

## OTELCO TELEPHONE, LLC'S ACCEPTABLE USE POLICY

THIS AGREEMENT is entered into between Otelco Telephone, LLC ("Otelco" or "Company") and the person or entity who makes use of Company's Internet services and/or products ("Customer") and outlines acceptable use of the Company's Internet services and/or products (the "Service"). Use of the Service constitutes a Customer's agreement with Company to abide by this Acceptable Use Policy ("AUP"), which sets forth specific actions that are prohibited by Company and applies to all users (the "Customer," "user," "you" and "your") of the Service, without exception. This Agreement is in addition to any restrictions contained in Company's Standard Terms and Conditions. All capitalized terms used in this Agreement that are not defined herein have the meanings given to them in the Terms of Use and Conditions.

Violations of this Agreement may result in immediate suspension and/or termination of the Service without notice to you. If you do not agree to comply with this Agreement, you must immediately stop all use of the Service and notify Otelco so that it can close your account.

Company reserves the right to revise from time to time, and in its sole discretion, the rates, terms, and conditions of its Agreement with Customer by posting a new version of the Agreement on its website at <http://www.otelco.net> or any successor URL. Company will use all reasonable efforts to make Customers aware of any changes to the Agreement by posting such changes to the Company's webpage, by electronic mail announcement or by conventional mail. Revised versions of this Agreement are effective immediately upon posting or sending. Customers should regularly visit Company's website and read any announcements they receive to ensure that their activities conform to the most recent version of the Agreement.

In the event of a conflict between any other Customer agreement, including Company's Standard Terms and Conditions, and this Agreement, the terms of this Agreement will govern. You can send questions regarding this Agreement and report violations of it to [info@otelco.net](mailto:info@otelco.net).

**1. PROVISIONING OF SERVICE.** Company shall provide and Customer shall accept Internet Service (all Internet related services provided by Company offered herein) at the applicable rates and charges, subject to the terms and conditions specified in this Agreement and incorporated by reference, as applicable, in the Standard Terms and Conditions. Company shall provide Customer with Internet access account IDs and phone numbers by which Customer may use Company's Internet system. Customer shall not have any proprietary right to the access account IDs and phone numbers provided by Company.

Customer agrees to pay for the Service pursuant to such rates, terms, and conditions, unless Customer terminates this Agreement in accordance with its provisions. Company reserves the right to assign, designate or change access account IDs and access phone numbers when, in its sole discretion, such assignment, designation or change is reasonable or necessary in the conduct of its business.

The Service is subject to transmission limitations caused by atmospheric, topographical and any other like conditions. Additionally, the Service may be temporarily refused, limited, interrupted or curtailed due to government, regulations or orders, system capacity limitations, limitations imposed by an underlying communications carrier, or because of equipment modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of Company's Internet system.

Customer is responsible for any use or misuse of the Service that violates this Agreement, even if it was committed by a friend, family member, or guest with access to your Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Service by strictly maintaining the confidentiality of your Service login and password. In all cases, Customer is solely responsible for the security of any device connected to the Service, including any data stored on that device. Otelco recommends that Customer take appropriate security precautions for any systems connected to the Service. Customer is also responsible for securing any wireless (WiFi) networks connected to the Service. Any wireless network installed by Customer that is unsecured or "open" and connected to the Otelco network will be deemed to be operating as an Internet Service Provider ("ISP") and subject to the prohibition on commercial use.

Otelco recommends against enabling file or printer sharing unless you do so in strict compliance with all security recommendations and features provided by Otelco and the manufacturer of the applicable file or printer sharing devices.

It is also Customer's responsibility to secure Customer equipment and any other premises equipment or programs not provided by Otelco that connect to the Service from external threats such as viruses, spam, botnets, and other methods of intrusion.

**2. USE OF SERVICE AND EQUIPMENT.** The Service and equipment are furnished for use by Customer for any lawful purpose. Customer warrants that he/she is at least nineteen (19) years old.

**3. CUSTOMER SERVICE REQUESTS.** Applications, including activation, change or discontinuance of Service, will only be accepted in writing via facsimile transmission or U.S. Mail, or by telephone, with verification of Customer's User ID & Security Code.

