

Tonica Telephone Company
Service Agreement and Service Terms and Conditions
SECTION I

1. GENERAL APPLICATION.

This Service Agreement ("Agreement") constitutes your agreement with **Tonica Telephone Company** for any Services, as defined by this Agreement, you subscribe to or receive from us, to the extent not governed by any governmentally-regulated tariffs or other written agreement between us, which tariffs or other agreement will supersede this agreement only concerning provisions that are not consistent with this Agreement. This Agreement is effective now for customers already subscribing to Services, or the date customers subscribe to Services ("Effective Date").

This Agreement incorporates by reference our rates, charges, terms and conditions for Services ("Prices and Rules") as posted and amended from time to time, and appear on our Internet website at www.tonicacom.net. If you do not have internet access to our website, you may request a written copy of these Prices and Rules by calling or writing to us at the telephone number and address on our bills.

Your subscription to, use of, or payment for Services constitutes your acceptance of this Agreement and our Prices and Rules. Contact us at 815-442-9901 immediately to cancel Services if you do not agree to any part of this Agreement. If you cancel Services, you will be responsible for all usage charges and the pro-rata portion of all monthly recurring charges incurred prior to cancellation.

▪ **Changes to this Agreement.** We reserve the right to change the terms and prices of the Services at any time, including this Agreement and the Prices and Rules incorporated in this Agreement. You will be provided written notice of changes in pricing and other terms and conditions relative to this Agreement in accordance with Section 9. The change will become effective on the date described in the notice. We will not provide notice to you regarding price decreases or the expiration of promotional pricing, offers, and terms. We will not provide notice of changes to applicable taxes or surcharges, unless required by law or regulation, but we may post such changes to the Prices and Rules page on our Website.

Your continued use of the Services after any change constitutes your acceptance of any such changes in the Prices and Rules. Your sole remedy for any changes made by us is your right to cancel the affected Service or terminate this Agreement.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION AND WAIVES ANY RIGHT TO TRIAL BY JURY TO RESOLVE CERTAIN DISPUTES AND OTHERWISE LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. You should carefully read all terms in this Agreement, including a Mandatory Arbitration of disputes provision.

2. DEFINITIONS.

- "Company," "we," and "us" means **Tonica Telephone Company** or any successor to or affiliate of **Tonica Telephone Company** to the extent such successor or affiliate provides Services to you under this Agreement.
- "Prices and Rules" means the rates and descriptions, charges, or other terms and conditions applicable to Services in addition to the terms described here, incorporated by reference into this Agreement as posted to the Website or by requesting a copy from us by calling **815-442-9901**. In the event of conflict between the terms and conditions of this document and the Prices and Rules, the terms and conditions of this Agreement govern. **You agree that it is impractical to list in this document all of the Service descriptions, charges, and other terms applicable to all Services governed by this Agreement and that providing this information on our Website is a reasonable method of providing you with notice of the Prices and Rules.**
- "Service" or "Services" means all telecommunications and ancillary services we provide to you.
- "Customer", "you", or "your" means any person or entity that requests or uses Services.

3. SERVICE PROVISION AND USE

- **Provision of Services.** In our sole discretion, we may accept or reject your request for Services for any lawful reason. Before activation of any Service, we may check your credit; verify your identity; require a deposit, prepayment or other fee to establish or maintain Services; or require that you execute any authorizations and verifications we believe necessary. You must have and maintain satisfactory credit to receive and continue to receive Services.
- **Installation.** If required, you will provide reasonable cooperation to enable us or our agents to install or repair the Services. You are responsible for damage to our equipment and Services located on your premises, excluding reasonable wear and tear or damage caused by us. You are responsible for the location and clear marking of all utilities (electric service, natural and propane gas lines, cable TV, telephone, internet and communications services, sewage lines and related facilities) located on your property, including all privately owned infrastructure. You are responsible for the repair of all non-located and/or unmarked privately owned infrastructure including but not limited to gas lines, electric cables, communication conduits and cables, and sewage lines and related facilities.

