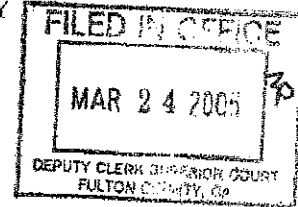


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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



DEBORAH EAVES, WILLIAM O'HARA,)
and DAVID TEGART, on behalf of)
themselves and all others similarly situated,)

Plaintiffs)

v.)

EARTHLINK, INC.,)

Defendant.)

Civil Action No.: 05CV97274

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

1. Plaintiffs Deborah Eaves, William O'Hara and David Tegart, by their counsel, allege upon knowledge with respect to themselves and their own acts and upon information and belief based, in part, on the investigation of counsel and publicly available reports and statements, as to all other matters as follows:

NATURE OF THE CASE

2. Earthlink, Inc. ("Earthlink" or "Defendant") engages in the unlawful practice of charging a so called "early termination fee" either to extract improper penalties from its customers or wrongfully to deter them from seeking alternative Internet service providers. The amount of the fee (\$149.95) is unconscionable and constitutes an unlawful penalty, and the manner in which it is typically collected – by an automatic debit of a customer's credit card account, without notice or permission – is deceptive. This consumer class action brought on behalf of all former and current Earthlink customers pursuant to Georgia common law and statute seeks to end that practice and

compensate class members who have been charged or assessed an early termination fee by Earthlink on or since February 16, 2001 (the "Class Period").

3. Upon a customer's termination of his or her service, Earthlink imposes a fee that exceeds any legitimate measure of "liquidated damages" to which it would even arguably be entitled. For customers that Earthlink claims are still in the initial term of their contracts, the amount is many times the cost of one-month's service. And for many customers, whose initial term had expired and who receive Internet service from Earthlink on a month-to-month basis, the fee is several times the total value of the contract. In either case, the fee is set to deter customers from canceling their service and not to compensate Earthlink for its reasonable contract damages, if any. Earthlink also charges this fee even when it has no contractual right to do so. Plaintiffs, on behalf of themselves and the class, seek a refund or credit of all early termination fees assessed or collected by Earthlink, and compensatory damages, rescission, and declaratory and injunctive relief declaring the early termination fees to be an illegal penalty under Georgia law, and prohibiting Defendant from continuing to contract for and collect such charges from its customers.

JURISDICTION AND VENUE

4. Jurisdiction and venue is proper in this Court because Defendant resides in this County, and Defendant's standard form contract that it seeks to enforce against all of its customers nationwide provides that it will be governed "by Georgia law without regard to conflict of law provisions," and that "[t]he federal and state courts located in Atlanta, Georgia alone have jurisdiction over all disputes arising out of or related to this Agreement and the Service."

PARTIES

5. Plaintiff Deborah Eaves Eaves was an Earthlink DSL customer from approximately March 2002 until October 2004, when she terminated her service.

6. Plaintiff William O'Hara O'Hara was an Earthlink dial-up customer (during periods when he was not an Earthlink DSL customer) from approximately June 1999 until July 2004, and an Earthlink DSL customer from approximately December 2000 until July 2004, when he terminated his service.

7. Plaintiff David Tegart Tegart is and has been an Earthlink DSL customer since March 2003.

8. Earthlink is incorporated in Delaware. Its corporate headquarters are located at 1375 Peachtree Street, Atlanta, Fulton County, Georgia 30309. Earthlink may be served a summons and complaint by serving its registered agent, CT Corporation System, 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361.

FACTUAL BACKGROUND

Plaintiff Deborah Eaves

9. Plaintiff Deborah Eaves initially signed up for Earthlink DSL service in or about March 2002.

10. Defendant's contract with Eaves is a standardized contract of adhesion applicable to Defendant's customary Internet service agreements (attached hereto as Exhibit A). Although Eaves's contract was specifically for DSL service, Earthlink's

contracts for other types of Internet connectivity are substantially similar, at least with respect to the provision for an unlawful early termination fee.

11. The contract provides for an initial term of twelve months from Eaves's "activation date," which is defined as either three days after Eaves's DSL line was provisioned or on the first day she connected to DSL. The twelve month term of Eaves's initial contract began in or about March 2002 and ended in or about March of 2003.

12. The contract further provides that cancellation of the Earthlink service "before the initial term of the agreement ends will result in a \$149.95 charge."

13. The contract further provides that the contract will continue on a month-to-month basis after the initial term of the agreement. The contract does not provide for an early termination fee if the customer terminates service after the initial term of the contract.

