

# Wilkes Communications Broadband Service Agreement

Thank you for choosing Wilkes Communications' Broadband Internet. By signing this Broadband Internet Service Agreement, you agree to abide by the following terms and conditions.

Please carefully read and review the terms and conditions of this Agreement before using the Service. This is a legal agreement between you, the Subscriber, and Wilkes Communications for the use of the Service. By completing the registration and using the Service, you signify your agreement to all terms, conditions, and notices contained or referenced herein. If you do not agree to these terms and conditions, do not use the Service. Wilkes Communications reserves the right, at our discretion, to update or revise this Agreement without prior notice. Please check Wilkes Communications' web site ([www.wilkes.net](http://www.wilkes.net)) periodically for changes. Your continued use of this service following the posting of any changes to the Agreement constitutes acceptance of those changes.

By using the Service, you also agree to abide by Wilkes Communications' Acceptable Use Policy, which is furnished separately and can be found on Wilkes Communications' web site ([www.wilkes.net](http://www.wilkes.net)).

Wilkes Communications will employ best commercial efforts to provide transmission speeds as defined in the customers selected Broadband Internet plan (between the customer location and the Wilkes Communications' Internet gateway). The actual data throughput experienced by you will be variable and will depend on several factors including the data overhead inherent with IP connections, your location, destination on the Internet, traffic on the Internet, interference with high frequency spectrum on your telephone line, etc. No minimum level of speed is guaranteed. While Wilkes Communications will employ best commercial efforts to maintain service availability, no guarantee is made regarding continuity of the Service, or the ability to log on to the Service.

## A. DEFINITIONS

1. "Agreement" means this Service Agreement as it may be amended from time to time.
2. "Computer" means the personal computer(s) located at Subscriber's location that will be used to access the service. Each computer will need to meet certain minimum hardware and software requirements. Such requirements may be changed from time to time by Wilkes Communications.
3. "Subscriber" means the account holder, authorized by Wilkes Communications, to access and utilize the service.
4. "Service" means Internet Protocol ("IP") connectivity to the Internet gateway using dynamically or statically assigned IP addresses.
5. "Initial Contract Period" shall mean a minimum period of time the subscriber is committed to pay for the service in recognition of certain Considerations extended to the subscriber by Wilkes Communications at the initiation of the Agreement.
6. "Consideration" is used in reference to price concessions made to the Subscriber by Wilkes Communications in return for a commitment on the part of the Subscriber to maintain service for an Initial Contract Period.
7. "Customer Premise Equipment" includes devices installed under the direction of Wilkes Communications in or at the Subscriber's home necessary to provide agreed Service(s). This shall include, but will not be limited to, DSL modems, Fiber Optic Termination Equipment, Digital Television set-top boxes, media converters, remote controls, wiring, wireless routers, gateways, switches, and network interface cards.

## Compliance Definitions

8. "CALEA" is the Communications Assistance to Law Enforcement Act, which was passed in 1994. CALEA is a United States law, which grants law enforcement agencies the right to wiretap and collect information on digital communications networks. Wilkes Communications enables its network to be tapped and complies with all CALEA guidelines.
9. "CPNI" refers to Customer Proprietary Network Information. This information is available to Wilkes Communications by virtue of the basic service subscriber relationship. This information may include the quantity, location, type, and amount of use of local telecommunications services subscribed to, and information contained on Wilkes Communications bills. This is based on the CPNI definition used by the independent voice mail and live telephone answering industry.

## B. GENERAL

1. Use of the Service supplied by Wilkes Communications is expressly limited to you and your immediate family or direct employees. Account sharing or resale is not permitted. Transfer of the account to any other person or entity, or

to another location, without the approval of Wilkes Communications, is prohibited.

2. Because our country allows the free interchange of ideas, you should be aware that some sites, accessible via Wilkes Communications' Service, may allow posting, retrieval, and/or electronic mailing of materials you may consider obscene or objectionable.

3. You must be at least 18 years of age to use the Service. You may, at your discretion, permit minors to use the Service under adult supervision. Wilkes Communications absolves any responsibility regarding activity and accessibility by minors.

4. You are responsible for confidentiality of all account numbers and passwords. Wilkes Communications will suspend access or change access to your account immediately upon notification by the subscriber that a password has been lost, stolen, or otherwise compromised. You must notify Wilkes Communications within 24 hours of discovering any unauthorized use of your account. If a breach does occur, Wilkes Communications will follow all CPNI guidelines.

5. Some material downloaded from the Internet may contain computer viruses. In addition, hackers can gain access to your computer when it is connected to the Internet. Wilkes Communications strongly recommends that you install virus detecting and firewall software on your computer. Wilkes Communications provides, at no charge, antivirus and antispyware software, which is located on our homepage after you sign in to your e-mail account. In addition, you should follow industry accepted security practices such as not opening e-mail from unknown sources.

