

**WELCOME! Thank you for giving us the opportunity to provide you affordable, reliable high-speed Internet access.**

**We look forward to you becoming a new customer.**

**Enterprise Solutions Customer Agreement**

This Agreement describes the terms and conditions between you and Butler Rural Electric Coop., Assn. Inc. ("Member," "Us" or "We") applicable to the WildBlue Enterprise Solutions service. Member is an authorized distributor of WildBlue Communications, Inc. ("WildBlue"). Please read this Agreement carefully since it contains important contract rights and obligations between you and Member, as well as important limitations on those rights. If you would like to contact us, you may call 316-321-9600 or write to:

**[Member Name and Address]**

Butler Rural Electric Cooperative, Assn. Inc.

216 S. Vine

El Dorado, KS 67042

This Agreement has 7 pages and also incorporates WildBlue's applicable Fair Access Policy and Acceptable Use Policy. You acknowledge that you have received, read, understand and agree to be bound by all of the terms and conditions set forth on each of the four pages of this Agreement and WildBlue's Fair Access Policy and Acceptable Use Policy, as each of these documents may be updated from time to time.

**If you did not receive pages 2 through 7 of this Agreement, DO NOT SIGN THIS AGREEMENT.**

**Customer Information:**

**Customer Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print Customer Name:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**1. The Service.**

1.1 **Description.** The Service consists of a enterprise, satellite-based Internet access service as further described in this Agreement (the "Service"). Service is in available locations in the contiguous U.S. with an unobstructed view of the southern sky and its usage is subject to WildBlue's Fair Access and Acceptable Use Policies. In order to receive the Service, you must purchase the equipment designated by the Member ("WildBlue Equipment") from Member. Only a Member-authorized installer may install the WildBlue Equipment in your residence.

2. **Minimum System Requirements.** Each computer receiving the Service must meet certain minimum requirements as set forth at [www.wildblue.com/aboutWildblue/qaa.jsp#1\\_6](http://www.wildblue.com/aboutWildblue/qaa.jsp#1_6). It is your responsibility, at your expense, to obtain, maintain, and operate suitable and fully compatible computer equipment. You are also responsible for all telephone charges incurred in connection with using the Service, if you access the Internet using our dial-up Internet access service.

**3. Service Commitment.**

3.1 **Minimum Service Commitment.** All service plans require a 24-month minimum service term ("Minimum Service Term"). If you terminate service prior to the expiration of the Minimum Service Term, you will owe (and your credit card, debit card,

or bank account may be charged) the Termination Fee as described below. You may not downgrade your service plan to a lower service package until 30 days after activation of your Service.

**3.2 Term and Renewal.** The term of this Agreement commences on the date your Service is activated and continues for the duration of the Minimum Service Term unless terminated earlier by you or Member in accordance with this Agreement. After the Minimum Service Term expires, the term of this Agreement will automatically renew on a month-to-month basis until terminated by you or Member in accordance with this Agreement.

**3.3 Termination Fees.** If you cancel your order before installation, you will not be charged. If you cancel the Service after installation but before completion of the Minimum Service Term, you will be charged a Termination Fee equal to the number of months left in your Minimum Service Term multiplied by your base monthly fee. You are not required to return, and Member is not obligated to de-install, the WildBlue Equipment.

#### **4. Responsibility And Supervision.**

**4.1 Account Set-Up.** You agree that you are responsible for obtaining installation services for the WildBlue Equipment from a Member -authorized installer and for verifying and maintaining the account, options, settings and other parameters under which the Service is used, including (without limitation) all related passwords and user identification information.

**4.2 Multiple Use of Account.** The service package you ordered may limit the number of computers in your commercial location that may receive Services under a single billing account. You must strictly observe any such limitation. Your "commercial location" does not include any type of office or other space not associated with your business. Any use of the Services other than as specified above constitutes an unlawful and unauthorized use of the Service and a material breach of this Agreement, regardless of whether you receive any compensation for such use, and may result in the immediate termination of the Services and the imposition of the Termination Fee, without prejudice to any rights and remedies available to Member under this Agreement, at law and at equity.

