



## OpticalTel Circuit/Service Agreement

**TARIFFS AND ENTIRE AGREEMENT:** References to this Agreement to “we”, “us” and “our” mean OpticalTel and its operating subsidiaries (Opticaltel). References in this agreement to “you” and “your” mean customer or subscriber. The services, in whole or in part, are subject to federal and state tariffs and our rates, terms and conditions and which are incorporated herein by reference (as if fully stated herein) (the “Terms”). We may amend the Terms from time to time. Any discounts on the services are based solely upon the pricing set forth in the Terms. This Agreement for Telecommunications Services Form (the “Form”), together with the Terms and the Letter of Authorization (LOA) and any applicable addendum (collectively the “Agreement”), establish the terms and conditions upon which we agree to provide you service. The Agreement sets forth the entire understanding between the parties and supersedes any prior or contemporaneous oral or written representations, offers or proposals made by us or representatives of us. The Terms, the Terms shall control. By accessing or using our Websites, Networks, and Services, you agree to these terms as OpticalTel may modify them from time to time. If you do not agree to accept and comply with the Agreement, do not access or use our Websites, Networks, or Services.

**PROVISION AND BILLING OF SERVICE, AND PAYMENT:** We will generally bill you on a monthly basis for a minimum period of one month. Usage charges and usage shortfalls, as well as long distance toll charges are billed in arrears. Most monthly recurring and non-recurring charges are billed in advance. Monthly Recurring Charges (MRC) shown in Proposal/Agreement exclude installation charges, taxes, surcharges, regulatory charges, Federal Universal Service Fund charges, and other Carrier Cost Recovery fees. Billed charges include applicable taxes and tax-related surcharges. At any time we may require you to make reasonable deposits or other assurances of payment. We may terminate your service or the Agreement if you fail to make such requested deposits or assurances of payment. Full payment of any invoice is due within 10 days after receipt of invoice, or as provided for in the Terms, and becomes past due thereafter. A monthly late payment fee of 1.5% (or lower as required by law) may be assessed for past due amounts. You shall provide us with written notice of any disputed charges appearing on your invoice within thirty (30) days after receipt of your invoice. You hereby agree to pay all costs and expenses incurred by us in the collection of unpaid amounts, including but not limited to attorneys’ fees and court costs, to the extent permitted by law.

**DEMARCATIION POINT:** The physical point at which the public network of a telecommunications company (i.e., a phone or cable company) ends and the private network (customer-premises equipment) of a customer begins; OpticalTel is not responsible for inside-wiring, including any and all costs associated therewith, from the Demarcation Point to your equipment.

**RIGHT TO CANCEL ORDER:** We will make reasonable efforts to provide you with the services ordered under the Agreement, however, there may be circumstances in which we may not be able to provide such services. If we determine that we cannot provide services to you efficiently or on the terms and conditions contemplated by the Agreement, we may immediately terminate the Agreement without liability and without further obligations.

**TERMINATION:** We may suspend or terminate your service or the Agreement in accordance with our rights in the Agreement and our normal business practices without liability and without waiving any other legal or equitable rights that we may have. We may declare you in breach of the Agreement if your account is not paid current, or if you fail to meet any other obligation contained in the Agreement. If, after the Effective Date, the Agreement is terminated by us for your breach or by you, you shall upon demand by us pay an early termination fee, on a service location basis, equal to the greater of (1) \$75.00 multiplied by the remaining number of months in the term, or (2) 75% of the average of all billed monthly recurring charges multiplied by the remaining number of months in the term. You shall reimburse us for any promotional credits and installation fee waivers as granted to you during the term of the Agreement. Charges for such early termination shall constitute liquidated damages and are not imposed as a penalty. We may terminate the Agreement at any time without liability upon thirty (30) days written notice. You may terminate the Agreement without liability before the expiration date if you sign a new agreement with us for equal or greater monthly revenue and term. Upon termination of this Agreement for any reason, it is your responsibility to switch to a new carrier. You shall be responsible for any and all outstanding charges owed to us at the effective date of termination, and you shall be liable for all charges incurred during the transition to a new carrier. After 30 days any unpaid balance will be referred to a collections agency.

**PROMOTIONAL DISCOUNTS:** You may have received a Promotional discount which would have been applied as agreed in the service order. If the contract is in default you will be liable for all discounts provided.

