

HOMETOWN UTILICOMSM FIBER OPTIC SERVICES
EXPLANATION OF TERMS AND CONDITIONS OF SERVICE CONTRACT

BY ACCEPTING SERVICES FROM HOMETOWN UTILICOMSM, YOU AGREE TO ACCEPT AND COMPLY WITH THE TERMS AND CONDITIONS OF SERVICE CONTRACT DESCRIBED IN THIS EXPLANATION. IN THIS EXPLANATION, YOU ARE THE "CONSUMER" AND HOMETOWN UTILICOMSM IS "HOMETOWN".

1. **Applicable Terms.** All capitalized terms used in this explanation which are not defined in this explanation shall have the respective meanings given to such terms in Chapter 110 of the Code of the Borough of Kutztown, titled "FIBER OPTIC COMMUNICATIONS NETWORK STANDARDS", and such Fiber Optic Communications Network Standards, as amended from time to time, are incorporated herein. By accepting the Services, Consumer agrees to be bound by the terms of such Fiber Optic Communications Network Standards and the terms and conditions described in this explanation, as each are amended from time to time, during such time as the Consumer is obtaining Services from Hometown.
2. **Rates.** All rates and fees charged the Consumer by Hometown are subject to change, from time to time, by action of the Borough Council of the Borough of Kutztown.
3. **Billing and Payment.** All bills for Service shall be rendered by Hometown before the 15th day of each month of each year, and such bills shall include the Service charges for the immediately succeeding month, reflecting the Service and consumption for which the Consumer currently has a Service Contract at the time of billing. All such bills shall be due and payable on or before the last day of the same month in which they were rendered. All bills remaining unpaid after the due date may be subject to a penalty and interest as adopted from time to time by Resolution of Borough Council as part of the Schedule of Rates and Services, which penalty plus interest shall be computed on the unpaid balance. Adjustments to reflect changes to the Services which a Consumer actually received during any month, including new Services and any disconnections, shall be reflected in the monthly billing issued after such month.
4. **Deposit.** A deposit, if required, shall be paid, held and refunded in accordance with the Fiber Optics Communication Network Standards.
5. **Permissible Consumer uses.**
 - A **Retail Use.** Service shall not be used by any Consumer for any purpose or in any place other than the Unit stipulated in this Service Contract and the uses stipulated in the Schedule of Rates and Services, nor shall Service supplied by Hometown be resold, on either a wholesale or retail basis, or used by any person other than the Consumer contracting with the Hometown, except with the prior written permission of Hometown.
 - B **Unauthorized Use.** Unauthorized connection to the Network may be terminated by Hometown without notice. Use of any Service without first notifying Hometown, or the provision of any service to Network users by a person who is not a Wholesale Provider is strictly prohibited, and may subject the unauthorized user to prosecution, fines and penalties.
 - C **Illegal Use.** The Network may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited.
6. **Maintenance of Services by Hometown.**
 - A **Notice of Network Hazard.** The Consumer shall immediately notify Hometown promptly of any Network Hazard that the Consumer may discover. Such notification shall be made to such persons and in such manner as Hometown may designate from time to time. A "Network Hazard" is any condition posing an actual or potential threat of damage to the physical properties of the Network, the Consumer's Installation or endangerment to the public safety, health and welfare, including, but not limited to, any such condition posing an actual or potential disruption or interruption of communication on the Network.
 - B **Continuity of Service.** Hometown will use reasonable diligence to preserve, as nearly as possible, the continuity and availability of Service provided to Consumers, subject to:
 - (a) Acts of God or of a public enemy;
 - (b) Fires, severe weather, floods, earthquakes, natural disasters, explosions or other catastrophes;
 - (c) Embargoes, epidemics or quarantine restrictions;
 - (d) Technical causes beyond the control of Hometown in furnishing services, including, but not limited to, breakdown or failure of equipment and failure of outside communications capabilities interfacing or connecting with the Network and the Internet;
 - (e) Unauthorized, intentional and/or negligent acts constituting a Network Hazard, including, without limitation, computer viruses and attempts to overload computers or the Network;
 - (f) Delays of suppliers or transportation;

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- (g) Shortages of goods, labor strikes, labor slowdowns, differences with workers or labor stoppages of any kind; and/or
- (h) Acts of the United States or any state or subdivision or instrumentality thereof, except Hometown.