**4. PROHIBITED USES AND ACTIVITIES.** The Agreement prohibits uses and activities involving the Service that are illegal, infringe on the rights of others or interfere with or diminish the use and enjoyment of the Service by others. Prohibited uses and activities include, but are not limited to, using the Service, Customer equipment or Otelco's Equipment, either individually or in combination with one another, to:

#### **Conduct and Information Restrictions**

- undertake or accomplish any unlawful purpose, including, but not limited to, posting, storing, transmitting or disseminating information, data or material that is libelous, obscene, unlawful, threatening or defamatory, or which infringes on the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense or otherwise violate any local, state or federal law, order, or regulation;
- post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be indecent, pornographic, harassing, threatening, hateful or intimidating;
- upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Service or otherwise that is protected by copyright or other proprietary right, without obtaining permission of the

owner, including, but not limited to, links to such material, serial or registration numbers for software programs or pirated copyrighted content, such as authorized copies of music, video or other media files, whether through Internet Relay Chat or file sharing programs or services;

- transmit unsolicited bulk or commercial messages, commonly known as "spam";
- send numerous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files that disrupt a server, account, newsgroup or chat service;
- initiate, perpetuate or in any way participate in any pyramid or other illegal scheme;
- participate in the collection of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as "spidering" or "harvesting," or participate in the use of software (including "spyware") designed to facilitate this activity;
- collect responses from unsolicited bulk messages;
- falsify, alter or remove message headers;
- falsify references to Otelco or its network, by name or other identifier, in messages;
- impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity (for example, "phishing");
- violate the rules, regulations, or policies applicable to any network, server, computer database, or Web site that you access.

### **Otelco's Technical Restrictions**

Customers may not:

- attempt to interfere with or compromise the operation of Otelco's network in whole or part, to interfere with any of the equipment comprising the system, or to access other accounts or restricted areas of the system;
- access any other person's computer or computer system, network, software, or data without his or her knowledge and consent; breach the security of another user or system; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts without express permission to do so;
- use or distribute tools or devices designed or used for compromising security, such as password guessing programs, decoders, password gatherers, unauthorized keystroke

loggers, analyzers, cracking tools, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Unauthorized port scanning is strictly prohibited;

- copy, distribute, or sublicense any software provided in connection with the Service by Otelco or any third party, except that you may make one copy of each software program for back-up purposes only;
- distribute programs that make unauthorized changes to software ("cracks");
- use or run dedicated, stand-alone equipment or servers from the premises that provide network content or any other services to anyone outside of your premises local area network ("Premises LAN"), also commonly referred to as public services or servers. Examples of prohibited equipment and servers include, but are not limited to, e-mail, Web hosting, file sharing, and proxy services and servers;
- use or run programs from the premises that provide network content or any other services to anyone outside of your Premises LAN, except for personal and non-commercial residential use;
- service, alter, modify, or tamper with Otelco's equipment or Service or permit any other person to do the same who is not authorized by Otelco;

### **Network and Usage Restrictions**

Customers shall not:

- restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Service, including, without limitation, posting or transmitting any information or software which contains a worm, virus, lock, key, bomb, cancelbot or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;
- restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any Otelco (or Otelco supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any Otelco (or Otelco supplier) facilities used to deliver the Service;
- resell the Service or otherwise make available to anyone outside the premises the ability to use the Service (for example, though WiFi or other methods of networking), in whole or in part, directly or indirectly. The Agreement contemplates use of the Service for residential and small business purposes only. You agree not to use the Service for operation as an Internet service provider or for any similar business purpose;
- connect the Otelco equipment to any computer outside of your premises;
- interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network,

overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host;

- access and use the Service with anything other than a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not configure the Service or any related equipment to access or use a static IP address or use any protocol other than DHCP, unless you are subject to a Service plan that expressly permits you to do so.

**5. E-MAIL USE.** Customers may receive announcements from time to time from Otelco via e-mail regarding various aspects of the Service, including, without limitation, notices of feature upgrades or changes, Service-affecting issues or events, or special offers for Service users from Otelco's distribution partners or other parties.

Sending mass, unsolicited e-mail is prohibited. Otelco reserves the right, in its sole discretion, to determine whether such e-mail constitutes unsolicited messages or transmission.

Sending unsolicited e-mail advertising a service or Website, newsgroup, etc. located or hosted within the Service domain space or address space, or service otherwise associated with the Service is also prohibited, regardless of e-mail point of origin. Additionally, using a Otelco e-mail address or website address to collect responses from unsolicited e-mail is prohibited.

