

Lackawanna County Wireless Initiative

Master Agreement- Terms of Service

This Agreement is between you as our Subscriber and Lackawanna County, and it sets forth the terms and conditions under which you agree to use and we agree to provide the Service.

THIS IS A CONTRACT. PLEASE READ THESE TERMS CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICE.

A. REVISIONS TO THIS AGREEMENT.

From time to time we will make revisions to this Agreement and the policies relating to the Service. We will provide notice of such revisions by posting revisions to the Lackawanna County Wireless Initiative Webpage at www.lackawannacounty.org/wireless, or sending an email to your primary email address, or both. You agree to visit the above webpage periodically to review any such revisions.

1. DIA SERVICE SCHEDULE.

This Dedicated Internet Access Service Schedule ("Schedule") is part of the agreement under which Lackawanna County provides Lackawanna County Service to Customer and which incorporates this Schedule (the "Agreement").

1.1 Service Description. Lackawanna County's Dedicated Internet Access Service (DIA Service) is a dedicated tier-2 high-speed connection to the Internet provided solely on Lackawanna County's network from a Lackawanna County core IP point of presence ("IP POP"). Service level agreements ("SLA(s)"), service level objectives ("SLO(s)"), outage credits and related warranties as set forth in this Schedule apply only to Lackawanna County provided DIA Service and do not apply to any Third Party Services. Internet Protocol ("IP") addresses and/or secondary domain naming system are also available. DIA Service will meet the SLA as set forth in this schedule. All services quoted and provided by Lackawanna County Wireless are measured as aggregate whereas a 50Mbps service is measured as 25Mbps up/25Mbps down.

1.2 Connectivity and Speeds. Customer may choose from a variety of port speed options based on the below selections.

Actual speeds and availability are dependent upon the customers distance between the closest line-of-sight network tower and ground cover interference. Lackawanna County will make every effort to get the customer the bandwidth speeds requested.

Prices will be quoted based on customer need, location, line-of-sight, availability, installation, and subscriber unit needed.

- **Services available;** private point-to-point connection, DIA Tier-2 (dedicated internet access), point-to-multipoint
- **Last Mile;** last mile applications, engineering, mobility, hardware solutions may be available as a service
- **Availability;** speeds between 5Mbps and 1Gbps

1.3 Technical Specifications. Lackawanna County has designed its network to conform to the technical standards as specified by the Internet Engineering Task Force ("IETF").

1.4 Service Level Agreement. DIA Tier-2 Service shall perform in accordance with the following SLAs as set forth in Sections below. The Outage Credits provided below are Customer's sole and exclusive remedy for any failure, interruption or degradation of the DIA Service. The SLAs for DIA Service are measured between IP POPs only.

a. **Port Availability.** Port availability is a measurement of the total time that DIA Service is operative when measured in a thirty (30) day month (720 hour) period. DIA Service is considered operative when the Customer can exchange IP packets over the Lackawanna County IP network via the Customer's access port. Though the wireless network core ring is engineered to meet or exceed 99.999% availability, port availability for DIA Service shall meet or exceed 99%.due to a single point of failure with CPE.

Chart-Minutes of Downtime Per Year			
525,600	"9's"	minutes / year	days / year
	99.0%	5,256	3.65
	99.9%	526	0.37
	99.99%	53	0.04
	99.999%	5.3	0.004
	99.9999%	0.53	0.0004

b. Latency. Latency is measured as the round trip time, averaged over a thirty (30) day month (720 hour) period, for an IP packet to travel from core IP POP to IP POP. Latency for Lackawanna County network shall not exceed an IP POP network average of 50 milliseconds average between any two Lackawanna County Wireless IP POPs.

c. Packet Loss: Packet loss is measured as the percentage of lost packets, averaged over a thirty (30) day month (720 hour) period, from IP POP to IP POP. Packet loss for Lackawanna County network shall not exceed 1% between any IP POPs.

d. In no event shall Lackawanna County's liability for Outages exceed a total of one (1) month's MRC for the affected port during any calendar month.

