

*Total Communications, Inc. is committed to adhering to the principles contained in the Federal Communications Commission Internet Policy Statement: 05-151 and 10-201*

## **Acceptable Use Policy and Service Agreement for Internet Access Services Provided by Total Communications, Inc.**

THIS AGREEMENT, made and entered as of the date of on-line connection, by and between Total Communications, Inc. dba Total, ("TOTAL"), and the Internet access subscriber, ("Customer"), upon the following terms and conditions ("Agreement"), including any attachments and documents incorporated herein by reference.

### **TERMS AND CONDITIONS**

#### **Definitions**

The following definitions shall apply to this Agreement:

1. "Customer" and "Customers" shall refer to the Customer named below. To subscribe to TOTAL's Internet access services the Customer must be at least 18 years old.
2. The "Service" means any and all Internet access services and Internet related services provided by TOTAL.
3. The "Effective Date" is when the Agreement is accepted by TOTAL and hook-up of the Service has occurred which is when the Service is available for Customer's use, regardless of the status of Customer's equipment.

#### **BILLING**

All invoicing to customer for Service provided shall be done either electronically or by mail. Payment is due upon receipt of invoice per due date listed. If the Customer's payment is returned to TOTAL, unpaid due to insufficient funds or any other reason, the Customer will be immediately in default and subject to a return check charge of up to \$30.00 plus all past due balances. If the Customer defaults, the customer agrees to pay TOTAL its reasonable expenses, including attorney's fees and collection agency fees incurred in enforcing its rights under this Agreement.

If any Customer is in default more than three (3) times, TOTAL reserves the right to request the entire Service fee or any terms of Service to be paid in advance before Service is reconnected. Payments not received before the next statement date may incur a late payment charge of the lesser of 3.0% 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.

#### **Rights and Obligations of the Customer**

Customer shall, at its own expense, undertake all necessary preparations required to comply with TOTAL's installation and maintenance instructions.

Customer warrants that he/she is at least 18 years of age.

Customer may not use the Service in a manner that violates any applicable local, state, federal or international law, order or regulation. Additionally, Customer may not use the Service to:

Conduct, participate in, or otherwise facilitate pyramid or other illegal soliciting schemes.

Take part in any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

Invalidate another person's privacy, stalk, harass, or otherwise violate the rights of others.

Post, transmit, or disseminate content that is threatening, abusive, libelous, slanderous, and defamatory, incites hatred, or is otherwise offensive or objectionable.

Restrict, inhibit, or otherwise interfere with the ability of any other person to use or enjoy the equipment or the Service, including, without limitation, by posting or transmitting any information or software which contains a virus, lock, key, bomb, worm, Trojan horse, cancelbot, or other harmful feature.

Collect or store personal data about other users.

Use an IP address not assigned to you.

Violate any other TOTAH policy or guideline.

Resell or redistribute the Service to any third party via any means including but not limited to wireless technology.

Customer may not use the Service to harm or attempt to harm a minor, including, but not limited to, by hosting, possessing, disseminating, or transmitting material that is unlawful, including child pornography or obscene material.

Customer shall be responsible for maintaining its own equipment that interfaces with the Service.

Customer assumes total responsibility and risk for customer's use of the Service and other Internet related Services.

Customer is solely responsible for any information that is published on the web or other Internet services. Customer must ensure that the recipient of the content is appropriate and must take appropriate precautions to prevent minors from receiving inappropriate content. TOTAH reserves the right to refuse to post or to remove any information or materials from the Service, in whole or in part, that it, in TOTAH's sole discretion, deems to be offensive, indecent, or otherwise objectionable.

The Service is designed for personal use of the Internet and may not be used for commercial purposes. Customer may not resell or otherwise charge others to use the residential Service. Customer agrees not to use the Service for operation as an Internet service provider, or for any other business enterprise, including, without limitation, virtual private network usage, IP address translation, or similar facilities intended to provide additional access.

Customer may not operate, or allow others to operate, servers of any type or any other device, equipment, and/or software providing server-like functionality in connection with the Service, unless expressly authorized by TOTAH.

Customer is responsible for any misuse of the Service that occurs through his/her account. Customer must therefore take steps to ensure that others do not gain unauthorized access or misuse the Service.