- **Use of Services.** You agree to: (A) ensure compliance with this Agreement by anyone you authorize to use the Services; (B) pay all charges for Services provided or used under this Agreement including, but not limited to, unauthorized charges incurred on calls placed from your premises; (C) ensure that your actions and equipment do not directly or indirectly interfere with our ability to provide Services to others, or the quality of such Services; (D) comply with all applicable laws and regulations when using our Services and not use our Services in an unlawful, fraudulent, destructive, or abusive manner, or allow others to do so, (E) not use Services in such a manner that causes interference with our or another users of our network, and (F) allow us, **in our sole discretion and without liability to you, to place restrictions on use of your Services, and immediately (even during a call) disrupt, suspend, or terminate your Services without notice for violations, suspected violations, or to prevent violations of the terms of this Agreement.**

- **Monitoring.** You understand that it may be possible for unauthorized third parties to monitor data traffic. If you wish to secure your usage in connection with any Services, you have the obligation to obtain, at your own cost, encryption software or other transmission security protections. You assume full responsibility for the establishment of appropriate security measures to control or limit access to your information.

- **Acceptable Use Policy.** If you purchase Services that connect to or flow over the Internet, you must conform to our acceptable use policy posted on our Website.

- **Failure to Comply.** If you fail to comply with any provision of this Section 3, you release us from all liabilities or obligations in connection with the affected service and you will indemnify us for all costs or damages that we incur as a result of your non-compliance as described in Section 7 of this Agreement.

4. CHARGES AND PAYMENT

- **Charges.** We will bill you for Services on a monthly basis based on the current Prices and Rules posted on the Website and listed in any written information we send you. You agree to pay these charges, including all applicable connection charges, usage charges, monthly fees, monthly minimums, other fees, surcharges, taxes and federal, state and local government or quasi-government imposed or permitted charges, including, but not limited to, charges related to E-911, state and federal Universal Service, Telephone Relay Service, payphone providers, Interexchange Carrier Charges and Federal Subscriber Line Charge. Taxes and government surcharges will be in the amounts that federal, state, and local authorities require or permit us to bill you. You agree to pay all taxes, surcharges, assessments, and other fees that are related to the Services and included on your bill or bill, unless you are exempt from these payments and provide us documentary evidence of the exemption.

- **Billing.** Any Recurring Charges for your Service listed in the Prices and Rules begin accruing when the Service to which the Recurring Charges are applicable is available for your use. You may be billed a prorated portion of any Recurring Charges in the initial month of service. Recurring Charges may be billed in arrears or in advance, depending on the Service, while monthly usage charges are generally billed in arrears. If your monthly charges net to \$0, you may not be billed. Current billing information may be available in your account information accessible from our Website and will be available by calling our customer service number listed on your bill, and an additional fee may be charged for bill reprints.

- **Payment.** You must pay all charges applicable to your Services, including all applicable taxes, fees, and surcharges, in U.S. currency within 18 days of the bill date. We may charge you late payment fees or interest on those charges equal to the greater of 1.5% per month or the maximum rate allowed by law for all late payments. The interest will be applied to the entire unpaid balance. If we don't receive your payment before the next billing cycle, you agree to pay any costs and expenses associated with our collections efforts, including attorneys' fees. We may charge you an insufficient funds or returned check fee, up to the maximum rate allowed by law, if your check, bank draft, electronic funds transfer, or other order for payment is dishonored or returned for insufficient funds or any other reason. Our acceptance of late or partial payment (even those marked "PAID IN FULL") and late payment charges will not constitute waiver of any of our rights to collect the full amount due under this Agreement.

Any mathematical error made by us or any of our representatives does not constitute an offer and may be corrected by us.

You are responsible for preventing any unauthorized use of the Services, and you are solely responsible for paying us for any charges resulting from unauthorized use of our Services.

- **Disputed Charges.** Except as otherwise provided by applicable law, you must notify us of any disputes concerning any billed charges within 60 days of the date of the bill. You accept all charges not disputed within 60 days. We mutually waive all rights of subrogation against each other in connection with Services. To dispute a charge on your bill, you must follow the procedures in Section 8 of this Agreement.

- **Credit Limits.** If you refuse to make an advance payment, we reserve the right to refuse to provide you Service subject only to applicable federal or state law. As we determine in our sole discretion and to the extent permitted by

applicable law, we may set a credit limit on your account at any time. We may restrict the Services to which you have access if you exceed this credit limit.

