

TERMS OF DEDICATED ACCESS SERVICE

THESE TERMS SHALL APPLY TO ALL DEDICATED ACCESS SERVICE ORDERS AND ANY ATTACHMENTS THERETO (HEREINAFTER REFERRED TO AS AN "ORDER" OR "ORDERS"). AN ORDER COMBINED WITH THESE TERMS SHALL CONSTITUTE A SUBSCRIPTION AGREEMENT BETWEEN POWERCOM CORPORATION. ("COMPANY") AND SUBSCRIBER ("CUSTOMER").

1. DEFINITIONS:

"Company Facilities" shall mean the software, hardware and network operated by Company.

"CPE" (Customer Premise Equipment) shall mean the software; hardware; equipment; computer(s); computer network(s); router(s); and modem(s) owned and/or operated by the Customer and connected to the Company Facilities.

"Connection Point" shall mean the point at which the telecommunications link from CPE connects to the Company Facilities.

"Downstream Routing" shall mean Customer providing Internet service to end users other than Customer.

"Internet" shall mean that collection of interconnected networks running TCP/IP and other Internet protocols and commonly referred to as the Internet.

"Internet Access" shall mean the Internet access that the Company provides Customer using Company Facilities.

"Service(s)" shall mean all service(s) specified on an Order.

"Start Date" shall mean the later of the Desired Start Date as set forth on an Order or the date of activation of Service by the Company. There may be different Start Dates for different Service(s) as specified on the related Order(s).

"TCP/IP" shall mean transmission control protocol/Internet protocol.

"VISP" Services (if applicable) shall mean Virtual ISP Services described on an Attachment.

2. LENGTH OF AGREEMENT.

Commencement of Service shall be subject to Company's acceptance of the Order. Assuming the Order is accepted by Company, the initial term of Service shall commence on the Start Date, and shall continue for the duration of the applicable term as specified on the related Order.

3. COMPANY EQUIPMENT PROVIDED FOR USE BY CUSTOMER.

If Company makes any software or equipment available for use by Customer, Customer shall use such software or equipment only for purposes of utilizing the Services provided by Company, and Customer agrees to protect and maintain said equipment, and Customer shall be responsible for any loss or damage resulting from vandalism, theft, fire or other casualty loss. Customer shall be responsible for maintaining full insurance coverage protecting such equipment from theft, vandalism and other casualty loss, for the benefit of Company.

4. TERMS OF SERVICE(S).

4.1 Description of Service(s). Service(s) ordered from Company shall be ordered on an Order.

4.2 Start of Service. The start of Service for contract and billing purposes shall begin on the Start Date related to that Service.

4.3 Unless Downstream Routing is purchased, Customer agrees that the Service provided by Company shall be used solely and exclusively by Customer, and Customer shall not resell, assign or permit any other person, business or other entity to utilize said Service for any purpose.

5. SECURITY.

Customer shall maintain the security of access numbers, logins, passwords and authorization codes pursuant to the Order and shall maintain adequate security over any of its access facilities and shall be responsible for all charges or other liability arising from authorized or unauthorized usage.

6. AGREEMENT TO PAY.

6.1 Customer assumes financial responsibility for use of the Service, for payment of all charges, including one-time (non-recurring) charges, monthly recurring charges, usage charges, other charges, finance charges, service fees and taxes. All payments received shall be applied to the oldest outstanding balance first, including finance charges, if any. Prior to Service activation, Customer, at Company's sole discretion, may be required to pay to Company a prepayment for future charges and/or a one-time connection or security charge (as indicated on the Order), plus other charges and taxes. All future Service payments are due as indicated on the Customer's statement or fifteen (15) days following the close of the billing period, whichever is later. Monthly charges are billed and payable one (1) month in advance. If Customer's account is not kept current, Company reserves the right to suspend Customer's Service without prior notification to Customer, unless required by applicable state law.

6.2 The parties agree from the Start Date of a Service, Company shall provide the Service, and Customer shall thereafter pay the charges defined in 6.1 for Service as specified on the related Order, until expiration or cancellation of that Service pursuant to the Order. The term for each dedicated circuit order, as specified on the respective Order and incorporated herein by reference, shall commence with the Start Date for the Order. Delays in service activation due to the Customer or any service provider, interconnection provider, equipment or facilities contracted directly or indirectly by the Customer exclusive of Service provided directly by Company is not a reason to delay payment to Company for Service.