Customers may not, through action or inaction, allow the transmission of files that contain a virus or corrupted data. To protect our Customers and our network, Otelco may suspend and/or cancel Customer's account if we believe that Customer is transmitting a virus to other Internet users or our network.

Otelco may also immediately terminate any account which it determines, in its sole discretion, is transmitting or is otherwise connected with any "spam" or other unsolicited bulk e-mail. If actual damages cannot be reasonably calculated or quantified, Otelco may seek liquidated damages of five dollars (\$5.00) for each piece of "spam" or unsolicited bulk e-mail transmitted from or otherwise connected with your account.

Otelco is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Otelco is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily, at Otelco's sole discretion. In the event that Otelco believes, in its sole discretion, that any Customer name, account name or e-mail address (collectively, an "identifier") on the Service may be used for, or is being used for, any misleading, fraudulent or other improper or illegal purpose, Otelco (i) reserves the right to block access to and prevent the use of any of these identifiers and (ii) may at any time require any Customer to change his or her identifier. In addition, Otelco may at any time reserve any identifiers on the Service for Otelco's own purposes. If a Service account is terminated for any reason, all e-mail associated with that account (and any secondary accounts) will be permanently deleted, as well.

**6. PERSONAL WEBPAGES.** Otelco may make personal Webpages available as an optional feature of its Service. Customer is solely responsible for any information that you or others publish or store on the Personal Webpages. Customer is also responsible for ensuring that all content

made available through the Personal Webpages is appropriate for those who may have access to it. You must take appropriate measures to prevent minors from receiving or accessing inappropriate content. Otelco reserves the right to remove, block, or refuse to post or store any information or materials, in whole or in part, that, in its sole discretion, it deems to be in violation of the "Content and Information Restrictions" section of this Agreement. For purposes of this Agreement, "material" refers to all forms of communications, including narrative descriptions, graphics (including photographs, illustrations, images, drawings, logos), executable programs and scripts, video recordings, and audio recordings. Otelco may remove or block content contained on the Customer's Personal Webpages and terminate your Personal Webpages and/or your use of the Service, if we determine that you have violated the terms of this Agreement.

Use of the Personal Webpages shall be limited as follows:

- Customers are entitled to create a personal, non-commercial website as a part of their Otelco Internet account. The webspace provides up to ten (10) mb of space at no additional charge.
- Otelco reserves the right to limit usage on Customer's application for Service.
- Server side executable programs are not permitted.
- Otelco is not responsible for any revenue lost by a site being down.
- Customers may not share their passwords.
- Otelco's name and trademark may not appear to endorse a Personal Webpage site.

7. **CENSORSHIP.** Otelco does not intend to censor the content of any newsgroups or other communications passing through its systems. We believe such choices should generally be left to the individual Customer. Software tools are available to screen a Customer account's access to newsgroups and Websites that might be considered offensive. It is the Customer's responsibility to make use of such tools, if desired.

Newsgroup postings and other e-mail messages sent via the Service and the Internet are communications between the senders and consenting receivers thereof, and Otelco has neither the authority nor the responsibility to regulate their content. The views and comments expressed by the senders of such postings or messages are solely those of their authors and do not reflect any review, approval or endorsement by Otelco. Otelco will, however, attempt to assist Customers who continually receive e-mail they deem to be objectionable and/or unsolicited e-mail and notify Otelco of the problem.

8. **VIOLATIONS.** Otelco reserves the right to immediately suspend or terminate your Service account and terminate this Agreement if you violate its terms.

Otelco does not routinely monitor the activity of individual Service accounts for violations of this Agreement, except for determining aggregate bandwidth consumption in connection with the provisions of this Agreement. However, Otelco will respond appropriately if it becomes aware of inappropriate use of the Service. Otelco and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to, among other things, operate the Service,

identify violations of this Agreement and/or protect the network, the Service and Otelco's' users, although they have no legal obligation to do so.

Otelco prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. Otelco also prefers to have Customers directly resolve any disputes or disagreements they may have with others, whether Customers or not, without Otelco's intervention. However, if the Service is used in a way that Otelco or its suppliers, in their sole discretion, believe violates this Agreement, Otelco or its suppliers may take any responsive actions they deem appropriate under the circumstances with or without notice to Customer. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service. Neither Otelco nor its affiliates, suppliers or agents will have any liability for any of these responsive actions. These actions are not Otelco's exclusive remedies, and Company may take any other legal or technical actions it deems appropriate with or without prior notice to Customer.