Customer may not use the Service to breach or attempt to breach the security of another user or attempt to gain access to any other person's computer, software, or data without the knowledge and consent of such person. The equipment and the Service may not be used in any 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 Customer, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other networks or computers for any reason. Use or distribution of tools designed for compromising security, such as password guessing programs, cracking tools, packet sniffers or network probing tools, are prohibited.

Customer is solely responsible for the security of any device connected to the Service, including any data stored on that device. TOTAH recommends that you take appropriate security precautions for any systems connected to the Service.

Customer may not disrupt the Service in any manner. Nor shall Customer interfere with computer networking or telecommunications services to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges or attempts to "crash" a host.

Software or other content downloaded from the Service may contain viruses and it is Customer's sole responsibility to take appropriate precautions to protect your computer from damage to its software, files and data. Customer is prohibited from posting, transmitting or disseminating any information or software that contains a virus, Trojan horse, worm or other harmful program or that generates levels of traffic sufficient to impede others' ability to send or retrieve information. Prohibited conduct of this type includes denial of service attacks or similarly disruptive transmissions, as well as transmissions containing other harmful or malicious features.

Customer may not use the Service to send unsolicited bulk or commercial e-mail messages ("spam"). Any unsolicited e-mail must also not direct the recipient to any web site or other resource that uses the Service. The Service may not be used to collect responses from unsolicited e-mail sent from accounts on other Internet hosts or e-mail services that violates this Policy or the acceptable use policy of any other Internet service provider. In addition, "mail bombing," the sending of numerous copies of the same or substantially similar messages or very large messages or files with the intent to disrupt a server or account, is prohibited.

Customer must comply with the current bandwidth, data storage and other limitations on the Service. Customer must ensure that your activities do not improperly restrict, inhibit, or degrade any other user's use of the Service, nor represent (in the sole judgment of TOTAH) an unusually large burden on the network itself. In addition, you must ensure that their activity does not improperly restrict, inhibit, disrupt, degrade or impede TOTAH's ability to deliver the Service and monitor the Service, backbone, network nodes, and/or other network services. TOTAH may terminate, suspend, or require you to upgrade the Service and pay additional fees if TOTAH, in its sole discretion, determines that that you are using excessive bandwidth.

You understand and agree that the cancellation of this agreement is your sole right and remedy with respect to any dispute with TOTAH. This includes, but is not limited to any dispute related to, or arising out of:

- Any term of this agreement or TOTAH's enforcement or application of this agreement;
- Any policy or practice of TOTAH or enforcement or application of its policies;
- Your ability to access and/or use TOTAH's Internet services, or the amount or type of fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges, or billing methods.

### **Equipment or Software**

1. TOTAH shall not be responsible for the installation, operation or maintenance of equipment or software unless contracted by the Customer through TOTAH, nor shall TOTAH be responsible for the transmission or reception of information by equipment or software not installed by TOTAH.
2. Customer shall be responsible for the use and compatibility of all equipment or software not installed by TOTAH.

### **Rights and Obligations of TOTAH; Disclaimer of Warranties**

1. TOTAH shall operate and maintain the Service. Customer acknowledges that Service is subject to transmission limitations caused by atmospheric, topographical and any other like conditions. Additionally, Service may be temporarily refused, limited, interrupted or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying communications carrier, or because equipment modifications, upgrades, repairs, or reallocations or other similar activities necessary or proper for the operation or improvement of TOTAH's Service.
2. Customer understands that neither TOTAH nor any of its affiliates operates or controls the Internet in any way, and that all merchandise, information and services offered or made available or accessible on the Internet are offered or made available or accessible by third parties who are not affiliated with TOTAH or its affiliates. Neither TOTAH nor its affiliates make any express or implied warranties, representations or endorsements whatsoever (including without limitation warranties of title of merchantability or fitness for a particular purpose) with regard to any merchandise, information or service provided through the Internet, and it shall not be liable for any costs or damage arising either directly or indirectly from any such transaction. It is solely Customer's responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, and other information, and the quality and merchantability of all merchandise, provided through the Service or on the Internet generally.
3. Customer understands and expressly acknowledges that the Internet contains unedited materials, some of which are sexually explicit or may be offensive to some people. Customers access such material at customer's own risk. Customer acknowledges that TOTAH is not liable to customer for any claims, loss, damages or costs which may result from such materials accessed on the Internet through the Service.
4. Customer acknowledges that the Service and Internet systems use public access facilities to transmit voice and data communications and that this Service may not be completely private. Thus TOTAH is not liable to customer for any claims, loss, damages or costs which may result from lack of privacy on the Service.