**APPROXIMATE INSTALLATION DATE:** Approximate installation date does not apply to METRO-E circuits which can take up to 12 months to complete.

**TERM AND RENEWAL OF TERM:** This Agreement is effective when signed by us (the "Effective Date"). The term of the Agreement shall continue for the duration of the term as set forth in the Agreement but in no case less than for a one-year term. Upon the expiration of the original term, the Agreement shall automatically renew for the same Terms, Conditions and period unless either party provides the other party at least sixty (60) days advance written notice of the intent to terminate the Agreement. Such written notice shall be sent via Certified U.S. Postal Service, return receipt requested to:

**Contracts Department  
OpticalTel / HControl/ Vox3Com/ DSLi  
1360 South Dixie Highway  
Suite 200  
Coral Gables, FL 33146**

**HARDWARE:** Any hardware leased on a monthly basis or provided at no charge remains property of OpticalTel. Upon termination of contract term, the customer can purchase the equipment or return it in working conditions. Customer will be charged full equipment price if it is returned defective or non-working status.

**LIMITATION OF LIABILITY; NO SPECIAL DAMAGES; DISCLAIMER OF WARRANTIES:** THE ENTIRE LIABILITY OF US AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ALL CLAIMS OR DAMAGES OF WHATEVER NATURE ARISING FROM OR IN ANY WAY RELATED TO THE AGREEMENT ON THE PROVISION OF SERVICE (INCLUDING THE FAILURE TO PROVIDE SERVICE), INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, WHETHER SUCH DAMAGES ARE ASSERTED IN AN ACTION BROUGHT IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR PURSUANT TO SOME OTHER THEORY (INCLUDING DECEPTIVE TRADE PRACTICE CLAIMS) AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN SHALL BE LIMITED TO THE LESSER OF (1) AMOUNTS PAID TO US UNDER THE AGREEMENT, OR (ii) REFUNDS IN AN AMOUNT EQUAL TO THE PROPORTIONAL MONTHLY CHARGES TO YOU FOR THE PERIOD OF SERVICE DURING WHICH ANY MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR, OR DEFECT IN THE SERVICE OR EQUIPMENT, OR ANY OTHER EVENT OR ACTION GIVING RISE TO ANY CLAIM, OCCURS. THIS LIMITATION OF LIABILITY APPLIES TO ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, COSTS OR ATTORNEYS' FEES ARISING IN WHOLE OR IN PART, FROM WARRANTIES, EXPRESS OR IMPLIED, DEFECTS IN MATERIALS, WORKMANSHIP OR DESIGN, NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR ANY OTHER BASIS OF LIABILITY FROM US. YOU ARE SOLELY RESPONSIBLE FOR ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS AND EXPENSES ARISING OUT OF THE USE OF THE SERVICES BY YOU, YOUR USERS, OR ANY OTHER PERSON OR ENTITY USING THE ACCOUNT WITH OR WITHOUT YOUR KNOWLEDGE OR CONSENT. SOME JURISDICTION MAY NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY, AND WE LIMIT OUR LIABILITY IN SUCH JURISDICTION ONLY TO THE DEGREE ALLOWED BY APPLICABLE LAW. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, WE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES, GOODWILL OR COSTS TO COVER WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF OUR EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER WE HAVE BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. WE MAKE NO WARRANTIES ON AGENTS, AND REGARDLESS OF WHETHER WE HAVE BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. WE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**WE ARE NOT RESPONSIBLE FOR TERMINATION CHARGES OF OTHER CARRIERS:** In selecting our services, you understand that you are canceling any services currently provided by your existing service provider, and that our services and features may differ from the services currently provided by your existing service provider. You further acknowledge that you may be assessed termination or other charges by your existing service provider based upon the terms and conditions that apply to such service. Payment of such termination or other charges shall be your responsibility.

**MULTIPLE SERVICE LOCATIONS:** We offer optional intra-company calling (local, intraLATA, and interLATA) to our facilities based customers with multiple locations. Intra-company calling does not include BYY, international calling, operator assisted calls, directory assistance services, calling card usage or usage sensitive feature activation. In order to be eligible for intra-company calling, you must select us as your primary, pre-subscribed provider for local, intraLATA, and interLATA service for

each of your eligible locations. Our intra-company calling is intended for normal voice traffic only. Minutes of use are measured per billing telephone number. No usage charges will be incurred for intra-company calling; however, you will be billed our standard usage rates for all intra-company usage that exceeds 1,500 minutes per line per month. We may immediately discontinue your use of intra-company calling if we determine, in our sole discretion, that you are using the intra-company calling in an abusive or fraudulent manner or in a manner inconsistent with the Agreement.