1.5 Service Level Objectives. Although Outage Credits are provided as set forth above, Lackawanna County's objective is to provide Tier-2 Service that meets the following SLO. Lackawanna County shall have no liability for its failure to achieve this objective.

a. Mean Time to Restore ("MTTR"). MTTR is Lackawanna County's objective to restore DIA Service and resume availability within the time periods set forth in this Section 2.3a. The time is measured from Lackawanna County's receipt of notice from Customer of the Outage and provided that Customer has released all or part of the DIA Service for testing if requested by Lackawanna County until the latter of (i) restoration of the first fiber on a cable cut or (ii) equipment is repaired and DIA Service is available. Lackawanna County has an objective of repairing network equipment within an average of two (2) hours and the first fiber on a cable cut restored within an average of four (4) hours.

2. PRICING.

2.1 Pricing and Charges. Charges for DIA Service include monthly recurring charges (MRC(s)) and non-recurring charges ("NRC(s)") as set forth in applicable Service Order. MRCs and NRCs contained in a Service Order are firm for the Service Term reflected on the related Service Order. Notwithstanding the foregoing, if Customer requests additional DIA Service or a change to an existing Service Order including but not limited to a Service Order change, supplement or tech assist which could incur additional NRCs, such NRCs are subject to change upon thirty (30) calendar days written or electronic notice. Upon expiration of the Service Term and until a new Service Order is placed, Customer charges for Lackawanna County Services, as set forth in the Service Order shall continue to apply throughout any Extension Period. Notwithstanding the foregoing, promotional pricing is subject to change at the end of the Service Term, or anytime thereafter, upon thirty (30) calendar day's prior written or electronic notice. At the end of a Service

Term or Extension Period, Customer may place a new Service Order specifying a new Service Term, and such Service Order shall set forth the charges for the new Service Term.

2.2 Implementation Intervals. Lackawanna County's **standard service*** implementation interval objective is set 15 business days. Lackawanna County shall make reasonable efforts to provide DIA Services within its standard service implementation interval. The start date of such interval begins on the acceptance date as provided to Customer in Lackawanna County's order confirmation document. Failure of Lackawanna County to deliver by such date shall not constitute a default under the Agreement and Lackawanna. Implementation intervals may be extended based on equipment availability..

County shall not be liable to pay to Customer any penalties or damages for Lackawanna County's failure to meet such standard service implementation intervals.

* Standard service constitutes as service not to exceed the capacity of a standard subscriber point to multi-point radio. If a larger radio is required to meet bandwidth demands, implementation schedule will begin once ordered radio is delivered.

2.3 Outage Credits. Customer acknowledges the possibility of an unscheduled, continuous and/or interrupted period of time during which DIA Service does not conform to the SLA as set forth in Section 2.2 above (“Outage”). An Outage shall begin upon Lackawanna County’s receipt of notice from the Customer of the Outage and provided that Customer has released all or part of the DIA Service for testing if requested by Lackawanna County. In the event of an Outage, Customer shall be entitled to a credit (“Outage Credit”) upon Lackawanna County receipt of Customer’s written request for such Outage Credit. Such written request must be received by Lackawanna County within thirty (30) calendar days of the Outage and the Outage Credit shall be credited on Customer’s next monthly invoice. If Lackawanna County does not receive Customer’s written notice within such thirty (30) calendar day period, Customer shall be deemed to waive its right to the Outage Credit. The amount of any applicable Outage Credit for DIA Service shall be calculated based on each SLAs set forth in Section 2.2 above and shall be as follows:

- a. For port availability, the amount of Outage Credit shall be an amount equal to 1/30 of the MRC for the affected port for each hour, during any calendar month that the affected port fails to conform to the SLA for availability, with the maximum Outage Credit allowed during any one (1) calendar month being equal to one-half (1/2) month’s total MRC for the affected port.
- b. For latency, the amount of Outage Credit shall be an amount equal to a one-time credit of 1/30th of the MRC during any calendar month that the affected port fails to conform to the applicable SLA. Lackawanna County will report latency monthly.
- c. For packet loss, amount of Outage Credit shall be an amount equal to a one-time credit of 1/30th of the MRC during any calendar month that the affected port fails to conform to the applicable SLA. Packet loss will be reported monthly by Lackawanna County.
- d. In no event shall Lackawanna County’s total liability for all Outages exceed a total of one (1) month’s MRC for the affected port during any calendar year.

2.4 Early Termination. If customer opts to disconnect or cancel service prior to the agreed upon contract maturity date, an early termination fee will apply. The customer will be charged 40% of the MRC up to the contract maturity date. Additional fees may be applied to recover the cost of CPE if ROI isn’t covered under contract payment schedules. Early termination may also revoke customer CPE ownership listed under section 9 of this SLA.

