



## WESTPHALIA TELEPHONE COMPANY AND WESTPHALIA BROADBAND INC ACCEPTABLE USE POLICY FOR INTERNET SERVICES

Westphalia Telephone Company and Westphalia Broadband, Inc. (collectively referred to herein as “WTC/WBI”) have adopted this Acceptable Use AUP (“AUP”) to outline the acceptable use of WTC/WBI Internet service (“Internet Service”). This AUP is in addition to any restrictions contained in the WTC/WBI Terms and Conditions (the “Terms and Conditions”) are available at: <http://4wbi.net/terms-conditions-of-service/> .

All capitalized terms used in this AUP that are not defined here have the meanings given to them in the Terms and Conditions.

The customer is responsible for complying with this AUP. Your failure to comply with this AUP could result in the suspension or termination of your Internet Service account. If the customer does not agree to comply with this AUP, customer must immediately stop all use of the Internet Service and notify WTC/WBI to close the customer’s account(s).

WTC/WBI may revise this AUP from time to time by posting a new version on the WTC/WBI Website at <http://4wbi.net/> . WTC/WBI will use reasonable efforts to make customers aware of any changes to this AUP, which may include sending e-mail notifications or posting information on the WTC/WBI Website. Revised versions of this AUP are effective immediately upon posting. Accordingly, Internet Services customers should read any WTC/WBI announcements they receive and regularly visit the WTC/WBI Website and review this AUP to ensure that their activities conform to the most recent version the AUP. Customer can send questions regarding this AUP to, and report violations of it at [Customercare@4wbi.net](mailto:Customercare@4wbi.net) to report illegal content on the Internet go to [www.ftc.gov](http://www.ftc.gov).

### **I. Prohibited Uses and Activities**

This AUP prohibits any use or activity of the Internet Service that is illegal, infringe the rights of others including intellectual property rights, or interferes with or diminishes the use and enjoyment of the Internet Service by others.

#### **A. Network and Usage Restrictions**

No user of the Internet Service, Customer Equipment, or the WTC/WBI Equipment, will individually or in combination with another:



1. Restrict, inhibit, or otherwise interfere with the ability of any other user, regardless of intent, purpose or knowledge, to use or enjoy the Internet, including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;
2. Restrict, inhibit, interfere with, or otherwise disrupt performance of the Internet Service or cause a performance degradation;
3. Regardless of intent, purpose or knowledge, cause service degradation to the Internet Service or any WTC/WBI (or WTC/WBI supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any WTC/WBI (or WTC/WBI supplier) facilities used to deliver the Internet Service;
4. Resell the Internet Service or otherwise make available to anyone outside the Customer's Premises the ability to use the Internet Service (for example, through Wi-Fi or other methods of networking), in whole or in part, directly or indirectly. The Internet Service is for personal and non-commercial residential use only and you agree not to use the Internet Service for operation as an Internet service provider or for any business enterprise or purpose (whether or not for profit);
5. Connect the WTC/WBI Equipment to any computer outside of your Premises;
6. 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;
7. Accessing and using the Internet 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 Internet 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 an Internet Service plan that expressly permits you to do so.

#### **B. Conduct and Information Restrictions**

No user of the Internet Service, Customer Equipment, or the WTC/WBI Equipment, will individually or in combination with another:

1. Avoid incurring charges for or otherwise avoid paying for usage of the Internet Service;
2. Invade another person's privacy, stalk, harass, or otherwise violate the rights of other persons;
3. Undertake or accomplish any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening or defamatory, or which infringes 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, federal, or non-U.S. law, order, or regulation;



4. Post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be unlawful;
5. Upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Internet Service or otherwise that is protected by copyright or other proprietary right, without obtaining all required permission of the owner;
6. Collect, or attempt to collect, personal information about third parties without their consent;
7. Transmit unsolicited bulk or commercial messages commonly known as "spam";
8. Send voluminous 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 disrupts a server, account, blog, newsgroup, chat, or similar service;
9. Initiate, perpetuate, or in any way participate in any pyramid or other illegal scheme;
10. Participate in the collection of voluminous amounts 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;
11. Collect responses from unsolicited bulk messages;
12. Falsify, alter, or remove message headers;
13. Falsify references to WTC/WBI or its network, by name or other identifier, in messages;
14. 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");
15. Violate the rules, regulations, terms of service, or policies applicable to any network, server, computer database, service, application, system, or Website that you access or use.