5. The Service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, non-infringement or implied warranties of merchantability or fitness for a particular purpose. TOTAH does not warrant that the Service will be uninterrupted or error free or that any information, software or other material accessible on the Service is free of viruses, worms, Trojan horses, or other harmful components.

6. Customer acknowledges and agrees that under no circumstances shall TOTAH, its affiliates or its contractors be liable for any direct, indirect, incidental, special, punitive or consequential damages that result in any way from Customer's use of or inability to use the Service or to access the Internet or any part thereof, or Customer's reliance on or use of information obtained from the Service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance.

7. TOTAH has no obligation to monitor the Service. However, Customer agrees that TOTAH has the right to monitor the Service electronically from time to time and to disclose any information necessary to satisfy any law, regulation or other governmental request, to operate the Service properly or to protect itself or its subscribers and/or Customers.

8. Notwithstanding any of the foregoing representations and terms of this Agreement, TOTAH reserves the right to terminate Service immediately and without notice to Customer in order to maintain system integrity or to comply with any law, regulation, court order or other governmental request.

9. Transmission of any material in violation of any United States or state law or regulation is strictly prohibited. This includes, but it not limited to copyrighted material, threatening or obscene material, or material protected by trade secret. To the extent any material is utilized by Customer, Customer agrees to indemnify and hold harmless TOTAH, its officers, agents and employees from any claims and damages resulting from Customers use of the Service which may damage the Customer or any other party.

### **Indemnity**

Customer agrees to defend, indemnify and hold TOTAH and its affiliates harmless from any and all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from:

1. Any violation of this Agreement by Customer;
2. The use of the Service or Internet related Services or the placement or transmission of any messages, information, software or other material on the Service by Customer;
3. Negligent acts or omissions of Customer's officers, employees, agents or contractors in connection with the construction, installation, maintenance, presence, use or removal of systems, channels, or terminal equipment or software not provided by TOTAH, which are connected or are to be connected to the Service;
4. Claims for infringement of patents arising from the use of the equipment and software, apparatus and systems not provided by TOTAH in connection with the Service.

## **NETWORK MANAGEMENT AND LIMITATIONS ON DATA CONSUMPTION**

TOTAH manages its network with one goal: to deliver the best possible broadband Internet experience to all of its customers. High-speed bandwidth and network resources are not unlimited. Managing the network is essential as TOTAH works to promote the use and enjoyment of the Internet by all of its customers. The company uses reasonable network management practices that are consistent with industry standards.

The Service is for personal and non-commercial residential use only. Therefore, TOTAH reserves the right to suspend or terminate Service accounts where data consumption is not characteristic of a typical residential user. *TOTAH reserves the right to established a monthly data consumption threshold per customer, should future requirements arise.*

## **NETWORK TRANSPARENCY**

### **Network Management Practices**

TOTAH provides quality Internet services through proactive network management practices. The network is monitored utilizing real-time evaluation including fault isolation and root-cause analysis. The information is integrated into an automated system with automated call-out and escalation procedures.

Uplink utilization is trended using monthly reporting. Uplink capacity is added proactively as required.

SPAM filtering for e-mail services is provided via the web portal interface. If POP3 or IMAP services are used via customer supplied software, SPAM filtering must be provided by the customer machine, if required. SPAM may contain harmful information, links, and attachments. The customer assumes ALL risks associated with the use of ANY e-mail or ANY other service, application, or web use.

Network congestion rarely occurs in the network due to applied engineering practices. Pre-defined concentration ratios are adhered to throughout the network. Inter-network and Intra-network ratios are evolving as the nature of traffic and customer habit's change. Planning and network upgrades insure network concentration points are updated ahead of the growth curve in most cases. The primary cause of network congestion results from a hardware or software malfunction or failure. The customer may experience mild network congestion during peak usage times.

