

## OPENBAND INTERNET TERMS OF SERVICE

This Agreement ("Agreement") is between you as our Subscriber and OpenBand Multimedia, LLC; OpenBand at Lansdowne, LLC; OpenBand at Broadlands, LLC; OpenBand at Lansdowne Town Center, LLC; OpenBand SPE, LLC; OpenBand SPE II, LLC; and OpenBand SPE III, LLC as applicable ("OpenBand") and it sets forth the terms and conditions under which you agree to use and we agree to provide OpenBand Internet Service (the "Service").

THIS IS A CONTRACT. PLEASE READ THESE TERMS CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AND OURS. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICE AND CONTACT US IMMEDIATELY TO TERMINATE IT.

### 1. TERM AND ACCEPTANCE OF AGREEMENT; AGREEMENT TERMS GENERALLY INCLUDED.

This Agreement starts when you accept it. By accepting this Agreement, you and any other OpenBand Internet users within your premises are bound by its conditions. Your acceptance of this Agreement occurs upon the earlier of: (a) your electronic, written or oral acceptance during the submission of your order; or (b) your use of the Service. This Agreement will end when you or we terminate this Agreement as permitted below. If you change Service plans, your term and monthly rate may change (depending on the plan you select), but all other provisions of this Agreement will remain in effect unless otherwise noted. This Agreement consists of the terms below, plus (i) the specific elements of your Service or Package plan (including the plan's pricing, duration and Early Termination Fee ("ETF") if applicable, all as described in the information made available to you when placing and confirming your order); (ii) our Acceptable Use Policy; and (iii) other OpenBand policies referred to in this Agreement including our Privacy Policy, incorporated herein by reference. A current version of this Agreement and related policies are posted online at <http://www.openband.net/terms.html>.

### 2. DEFINITIONS AND CHANGES TO SERVICE.

- a) "Content" means content provided by OpenBand or its third-party licensors or suppliers and accessible on the Service, including without limitation images, photographs, animations, video, audio, music, and text in any format.
- b) "Early Termination Fee" or "ETF" refers to the early termination fee charged to a subscriber for the early termination of a Service or Package plan with a minimum term commitment, as defined in Service or Package details.
- c) "Equipment" means any equipment provided by OpenBand for use with the Service. For the avoidance of doubt, the term "Equipment" shall not include any router or similar devices that you purchase from OpenBand or a third party herein referred to as "Other Devices."
- d) "Internet Service" means OpenBand's Internet access service.
- e) "OpenBand Website(s)" mean the sites located at OpenBand.net and support.openband.net, which are comprised of various web pages, tools, information, software, content, and features operated by OpenBand.
- f) "Package(s)" means a combination of an OpenBand Internet Service with one or more other eligible OpenBand services, including but not limited to OpenBand Video or OpenBand Telephone service.
- g) "Premises" refers to the physical location at which the Service has been installed.
- h) "Service" means all OpenBand Internet access services, Software, Equipment, Content, technical support, email, domain name server ("DNS") and related services, OpenBand Websites and other products and services provided by OpenBand under the pricing plan applicable to your Service.
- i) "Term Plan" refers to a Service or Package plan with a minimum term commitment.

### 3. CHANGES TO THIS AGREEMENT.

The current version of the terms of this Agreement shall be available at: <http://www.openband.net/terms.html>. From time to time, we will make revisions to this Agreement and to the policies relating to the Service, including revisions to the provisions that govern the way in which you and OpenBand resolve disputes. We will provide notice of any revisions by sending an email to the email address that you provide to receive communications from us (your "Primary" or "Billing Email Address"). You agree to check your listed email inbox to review any such revisions. You also agree to notify OpenBand immediately of any changes in your Primary or Billing Email Address. Revisions to the terms and conditions shall be effective on the date specified in the notice. Unless we provide otherwise, you accept the revisions and agree to abide by them by continuing to use the Service after the revisions are effective.