**4.3 Installation of Equipment.** You represent that there are no legal, contractual or similar restrictions on the installation of the WildBlue Equipment in location(s) you have authorized. It is your responsibility to ensure compliance with all applicable building codes, zoning ordinances, homeowners' association rules, covenants, conditions, and restrictions related to services provided under this Agreement, to pay any fees or other charges, and obtain any permits or authorizations necessary for services provided under this agreement (collectively "Legal Requirements"). You are solely responsible for any fines or similar charges for service in violation of any applicable Legal Requirements. You acknowledge and agree that Member or our designated service provider will be required to access your premises or system and to install and maintain the WildBlue Equipment, including the antenna and its components, necessary for you to receive the Service inside and outside your location. This will include attaching a satellite modem(s) to your computer(s), installing software on your computer(s) and configuring your computer(s) for optimized performance of the Service. By signing this Agreement, scheduling a service or installation visit, and permitting us or our service provider to enter your premises, you are authorizing Member or our service provider to perform all of the above actions. NEITHER MEMBER, WILDBLUE NOR MEMBER'S SERVICE PROVIDER SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSSES RESULTING FROM INSTALLATION, REPAIR OR OTHER SERVICES, INCLUDING WITHOUT LIMITATION, DAMAGE TO YOUR PREMISES, LOSS OF SOFTWARE, DATA OR OTHER INFORMATION FROM YOUR COMPUTER(S). You are responsible for backing up the data on your computers and we highly recommend that you do so prior to permitting access to us or one of our designated service providers. This limitation does not apply to any damages arising from the gross negligence or willful misconduct of any installation or maintenance service provider. Timeframes for installation, if any, are not guaranteed and may vary depending on the types of services requested and other factors.

**(a) Subscriber Responsibility.** You agree that you are responsible for all access to and use of the Service through your account or password(s) and for any fees incurred for Service, or for software or other merchandise purchased through the Service, or any other expenses incurred in accordance with the terms of this Agreement. You ratify and confirm any obligations an employee or any other individual with access to your account incurs or assumes. You acknowledge that an owner's manual or similar material was provided to you at the time of installation of your WildBlue Equipment and that (subject to any exceptions granted by us) a monthly fee payable in advance will apply for each and every month (or portion of a month) that you are a subscriber, beginning with the date your Service is activated. Your account will continue until you cancel the account in accordance with the method specified by us (unless otherwise terminated in accordance with this Agreement). The monthly subscription fee shall cease to apply for any months after the billing month in which you cancel or terminate your account in accordance with these terms and conditions.

**(b) Billing and Charges.** You agree to pay, in accordance with the provisions of the billing option you selected, any registration, activation or monthly fees, ISP service charges, minimum charges and other amounts charged to or incurred by you, or by users of your account, at the rates in effect at the start of the billing period in which those amounts are charged or incurred. You agree to pay all applicable taxes related to your use of the Service, provision of services, software or hardware or the use of the Service by users of your account. Information on charges and surcharges (if any) that are to be paid to us and are incurred by you or by users of your account are available from Member, and you agree that this is sufficient notice for all purposes as to charges incurred and paid or to be paid to us. Additional terms relating to pricing, billing and payment which are an integral part of this Agreement and which were provided to you are incorporated into this Agreement. Member reserves the right to correct and charge under-billed amounts for a period of 90 days after the incorrect statement was issued. Payment of the outstanding balance is due in full each month.

(c) **Late Payment.** If your payment is not received by us before the next statement is issued, you may be charged a late fee on the delinquent balance at the lesser of 1.5% per month or the maximum rate permitted by applicable law. If we do not receive payment from you before your next statement is issued, we have the right to suspend your Service or terminate this Agreement without notice. Termination of the Agreement by us due to your default or nonpayment will result in a Termination Fee owed by you.