7. PAST DUE BALANCES, ANNUAL PERCENTAGE RATE ("APR").

7.1 Balances which are not paid by the due date as set forth on the statement or fifteen (15) days following the close of the billing period, whichever is later, are considered delinquent and are subject to finance charges of 1.5% per month (18% APR). Customer agrees to pay all costs and expenses including actual attorney's fees incurred by Company in collecting past due balances unless not allowed by applicable state law. In the event Customer does not pay on a timely basis as defined in the Order or the terms set forth herein, Customer hereby authorizes Company to deduct payment from Customer's credit card account as provided on this Order or as provided in verbal or written form after the signing of the Order.

7.2 Customer is subject to Service disconnection for nonpayment of outstanding balances. If, at Company's sole discretion, Service is reconnected after disconnection due to nonpayment, a reconnection fee of \$200.00 shall be charged.

7.3 A \$50.00 fee shall be charged for all checks that are returned due to a closed account or insufficient funds.

7.4 CREDIT CARD PAYMENTS. Customer must notify Powercom of new credit card expiration dates or change of card choice to avoid card rejection which may result in late fees, service fees, and/or Service disconnection for late payment on account. A \$20.00 fee shall be charged for all credit card declines.

8. OTHER CHARGES.

Customer shall be responsible for any taxes, tariffs, licensing fees or other charges imposed by any governmental or quasi-governmental entity or other charges imposed by Company relating to providing the Service during the term of the Order. Upon request, Company shall provide Customer with a notice of the amount and description of these charges and shall provide additional notices to Customer in the event of changes to other charges imposed by Company.

9. DISPUTES AND ARBITRATION.

9.1 DISPUTES. Unless written notice of a dispute is received from Customer within thirty (30) days of the statement date with the initial dispute, such statement shall be deemed to be correct and payable in full by Customer. Customer agrees to cooperate in any investigation of disputed matters. Payment of amount not disputed must be received by Company by statement due date to avoid finance charges, service fees, and/or Service disconnection.

9.2 ARBITRATION. Any claim or dispute arising between Customer and Powercom which cannot be resolved between the parties shall be resolved by binding arbitration at the request of either party. If arbitration is requested by either party, neither party shall have the right to litigate the claim or dispute in court (except that either party may bring a claim in small claims court). Neither party shall have the right to a jury trial. The arbitration proceeding shall be administered by the American Arbitration Association, pursuant to the American Arbitration Association's Commercial Arbitration Rules, and if applicable, the Supplementary Procedures for Consumer-Related Disputes. All claims shall be treated individually and there shall be no consolidation of claims or class actions. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. For additional information on invoking arbitration and how the arbitration process works, you may call the American Arbitration Association at 800-778-7879.

10. TEMPORARY RATE ADJUSTMENT IN THE EVENT OF DEFAULT.

In the event Customer is in default on any of the terms of an Order or the terms set forth herein, including any failure to pay any amounts due by the required payment due date, the rates and charges for Service under an Order shall be increased, for the period of default, to the standard month to month rate as set forth on the Order(s).

11. TERMINATION OF SERVICE, MODIFICATION OF RATES AND OTHER TERMS OF THIS AGREEMENT.

Company shall have the right to terminate Service without notice for Customer's violation of the Order or the terms set forth herein, or for nonpayment of any amounts due under the Order at any time, unless notice is required by applicable state law. Termination fees listed in proposal will apply.

In the event that Company's underlying costs are increased during the term of an Order or renewal thereof due to: (1) new or revised FCC or state mandates, or (2) federal or state laws or procedures, Company shall have the right to increase charges to Customer without affecting the terms of the Order.

In the event that Company's underlying costs are increased during the term of an Order or renewal thereof due to costs other than those stated in the paragraph above, Company shall have the right to increase charges for any Service under the Order and to modify the Service in any respect, upon thirty (30) days advance notice to Customer. Upon receipt of such notification, Customer shall have the right, for a period of thirty (30) days, to renegotiate or terminate the Service under the Order for which rates are increased. In the event of such termination, Customer shall be responsible for payment of Services rendered through the date of termination. Termination fees listed in Paragraph 19 below will not apply. The Order shall continue to be binding on Service(s) not affected by the rate increase.

12. LIABILITY FOR NETWORK INTERRUPTIONS.

Company purchases connectivity from other vendors and as a secondary connectivity provider shall not be responsible for network interruptions. Company shall not be liable for any losses or damages associated with network interruptions, deficiencies or failures of any kind, including, but not limited to, direct, actual, special, incidental, consequential or indirect damages. Customer shall indemnify and hold harmless Company and its affiliates, shareholders, directors, officers, agents, and employees from and against all claims, demands, actions, causes of actions, damages, liabilities, losses and expenses (including reasonable attorney fees) incurred as a result of any network interruptions.