14. The contract further requires that the customer provide credit card billing information so that charges can be billed to the customer's credit card or debit card each month for the service and any additional usage or services. On information and belief, it is Earthlink's policy to automatically charge early termination fees to the customer's credit card without first requesting the customer's permission to process such charges, as it did to Eaves.

15. After the initial term of Eaves's agreement ended, Eaves continued to use Earthlink's DSL services as a month-to-month customer.

16. In May 2004, Eaves attempted to upgrade her DSL service from Earthlink to a higher speed than her existing service. She was specifically told by Earthlink that she could cancel the higher speed service without incurring a termination fee. A week

later, she called to cancel the higher speed service because she did not experience higher speed.

17. She went back to her original level of service on a month-to-month basis without entering into any new contract or agreeing to an early termination fee.

18. In October, 2004, Eaves cancelled her Earthlink service. Despite having no contractual right to do so, Earthlink charged a \$149.95 early termination fee to her credit card without providing notice or seeking her permission in advance. Eaves attempted to dispute the charge through the company but Defendant refused to reverse the charge.

Plaintiff William O'Hara

19. Plaintiff William O'Hara initially signed up as an Earthlink dial-up customer in June 1999. In December 2000, he upgraded to Earthlink DSL service.

20. To the best of his recollection, O'Hara did not receive any written contract from Earthlink either at the time he first signed up for Earthlink's DSL service or later.

21. Between January 2002 and April 2004, O'Hara moved residences three times. Each time that O'Hara moved, he maintained an Earthlink dial-up account until he could be reconnected as an Earthlink DSL customer.

22. Each time O'Hara restarted his DSL service, Earthlink began a new twelve month contract term. Earthlink used its practice of restarting the clock on O'Hara's contract whenever he moved as a basis for charging him an early termination fee, even though he had been an Earthlink customer for several years and Earthlink sent him no new equipment when he moved. Except for O'Hara's most recent move, Earthlink credited \$99.95 of the fee back, but retained a \$50 "moving fee." On information and

belief, this \$50 moving fee, which is a subset of the early termination fee, was also unjustified by the costs to Earthlink entailed in moving O'Hara's service to a new location.

23. In approximately April 2004, O'Hara moved from California to Washington State. Earthlink charged him an early termination fee but stated that if he restarted his service at a new address, the company would refund \$99.95 of the fee, as it had done in the past. In July 2004, once he found a permanent residence in Washington State, he attempted to restart his Earthlink DSL service, but discovered that Earthlink did not provide in his new neighborhood the same type of high speed DSL service he had been using previously. Earthlink provides high-speed cable service in his new neighborhood and O'Hara stated his interest in getting that service as an alternative to Earthlink DSL. However, Earthlink informed him that he would still be charged an early termination fee, even if he used the only available high-speed option provided by Earthlink in his area comparable to the DSL service he had been using, because he was not restarting his Earthlink *DSL* service.

24. O'Hara attempted to dispute the early termination fee through the company, but was repeatedly rebuffed. He spoke to no fewer than seven employees of Earthlink seeking to get the early termination fee reversed, and even wrote a letter to the CEO of Earthlink describing the unfair manner in which he was being treated, but Earthlink refused to reverse the early termination fee. As a result, he cancelled his Earthlink account in July 2004, and Earthlink debited the \$149.95 early termination fee from the credit card that he had on file with Earthlink.

Plaintiff David Tegart

25. David Tegart first signed up for Earthlink DSL service by phone in approximately March 2003. To the best of his recollection, Tegart did not receive any written contract from Earthlink either at the time he first signed up for Earthlink's DSL service or later.

26. In July 2004, Tegart relocated to a new address in the same city, Boulder, Colorado. At the time that Tegart moved, he had already completed his initial twelve month term of service with Earthlink and was a month-to-month customer.

27. Approximately a week before moving, Tegart requested that Earthlink relocate his DSL service to his new residence. He was informed that DSL was available at his new address and that it would take four to six *weeks* to complete the request.

28. It took approximately four *months* for Tegart finally to get his Earthlink DSL service reconnected. Over the course of those four months, Tegart called Earthlink technical and accounting personnel multiple times to determine the source of the delay and attempt to fix the problem. During this time, Earthlink continued to charge Tegart for Earthlink DSL service that he did not have, although he eventually obtained at least partial credit for this extended period without service.

29. In November 2004, Earthlink charged Tegart an early termination fee, even though he had not terminated his service, and had endured repeated phone calls to get his Earthlink DSL service restarted. Earthlink eventually refunded that fee.