### 4. AUTHORITY; PREMISES; ACCOUNT USE; RESPONSIBILITIES; REFUSAL OF SERVICE.

- a) Legal Authority. You acknowledge that you are eighteen (18) years of age or older and that you have the legal authority to enter into this Agreement. You agree to promptly notify OpenBand whenever your personal or billing information changes.
- b) Access to Premises. You agree to allow us and our representatives the right, at reasonable times, to enter the Premises for the purpose of installing, maintaining, servicing, inspecting, upgrading and/or removing the Service (including any Equipment and, subject to and limited by any applicable limited warranty, laws, and/or policies, Other Devices).
- c) Authorized Owner or Tenant. You acknowledge and agree that you are either an owner of, or legal tenant in, your Premises, and as such have the right to allow us and our representatives to enter and make modifications to the Premises in connection with the delivery of the Service.
- d) Use of your Service and Account and Compliance with Applicable Authority. You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account, and to pay for all activity associated with your account. You agree to comply with all applicable laws, regulations and rules regarding your use of the Service and to only use the Service within the United States (unless otherwise permitted by this Agreement).
- e) Refusal of Service. We reserve the right, in our sole discretion, to refuse to provide the Service to you for any reason at any time consistent with law.
- f) Export Control. You expressly agree to comply with all applicable export and re-export laws, including but not limited to the Export Administration Act, the Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Service in any way that violates any provision of these export and re-export laws or their implementing regulations.
- g) Restrictions on Use. Service provided to residential customers is a consumer-grade service and is not designed for or intended to be used for any commercial purpose. Except as otherwise set forth in this Agreement, you may not resell, re-provision or rent the Service (either for a fee or without charge), or allow third parties to use the Service via wired, wireless or other means. For example, you may not provide Internet access to third parties through a wired or wireless connection or use the Service to facilitate public Internet access (such as through a Wi-Fi hotspot), use it for high-volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). If you subscribe to an Internet Service, you may connect multiple computers/devices within a single home to the Service, through one or more OpenBand-issued IP addresses. You also may not exceed the bandwidth usage limitations that OpenBand may establish from time to time for the Service, or use the Service to host any type of server. Violation of this section may result in bandwidth restrictions on your Service or suspension or termination of your Service.

## 5. PRIVACY.

Personal information you provide to OpenBand is governed by our Privacy Policy, which is posted at <http://www.openband.net/terms.html> and incorporated by reference herein, and is subject to change from time to time. OpenBand reserves the right to provide account and user information, including email, to third parties as required or permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include, but is not limited to, monitoring of the OpenBand network consistent with applicable law. In addition, OpenBand is required by law to report any facts or circumstances reported to us, or that we discover, from which it appears there may be a violation of the child pornography laws. We reserve the right to report any such information, including the identity of users, account information, images and other facts to law enforcement personnel.

## 6. AVAILABILITY OF AND CHANGES TO SERVICE.

- a) Service and Bandwidth Availability and Speed. The Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed, and some locations may not qualify for the Service. Bandwidth is provided on a per-line (not a per-device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), and other factors. The speed of the Service will vary based on network or Internet congestion, your computer configuration, the condition of the wiring inside your location, among other factors. We and our suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control.
- b) Changes to Service or Features. OpenBand reserves the right to change any of the features, Content, Equipment authorized by OpenBand for use in connection with the Service, or applications of the Service at any time with or without notice to you. This includes the portal services we may make available as part of the Service or for an additional charge.

## 7. PRICING; BILLING; CHANGES TO SERVICE PLANS; PAYMENT AND SUPPORT.

- a) Prices and Fees. You agree to pay the fees applicable to your Service or Package on a monthly basis and to pay: (i) applicable taxes, (ii) surcharges, (iii) recovery fees, (iv) activation fees, (v) installation fees, (vi) set-up fees, (vii)

Equipment charges, (viii) ETFs, and (ix) other recurring and nonrecurring charges associated with the Service plan you have selected. The taxes, fees and other charges detailed in (i)-(iii) above may vary on a monthly basis. Surcharges and recovery fees are not taxes and are not required by law, but are set by OpenBand and may change. You also agree to pay any additional charges or fees applied to your account, including interest and charges due to insufficient credit or insufficient funds. If you cancel any component of a Packages plan, the monthly charges for the remaining services on your account will automatically convert to the applicable existing, non-discounted month-to-month service rate.

- b) **Billing.** Billing for Service will begin: (i) upon installation of the Service if installed by OpenBand; or (ii) when you take possession of OpenBand Equipment if the Service is self-installed; or (iii) the order completion date when you transition from one Service or Package subscription or term to another. Non-recurring charges such as set up, activation and installation fees, and certain Equipment charges, will be included in your first bill. Monthly Service and Package recurring charges will be billed one month in advance; any usage charges will be billed in arrears. You agree to pay all applicable charges by the due date set forth in your monthly invoice.