Otelco reserves the right to investigate suspected violations of this Agreement, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Otelco's servers and network. During an investigation, Otelco may suspend the account or accounts involved and/or remove or block material that potentially violates this Agreement. You expressly authorize and consent to Otelco and its suppliers cooperating with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this Agreement. Upon termination of your Service account, Otelco is authorized to delete any files, programs, data, e-mail and other messages associated with your account (and any secondary accounts).

The failure of Otelco or its suppliers to enforce any provision of this Agreement, for whatever reason, shall not be construed as a waiver of Company's right to do so at any time. You agree that if any portion of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

You agree to indemnify, defend and hold harmless Otelco and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from any violation of this Agreement. Your indemnification will survive any termination of this Agreement.

**9. COPYRIGHT AND DIGITAL MILLENIUM COPYRIGHT ACT.** Otelco is committed to complying with U.S. copyright and related laws and requires all Customers and users of the Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Service (or any part of the Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is Otelco's policy, in accordance with the DMCA and other applicable laws, to reserve the right to terminate the Service provided to any Customer or user who is either found to infringe third party copyright or other intellectual property rights, including repeat infringers, or who Otelco, in its sole discretion, believes is infringing these rights.

Otelco may terminate the Service at any time with or without notice for any affected Customer or user.

Copyright owners may report alleged infringements of their works that are stored on the Service or on any Personal Web Features by sending Otelco's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon Otelco's receipt of a satisfactory notice of claimed infringement for these works, Otelco will respond expeditiously to either directly or indirectly (i) remove the allegedly infringing work(s) stored on the Service or the Personal Web Features or (ii) disable access to the work(s). Otelco will also notify the affected Customer or user of the Service of the removal or disabling of access to the work(s).

Copyright owners may use their own notification of claimed infringement form that satisfies the requirements of Section 512(c)(3) of the U.S. Copyright Act. Under the DMCA, anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Otelco, the alleged infringer, and the affected copyright owner for any damages incurred in connection with the removal, blocking, or replacement of allegedly infringing material.

If you receive a notification of alleged infringement as described above, and you believe in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then you may send a counter notification to Otelco. Upon Otelco's receipt of a counter notification that satisfies the requirements of DMCA, Otelco will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. You expressly agree that Otelco will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

**10. BANDWIDTH CONSUMPTION.** Where a Otelco Service account, service or feature descriptions specify bandwidth, disk utilization, simultaneous connections and/or aggregate data download or upload, use in excess of those limits (bytes/bits transferred) is not permitted without an appropriate change in account type or status and additional charges may incur for such usage.

In addition, sessions on dial accounts that repeatedly exceed a reasonable time may be terminated in order to protect network resources and preserve Service availability for other users.

In the event Otelco determines that an account is exceeding the relevant bandwidth, disk utilization, aggregate data download/upload limits, simultaneous connections or reasonable session times for dial-up or high-speed broadband accounts, the Customer will generally be notified by e-mail. However, if excessive bandwidth, disk space utilization, simultaneous connections, aggregate data download or upload, or dial-up session length is determined to adversely affect Otelco's ability to provide Service, immediate action may be taken. The account owner may be notified as soon as practicable thereafter. If excess use continues after such notification, the account owner may be requested to upgrade the type of account or modify the activity creating the excess use. Failure to make the requested modifications may result in the account being terminated.

**11. MANAGING THE NETWORK.** Otelco uses various tools and techniques to manage its network, deliver the Service, and ensure compliance with this Agreement. These tools and techniques are dynamic, like the network and its usage, and can and do change frequently. For example, these network management activities may include (i) identifying spam and preventing its delivery to customer e-mail accounts, (ii) detecting malicious Internet traffic and preventing the



distribution of viruses or other harmful code or content, (iii) temporarily delaying peer-to-peer sessions (or sessions using other applications or protocols) during periods of high network congestion, (iv) limiting the number of peer-to-peer sessions during periods of high network congestion, and (v) using other tools and techniques that Otelco may be required to implement in order to meet its goal of delivering the best possible broadband Internet experience to all of its customers.