30. Earthlink finally successfully restarted Tegart's DSL service in November 2004. Tegart wishes to cancel his Earthlink DSL service due to the poor customer service he has experienced and to switch to another provider. But the company now

claims that Tegart is subject to a new twelve month contract period starting from November 2004 (when the company finally got his service restarted), and that if he cancels his service prior to November 2005, he will be charged an early termination fee. Earthlink did not tell Tegart that he was beginning a new twelve month contract at the time of his move or when the new service was finally up and running.

31. But for concern that he would be charged an early termination fee, Tegart would cancel his Earthlink service now.

32. Earthlink's early termination fee is an illegal penalty and not lawful liquidated damages for early termination. Earthlink assesses early termination fees, such as the one it assessed or threatens to assess Plaintiffs, for the purpose of deterring Plaintiffs and the Class from terminating Earthlink's services, and for the purpose of penalizing Plaintiffs and the Class if they do terminate Earthlink's services. Earthlink's early termination fee does not represent the damages, if any, that it incurs when its customers terminate its Internet connection services "early". Moreover, the actual injury, if any, that early termination causes Earthlink is not difficult or impossible for Earthlink to estimate accurately at the beginning of its relationship with its Internet service customers, and the early termination fee is not a reasonable pre-estimate of the probable loss to Earthlink, if any, resulting from such early termination. Earthlink also charges this fee even when it has no contractual right to do so.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this case as a class action pursuant to Ga. Code Ann. § 9-11-23 on behalf of a class (the "Class") consisting of all current or past residential Internet service customers of Earthlink (regardless of mode of connection, i.e., DSL, dial

up, wireless, cable, satellite and dedicated circuit) who have been assessed an early termination fee either for canceling their Internet service purportedly prior to the expiration of their contract, or who were charged such a fee for canceling service after the expiration of the initial term of their contract, or who were charged a "moving fee" for relocating their Internet service, on or since February 16, 2001, or who are subject to being assessed such an early termination fee or moving fee if they cancel their service in the future.

34. On information and belief, there are more than 5.1 million persons who are or have been Internet service customers of Earthlink. All such persons are subject to being assessed an early termination fee if they cancel their Earthlink service (whether or not their original term contracts are still in effect), and a substantial number of such persons have been assessed and/or charged unlawful early termination fees by Defendant in violation of Georgia law. Although the exact number of such persons is unknown to Plaintiffs at this time, Defendant's record systems should contain information on the identities and location of all such parties as well as the amounts of the illegal early termination fees imposed on or collected from all such persons. Because Defendant has exclusive control of such information, Plaintiffs reserve their right to amend their allegations following completion of discovery of Defendant. Given the large nature and extent of Defendant's business, it is clear that the members of the Class are so numerous that joinder of all members of the Class is impracticable.

35. Plaintiffs' claims involve questions of law and fact common to the Class, because Plaintiffs and other members of the Class were parties to standardized, adhesion contracts, or other standard policies of Defendant, containing similar if not identical

provisions with Defendant's unlawful early termination fees in violation of Georgia law. Defendant's standard contract imposes a choice of venue and law provision that specifies Georgia law is applicable and that venue is proper only in the courts in Atlanta, Georgia.

36. Plaintiffs' claims are typical of the claims of the members of the Class, because Plaintiffs and the Class sustained damages arising out of Defendant's wrongful conduct, and/or are threatened with damages if they terminate Earthlink's services.

37. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel competent and experienced in class and consumer litigation and have no conflict of interest with other Class members in the maintenance of this class action. In addition, Plaintiffs have no relationship with Defendant except as current or former customers. Plaintiffs' interests are antagonistic to the interests of Defendant and Plaintiffs will vigorously pursue the claims of the Class.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, because the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Class to individually seek redress for the wrongs done to them. Plaintiffs believe that Class members, to the extent that they are aware of their rights against Defendant herein, would be unable to secure counsel to litigate their claims on an individual basis because of the relatively small nature of the individual damages, and that a class action is the only feasible means of recovery for the Class members. Individual actions also would present a substantial risk of inconsistent decisions, even though each Class member has an identical claim of right against Defendant. Plaintiffs envision no

difficulty in the management of this action as a class action. Damages may be calculated with mathematical precision from the information maintained in Defendant's records, so that the cost of administering any recovery can be minimized.

39. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether the early termination fee imposed by Defendant is an unlawful penalty in violation of Georgia law, including (1) whether it is used for the purpose of deterring Plaintiffs and the Class from terminating their service and of penalizing them in the event they should do so, (2) whether it was a sum which represented those damages, if any, that would ensue if Earthlink's service were terminated by the customer, (3) whether the injury, if any, caused to Earthlink from early termination was or is difficult or impossible to estimate accurately at the beginning of its relationship with its Internet service customers, (4) whether the early termination fee is a reasonable pre-estimate of the probable loss to Earthlink, if any, resulting from early termination by a customer, and (5) whether Earthlink imposes an early termination fee even when it has no contractual right to do so.

b. whether Earthlink engages in a practice of automatically debiting its customers' credit card accounts, without notice or permission, for a termination fee regardless of whether the customer cancels his or her Internet service after the term of their initial contract.

c. Whether the members of the Class have sustained damages and, if so, what is the proper measure thereof; and

d. Whether Defendant should be enjoined from imposing an illegal early termination fee and the proper scope of any such injunction.

COUNT I -- DECLARATORY AND INJUNCTIVE RELIEF

40. Plaintiffs incorporate all of the averments above as if fully set forth herein.

41. Earthlink's \$149.95 early termination fee is a penalty that is unenforceable under Georgia common law.

42. Earthlink's early termination fee is an illegal penalty in a contract of adhesion. The charge is not reasonably related to any reasonable liquidated damages provisions, as it has no relationship to any fair estimate of the costs deriving from a customer termination and is intended not to recompense such costs, but instead to deter and penalize a customer termination and to recover additional revenues. Earthlink also imposes an early termination fee even where it has no contractual right to do so.

43. Earthlink is not entitled to collect early termination fees from plaintiffs and the class.

44. Earthlink has assessed early termination fees against plaintiffs and the class members. On information and belief, Earthlink retains these assessments in its books and records and has attempted to collect, or reserves to itself the right to collect, or attempt to collect, such early termination fees. On information and belief, Earthlink also reports unpaid early termination fees it has assessed to credit reporting and other entities interested in the creditworthiness of plaintiffs and the class.

45. Earthlink will continue to attempt to collect such early termination fees in the absence of an adjudication that it is not entitled to collect such fees.

46. Plaintiffs and class members are entitled to a declaration of their rights, declaring that they are not obligated to pay Earthlink the early termination fees it has assessed against them, and to an injunction preventing Earthlink from collecting or attempting to collect such fees.

WHEREFORE, Plaintiffs request that the Class be certified, and for judgment against Defendant Earthlink on behalf of themselves and all class members for

(a) A declaration that Earthlink's early termination fees are unenforceable penalties that cannot be collected;

(b) An injunction prohibiting Earthlink from collecting early termination fees either pursuant to the unenforceable early termination provision in its contract of adhesion with consumers, or pursuant to its general practice of charging such fees even where it has no contractual right to do so;

(c) An injunction requiring Earthlink to credit the accounts and correct the credit records of early terminating customers to whom it assessed early termination fees but who did not pay such charges;

(d) Costs and reasonably attorneys' fees; and

(e) Such other relief as the Court deems just and proper.

COUNT II -- UNJUST ENRICHMENT

47. Plaintiffs incorporate all of the averments above as if fully set forth at length.

48. Earthlink's early termination fee is a penalty that is unenforceable under Georgia common law governing liquidated damages. Earthlink also imposes an early termination fee even when it has no contractual right to do so.

49. Earthlink's early termination clause, set forth in its standard contract with all of its customers and in other written statements of company policies and practices, results in a windfall to Earthlink all or substantially all of the time that it is applied.

50. Earthlink knows and intends that it will reap a windfall through imposition of its early termination fee.

51. Earthlink has been unjustly enriched at the expense of the class by its collection of the unenforceable early termination fees.

52. It would be unjust to permit Earthlink to retain the proceeds of its unenforceable early termination fee clause.

53. Earthlink is liable to disgorge to plaintiffs and the class the amount by which it has been unjustly enriched through application of its unenforceable early termination fee.

WHEREFORE, Plaintiffs request that the Class be certified, and for judgment against Defendant Earthlink on behalf of themselves and all class members for:

- (a) Disgorgement of early termination charges unlawfully assessed and collected;
- (b) Costs and reasonable attorneys' fees; and
- (c) Such other relief as the Court deems just and proper.

COUNT III -- BREACH OF CONTRACT DUTY OF GOOD FAITH AND FAIR DEALING (Charging An Illegal Penalty)

54. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein.

55. Earthlink's early termination fee is an illegal penalty provision in a contract of adhesion. The charge is not reasonably related to any reasonable liquidated

damages, as it has no relationship to any fair estimate of the costs of a customer termination and is intended not to recompense such costs, but instead to deter and penalize a customer termination and to recover additional revenues.