**4.4 Payment Authorization.** Except where additional methods of payment are specifically required or permitted under applicable law or regulation or as otherwise agreed to by Member from time to time, you agree that WildBlue can charge your credit card or debit card ("Card Payment"), or initiate an electronic funds transfer out of your bank account ("EFT Payment") for payment of all Service fees, the Termination Fee or any other amounts payable under this Agreement. Additionally, you agree that Member will bill your monthly Service fee in advance. If you selected automatic credit card or bank account withdrawal, the following terms apply: The Service fee will automatically be collected through either a Card Payment or EFT Payment. With respect to such charges the following authorization applies: You authorize automatic Card Payments or EFT Payments by Member. You agree that the charges described above will be billed to the credit or debit card provided by you when you applied for the Service until such time as you may authorize recurring EFT Payments. You must provide current, complete, and accurate information for your billing account, and promptly update any changes (such as a change in billing address, credit card number, credit card expiration date, bank account number). If you fail to provide us with any of the foregoing information, you agree that Member may continue charging you for any service provided under your account. If we are unable to process your credit or debit card at any time, your account may be immediately suspended or terminated and you will remain responsible for all amounts payable by you to us. Your card issuer agreement governs use of your credit or debit card payment in connection with this Service and you must refer to that agreement with respect to your rights and liabilities as a cardholder. If we do not receive payment from your credit or debit card issuer or its agent, you agree to pay us all amounts due upon demand by us. You agree that Member will not be responsible for any expenses that you may incur resulting from overdrawing your bank account or exceeding your credit limit as a result of an automatic charge made under this Agreement. Credit card payment is not required for residents of States where payment by credit cards may not be made mandatory.

**4.5 Disputes and Partial Payments.** If you think a charge is incorrect or you need more information on any charges applied to your account, you should contact our billing department. You must contact us within 45 days of receiving the statement on which the error or problem appeared. Member will make available to you a statement for each billing cycle showing payments, credit purchases and other charges. Member will not pay you interest on any overcharged amounts later refunded or credited to you. We may, but are not required to, accept partial payments from you. If partial payments are made, they will be applied to amounts owed by you starting with the oldest outstanding statement. If you send us checks or money orders marked "payment in full" or otherwise labeled with a similar restrictive endorsement, we can, but are not required to, accept them, without losing any of our rights to collect all amounts owed by you under this Agreement. If we choose to use any collection agency or attorney to collect money that you owe us or to assert any other right that we may have against you, you agree to pay the reasonable costs of collection or other action including, but not limited to, the costs of a collection agency, reasonable attorney's fees, and court costs.

**4.6 Reactivation.** If your Service is suspended or terminated, including your failure to submit payment on time or for any other reason, in addition to payment of past due amounts, we may require a deposit before reactivating your Service. The amount of the deposit will not exceed one year of monthly fees. Amounts deposited by you will appear on your statement as a credit, and service charges and other fees will be invoiced as described above. If you fail to pay any amount on a subsequent bill, the unpaid amount will be deducted each billing cycle from the credit amount. Credit amounts shall not earn or accrue interest. If your Service is suspended or terminated for any reason, including at your request or because of your failure to pay past due amounts, and you want to reactivate the Service, you agree to pay a reactivation fee in accordance with our then current rates. In addition you must bring your account up to date through the month of reactivation by making payment in full of any outstanding balance, fees and other applicable charges.

## **5. Modifications, Rights of Cancellation or Suspension.**

**5.1 Modification of this Agreement.** Upon notice published over the Service, we may at any time (and from time to time) modify this Agreement, including, without limitation, our pricing and billing terms. We may, but are not required to, notify you by e-mail, online via one or more of the websites within the Service or other electronic notice. If you do not agree to such changes or additions, then you must terminate this Agreement in accordance with Section 5.3 and stop using the Service prior to the effective date of such modifications. Your continued use of the Service after the effective date of such modifications constitutes your acceptance of such modifications.

**5.2 Modification of the Service.** We may discontinue, add to or revise any or all aspects of the Service in our sole discretion and without notice, including access to support services, publications and any other products or services ancillary to the Service. In particular, we reserve the right at our sole discretion to modify, supplement, delete, discontinue or remove any software, file, publications, information, communication or other content provided to you by Member or our vendors in connection with the Service. If we undertake any of these changes, we may, but are not required to, notify you by e-mail, online via one of more of the websites within the Service or other electronic notice. If you do not agree to such changes, then you must cancel your subscription and stop using the Service prior to the effective date of such changes. Your use of the Service after the effective date of such changes or additions constitutes your acceptance of such changes. In addition, we may take any action consistent with our Acceptable Use and Fair Access Policies, including actions to (a) prevent bulk e-mailing from entering or leaving any e-mail account or the network e-mail system, (b) delete e-mail messages if your e-mail account has not been accessed by you within a time established by us from time to time, in our sole discretion, (c) instruct our system not to process e-mail or instant messages due to space limitations, (d) make available to third parties information relating to Member or its subscribers, subject to our Subscriber

Privacy Policy, (e) withdraw, change, suspend or discontinue any functionality or feature of the Service, (f) delete attachments to e-mail due to potentially harmful materials included within such attachment, and (g) limit access to the Service to prevent abusive consumption and ensure fair access for all subscribers.