**TOLL CALLS:** The long distance rates charged by us assume that no more than 20% of your volumes are destined to high cost regions. High-cost regions are those operated by independent telephone companies or other non-Bell destination codes. Operating companies affiliated with the various Regional Bell Operating Companies are typically assigned Operating Company Number ("OCN") in the 9000 series or the 5000 series. For purposes of this section, any toll call destined to an Area Code/Prefix or NPA/NXX assigned to a carrier with an OCN other than the 900 series will be presumed to be "high cost". If, in any one billing period, the total volumes of your toll calls are found to have more than 20% high-cost traffic, a surcharge of \$0.05 per minute will be applied to all high-cost volumes. In such instances where you exceed the 20% limit for three (3) or more months, then you are considered in breach of the Agreement and may exercise our rights under TERMINATION, above. In addition, you are responsible for usage charges for toll calls whether authorized or unauthorized by you.

**CHANGE IN RATES:** OpticalTel may revise the long distance (inter-lata, interstate and international) rates it charges its customers upon written notice to the customer. The written notice required under this paragraph is via electronic mail sent to the e-mail address of the customer as on file with OpticalTel as of the date of the revision. Unless a later effective date is otherwise stated in the notice, domestic and international rates are effective within thirty (30) days and international rates are effective within seven (7) of the date of OpticalTel's written notice.

**TOLL-FREE NUMBERS: YOU ARE RESPONSIBLE FOR ALL USAGE ON YOUR TOLL-FREE (e.g. 8yy) NUMBERS (INCLUDING WITHOUT LIMITATION, CHARGES FOR INCOMPLETE AND WRONG NUMBER CALLS). YOU SHALL DEFEND AND INDEMNIFY US FROM ALL LIABILITIES RELATED TO YOUR TOLL-FREE NUMBERS. WE SHALL HAVE NO LIABILITY TO YOU OR ANY THIRD PART WITH RESPECT TO ANY PREMATURE OR INCORRECT PUBLICATION OR ADVERTISEMENT OF A TOLL-FREE NUMBER.** Requests for toll free numbers area are controlled by an independent agency based on availability at the time an order is submitted to the agency. We do not guarantee the availability of any requested toll-free number. You may not reserve or activate a toll-free number for the primary purpose of selling, brokering, bartering or leasing the toll-free number for a fee or other consideration. You have no proprietary interest in any toll-number, but you do have a qualified control interest in your active toll-free numbers. If upon cancellation of our toll-free service, you do not submit a written request for the appointment of a new responsible organization or service provider for your toll-free numbers within 20 days after such cancellation, you release all rights to use or control such toll-free numbers. You are subject to any toll free service policies and procedures implemented by us from time to time.

**VANITY NUMBERS:** OpticalTel offers Vanity Numbers on a shared use bases only. This means we offer Shared Usage of our Vanity Numbers to accounts billing over \$1,500 per month, while account is active and current on payment, the right to exclusively license our Vanity Number(s) via a call-forward from our account to point to customer's main number to do business. Vanity Numbers remain property of OpticalTel and cannot be Ported. Vanity Numbers can be immediately shut-off if any of the following occurs: If Customer fails to pay their OpticalTel Invoice by due date; If Customer cancels service; If Customer is disconnected for any provision in this Agreement; If OpticalTel receives a port request for its Vanity Number; If Customer's monthly billing falls below \$1500 per month in Monthly Recurring Service or Upon Expiration of this Agreement.

**TELECOMMUNICATIONS FACILITIES AND INTERNET ACCESS:** Service will, at our sole option, be provided via telecommunications facilities owned by us, via telecommunications facilities leased from one or more other telecommunication carriers or via a combination of the foregoing, provided our ability to provide such service is not materially impaired. Without limiting the generality of the foregoing, you authorize us to convert service being provided solely through the facilities of one or more other carriers (i.e. resale service) to service being provided in whole or in part over our facilities (i.e. Facilities-based service). We are offering hereunder a particular speed for our Internet access services. We may select, at our sole discretion, the deliver method of such access services.