If you enroll in OpenBand's eBilling program, you agree to view and pay your bill electronically each month and to provide OpenBand with current, accurate, complete, and updated information including your legal name, address, telephone number(s), email address and applicable payment data such as your bank account number. You agree to notify OpenBand immediately of any changes in your email address or other registration or payment data. You will no longer receive a paper bill. Instead, each month you will receive an email notifying you that your bill is available online for viewing and payment at <http://support.openband.net>. You must continue to pay your paper bill until you receive your first e-mail notification that your bill is available online. If your electronic payment is rejected for any reason, OpenBand may charge a return item fee (where permissible), cancel your enrollment in the eBilling program and resume sending you paper bills. If you wish to revoke consent to eBilling and receive a paper bill, contact OpenBand customer service at 866-OPENBAND (866-673-6226) or 703-961-1110. If you use a third-party bill payment vendor or distributor to receive and pay your OpenBand bill, OpenBand is not responsible for the accuracy and timeliness of your bill payments.

- c) **Plans with Minimum Terms.** If you choose a Service or Package plan with a minimum term commitment, you agree to maintain your Service for the term of that plan (a "Term Plan"). Your Term Plan begins once the Service or all Package services have been provisioned. You will begin receiving any discount associated with a Package plan once all Package services have been provisioned. At the end of any Term Plan you may be given the option to select a new Term Plan. If you do not select a new Term Plan, your Service will automatically convert to a month-to-month Service plan at a monthly fee that may be higher than your current rate. If you select a new Term Plan, the terms of that plan will apply.
- d) **Third-Party Charges.** You acknowledge and agree that you may also incur data charges or fees from a wireless or Internet service provider (which may be a third party) for accessing online services or purchasing products and services through interactive options available through the Service. You are solely responsible for all charges or fees payable to OpenBand or third parties, including all applicable taxes, and you are solely responsible for protecting the security of credit card and other personal information provided to third parties in connection with such transactions.
- e) **Discontinuation of Service for Nonpayment.** We may discontinue your Service without notice if Service charges are refused for any reason, or if you fail to make payment when due or to provide us with a new charge card expiration date before the existing one expires.
- f) **Late Fees.** If any portion of your bill is not paid by the due date, OpenBand may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. Otherwise, the late fee will be the lesser of 1.0 % per month, or the highest rate permitted by law. If OpenBand uses a collection agency or legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover any money due, including attorneys' fees. If you fail to pay on time and OpenBand refers your account(s) to a third party for collection, a collection fee will be assessed and will be due at the time of the referral to the third party. The fee will be calculated at the maximum percentage permitted by applicable law.
- g) **Limitation on Special Pricing Promotions.** You may only take advantage of one special pricing promotion during any consecutive 12-month period. Eligibility for promotional offers may be contingent upon payment of all outstanding OpenBand charges.
- h) **Refundable Deposit.** We may require that you provide us with a refundable deposit, which will be specified at the time of your order. We may also require an additional deposit after activation of the Service if you fail to pay any amounts when due. Within ninety (90) days after termination of your Service, we will return your Subscriber Deposit, less any unpaid amounts due on your account, including any amounts owed for unreturned or damaged Equipment. Amounts held on deposit will not accrue interest except as required by law.
- i) **Billing Disputes.** Subject to applicable law, if you intend to dispute a charge on your billing statement, you must contact us within thirty (30) days of the billing date you receive the bill in question. **UNDISPUTED PORTIONS OF YOUR BILLING STATEMENT MUST BE PAID BY THE DUE DATE TO AVOID A LATE FEE AND POSSIBLE SUSPENSION OR TERMINATION OF THE SERVICE.**

- j) Complaint Procedures. If you have any concerns regarding customer service, billing, or service quality, please contact us at our toll free customer service telephone number: 866-OPENBAND (866-673-6226) or 703-961-1110. You may also write to the address listed below. OpenBand personnel are available 24 hours a day.

OpenBand Customer Relations Manager  
22980 Indian Creek Drive  
Dulles, VA 20166

E-mail us at:  
billing@openband.net (for billing issues); or  
support@openband.net (for service issues)

When you contact us, please explain the nature and history of the problem. We will try to promptly resolve your concern. If we are unable to resolve your concern, we will notify you that we are unable to do so and explain the reason why.

