises. Note that the Terms referenced above and fully incorporated herein contain specific provision, which govern the use, access, ownership and maintenance of equipment as defined therein. You will be responsible for and will indemnify us against and damage to or loss of any component of the equipment and any related spare parts stored on your premises. You shall return the equipment to us upon discontinuance of service or else you shall pay us the list price for such equipment.

MODIFICATION: The Agreement shall not be amended, changed, or modified by you except in writing, approved by our Legal Department and executed by your representative and a duly authorized representative of our company. Norcast may amend the Terms from time to time without prior notice. Any unauthorized modification to the Agreement may render the Agreement null and void and subject to immediate termination.

ASSIGNMENT, CONTRACTING ENTITY AND GOVERNING LAW: The Agreement is binding on you and our affiliate(s) providing you Service and its respective permitted successors and assigns. The Agreement is, however, subject to immediate termination at our election in the event you sell all or substantially all of your assets or stock or you attempt assignment of the Agreement without our prior written consent. The Agreement shall be in all respects governed by and enforced in accordance with the laws of the state where the services are provided. The parties agree that exclusive jurisdiction and venue for any action concerning the Agreement is San Luis Obispo, California, and both parties consent to such exclusive jurisdiction and venues.

THIRD PARTIES: The provisions of this Agreement are only for the benefit of the parties hereto, and no third party may seek to enforce or benefit from these provisions.

SEVERABILITY: If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (i) both parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (ii) the remainder of this Agreement shall be valid and enforceable. The failure of either party to enforce any provision hereof shall not constitute the permanent waiver of such provision.

FORCE MAJEURE: Either party may adjust or suspend its performance (other than the obligation to make payment) to the extent performance is beyond its reasonable control for reasons including, without limitation, acts of God, fire, explosion, atmospheric conditions such as rain, cable cut caused by a third party, governmental action, national emergencies, war, riot, insurrection, terrorism, vandalism, or labor difficulties such as work stoppages, strikes, or lockouts. If the force majeure event continues for a period of thirty (30) calendar days, then either party may, without incurring liability, except for Customer's liability for any charges of a Third Party Provider, terminate the affected Services or circuits.

NON-AGENCY: Nothing contained in this Agreement or the Dispute Policy shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

NOTICES: All notices, including notices for termination of the Agreement or Service, must be sent to our Customer Care Department at 1998 Santa Barbara Avenue, Suite 100, San Luis Obispo, CA 93401, Attention: Contract Administrator. You must provide Norcast with at least 30 days' prior written notice of your intent to terminate the Agreement of Service. We may not accept a notice for termination of the Agreement or Service unless it is sent in accordance with this Notices provision.