**5.3 Termination by Subscriber.** Subject to your payment of the Termination Fee and the fee for Services for the full billing cycle in which termination occurred, you may immediately terminate this Agreement and discontinue the Service at any time upon written or telephone notice to us. You must terminate this Agreement in accordance with its terms; failure to do so may delay or prevent us from knowing that a termination was intended. You will continue to be liable under this Agreement for all fees and charges until such time as the Agreement has been properly terminated or we have acknowledged such termination in writing or by e-mail.

**5.4 Termination or Suspension by Member.** We may immediately terminate your Service and this Agreement if you or a user of your account breaches this Agreement. We reserve the right in our sole discretion to terminate your account and this Agreement at any time or to suspend (with or without notice) or terminate access to or use of the Service, in whole or in part.

**5.5 Post-Termination or Suspension Obligations.** Notwithstanding any cancellation or termination of this Agreement or any of your accounts, nor any suspension or termination of access to or use of the Service, you will remain responsible for all payment and other obligations under this Agreement, including the obligation to pay all charges that may be due as a result of or in connection with such cancellation, termination or suspension. Your payment and other obligations under this Agreement are not suspended or affected by a suspension of access to or use of the Service, in whole or in part, due to a violation (actual, threatened, or alleged) of this Agreement or of any law or legal obligation by you or any user of your account.

## **6. Permitted Use And Restrictions On Use.**

**6.1 Software License.** Subject to the terms of this Agreement, WildBlue grants to you a personal, non-exclusive, non-assignable and nontransferable license to use and display the software provided by or on behalf of WildBlue (including any updates) only for the purpose of accessing the Service ("Software") in accordance with this Agreement. Unauthorized copying of the Software, including software that has been modified, merged or included with the Software, or the written materials associated therewith is expressly forbidden. You may not sublicense, assign, or transfer this license or the Software except as permitted in writing by WildBlue. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this license is void and may result in termination by WildBlue of this Agreement and the license. You agree that you shall not copy or duplicate or permit anyone else to copy or duplicate, any part of the Software, or create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under this Agreement.

**6.2 Restrictions On Use Of The Service.** Member and WildBlue reserve the right to terminate immediately the Service and this Agreement if you or any user under your account knowingly or otherwise engage in any prohibited activity or if you use the WildBlue Equipment or Service in a way which is contrary to any WVAR policy, WildBlue policy or any policy of a Member supplier. You must strictly adhere to any policy set forth by another service provider accessed through the Service. You agree to comply with WildBlue's Acceptable Use Policy, [www.wildblue.com/legal/acceptable\\_use\\_policy.jsp](http://www.wildblue.com/legal/acceptable_use_policy.jsp), and Fair Access Policy attached to this agreement (both may be updated from time to time) and both of which are incorporated into and made a part of this Agreement. You do not own, nor have any rights other than those expressly granted to you, to a particular IP address, even if you have ordered a static IP address.

**6.3 Fair Access Policy.** If your usage exceeds the limits set forth in the Fair Access Policy applicable to your plan, we may reduce the bandwidth available to you on a temporary basis. Continued violation of the Fair Access Policy is a breach of this Agreement and will result in the termination of this Agreement and you will owe the Termination Fee, if you have not completed your Minimum Service Term. Internet access is not guaranteed. The terms of this policy apply to all service plans. For specific Fair Access Policy limitations please see the description of the service plan you are receiving.

**6.4 Prohibition on Resale.** Reselling the Service or otherwise making the Service available to anyone other than your designated employees, agents or contractors (e.g. via wi-fi, or any other method), in whole or in part, directly or indirectly, whether monetary compensation is received or not, and whether on a bundled or unbundled basis is prohibited. The Service is for your business' use only and you agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose that makes Service available to any person unaffiliated with you or computer not under your control, or as an end-point on a non-WildBlue local area network or wide area network. In addition, other prohibited activities include connecting multiple computers behind the satellite modem to set up a LAN (Local Area Network) that in any manner would result in a violation of the terms of the Acceptable Use Policy, Fair Access Policy or terms of any other policy or plan, or running programs, equipment, or servers from your residence that provide network content or any other services to anyone outside of your premises.

