

Fibercast Corporation - Terms and Conditions

1. Service Provider: Upon Acceptance (as defined below), Fibercast Corporation. (Fibercast) will provide and Client will purchase the services and products ("the Services") selected on the first page of this Application for Service and Agreement ("Agreement") during the Term, under the terms and conditions set forth below and in Fibercast's Tariffs and AUP (as defined below). "Fibercast" means the affiliate(s) or partner(s) of Fibercast Corporation (including G4 Telecom entities) certified in Client's state(s) to provide the Services.

2. Acceptance by Fibercast: This Agreement is not enforceable until accepted by Fibercast. If Client fails to provide complete, accurate and satisfactory installation, credit or other required information, or if Fibercast is unable to provide the Services due to unavailability of facilities or any other reason, Fibercast may, in its sole discretion, reject Client's Application for Service. "Acceptance" will occur upon the earlier of commencement of the Services or Client's first invoice date. Fibercast makes no representation as to when Service will commence. Fibercast will use commercially reasonable efforts to initiate Service, but Client understands that service initiation may be dependent upon the actions of third parties not in Fibercast's control.

3. Term: The initial Term for any Services will begin upon Acceptance of those Services and will continue for the number of Months set forth on the first page of this Agreement or on a Multiple Location Form, as applicable. For purposes of this Agreement, "Month" will mean a full billing cycle. The Client has 10 business days to accept services once Fibercast is ready to provide the services, unless a specific install date has been requested at the time of the service order. If one or more Multiple Locations Forms are included in this Agreement, this Agreement will remain in effect until the last to expire of the Terms set forth on the first page or on any Multiple Location Form. Upon completion of a Term, except where prohibited by law, the Term will automatically renew for the same number of Months as the initial Term, unless Fibercast receives written notice of non-renewal to Fibercast at least 30 days prior to the end of the current Term. Then current tariffed rates will apply to any renewal. In the event Client continues to use Services without renewing a term plan, Fibercast's month-to-month rates will apply. In the event that legislative, regulatory, other legal action or changes in the laws alter Fibercast's cost structure relative to this Agreement, Fibercast reserves the right to renegotiate or terminate this Agreement.

4. Tariffs and AUP: Client understands that in addition to the terms and conditions explicitly set forth in this Agreement, Fibercast's relevant state and federal tariffs, as modified from time to time (the "Tariffs"), will govern this Agreement and the provision and use of the Services and are incorporated herein. Tariffs are published at the Public Utility Commission for the State the service is provided and/or at FCC. Use of all Internet Services must comply with Fibercast's Acceptable Use Policy ("AUP"), which may be modified from time to time and is published at www.FiberCast.net/aup/.

5. Multiple Locations: If one or more Multiple Location Forms are initiated by Client and attached to this Agreement, Fibercast shall provide, and Client shall purchase, the Services set forth therein for each location that has been accepted by Fibercast.

6. Price Decrease: For Terms of 12 months or longer: if Fibercast's standard tariffed Service rates for the same term plan decrease during the Term, Client will have the right to enter into a new agreement for the Services for a new Term at least as long as the original Term. This Section 6 only applies to PUC or FCC tariffed services.

7. Moves and Disconnection of Service: To disconnect Services, Client must inform Fibercast in writing with 30 days advanced notice of Client's desired disconnect date, by letter addressed to: Client Services, Fibercast Corporation, 25 South Maple Street, Manchester, New Hampshire 03103. If Client desires to move Services to another location, Client shall provide Fibercast at least 30 days notice by initiating such request through Fibercast Sales Department. If Fibercast is able to continue providing Services, Client shall pay Fibercast's applicable standard tariffed service activation and install charges for each new location. If Fibercast determines, in its sole discretion, that it is unable to provide Services at the new location, Fibercast shall have no obligation to do so, where early termination fees will apply.