2.4 Exceptions. Customer shall not receive an Outage Credit if the Outage is: (i) caused by Customer or others authorized by Customer to use the DIA Services under the Agreement; (ii) due to the failure of power, facilities, equipment, systems or connections not provided by Lackawanna County; (iii) caused by the failure of Third Party Service to Lackawanna County’s network; (iv) the result of maintenance performed by Lackawanna County in accordance with Sections 6.1 and 6.2 of this Schedule; or (v) due to a force majeure event as defined in the Agreement.

3. MAINTENANCE AND WARRANTIES.

3.1 Planned Network Maintenance Period (“PNMP(s)”). Lackawanna County shall avoid performing PNMP between 0600 to 2200 local time, Monday through Friday. Lackawanna County shall provide Customer with electronic mail, telephone, facsimile, or written notice of a PNMP (i) not less than three (3) business days prior to performing a PNMP that in Lackawanna County’s reasonable opinion, has a substantial likelihood of affecting Customer’s traffic for up to fifty (50) milliseconds, or (ii) not less than ten (10) business days prior to performing a PNMP that in Lackawanna County’s reasonable opinion, has a substantial likelihood of affecting Customer’s traffic for more than fifty (50) milliseconds. If the PNMP is canceled or delayed, Lackawanna County shall promptly notify Customer and shall comply with the provisions of this Section 6.1 to reschedule the PNMP.

3.2 Emergency Network Maintenance Period (“ENMP(s)”). It may be necessary for Lackawanna County to issue notification of an ENMP. ENMPs allow Lackawanna County to perform mandated maintenance with a shorter Customer notification interval than PNMPs.

3.3 Warranty. Lackawanna County warrants, that DIA Service shall conform to SLA's set forth in Section 2.2 above. Lackawanna County shall use commercially reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors in the DIA Service and restore such DIA Service to comply with the terms hereof. THE OUTAGE CREDIT AS SET FORTH IN SECTION 5.1 SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER IN THE EVENT OF ANY FAILURE, INTERRUPTION OR DEGRADATION OF DIA SERVICE INCLUDING AN OUTAGE AND/OR FOR BREACH OF THIS WARRANTY.

3.4 Network Service. Lackawanna County is responsible only for the network functionality up to and including the customer end subscriber unit. Disruption or drop of service caused by customer equipment after the installed customer subscriber unit is not the responsibility of Lackawanna County. Lackawanna County is not liable for the installed customer subscriber unit if said unit has been moved, altered, or damaged, or if equipment or material has been placed in a location that causes interference with subscriber unit post install. Lackawanna County is not responsible for or liable for customer equipment not part of the equipment installed to complete the contracted circuit. If a service call is needed due to a faulty subscriber unit, Lackawanna County Wireless Initiative support will be available during normal business hours between M-F 9-5 EST by calling the support number listed on your monthly bill. If service is needed above and beyond the listed service time, Lackawanna County will make every effort to return your call as promptly as possible but is not liable for response time delay.

3.5 Equipment Ownership. At contract maturity all installed CPE will be owned by the customer. Lackawanna County will repair or replace CPE if equipment becomes faulty during the period of service through the Lackawanna County Wireless Initiative. Lackawanna County is not responsible for CPE once said equipment is turned down due to service termination or disconnect.

4. LIABILITY. Lackawanna County is not to be held liable or accountable with any traffic and/or packets transmitting through the Lackawanna County Wireless network that directly or indirectly presents legal action by any parties. Lackawanna County serves only as a pass through handoff for internet services whereas these services are not monitored by Lackawanna County. The customer is solely responsible for any and all traffic passing to and from the customer equipment.

Lackawanna County shall not be held liable for any illegal activity generated from the customer's domain. This illegal activity shall include but is not limited to copyright infringement, illegal packet transportation (torrent), and legal lawsuits regarding internet traffic violated under The Digital Millennium Copyright Act of 1998 (DMCA) .

5. AUTHORIZED USER, ACCOUNT USE, AND RESPONSIBILITIES.

5.1 You acknowledge that you are eighteen (18) years of age or older and that you have the legal authority to enter into this Agreement. You agree promptly to notify Lackawanna County whenever your personal or billing information changes.