13. LIMITATION OF LIABILITY AND DAMAGES.

13.1 Content Responsibility. Customer understands that neither Powercom nor its network services supplier is responsible for the content of the transmissions which may pass through the Internet and/or the Service. Customer agrees that Customer will NOT use the Service in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the network. Examples are provided in Powercom Acceptable Use Policy under "Customer Responsibilities" and "Unacceptable Use" found at www.powercom.net.

13.2 Export Compliance. Customer agrees to comply with U.S. Export laws concerning the transmission of technical data and other regulated materials via the Service.

13.3 Liability Limitations. In no event will Powercom or its network services suppliers be liable for any damages, including but not limited to loss, corruption or inadvertent disclosure of data, loss of revenue or profits, or for any other direct, actual, special, incidental, indirect, punitive or consequential damages, whether based on contract, tort or any other legal theory, even if Powercom has been advised of the possibility of such damages. Neither Powercom nor its network services suppliers will be liable for unauthorized access to Customer's transmission facilities or premise equipment, or for unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of Powercom's or its network services supplier's negligence. Powercom's liability, if any, relating to the Service shall not exceed the amount paid by Customer to Powercom for a period of twelve (12) month's Service. Powercom's liability, if any, relating to equipment shall not exceed the lesser of the purchase price or depreciated value of the specific defective equipment giving rise to the claim.

13.4 Indemnification. Customer shall indemnify and hold harmless Powercom and its affiliates, shareholders, directors, officers, agents, and employees from and against all claims, demands, actions, causes of actions, damages, liabilities, losses and expenses (including reasonable attorney fees) incurred as a result of any network interruptions or as the result of any act or omission of Customer in connection with the use of the Service, facilities or equipment provided by Powercom.

13.5 Warranty Limitations. The network services supplier and Powercom disclaim all express and implied warranties, including warranties of merchantability and fitness for a particular purpose on all Service and equipment. Equipment is sold "as is". Customer agrees to look only to the equipment manufacturer's warranty, if any. No advice or information given by Powercom, its employees, affiliates or contractors shall create a warranty.

14. NOTICE.

No agreements, guarantees or terms provided to Customer by Company for switched services, shall apply to dedicated services.

15. WEB HOSTING.

In the event that Powercom is hosting Customer Web site on a computer server provided by Powercom, Powercom makes no warranty that the Web site will be accessible at any particular speed or throughput from any other site on the Internet. Powercom makes no performance or other warranty, expressed or implied, with respect to the adequacy of hardware or connection for Customer for the Web site. It is Customer's responsibility to maintain a current back up of Customer's site. Powercom is not responsible for lost data.

16. CUSTOMER RESPONSIBILITY.

16.1 Customer is responsible for assisting Company in the resolution of technical problems through timely notification, proper problem descriptions and cooperation during problem resolution.

16.2 Customer shall provide at its own risk and expense a connection from CPE to the Connection Point.

16.3 Customer shall be responsible for the use and compatibility of CPE. Company makes no warranty, guarantee or representation that CPE will function properly with Services. Customer's responsibility for payments under the Order shall not be reduced or changed by virtue of any CPE failing to function or being incompatible with Services.

16.4 Customer shall not, and shall not permit or assist, any third party (including its employees and authorized users) to use the Company Facilities in violation or contravention of any applicable law, regulation, order or other government directive or fraudulently use the Company Facilities or otherwise use Services for any purposes other than those for which Services are intended. Company may deny Customer use of Company Facilities if Customer or its employees or authorized users engage in any conduct or activities that Company, in its sole discretion, reasonably believes violates any of the terms or conditions of an Order. Customer agrees to indemnify and hold harmless Company from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from any violation of an Order or the terms set forth herein by Customer or any third party.

16.5 Customer shall not, and shall not permit or assist others, to abuse, fraudulently use, or otherwise use Services for any purposes other than those for which Services are intended. Without limiting the foregoing, Customer shall not attempt to obtain Service by fraudulent means or device with intent to avoid payment; attempt to access, alter, or destroy any information of another by any fraudulent means or device; attempt to use Company Facilities so as to interfere with the use of services by other lawful users, or in violation of any laws, or in aid of any unlawful activity; or attempt to access a record in electronic format that contains personally identifiable information in order to facilitate any violation of the law. If Internet service is provided pursuant to an Order, Customer shall not utilize the Internet access provided by Company in violation of Company's current Acceptable Use Policy. A copy of the current Acceptable Use Policy will be maintained at Company's web site at <http://www.powercom.net>.