8. Early Termination: Except as set forth in Section 7 above, if this Agreement or any Service is terminated after installation but prior to the end of the Term (including any lines ported to another carrier), for any reason, Client shall, immediately upon demand, pay Fibercast an early termination charge equal to the sum of (a) the difference between what Client would have been charged for the terminated Service at the rates (excluding taxes and surcharges) for the number of Months from Acceptance until the Service is terminated plus 30 days and the amount Client actually paid for the terminated Service (excluding taxes and surcharges) during such period, plus (b) the amount of any promotional considerations and discounts provided to Client. If Client cancels a service order prior to Acceptance, Client shall pay minimum of one month's charges for the canceled Services, the applicable installation and service initiation fees, plus the amount of any promotional considerations and discounts provided to Client. Fibercast shall have the right to terminate the Services due to Client's non-payment, breach of this Agreement, misuse of the Services or due to other reasons in accordance with and as set forth in the Tariffs.

9. Usage & Resale: Client agrees use of Fibercast services is limited to the customer, employees, and occasional guests, and will not use of the service for resale, or telemarketing bureau purposes. In addition, the use of auto dialers, polling devices, remote access to call forwarding, three-way calling (other than incidental usage) and other devices and/or dialing arrangements for telephone service with the intent to avoid payment of otherwise applicable usage charges is prohibited.

10. Assignment: Client shall not assign its rights or obligations under this Agreement without the prior written consent of Fibercast, which shall not unreasonably be withheld. In the event of any attempted assignment or change in control of Client's equity or assets (including change in control of a Service location) without such consent, Fibercast will have the right to terminate this Agreement and Client will be liable for the early termination charge described in Section 8 above. Client has no right in, and no right to assign, any telephone number used by Client. Fibercast has the right to assign this Agreement at any time.

11. Limitation of Liability: Fibercast's liability to Client or to third parties for any cause of action arising out of this Agreement or the Services shall in no event exceed the limitation of liability set forth in the Tariffs, or, if there are no applicable Tariff provisions, the total amount paid for the affected Service for the period in which Service was interrupted or unavailable. Under no circumstances shall Client hold Fibercast liable for damages arising from delays in commencement of the Service, loss of information, numbering or directory listing errors, loss of business, pre-existing contracts or obligations (including any minimum payment or usage agreement), however arising. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL FIBERCAST BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR LOST PROFITS OR REVENUES, ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

12. Governing Law and Venue: This Agreement shall be construed and governed by the laws of the State of New Hampshire, excluding its laws concerning conflicts of laws. The parties consent to the exclusive personal jurisdiction and venue of the federal and/or state courts in Merrimack County, New Hampshire.

13. Payment Obligations: Client shall pay for all Services provided by Fibercast at the rates set forth in this Agreement and the Tariffs. In the event of any conflict between the rates set forth in this Agreement and those in the Tariffs, this Agreement shall control. All past due invoices are subject to interest at the lower of 1.5% per month or the highest rate permitted by law. All invoices not disputed in writing by Client within 30 days from the invoice date, or such other period as stated in the Tariffs, shall be deemed binding on Client. In the event of a dispute, Client shall pay all undisputed amounts by the due date. Client agrees to pay all costs of collection, including reasonable attorney's fees for any past due amounts and other actions, as described in the Tariffs. Fibercast may require Client to make a reasonable security deposit at any time. Monthly recurring charges and Calling Packages will be billed one month in advance.

14. Rates, Taxes and Surcharges: Additional taxes and surcharges may be imposed in addition to the rates specified on the first page of this Agreement or on a Multiple Location Form. Taxes and surcharges may be subject to change without notice, consistent with federal and state laws and regulations. Rates are based Fibercast's bundled Service offerings, and vary with quantity and types of Services purchased. Fibercast may modify Client's rates due to changes in the quantity and/or types of Services purchased, Client's failure to meet any required minimum, or Fibercast's determination that, despite exercising reasonable efforts, installation of the Services as requested is not feasible.

15. E-mail Notification: Client agrees that Fibercast may contact Client via e-mail for service and marketing notifications (e.g., service initiation and service and product information). Client will hold Fibercast, its officers, directors, employees and agents harmless from any liability arising from Fibercast's communication with Client via e-mail or the Internet.