Since network security is paramount, TOTAH has ensured that its network is as secure as possible. The very nature of the "OPEN" Internet provides ample opportunity for security threats and breaches.

For this reason, TOTAH recommends that every customer utilize a firewall for each computer. In addition, the customer should keep current with all operating system upgrades and patches to ensure protection against the looming threats. A reputable anti-virus program is also recommended for each customer computer. Again, TOTAH is not responsible for ANY damage to hardware or software regardless of the customers' adherence to the recommended practices. The prior are "best practices" for the industry and are provided as recommendations only.

### **Network Blocking**

TOTAH is in complete compliance with FCC order 10-201. That being said, in no way will TOTAH participate in the practice of blocking ports, applications, or any other lawful content. Subscriber blocking is reserved for the following:

Unlawful activity, non-adherence to reasonable usage, spamming, non-payment, infected with a virus or bot net, affecting network performance for other customers, anything that degrades or may be harmful to the network or other customers.

### **Performance Characteristics**

The following technology is utilized to deliver high speed Internet to TOTAH customers. The network is in a revolving state of upgrade.

### **Service Description:**

**ADSL:** Asymmetrical Digital Subscriber Line provides high speed Internet allowing for faster download speeds and slower upload speeds. The nature of Internet traffic typically melds well with this technology as the consumer typically makes a request (small amount of data) and receives a larger amount of information in return. The maximum amount of data provided upstream is 1 Mb/s. ADSL is a rate adaptive technology, meaning that if your line is not capable of 1 Mb/s up stream (or Down), it will get as close as it can to the desired bandwidth. Some ADSL flavors are capable of downloads in excess of 20 Mb/s.

### **Service Offerings:**

#### Asymmetrical Digital Subscriber Line (ADSL)

(A) .768 Mb/s Download and .512 Mb/s Upload

Expected latency suitable for most real-time applications.

(B) 1 Mb/s Download and .768 Mb/s Upload

Expected latency suitable for most real-time applications.

(C) 2 Mb/s Download and 1 Mb/s Upload

Expected latency suitable for most real-time applications.

(D) 3 Mb/s Download and 1 Mb/s Upload

Expected latency suitable for most real-time applications.

(E) 5 Mb/s Download and 1 Mb/s Upload

Expected latency suitable for most real-time applications.

### **Commercial Terms**

Monthly prices, usage-based fees, and fees for early termination or additional network services are handled on individual case basis.

### **Privacy**

Network management practices rarely entail individual specific inspection of network traffic. TOTAH may retain personal customer information in its regular business records as long as someone is a customer

or until no longer needed for business or legal purposes. This information is not provided to third parties, or used by the carrier for non-network management purposes.

### **Miscellaneous Terms and Provisions**

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas & Oklahoma without regards to its conflict of law provisions. Any cause of action Customer may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action shall be barred.

2. This Agreement constitutes the entire Agreement between Customer and TOTAH with respect to the Service to be provided. There may be additional terms and conditions if you use affiliate services such as DSL.

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

4. 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.

5. By reading these terms and conditions, Customer states that is has proper authorization to contractually and financially bind itself and any associates entity subscribing to the Service.

6. The Internet and online world is changing rapidly and as technology and TOTAH's business continue to evolve, TOTAH's policies and this Internet Use Agreement may have to be updated or revised. Since the terms of this agreement and TOTAH's policies may change you should check the TOTAH website for the most current versions. For the same reasons, it may be necessary for TOTAH to update and revise certain provisions of this agreement. By accepting this agreement you agree that TOTAH may change the terms of this agreement and that if TOTAH makes material changes or revisions to this agreement, we will provide notice to you 30 days in advance. If you do not agree to the changes proposed by TOTAH, or to any of the terms in this agreement, your only remedy is to cancel this agreement pursuant to the terms contained herein.

Totah Communications, Inc. is committed to providing the best online experience possible for all of its customers. If you have any questions regarding TOTAH's Pricing, Monitoring and other Network Practices, please contact a Totah Communications, Inc. representative at:

### **Totah Communications, Inc.**

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