7. Hometown liability.

A Liability Limitations. The Services provided by Hometown (and any information, data and software contained therein or in the Network) are provided "AS IS" and "AS AVAILABLE", WITHOUT WARRANTY OF ANY KIND TO CONSUMER OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF (1) MERCHANTABILITY; (2) FITNESS FOR A PARTICULAR PURPOSE; (3) EFFORT TO ACHIEVE PURPOSE; (4) QUALITY; (5) ACCURACY; (6) NON-INFRINGEMENT; (7) QUIET ENJOYMENT; (8) TITLE; AND (9) CONTINUITY, RELIABILITY AND AVAILABILITY OF SERVICE. CONSUMER AGREES THAT ANY EFFORTS BY HOMETOWN TO MODIFY ITS SERVICES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY HOMETOWN WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. CONSUMER FURTHER AGREES THAT BOROUGH SHALL NOT BE LIABLE TO CONSUMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY PENALTIES OF ANY KIND WHETHER UNDER THIS CHAPTER, ANY SERVICE CONTRACT, OR OTHERWISE, EVEN IF HOMETOWN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS GROSSLY NEGLIGENT. Hometown's liability is limited to the greatest extent permitted by law. Acceptance of delivery of Services shall constitute a waiver and release of Hometown by the Consumer for any claim for damages, setoff, discount or other liability on account of delay.

8. Disconnection of Service by Hometown. Hometown may disconnect and shutoff Service to a Consumer for failure to pay bills which have been rendered, for violation of applicable rules and regulations, for safety purposes, and for fraud. Hometown may also disconnect the Consumer's Services if you: (a) pay late more than once in any 12 months; (b) incur charges larger than any required deposit (even if we have not yet billed them); (c) exceed your credit limit, if any; (d) make a false statement to Hometown; (e) interfere with Hometown's Services to consumers or other business operations; (f) become insolvent or go bankrupt; and/or (g) breach any part of this agreement. Hometown may also discontinue Service if: (h) Hometown cannot verify your credit information; (i) Hometown believes your Service is being misused or used by anyone for unlawful activity; and/or (j) your use of Service adversely affects the provisioning of Service to other consumers. In the case of any failure of a Consumer to pay any bill for services within three (3) days of the due date, Hometown reserves the right to disconnect the Service to such Consumer with five (5) calendar day's notice. Disconnection for cause or violation of rules and regulations may be made upon five (5) days notice. Reconnection of Service after a disconnection for reasons other than safety will occur only upon payment in advance of the reconnection fee then in effect.

9. Discontinuance of Service by Consumer. The Consumer shall give Hometown at least three (3) working days notice to discontinue Service, and the Consumer shall be liable for Service taken until the Service disconnect date specified by the Consumer. Such notice prior to the expiration of a Service Contract term will not relieve the Consumer from any minimum or guaranteed payments under any Contract or under the Schedule of Rates and Services. The final bill for Service is due and payable immediately after notice is received by Hometown to discontinue Service and the final billing is sent to the Consumer.

10. Miscellaneous. If either Hometown or you waive any part of this Service Contract in one instance, that waiver shall not constitute a waiver of any other provision or any other instance. Hometown may assign all or part of this Service Contract without notice, and you agree to make all subsequent payments as instructed. (Assignment will release Hometown from all liability for the rights or duties involved.) You cannot assign any part of this Service Contract or any of your rights or duties without Hometown's prior written approval. All written notices are considered delivered to you when mailed to the billing address Hometown has on file for you at the time, or to Hometown when mailed to Hometown's customer service address on your most recent bill. You represent that you have the legal capacity to agree to this Service Contract. If you are ordering for a company, you are representing that you are authorized to bind the company, and where the context requires "you" in this Service Contract will mean that company. If any part of this Service Contract is held invalid, that will not have any effect on any other part, unless your or Hometown's rights or duties are materially impaired. You cannot rely on any other document or statement by anyone, and you have no other rights with respect to Services or this Service Contract, except as specifically provided by law (including the Fiber Optic Communications Network Standards) or in this Service Contract. This Service Contract is not for the benefit of any third party except Hometown's affiliates and predecessors and successors in interest. This Service Contract is governed by the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules. HOMETOWN UTILICOMSM IS A SERVICE MARK AND TRADE MARK OF THE BOROUGH OF KUTZTOWN.

11. How to Contact Hometown. To ask questions, to discuss your bill, to complain, to obtain additional Services, and to obtain other customer assistance, please contact Hometown at:

BY MAIL OR IN PERSON:
Customer Service Representative
Hometown UtilicomSM
45 Railroad Street
Kutztown, PA 19530

BY TELEPHONE:
610.683.5722
or
610.683.6131

BY EMAIL:
www.kutztownboro.org and click on Hometown UtilicomSM Inquiry Link