**12. LIMITATION OF COMPANY'S LIABILITY.** CUSTOMER UNDERSTANDS THAT ALTERNATIVE AND COMPETING INTERNET COMMUNICATIONS CARRIERS ARE AVAILABLE TO CUSTOMER; OCCASIONAL INTERRUPTION OR IRREGULARITIES IN THE SERVICE MAY OCCUR; ANY POTENTIAL HARM FROM INTERRUPTIONS OR IRREGULARITIES IN THE SERVICE IS SPECULATIVE IN NATURE; COMPANY CANNOT OFFER THE SERVICE AT RATES WHICH REFLECT ITS VALUE TO EACH CUSTOMER; AND COMPANY ASSUMES NO RESPONSIBILITY OTHER THAN THAT CONTAINED IN THIS AGREEMENT. ACCORDINGLY, CUSTOMER AGREES THAT EXCEPT AS LIMITED BY LAW, COMPANY'S SOLE LIABILITY FOR LOSS OR DAMAGE ARISING OUT OF MISTAKES, VIRUSES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN THE SERVICE OR TRANSMISSION OF SERVICE PROVIDED BY COMPANY OR ANY UNDERLYING COMMUNICATIONS CARRIER, OR FOR LOSSES OR DAMAGES ARISING OUT OF THE FAILURE OF COMPANY OR ANY UNDERLYING COMMUNICATIONS CARRIER TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION, SHALL BE AS FOLLOWS:

(i) A CREDIT ALLOWANCE AS DESCRIBED IN SUBSECTION (iv) BELOW, WILL BE MADE AT CUSTOMER'S REQUEST IN THE FORM OF A PRO-RATA ADJUSTMENT OF THE FIXED MONTHLY CHARGES BILLED TO CUSTOMER. FIXED MONTHLY CHARGES ARE THE MONTHLY CHARGES FOR ACCESS AND OPTIONAL FEATURES PER ACCESS ACCOUNT ID, AS DESCRIBED IN THE SCHEDULE OF RATES AND CHARGES IN EFFECT AT THE TIME OF INTERRUPTION.

(ii) COMPANY'S LIABILITY FOR DAMAGES IN REGARD TO EXTRAORDINARY AND UNREASONABLE INTERRUPTIONS OF SERVICES, OR FOR MISTAKES, OMISSIONS, DELAYS, ERRORS AND DEFECTS IN THE PROVISION OF THE SERVICE, SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE PRO-RATA CHARGES TO YOU FOR THE PERIOD DURING WHICH THE SERVICE IS AFFECTED.

(iii) THE CREDIT ALLOWANCE WILL BE COMPUTED BY DIVIDING THE LENGTH OF THE SERVICE INTERRUPTION BY A STANDARD THIRTY (30) DAY MONTH AND THEN MULTIPLYING THE RESULT BY COMPANY'S FIXED MONTHLY CHARGES FOR EACH INTERRUPTED ACCESS ACCOUNT ID. IN NO CASE WILL THE CREDIT EXCEED THE FIXED MONTHLY CHARGES.

(iv) A CREDIT ALLOWANCE WILL NOT BE GIVEN FOR MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS, OR CURTAILMENTS IN THE SERVICE CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CUSTOMER OR OTHER PARTIES, OR MISTAKES, OMISSIONS INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS CAUSED BY FAILURE OF EQUIPMENT OR SERVICE NOT PROVIDED BY COMPANY.

(v) THE SERVICE FURNISHED BY COMPANY, IN ADDITION TO THE LIMITATIONS SET FORTH PRECEDING, IS ALSO SUBJECT TO THE FOLLOWING LIMITATION: THE LIABILITY

OF COMPANY FOR LOSS OR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICE, ITS TRANSMISSION OR FAILURES OR DEFECTS IN FACILITIES OF THE UNDERLYING COMMUNICATIONS CARRIER, OCCURRING IN THE COURSE OF FURNISHING SERVICE AND NOT CAUSED BY THE NEGLIGENCE OF THE AUTHORIZED USER, OR THE UNDERLYING COMMUNICATIONS CARRIER IN FAILING TO MAINTAIN PROPER STANDARDS OF MAINTENANCE AND OPERATION AND TO EXERCISE REASONABLE SUPERVISION, SHALL IN NO EVENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONATE FIXED MONTHLY CHARGE TO THE AUTHORIZED USER FOR SERVICE DURING THE PERIOD OF TIME IN WHICH SUCH MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS IN SERVICE, ITS TRANSMISSION, OR FAILURES OR DEFECTS IN FACILITIES FURNISHED BY COMPANY OR THE UNDERLYING COMMUNICATIONS CARRIER OCCURRED.

Company shall in no event be liable for Service or equipment interruptions or delays in transmission, errors or defects in Service or equipment, when caused by acts of god, fire, war, riots, government authorities, default of supplier, or other causes beyond Company's or any underlying communications carrier's control.