## 8. SOFTWARE LICENSES; THIRD-PARTY SERVICES.

- a) Software for use with Service. We may provide you, for a fee or at no charge, software for use in connection with the Service which is owned by OpenBand or its third-party licensors, providers and suppliers ("Software"). We reserve the right periodically to update, upgrade, change, or add new Software remotely or to make related changes to the settings and software on your computer, Equipment, or Other Devices used in connection with the Service, and you agree to permit such changes and access to your computer, Equipment, or Other Devices used in connection with the Service. You may use the Software only in connection with the Service and for no other purpose.
- b) End User License Agreement. Certain Software may be accompanied by an end-user license agreement ("EULA") from OpenBand or a third party. Your use of the Software is governed by the terms of that EULA and by this Agreement. You may not install or use any Software that is accompanied by or includes a EULA unless you first agree to the terms of the EULA.
- c) Software Not Accompanied by EULA. For Software not accompanied by a EULA, you are hereby granted a revocable, non-exclusive, non-transferable license by OpenBand or its applicable third-party licensor(s) to use the Software (and any corrections, updates and upgrades). You may not make any copies of the Software. You agree that the Software is confidential information of OpenBand or its third-party licensors and that you will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by OpenBand or its third-party licensors. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human-readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that OpenBand or its third-party licensors continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.
- d) Time Period for Use of Software or Additional Services. Your license to use the Software or any Additional Services will remain in effect until terminated by OpenBand or its third-party licensors, or until your Service is terminated. Upon termination of your Service, you must cease all use of and immediately delete the Software from your computer or Other Devices not returned to us.
- e) EULA of Third-Party Provider. If you subscribe to or otherwise use any third-party services offered by OpenBand, your use of such services is subject to the EULA of that third-party provider. Violation of those terms may, in our sole discretion, result in the termination of your Service.
- f) Ownership of Intellectual Property Rights. All title and intellectual property rights (including without limitation, copyrights, patents, trademarks and trade secrets) in and to the OpenBand Websites are owned by OpenBand, its affiliates or licensors. All title and intellectual property rights in and to the information and content which may be accessed through use of the OpenBand Websites are the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement does not grant you any rights to use any of the content, nor does it grant any rights to the OpenBand Websites, other than the right to use the OpenBand Websites according to the terms of the Agreement.

## 9. TERMINATION OF SERVICE.

- a) Month-to-Month Service. If you have a month-to-month Service subscription, either you or OpenBand may terminate this Agreement any time by giving notice to the other party as set forth in this Agreement. Termination by you will be effective upon your notice to us.



- b) Subscribers with Term Plans; Early Termination Fee (ETF). EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IF YOUR INTERNET SERVICE OR ANY COMPONENT OF A PACKAGE PLAN IS TERMINATED BY YOU OR BY US AS A RESULT OF VIOLATION BY YOU OF THIS AGREEMENT BEFORE COMPLETING YOUR TERM PLAN, THEN YOU AGREE TO PAY OPENBAND THE ETF SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN. If you terminate Service at your location, your existing Term Plan cannot be carried over to a new Service location.
- c) Termination and/or Suspension by OpenBand. OpenBand reserves the right to change, limit, terminate, modify, or temporarily or permanently cease providing the Service or any part of it with or without prior notice if we elect to change the Service or a part thereof or if you violate the terms of this Agreement. If OpenBand terminates your Service under this Section 9(c), you must immediately stop using the Service and you will be responsible for any applicable fees and/or Equipment charges set forth in Sections 7 and 9. If the termination is a result of violation by you of the terms of this Agreement, you also shall be liable to pay any applicable ETF. If OpenBand terminates or ceases to offer service to your location, you shall not be liable to pay the ETF. If your Service is reconnected, a reconnection fee may apply.
- d) Deletion of Data upon Termination. YOU AGREE THAT IF YOUR SERVICE IS TERMINATED FOR ANY REASON, OPENBAND HAS THE RIGHT TO IMMEDIATELY DELETE ALL DATA, FILES AND OTHER INFORMATION (INCLUDING EMAILS, ADDRESS BOOK AND WEB STORAGE CONTENT) STORED IN OR FOR YOUR ACCOUNT WITHOUT FURTHER NOTICE TO YOU.
- e) Return of Equipment upon Termination. If your Service is terminated for any reason and you received Equipment from OpenBand, you must return the Equipment to OpenBand within thirty (30) days or you will be charged for the Equipment. Failure to return any Equipment you received from OpenBand, or returning Equipment in a damaged condition (subject only to reasonable wear and tear), will result in the imposition of an Equipment fee that may be substantial.