5.2 You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account, and to pay for all activity associated with your account. You agree to comply with all applicable laws, regulations and rules regarding your use of the Service and to only use the Service within the United States (unless otherwise permitted by this Agreement).

6. PRIVACY POLICY; LEGAL COMPLIANCE.

Lackawanna County Wireless reserves the right to provide account and user information, including email, to third parties as required or permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter. Such cooperation may include, but is not limited to, monitoring of the Lackawanna County Wireless network consistent with applicable law. In addition, Lackawanna County Wireless is required by law to report any facts or circumstances reported to us or that we discover from which it appears there may be a violation of the child pornography laws. We reserve the right to report any such information, including the identity of users, account information, images and other facts to law enforcement personnel.

7. AVAILABILITY OF AND CHANGES TO SERVICE.

7.1 Service and Bandwidth Availability and Speed. The Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed, and some locations may not qualify for the Service even if initial testing showed that your location was qualified. We will provision qualified service at the maximum speed available to your location based on our standard qualification procedures, unless you have selected a level of service with a lower maximum line rate. Bandwidth is provided on a per-line (not a per device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), among other factors. The speed of the Service will vary based on network or Internet congestion and your computer configuration, among other factors. We and our suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control.

7.2 Changes to Service or Features. Lackawanna County Wireless reserves the right to change any of the features, Content or applications of the Service at any time with or without notice to you. This includes the portal services we may make available as part of the Service or for an additional charge.

8. SOFTWARE LICENSES AND THIRD PARTY SERVICES.

8.1 We may provide you, for a fee or at no charge, software for use in connection with the Service which is owned by Lackawanna County Wireless or its third party licensors, providers and suppliers ("Software"). We reserve the right periodically to update, upgrade or change the Software remotely or otherwise and to make related changes to the settings and software on your computer or Equipment, and you agree to permit such changes and access to your computer and Equipment. You may use the Software only in connection with the Service and for no other purpose.

8.2 Certain Software may be accompanied by an end user license agreement ("EULA") from Lackawanna County Wireless or a third party. Your use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes a EULA unless you first agree to the terms of the EULA.

8.3 For Software not accompanied by a EULA, you are hereby granted a revocable, non-exclusive, non-transferable license by Lackawanna County Wireless or its applicable third party licensor(s) to use the Software (and any corrections, updates and upgrades thereto). You may not make any copies of the Software. You agree that the Software is confidential information of Lackawanna County Wireless or its third party licensors and that you will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Lackawanna County Wireless or its third party licensors. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that Lackawanna County Wireless or its third party licensors continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

8.4. Your license to use the Software or any Additional Services will remain in effect until terminated by Lackawanna County Wireless or its third party licensors, or until your Service is terminated. Upon termination of your Service, you must cease all use of and immediately delete the Software from your computer.

8.5 If you subscribe to or otherwise use any third party services offered by Lackawanna County Wireless, your use of such services is subject to the EULA of that third party provider. Violation of those terms may, in our sole discretion, result in the termination of your Service.

9. TERMINATION OR SUSPENSION OF SERVICE.

9.1 Discontinuation of Service for Nonpayment. We may discontinue your Service without notice if Service charges on your Lackawanna County Wireless invoice are refused for any reason, or if you fail to make payment when due.

9.2 Late Fees. If any portion of your bill is not paid by the due date, Lackawanna County Wireless may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. The late fee will be the lesser of 1.5 % per month, or the highest rate permitted by law. If Lackawanna County Wireless uses a collection agency or legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover such monies, including attorneys' fees.

10. MANAGEMENT OF YOUR DATA AND COMPUTER.

10.1 Your Responsibilities Regarding Management of Your Computer and Data. You are solely responsible for obtaining, maintaining and updating all equipment and software necessary to use the Service, and for management of your information, including but not limited to back-up and restoration of your data.

YOU AGREE THAT LACKAWANNA COUNTY IS NOT RESPONSIBLE FOR THE LOSS OF YOUR DATA OR FOR THE BACK-UP OR RESTORATION OF YOUR DATA REGARDLESS OF WHETHER THIS DATA IS MAINTAINED ON OUR SERVERS OR YOUR DEVICE(S). YOU SHOULD ALWAYS BACK-UP ANY IMPORTANT INFORMATION SEPARATELY FROM DATA STORED ON LACKAWANNA COUNTY'S OR ANY THIRD PARTY'S SERVERS.