- **Refund Policy.** Refunds are handled on a case by case basis, for any questions concerns or disputes please contact us at 815-442-9901 or email tontel@tonicacom.net

5. TERMINATION OF SERVICE

- **Termination of Service by You.** You may cancel Services at any time by calling the number on your bill; however, your continued subscription to, use of, or payment for Services after the cancellation date you give us will continue this Agreement for those Services. If you cancel a Service prior to the completed installation of that Service, you agree to pay all reasonable costs incurred by us in implementation of the Service before cancellation notice was received, as if the implementation of the order had been completed.
- **Termination or Suspension of Service by us.** To the extent permitted by the Prices and Rules and applicable law or regulation, we may terminate or suspend your Service with or without notice, depending on the circumstances, for any reason including for nonpayment of any amount owed to us, including late payment fees or disputed amounts that we determine was validly billed, and your violation of any limitation listed in Section 3 of this Agreement.
- **Termination and Payment.** It may take up to 3 days to disconnect your Services. Regardless of the reason for disconnection, you must pay all charges incurred before our disconnection of your Service. You will be charged the full Recurring Charges for your Services for the month in which those Services terminate. Promotional credits or discounts may not be applied to your final bill. If you reinstate Services following cancellation or termination, we may require you to pay a deposit.
- **Force Majeure.** We will not be responsible for any delay, interruption, or other failure to perform under this Agreement due to acts beyond our control. Force majeure events include, but are not limited to natural disasters (e.g. lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; inability to obtain parts or equipment from third party suppliers; cable cuts or other facilities damage by third parties, and acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; governmental decrees; and any other cause beyond our reasonable control.

6. DISCLAIMER OF WARRANTIES. TONICA TELEPHONE PROVIDES ALL SERVICES "AS IS" AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU AGREE THAT YOU WILL NOT RELY ON ANY SUCH STATEMENT.

7. LIMITATION OF LIABILITY

- **Direct Damages.** **Tonica Telephone** is not liable for any damages arising out of or in connection with any: (A) act or omission by you, or another person or company; (B) provision or failure to provide Services, including deficiencies or problems with any equipment used in connection with the Services (for example, blocked calls, transmission failures, interruptions in Service, etc.); (C) content or information accessed while using our Services, such as through the Internet; (D) interruption or failure in accessing or attempting to access emergency services, including through 911 or otherwise, or (E) errors or omissions in any directory or database listings, including listings we provide to public safety answering points. IF, FOR ANY REASON, WE ARE FOUND TO BE RESPONSIBLE TO YOU FOR MONETARY DAMAGES RELATING TO ANY SERVICES OBTAINED THROUGH US AND IF THIS LIMITATION IS FOUND TO BE UNENFORCEABLE FOR ANY REASON, YOU AGREE THAT ANY SUCH DAMAGES WILL NOT EXCEED THE PRO-RATED MONTHLY RECURRING CHARGES PAID BY OR OTHERWISE OWED BY YOU FOR THE AFFECTED SERVICES DURING THE AFFECTED PERIOD.
- **NO CONSEQUENTIAL OR OTHER DAMAGES.** UNDER NO CIRCUMSTANCES IS TONICA TELEPHONE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OF OPPORTUNITY, OR COST OF REPLACEMENT SERVICES.
- **Indemnification.** You will indemnify and defend Tonica Telephone, its directors, officers, employees, affiliates, subsidiaries, agents, and their successors and assigns from and against all claims, damages, losses, or liabilities, including reasonable attorneys' fees, arising from or relating to any Service, or any act or omission by you related to any Service or any person you authorize or permit to use any Service, including incorrect or misleading information, libel, slander, invasion of privacy, identity theft, intellectual property infringement, and any defective Service.

- **Survival.** All provisions of this Section 7 will survive and continue to apply after this Agreement is canceled or terminates.

8. DISPUTE RESOLUTION

- **Dispute Process.** If you have a dispute with Tonica Telephone relating to any matter, you agree to first notify us at the telephone number or address shown on your bill in an attempt to resolve your dispute. You must describe your dispute with specificity and provide us with any supporting documentation. If we have a dispute with you, we will notify you in writing in an attempt to resolve the dispute. If after following this process, either party is unable to resolve its dispute within 60 days of notifying the other party, either party may take the dispute to small claims court, if appropriate under applicable state or local rules or laws. Alternatively, either party may pursue the dispute only as set forth below.

- **MANDATORY ARBITRATION OF DISPUTES.** INSTEAD OF SUING IN COURT, YOU AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND ("CLAIMS") AGAINST US. THIS INCLUDES BUT IS NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AS WELL AS CLAIMS ARISING OUT OF OR RELATING TO OUR SERVICES, BILLING OR ADVERTISING, OR ARISING OUT OF OR RELATING TO EQUIPMENT YOU OR WE MAY USE IN CONNECTION WITH SERVICES. THIS REQUIREMENT TO ARBITRATE APPLIES EVEN IF A CLAIM ARISES AFTER YOUR SERVICES HAVE TERMINATED; AND APPLIES TO ALL CLAIMS YOU MAY BRING AGAINST OUR EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES;

THE FEDERAL ARBITRATION ACT, NOT STATE LAW, APPLIES TO THIS AGREEMENT AND ITS PROVISIONS AND, GOVERNS ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR US FROM BRINGING APPROPRIATE CLAIMS IN A SMALL CLAIMS COURT HAVING VALID JURISDICTION, OR THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION.