### **C. Technical Restrictions**

No user of the Internet Service, Customer Equipment, or the WTC/WBI Equipment may, individually or in combination with another:

1. Use the Internet service or facilities for Web hosting, e-mail hosting, or other unusually high bandwidth consumption unless you have made special subscription arrangements with WTC/WBI and the usage does not otherwise violate law or regulation;
2. 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;
3. Use or distribute tools or devices designed or used for compromising security or whose use is otherwise unauthorized, such as password guessing programs, decoders, password gatherers,



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

4. Copy, distribute, or sublicense any proprietary software provided in connection with the Internet Service by WTC/WBI or any third party, except that you may make one copy of each software program for back-up purposes only;
5. Distribute programs that make unauthorized changes to software (cracks);
6. 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;
7. 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;
8. Service, alter, modify, or tamper with the WTC/WBI Equipment or Internet Service or permit any other person to do the same who is not authorized by WTC/WBI.



## **II. Customer Conduct and Features of the Internet Service**

### **A. Customer Obligations**

In addition to being responsible for customer's compliance with this AUP, customer is also responsible for any use or misuse of the Internet Service that violates this AUP, even if a friend, family member, or guest with access to customer's Internet Service account commits a violation of this AUP. Therefore, customer must take steps to ensure that others do not use your account to gain unauthorized access to the Internet Service by, for example, strictly maintaining the confidentiality of your Internet Service login and password. In all cases, customer is solely responsible for the security of any device customer chooses to connect to the Internet Service, including any data stored or shared on that device. It is also customer's responsibility to secure the Customer Equipment and any other Premises equipment or programs not provided by WTC/WBI that connect to the Internet Service from external threats such as viruses, spam, bot nets, and other methods of intrusion.

### **B. WTC/WBI's Rights**

WTC/WBI reserves the right to refuse to transmit or post, and to remove or block, any information or materials, in whole or in part, that WTC/WBI, in its sole discretion, deems to be in violation of Sections I or II of this AUP, or otherwise harmful to WTC/WBI's network or customers using the Internet Service, regardless of whether this material or its dissemination is lawful so long as it violates this AUP. Neither WTC/WBI nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, file transfer, blog, newsgroup, and instant message transmissions) made on the Internet Service. However, WTC/WBI and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this AUP and to disclose, block, or remove them in accordance with this AUP, the Subscriber Agreement, and applicable law.

### **C. Service Restrictions**

All of WTC/WBI's network and system services are provided according to scheduled fees for each type of service. You agree to use such services in accordance with the terms set forth below.

#### **1. Email and Web Hosting Services**

- i. Unsolicited Email Prohibited - You may not use WTC/WBI-hosted email addresses for the purpose of sending unsolicited email. You may not use or cause to be used WTC/WBI's equipment, network connectivity, or other resources to originate, deliver, relay or otherwise transmit unsolicited email messages. You may not engage in any of the foregoing prohibited activities by using the service of any other provider, third-party agent, re-mailing service or address forwarding service, in such a way that WTC/WBI's



