

# SUBSCRIBER AGREEMENT

## Introduction

This Agreement (the "Agreement") sets forth the terms and conditions under which Westco Internet, together with any affiliate and/or distribution partner (collectively, the "Company"), agrees to provide Westco Internet service (hereinafter the "Service") to you. By completing the registration and using the Service, you (i) agree to abide by, and require others using the Service through your account to abide by the terms of this Agreement, and (ii) represent and warrant that you are at least 18 years of age. If you do not agree with the foregoing, you may not use the Service and must return any installation software, equipment, and all associated materials to the Company. This Agreement takes effect on the date on which you accept this Agreement, and continues until your subscription is terminated.

The Company reserves the right to modify the terms of this Agreement or prices for the Service and may discontinue or revise any or all other aspects of the Service in its sole discretion at any time by posting changes online at the Company's website – [www.westco.net](http://www.westco.net). Your continued use of the Service after changes are posted constitutes your acceptance of this Agreement as modified by the Company's posted changes. The updated, online version of this Agreement shall supersede any prior version of this Agreement that may have been included in any software or related materials provided by the Company. This Agreement should be read in conjunction with our Acceptable Use Policy ("AUP"), Privacy Policy, and other applicable policies.

***IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU SHOULD IMMEDIATELY STOP THE USE OF THE SERVICE AND NOTIFY THE COMPANY'S CUSTOMER SERVICE DEPARTMENT SO THAT YOUR ACCOUNT CAN BE CLOSED.***

## 1. Your Subscription

Your subscription entitles you to use the Service. You agree not to assign, transfer, resell or sublicense your rights as a subscriber unless specifically allowed by this Agreement. You agree that you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach results from your use of the Service or by another person who uses your computer. You agree to contact the Company immediately upon the occurrence of any change in the status of your account (*e.g.*, change in individuals authorized to use your account) for the purpose of updating your account information.

## 2. Payment Terms

You agree to be responsible for any and all charges, damages and costs that you or anyone using your Company account may cause. You agree to pay all monthly fees and installation charges associated with the Service including, but not limited to, applicable taxes, customer service fees, late fees and collection fees. Monthly fees for the Service will be billed one month in advance. If payment is not received by the due date, late fees and/or collection charges may be assessed and the Company may terminate your Service.

Separate and apart from the charges for the Company's Services, you may also incur charges including, without limitation, charges relating to the purchase of "premium" services, such as additional web space, business class services, or access to certain gaming sites in addition to those billed by the Company. All such charges, including all applicable taxes, are your sole responsibility. You may be required to pay a reconnect fee and/or a security deposit in addition to all past due charges before the Service is reconnected.

The Company may apply a late fee of [the maximum rate permitted by law to each of your bills not paid by the due date. You are responsible to pay all the Company's cost of collection, including bank charges and reasonable attorneys' fees. In the event that a check or draft tendered by you is returned, a fee of Five Dollars (\$5.00) will apply, unless the return is a bank error that is properly documented by you. When billing for the Company's Services is performed by local exchange telephone companies, credit card companies or others, the payment conditions and regulations of such companies apply, including any applicable interest and/or late payment charges.

If you believe you have been billed in error, you must contact the Company within thirty (30) days of the date of the bill which contains the disputed charge. Refunds or adjustments will not be issued for any charge that is more than sixty (60) days old. The Company will notify you of the results of its inquiry, and either adjust the billing, issue a credit, or notify you that your dispute is denied.

### **3. Software License**

To the extent applicable, the Company grants to you a limited, non-exclusive, non-transferable and non-assignable license to install and use the Company's access software (including software from third party vendors that the Company distributes, hereinafter referred to as the "Licensed Software"), in order to access and use the Service. The Company may modify the Licensed Software at any time, for any reason, and without providing notice of such modification to you. The Licensed Software constitutes confidential and proprietary information of the Company and the Company's licensors and contains trade secrets and intellectual property protected under United States copyright laws, international treaty provisions, and other laws. All right, title, and interest in and to the Licensed Software, including associated intellectual property rights, are and shall remain with the Company and its licensors. You agree to comply with the terms and conditions of all end user software license agreements accompanying any software or plug-ins to such software distributed by the Company in connection with the Service. Your right to use the Licensed Software terminates upon termination of this Agreement.

### **4. Computer and Equipment Requirements**

At the time of initial installation of the Service, provided that your computer and other equipment does not harm the Company's network or infringe upon other users' use of the Company's service, you may attach such device to the Company's network. Should such device harm the Company's network or infringe other users' use of the Service, such device must be

removed from the network. You will not remove any equipment owned by the Company (the "Equipment") from your premises ("Premises").