WE FURTHER AGREE THAT YOU WILL NOT JOIN ANY CLAIM WITH A CLAIM OR CLAIMS OF ANY OTHER PERSON(S) OR ENTITY(IES), WHETHER IN A LAWSUIT, ARBITRATION, OR ANY OTHER PROCEEDING. YOU AGREE THAT YOU WILL NOT ASSERT ANY CLAIMS AGAINST US IN ANY REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE, THAT NO CLAIMS WILL BE MADE OR RESOLVED ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATOR OR ARBITRATION FORUM WILL HAVE AUTHORITY TO ACCEPT OR DETERMINE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO RULES FOR CLASSWIDE OR COLLECTIVE ARBITRATION WILL APPLY. THIS PARAGRAPH AND EACH OF ITS PROVISIONS ARE INTEGRAL TO, AND NOT SEVERABLE FROM, THIS SECTION ON MANDATORY ARBITRATION OF DISPUTES.

A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of the National Arbitration Forum ("NAF"), or, alternatively, as we may mutually agree.

Except as expressly provided in the preceding paragraph, the arbitration will be conducted by and under the then-applicable rules of NAF unless the parties agree otherwise. NAF rules can be found at <http://www.adrforum.com>. All expedited procedures prescribed by the applicable rules will apply. We agree to pay our respective arbitration costs, but the arbitrator can apportion these costs as appropriate. NOTWITHSTANDING ANY NAF RULE TO THE CONTRARY, AN ARBITRATION AWARD IS FINAL AND BINDING AND MAY ONLY BE REVIEWED IN ACCORDANCE WITH THE TERMS OF THE FEDERAL ARBITRATION ACT. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT WITH JURISDICTION. IF FOR ANY REASON, THE ABOVE PROVISIONS ON ARBITRATION ARE HELD UNENFORCEABLE OR ARE FOUND NOT TO APPLY TO A CLAIM, YOU AGREE TO WAIVE TRIAL BY JURY. If you file a judicial or administrative action asserting a claim that is subject to arbitration and TONICA TELEPHONE successfully stays such action or compels arbitration, you agree to pay us costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys' fees.

Except as expressly provided above, if any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the section remains in full force and effect.

9. MISCELLANEOUS

- **No Waiver of Rights.** If either you or we fail to enforce or waives any requirement under this Agreement that does not waive that party's right to later enforce that requirement in the future.
- **Limitation on Third Party Beneficiaries.** This Agreement does not give any third party a remedy, claim, or right of reimbursement.

- **Severability.** If any provision of the Agreement is found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.
- **Assignment.** You may not assign this Agreement to any other person or entity without our prior written approval. We reserve the right to assign or transfer all or part of our rights or duties under this Agreement without notifying you.
- **Notices.** You must provide notices to us as described in the applicable sections of this Agreement. When we receive notice from you via telephone, such notice will be effective on the date we received your call, as shown by our records. We may provide you notice as required under this Agreement in at least one of the following ways, postcard or letter mailed to the most recent address on your account, bill messages, bill inserts, email notification to an address provided by you, posting on the Website, call to your billed telephone number and speaking to you or leaving a message, or any other reasonable method of notice.
- **Governing Law.** This Agreement will be governed by the laws of the state of Indiana except that the arbitration provisions in Section 8 will be governed by the Federal Arbitration Act to the extent applicable.
- **Survivability.** The terms and conditions of this Agreement that by their sense and context are intended to survive the expiration of this Agreement will survive.
- **Conflicts.** If a conflict exists between or among provisions within this Agreement, including all referenced documents and the Prices and Rules at the Website, specific terms will control over general provisions.
- **Entire Agreement.** This Agreement, including the Prices and Rules on our Website, the Acceptable Use Policy on our Website, and all other referenced documents, constitutes the entire agreement and understanding between you and Tonica Telephone. No written or oral statement, advertisement, or Service description not expressly contained or referenced and incorporated into this Agreement will be allowed to contradict, vary, explain, or supplement this Agreement.

