

# OlyPen

## Terms of Service Agreement

### Introduction.

This Agreement (the “Agreement”) between you as a subscriber (“you”, “your” or “Subscriber”) and OlyPen, Inc. sets forth the terms and conditions under which OlyPen, Inc., together with any of its affiliates and/or distribution partners (collectively “OlyPen” or “we”), agrees to provide the services described herein.

OlyPen Service (the “Service”) may consist of, but is not limited to, one or more of any or all of the following services offered by OlyPen: Internet connectivity (via DSL, Cable, Fiber, Wireless, dedicated T1, Dialup or other means), E-mail, Web-Hosting, Domain Registration, Server Co-Location, online classifieds, point-to-point computer and/or communication networks, Voice over IP telephone service and online backup.

Please read this agreement carefully, before accessing the Service. By using the Service(s), you agree to abide by, and require others using the Services via your account to abide by the terms of this Agreement, and 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 Services and must return any installation software, equipment, and all associated materials to OlyPen. This Agreement takes effect on the date on which you accept this Agreement, and continues until your subscription is terminated.

OlyPen reserves the right to modify the terms of this Agreement and/or prices for the Services and may discontinue or revise any or all other aspects of the Services in its sole discretion at any time by posting changes online. An online version of this Agreement, as so changed from time to time, will be accessible at [www.olyphen.com](http://www.olyphen.com) or another online location designated by OlyPen, or can be obtained by calling OlyPen Customer Service. Your continued use of the Services after changes are posted constitutes your acceptance of this Agreement as modified by the 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 OlyPen. If you do not agree to any such change, you must cease using the Services and notify OlyPen that you are terminating your account.

In consideration of OlyPen’s provision of the Services that you have requested, subject to applicable law, YOU AGREE AS FOLLOWS:

**IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST IMMEDIATELY STOP THE USE OF THE SERVICES AND NOTIFY OLYPEN CUSTOMER SERVICE SO THAT YOUR ACCOUNT MAY BE CLOSED.**

**1.0 Warranty Disclaimer.** The service is provided 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, noninfringement, implied warranties of merchantability or fitness for a particular purpose or any warranties arising from course of dealing or usage of trade, no advice or information given by OlyPen, its affiliates, its licensors, its contractors or their respective employees shall create a warranty. Neither OlyPen nor its affiliates, its licensors, its contractors or their respective employees warrants that the service will be uninterrupted or error free or that any information, software or other material accessible on the service is free of viruses, worms, Trojan horses or other malware and/or harmful components.

**2.0 Limitations of Liability.** Under no circumstances shall OlyPen, its affiliates, its licensors, its contractors or other respective employees be liable for any direct, indirect, incidental, special, punitive or consequential damages that result in any way from user’s use of or inability to use the Service or to access the Internet or any part thereof, or user’s reliance on or use of information services or merchandise provided on or through the Service, or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, any failure of performance, computer virus, communication line failure, theft or destruction or unauthorized access to alteration of or use of user’s account, whether for breach of contract, negligence or under any other cause of action. In the event OlyPen is found liable under any circumstance under the terms of this agreement, OlyPen’s liability shall be limited to the unused balance of Subscriber’s subscription payment pro-rated to reflect the current term.

**2.1 Remedy.** If Subscriber is dissatisfied with the Service or with any terms, conditions, rules, policies, guidelines or practices of OlyPen in operating the Service, Subscriber’s sole and exclusive remedy is to discontinue using the Services.

**3.0 Associated Terms of Service Agreements.** OlyPen provides the Service through a variety of partnership arrangements. For instance, OlyPen DSL service is provided in partnership with Qwest ®; OlyPen cable Internet service is provided in partnership with Wave Broadband ®; OlyPen fiber Internet service is provided in partnership with Capacity Provisioning Inc. (CPI) and/or Clallam County PUD. By accepting this OlyPen Terms of Service Agreement, Subscriber additionally agrees to abide by and be bound by the Terms of Service Agreement of the applicable partner(s) providing Subscriber’s OlyPen service. Links to the individual partner agreements may be found on the OlyPen web site ([www.olypen.com](http://www.olypen.com)) or by contacting OlyPen Customer Service.