- network addresses or WTC/WBI-hosted Web or email services are in any way identified as being associated with the sending of unsolicited email.
- ii. Unauthorized use, or forging, of mail header information (e.g. “spoofing”) is prohibited.
  - iii. Fraudulent Activity Prohibited – You may not use the WTC/WBI email and Web hosting services to make fraudulent offers to sell or buy products, items, services, or to advance any type of financial scam such as “pyramid schemes”, “Ponzi schemes”, or “chain letters”. You may not use techniques to hide or obscure the source of any e-mail or other communications.
  - iv. WTC/WBI, in its sole discretion, reserves the right to suspend or delay delivery of email to customer’s utilizing the WTC/WBI email services or the virtual domain email if the volume of email being redirected, stored, or delivered on the customer’s behalf is deemed excessive. Excessive traffic is defined as any amount of email that consumes more than 10MB of disk storage space per individual mailbox or any volume of email traffic that noticeably degrades performance on the server in question. Stored mail exceeding these limits may be transferred to a compressed file. WTC/WBI will attempt to notify the account holder via the account contact information on record, however WTC/WBI reserves the right to delete the contents of such email boxes thirty (30) days after attempted notification.

The Internet Service may not be used to communicate or distribute e-mail or other forms of communications in violation of this AUP. As described below in Section III of this AUP, WTC/WBI uses reasonable network management tools and techniques to protect customers from receiving spam and from sending spam (often without the customer’s knowledge). WTC/WBI reserves the right to restrict, suspend or discontinue providing any Service in the event of Customer’s violation of this AUP.

WTC/WBI is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address. WTC/WBI is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. WTC/WBI, in its sole discretion, will return to the sender, ignore, delete, or temporarily store misdirected e-mails. In the event that WTC/WBI believes that any subscriber name, account name, or e-mail address (collectively an “identifier”) on the Internet Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, WTC/WBI (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, WTC/WBI may at any time reserve any identifiers on the Internet Service for WTC/WBI's own purposes. In the event that an Internet Service account is terminated for any reason, all e-mail associated with that account would be permanently deleted.

## 2. Instant, Video, and Audio Messages

Each user is responsible for the contents of his or her instant, video, and audio messages and the consequences of any of these messages. WTC/WBI assumes no responsibility for the timeliness, mis-



delivery, deletion, or failure to store these messages. In the event that an Internet Service account is terminated for any reason, all instant, video, and audio messages associated with that account would be permanently deleted.

### **III. Network Management and Limitations on Data Consumption**

WTC/WBI manages its network with the goal of delivering a fast, safe and uncompromised Internet experience to all of its customers', however high-speed bandwidth and network resources are not unlimited. Managing the network is essential to providing the best possible Internet experience to all of WTC/WBI's customers. WTC/WBI uses network management practices that are consistent with industry standards. WTC/WBI uses tools and technologies that are minimally intrusive and, in its independent

judgment guided by industry experience, among the best in class. WTC/WBI's network management practices will change and evolve along with the uses of the Internet to meet the ever-changing challenges and threats on the Internet.

#### **A. Network Management**

WTC/WBI uses various tools and techniques to manage its network, deliver the Internet Service, and ensure compliance with this AUP and the Terms and Conditions. These tools and techniques are dynamic, like the network and its usage, and change frequently. WTC/WBI's network management practices 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 lowering the priority of traffic for users who are the top contributors to current network congestion; and (iv) using other tools and techniques that WTC/WBI may be required to implement in order to meet its goal of delivering the best possible Internet experience to all of its customers.

#### **B. Network Usage and Data Consumption Restrictions**

Customer acknowledge that all of the WTC/WBI Internet services are intended for periodic, active use of email, user newsgroups, transfers via File Transfer Protocol ("FTP"), Internet chat, Internet games, and browsing of the Internet. Customer must comply with all current bandwidth, data storage, and other limitations of WTC/WBI's Internet Services established by WTC/WBI and WTC/WBI suppliers. Customer agrees not to intentionally use the WTC/WBI Internet Services on a standby or inactive basis in order to maintain a connection. The excessive use or abuse of WTC/WBI's network resources by one Customer may have a negative impact on all other WTC/WBI Customers. Accordingly, customer may not use the WTC/WBI Internet Services or take any action, directly or indirectly, that will result in excessive consumption or utilization of the system or network resources, or which may weaken network performance, as determined by WTC/WBI. Such prohibited actions include, but are not limited to: (i) using the WTC/WBI Internet Services to host a Web server site which attracts excessive traffic at customer's location; (ii) continuously uploading or downloading streaming video or audio; (iii) use net



hosting; (iv) continuous FTP uploading or downloading; or (v) acting in a manner that negatively affects other users' ability to engage in real time exchanges and use of the WTC/WBI Internet Services.