## **5. Installation**

You authorize Company personnel and/or its agents to enter your Premises at mutually agreed upon times in order to install, maintain, inspect, repair and remove the Service. If you are not the owner of the Premises at which the Service is to be installed, you represent that you have obtained the consent of the owner of the Premises for the Company's personnel and/or its agents to enter the Premises for the purposes described above. You shall indemnify and hold the Company harmless from and against any claims of the owner of the Premises arising out of the performance of this Agreement. You further acknowledge and agree that installation and/or use of the Service (including the Licensed Software) may result in the modification of your computer's systems files and that the Company may periodically update the software in order to provide the Service. The Company neither represents, warrants, nor covenants that such modifications will not disrupt the normal operations of your computer. The Company shall have no liability whatsoever for any damage resulting from the installation and/or use of the Licensed Software or file modifications. The Company is not responsible for returning your computer to its original configuration prior to installation. The Company or its agents will supply and install certain software and, if required, hardware for a fee determined by the Company. The Company will also provide a "getting started guide" and online instructions on how to use the Service. The Company shall use reasonable efforts to install the Service to full operational status, provided that your computer fulfills the minimum computer requirements set forth herein.

## **6. Acceptable Use Policy**

You agree to use the Services strictly in accordance with the Acceptable Use Policy located at [www.westco.net/openinternet/acceptableusepolicy.pdf](http://www.westco.net/openinternet/acceptableusepolicy.pdf), which may be modified by the Company from time to time, and which is incorporated herein by reference and made a part of this Agreement.

## **7. Posting of Material**

You are solely responsible and liable for all material that you upload, post, email, transmit or otherwise make available via the Service, including, without limitation, material that you post to any Company website, or any third party vendor's service (e.g., newsgroups) that is used by the Company. The Company does not claim ownership of material you submit or make available for inclusion on the Service. However, with respect to material you submit or make available for inclusion on publicly accessible areas of the Service, you grant the Company a world-wide, royalty free and non-exclusive license(s) to: use your material in connection with the Company's businesses including, but not limited to, the rights to copy, distribute, publicly perform, publicly display, transmit, publish your name in connection with the material, and to prepare derivative works. No compensation will be paid with respect to the use of your material.

## **8. Links to Third Party Websites**

In your use of the Service and/or the Company's website, you may encounter various types of links that enable you to visit websites operated or owned by third parties ("Third Party Site"). These links are provided to you as a convenience and are not under the control or ownership of the Company. The inclusion of any link to a Third Party Site is not (i) an endorsement by the Company of the Third Party Site, (ii) an acknowledgement of any affiliation with its operators or owners, or (iii) a warranty of any type regarding any information or offer on the Third Party Site. Your use of any Third Party Site is governed by the various legal agreements and policies posted at that website.

## **9. Monitoring and Removal of Content**

The Company is under no obligation to monitor the Service. However, the Company reserves the right at all times and without notice to remove, restrict access to, or make unavailable, any content on its servers that it considers, in its sole discretion, to be obscene, lewd, lascivious, excessively violent, harassing, or otherwise objectionable, and to monitor, review, retain and/or disclose any content or other information in the Company's possession about or related to you, your use of the Services or otherwise as the Company deems necessary to satisfy any applicable law, regulation, legal process, or governmental request. The Company also retains the right to purge your email account or accounts in the event that any such account has not been accessed for at least three (3) months.

## **10. Privacy**

You authorize the Company to make inquiries and to receive information about your credit history from others and to utilize such information in its decision regarding its provision of the Service to you. You agree that the Company may collect and disclose information concerning you and your use of the Service in the manner and for the purposes set forth herein and in the Company's Privacy Policy. [www.westco.net/openinternet/privacypolicy.pdf](http://www.westco.net/openinternet/privacypolicy.pdf)

## **11. No Spam or Other Unsolicited Bulk Email**

**12.** The Company may immediately terminate any subscriber account that it determines, in its sole discretion, is transmitting or is otherwise connected with any "spam" or other unsolicited bulk email. You agree to pay the Company's damages for "spam" or unsolicited bulk email transmitted from or otherwise connected with your account. Provided that such action is required by the Company in order to protect the integrity and customers' use of the Company's network and services as provided for in the Company's Network Management Policy [www.westco.net/openinternet/networkmanagementpolicy.pdf](http://www.westco.net/openinternet/networkmanagementpolicy.pdf), the Company reserves the right to reject or remove what it considers in its sole discretion to be "spam" or other unsolicited bulk email from the Service and the Company shall have no liability for blocking any email considered to be "spam."**Termination and Surviving Obligations**

Either party may terminate this Agreement at any time without cause by providing the other party with no less than twenty-four (24) hours notice of such termination. In the event of termination by you, you must notify the Company by telephone or by electronic written submission. Email submissions shall not constitute effective notice. The Company may notify you of termination by electronic or other means.

You expressly agree that upon termination of this Agreement: (i) you will pay the Company in full for your use of any Equipment and Service up to the later of the effective date of termination of this Agreement or the date on which the Service and any Equipment have been disconnected and returned to the Company; (ii) you will permit the Company to access the Premises at a reasonable time to remove any Equipment and other material provided by the Company; (iii) you will ensure the immediate return of any Equipment to the Company and you will return or destroy all copies of any software provided to you pursuant to this Agreement; and (iv) the Company is authorized to delete any files, programs, data and email messages associated with such account.

### **13. Disclaimer of Warranties and Limitation of Liability**

You expressly agree that the Company is not responsible or liable for any content, act or omission of any third party including, without limitation, any threatening, defamatory, obscene, offensive, or illegal conduct, or any infringement of another's rights including, without limitation, privacy and intellectual property rights, and you hereby release the Company for any such claims based on the activities of third parties.