SECTION II

Service Terms and Conditions: Broadband Internet (Internet), Telecommunications, or any combination of the two services

1. After one year, service may be discontinued without a termination charge. Changes to service, whether by addition or down-grade, may affect the rates you have selected. In the event of a delay of installation caused by the customer, or a cancellation of the order after costs have been incurred by Tonica Telephone, incurred costs will be immediately due. In the event that any item of service is terminated prior to expiration of the payment period elected by the customer, a termination charge equal to the current monthly billing multiplied by the remaining months under contract, will become due. A termination of service will occur when there is a move to a new location with an interruption of service or when equipment is removed, changed, downgraded, or substituted or if the customer fails to make timely payment when invoiced by Tonica Telephone. Customers disconnected for any reason should note the following requirements for reconnection:

- a. Full payment for previous service that is unpaid must be received.
- b. A standard installation connection fee and one month payment in advance for all services will be required before service is ordered.
- c. A new one year initial term of Agreement will be in effect.
- d. An approved customer credit review may be required.

2. Internet service, telecommunication service from Tonica Telephone. Numerous packages or combination of services are available.

3. Tonica Telephone provides access to the Internet, Email, and Telecom services. Reselling or sharing services is prohibited, unless an internet reseller agreement is approved, in writing, by Tonica Telephone. Special provisions are based on an individual case basis. No server-based equipment is permitted unless approved by Tonica Telephone. Malicious and/or abusive Internet or telecom traffic originating from customer location is prohibited and will result in termination of service.

4. Billing begins when service is activated and installed at the customer premise. Billable service rates may be paid by cash, check, money order, or credit/debit card (additional credit/debit card fees may apply). Any installation charges and/or equipment charges must be paid in full at time of order. If Tonica Telephone is unable to provide service to your location, you will receive credit (21 days for checks) for activation/equipment charges after all

equipment is returned to the Tonica Telephone office in working condition. Please keep Tonica Telephone informed of any changes pertaining to service location and billing information.

5. Customer is considered in default of Agreement if payment is not received within 10 days after notice has been sent via US Postal Service, or for any other breach of Agreement not remedied within 10 days after notification. If in default of this Agreement, all services provided by Tonica Telephone may be suspended or terminated without further notice. If terminated before end of the Agreement period, the Customer is responsible for balance remaining to complete the Agreement period.

6. Actual Internet transmission speeds may vary due to such factors as length and quality of telephone line serving the customer premises for DSL customers. Tonica Telephone may terminate the Agreement, without liability, if not able to provide, repair, or maintain service to the premises.

7. Tonica Telephone is not responsible for service issues related specifically to your computer, network, hardware, software, or inside wiring. If you experience substantial reduction in quality of service, please notify Tonica Telephone and a good-faith effort will be made to restore service.

8. Tonica Telephone is offering the use of a DSL Modem necessary for service. The Customer is financially responsible for all equipment supplied by Tonica Telephone. If any equipment provided by Tonica Telephone is subject to physical or electrical stress, misuse, neglect, accident or abuse, or damaged by any other external causes, customer is responsible for replacement at a fee up to \$250.00 per unit, plus additional labor charges if required. Customer will be issued another unit after a replacement fee is paid. All electronic equipment should be protected with an electric current surge protector that has commercial power, ethernet, and telephone line protection.

9. Tonica Telephone is not responsible for inside wire or premises equipment problems, defects, or maintenance. An hourly service rate applies to work performed by Tonica Telephone. Please call for the current the hourly rate in effect.

10. If a DSL Modem is not returned to Tonica Telephone after disconnecting service, a charge of up to \$250.00 per unit will be added to the final bill. When returned, Tonica Telephone will credit your account on the next billing cycle.

11. You agree to indemnify and hold harmless Tonica Telephone Company and its affiliates and owners, from all claims that result from the usage of any and all services.

13. You agree that the security of your account, including the password, is your responsibility and that all use which emanates from your account will be considered to be undertaken by you unless it can be shown to have been an unauthorized intrusion. You agree to notify Tonica Telephone immediately if you believe that your account has been or is being compromised.

14. You agree to keep Tonica Telephone informed of your current legal mailing address and any other contact information. Tonica Telephone will not disclose this information to any third party except upon the presentation of a valid warrant or court order.

15. Any or all of these Terms may be altered or superseded through the use of a written agreement stating such between you and Tonica Telephone.

16. These Terms and Conditions supersede all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any other submitted. Use of any service constitutes acceptance of these Terms and Conditions. TONICA TELPHONE reserves the right to change the rates and otherwise modify any of these Terms and Conditions by notifying you 30 days in advance of the effective date of change.