#### 10. MANAGEMENT OF YOUR DATA, COMPUTER AND OTHER DEVICES.

- a) Your Responsibilities Regarding Management of Your Computer, Other Devices and Data. You are solely responsible for obtaining, maintaining and updating all customer premise equipment and software necessary to use the Service, and for management of your information, including but not limited to back-up and restoration of your data. YOU AGREE THAT OPENBAND IS NOT RESPONSIBLE FOR THE LOSS OF YOUR OR ANY THIRD-PARTY DATA OR FOR THE BACK-UP OR RESTORATION OF YOUR OR ANY THIRD-PARTY DATA REGARDLESS OF WHETHER THIS DATA IS MAINTAINED ON OUR SERVERS OR YOUR PERMITTED GUESTS' DEVICE(S). YOU SHOULD ALWAYS BACK-UP ANY IMPORTANT INFORMATION SEPARATELY FROM DATA STORED ON OPENBAND'S OR ANY THIRD PARTY'S SERVERS.
- b) Content and Data Management by OpenBand. We reserve the right to: (i) use, copy, display, store, transmit and reformat data transmitted over our network and to distribute such content to multiple OpenBand servers for back-up and maintenance purposes; and (ii) block or remove any unlawful content you store on or transmit to or from any OpenBand server. We do not guarantee the protection of your content or data located on our servers or transmitted across our network (or other networks) against loss, alteration or improper access.
- c) Your Responsibilities Regarding Security. You agree that you are solely responsible for maintaining the security of your, and any permitted guests', computer(s), device(s) and data, including without limitation, encryption of data and protection of your user ID, password and personal and other data. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE. Use of the OpenBand network for the distribution, operation, and maintenance of malicious software (viruses, bots, worms, Trojan horses, etc.) is prohibited. Communications to malicious domain names (e.g., domain names used by networks of machines running malicious software) and to malicious Internet protocol addresses (e.g., IP addresses used by networks of machines running malicious software) may be redirected by OpenBand to our network security systems at any time without notice as a countermeasure against the operation of malicious software in the OpenBand network.

OpenBand may retain certain information such as the date and time of the malicious communication, the IP address it originated from, the domain name involved, and other technical information for cybersecurity purposes.

- d) Monitoring of Network Performance by OpenBand. OpenBand automatically monitors network performance and the performance of your Internet connection and our network. We may access and record information about your computer, Equipment's or Other Device's profile and settings and the installation of software we provide. You agree to permit us to access your computer, Equipment and Other Devices to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service. You also consent to OpenBand's monitoring of your Internet connection and network performance, and to our accessing and adjusting your computer and Equipment and Other Devices' settings, as they relate to the Service, Software, or other services, which we may offer from time to time. We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of OpenBand or its authorized vendors, contractors and agents.