16.6 Customer shall indemnify and hold Company harmless from and against all loss, liability, damage, claims and expense (including reasonable attorney's fees) caused by claims for libel, slander, defamation, invasion of privacy, infringement of intellectual property rights including trademark and copyright, and unlawful access or alteration to private records or data arising from any information, data or message transmitted or received by Customer through the Company Facilities; against negligent or intentional wrongdoing by Customer or its employees or authorized users; or against any breach of an Order or the terms set forth herein by Customer.

17. RIGHT TO TERMINATE.

Either party to an Order will have the right to terminate the Order:

17.1 If at any time during the term of an Order a petition in bankruptcy or insolvency or for the reorganization or for the appointment of a receiver or trustee of all or substantially all of the other party's assets is filed against the other party in any court pursuant to any statute, either of the United States or of any state, or if the other party voluntarily files a petition of bankruptcy or makes an assignment for the benefit of creditors or petitions for or enters into any arrangement with creditors.

17.2 In the event the other party fails to perform or performs improperly any obligation under an Order or the terms set forth herein, provided such failure or improper performance has not been cured or rectified by the defaulting party within thirty (30) days after its receipt of written notification of cancellation, or in the event of a cure which requires in excess of thirty (30) days to complete, if the other party has not commenced such cure within thirty (30) days of such notice and is not diligently pursuing said cure to completion. Notwithstanding the foregoing, Service may be terminated without prior notice (unless required by applicable state law) for: (1) Nonpayment of any amount due by the payment due date; or (2) If the Customer uses the Service or allows the Service to be used for any unlawful, unauthorized or fraudulent purposes or in any unlawful or materially abnormal matter or in the event the Company determines that the Service is likely to be used for any such improper purpose.

17.3 In the event of the loss of the use of facilities or in the event that any lease, certificate, permit, license or approval applied for or issued is canceled, expires, lapses, or is otherwise withdrawn or terminated, which result is any change in the ability of Company to provide Service under the Order.

18. CANCELLATION.

If Customer cancels any Service under an Order prior to the expiration of the initial term for that Service or any renewal term or if Service to Customer is terminated for a breach by Customer under Sections 17.1 or 17.2 or for nonpayment (Paragraph 11), Customer shall pay Company upon billing (in addition to the then outstanding indebtedness for Service) the termination fees listed in Paragraph 19. No termination fees are due if Service is terminated under Section 17.3 or due to a rate increase (Paragraph 11).

19. EARLY TERMINATION CHARGES.

The full amount due for early termination will be invoiced on a Customer bill following termination. Termination fees shall apply to the canceled Service only. In the event that Customer cancels any Service prior to the expiration of the initial term or any renewal term of that Service, the Customer shall pay a termination charge as follows: the lessor of (1) 100% of the network monthly charges otherwise due for balance of the term plus the minimum monthly usage guarantee (if applicable) otherwise due for the balance of the term plus other charges, finance charges, service fees and taxes. In addition, the Customer shall pay any and all expenses attributable to termination of the local exchange carrier access or (2) Termination liability up to six (6) months may be no more than 200 percent of the annual cost. Actual termination liability up to six (6) months will depend upon the length of the term agreement broken. The Customer agrees that Company damages for early termination would be difficult to determine and, therefore, establishes liquidated damages that are not intended as a penalty.

20. LIMITED WARRANTY.

20.1 Company warrants that it will provide Customer with dedicated access from the Connection Point using Company Facilities, at the rate indicated on the Order and that the Company Facilities shall conform to the specifications existing on the Order approved by Customer and commencing on the Start Date. This warranty does not apply to transmission of information, messages or data from the Connection Point to the CPE or from any other point to the Company Facilities.

20.2 Company shall have no responsibility for the telecommunications link from CPE to the Connection Point. Company makes no warranty or representation concerning the suitability or capability of the link.

