

# Broadlinc Communications LLC

## Internet Service Agreement

**INTRODUCTION** We are committed to complying with the Children's Online Privacy Protection Act. Accordingly, if you are under the age of 13, you are not authorized to provide us with personally identifying information, and we will not use any such information in our database collection activities. We appreciate your cooperation with this federally mandated requirement. By using this Internet service ("Service") or by establishing an account, you agree to be bound by this Agreement and to use the Service in compliance with this Agreement, our Acceptable Use Policies and all other use policies (collectively, the "Terms of Service"). If you do not agree to the Terms of Service, including any future revisions, you may not use the Service, and if you have an account you must terminate it as provided herein. We, your Internet service provider (the "ISP"), reserve the right to revise the Terms of Service and you accept sole responsibility for periodically reviewing them for any and all changes. Your continued use of this Service following the posting of any revisions to the Terms of Service constitutes your acceptance of those revisions.

**1. SUBSCRIBER OBLIGATIONS** (A) End users establishing an account with the ISP ("Members") must be at least 18 years old. (B) Members must (i) provide ISP with accurate and complete billing information including legal name, address, telephone number, and credit card/billing, and (ii) report to ISP all changes to this information within 30 days of the change. Members are responsible for all charges to their account. (C) Members are billed each month for the service and any additional usage or services. Members are responsible for paying all charges billed to their account in the manner and method prescribed on their invoice. ISP is not responsible for any charges or expenses (overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by ISP. (D) If ISP has failed to pay any underlying service provider all amounts owing for your account - whether or not you have paid ISP - your account will be subject to suspension or cancellation until you or ISP has paid all amounts due. (E) Delinquent accounts may be suspended or canceled at ISP's sole discretion; however, charges will continue to accrue until the account is canceled. ISP may bill an additional charge to reinstate a suspended account.

**2. A SPECIAL NOTE CONCERNING MINORS** Protecting children's privacy is especially important to us. It is our policy to comply with the Children's Online Privacy Protection Act of 1998 and all other applicable laws. ISP recommends

that children ask a parent for permission before sending personal information to ISP, or to anyone else online.

**3. MONITORING THE SERVICE** ISP has no obligation to monitor the Service, but may do so and may disclose information regarding the use of the Service for any reason if ISP, in its sole discretion, believes that it is reasonable to do so, including but not limited to: satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself and its Members. Please see our Privacy Policy. ISP may immediately remove your material or information from ISP's servers, in whole or in part, which ISP, in its sole and absolute discretion, determines to infringe another's property rights or to violate our Acceptable Use Policy.

**4. DISCLAIMER OF WARRANTIES** EXCEPT FOR CERTAIN PRODUCTS AND SERVICE SPECIFICALLY IDENTIFIED AS BEING OFFERED BY ISP, ISP DOES NOT CONTROL ANY MATERIALS, INFORMATION, PRODUCTS, OR SERVICE ON THE INTERNET. THE INTERNET CONTAINS UNEDITED MATERIALS, SOME OF WHICH ARE SEXUALLY EXPLICIT OR MAY BE OFFENSIVE TO YOU. ISP HAS NO CONTROL OVER AND ACCEPTS NO RESPONSIBILITY FOR SUCH MATERIALS. YOU ASSUME FULL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE AND THE INTERNET AND ARE SOLELY RESPONSIBLE FOR EVALUATING THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICE, PRODUCTS, AND OTHER INFORMATION, AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE PROVIDED THROUGH THE SERVICE OR THE INTERNET. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ISP DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES, OR OTHER HARMFUL COMPONENTS. ISP 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 ISP OR THE INTERNET GENERALLY. NO ADVICE OR INFORMATION GIVEN BY ISP OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY.

**5. LIMITATION OF LIABILITY** UNDER NO CIRCUMSTANCES SHALL ISP, EMPLOYEES, SUBSIDIARIES, ITS LICENSORS OR ANY UNDERLYING SERVICE PROVIDER BE LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OR INABILITY TO USE THE

SERVICE OR THE INTERNET INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF ISP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, ISP'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

**6. INDEMNIFICATION** Upon a request by ISP, you agree to defend, indemnify, and hold harmless ISP and its subsidiary and other affiliated companies, and their employees, contractors, officers, and directors from all liabilities, claims, and expenses, including attorney's fees, which arise from your use or misuse of this site. ISP reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with ISP in asserting any available defenses.