The Internet Service is for personal and non-commercial residential use only. Therefore, WTC/WBI reserves the right to suspend or terminate Internet Service accounts where data consumption is not characteristic of a typical residential user of the Internet Service as determined by WTC/WBI in its sole discretion.

Common activities that may cause excessive data consumption in violation of this AUP include, but are not limited to, numerous or continuous bulk transfers of files and other high capacity traffic using (i) FTP; (ii) peer-to-peer applications; and (iii) newsgroups. Customer must also ensure that your use of the Internet Service does not restrict, inhibit, interfere with, or degrade any other person's use of the Internet Service, nor cause an overly large burden on the network. In addition, customer must ensure that its use of the Internet Service does not limit or interfere with WTC/WBI's ability to deliver and monitor the Internet Service or any part of its network.

If customer's use the Internet Service violates the restrictions in this AUP, WTC/WBI may, in its sole discretion, suspend or terminate customer's Internet Service or request that customer subscribe to a different Internet Service plan (such as a commercial grade Internet service) if the customer wishes to continue to use the Internet Service at higher data consumption levels. WTC/WBI may also provide Internet Service plans with different speed and data consumption limitations, among other characteristics, subject to applicable Internet Service plans.

WTC/WBI's determination of the data consumption for Internet Service accounts is final.

#### **IV. Violation of this AUP**

WTC/WBI reserves the right to immediately suspend or terminate customer's Internet Service account if customer violates the terms of this AUP or the Terms and Conditions.

WTC/WBI does not routinely monitor the activity of individual Internet Service accounts for violations of this AUP, except for determining aggregate data consumption in connection with the data consumption provisions of this AUP. However, in WTC/WBI's efforts to promote good citizenship within the Internet community, it will respond appropriately if it becomes aware of inappropriate use of the Internet Service. WTC/WBI has no obligation to monitor the Internet Service or the network, however, WTC/WBI and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to protect the network and WTC/WBI Internet Service customers, efficiently operate the Internet Service and identify violations of this AUP.



WTC/WBI prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action, however if the Internet Service is used in a way that WTC/WBI or its suppliers, in their sole discretion, believe violates this AUP, WTC/WBI or its suppliers may take any responsive action they deem appropriate under the circumstances with or without notice. 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 Internet Service. WTC/WBI, its affiliates, suppliers, and agents will have no liability for any of these responsive actions. These actions are not WTC/WBI's exclusive remedies and WTC/WBI may take any other legal or technical actions it deems appropriate with or without notice.

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

The failure of WTC/WBI or its suppliers to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time. Customer agrees that if any portion of this AUP 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. Customer agrees to indemnify,

defend and hold harmless WTC/WBI and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from any violation of this AUP. Customer's indemnification will survive any termination of the customer's agreement(s) with WTC/WBI.

#### **V. Copyright and Digital Millennium Copyright Act Requirements**

WTC/WBI is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Internet Service to comply with these laws. Accordingly, customer may not store any material or content on, or disseminate any material or content over, the Internet Service (or any part of the Internet Service) in any manner that constitutes an infringement of third party intellectual property rights, including but not limited to rights granted by the United States ("U.S") or foreign countries copyright laws. 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 [Customercare@4wbi.net](mailto:Customercare@4wbi.net). It is WTC/WBI's policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Internet Service provided to any customer or user who is either found to have infringed a third party copyright or other intellectual property rights of a third party, or who WTC/WBI, in its sole discretion, believes is



infringing these rights. WTC/WBI may terminate the Internet Service at any time with or without notice for any affected customer or user.