Customer acknowledges that Internet systems use public access facilities to transmit voice and data communications and that the Service may not be completely private. Company is not liable to Customer for any claims, loss, damages or cost that may result from lack of privacy on the system.

Customer acknowledges that Internet systems may carry material which may be considered abusive, profane, or sexually offensive and that Company is not liable to Customer for any claims, loss, damages or cost that may result from such material.

Customer hereby agrees to indemnify and save Company harmless against claims for libel, slander or infringement or copyright from the material in any form over its facilities by Customer or those using Customer's equipment; against claims for infringement of patents arising from combining or using apparatus or systems of Customer with the facilities of Company or any communications carrier; and against all other claims arising out of any act or omission of Customer in connection with the facilities or Service provided by Company.

**13. DISCLAIMER OF WARRANTIES AND LIMITATION OF REMEDIES.** CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY IS NOT THE MANUFACTURER OF EQUIPMENT AND INTERNET PACKAGE SOFTWARE, AND COMPANY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH THE EQUIPMENT OR SERVICE OR INTERNET PACKAGE SOFTWARE (WHETHER PURCHASED OR LEASED BY CUSTOMER FROM COMPANY OR ANOTHER), INCLUDING, BUT NOT LIMITED TO, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF SUITABILITY, DURABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY, TO THE EXTENT PERMITTED BY LAW, ASSIGNS TO CUSTOMER ANY AND ALL MANUFACTURERS' WARRANTIES RELATING TO EQUIPMENT OR INTERNET PACKAGE SOFTWARE PURCHASED BY CUSTOMER, AND CUSTOMER ACKNOWLEDGES RECEIPT OF ANY AND ALL SUCH MANUFACTURERS' WARRANTIES.

CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN CONNECTION WITH ANY DEFECTS IN THE EQUIPMENT OR SOFTWARE, INCLUDING

MANUFACTURE OR DESIGN, SHALL BE AGAINST THE MANUFACTURER OF THE EQUIPMENT OR SOFTWARE UNDER THE MANUFACTURER'S WARRANTIES AND THAT COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER IN ANY EVENT FOR ANY LOSS, DAMAGE, INJURY OR EXPENSE OF ANY KIND OR NATURE RELATED DIRECTLY OR INDIRECTLY TO ANY EQUIPMENT OR SOFTWARE OR SERVICE PROVIDED HEREUNDER. WITHOUT LIMITING THE FOREGOING, COMPANY SHALL HAVE NO LIABILITY OR OBLIGATION TO CUSTOMER, IN EITHER CONTRACT OR TORT, FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND INCURRED BY CUSTOMER, SUCH AS, BUT NOT LIMITED TO, CLAIMS OR DAMAGES FOR PERSONAL INJURY, WRONGFUL DEATH, LOSS OF USE, LOSS OF ANTICIPATED PROFITS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSSES OF ANY KIND INCURRED BY CUSTOMER DIRECTLY OR INDIRECTLY RESULTING FROM OR RELATED TO ANY EQUIPMENT, SERVICE OR SOFTWARE DESCRIBED HEREUNDER, WHETHER OR NOT CAUSED BY COMPANY'S NEGLIGENCE, TO THE FULL EXTENT SAME MAY BE DISCLAIMED BY LAW.

ANY REFERENCES TO EQUIPMENT OR SOFTWARE IN THIS PARAGRAPH SHALL BE DEEMED TO APPLY TO ALL EQUIPMENT OR SOFTWARE PURCHASED BY CUSTOMER OR LEASED BY CUSTOMER FROM COMPANY OR ANOTHER LESSOR.

**14. INDEMNIFICATION AND RELEASE.** Customer agrees to release, defend, indemnify and hold harmless Company, its officers and employees, to the full extent permitted by law, from and against any and all claims, damages, liabilities and expenses, including legal and attorney fees, of any nature arising directly or indirectly out of this Agreement, including, without limitation, claims for personal injury or wrongful death to Customer or users of the equipment, products or services provided by Company or sued in conjunction with such equipment, products or services provided by Company and arising out of the manufacture, purchase, operation, condition, maintenance, installation, return or use of the equipment or Service, or arising by operation of law, whether the claim is based in whole or in part on negligent acts or omissions of Company, its agents or employees.