**6.5 No Unauthorized Use of WildBlue Equipment or Software.** You are strictly prohibited from servicing, altering, modifying, or tampering with the WildBlue Equipment, Software or Service or permit any other person to do the same who is not authorized by Member. You may not copy, distribute, sublicense, decompile or reverse engineer any of the Software.

**6.6 Compliance with Laws.** You agree to comply with all applicable laws, rules and regulations in connection with the Service, your use of the Service and this Agreement.

**6.7 Security.** You agree to take reasonable measures to protect the security of computers capable of accessing the Service through your account, including maintaining at your cost an up-to-date version of anti-virus and/or firewall software to protect

your computer from malicious code, programs or other internal components (such as a computer virus, computer worm, computer time bomb or similar component). You expressly agree that if your computer becomes infected and causes any of the prohibited activities listed in the Acceptable Use Policy, Member may immediately suspend your Service until such time as your computer is sufficiently protected to prevent further prohibited activities. You will be fully liable for all monthly fees and other charges under this Agreement during any period of suspension. In all cases, you are solely responsible for the security of any device you choose to connect to the Service, including any data stored or shared on that device.

**6.8 Responsibility of Subscriber.** You are responsible for any misuse of the Service committed through your account or utilizing your WildBlue Equipment. You must take steps to ensure that unauthorized access to the Service does not occur, for example, strictly maintaining the confidentiality of your Service login and password. You agree to notify us immediately after you sell, give away or otherwise transfer your WildBlue Equipment to anyone else. You are considered the registered recipient of the Services until we receive such notice, and you will be liable for any charges or fees incurred by the use of your WildBlue Equipment by anyone else up to the time that we receive your notice, unless otherwise provided by applicable law. You may not assign or transfer your Service without our written consent. If you do, we may inactivate your Service. If your WildBlue Equipment is stolen or otherwise removed from your premises without your authorization you must notify Member's Customer Care Center immediately, or else you will be liable for payment for unauthorized use of the Service or WildBlue Equipment.

**7. Use And Control Of Information; Member Communication; Ads.** We may, without obligation, liability or notice, except to the extent prohibited by applicable law, distribute, loan, sell or otherwise share with other persons or entities user lists (subscriber account information that does not identify you by name, address or similar personally-identifiable information) as well as aggregate information. Aggregate information includes information constituting or descriptive of demographic information, habits, usage patterns, preferences, survey data or other descriptive or related data which do not rely on providing to recipients the identity of any particular user of the Service. This shall not be construed to limit our use of other information not addressed in this Section. We will be free, in our reasonable good faith discretion and without notice, to provide subscriber and user information and records to (i) the courts, (ii) law enforcement agencies, (iii) government agencies, or (iv) authorized persons or entities involved in enforcing compliance with the law or prosecuting claims or investigations for conduct or conditions alleged or believed to be illegal or to violate or threaten the rights of any person or entity. In addition, we may maintain and use internally such information and records. Information generated by or in connection with our administration of the Service shall be and remain our exclusive property. We may also from time to time provide online, fax, telephone, e-mail, mail and other communications to our Subscribers and users on matters pertaining to the Service, its features, its sponsors or its use without compensation to them or reimbursement of costs for doing so, but shall do so reasonably and in good faith. You acknowledge that communications with us, our representatives and our contractors may be monitored or reviewed for quality control and other reasonable business purposes. You also acknowledge that advertising and promotion may occur on the Service and also that neither you nor any user shall have any claim with respect to any proceeds from such activities.

**8. WildBlue Equipment.** The terms of sale applicable to the WildBlue Equipment are governed by your purchase agreement or other documents evidencing such sale and, if applicable, WildBlue's limited warranty (available at [www.wildblue.com/legal/limitedwarranty.jsp](http://www.wildblue.com/legal/limitedwarranty.jsp)) and service plan, if any. In addition, WildBlue Equipment contains software and/or other intellectual property subject to a license agreement(s) ("License Agreement") provided with the WildBlue Equipment. Any breach of the License Agreement constitutes a breach of this Agreement.