THE SERVICE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND. NEITHER THE COMPANY, NOR ITS AFFILIATES OR ANY OF ITS SUPPLIERS OR LICENSORS, EMPLOYEES OR AGENTS WARRANT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR FREE FROM VIRUSES OR OTHER HARMFUL MALICIOUS AGENTS EVEN IF ANTI-VIRUS MECHANISMS ARE DEPLOYED. THE COMPANY DOES NOT WARRANT THAT ANY DATA OR ANY FILES SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY EXCLUDED AND DISCLAIMED. THE COMPANY AND ITS EMPLOYEES, REPRESENTATIVES AND AGENTS ARE NOT LIABLE FOR ANY COSTS OR DAMAGES, ARISING DIRECTLY OR INDIRECTLY, FROM THE INSTALLATION OR USE OF, THE LICENSED SOFTWARE, THE SERVICE (INCLUDING E-MAIL), EQUIPMENT FURNISHED BY THE COMPANY, OR THE COMPANY'S PROVISION OF TECHNICAL SERVICE AND SUPPORT FOR THE SERVICE, AND YOU AGREE THAT THIS DISCLAIMER OF LIABILITY APPLIES EVEN IF SUCH DAMAGE RESULTS FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF A THE COMPANY INSTALLER, TECHNICIAN, OR CUSTOMER SERVICE REPRESENTATIVE AND YOU FURTHER AGREE THAT THIS DISCLAIMER OF LIABILITY INCLUDES ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR DAMAGES, REGARDLESS OF WHETHER OR NOT THE COMPANY HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE COMPANY'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE SHALL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING TWO (2) MONTH PERIOD. YOU HEREBY RELEASE THE COMPANY FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. THE COMPANY IS ALSO NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING FROM OR RELATED TO YOUR BREACH OF THIS AGREEMENT. Your sole and exclusive remedies under this Agreement are as expressly set forth herein. Some states do not allow the exclusion or limitation of implied warranties, so the above exclusions or limitations may not apply to you.

#### **14. Indemnification**

You agree to indemnify and hold the Company, its affiliates, officers, directors and employees, harmless from any claim, demand, or damage, including costs and reasonable attorneys' fees, asserted by any third party due to or arising out of your use of or conduct on the Service. The Company will notify you within a reasonable period of time of any third party claim for which the Company seeks indemnification and will afford you the opportunity to participate in the defense of such claim, provided that your participation will not be conducted in a manner prejudicial to the Company's interests, as reasonably determined by the Company.

#### **15. Management of Network, Maintenance**

The Company reserves the right to manage its network for the greatest benefit of the greatest number of subscribers including, without limitation, the following: rate limiting, rejection or removal of "spam" or otherwise unsolicited bulk email and anti-virus mechanisms, as further described in the Company's Network Management Policy [www.westco.net/openinternet/networkmanagementpolicy.pdf](http://www.westco.net/openinternet/networkmanagementpolicy.pdf) . You expressly accept that such action on the part of the Company may affect the performance of the Service. The Company reserves the right to enforce limits on specific features of the Service including, without limitation, email storage (including deletion of dormant or unchecked email) and web hosting maximums. The Company will endeavor to perform planned service-affecting maintenance between 12:00 a.m. and 6:00 a.m. However, if exigent circumstances require maintenance at other time, the Company reserves the right to perform maintenance at such time as may be necessary. The Company will maintain a database of email contacts to be notified for maintenance that may be service affecting.

#### **16. Copyright and Trademark Notices**

Materials available on the Company website are or may be protected by copyright law. All other trademarks and service marks are the property of their respective owners.

#### **17. Intellectual Property Infringement Claims**

In accordance with Title 17, United States Code, Section 512(c)(3), if you believe that a web page hosted by the Company is violating your rights under U.S. copyright law, you may file

a complaint of such claimed infringement with the Company's designated agent.  
[www.westco.net/openinternet/copyrightinfringementpolicy.pdf](http://www.westco.net/openinternet/copyrightinfringementpolicy.pdf)

## **18. Governing Law and Jurisdiction**

This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of West Virginia, without regard to its conflict of laws provisions. All disputes arising out of or related to this Agreement and the Service must be brought in a federal or state court located in the State of West Virginia. You consent to the personal jurisdiction of such courts located therein. You waive all rights to bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.

## **19. Miscellaneous**

This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes and replaces any and all prior written or oral agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of its provisions shall remain in full force and effect. Nothing contained in this Agreement shall be construed to limit the Company's rights and remedies available at law or in equity. The Company's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement. This Agreement may not be assigned or transferred by you. This Agreement is freely assignable by the Company to third parties.

## **20. How to Contact Us**

For any questions regarding this Subscriber Agreement, billing or other, please contact the Company at one of the following:

Email: [customercare@westco.net](mailto:customercare@westco.net)  
Phone: 304-983-2211  
U.S. Mail: 1449 Fairmont Road  
Morgantown WV 26501