

Acceptable Use Policy for WildBlue Customers

Customer Agreement and Usage Policy

BY USING THE INTERNET ACCESS OFFERED BY **Mobius Communicatios Company** (heretofore referred to as Mobius) OR OPENING THIS PACKAGE, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, DO NOT USE INTERNET ACCESS OFFERED BY Mobius OR RETURN THE PRODUCT TO THE PLACE OF PURCHASE FOR A REFUND.

THE SOFTWARE AND DOCUMENTATION ARE PROVIDED FOR USE (I) ONLY WITH THE INTERNET ACCESS SERVICE INITIALLY OFFERED BY Mobius IN CONJUNCTION WITH THE DISTRIBUTION OF THE SOFTWARE AND DOCUMENTATION AND (II) IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. NO RIGHT OR LICENSE IS GRANTED TO USE THE SOFTWARE OR DOCUMENTATION WITH ANY OTHER INTERNET ACCESS.

GRANT

Mobius hereby grants non-exclusive, non-transferable, limited license to access the Internet through **Mobius'** network and a non-exclusive license to use its accompanying software product and accompanying documentation on the following terms:

You may:

use the Software only with the Internet service initially offered by Mobius in conjunction with the distribution of the Software and Documentation of Mobius' Internet Services, with which it is bundled; use the Software on any single computer; use the Software on a second computer so long as the first and second computers are not used simultaneously; or copy the Software for archival purposes, provided any copy contains all the original Software's proprietary notices.

You may not:

use the Software or Documentation in conjunction with any Internet access or other network service, other than **Mobius'** Internet Services permit individuals outside your household to use the Software except under the terms above; modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the Software or Documentation; copy the Software or Documentation (except for back-up purposes); rent, lease, transfer or otherwise transfer rights to the Software or Documentation; or remove any proprietary notices or labels on the Software or Documentation.

TITLE

Title, ownership rights and intellectual property rights in and to the Software and Documentation will remain with Mobius and/or its suppliers. The copyright laws of the United States and international copyright treaties protect the Software. Title, ownership rights and intellectual property rights in and to the content accessed through the Software or through **Mobius'** Internet Services are the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives you no rights to such content. You retain any rights you may have in data posted by you to the Internet.

NO ASSIGNMENT

The benefits or rights conferred by this agreement are non-transferable and non-assignable. The connectivity provided is expressly limited to you. Resale or use of this connection by another person or persons is prohibited.

DEFINITION OF SERVICES

Single Dial-up Internet Services provide Internet access to one user on one computer for a single dial-up session. Single Dial-up Internet Services include Residential Basic Service, Residential Standard Service, Educational Dial-up Service, Business Single Dial-up Service, and other single dial-up services that may be provided from time to time. Multiple User Internet Services provide Internet access to one or more users on one or more computers for single or multiple simultaneous sessions. Business Virtual Direct Service is a Multiple User Internet Service that provides Internet access through a single dial-up session. Business Direct Services are Multiple User Internet Services that provide Internet access through a direct connection.

CHARGES AND BILLING

A valid credit card may be required to open an account for Single Dial-up Internet Services. A completed Internet Services Application is required for Multiple User Internet Services.

You agree to pay Mobius all charges relating to use of your account(s). Single Dial-up Internet Service charges will be according to rates and prices published online at the time of use. Charges for Multiple User Internet Services will be as stated in the Internet Services Application or as otherwise agreed in writing by the parties. Charges for other services, such as promotional offerings and other services to be offered from time to time, will be according to prices published at the time.

Charges at the date of invoice will include the next month's access fee, the next month's other recurring charges, and additional usage charges incurred during the prior month, if any. Your first bill will be prorated according to the days of service left in **Mobius'** billing period.

For Single Dial-up Internet Services, you may elect payment by bank draft, credit card, debit card, check or money order. You are solely responsible for informing Mobius of new expiration dates and account numbers on your listed credit card, debit card, or bank draft accounts as appropriate. You are responsible for keeping Mobius updated when your listed credit card has no remaining credit. Invoices will be mailed by the first (1st) day of the month.

Mobius will charge \$25 for all returned checks and for bank drafts declined by your bank, and your account will be subject to immediate suspension. Mobius will charge a \$15 processing fee for all credit card or debit card transactions that are either denied or cannot be processed for any reason, and your account will be subject to immediate suspension. If payment is not received by the date due, your account is delinquent and subject to an interest charge of 1.5% per month on the outstanding balance. If your state law does not allow an interest rate of 1.5% per month, the maximum allowable rate for your state will be charged. Mobius may at any time charge your credit card any amount past due or any balance due at the time of notification to Mobius of a denied bank draft, declined debit card, or check returned for non-sufficient funds.