10.2 Your Responsibilities Regarding Security. You agree that you are solely responsible for maintaining the security of your computer(s) and data, including without limitation, encryption of data and protection of your User ID, password and personal and other data. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE.

11. LIMITATIONS ON USE OF THE SERVICE.

11.1 You acknowledge and agree that Lackawanna County (a) is not responsible for invalid destinations, transmission errors, or the corruption of your data; and (b) does not guarantee your ability to access all websites, servers or other facilities or that the Service is secure or will meet your needs.

11.2 You acknowledge that the Service will allow access to information which may be sexually explicit, obscene or offensive, or otherwise unsuitable for children. You agree that the supervision of use of the Service by children is your responsibility and that Lackawanna County is not responsible for access by you or any other users to objectionable or offensive content. LACKAWANNA COUNTY STRONGLY RECOMMENDS THE USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.

11.3 You are not authorized to use any Lackawanna County or Lackawanna County Wireless name or mark as a hypertext link to any Lackawanna County Web site or in any advertising, publicity or in any other commercial manner without the prior written consent of Lackawanna County.

11.4 You agree that Lackawanna County assumes no responsibility for the accuracy, integrity, quality completeness, usefulness or value of any Content, advice or opinions contained in any emails, message boards, chat rooms or community services, or in any other public services or social networks, and that Lackawanna County does not endorse any advice or opinion contained therein, whether or not Lackawanna County provides such service(s). Lackawanna County does not monitor or control such services, although we reserve the right to do so.

11.5 You represent that when you transmit, upload, post or submit any content, images or data using the Service you have the legal right to do so and that your use of such data or content does not violate the copyright or trademark laws or any other third party rights.

11.6 Websites linked to or from the Service are not reviewed, controlled, or examined by Lackawanna County and you acknowledge and agree that Lackawanna County is not responsible for any losses you incur or claims you may have against the owner of third party websites. The inclusion of any linked websites or content from the Service, including websites or content advertised on the Service, does not imply endorsement of them by Lackawanna County.

12. WARRANTIES AND LIMITATION OF LIABILITY.

12.1 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY LACKAWANNA COUNTY (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT), LACKAWANNA COUNTY (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES) (COLLECTIVELY THE "LACKAWANNA COUNTY WIRELESS PARTIES"), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. ALSO, THERE IS NO WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE. NO ADVICE OR INFORMATION GIVEN BY LACKAWANNA COUNTY OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY WITH RESPECT TO ADVICE PROVIDED.

12.2 LACKAWANNA COUNTY DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF LACKAWANNA COUNTY HAS ACCEPTED YOUR ORDER FOR SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY, LOOP LENGTH, THE CONDITION OF YOUR WIRING INSIDE YOUR LOCATION, AND YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR LACKAWANNA COUNTY SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY LACKAWANNA COUNTY-PROVIDED EQUIPMENT).

12.3 LACKAWANNA COUNTY DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY LACKAWANNA COUNTY WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE. LACKAWANNA COUNTY SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE.

12.4 IN NO EVENT SHALL THE LACKAWANNA COUNTY WIRELESS PARTIES OR LACKAWANNA COUNTY'S THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE, LOSS OF PROGRAMS OR INFORMATION OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, OR RELIANCE ON OR PERFORMANCE OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF LACKAWANNA COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

12.5 THE LIABILITY OF THE LACKAWANNA COUNTY PARTIES, OR (SUBJECT TO ANY DIFFERENT LIMITATIONS OF LIABILITY IN THIRD PARTY END USER LICENSE OR OTHER AGREEMENTS) OUR THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, FOR ALL CATEGORIES OF DAMAGES SHALL NOT EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL NONRECURRING CHARGES, REGULATORY FEES, SURCHARGES, FEES AND TAXES) YOU HAVE PAID TO LACKAWANNA COUNTY WIRELESS FOR THE SERVICE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHEN SUCH CLAIM AROSE, WHICH SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY REGARDLESS OF THE TYPE OF CLAIM OR NATURE OF THE CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL APPLY TO THE FULL EXTENT PERMITTED BY LAW, AND ARE NOT INTENDED TO ASSERT ANY LIMITATIONS OR DEFENSES WHICH ARE PROHIBITED BY LAW.

12.6 ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION 12 ALSO APPLY TO LACKAWANNA COUNTY'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.