**4.0 Communications.** OlyPen will communicate with Subscriber primarily via e-mail and OlyPen will send notifications to Subscriber’s e-mail address on file. Such

notifications may consist of vital information about OlyPen Service, billing, service outages and enhancements or changes to existing Services. This information is usually time sensitive in nature. It is therefore important that Subscriber read any e-mail sent by OlyPen in a timely fashion to avoid any unexpected interruptions of Service. Subscriber may designate any preferred e-mail address to receive notifications from OlyPen. Subscriber may optionally request communication via U.S. Postal Service for an added cost of two dollars (\$2.00) per month (see Section 5, Accounts, Charges and Payments, below).

## **5.0 Accounts, Charges and Payments.**

**5.1 Applicability.** This agreement applies to all accounts, sub-accounts, alternative account names associated with Subscriber's principal account. Each Subscriber is responsible for use of Subscriber's account(s) under any name on that account by any person, and for ensuring full compliance with this Agreement by all users of Subscriber's account(s). An OlyPen Service account may not be transferred without prior written approval from OlyPen and is subject to any limits established by OlyPen.

**5.2 Subscriber Responsibility and Confidentiality.** Subscriber is responsible for maintaining the confidentiality of all login names and passwords associated with Subscriber's account. Subscriber is responsible for all activities and charges resulting from use of Subscriber's principal account with OlyPen. Subscriber agrees to pay all monthly membership fees, connect time charges, surcharges, applicable taxes and/or franchise fees and other charges incurred by Subscriber and/or Subscriber's designated users. In the event of a breach of security, Subscriber will remain liable for any unauthorized use of OlyPen Service until Subscriber notifies OlyPen Customer Service.

**5.3 Service Start and Billing Period.** Unless otherwise specified, OlyPen Service is a monthly reoccurring service, billed in advance. Service commences on the first day Service is made available to Subscriber regardless whether or not subscriber uses Service on that date and; reoccurring charges are due and payable on the same day of each subsequent month until Service is terminated or Service changes are made.

**5.4 Service Changes and Adjustments.** When Subscriber requests changes to Service such as upgrades, downgrades and/or change of connection type, OlyPen will pro-rate monthly Service charges up to the date of change and may, at its sole discretion, change the monthly due date to coincide with the date of change to Service.

**5.5 Service Rates.** Current rates for OlyPen Service may be obtained by calling (360) 683-1456, through OlyPen's web page ([www.olypen.com](http://www.olypen.com)) or by visiting OlyPen at 245 E. Washington Street, Sequim, WA 98382. OlyPen reserves the right to increase fees and/or surcharges or to institute new fees at any time upon thirty (30) days prior notice (see paragraph 4.0 Communications above). OlyPen may reduce these fees at any time without prior notice to Subscriber. In the event that a Subscriber's Service is terminated or canceled, ONLINE TIME CREDIT IS NOT TRANSFERABLE TO CASH or other

form of credit. Subscriber is liable for ALL account charges until Subscriber notifies OlyPen in writing to terminate Subscriber's account (see Section 13, Term; Termination, above).

**5.6 Billing.** All invoices are due and payable in advance of services rendered, on or before the due date stipulated on the invoice unless other payment terms have been authorized in writing by OlyPen. **Invoices are sent via e-mail** at least five (5) days prior to start of service date ("expiration date") and are due payable on date specified on invoice. Alleged non-receipt of invoice by E-mail does not alleviate Subscriber's responsibility to pay monthly reoccurring charges on or before due date in accordance with Subscriber's established monthly billing cycle. See Section 4.0 Communication.

**5.7 Payment.** Payment is accepted by cash, check, ACH transfer, credit card and debit card. Checks shall be made payable to OlyPen and mailed or delivered to OlyPen at 245 E. Washington Street, Sequim, WA 98382. Cash payments may be made at the same address or at 314 E. 8<sup>th</sup> Street, Port Angeles, WA 98362. Credit card, debit card and ACH transfer payments may be made by contacting OlyPen Customer Service at (360) 683-1456 or in person at 245 E. Washington Street, Sequim, WA 98382.

**5.8 Return Payment Fees.** OlyPen, at its sole discretion, may charge fees for all returned checks and account debit (including ACH transfer), bank card or charge card charge-backs. The current return/charge-back fee is \$25.00 per incident. OlyPen reserves the right to change return/charge-back fees at any time.

**5.9 Late Payment and Collection Charges.** If OlyPen does not receive the full amount of Subscriber's OlyPen Service account balance within fifteen (15) days of invoice due date, the higher of an additional 1.5% of the outstanding balance or two dollars (\$2.00) will be added to Subscriber's bill as a late charge for each month and shall be due and payable. Subscriber shall also be liable for any and all attorney and collection fees arising from OlyPen's efforts to collect any unpaid balance of Subscriber's account(s).