20.3 Company does not warrant that any Service will be uninterrupted, error free or secure.

20.4 Regarding Internet service, if applicable, Company does not warrant that any software or other material accessible on or through the Company Facilities will be free from viruses, worms or other harmful components. Company does not warrant that Customer will be able to connect, communicate or pass information at any particular speed or throughput.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

21. SOLE REMEDY.

21.1 Customer's sole remedy for breach of an Order or the terms set forth herein shall be against Company and shall be limited to a refund of a prorated portion of the monthly rate established under the Order. Customer waives any rights that it may have to claims against any third party (or its affiliates) leasing or otherwise supplying any portion of the Company Facilities to Company. Customer shall be entitled to a refund (as defined in [Section 21.2](#)) only in the event that a Service outage on the Company Facilities due to the fault of Company exceeds forty-eight (48) hours. Company shall not be liable to Customer for special, incidental, consequential or indirect damages, including, but not limited to, lost profits, lost business opportunities, and business interruption even if Customer has advised Company of the possibility of such damages.

21.2 Refund for individual Service outage (as defined in [Section 21.1](#)) shall be determined as follows:

Monthly charge* for affected Service ÷ 720 (hours/month) x actual hours of Service outage (as defined in [Section 21.1](#))

*Monthly charge for affected Service shall be based upon the smallest determinable increment such as per line, per circuit or per port.

21.3 Company shall not be liable for claims or damages caused by Customer's fault or negligence, or for claims against Customer by any other person.

22. INSURANCE.

Customer, at its sole cost and expense for the mutual benefit of Company and Customer (when used in this section the term "Company" shall include Company and its affiliates shareholders, directors, officers, agents and employees) shall purchase, keep and maintain in force and effect during the term of an Order, insurance on all of its equipment and other personal property that is placed, stored or located on property controlled by Company, for damage or other loss caused by theft, vandalism, fire or other casualty, in an amount not less than the full insurable replacement value of such property. Such insurance shall name Company as additional insureds and shall waive all subrogation against Company with respect to losses payable under such policies and provide written notice to Company at least thirty (30) days prior to the expiration or termination of said policy. Customer shall deliver certificates of insurance evidencing such coverage upon execution hereof and thereafter not less than fifteen (15) days prior to the expiration date of any such policy. Company and Customer intend that the above stated risk of loss or damage be born by the responsible insurance carrier to the extent provided and Customer releases Company, and agrees to look solely to, and to seek recovery only from, the insurance carrier in the event of damage or other loss with respect to its equipment or other personal property.

23. FORCE MAJEURE.

No failure or omission by Company to carry out or observe any of the terms of an Order or the terms set forth herein shall give rise to any claim against Company or be deemed to be a breach of the Order if such failure or omission arises from any cause reasonably beyond the control of Company (a "Force Majeure Event").

24. ACCEPTABLE USE POLICY (FOR INTERNET SERVICE ONLY).

Customer agrees that its use of Internet access provided by Company is subject to the Company Acceptable Use Policy and, unless provided on an Order, shall specifically not allow Downstream Routing. The Service provided by Company may be terminated or an additional administrative fee charged, which shall be the greater of \$200 or actual damages, in the event that Company, in its sole discretion, determines that actions by Customer have violated the Acceptable Use Policy. Customer authorizes Company to examine its Internet traffic for the purposes of debugging, investigation of acceptable use violations, compliance with a court order, statistical gathering, service monitoring, and other situations as needed. The Acceptable Use Policy may be amended from time to time by Company. The current version of the Acceptable Use Policy will be accessible at Company's web site at <http://www.powercom.net/start>.

25. MISCELLANEOUS.

25.1 Entire Agreement. The Order(s) and the terms set forth herein constitute the entire agreement between the parties with respect to the transactions contemplated herein, and there are no other agreements, representations, or warranties between the parties other than those set forth or provided for herein. Customer acknowledges that no other persons, including agents, distributors, resellers, consultants, or others, have the authority to make any representations or warranties with respect to Company performance under the Order.

25.2 Notices. All notices shall be given in writing and shall be deemed given when personally delivered, faxed, or deposited, postpaid and addressed to the party's most recent address in the United States mail. The initial fax numbers and addresses of the parties for notices are stated on the Order.

25.3 Waivers. No waiver by Company of any provision of an Order or the terms set forth herein shall be deemed a waiver of

any other provision hereof or of any subsequent breach by Customer of the same or any other provision. Company's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Company's consent to or approval of any subsequent act by Customer. The acceptance of payments hereunder by Company shall not constitute a waiver of any breach by Customer even if Company knows of such breach at the time of acceptance of such payments. No payment by Customer or receipt by Company of a lesser amount than the amount then due shall be deemed to be other than on account of the earliest amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Company shall accept such check or payment without prejudice to Company's right to recover the balance of such amount due or pursue any other remedy in this agreement.