12.7 THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

13. INDEMNIFICATION.

You agree to defend, indemnify and hold harmless Lackawanna County and the Lackawanna County Parties from and against all liabilities, costs and expenses, including reasonable attorneys' and experts' fees, related to or arising from your use of the Service (or the use of your Service by anyone else), (a) in violation of applicable laws, regulations or this Agreement; (b) to access the Internet or to transmit or post any message, information, software, images or other materials via the Internet; (c) in any manner that harms any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property; or (d) claims for infringement of any intellectual property rights arising from or in connection with use of the Service.

14. GENERAL PROVISIONS.

14.1 All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination of this Agreement, including without limitation, those relating to Limitation of Liability and Indemnification, shall survive such termination.

14.2 Lackawanna County will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes, work slow-downs or other labor related activity, or an inability to obtain necessary equipment or services.



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14.3 You may not assign or otherwise transfer this Agreement, or your rights or obligations under it, in whole or in part, to any other person. Any attempt to do so shall be void. We may freely assign all or any part of this Agreement with or without notice and you agree to make all subsequent payments as directed.

14.4 Lackawanna County's failure at any time to insist upon strict compliance with any of the provisions of this Agreement shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.

14.5 This Agreement, including all Policies referred to herein and posted on the Lackawanna County Website, constitutes the entire agreement between you and Lackawanna County with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. No changes by you to this Agreement shall be effective unless agreed to in a writing signed by an authorized person at Lackawanna County.

ATTACHMENT A
LACKAWANNA COUNTY WIRELESS INFORMATION TECHNOLOGY INFRASTRUCTURE INITIATIVE
ACCEPTABLE USE POLICY

1. General Policy: Lackawanna County reserved the sole discretion to deny or restrict your service , or immediately to suspend or terminate your Service, if the use of the service by you or anyone using it, in our sole discretion, violates the Agreement or other Lackawanna County Wireless policies, is objectionable or unlawful, interferes with the functioning or use of the internet or the Lackawanna County Wireless network, or other users, or violates the terms of this Acceptable Use Policy (“AUP”).
2. Specific Examples of AUP Violations: The following are examples of conduct which may lead to termination of your service. Without limiting the general policy in section 1, it is a violation of the agreement and this AUP to: (a) access without permission or right the accounts or computer systems of others, to spoof the URL, DNS, or IP addresses of Lackawanna County or any other entity, or to penetrate the security measures of Lackawanna County or any other person’s computer system or network, or to attempt any of the foregoing; (b) transmit uninvited communications, data or information, or engage in other similar activities, including without limitation, “spamming”, “flaming”, or denial of service attacks; (c) intercept, interfere with or redirect email or other transmissions sent by or to others; (d) introduce viruses, worms, harmful code or Trojan horses on the internet; (e) post off-topic information on message boards, chat rooms, or social networking sites; (f) engage in conduct that is defamatory , fraudulent, obscene or deceptive; (g) violate Lackawanna County’s or any third party’s copyright, trademark, proprietary or other intellectual property rights; (h) engage in any conduct harmful to the Lackawanna County Wireless network, the internet generally, or other internet users; (i) use the service to violate any rule , policy, or guideline of Lackawanna County; or (j) use the service in any fashion for the transmission or dissemination of images containing child pornography or in a manner that is obscene, sexually explicit, cruel or racist in nature or which espouses , promotes or incites bigotry, hatred, or racism.
3. Copyright infringement/Repeat Infringer Policy: Lackawanna County respects the intellectual property rights of third parties. Accordingly, you may not store any material or use Lackawanna County’s systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including US copyright law. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable laws, it is the policy of Lackawanna County to suspend or terminate, in appropriate circumstances, the service provided to any subscriber or account holder that is deemed to infringe third party intellectual property rights, including repeat infringers of copyrights. In addition, Lackawanna County reserves the right to suspend, terminate or take other interim action regarding the service of any subscribe or account holder if Lackawanna, in its sole judgment, believes that circumstances related to infringement of third party intellectual property rights warrant such action. These policies are in addition to and do not affect or modify any other rights Lackawanna County may have under law or contract.
4. Lackawanna County may, but is not required to, monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement and AUP. You acknowledge that Lackawanna County shall have the right, but not the obligation, to pre-screen, refuse, move or remove any content available on the service, including but not limited to content that violates the law or this agreement.