**5.10 Refunds.** Refund request must be submitted to OlyPen in writing. Refunds will be provided for prepaid service, prorated monthly. Partial month Service credits are not refundable. All service charges prorated as full month service up to and including the last month of service in which Service is terminated regardless whether or not Subscriber uses Service in any given month. Prepaid accounts that received special discounts will be charged for the period(s) of Service up to the date of cancellation at the full standard monthly rate(s). Setup fees, installation fees and equipment charges are not refundable.

**5.11 Credit Card, Bank Debit and ACH Transfers.** If Subscriber elects to be billed automatically by credit card, debit card or ACH transfer, Subscriber agrees to be billed each month for any amounts due under this Agreement.

**5.12 Taxes and Fees.** Subscriber acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services OlyPen

provides and, consequently, uncertainty about what fees, taxes and surcharges are due from OlyPen and/or its Subscribers. Accordingly, Subscriber agrees that OlyPen has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Subscriber. Subscriber further agrees to waive any claims Subscriber may have regarding OlyPen's collection or remittance of such fees, taxes and surcharges.

**5.13 Billing Errors.** Subscriber agrees that it is Subscriber's responsibility to report OlyPen billing errors within thirty (30) days from receipt of the bill so that service levels and all payments can be verified. If not reported within 30 days, Subscriber agrees that the errors are waived.

## **6.0 Installation; Equipment & Cabling.**

**6.1 Consent of Owner.** If Subscriber is not the owner of the house, apartment or other premises upon which OlyPen Equipment and Software are to be installed, Subscriber warrants that Subscriber has obtained the consent of the owner of the premises for OlyPen personnel and/or its agents to enter the premises for the purposes described in Section 6.2 & 6.3 below. Subscriber agrees to indemnify and hold OlyPen parties harmless from and against claims of the owner of the premises arising out of the performance of this Agreement (including costs and reasonable attorney's fees).

**6.2 Service Installation; hold harmless.** Subscriber authorizes OlyPen and/or its affiliates to make any preparations to the premises necessary for the installation, maintenance, or removal of equipment. OlyPen shall not be liable for any effects of normal Services installation and workmanship, such as holes in walls, etc. which may remain after installation or removal of OlyPen Equipment, except for damage caused by the gross negligence or willful misconduct on the part of OlyPen.

**6.3 Reasonable Access.** Subscriber agrees to provide OlyPen and its authorized agents access to Subscriber's premises during regular business hours upon reasonable notice during the term of this Agreement and after its termination to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove OlyPen Equipment, to install Software, to conduct service theft audits, or to check for signal leakage. Subscriber agrees that OlyPen may have reasonable access to easements and OlyPen Equipment located on subscriber's property.

**6.4 Equipment Modifications.** OlyPen shall have the right to upgrade, modify and enhance OlyPen Equipment and Software from time to time through "downloads" from OlyPen's network or otherwise. Without limiting the foregoing, OlyPen may, at any time, employ such means to limit or increase throughput available through OlyPen and/or its affiliates' networks.

**6.5 OlyPen Equipment.** OlyPen Equipment is and at all times shall remain the sole and exclusive property of OlyPen. Among other things:

(a) Subscriber agrees that Subscriber does not become an owner of any OlyPen Equipment by virtue of the payments provided for in this Agreement or the attachment of any portion of OlyPen Equipment to Subscriber's residence or otherwise. Upon termination of any Services, subject to any applicable laws or regulations, OlyPen may, but shall not be obligated to, retrieve any associated OlyPen Equipment to be returned by Subscriber. OlyPen will not be deemed to have "abandoned" the OlyPen Equipment if it does not retrieve such equipment.

(b) If Services are terminated, Subscriber agrees that Subscriber has no right to possess or use OlyPen Equipment related to the terminated Services. Subscriber further agrees that Subscriber must arrange for the return of OlyPen Equipment to OlyPen, in the same condition as when received (excepting ordinary wear and tear), upon termination of Services.

(c) If Subscriber does not promptly return OlyPen Equipment or schedule with OlyPen for its disconnection and removal, OlyPen may enter any premises where the OlyPen Equipment may be located for the purpose of disconnecting and retrieving. Subscriber acknowledges that Subscriber is not to use OlyPen Equipment for any purpose other than to use OlyPen Services in accordance with this Agreement.