56. Earthlink owed plaintiffs and members of the Class the duty of good faith and fair dealing that is implied in every agreement, including a duty to impose liquidated damages only in accordance with applicable laws.

57. Defendant breached its duties of good faith and fair dealing and breached its contracts with plaintiff and the class by charging them an illegal termination fee.

58. Plaintiffs and the members of the Class are therefore entitled to rescission of the agreement and/or repayment of the early termination fees plus interest from the date of such payment, plus reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs request that the Class be certified, and for judgment against Defendant Earthlink on behalf of themselves and all class members for:

(a) Rescission of the illegal penalty, and compensatory damages as a result of the wrongs alleged herein;

(b) Disgorgement of early termination charges unlawfully assessed and collected;

(c) Costs and reasonable attorneys' fees; and

(d) Such other relief as the Court deems just and proper.

COUNT IV – MONEY HAD AND RECEIVED--CONVERSION

59. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein.

60. Earthlink has taken, reserved, received, collected and converted early termination fees from plaintiffs and the Class based on a false and illegal claim of right.

61. Plaintiffs and the members of the Class have been deprived of the money and the use of such money that Earthlink has taken, charged, converted, used and received under its false and illegal claim of right, and have suffered damages as a result.

WHEREFORE, Plaintiffs request that the Class be certified, and for judgment against Defendant Earthlink on behalf of themselves and all class members for:

(a) Disgorgement of early termination charges unlawfully assessed and collected;

(b) Costs and reasonable attorneys' fees; and

(c) Such other relief as the Court deems just and proper.

COUNT V—UNCONSCIONABILITY

62. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein.

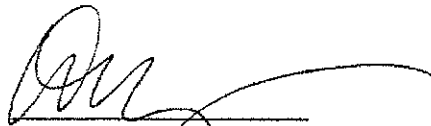
63. Earthlink's early termination fee is an illegal penalty provision in a contract of adhesion. The charge is not reasonably related to any reasonable liquidated damages provisions, as it has no relationship to any fair estimate of the costs deriving from a customer termination and is intended not to recompense such costs, but instead to deter and penalize a customer termination and to recover additional revenues.

64. Earthlink's early termination fees were unconscionable in taking advantage of its superior bargaining power and knowledge to obtain contract terms that were oppressive and unlawful, and/or imposing early termination fees without the contractual right to do so.

WHEREFORE, Plaintiffs request that the Class be certified, and for judgment against Defendant Earthlink on behalf of themselves and all class members for:

- (a) Disgorgement of early termination charges unlawfully assessed and collected;
- (b) Costs and reasonable attorneys' fees; and
- (c) Such other relief as the Court deems just and proper.

Respectfully submitted this 21st day of March, 2005.



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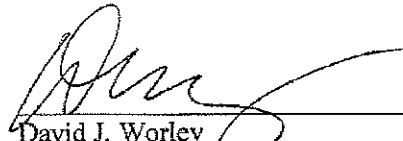
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CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the within and foregoing "**First Amended Complaint**" upon the below listed individuals by first-class U.S. Mail, postage prepaid, at the following addresses:

Jerry Blackstock
Brad Grout
Hunton & Williams
Bank of America Plaza
Suite 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216

This 24th day of March, 2005.



David J. Worley
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EXHIBIT A

EARTHLINKSM DSL INTERNET SERVICE AGREEMENT

1. AGREEMENT

This is an agreement between EarthLink, Inc. and you to provide EarthLink DSL ("the Service"). By establishing an account or using the Service or equipment, you agree to be bound by this Agreement and to use the Service in compliance with the EarthLink Internet Service Agreement and EarthLink Acceptable Use Policy ("the Agreements") which can be found by going to www.earthlink.net/about/policies.

2. TERM

The initial term of this agreement begins on the day that you sign up and ends twelve (12) months from your activation date. Your activation date is three days after your DSL line is provisioned OR on the first day you connect to your DSL service, whichever is earlier. The agreement will continue on a month-to-month basis after the initial term. EarthLink reserves the right to change the price of the Service at any time after the initial term upon 30 days notice. Prices for other EarthLink services may change at any time upon 30 days notice and will be posted on the EarthLink homepage: www.earthlink.net. Current rates may also be obtained by calling 1-800-395-8425.