**EQUIPMENT:** Some services ordered hereunder may require us to install certain equipment on your premises. Note that, the Terms referenced above and fully incorporated herein contain specific provisions, which govern the use, access, ownership and maintenance of equipment as defined therein. You will be responsible for and will indemnify us against any damage to or loss of any component of the equipment and any related spare parts stored on your premises caused by, you, your agents, employees, vendors, subcontractors, invitees, contractors and affiliates. ALL EQUIPMENT PROVIDED BY US SHALL BE PROVIDED "AS IS", WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES.

**MODIFICATION:** The Agreement shall not be amended, changed, or modified except in writing, approved by our Legal Department, and executed by your representative and of our representatives (one of whom must be an officer). Any unauthorized modification to the Agreement may render the Agreement null and void and subject to immediate termination.

**ASSIGNMENT, CONTRACTING ENTITY AND GOVERNING LAW:** The Agreement is binding on you and on OpticalTel and our permitted successors and assigns. The Agreement is, however, subject to immediate termination at our election in the event you sell all or substantially all of your assets or stock or you attempt assignment of the Agreement without our prior written consent. If Customer provides their username and password to gain access to OpticalTel's system for any purpose, that purpose will be deemed be using the account with the knowledge and consent of Customer. Customers that allow their accounts to be used by anyone other than Customer, including an immediate family member, are responsible for the actions of

that person while they use the account and for any extra fees or charges they may incur by taking advantage of services which incur an extra charge or by violating the AUP or the Terms of Service as set forth in this Agreement. Customer may not resell IP accounts from an OpticalTel provided leased line, including but not limited to, Serial Line Internet Protocol (SLIP) or Point-to-Point Protocol (PPP) dial-up accounts, Point-to-Point Leased Lines, Frame Relay circuits, or any TCP/IP transmission that utilizes resources on OpticalTel's network without explicit written permission of OpticalTel. This Agreement shall be in all respects governed by and enforced in accordance with the laws of the State of Florida . The parties agree that personal jurisdiction and venue for any action concerning the Agreement is Miami , Florida , and both parties consent to personal jurisdiction and venue in that location. Both parties waives the right to trial by jury with respect to any matter relating to or arising from this agreement or the products or services provided by OpticalTel.

**CONNECTION AND DISCONNECTION OF SERVICES:** The following Connection and Disconnection charges are applicable to the corresponding services as listed below. Disconnection of services under contractual obligations result in the issuance of a cancellation invoice including but not limited to cancellation fees for services that were still under term liability. Reconnection charges are composed by the addition of Connection charges (for the reconnection of services) and the applicable Disconnection charges (for the waiving of the already issued cancellation invoice) for the corresponding services. Both of these are for the additional un-expected cost we incurred in with our providers by connecting disconnected services and by disconnecting existing services. The list of the above mentioned charges is as follows:

| Fee Schedule |            |            |               |              |
|--------------|------------|------------|---------------|--------------|
| Group        | Service    | Connection | Disconnection | Reconnection |
| Voice        | Analog     | \$60.00    | \$60.00       | \$120.00     |
|              | Digital *  | \$60.00    | \$60.00       | \$120.00     |
|              | VoIP       | \$60.00    | \$60.00       | \$120.00     |
|              | TFN        | \$60.00    | \$60.00       | \$120.00     |
| Data         | ADSL       | \$60.00    | \$60.00       | \$120.00     |
|              | Metro E ** | \$250.00   | \$500.00      | \$250.00     |
|              | T-1        | \$460.00   | \$80.00       | \$540.00     |
|              | T-1 EEL    | \$540.00   | \$120.00      | \$660.00     |

\*Digital Voice Includes: Primary Account, Extensions, Auto Attendant, Hunt Group, Call Center, SIP PRI, SIP Trunk, Series Completion : Hunting Analog Lines

\*\*Metro Ethernet circuit delivered either via fiber or copper, FiberNow

**SERVICE INTERRUPTION CHARGES**

These charge's will be automatically applied to accounts when contracted services are interrupted (suspended) for lack of payments on past-due balances that were properly notified as required by industry regulators. The charge will be in the amount of \$20.00 per "Order" and will be due immediately.