**9. Warranties and Limitations of Liability.**

**9.1 DISCLAIMER OF WARRANTIES.** YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. NEITHER MEMBER NOR ANY OF MEMBER'S DEALERS, DISTRIBUTORS, AGENTS, EMPLOYEES, SUPPLIERS (INCLUDING WILDBLUE), LICENSORS OR THIRD PARTY CONTENT PROVIDERS ("MEMBER'S PARTNERS") WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO MEMBER NOR ANY OF MEMBER'S PARTNERS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE, INCLUDING ANY MINIMUM UPLOAD OR DOWNLOAD SPEEDS. THE SERVICE IS DISTRIBUTED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF INFORMATIONAL CONTENT, NON-INFRINGEMENT OR OTHERWISE, EXCEPT THE FOREGOING SHALL NOT APPLY IN STATES WHERE IT IS PROHIBITED. MEMBER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR FREE, SECURE OR UNINTERRUPTED OR OPERATE AT ANY MINIMUM SPEED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY MEMBER OR ANY OF MEMBER'S PARTNERS SHALL CREATE A WARRANTY; NOR SHALL YOU RELY ON ANY SUCH INFORMATION OR ADVICE. BECAUSE MEMBER PROVIDES SUBSCRIBERS WITH ELECTRONIC ACCESS TO THE CONTENT AVAILABLE ON THE INTERNET, WE CANNOT AND DO NOT WARRANT THE ACCURACY OF ANY OF THE INFORMATION YOU OBTAIN THROUGH THE SERVICE. WE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM, OR FROM ANY ATTEMPT TO REMOVE, ANY COMPUTER VIRUS OR OTHER HARMFUL FEATURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU TO THE EXTENT SUCH EXCLUSION IS NOT ALLOWED BY APPLICABLE LAW. THE LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU ALSO MAY HAVE OTHER RIGHTS THAT VARY BY JURISDICTION.

**9.2 LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER MEMBER NOR ANY OF MEMBER'S PARTNERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY. WITHOUT IN ANY WAY LIMITING THE FOREGOING, IF FOR ANY REASON, BY OPERATION OF LAW OR OTHERWISE, ANY PORTION OF THE FOREGOING LIMITATION OF LIABILITY SHALL BE VOIDED, THEN IN SUCH EVENT WILDBLUE'S MAXIMUM, SOLE, AND EXCLUSIVE LIABILITY AND THE LIABILITY OF MEMBER AND MEMBER'S PARTNERS SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO MEMBER BY YOU FOR SERVICE DURING AND FOR A PERIOD OF TIME COMMENCING UPON THE OCCURRENCE OF SUCH ERROR, DEFECT OR FAILURE AND CEASING UPON THE DISCOVERY OF SUCH, IN WHOLE OR IN PART; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL SUCH PERIOD OF TIME EXCEED THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHICH SUCH ERROR, DEFECT OR FAILURE IS FIRST DISCOVERED IN WHOLE OR IN PART.

**9.3 Applicability and Exceptions.** The foregoing exclusions or limitations of liability apply regardless of any allegation or finding that a remedy failed of its essential purpose, regardless of the form of action or theory of liability (including, without limitation, negligence) and even if Member or others were advised or aware of the possibility or likelihood of such damages or liability. The foregoing shall not apply in states where such exclusions are prohibited. In addition, these exclusions and limitations do not apply to your purchase of your WildBlue Equipment, which is governed by your purchase agreement or other documents evidencing such sale and if applicable, WildBlue's limited warranty (available at [www.wildblue.com/legal/limited\\_warranty.jsp](http://www.wildblue.com/legal/limited_warranty.jsp)) and service plan, if any.

**9.4 Service Interruptions.** Service may be interrupted from time to time for a variety of reasons. We are not responsible for any interruptions of Service that occur due to acts of God (including weather), power failure or any other cause beyond our reasonable control. You acknowledge and agree that the Service is not intended to be, and should not be used as, your primary or "life-line" telecommunications service.