3. THE SERVICE

The Service includes:

- DSL access for one computer
- A new user kit
- Eight email accounts
- Personal webspace on EarthLink servers
- 20 hours of free dial-up access per month, with each additional hour charged at \$1 up to the current monthly rate for the EarthLink Unlimited dial-up service as posted on www.earthlink.net

The Service speed can vary depending on location, line quality, inside wiring, Internet traffic, and other factors beyond the control of EarthLink. EarthLink provides the Service on a "best effort" standard and does not guarantee upload or download speeds. Some line stabilization may be necessary for service. Line stabilization could include the lowering of provisioned line speed. Should the lowering of line speed occur, EarthLink will NOT be able to increase the line speed once the connection is stabilized.

The email, webspace, and dial-up service are available under this agreement after the Activation Date. You may purchase a separate dial-up account while waiting for the service to be installed. You are solely responsible for determining if use of a particular dial-up number will cause you to incur long-distance, toll, or any other charges. EarthLink is not responsible for any long-distance, toll, or other charges you incur. Toll-free (800, 888, 877), international, and simultaneous login access costs will be extra.

4. CANCELLATION

If you are dissatisfied with the Service or any related terms, conditions, rules, policies, guidelines, or practices, your sole remedy is to discontinue using the Service, cancel your account, and pay any cancellation fees that apply. EarthLink is providing equipment to you for your use of the Service. Cancellation of the Service by you before the initial term of the agreement ends will result in a \$149.95 charge. Cancellation of the Service by you before the Activation Date will not result in an equipment charge, provided that you return all equipment provided to you by EarthLink unopened in their original container (or an equivalent) within 30 days of cancellation.

To cancel the Service you must call 1-888-329-8466 or write to EarthLink, Inc., Customer Service Manager, Consumer DSL Services, 1375 Peachtree Street, Level A, Atlanta, GA 30309. Cancellation will be effective at the end of the current billing period in which notice of cancellation is received. Upon cancellation, email service will be terminated and all files stored on EarthLink servers will be deleted.

EarthLink may terminate this Agreement, your password, your account, or your use of the Services for any reason, including, without limitation, if EarthLink, in its sole discretion, believes you have violated the Agreements or if you fail to pay any charges when due. Termination notice will be by email or U.S. Mail to the address you provided for the Service. All notices to you shall be deemed effective on the first (1st) day following the date of the email or on the fourth (4th) day following the date of the mailing.

Sections 1, 4, 6, 10, and 11 of this Agreement shall survive termination of this Agreement.

5. ACCOUNT REQUIREMENTS

In order to receive the Service:

- You must be at least 18 years old and provide a valid credit card
- The Service must be available to your location
- You must keep your current telephone service active in order for the Service to work and you are responsible for charges for the Service regardless of the status of your underlying telephone service
- Changing telephone service providers will result in substantial interruption of the Service and will result in fees associated with cancellation and setting up a new account
- Your computer must meet the following minimum requirements:
 - For PC:
 - 133 MHz (or faster) Pentium-based processor (or equivalent)
 - Windows 95b, Windows 98 and 98SE, Windows Me, Windows NT (4.0 Workstation with Service Pack 3 or higher), and Windows 2000 (no server versions of NT 4 or Windows 2000 supported)
 - 32MB RAM
 - 25MB of available hard disk space
 - Installed CD-ROM drive
 - All machines should have an installed, functional 10BaseT or better Ethernet interface**
 - Operating System CD
 - For Macintosh:

- PowerPC or faster processor
- Mac OS 8 - OS X
- Open Transport 1.1.1 enabled
- 32MB RAM
- 25MB of available hard-disk space
- Installed CD-ROM drive
- All machines should have an installed, functional 10BaseT or better Ethernet interface**
- Operating System: CD

6. PAYMENT

You will be charged a one-time activation fee of \$99.00 and a monthly charge of \$49.95 for the Service. EarthLink may offer from time to time certain promotions with different terms, activation fees, and monthly charges. You must provide accurate billing information including legal name, address, telephone number, and credit card/billing information, and report all changes to this information immediately. You are responsible for any charges to your account. Questions regarding charges to an account should be directed to EarthLink's Customer Service Department at 1-800-890-6356. All charges are considered valid unless disputed in writing within sixty (60) days of the billing date. Adjustments will not be made for charges that are more than 60 days old.

Charges are billed to your credit card or debit card, as applicable, each month for the Service and any additional usage or services. EarthLink is not responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by EarthLink. Payment by check is due within 30 days after the month in which the charges are incurred. You agree to maintain valid and current credit card information on file with EarthLink at all times.

