

# Charge Guard<sup>®</sup> Service Agreement Terms and Conditions

Thank you for selecting Charge Guard. These Terms and Conditions, together with your monthly bill from ELPASOTEL ("Bill"), constitute your plan service agreement (the "Plan") and govern the services described below, so you should keep a copy of the Plan for future reference.

**Charge Guard: What is Covered:** If your ELPASOTEL<sup>®</sup> DSL service fails, then, at your request, we will provide trouble location and repair of your simple inside telephone wire and one jack used to provide your ELPASOTEL DSL service. Additionally, we will not charge you, as a DSL Charge Guard subscriber, additional amounts, including, but not limited to, maintenance of service charges, time and materials charges, or trouble isolation charges for covered simple inside telephone wire and jack repair and trouble location. The Plan does not cover initial installation and corrective work to permit your ELPASOTEL DSL service to become operational. Charge Guard does not cover trouble that exists prior to establishing operating DSL service or prior to establishing the Plan.

**Agreement:** You agree to all the provisions of this Plan when you order the Plan and/or pay for it. We may increase the monthly charge for the Plan, change the administration of the Plan, or change these Terms and Conditions from time to time upon 30 days written notice to you, subject to applicable law. Such notice may be provided in a Bill insert, as a message printed on your Bill, in a separate mailing, or by any other reasonable method, at our discretion. Your continued use of the Plan and payment of the charges, after such notice, constitutes your acceptance of the changes. The monthly charge for the Plan may be decreased by us without prior notice. The Plan is available to customers of ELPASOTEL DSL service, only, on a per line basis; customers with multiple DSL lines at a single customer location must purchase separate Plans for each and every DSL line at such location to have Charge Guard. Your participation in the Plan is optional and you may cancel the Plan at any time. Please refer to the section of this Plan regarding cancellation.

**Definitions:** (1) "we", "us", and "our" mean ELPASOTEL together with its Charge Guard service partners which act as the obligor under this Plan, subject to applicable law; (2) "ELPASOTEL" means El Paso County Telephone Company, a Colorado corporation whose address is 480 N. Peyton Highway, Colorado Springs, CO 80930, its affiliates, successors, and assigns and is the party which sold this Plan; (3) "simple inside telephone wire" means the wire that runs from our connection point (usually a small box on the out-side of your home) to a telephone jack or outlet inside your home that you plug your DSL modem or other DSL equipment into, but for purposes of the Plan, no coverage is extended to wire or cable not actually used to provide ELPASOTEL DSL service or to distribution panels or other non-wire parts of so-called structured wire. Simple inside telephone wire coverage includes a home run wiring configuration, if necessary, but only after your DSL service has, at one time, been operational; (4) "trouble location" means that we will identify whether the problem with the ELPASOTEL DSL service is with covered simple inside telephone wire, a covered jack, your DSL modem or other DSL-related equipment, or one computer connected to your DSL modem or other DSL-related equipment. Trouble location includes performing the ELPASOTEL DSL Inspection Checklist which provides an on-site inspection of your DSL line, modem or other DSL-related equipment, and web browser on one computer that is connected to your modem or DSL equipment; (5) "DSL", "ELPASOTEL DSL service", or "DSL service" means the ELPASOTEL DSL service you purchase from ELPASOTEL; (6) "you" and "your" means the subscriber to the ELPASOTEL DSL service and the person who purchased the Plan; and (7) "home run wiring configuration" means wiring run directly from our connection point to enable your DSL service connection when the covered jack works, but your DSL service is not operational because of a simple inside telephone wire problem.

**Plan Period:** The Plan is offered on a monthly basis for a term which begins on the date your order or request for the Plan is received (the "Effective Date") and shall continue month-to-month until terminated by you or by us. We may elect not to renew the Plan upon at least 30 days written notice to you.

**Charges:** You will be billed monthly, in advance, on your Bill. Applicable taxes, charges, regulatory surcharges, and assessments, if any, will be added to your Bill. If we do not receive full payment on the due date shown on the Bill, and/or if your payment is returned/dishonored, we may charge you for the returned/dishonored payment and for the late payment in the same way we do with other services, subject to applicable law. You must not remit payment for the Services by funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate ELPASOTEL to provide certain information or perform certain functions unless those functions and obligations are specifically included and agreed to by the parties elsewhere in this Agreement or in an Amendment to this Agreement.

**Deposit:** Subject to any applicable rules or laws, if we hold a deposit for your account, we may apply it to any unpaid balance that you owe to us when services are terminated for any reason.

## EXCLUSIONS - THE PLAN DOES NOT COVER:

- Trouble that exists prior to establishing operating DSL service or prior to establishing the Plan.
- Trouble that results from your intentional abuse, misuse, or negligence.
- Repair or replacement of USB connections, Ethernet connections or the cable connecting the modem to the telephone jack.
- Repair or replacement of your computer or DSL modems and other DSL-related equipment (whether ELPASOTEL-certified or not).

- Drilling or cutting into metal walls in order to facilitate the repair. Our technicians will work with you to complete the repair in a safe manner.
- Installation of new jacks and new wiring or rewiring (except for DSL service-related home run wiring and jack or simple inside wire repair or replacement that is covered under the Plan).
- Cable or wiring that runs between or among separate buildings, apartments or dwelling units, in a multi-tenant property. If you reside in a multi-tenant building, campus, or military housing, we suggest you discuss inside telephone wire repair responsibility with the manager or owner. In some cases, they have arranged to handle telephone wiring repair.
- Complete rewiring for jacks and wiring not installed or existing in accordance with accepted industry standards for telephone wiring. We will repair and rewire if necessary the jack or outlet that is not working and offer to complete other rewiring, if requested, at our regular installation charges.
- Distribution panels or other non-wire parts of so-called structured wire systems, and no part of any wiring arrangement that provides you with a service or offering of another firm or provider.
- Wire or cable serving other electronic systems such as entertainment systems or providing service for anything except ELPASOTEL DSL service.