**9.5 Indemnity.** You agree to indemnify, defend and hold us and WildBlue harmless against all claims, liability, damages, costs and expenses, including but not limited to reasonable attorneys fees, arising out of or related to any and all use of your account. This includes, without limitation, responsibility for all consequences of your (or that of any user of your account) violation of this Agreement or placement on or over, or retrieval from or through, the Service of any software, file, information, communication or other content and all costs incurred by us in enforcing this Agreement against you.

**9.6 Third Party Beneficiaries.** The provisions of this Section 9 are for the benefit of us, WildBlue, the National Rural Telecommunications Cooperative and our respective contractors, information or content providers, service providers, licensors, employees and agents; and each shall have the right to assert and enforce such provisions directly on their own behalf. Other than as expressly stated in this Agreement, this Agreement shall not be deemed to create any rights in third parties.

## **10. General**

**10.1 Limits on Transfers.** Unless otherwise agreed in writing, your right to use the Service, or to designate other users of your account, is not transferable and is subject to any limits established by ourselves, or by your credit card company or other billing institution, as applicable.

**10.2 Applicable Law.** This Agreement is made in the State of Kansas. This Agreement and all of the Parties respective rights and duties, including, without limitation, claims for violation of state consumer protection laws, unfair competition laws, and any claims in tort shall be governed by and construed in accordance with the laws of the State of Colorado, in the United States, excluding conflicts of laws provisions. **Any such controversy or claim shall be settled exclusively by arbitration, and administered by the American Arbitration Association under its Commercial Arbitration Rules. Any such arbitration will be held in El Dorado, Kansas or the location of the residence where the WildBlue Equipment was installed. The arbitrator will be an expert in the field of Internet services or other appropriate subject matter of the dispute. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.** There shall be no class action arbitration pursuant to this Agreement. Any cause of action brought by you, or by users of your account, with respect to the Service or this Agreement must be instituted within one year after the claim or cause of action has arisen or be barred. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and it is acknowledged that this is a services contract and not a contract for the sale of goods.

**10.3 Notices, Disclosures and Other Communications.** Where notification by Member is contemplated by or related to this Agreement, notice may be made by any reasonable means, including, but not limited to, e-mail or publication over the Service. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial and administrative proceedings relating to or based upon this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You must promptly notify us on any change in your e-mail or postal address in writing.

**10.4 Construction and Delegation.** Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. We may authorize or allow our contractors and other third parties to provide to services necessary or related to making the Service available and to perform obligations and exercise our rights under this Agreement, and we may collect payment on their behalf, if applicable. The provisions of any Sections of this Agreement, which by their nature should continue, shall survive any termination of this Agreement.

**10.5 Miscellaneous.** If any term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, it shall be construed in such a way as to eliminate the offending aspects while still giving as much effect as possible to the intentions of such term. If this cannot be done and the entire term is invalid, illegal or unenforceable and cannot be so repaired, then the term shall be considered to be stricken from this Agreement as if it had not been included from the beginning. In any such case, the balance of this Agreement shall remain in effect in accordance with its remaining terms notwithstanding such invalid, illegal or unenforceable term. We may enforce or decline to enforce any or all of the terms of this Agreement in our sole discretion. In no event shall we be required to explain, comment on, suffer liability for or forfeit any right or discretion based on its enforcement, non-enforcement or consistency of enforcement of these terms. Captions used in this document are for convenience only and shall not be considered a part of this Agreement or be used to construe its terms or meaning.

**10.6 Assignment Of Account.** We may sell, assign, pledge or transfer your account or an interest in your account to a third party without notice to you. In the absence of a notice of such sale or transfer, you must continue to make all required payments to us in accordance with your statement.

**10.7 Entire Agreement.** This Agreement, as well as the additional online documents specifically incorporated as a part of this Agreement, constitute the entire and only agreement with respect to its subject matter between you and ourselves, applicable also to all users of your account. This Agreement supersedes all representations, proposals, inducements, assurances, promises, agreements and other communications with respect to its subject matter except as expressly set forth in this document.