If purchasing Services through a reseller, the reseller must pay all amounts owing for your account. If the reseller fails to pay EarthLink any amounts due, whether or not you have paid the reseller, your account will be subject to suspension or cancellation until you or the reseller has paid all amounts due. Delinquent accounts may be suspended or canceled at EarthLink's sole discretion; however, charges will continue to accrue until the account is canceled. EarthLink may bill an additional charge to reinstate a suspended account.

7. YOUR ACCOUNT, PASSWORD, AND SECURITY

Upon registration, you will receive a username, password, and account designation. You are solely responsible for use of the Service. You must keep your password confidential so that no one else may access the Services through your account. You must notify EarthLink immediately upon discovering any unauthorized use of your account.

Unless you purchase a Static IP, you will be allocated a Dynamic IP address. EarthLink reserves the right to timeout inactive connections. EarthLink technical support may be limited to EarthLink-provided services, software and/or unmodified hardware. Email accounts exceeding 10MB in size may be inactivated until you reduce the size of the mail being stored. Any free Web site exceeding the allotted amount of disk space may be suspended until you reduce the disk space usage or purchase additional space. Any free Web site exceeding the allotted amount of bandwidth will be billed for excess traffic. Email, webspace, and bandwidth limits are posted throughout our Web site at www.earthlink.net. These limits may also be obtained by calling 1-800-395-8425. EarthLink reserves the right to change limits at any time upon 30 days prior notice.

8. INSTALLATION

EarthLink will provide you with a new user kit ("the Equipment"). If the relationship is terminated by either party (you or EarthLink) before the Activation Date or if the line is found to be unprovisionable, you must return the full kit with all of its original packaging to EarthLink. If you choose to cancel the account after the Activation Date, you will be charged \$149.95. This fee is posted on our Web site and is subject to change. Contents of the kit may change from time to time.

The installation, use, inspection, maintenance, repair, and removal of the Equipment may result in service outage or potential damage to your computer. You are solely responsible for backing up all of your existing computer files and data. EarthLink and its employees, agents, contractors, and representatives shall have no liability whatsoever for any damage to or loss or destruction of any of your hardware, software, files, data, or peripherals. You assume responsibility for impacts to or loss of any warranty associated with the opening of your computer for installation of an internal card (such as a Network Interface Card) or DSL modem.

You acknowledge that this is a fixed-location service for one personal computer only. Moving to another location will require the service to be re-provisioned at the new location. This may result in substantial interruption of the Service and will result in fees associated with cancellation and setting up a new account. Early termination charges will apply even if the cancellation is for reasons of a move to another location.

If you are unable to perform self-installation, EarthLink may suggest an outside vendor to help install the service. You will be responsible for all costs and scheduling associated with the installation by a third party. You are also responsible for all inside wiring repair necessary to install the service.

EARTHLINK DOES NOT REPRESENT, WARRANT, OR COVENANT THAT INSTALLATION BY YOU OR A THIRD PARTY CHOSEN BY YOU WILL ENABLE YOU TO SUCCESSFULLY ACCESS, OPERATE, OR USE THE SERVICES, NOR THAT SUCH INSTALLATION WILL NOT CAUSE DAMAGE TO YOUR COMPUTER, DATA, SOFTWARE, FILES, OR PERIPHERALS. IN ADDITION, EARTHLINK SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, OR FOR THE FAILURE TO PROPERLY INSTALL, ACCESS, USE, OR OPERATE THE EQUIPMENT OR SERVICES BECAUSE OF YOUR INSTALLATION. THE FOREGOING LIMITATION OF LIABILITY IS IN ADDITION TO AND SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY AND ALL LIMITATIONS OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT.

EarthLink will make its best effort to provide the Service. Because of the complex nature of broadband services, availability, and the underlying infrastructure, it may not be possible to provide the Service to everyone. In its sole discretion, EarthLink may cancel the installation process and refund any money that you have paid. EarthLink will notify you of its intent to cancel as soon as reasonably

possible. It may take 30, 60, 90 or more days to determine if EarthLink is able to provide service. EarthLink shall have no responsibility whatsoever for claims arising out of its failure or refusal to complete the installation or provide the Service.

9. MONITORING THE SERVICES

EarthLink has no obligation to monitor the Services, but may do so and disclose information regarding use of the Services for any reason if EarthLink, in its sole discretion, believes that it is reasonable to do so, including to satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself and its subscribers. Please see our Privacy Policy. EarthLink may immediately remove your material or information from EarthLink's servers, in whole or in part, which EarthLink, in its sole and absolute discretion, determines to infringe another's property rights or to violate our Acceptable Use Policy.