**15. OPERATING RULES.** Customer agrees not to publish on or over the Internet content that violates or infringes upon the rights of any other. If Company is challenged by any third party regarding the suitability of Customer's content, Company may, at its sole discretion, delete Customer's content from the Internet service. Customer agrees not to send unsolicited electronic mail to Company's Customers without Company's explicit written permission for each instance of communication.

Customers shall not knowingly collect or solicit personal information from a minor or use this Service to harm a minor, including, but not limited to, using the Service to send pornographic, obscene or profane materials involving a minor. A minor is defined as any person under the age of eighteen (18) years of age.

**16. RATES AND CHARGES.** Unless otherwise agreed by Company, Customer will be billed in advance for monthly access base rate charges and in arrears for extended connect time, bandwidth and disk use charges. Unless otherwise agreed by Company, Customer will be charged a minimum of one (1) minute of connect time for each connected call. Chargeable connect time is

measured from the time of channel seizure to channel termination for connected calls and shall be rounded up to the next one (1) minute increment.

Payment is due to Company each month upon receipt of bill by the Customer. Payment is to be made through a check, draft, or other negotiable instrument.

Customer shall be responsible for payment of charges for all services furnished by Company, including without limitation, Service establishment fees, Service connection charges and charges for enhanced features, sales and use taxes, other taxes required by law, fees or other exaction imposed by or for any municipal or other political authority against Company. Rates and charges shall be based on prices in effect at the time Service is furnished.

Payments received after the due date may incur a late payment charge of the lesser of 1.5% per month or the highest rate permitted by law of the unpaid balance for each month or fraction thereof that such balance shall remain unpaid.

In the event that Customer's equipment is lost, stolen or otherwise absent from Customer's possession and control, Customer shall nonetheless be liable for all use and other charges attributable to the Internet access account ID until such time as Company is notified of the loss, theft, or other occurrence.

When payment for Service or equipment is made by check, draft, or other negotiable instrument, a charge of thirty dollars (\$30.00) may be assessed by Company for each time such item is returned unpaid to Company for any reason, except to the extent limited by law.

Unless otherwise agreed by Company, Customer shall be responsible for all outstanding charges for service rendered and shall be responsible for all charges through the end of the billing cycle within which termination occurs, without proration of any such charge.

**17. DEFAULT AND WAIVER.** In the event Customer defaults in the payment when due of any sum due hereunder, or in the event of any default or breach of the terms and/or conditions of this Agreement, or if any proceeding in bankruptcy, receivership or insolvency or petition for receivership shall be instituted by or against Customer, Company, at its option, may:

(i) Proceed by appropriate court action or actions to enforce performance by Customer of the applicable covenants and terms of this Agreement or to recover damages for the breach thereof; and/or

(ii) Terminate this Agreement, whereupon all rights and interests of Customer shall terminate and Customer shall remain liable for all Services provided.

Customer shall pay to Company on demand any and all past due amounts which Company may sustain by reason of such default or breach by Customer, together with all other charges as provided by this Agreement, reasonable attorney's fees incurred by Company in connection with such breach or default by Customer and all other costs and expenses incurred by Company in collecting such amounts. All amounts shall be payable by Customer without set off or deduction of any kind.

The remedies provided in favor of Company in the event of default shall not be deemed to be exclusive, but shall be in addition to all other remedies in its favor existing at law.

No failure on the part of Company to exercise any right or remedy arising directly or indirectly under this Agreement shall operate as a waiver of any right or remedy Company may have, nor shall an exercise of any right or remedy by Company preclude any other right or remedy Company may have.

18. **ASSIGNMENTS.** Neither this Agreement nor Customer's rights hereunder shall be assignable by Customer, except with Company's prior written consent. The conditions hereof shall bind any permitted successors and assigns of Customer.

19. **ENTIRE AGREEMENT AND GOVERNING LAW.** Customer acknowledges that this Agreement contains the entire agreement between the parties relating to the services and/or equipment described herein and that Company and its employees have not made orally or in writing any representations, warranties or agreements inconsistent with the terms of this Agreement. No modification, change or alteration of any of the terms of this Agreement shall be valid unless in writing and signed by Company and Customer, except as otherwise proved herein. This Agreement supersedes all prior agreements and understandings, both oral and written, with respect to the subject matter hereof. Customer agrees to notify Company within thirty (30) days of any change of Customer's address. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama, County of Blount.