6. You are responsible for backing up of data on your computer before installation of hardware and software. In some areas the service requires an Internet modem, network interface card (NIC), and necessary software. Whether supplied by the subscriber or Wilkes Communications, the modem and NIC become your property and if they cease to function, are damaged, destroyed, lost, or stolen, you will be liable for the cost of their repair or replacement. We strongly urge you to protect the equipment with a surge arrestor that protects both power and telephone connections.

7. Wilkes Communications reserves the right at any time to add to, modify, or delete any aspect, feature, or requirement of the service, including but not limited to content, equipment, and system requirements.

8. Upon termination of services, whether by the Subscriber's or Wilkes Communications' choice and accord, any webspace, online storage, and e-mails will immediately be deleted.

### C. BILLING

1. You agree to pay Wilkes Communications all charges relating to use of your account including those associated with local service, long distance service, all sales and use taxes, and all other taxes that are applicable to the Service.

2. Access is subject to credit limits, security deposits, and/or pre-payments established by Wilkes Communications.

3. Wilkes Communications reserves the right to change prices without notice.

4. All invoices are due upon receipt and payment is expected unless other arrangements have been made in advance. An administrative late charge may be charged on accounts that are deemed past due.

5. Wilkes Communications may charge a service fee for all returned checks and bankcard or credit card charge backs.

6. Wilkes Communications reserves the right to suspend access to the Service upon an indication of credit problems including delinquent payments. A reconnection charge will apply after payment of any outstanding balance.

7. Upon service termination, Wilkes Communications reserves the right to bill the Subscriber for the remainder of the contract, contract break penalties, as well as for any non-returned Customer Premise Equipment.

### D. OWNERSHIP/COPYRIGHT

1. Information available on the Internet is the property of its providers or other Internet users. You shall not redistribute, reproduce, or commercially exploit such information without express written permission of its owner. Information providers shall have the right to assert and enforce such copyright provisions directly on their own behalf.

2. By submitting information owned by you for publication on the Internet, you grant Wilkes Communications non-exclusive permission to distribute the information product worldwide. You retain all rights you may have to such information.

3. You agree that any material submitted for publication on the Internet through your account(s) does not violate or infringe upon any copyright, trademark, patent, statutory, common law, or proprietary rights of others, or contain anything obscene, objectionable, or libelous.

4. You acknowledge that safeguards relative to ownership, decency, reliability, and integrity of content may be entirely lacking with respect to the Internet or other services or content accessible through Wilkes Communications' Service. You assume all risk and liability of your use of the Internet and such content.

### E. DISCLAIMER OF WARRANTY, LIMITATION OF LIABILITY

1. WILKES COMMUNICATIONS' INTERNET SERVICES ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE WITH RESPECT TO THESE SERVICES OR ANY INFORMATION OR SOFTWARE PROVIDED THEREBY.

2. Some sites accessible via Wilkes Communications' Service allow posting, retrieval, and/or electronic mailing of materials that may be considered obscene or objectionable. Wilkes Communications assumes no responsibility for any content on the Internet or content that you post to the Internet.

3. Wilkes Communications makes no warranties as to the speed or performance of the system, including, but not

limited to, any warranty that any data files or other communications will be transmitted in uncorrupted form or within a reasonable period of time, or that the Service will be uninterrupted or error free. There is no guarantee of message delivery.

4. Due to the low-priority nature of ICMP or PING traffic handling on network routers, this service/application is not appropriate for use in measuring network response time, latency, Service Level Agreements (SLA) or making claims of SLA violations.

5. Wilkes Communications is not responsible for your personal files residing on the Internet. You are responsible for independent backup of such data. Wilkes Communications offers an online backup service for personal data.

6. The service allows you to access via the Internet certain content, merchandise and services for which there are charges payable to third parties. You, and not Wilkes Communications, have the sole responsibility to pay the charges and shall indemnify and hold harmless Wilkes Communications for all liability in connection to such charges.

7. There is a risk that you could be subject to a variety of security breaches. This means that other people, without your knowledge or permission, may be able to access, monitor and alter your computer files or render your computer inoperable. You should also be aware that when using the Internet there are certain applications, in which you might willingly allow others to gain access to your computer. In either case you should take the appropriate security measures to protect your computer against unauthorized access. Wilkes Communications shall have no liability whatsoever for any damage caused by bugs, viruses, or security breaches to your computer.