**7. SOFTWARE LICENSE** ISP grants to each Member a limited, non-exclusive, non-transferable and non-assignable license to install and use the ISP access software (including software from third-party vendors that ISP distributes) (in object code format), its associated documentation, and any updates thereto ("Licensed Programs") in order to access and utilize the Service. Each Member agrees to use the Licensed Programs solely in conjunction with the Service and for no other purpose. ISP may modify the Licensed Programs at any time, for any reason, and without providing notice of such modification to a Member. The Licensed Programs constitute confidential and proprietary information of ISP and ISP's licensors and embody trade secrets and intellectual property protected under United States copyright laws, other laws, and international treaty provisions. All right, title, and interest in and to the Licensed Program, including associated intellectual property rights, are and shall remain with ISP and ISP's licensors. Member shall not translate, decompile, reverse engineer, distribute, remarket or otherwise dispose of the Licensed Program or any part thereof. You may not download, use or otherwise export or re-export the Licensed Programs or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. By installing or downloading the Software, you represent and warrant that you are not located in, under the control of or a national or resident of any country on the U.S. Treasury Department's list of

Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.

**8. WEBSITE USAGE and OTHER WEB SITES** The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because ISP has no control over such sites and resources, you acknowledge and agree that ISP is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that ISP shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource. Some portions of the Website are made available for the free exchange of ideas by participants and are not regularly monitored nor moderated by ISP. ISP assumes no responsibility and makes no warranty that it will undertake to screen or remove such material. You agree to hold ISP harmless from all claims based upon the materials posted by others. Also, in exchange for availing yourself of the opportunity to upload or provide information to this site and any associated chat rooms or discussion areas, you will indemnify ISP from any claims made by third parties regarding the material that you provide. Personal information posted by you to the Website is posted at your own risk. ISP will have no liability arising from use of that information. You shall not use the Website to distribute or publish any advertising of goods or services, solicitations for funds, or other commercial messages. You agree that you will not post, upload or otherwise introduce a virus or other harmful code onto the Website. Your posting of material on the Website or providing material to ISP to use on the Website, will be deemed to be a grant by you to ISP of a perpetual, non-revocable, worldwide, non-exclusive license to the material to include the material on the Website and to reproduce, publish, distribute, perform, display, and transmit the material and to prepare derivative works as reasonably necessary to do so, and you waive all rights of attribution and integrity with respect to the material.

**9. TERM OF AGREEMENT** Continued use of the Service constitutes acceptance of this Agreement and any future versions. If you are dissatisfied with the Service or any related terms, conditions, rules, policies, guidelines, or practices, your sole and exclusive remedy is to discontinue using the Service and, if you are a Member, to terminate your account.

**10. TERMINATION** ISP reserves the right, in its sole discretion, to terminate your account, your password and your use of the Service, with or without notice. You may terminate your account at any time and for any reason by providing notice of intent to terminate to ISP by: telephone calls directed to Customer Service. registered or certified mail, return receipt requested addressed to ISP. Email termination of your basic Internet access account will not be accepted. If your account included space on ISP's servers, anything stored on this space will be deleted upon termination. Section 2, the third paragraph of Section 3, and Sections 5, 6, 7, 12 and 13 of this Agreement shall survive termination of this Agreement.

**11. THIRD PARTY BENEFICIARY** YOU AGREE THAT ANY UNDERLYING SERVICE PROVIDER OF ISP'S SERVICE IS A THIRD-PARTY BENEFICIARY OF THIS AGREEMENT AND AS SUCH IS ENTITLED TO ALL THE RIGHTS AND PROTECTIONS AFFORDED BY THIS AGREEMENT TO ISP DESCRIBED HEREIN.