If you default, you are liable for any and all attorney fees, court costs and collection agency fees or commissions if Mobius has to employ these methods in order to collect debts owed to Mobius under this Agreement. Accounts cancelled due to non-payment will be reported to a credit reporting agency.

You agree to pay a fine of \$500 for flagrant disregard of **Mobius'** Allowable Use Policy as contained in this Agreement. It is at **Mobius'** sole discretion what constitutes flagrant disregard of allowable use.

OTHER CHARGES

Mobius is not responsible for any phone charges unintentionally incurred by any subscriber for any reason. You also are responsible for providing all equipment, including computer hardware and software, used in connecting to Mobius.

LIMITATION OF LIABILITY

Mobius exercises no control whatsoever over the content of the information accessed through **Mobius'** Internet Services. **Mobius'** Internet Services are provided on an "as is, as available" basis, without warranty of any kind, expressed or implied, including, but not limited to, the warranties of performance, merchantability and fitness for a particular purpose. Mobius and/or contributors will have no liability whatsoever to you for any claim(s) relating in any way to (i) your inability or failure to perform research or related work or to work properly or completely, or (ii) any lost profits or consequential, exemplary, incidental, indirect or special damages relating in whole or in part to your rights hereunder or use of, or inability to use, **Mobius'** Internet Services. Mobius will not be responsible for any damage

suffered by you, including, but not limited to, loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions caused by its own negligence or your errors or omissions. Use of any information obtained via **Mobius'** Internet Services is at your sole risk. Mobius specifically disclaims any responsibility for the accuracy or quality of information obtained through **Mobius'** Internet Services.

Under no circumstances and under no legal theory, tort, contract or otherwise, will Mobius or its suppliers or resellers be liable to you or any other person for any indirect, special, incidental or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, or for any damages in excess of **Mobius'** list price for a license to the Software and Documentation, even if Mobius will have been informed of the possibility of such damages, or for any claim by any other party. This limitation of liability will not apply to liability for death or personal injury to the extent applicable law prohibits such limitation. Furthermore, some states do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to you.

ALLOWABLE USE

Mobius will publish its Customer Agreement, including the Allowable Use Policy, on its web site. These policies may be revised from time to time. You agree to abide by **Mobius'** policies concerning use of Mobius' Internet Services as published on line at the time of use.

Mobius' Internet Services may only be used for lawful purposes.

Transmission of any material in violation of any federal or state statute or regulation is prohibited. This includes, but is not limited to, copyrighted material, material legally judged to be threatening or obscene, or material protected by trade secret. You agree to indemnify and hold harmless Mobius from any claims resulting from your use of **Mobius'** Internet Services.

Commercial advertisements are unwelcome in most Usenet discussion groups and on most e-mail mailing lists. Inappropriate posting may result in account suspension or cancellation. See the newsgroup or mailing list's charter for whether advertising is allowed or not. "Spamming," or sending a message to many different off-topic newsgroups, is not allowed. Sending a message, especially an advertisement, to more than five recipients, is considered by itself spamming unless the individuals have specifically requested to be added to a mailing list on that topic. E-mail is a person-to-person medium, not a broadcast medium. Unsolicited advertisements via e-mail, or via discussion groups whose charter does not explicitly allow advertisements, are not allowable.

Violations of **Mobius'** Customer Agreement and allowable use policies will result in account suspension or cancellation and fines as states in Charges and Billing.

RESPONSIBILITY FOR ACCOUNT USE

You are responsible for all use of your account(s) and confidentiality of password(s). Mobius will suspend or change access upon notification that your password has been stolen, lost or otherwise possibly compromised. Mobius is not responsible for your personal files residing online on Mobius owned and controlled computers. You will be responsible for independent backup of your data stored online. You will be responsible for all access to and use of **Mobius'** Internet Services by your personnel or by means of your equipment, whether or not you have knowledge of or authorize such access or use.

If the subscriber is less than 18 years of age, the application must be signed and these terms agreed to by a parent or legal guardian, who is responsible for all charges related to the use of subscriber's account(s).

UNAUTHORIZED USE OF ACCOUNT

Mobius will strongly react to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include "social engineering" (tricking other people into releasing their passwords), password cracking, security hole scanning, denial-of-service attacks (ping-flooding, sending packets with an illegal packet size, UDP flooding, half-open TCP connection flooding, etc.) and the like.

Harassment or abusive use of e-mail and other Internet services are not allowed. Mobius will handle incidents of harassment on a case-by-case basis, consulting with all parties involved.