To Obtain Service: You may request service by calling us at 683-2501.

**Cancellation:** You may cancel this Plan within 20 days from your receipt of this Plan service agreement, by calling us at 683-2501. You will then receive a refund or credit on your Bill for the full Plan price paid. You may also cancel this Plan at any other time by surrendering it or providing written notice to us at the address listed above. This Plan may be canceled by you, or by us, for any reason at any time. If you or we cancel this Plan, you will receive a refund of 100% of the pro-rata unearned portion of the Plan price paid, if any, based on elapsed time. If you fail to make any monthly payment for this Plan or any charge provided for in this Plan, coverage will cease on the date the payment was due. Any termination, cancellation, suspension, interruption, or discontinuance of your DSL service for any reason constitutes cancellation of the Plan by you, subject to the terms and conditions of this Plan.

**Suspension/Discontinuation:** We may suspend or discontinue the Plan without notice if any misuse or abuse of the Plan occurs, or if a hazard or danger to person or property exists which could prevent our technicians from performing the work in a safe manner.

**Limitation of Liability:** We are agreeing to provide trouble location and to repair your simple inside telephone wire and one jack to enable an ELPASOTEL DSL service connection, all consistent with our usual practices. If we do not do that correctly, we will come back and fix it. THIS IS YOUR SOLE REMEDY FOR ERRORS, OMISSIONS AND OUT-OF-SERVICE CONDITIONS, EVEN IF IT IS OUR FAULT. IN OTHER WORDS, OUR ONLY LIABILITY TO YOU IS TO LOCATE TROUBLE AS PROVIDED HEREIN AND REPAIR YOUR SIMPLE INSIDE TELEPHONE WIRE AND ONE JACK IN OUR USUAL MANNER, AND WE ARE NOT LIABLE FOR ANY OTHER DAMAGES, REGARDLESS OF THE THEORY, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL. Notwithstanding the foregoing, as part of the trouble location process ELPASOTEL may access your computer hardware and software and your DSL-related equipment. ELPASOTEL does not represent or warrant that its technicians have any special expertise regarding your computer or DSL-related equipment. An ELPASOTEL technician will access your computer and/or DSL-related equipment, as a courtesy to you, solely to locate trouble with your ELPASOTEL DSL service. ELPASOTEL liability for any damage arising from reckless or negligent acts of ELPASOTEL technicians in accessing your computer or DSL-related equipment is limited to \$2,000 and ELPASOTEL is not liable for any other damages, regardless of the theory, whether direct, indirect, incidental, special or consequential.

**Limited Warranty / Sole Remedy:** We warrant to you and no one else that the repair work we provide to you on simple inside telephone wire and jack will be done in a proper, timely manner, consistent with industry standards, and any materials we supply will be substantially free of defects. This LIMITED WARRANTY applies only to the simple inside telephone wire and jack work we do and the materials we supply. If you think our work or materials are defective, please contact us promptly and we will correct defects in our simple inside telephone wire or jack work or materials which are our responsibility, without further charge. REPAIR OF ERRORS IS YOUR SOLE REMEDY FOR ANY CLAIMS IN CONNECTION WITH THIS LIMITED WARRANTY. Our LIMITED WARRANTY is good for a full 30 days after the simple inside telephone wire or jack work is done, so any implied warranties and our LIMITED WARRANTY expire at that time. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. Some states do not allow the exclusion of incidental or consequential damages or do not allow limitations on implied warranties or their durations, so the above exclusions and limitations may not apply to you. Nothing in this Plan is intended to supersede local ordinances or building codes.

**Dispute Resolution and Arbitration:** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

(1) Arbitration Terms. You and ELPASOTEL agree that, except as otherwise provided below, any dispute or claim arising out of or relating to Charge Guard or this Plan (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration.

(a) Arbitration Procedures. Before commencing arbitration you must first present any claim or dispute to ELPASOTEL in writing to allow ELPASOTEL the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration shall be conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern concerning other procedures for arbitration of the dispute. Colorado state law, without regard to choice of law principles, shall otherwise govern and apply to any and all claims or disputes. Arbitration is final and binding. Under the JAMS Rules, there may be no right to pre-arbitration discovery. You and ELPASOTEL agree, however, to the discovery or exchange of non-privileged information relevant to the dispute to the extent provided by JAMS Rules. Any arbitration shall be confidential, and neither you nor ELPASOTEL may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitration award shall be in writing, but is not required to include factual findings or legal reasoning. Judgment on any arbitration award may be entered in any court having jurisdiction. 683-2501 for customer assistance

(b) Costs of Arbitration. Each party will bear the expense of its own counsel, witnesses, preparation, and presentation of evidence at the arbitration.

(2) Waiver of Class Action. By this Agreement, both you and ELPASOTEL are waiving rights to litigate claims or disputes in court, including the right to a jury trial, except that no party shall be precluded from seeking remedies in a small claims court for disputes within the scope of such court's jurisdiction. You further waive any right to pursue any claim on a class or consolidated basis or in a representative capacity, regardless of the applicable law or the applicable JAMS Rules.

Force Majeure: We have no responsibility for delays or failures due to fire, flood, explosion, war, strike, embargo, acts of the government, military authority, or the elements, or other cause beyond our control, and in such event, we may cancel the Plan immediately.

Prohibitions on Transfer of the Plan: This Plan is for your use only. It is not transferable by you to any other person, and may not be assigned by you.

Deductible: This Plan does **not** require you to pay a deductible.