10. DISCLAIMERS

CERTAIN EQUIPMENT MAY BE SUBJECT TO THIRD PARTY WARRANTIES WHICH MAY BE PASSED THROUGH EARTHLINK TO YOU AT NO ADDITIONAL CHARGE. EARTHLINK WILL COMPLY WITH ALL REASONABLE REQUIREMENTS NECESSARY TO AFFECT THE PASS-THROUGH OF THE WARRANTY TO YOU. AT ITS SOLE OPTION WITHIN THE INITIAL TERM, EARTHLINK OR ITS AGENT MAY REPLACE A DEFECTIVE MODEM OR GATEWAY ON BEHALF OF THE MANUFACTURER, PROVIDED YOU FOLLOW ALL APPLICABLE PROCEDURES AND OBTAIN A RETURN MATERIALS AUTHORIZATION (RMA) NUMBER. THIS WARRANTY DOES NOT COVER DEFECTS RESULTING FROM ACTS OUTSIDE OF EARTHLINK'S CONTROL, USE CONTRARY TO SPECIFICATIONS OR INSTRUCTIONS; OR REPAIR OR MODIFICATION BY ANYONE OTHER THAN EARTHLINK OR ITS CONTRACTOR. EARTHLINK RESERVES THE RIGHT TO MODIFY THIS WARRANTY AT ANY TIME. EARTHLINK WILL NOT BE RESPONSIBLE FOR ANY EQUIPMENT DAMAGED BY ANY NATURALLY OCCURRING EVENT SUCH AS LIGHTNING, FLOOD, OR EARTHQUAKE OR OTHER EVENTS OUT OF EARTHLINK'S CONTROL SUCH AS FIRE, POWER SURGES, OR THE ACTS OF OTHERS.

THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EARTHLINK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES, OR OTHER HARMFUL COMPONENTS. EARTHLINK MAKES NO EXPRESS WARRANTIES AND WAIVES ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH EARTHLINK OR THE INTERNET GENERALLY. NO ADVICE OR INFORMATION GIVEN BY EARTHLINK OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. EARTHLINK AND ITS EMPLOYEES ARE NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OF THE SERVICES OR THE INTERNET INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN ANY EVENT, EARTHLINK'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICES SHALL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING A ONE-YEAR PERIOD.

EARTHLINK SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: OTHER USERS ACCESSING YOUR COMPUTER; SECURITY BREACHES; EAVESDROPPING; DENIAL OF SERVICE ATTACKS; INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICES; YOUR RELIANCE ON OR USE OF THE EQUIPMENT OR SERVICES, OR THE MISTAKES, OMISSION, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSIONS, OR ANY FAILURE OF PERFORMANCE OF THE EQUIPMENT OR SERVICES; THE USE OF THE EQUIPMENT OR SERVICES BY YOU OR A THIRD PARTY THAT INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHTS, PROPRIETARY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY; THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICES, PRODUCTS AND OTHER INFORMATION; AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE PROVIDED THROUGH THE SERVICE OR THE INTERNET.

THE FOREGOING LIMITATION APPLIES TO THE ACTS, OMISSIONS, NEGLIGENCE AND GROSS NEGLIGENCE OF EARTHLINK, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES WHICH, BUT FOR THIS PROVISION, WOULD GIVE RISE TO THE CAUSE OF ACTION AGAINST EARTHLINK IN CONTRACT, TORT, OR ANY OTHER LEGAL DOCTRINE. YOUR SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT ARE AS EXPRESSLY SET OUT IN THIS AGREEMENT. ANY WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

11. JURISDICTION

Under California Civil Code Section 1789.3, subscribers who are residents of California are entitled to the following specific consumer rights information: the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA 95814 or by telephone at 1-916-448-1254.

This Agreement is governed by Georgia law without regard to conflict of law provisions. The federal and state courts located in Atlanta, Georgia alone have jurisdiction over all disputes arising out of or related to this Agreement and the Service. You consent to the personal jurisdiction of such courts sitting in Atlanta, Georgia with respect to such matters or otherwise between you and EarthLink, and waive your rights to removal or consent to removal.

12. MISCELLANEOUS

This Agreement, the Acceptable Use Policy, and EarthLink's other Agreements and policies posted on EarthLink's Web site constitute the entire agreement between you and EarthLink with respect to your use of the Service.

EarthLink may revise, amend, or modify the Agreements at any time and in any manner. Notice of any revision, amendment, or modification will be posted on EarthLink's Web site (www.earthlink.net) and/or on your start pages and/or by email and/or in our various publications and mailings to you.