8. Installation of hardware and software necessary to use the Service could result in damage to your computer, or loss of data files. You are responsible for backing up all data files stored on your computer prior to installing the software and connecting to the service. Wilkes Communications shall have no liability for damage to your computer or loss of data files.

9. Wilkes Communications shall not be liable for any delay in or failure to perform the services caused by circumstances entirely beyond its control such as those occasioned by acts of God or other causes or which it could not have reasonably foreseen or any other cause, which similarly impedes the providing of service.

10. In order to install certain hardware, it may be necessary to open your computer. You assume responsibility for loss of any warranty associated with such opening of your computer. If Wilkes Communications or its Agents supplies required hardware, it is permissible for you or a third party to install such required hardware.

11. If Wilkes Communications supplies hardware, the manufacturer's warranty on that hardware applies. Additional Maintenance Plans may be available to extend the manufacturer's warranty. In the absence of a Maintenance Plan, the manufacturer's warranty applies.

12. Wilkes Communications only supports and maintains modems and other Customer Premise Equipment, as mentioned in Section A, Paragraph 7, provided by or approved by Wilkes Communications. Use of any other service provider's Customer Premise Equipment or non-approved devices is grounds for suspension of service, without warning, due to potential negative network impact.

#### E. OPERATION

1. Wilkes Communications reserves the right to delete customer personal files, which have not been accessed for more than one month, including files stored on your personal web space.

2. You are warned that Internet services may be interrupted for several reasons, including but not limited to malfunctions, maintenance, or improvements as required to protect network resources in the event of malfunctions or misuse. You acknowledge that there may not be advance notification of any such interruption of service.

3. Wilkes Communications reserves the right in its sole discretion to delete any information stored on hardware owned and/or controlled by Wilkes Communications. Wilkes Communications and its authorized representatives shall have the right, but shall not be obligated, to edit publicly viewable information.

4. Suspension of Service

a. Wilkes Communications, at its sole judgment, may immediately suspend your access to the service upon any breach of any of this Agreement, including, but not limited to, refusal or failure to pay for services provided or disruptive online behavior.

b. Although Wilkes Communications has limited authority with regard to information that passes between individual users of the Internet, it is our responsibility to respond to complaints of individual users who are subjected to illegal use of the medium, or who are subjected to unsolicited material that is, in the judgment of Wilkes Communications, considered objectionable to, or damaging to the data of other subscribers and users of the internet.

c. In compliance with CALEA and CPNI regulations, Subscriber information including name, address, contact information, and usage will not be disclosed to any third-party; however, Wilkes Communications will provide to Local, State, or Federal authorities, upon proof of a court order, any information pertinent to that investigation.

d. In keeping with this responsibility, Wilkes Communications reserves the right to suspend the service of any of its subscribers who knowingly, or unknowingly, generate such illegal or unsolicited material.

5. Restoration of Service; Wilkes Communications will restore a service suspended consequent to 4 above when, in Wilkes Communications' judgment, the condition leading to the suspension has been resolved.

6. Wilkes Communications reserves the right to terminate access to service for any customer account which has not been actively used for six months or longer.

#### G. TERM/TERMINATION

1. If, at the initiation of the agreement, Wilkes Communications extends certain Considerations to the subscriber, including, but not limited to, hardware, software, or installation labor, the subscriber agrees to maintain and pay for the service for an Initial Contract Period as defined at the time of such initiation. Furthermore, the subscriber agrees, in the event of a termination of service in less than the Initial Contract Period, to pay to Wilkes Communications an Early Termination fee, as defined in Section "A" Definitions.
2. Minimum Service Requirement: No minimum service requirement "Initial Contract Period" applies if no Consideration was extended to the subscriber by Wilkes Communications at the initiation of the agreement. By signing the Broadband Contract, the customer agrees to the Minimum Service Commitment of 12 months.
3. If the Initial Contract Period has expired, this agreement shall remain in effect so long as the Service is provided or until terminated by either party by providing the other party written or verbal notice.
4. The subscriber agrees, in the event of a termination of service in less than the Initial Contract Period, to pay to Wilkes Communications an Early Termination fee as defined in Section "A" Definitions.

#### H. AMENDMENT

Wilkes Communications may change, modify, add or remove portions of this Agreement at anytime. Wilkes Communications will provide notice of such changes to this Agreement by monthly newsletters, electronic mail, or by the posting of a notice on its web site. Your continued use of the Service following notice of such change shall be deemed to be your acceptance of any modification. If you do not agree to any modification of this Agreement, discontinue using the service and notify Wilkes Communications to terminate your connection to the Service

#### I. GOVERNING LAW

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes hereunder, shall be governed by and construed in accordance with the laws of the State of North Carolina.

Revised date: January 29, 2010