(d) OlyPen will repair and maintain all OlyPen Equipment during the term of this Agreement. Subscriber acknowledges that Subscriber will not allow OlyPen Equipment to be serviced by anyone other than OlyPen employees or agents. Subscriber acknowledges that Subscriber will not sell, transfer, lease, encumber, or assign all or any part of OlyPen Equipment to any third party. If any OlyPen Equipment or part thereof is lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned, Subscriber agrees to pay OlyPen the then-current full manufacturer's suggested retail price for its replacement, together with any incidental costs that OlyPen may incur relating to its replacement.

(e) If subscriber changes residences, subscriber must contact OlyPen for information on OlyPen Equipment and Services that can be transferred to Subscriber's new residence and what the relocation will cost. If subscriber wishes to disconnect Services, Subscriber must contact OlyPen for information on the necessary procedures and cost.

## **7.0 Use of Service; General.**

**7.1 Service Modifications.** OlyPen reserves the right to add to, modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and systems requirements). Upon any such change, your continued use of Services will constitute your consent to such change and your agreement to continue to receive the relevant Services, as so changed, pursuant to this Agreement.

**7.2 Lawful Use and Acceptable Use Policy.** Subscriber agrees use OlyPen Services for lawful purposes and to be governed by OlyPen's Acceptable Use Policy ("AUP") as published on OlyPen's web site at [www.olypen.com](http://www.olypen.com). Among other things, the AUP prohibits:



- (a) Using the Service in a manner that is prohibited by law or regulation or facilitates the violation of any law or regulation;
- (b) Using the Service in a manner that will disrupt third parties use or enjoyment of the OlyPen Service or other communications services and outlets;
- (c) Use of service to invade the privacy of third-parties;
- (d) Transmitting via e-mail, USENET, chat service or the Subscriber's personal web page or site, abusive, profane, libelous, slanderous, threatening or otherwise harassing material;
- (e) Soliciting other OlyPen subscribers to patronize competing services

**7.3 Confidentiality.** Subscriber agrees to be responsible for protecting the confidentiality of screen names, passwords, personal identification numbers (PINs), parental control passwords or codes and any other security measures made available, recommended or provided by OlyPen.

**7.4 Objectionable Material.** You, the Subscriber, understand that information available to you through the OlyPen Service may include materials that are unedited, sexually explicit or offensive to you and that your access to such materials is at your own risk. OlyPen has no responsibility for or control over such materials.

**7.5 Access Restrictions.** Subscriber recognizes that Subscriber is solely responsible for the content of any information Subscriber makes available through the Service. Subscriber agrees that if OlyPen is made aware of content that OlyPen deems in its sole discretion to be unacceptable, undesirable, offensive, indecent, obscene, excessively violent or otherwise objectionable, OlyPen has the right, but not the obligation, to remove or deny access to such content. Subscriber expressly agrees that OlyPen shall not be liable to Subscriber for any action OlyPen takes to remove or restrict access to such material, nor for any action taken to restrict access to material posted in violation of any law, regulation or rights of a third-party, including, but not limited to, rights under the copyright law and prohibitions on libel, slander and invasion of privacy. Subscriber recognizes that OlyPen's actions with respect to such material may include restriction, suspension or termination of Subscriber's access privileges and/or deletion of the objectionable material.

## **8.0 Classification of Service; Internet.**

**8.1 Residential Service.** Subscriber agrees, unless otherwise specified by OlyPen, that services requested are residential services, offered for reasonable personal, non-commercial use only. Subscriber may not resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or charge others to use the Service, or any portion thereof, unless otherwise authorized by OlyPen. Among other things:

- (a) Subscriber agrees not to use the Services for operation as an Internet Service Provider, or for the hosting of web sites or for any enterprise purposes whether or not the enterprise is directed toward making a profit;

(b) Subscriber agrees that use of any form of transmitter or wide area network that enables persons or entities outside of the Service location, whether or not a fee is sought, will constitute an enterprise purpose;

(c) If Subscriber uses a wireless network within Subscriber's residence, Subscriber must take reasonable efforts to limit wireless access to members of Subscriber's household.