#### 11. LIMITATIONS ON THE USE OF SERVICE.

- a) You acknowledge and agree that OpenBand (i) is not responsible for invalid destinations, transmission errors, or the corruption of your data; and ii) does not guarantee your ability to access all websites, servers or other facilities, or that the Service is secure or will meet your needs.
- b) You acknowledge that the Service will allow access to information which may be sexually explicit, obscene or offensive, or otherwise unsuitable for children. You agree that the supervision of use of the Service by children is your responsibility and that OpenBand is not responsible for access by you or any other users to objectionable or offensive content. OPENBAND STRONGLY RECOMMENDS THE USE OF COMMERCIALY AVAILABLE CONTENT-FILTERING SOFTWARE.
- c) You are not authorized to use any OpenBand name or mark as a hypertext link to any OpenBand Website or in any advertising, publicity or in any other commercial manner without the prior written consent of OpenBand.
- d) You agree that OpenBand assumes no responsibility for the accuracy, integrity, quality, completeness, usefulness or value of any Content, advice or opinions contained in any emails, message boards, chat rooms or community services, OpenBand Websites or in any other public services or social networks, and that OpenBand does not endorse any advice or opinion contained therein, whether or not OpenBand provides such service(s). OpenBand does not monitor or control such services, although we reserve the right to do so.
- e) You represent that when you, or your permitted guests, transmit, upload, download, post or submit any content, images or data using the Service you or your permitted guests have the legal right to do so and that your or your permitted guests' use of such content, images or data does not violate the copyright or trademark laws or any other third-party rights. You understand and agree that any and all use of the Service is subject to the terms of OpenBand's Copyright Protection Policy found within the OpenBand Acceptable Use Policy, a description of which can be found at <http://www.openband.net/terms.html> and which is incorporated by reference herein.
- f) Websites linked to or from the Service are not reviewed, controlled, or examined by OpenBand and you acknowledge and agree that OpenBand is not responsible for any losses you incur or claims you may have against the owner of thirdparty websites. The inclusion of any linked websites or content from the Service, including websites or content advertised on the Service, does not imply endorsement of them by OpenBand.
- g) The OpenBand customer support portal is provided only for the use of OpenBand subscribers and any other use is prohibited. You may view, copy or print pages from the OpenBand customer support portal solely for personal, noncommercial purposes. You may not otherwise use, modify, copy, print, display, reproduce, distribute, manipulate, or publish any information from the OpenBand customer support portal without the express written permission of OpenBand. At any time OpenBand may, without notice, make changes to the OpenBand customer support portal or to the online services or products described on that site. Without the express prior written authorization of OpenBand, you may not (i) use any data-mining robots, hardware or software modules that add a specific feature or service by plugging into an existing larger system, or similar data-gathering and extraction tools, scripts, applications, or methods on the OpenBand customer support portal; (ii) use any device, software, or hardware to bypass any operational element or to interfere, or attempt to interfere, with the proper operation of the OpenBand customer support portal; (iii) take any action that imposes an unreasonable or disproportionately large load on the OpenBand customer support portal or its network infrastructure or that adversely affects our network or other customers; (iv) decompile, reverse engineer, modify or disassemble any of the software in or associated with the OpenBand network and/or servers; (v) use any meta tags or any other "hidden text" utilizing OpenBand's name or any OpenBand trademark without OpenBand's prior written permission; or (vi) frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of OpenBand or use any OpenBand trademark. Unauthorized use of the OpenBand customer support portal or its network infrastructure and/or data display by a person or entity that is not the authorized user of the account is illegal and OpenBand reserves the right to take appropriate legal action.
- h) If you choose to access the OpenBand Websites from locations outside the United States, you do so on your own initiative and you are responsible for compliance with all applicable local use controls, laws and regulations, including those relating to the transmission of technical data exported from or imported to the United States or the country in which you reside. OpenBand makes no representation that materials on the OpenBand Websites are appropriate or available for use in locations outside the United States and accessing them from territories where their contents are illegal is prohibited.

## 12. WARRANTIES AND LIMITATION OF LIABILITY.

- a) THE SERVICE MAY BE INTERRUPTED FROM TIME TO TIME FOR A VARIETY OF REASONS, AND OPENBAND DOES NOT REPRESENT OR WARRANT THAT THE SERVICE OR THE EQUIPMENT, OR ANY OTHER DEVICES, WILL BE AVAILABLE OR PERFORM IN A MANNER THAT MEETS YOUR NEEDS.

OPENBAND WILL NOT BE LIABLE FOR ANY INCONVENIENCE, LOSS, LIABILITY OR DAMAGE RESULTING FROM ANY PREEMPTION, LOSS, BLACKOUT OR INTERRUPTION OF THE SERVICE, DIRECTLY OR INDIRECTLY CAUSED BY OR RESULTING FROM ANY CIRCUMSTANCES, INCLUDING WITHOUT LIMITATION, ANY CIRCUMSTANCE BEYOND OPENBAND'S REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO, CAUSES ATTRIBUTABLE TO YOU OR YOUR PROPERTY, INABILITY TO OBTAIN ACCESS TO THE PREMISES,

FAILURE OF A COMMUNICATIONS SATELLITE OR OUR NETWORK, INABILITY TO ACCESS OR INTERRUPTIONS IN ACCESSING PROGRAMMING, LOSS OF USE OF POLES OR OTHER UTILITY FACILITIES, STRIKE, LABOR DISPUTE, RIOT OR INSURRECTION, WAR, EXPLOSION, ACT OF TERRORISM, MALICIOUS MISCHIEF, FIRE, FLOOD OR OTHER ACTS OF GOD, FAILURE OR REDUCTION OF POWER, OR ANY COURT ORDER, LAW, ACT OR ORDER OF GOVERNMENT RESTRICTING OR PROHIBITING THE OPERATION OR DELIVERY OF THE SERVICE.