**12. MISCELLANEOUS** This Agreement, the Acceptable Use Policy, the Privacy Policy, and ISP's other user policies posted on ISP's website constitute the entire agreement between you and ISP with respect to your use of the Service. ISP may revise, amend, or modify this Agreement, the Acceptable Use Policy and any other user policies, at any time and in any manner. Any revision, amendment, or modification will be effective immediately after ISP posts it at its website. This Agreement is governed by the law of the state in which ISP operates its main office without regard to conflict of law provisions. The federal and state courts located in said state 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 said state with respect to such matters or otherwise between you and ISP, and waive your rights to removal or consent to removal.

## **Acceptable Use Policy**

**1. INTRODUCTION** This Acceptable Use Policy ("AUP") governs your use of the Internet services ("Service") provided by us (the "ISP"), whether you subscribe to the Service or not, and you agree to all the terms set forth herein. Generally, ISP does not monitor or edit the content posted by users of the Service or other Internet services that may be available on or through the Service (e.g., newsgroups, chat rooms, message boards, etc.). However, ISP and its agents reserve the right at their sole discretion to remove any content that, in ISP's judgment, does not comply with the AUP or is otherwise harmful,

objectionable, or inaccurate. ISP is not responsible for any failure or delay in removing such content. In addition, ISP may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Your violation of this AUP may result in the suspension or termination of either your access to the Service and/or your ISP account. You agree to indemnify, defend, and hold ISP harmless from any claims resulting from your use of this service, which damages you or another party. At our sole discretion, we may revoke your access for inappropriate usage. Use of any information obtained via the Service is at your own risk. ISP is not responsible for the accuracy, quality, or content of information obtained through the Service. This AUP should be read in conjunction with our Internet Service Agreement and other policies.

**2. VIOLATIONS** The following constitute violations of ISP's AUP: **(A)** Using the Service to gain unauthorized access to any computer systems. **(B)** Using the Service to transmit any material (by email, uploading, posting, or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated thereunder. **(C)** Using the Service to interfere with access to the Internet by other parties or disrupt the network used by ISP. **(D)** Using the Service to harm, harass, degrade, or intimidate an individual or group of individuals on the basis of religion, gender, race, ethnicity, age, or disability. **(E)** Using the Service to transmit any material (by email, uploading, posting, or otherwise) that threatens or encourages bodily harm or destruction of property. **(F)** Using the Service to harass, threaten, embarrass or cause distress, unwanted attention or discomfort upon another. **(G)** Using the Service to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes," "ponzi schemes," and "chain letters." Acceptable Use Policy **(H)** Adding, removing or modifying identifying network header information in an effort to deceive or mislead. **(I)** Using the Service to transmit any unsolicited commercial email or unsolicited bulk email is prohibited. Activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email, whether or not that email is commercial in nature, is prohibited. **(J)** Using the Service to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of ISP or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data. **(K)** Using the Service to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any

third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software. **(L)** Using the Service to collect, or attempt to collect, personal information about third parties without their knowledge or consent. **(M) Using the Service to harm minors in anyway.** **(N) Reselling the Service without ISP's authorization.**

**3. DIAL-UP USAGE** All dial-up accounts under the Service are allowed an unlimited number of sessions, however, these are not dedicated access accounts. Automated means of avoiding disconnections due to inactivity are prohibited. Such automated means include electronic or software auto-dialers, programs that maintain an active connection, pinging the mail server, repetitive e-mail checks and any other means currently available or developed in the future. Please refer to our web site or customer service for the current pricing for our accounts and any excess usage charges.

**4. BANDWIDTH / USAGE LIMITS** To prevent a small percentage of customers from using a large percentage of the total available bandwidth, and thereby effecting the Quality of Service (QoS) of other customers. Bandwidth, a total of up and down, is limited to 3 Gigabytes per day (any 24 hour period) for Package #1, and 4 Gigabytes per day (any 24 hour period) for Package #2. When this limit is exceeded, the bandwidth speed will be restricted to 300kbps for a duration that is deemed necessary by Broadlinc management.

**5. REVISIONS BY ISP OF THIS AUP** ISP reserves the right to revise, amend, or modify this AUP, our Internet Service Agreement and our other policies at any time and in any manner. Any revision, amendment, or modification will be posted in accordance with the terms of the Internet Service Agreement.