**8.2 Business Service.** Nothing in Section 8.2 of this Agreement, shall prohibit Subscribers classified as "Business" or "Enterprise" customers by OlyPen from redistributing Service among Subscriber's employees and/or associates at the Service address specified in Subscriber's account(s), nor prohibit the use of Virtual Local Area Networks to interconnect offices, nor prohibit the hosting of web servers and/or e-mail servers relative the Subscriber's principal business. However, Subscribers who wish to be classified by OlyPen as Business or Enterprise Subscribers must obtain an Enterprise Service Agreement from OlyPen.

**8.3 Wholesale Service.** Nothing in Section 8.2 and/or Section 8.3 of this Agreement, shall prohibit Subscribers classified as "Wholesale" customers from redistributing or reselling any Services authorized under the terms of Subscriber's Wholesale Agreement. However, Subscribers who wish to be classified as Wholesale customers by OlyPen, must obtain a Wholesale Service Agreement from OlyPen.

## **9.0 E-mail Service.**

**9.1 Unsolicited e-mail (SPAM).** Subscriber acknowledges that Subscriber is expressly prohibited from utilizing the OlyPen Service, OlyPen's equipment or any OlyPen electronic mail message ("e-mail"), whether commercial or not, to send e-mail to a large number of recipients. This prohibition extends to the sending of unsolicited mass mailings from another service which in any way implicates the use of the OlyPen Service, OlyPen's equipment or any OlyPen electronic mail address. The following definitions are provided for guidance with this provision:

(a) By U.S. Code, Title 47, Sec. 227(a)(2)(B), a computer/modem/printer meets the definition of a telephone fax machine. By Sec. 227(b)(1)(C), it is unlawful to send any unsolicited advertisement to such equipment. By Sec. 227(b)(3)(C), a violation of the aforementioned Section is punishable by action to recover actual monetary loss, or five hundred dollars (\$500.00), whichever is greater, for each violation;

(b) A message is unsolicited if it is posted in violation of a USENET or Newsgroup charter and/or if it is sent to a recipient who has not requested or invited the message. For purposes of this provision, merely making one's e-mail address accessible to the public shall not constitute a request or invitation to receive messages.

**9.2 E-mail Storage.** Subscriber acknowledges that OlyPen shall not maintain more than 500MB of e-mail storage for Subscriber and the Subscriber is responsible for ensuring that the level of e-mail storage remains below this 500MB limit. Subscriber expressly agrees that OlyPen shall not be liable to Subscriber or parties interacting with Subscriber for any damages resulting from action OlyPen may take to enforce this provision.



Subscriber further acknowledges that OlyPen accepts no responsibility for loss of e-mail that has been inadvertently removed from OlyPen servers either by Subscriber, by third-parties or by OlyPen. Subscriber further acknowledges OlyPen provides no assurance of data-recovery in the event of hardware, software or other server failure.

**9.3 E-mail Filtering.** OlyPen E-mail Service includes e-mail filtering, both inbound and outbound, to quarantine and/or drop unsolicited e-mail and/or e-mail that may contain harmful content. As with all OlyPen Services, e-mail service is provided “as is” and “as available” basis without warranties of any kind, either express or implied. Subscriber acknowledges that OlyPen accepts no responsibility for e-mail messages that may be blocked, dropped, delayed or for any reason are undelivered whether originating from Subscriber or bound to Subscriber.

**10.0 Personal Web Pages.** Subscriber agrees that any personal web page or site Subscriber publishes in connection with OlyPen service is intended for personal use. While other uses (e.g. commercial) are not prohibited, they may draw sufficient third-party visits (“hits”) to the page or site so as to impose a burden on the Service by reducing available bandwidth. To ensure that all Subscribers can use and enjoy the Service, Subscriber agrees that OlyPen is entitled to suspend or terminate access to any Subscribers personal web page or site if OlyPen, in its sole discretion, determines that the page or site has, on any single day, caused an excessive traffic load. Subscriber expressly agrees that OlyPen shall not be liable to Subscriber or parties interacting with Subscriber for any damages resulting from action OlyPen takes to enforce this provision.

## **11.0 Internet Service**

**11.1 Service Speeds & Data Transfer.** OlyPen provides broadband Internet access on a best-effort basis. Service speeds stated are provided up to the speed indicated on a “best-effort” basis with no assurance of achieved or sustained throughput. Data transfer rates between Customer Premise Equipment (CPE) and the Internet may vary due to Internet traffic congestion, peak usage, system maintenance, weather effects such as rain, snow, fog, wind lightning, and other influences.