## FAIR ACCESS POLICY

**At WildBlue, our goal is to give each of our customers the fastest service possible at the lowest possible price. We are always striving to develop programs and policies that help make that possible. Our Fair Access Policy is designed to impact the fewest customers while helping ensure the best speeds for the vast majority of our customers.**

WildBlue has documented that a small percent of customers account for a disproportionate share of data usage on the WildBlue network. To ensure that all WildBlue customers have equitable access to the WildBlue network, WildBlue, has implemented a Fair Access Policy (or "FAP"). WildBlue sets usage thresholds on the amount of data you can upload and download within stated time periods. If you exceed these thresholds, WildBlue will temporarily limit the speed at which you can send and receive data over the WildBlue access network. You will still be able to use the WildBlue Internet access service but your speed will be slower. WildBlue may use other traffic management and prioritization tools to help ensure equitable access to the WildBlue network for all customers. Your WildBlue Internet access is not guaranteed and is subject to this FAP.

Based on an analysis of typical customers, we have set a rolling 30-day limit on data usage per customer, called a Usage Threshold. As shown in the table below, this threshold varies based on the service plan you selected. For each service plan, the Usage Thresholds are significantly above the amount of data that is used by a typical customer. Every day, we measure your upload and download data usage ("Actual Usage") to determine if your total Actual Usage, as aggregated over the previous 30 days ("Usage Total"), exceeds the Usage Threshold for the service plan that you selected. At any time, you can see your Usage Total versus your monthly Usage Threshold under the Usage section in the Admin Tool. If you feel that your usage will exceed the Usage Thresholds specified for your current level of service we would recommend that you contact your WildBlue service agent to see how you can upgrade your service to a higher level.

You will be notified via your WildBlue contact email address if your Usage Total reaches 80% or more of the Usage Threshold. If at any time your Usage Total is above the Usage Threshold, your usage has violated the FAP and we will reduce your WildBlue access speeds, typically to 128 kbps in the downstream (from the Internet to you) and 28 kbps in the upstream (from you to the Internet). Once your speeds have been reduced, you must decrease your usage to bring your Usage Total to 70% or less of the Usage Threshold. Once your Usage Total reaches this level, your access speeds will be restored to the original speed levels by the next day.

If, however, you do not decrease your usage to 70% or less of the Usage Threshold within the next 30 days, this failure will constitute a second FAP violation. If you violate the FAP in each of the four consecutive months or in each of five calendar months within any twelve month period -- whether by exceeding the monthly Usage Threshold or by remaining in a reduced-speed status -- your speeds will be reduced and your access will be restricted to Web browsing activities and to sending and receiving e-mail. Again, once you reduce your Usage Total to 70% of your monthly Usage Threshold, your speeds and access will return to normal.

You are likely to avoid any limitations imposed by the FAP if your use is typical of the majority of Internet users and consists primarily of Web surfing and a reasonable amount of downloading. The table below shows the monthly Usage Thresholds for each plan. These limits specify the amount of data that you can upload and download before your access speed is reduced. Please note that your Usage Total is far more likely to exceed the Usage Thresholds below if you use peer-to-peer file sharing programs, you use a webcam or you download full length movies, large quantities of music files, full software applications or similar high-bandwidth activities.

	WildBlue FAP Monthly Usage Thresholds				
	Nickel	Copper	Bronze	Silver	Gold
<b>Upload Threshold (MB) <sup>1</sup></b>	500	3,000	4,000	6,000	10,000
<b>Download Threshold (MB)</b>	1,000	12,000	17,000	24,000	38,000

<sup>1</sup>	Upload Threshold is the volume of data that can be uploaded during the previous 30 days before the Fair Access Policy may restrict the user's speeds.
<sup>2</sup>	Download Threshold is the volume of data that can be downloaded during the previous 30 days before the Fair Access Policy may restrict the user's speeds.

*These terms and conditions state important requirements regarding your use of WildBlue's High-speed Internet service and your relationship with WildBlue. You should read them carefully as they contain important information regarding your rights and ours. If you do not agree to these terms and conditions, you may not use the service and, subject to the terms of your Customer Agreement, you must terminate your service immediately.*

*WildBlue may revise this Fair Access Policy from time to time without notice by posting a new version of this document on [wildblue.com](http://wildblue.com), [wildblue.net](http://wildblue.net) or any successor URL(s). All revised copies of the Policy are effective immediately upon posting. Accordingly, customers and users of WildBlue's High-speed Internet service should regularly visit these web sites. Questions regarding this FAP and complaints of violations of it by WildBlue customers and users can be directed to your WildBlue service agent.*  
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