16. Equipment: Fibercast-provided customer premises equipment ("CPE") will at all times remain the property of Fibercast. In the event that Client fails to return any CPE to Fibercast (or, at Fibercast's option, to permit recovery of CPE by Fibercast) in good working order, reasonable wear and tear excepted, within 30 days after the termination or expiration of this Agreement, Client shall be responsible for the full replacement cost and shall pay to Fibercast all recovery charges and any other charges set forth in the Tariffs. Fibercast makes no representations or warranties of any kind with respect to CPE. Warranties are specifically disclaimed in the Tariffs.

17. General Terms: This Agreement together with the Tariffs, AUP, Multiple Location Form(s) and Additional Pricing Form(s) (if applicable) and Letter of Agency constitute the entire agreement between the Parties with respect to the Services. There are no other written or oral understandings, promises or agreements related hereto. No agreement will be accepted by Fibercast that is modified in any way by Client, including handwritten modifications and strike-outs. Amendments and waivers to this Agreement will be valid only if in writing and executed by an authorized representative of Client and Fibercast president or an officer. If any provision of this Agreement is found to be unenforceable, the remainder of the Agreement will continue in full force and effect.

Additional Terms and Conditions for Data & Other Services

18. E-Mail: If Client has not ordered e-mail Services with the initial order for Services, Client may do so at any time, but e-mail Services may be delayed by at least two weeks after an access line is installed.

19. Inside Wire: If Client has requested Fibercast to install inside wiring, Fibercast will do so at prevailing rates, otherwise Fibercast will terminate it's services at the building demarcation point.

20. IP Addresses: IP Addresses are not portable and are not assigned for independent administration or distribution. IP assignments cannot be guaranteed and may be modified by Fibercast or the American Registry for Internet Numbers (ARIN).

21. Domain Names: Upon Client's request, Fibercast will arrange for searching, reserving and registering Client's requested domain name with an accredited entity. Fibercast cannot guarantee the availability of any domain name, and will have no responsibility to resolve disputes concerning any domain name. Client warrants that the use and registration by Client or Fibercast of Client's domain name in connection with the Services will not infringe the trademark, service mark, copyright or other intellectual property right of any third party. Client shall indemnify and defend Fibercast from and against any loss, cost, damage or expense arising out of Client's breach of this warranty.

22. Web Site Hosting: If Fibercast is providing web hosting, Client shall provide all required information and materials. Limitations on complexity, sophistication of design and content, and traffic management may apply. Billing will begin upon activation of web hosting space Fibercast's server. Client warrants that it either owns or has the right to use all information, graphics, pictures, text service marks, trademarks and other intellectual property on the web site hosted Fibercast or provided to Fibercast in connection with the web hosting Services. Client warrants that all such materials will not infringe the trademark, service mark, copyright or other intellectual property right of any third party. Client shall indemnify and defend Fibercast from and against any loss, cost, damage or expense arising out of Client's breach of these warranties.

NOTICE OF CLIENT'S RIGHTS CONCERNING CUSTOMER PROPRIETARY NETWORK INFORMATION ("CPNI"): CPNI includes the Client's Service selections, feature selections, demographic information, and usage data for the Services. CPNI does not include Client's name and address. Fibercast has an obligation under federal law to protect the confidentiality of Client's CPNI. By signing this Agreement, Client authorizes Fibercast to record, maintain, modify, use, and exchange Client's CPNI (i) to install and manage the Services, (ii) to enhance the benefits of Client's existing Services, and (iii) to enhance Fibercast's ability to offer products and services tailored to Client's needs, by determining whether additional local, long distance, data, CPE, Internet, wireless, or other services would be of benefit to Client. Client may deny Fibercast's use of CPNI at any time by written notification to Client Services, Fibercast Corporation, 25 South Maple Street, Manchester, NH 03103. Client's approval or denial will be effective until revoked. Denial will not affect the provision, management, or quality of Services that Client receives from Fibercast. Client is under no obligation regarding new Services unless Client explicitly agrees to accept them. Client shall indemnify and hold harmless Fibercast from any and all liability resulting from Fibercast's authorized use of Client's CPNI.

Client Initials: _____ Date: _____