**11.2 Service Performance.** OlyPen shall use commercially reasonable efforts to assure that the Service is available to the Subscriber 24 hours per day, seven days per week. It is possible, however, that there will be interruption of the Service. If an outage condition is known sufficiently far in advance, OlyPen will attempt to provide the Subscriber with electronic mail notification. The Subscriber understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond OlyPen’s control. The temporary unavailability of the Service shall not constitute a breach of contract or a failure by OlyPen to perform its obligations under this Agreement.

**11.3 Network Management.** OlyPen and its affiliates reserve the right to manage their respective networks as they deem necessary, in their sole discretion, to maintain Quality

of Service (QOS) and integrity of their networks for all Subscribers and users. Management techniques may include, but are not limited to, bandwidth limiting by protocol, IP address and/or port; packet prioritization by protocol, IP address and/or port; and protocol, IP address and/or port blocking. OlyPen and its affiliates may employ, remove, change or otherwise modify management techniques at anytime, with or without notice.

**11.4 Monitoring the Services.** OlyPen is concerned with issues of privacy. OlyPen has no obligation to monitor Internet content. However, the Subscriber understands and agrees that OlyPen has the right to monitor from time to time in accordance with its Privacy Policy. A copy of the Internet Privacy Policy can be found at OlyPen's web site [www.olypen.com](http://www.olypen.com).

**11.5 Security & Firewall.** The Subscriber shall be responsible for the implementation of reasonable security procedures and standards with respect to its own demarcation point that interfaces with the Service. OlyPen may communicate security issues to the Subscriber from time to time when abuse or misuse is observed or reported by others. THE SUBSCRIBER ASSUMES ALL RESPONSIBILITY FOR PROVIDING AND CONFIGURING ANY "FIREWALL" OR SECURITY MEASURES FOR USE WITH THE SERVICE AT ITS LOCATION.

**11.6 Subscriber Responsibility.** OlyPen shall provide the Service to the Customer. Upon activation, OlyPen shall test to confirm that the Service can be accessed at the service location. OlyPen assumes no liability or responsibility for the installation, maintenance, compatibility or performance of any equipment or software not provided by OlyPen. If such third-party equipment or software impairs the Service, the Subscriber shall remain liable for payment. At the Subscriber's request, OlyPen shall reasonably attempt to resolve difficulties caused by such third-party equipment or software at OlyPen's then-current rates and terms. OlyPen makes no warranty that it will resolve the difficulties caused by such third-party equipment or software.

## **12.0 Support; Service & Repairs.**

**12.1 OlyPen's Responsibility.** Subscriber has the right to request reasonable service and maintenance calls to check and correct problems with the Service. OlyPen will, at its own expense, repair damage to or, at OlyPen's option, replace OlyPen Equipment, and otherwise attempt to correct interruptions of the Services, due to reasonable OlyPen Equipment wear and tear, or technical malfunction of the system or network operated by OlyPen. Subscriber acknowledges that if OlyPen determines that non-OlyPen Equipment or cabling is the cause of service problem, OlyPen may charge Subscriber for service work performed in order to resolve such service problems.

**12.2 Subscriber Equipment.** Subscriber shall be responsible for all wiring, equipment and related software installed at Subscriber's residence or place of business that is not OlyPen Equipment or OlyPen-licensed Software and OlyPen will have no obligation to

install, connect, support, maintain, repair or replace any Computer, television, telephone or telephone device, modems, cabling or other equipment (other than OlyPen Equipment or OlyPen-licensed Software).

### **13.0 Term; Termination of Service**

**13.1 Term.** This Agreement will remain in effect until terminated by either party or superseded by a revised Subscription Agreement.

**13.2 Termination; General.** Either OlyPen or Subscriber may terminate all or any portion of Subscriber's Service at any time for any or no reason, in its sole discretion.

**13.3 Termination by Subscriber.** If Subscriber wishes to terminate all or any portion of the Service for any reason, Subscriber must notify OlyPen by phone (360-683-1456), or by mail (OlyPen, Inc., 245 E. Washington St., Sequim, WA 98382), or in person (245 E. Washington St, Sequim, WA 98382), or by electronic mail ([billing@olypen.com](mailto:billing@olypen.com)) to request a cancellation of service. **SUBSCRIBER SHALL REMAIN LIABLE FOR ANY AND ALL MONTHLY REOCCURRING CHARGES ASSOICATED WITH THE SERVICE AND SERVICE WILL NOT BE CONSIDERED TERMINATED UNTIL SUCH TIME AS SUBSCRIBER RECIEVES A WRITTEN CONFIRMATION OF SERVICE TERMINATION FROM OLYPEN.** Additionally, OlyPen, at its sole discretion, may require the return and/or retrieval of OlyPen Equipment prior to the acceptance of a request for Service Termination and issuance of a Confirmation of Service Termination.