- b) YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT OR OTHER DEVICES PROVIDED BY OPENBAND (BUT ONLY IF THE WARRANTY IS INCLUDED WITH THE EQUIPMENT OR OTHER DEVICES), OPENBAND, ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES, ITS THIRD-PARTY LICENSORS, PROVIDERS AND SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. ALSO, THERE IS NO WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE. NO ADVICE OR INFORMATION GIVEN BY OPENBAND OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY WITH RESPECT TO ADVICE PROVIDED.
- c) OPENBAND DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF OPENBAND HAS ACCEPTED YOUR ORDER FOR SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY AND THE CONDITION OF WIRING INSIDE YOUR LOCATION, AMONG OTHER FACTORS. IF YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR OPENBAND SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT OTHER THAN YOUR OBLIGATION TO RETURN ANY EQUIPMENT).
- d) IN NO EVENT SHALL OPENBAND, ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES OR OPENBAND'S THIRD-PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (i) ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE, LOSS OF PROGRAMS OR INFORMATION OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, OR RELIANCE ON OR PERFORMANCE OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF OPENBAND HAS BEEN ADVISED OF THE POSSIBILITY OF ANY CLAIMS OR DAMAGES, OR (ii) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.
- e) THE LIABILITY OF OPENBAND, ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES, OR (SUBJECT TO ANY DIFFERENT LIMITATIONS OF LIABILITY IN THIRD-PARTY END-USER LICENSE OR OTHER AGREEMENTS) OUR THIRD-PARTY LICENSORS, PROVIDERS OR SUPPLIERS, FOR ALL CATEGORIES OF DAMAGES SHALL NOT EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL NONRECURRING CHARGES, REGULATORY FEES, SURCHARGES, FEES AND TAXES) YOU HAVE PAID TO OPENBAND FOR THE SERVICE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHEN A CLAIM AROSE, WHICH SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY REGARDLESS OF THE TYPE OF CLAIM OR NATURE OF THE CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL APPLY TO THE FULL EXTENT PERMITTED BY LAW, AND ARE NOT INTENDED TO ASSERT ANY LIMITATIONS OR DEFENSES WHICH ARE PROHIBITED BY LAW.
- f) ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION ALSO APPLY TO OPENBAND'S THIRD-PARTY LICENSORS, PROVIDERS AND SUPPLIERS, AS THIRD-PARTY BENEFICIARIES OF THIS AGREEMENT.
- g) THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

### 13. INDEMNIFICATION.

You agree to defend, indemnify and hold harmless OpenBand, its officers, employees, parent, subsidiaries and affiliates from and against all liabilities, costs and expenses, including reasonable attorneys' and experts' fees, related to or arising from your use of the Service, Equipment or Other Devices used in connection with the Service (or the use of your Service, Equipment or Other Devices by anyone else): (a) in violation of applicable laws, regulations or this Agreement; (b) to access the Internet or to transmit or post any message, information, software, images or other materials via the Internet; (c) in any manner that harms

any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property; or (d) in any manner that results in claims for infringement of any intellectual property rights.

#### 14. GENERAL PROVISIONS.

- a) Survival. All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination of the Agreement, including, without limitation, those relating to Limitation of Liability and Indemnification, shall survive such termination.
- b) Assignment. You agree not to assign or otherwise transfer this Agreement, or your rights and obligations under it, in whole or in part, to any other person. Any attempt to do so shall be void. Further, you agree to notify us of any changes of ownership of, or occupancy in, the Premises immediately upon such transfer of ownership or change in occupancy. We may freely assign all or any part of this Agreement with or without notice to you, and you agree to make all subsequent payments as directed.
- c) Applicable Law. Except as otherwise required by law, you and OpenBand agree that the substantive laws of the state and local area in which your Premises is located (Loudoun County, Virginia referred to as the "Service Jurisdiction"), without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or related in any way to the subject matter of this Agreement. Except as otherwise required by law, any cause of action or claim you 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 is forever waived.
- d) Waiver. OpenBand's failure at any time to insist upon strict compliance with any of the provisions of this Agreement shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and the unenforceable portion shall be construed as nearly as possible to reflect the original intent of the parties.
- e) Entire Agreement. This Agreement, including any policies or materials that are incorporated by reference, constitutes the entire agreement between you and OpenBand with respect to the subject matter and supersedes any and all prior or contemporaneous agreements whether written or oral. No changes by you to this Agreement shall be effective unless agreed to in writing, signed by an authorized person at OpenBand.
- f) Force Majeure. OpenBand will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes, work slow-downs or other labor-related activity, or an inability to obtain necessary Equipment, Other Devices or Services.