20. **SEVERABILITY.** If any part of this Agreement is contrary to or prohibited by or deemed invalid under applicable laws and regulations of any applicable jurisdiction, the remaining provisions and parts thereof shall remain and be construed in full force and effect to the extent permitted by law.

21. **RENEWAL AND TERMINATION.** Unless Customer or Company terminates this Agreement as provided herein, and except as otherwise agreed, upon completion of any initial term of this Agreement, the Agreement shall renew on a month-to-month basis. Notice of Customer's intent to terminate this Agreement shall be made in writing to the Company, Attn: Otelco Telephone, LLC, 505 3<sup>rd</sup> Avenue East, Oneonta, Alabama 35121-1557, or via fax at (205) 625-3591. Company reserves the right not to renew this Agreement at any time prior to the conclusion of the initial or any renewal term by giving Customer notice of same.

### Digital Millennium Copyright Act Our Policy

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act ("DMCA"). Otelco Telephone, LLC's policy is to respond to notices of alleged copyright infringement if such notices substantially comply with the DMCA and other applicable laws and/or regulations and to "take down" and/or disable access to material of repeat infringers.

In response to the DMCA, Otelco designated the Company's General Manager as its agent for notification of any alleged copyright infringement. He/she can be reached by mail, telephone or e-mail, as follows:

TITLE:	General Manager
ADDRESS:	505 Third Avenue East

Phone: Oneonta, Alabama 35121-1557  
(205)625-3591  
800-286-4600  
Facsimile: (205) 625-3523  
E-mail address: [info@otelco.net](mailto:info@otelco.net)

If Otelco "takes down," removes, blocks or otherwise disables access to material in order to comply with the DMCA, Otelco will use its best efforts to contact the Subscriber or Account holder affected so that they may respond with a "counter notification," as described in the DMCA. If Otelco receives a "counter notification" that substantially complies with the DMCA and other applicable laws and/or regulations, Otelco will provide the copyright owner with a copy. Unless Otelco receives notification from a copyright owner that he has filed a court action seeking to restrain the alleged infringement, Otelco will "put back" or unblock the material within 10 to 14 days of its receipt of the "counter notification". If Otelco receives such notification of court action, Otelco will not put back or unblock the material, but will use its best efforts to forward said notice to the Subscriber or Account holder affected.

Otelco reserves the right to terminate service upon receiving evidence of repeated instances of copyright infringement.

#### **What do I do if I believe my copyrighted material is being infringed?**

If you believe that your material has been reproduced and posted on the web in a way that constitutes infringement, you must provide Otelco's designated agent with the following information in writing:

1. Identification of the copyrighted work(s) that you believe has been infringed;
2. Identification of the material that you believe is infringing on your copyrighted work or that is the subject of infringing activity;
3. Identification of where the alleged offending material is located sufficient to allow Otelco to find it;
4. Information sufficient to allow Otelco to contact you (your mailing address and telephone number, along with your e-mail address, if available);
5. The following statement by you: "I have a good faith belief that the use of the copyrighted materials described above in the manner complained of is not authorized by the copyright owner, its agent or the law";
6. The following statement by you: "I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner or authorized to act on the copyright owner's behalf";
7. Your physical or electronic signature.

**WARNING:** If you knowingly materially misrepresent that material or activity is infringing, you are liable for any damages that Otelco, a Subscriber or Account Holder incurs as a result of such misrepresentation.

#### **How do I file a "counter notification"?**

If you believe that you have not infringed on protected material, you must then send a "counter notification", in writing, to Otelco's designated agent, with the following information:

1. Identification of the material that was removed or access to was otherwise disabled, and the location of such material prior to its removal;
2. At least one of the following statements by you: "I swear, under penalty of perjury, that I have a good faith belief that the materials described above were mistakenly removed or disabled" or "I swear, under penalty of perjury, that I have a good faith belief that the materials described above were removed or disabled because of misidentification";
3. Information sufficient to allow Otelco to contact you (your mailing address and telephone number, along with your e-mail address, if available);
4. The following statement by you: "I consent to the jurisdiction of the Federal District Court for the Judicial District in which my address is located, or if my address is outside the United States, for any judicial district in which Otelco may be found, and I will accept service of process from the person who provided the original notice of infringement or that person's agent";
5. Your physical or electronic signature.

**WARNING:** If you knowingly materially misrepresent that material was removed, blocked, taken down or otherwise disabled by mistake or misidentification, you are liable for any damages that Otelco, a Subscriber or Account Holder incurs as a result of such misrepresentation.