**13.4 Termination by OlyPen.** OlyPen may suspend Service or terminate this Agreement for any reason or for no reason. Subscriber acknowledges that if OlyPen suspends Service or terminates this Agreement, OlyPen will give such notice as provided by applicable law, if any. If OlyPen suspends Service or terminates this Agreement for a reason other than Subscriber's violation of this Agreement, all applicable fees and charges will accrue until the date of suspension or termination, but OlyPen will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due OlyPen for the Services, affiliate services, equipment, or other applicable fees and charges).

**13.5 Term Commitment and Early-Termination Charge.** If Subscriber orders a Service with a Term Commitment, Subscriber agrees to maintain that Service for the entire Term commitment period. If Subscriber terminates that service before the end of the Term commitment period, Subscriber will be required to pay the early-termination charge set forth in the agreement for the Service provided. For the purposes of this Agreement, moving, changing Internet Service Provider, or making a change to any part of Subscriber Service, except as otherwise agreed to in writing by OlyPen, is considered termination of the entire service. The early-termination charge is not a penalty. Rather it is an offset or recovery of OlyPen costs related to early termination. OlyPen, at its sole

discretion, may waive the early-termination charge if Subscriber moves or upgrades Service.

**14.0 Privacy.** OlyPen may provide Subscriber information to third parties or governmental entities when required, or permitted by law; to establish rights or obligations under this Agreement; or to protect OlyPen's or others rights or property regarding OlyPen services or the services of other providers from fraudulent, abusive or unlawful use of, or subscription to, such services. Full details of OlyPen's Privacy Policy may be found at OlyPen's web site [www.olypen.com](http://www.olypen.com) or by contacting OlyPen Customer Service.

**15.0 Consent to Phone and E-mail Contact.** By acceptance of this Agreement, Subscriber consents to OlyPen calling the phone numbers provided to OlyPen by Subscriber and/or OlyPen e-mailing Subscriber, at any e-mail address provided to OlyPen by Subscriber, for any purpose, including the marketing of its current and future Services. Subscriber may optionally remove specific phone numbers and/or e-mail address from OlyPen's marketing list by contacting OlyPen Customer Service. Among other things, Subscriber additionally agrees that:

- (a) Being included in any state or federal "do not call" registry will not be sufficient to remove Subscriber from OlyPen's phone marketing list.
- (b) If Subscriber's wireless or mobile provider charges Subscriber for receipt of such messages (phone, e-mail or otherwise), Subscriber shall be responsible for any and all applicable charges.

## **16.0 General Provisions.**

**16.1 Headings.** The headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

**16.2 Governing Law.** This Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Washington, without regard to conflicts of law provisions. The Subscriber agrees that the federal and state courts of Washington alone have jurisdiction over all disputes arising under this Agreement and the Subscriber consents to personal jurisdiction of those courts with respect to any other disputes arising under this Agreement.

**16.3 Dispute Resolution and Arbitration.** Subscriber agrees that any dispute or claim arising out of or relating to the Services, Equipment, Software, or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration administered by the American Arbitration Association under its commercial arbitration rules. The Arbitrator of any dispute or claim brought under or in connection with Agreement shall not have the power to award injunctive relief. The sole exceptions to arbitration are that either party may pursue claims: (1) in small claims court that are within the scope of its jurisdiction, provided the matter remains in such court and advances only individual (non-class, non-representative,

non-consolidated) claims; and (2) in court if they relate solely to collection of any debts Subscriber owes to OlyPen.

16.4 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a “Force Majeure Event”), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

16.5 Enforcement and Attorneys’ Fees. In the event that either party to this Agreement shall bring a claim in arbitration to enforce any rights hereunder, the prevailing party shall be entitled to recover costs and reasonable attorneys’ fees incurred as a result of such claim.

16.6 Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. Neither party’s failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder.

Revised 05/27/2011

#### References:

OlyPen Acceptable Use Policy.

OlyPen Privacy Policy.

[Wave Broadband® Terms of Service and Acceptable Use Policies.](#)

[Qwest High-Speed Internet® Subscriber Agreement.](#)