#### 15. EMAIL AND MESSAGING SERVICES.

- a) OpenBand does not authorize the use of its proprietary computers, servers, routers and computer network (the "OpenBand Network") to accept, transmit or distribute unsolicited bulk e-mail sent from the Internet to OpenBand subscribers (or to others). It is also a violation of OpenBand policy, and the law, to send or cause to be sent to, or through, the OpenBand Network e-mail that makes use of or contains invalid or forged headers, invalid or non-existent domain names or other means of deceptive addressing. OpenBand considers such e-mail to be unlawful and a violation of our policy, and any attempt to send or cause such e-mail to be sent to, or through, the OpenBand Network is unauthorized.

Moreover, any e-mail relayed from a third party's mail servers without the permission of that third party, or any e-mail that hides or obscures, or attempts to hide or obscure, the source of an e-mail also constitutes an unauthorized use of the OpenBand Network. E-mail sent or caused to be sent to the OpenBand Network that violates your agreement with OpenBand is also unauthorized. Nor does OpenBand authorize the harvesting or collection of screen names from the OpenBand Online service for the purpose of sending unsolicited e-mail. Any such action also constitutes violation of OpenBand policy.

- b) Limitations on Sending E-mail. You may not use the Service for spamming. This includes but is not limited to the following:
  - i. Sending bulk, unsolicited messages.
  - ii. Sending e-mails which provoke complaints from the recipients.
  - iii. Sending junk email.
  - iv. Using distribution lists that include people who have not given their permission to be included in such a distribution process.
  - v. Posting commercial ads to Usenet groups that do not permit them.
  - vi. Posting articles that contain binary-encoded data to non-binary newsgroups.



- vii. Sending excessive and repeated off-topic messages to newsgroups.
  - viii. Sending excessive and repeated cross-postings.
  - ix. Harassing other Internet users including but not limited to transmitting any threatening, libelous or obscene materials.
  - x. Posting or transmitting charity requests, petitions for signatures, chain letters or letters relating to pyramid schemes or contests, or any other duplicative or unsolicited messages (commercial or otherwise).
  - xi. Posting or transmitting through the Service any material that constitutes or contains advertising or any solicitation with respect to products or Service.
- c) OpenBand reserves the right to take all legal and technical steps available to prevent unsolicited bulk e-mail or other unauthorized e-mail from originating from, entering, utilizing or remaining within the OpenBand Network. Such action may include, without limitation, the use of filters or other network devices to scan e-mail transmitted from or to the OpenBand Network, immediate termination of OpenBand service, and prosecution of offenders through criminal or civil proceedings. In no event shall any failure by OpenBand to enforce this policy constitute a waiver of OpenBand's rights.
- d) Unauthorized use of the OpenBand Network in connection with the transmission of unsolicited bulk e-mail, including the transmission of counterfeit e-mail, may result in civil and criminal penalties against the sender, including those provided by the Computer Fraud and Abuse Act (18 U.S.C. § 1030 et seq.); and various state laws, including the Virginia Computer Crimes Act (Va. Code Ann. § 18.2-152.2 et seq.) (as amended.)
- e) OpenBand reserves the right in our sole discretion to provide the level of security we deem appropriate to safeguard our network and customers, and other Internet users, against Internet threats or abuses, including viruses, spam and phishing threats. These security measures may include, but are not limited to, the use of firewalls and block lists to block potentially harmful or abusive emails or attachments, anti-spam filters, anti-virus and anti-spyware software, and blocking selected ports. Such activities may result in the blocking, filtering or non-delivery of legitimate and non-legitimate email sent to or from your email account. By using any OpenBand-provided email service, you agree that delivery and receipt of email is not guaranteed and to OpenBand's use of such Internet and email security measures we in our sole discretion deem appropriate.