Any unauthorized use of accounts or computers by a Mobius customer, whether or not the attacked account or computer belongs to Mobius, will result in action against the attacker. Possible actions include warnings, account suspension or cancellation, and legal action, according to the seriousness of the attack.

E-MAIL PRIVACY

Electronic mail passes through multiple mail servers on the Internet as it passes from source to destination. Privacy can never be guaranteed from every possible mail server; therefore, users seeking total privacy should use some encryption scheme to render messages unreadable by eavesdroppers. With regards to **Mobius'** mail servers, Mobius places a high value on privacy and will only examine users' mail when absolutely required, for example when troubleshooting e-mail delivery problems or being presented with a search warrant for the information.

ILLEGAL MATERIAL

Mobius bears certain legal liabilities for the use of its computer network and equipment. As such, Mobius prohibits any and all use of **Mobius'** network for illegal purposes. When presented with a search warrant, Mobius is obligated to release any information named therein, and will cooperate with authorities in any criminal investigation of inappropriate Internet usage.

However, Mobius recognizes that the legal status of the Internet has not yet been resolved satisfactorily, either through legislation or court precedent. Therefore, Mobius must make certain decisions regarding the illegality of various specific actions. Among the actions Mobius considers illegal and therefore will not allow on its network are: unauthorized distribution of copyrighted material; exploitation of minors; and unauthorized use of computer resources. Mobius believes the First Amendment rights of free speech, freedom of the press and freedom of association apply to the Internet to the same degree as they do to print media and that any attempt to infringe upon those rights is void of legitimacy.

WEB SERVICE

Mobius provides personal web space to customers. Mobius includes web service in its enhanced packages and hosts commercial web pages for a fee. Mobius will handle potentially inappropriate web pages on a case-by-case basis. Examples of inappropriate information include downloadable virus code and obscene materials.

Personal web space provided under any Residential Service may not be used for purposes that can be deemed as an attempt to sell a product or service. Only web space provided under non-Residential Services account may be used for commercial activity.

Domain name service is available as an optional service. You are responsible for domain name registration with InterNIC and for any fees charged by InterNIC. Mobius charges a \$125 setup fee for adding your registered name on the Mobius domain name server.

TERM AND TERMINATION

This agreement will become effective on the date the service application is entered into Mobius' system (no later than the end of one business day after receipt of application). Mobius, at its sole discretion, may terminate this agreement immediately or suspend your access to the service upon any breach of this Agreement by you.

You are responsible for notifying Mobius of your wish to terminate your account if desired. Charges will continue to accrue until your notification to Mobius of account termination, or until your account is cancelled due to non-payment as stated in "Charges and Billing." If your account is cancelled due to non-payment, you will be in default and subject to any and all late fees and collection fees payable by you under this Agreement.

Licenses granted hereunder will terminate automatically if you fail to comply with the limitations described herein. Upon termination, you must destroy all copies of the Software and Documentation.

EXPORT CONTROLS

None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Yugoslavia, Iran, Syria or any country to which the United States has embargoed goods; or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Software, you are agreeing to the foregoing and are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

In addition, if the licensed Software is identified as a not-for-export product (for example, on the box, media or on the installation process), then the following applies: except for export to Canada for use in Canada by Canadian citizens, the Software and any underlying technology may not be exported outside the United States or to any foreign entity or "foreign person" as defined by U.S. Government regulations, including without limitation, anyone who is not a citizen, national or lawful permanent resident of the United States. By downloading or using the

Software, you are agreeing to the foregoing and are warranting that you are not a "foreign person" or under the control of a foreign person.

EFFECT OF AGREEMENT

This Agreement (which will include the current and future Schedules hereto) represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations between them.

MODIFICATION OF TERMS AND CHARGES

Mobius reserves the right to change rates or otherwise modify provisions of this Agreement by notifying you at least thirty (30) days before the effective date of the change, by written or online notice. Your use of **Mobius'** Internet Services after such notice will constitute your acceptance of the modifications to this agreement.

FORCE MAJEURE

Mobius' performance hereunder is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor disputes, inability to obtain necessary supplies and the like.

SEVERABILITY

If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and all other provisions are unaffected.

NOTICES

Except as otherwise provided herein, all notices hereunder will be given in writing as follows:

Mobius Communications Company

523 Niobrara Street, PO Box 246

Hemingford, Nebraska 69348

GOVERNING LAW

This Agreement will be governed by and construed under the laws of the state of Nebraska except as governed by Federal law. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly included. All disputes will be settled in Nebraska courts.

WAIVER

Failure of any party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

U.S. GOVERNMENT RESTRICTED RIGHTS

Use, duplication or disclosure of Software and Documentation by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or at 252.211-7015, and in similar clauses in the NASA FAR Supplement.

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