

Buckeye Brainiacs Support Terms of Service

1. ACKNOWLEDGEMENT AND ACCEPTANCE OF TERMS OF SERVICE

The Brainiacs Terms of Service (“Service Terms”) are available to you (“Customer”) at our website www.buckeyebroadband.com in connection with your purchase of Brainiacs Support (the “Service”). By utilizing the Brainiacs Support services whether through subscription or on an A-la-carte basis, regardless of whether services are performed in person or remotely, you agree to be bound by the Service Terms. These terms and conditions comprise the entire agreement between Customer and Buckeye Broadband (“Brainiacs”), and may be modified from time to time in the Brainiacs sole discretion.

2. DESCRIPTION OF SERVICE

Services are available for purchase by the Customer in a variety of options including subscription based, flat fees, a-la-carte services and hourly charges. For a current list of services provided and pricing options (“Buckeye Brainiac Plans”) visit www.buckeyebroadband.com. Services may be rendered remotely over the phone, remotely via an electronic connection to the Customer’s devices with Customer’s consent, in the Brainiacs service center, or in the Customer’s home as outlined in the Buckeye Brainiac Plans.

Brainiacs Phone Support as listed in the Buckeye Brainiac Plans shall include Services rendered over the phone and remote access via an electronic connection to the Customer’s devices with the Customer’s consent as listed below:

- Customer education, coaching and trouble shooting of supported software and hardware
- Software installation
- Operating system installation and recovery
- Monitoring customer electronic devices for proactive notification of virus detection
- Removal of viruses and other malware
- Software evaluation and removal
- Computer tune-ups including operating system software updates
- Registry optimization
- Step by step guidance of supported network hardware and software components
- Driver installations and updates for supported hardware and software
- Assistance with in home networking administration
- Password resets

Service is on a per-customer basis and is limited to Customer owned devices, software and hardware. A list of support devices, software and hardware (“Supported Hardware

and Software”) is available at www.buckeyebroadband.com and may change from time to time in the Brainiacs sole discretion.

3. CUSTOMER CONSENT FOR SERVICE

Customer consent for Services, and agreement to all terms and conditions applicable to those Services, shall be deemed as given when agreed to verbally over the phone with any person originating a call to, or receiving a call from, the phone number of record. Consent may also be given in-person or in writing, and in any event consent shall be deemed as given upon use of the services.

When Service is requested, Customer may request an estimate on the necessary time to complete the requested Service. Buckeye is not obligated to provide any estimate; should Buckeye provide an estimate, Customer understands and acknowledges circumstances may prevent Buckeye from completing the service in the estimated time frame, and Buckeye is not liable for any failure to complete the Services within that time frame. Should Customer for whatever reason request that Buckeye stop performing any requested Service before its completion, Customer acknowledges that the Service will not be effective and Customer remains fully liable for any amounts owed for the Service actually performed.

4. FEES AND PAYMENT

Services included with subscription fees, including prepaid subscriptions, as established in the Buckeye Brainiac Plans are set without regard to usage. Initial subscriptions may require a Residential Service Agreement (“RSA”) and would be subject to additional terms and conditions applicable under that Agreement. Additional a-la-carte and hourly services are available for purchase and are listed in the Buckeye Broadband rate card at www.buckeyebroadband.com/rates. .

Brainiac Services may be subject to sales tax, other governmental fees, and surcharges not reflected on the Buckeye Brainiac Plans, and Customer specifically agrees to pay such taxes, fees, and surcharges as applied.

The subscription Service will continue after the initial term on a period to period basis (i.e. annual subscriptions on an annual basis and monthly subscriptions on a month to month basis) until such time the Customer otherwise notifies the Brainiacs to end the Service. Appropriate Service charges will appear on the Customer’s monthly bill along with other Buckeye services.

Continued Service is dependent upon timely payment. The Brainiacs reserve the right to refuse Service to any Customer or potential Customer, including without limitation those not in good standing in accordance with Buckeye’s normal payment and collection practices, policies and procedures.

5. THIRD PARTY SOFTWARE

In providing Services, the Customer acknowledges that the Brainiacs may need to install third party software: for example, antivirus and PC optimization tools. In accepting Service, the Customer consents to the installation of such software and agrees to be bound by any third party software terms of use or end user license agreement. Copies of these terms of use and end user license agreements will be made available to the Customer upon request.

6. PRIVACY POLICY

Brainiacs service is governed by the Buckeye Express Subscriber Privacy Policy, which is available at <http://www.buckeyebroadband.com/legal>

7. HOURS OF OPERATION

Brainiacs Phone Support is generally available from 8am through 10pm seven days a week, but may exclude certain commonly recognized holidays. In-homesupport is generally available from 8am until 8pm seven days a week but may also exclude commonly recognized holidays. All hours are subject to change in the Brainiacs sole discretion without notice.

8. MODIFICATIONS OF TERMS OF SERVICE, SERVICE AND OTHER ITEMS

The Brainiacs may choose to change these Terms of Service, the Service, the Buckeye Brainiac Plans, Supported Hardware and Software, Hours of Operation and any offering from time to time in its sole discretion and without notice. Brainiacs reserve the right to choose which third party software will be used in the rendering of Service; however, the Customer has the right to refuse that related Service. Customer's continued use of Service constitutes acceptance of any such modification.

9. ACTS OF GOD AND FORCE MAJURE

Brainiacs shall not be liable for failure to provide Service or delays in providing Service due to any cause beyond its control.

10. CUSTOMER'S RESPONSIBILITY FOR DATA

Customer agrees and understands that any time a computer or other device is accessed, there is an inherent and unavoidable risk of lost data and programs, of loss of function in the Computer or device, and of the theft or misuse of the information stored on that Computer or device. Customer has the sole responsibility to back-up the data, software, images, information and or other files stored on the Customer's supported device(s). Customer agrees that whether or not the Customer requests back-up services from the Brainiacs or a third party service provider, the Customer is solely responsible for any loss, disclosure, or alteration of any data, software, images, information or files, and shall hold harmless the third party service provider, the Brainiacs and their employees, officers, directors and affiliates from any liability for such loss, disclosure, theft, misuse, etc. in accordance with paragraph 12 below.

11. DEVICE RETURN

In certain circumstances, it is not possible to perform the requested repair at a Customer home. Brainiacs may, with consent of the Customer, take possession of a Customer computer or other device, for the purpose of completing the requested Service. In permitting Brainiacs to take possession, Customer acknowledges and accepts all applicable limitations on the Brainiacs' liability, and specifically waives any claims against the Brainiacs for lost data; reinstallation of data or software or return of the equipment; unauthorized access to information, data, or the device itself; or injury, damage or destruction to the computer or device.

Customer acknowledges that Brainiacs shall not be responsible for holding the computer or device for more than Twenty-One (21) days after service is complete. Customer shall provide Brainiacs with current contact information. When the requested Service is complete, Brainiacs shall use that contact information to make reasonable efforts to contact Customer to notify the Customer that Service is complete and to schedule the return of the computer or device. Customer may pick up the computer or device; or it may request the Buckeye return and reinstall, which will be subject to additional charges. Should Brainiacs be unable to reach the Customer based on these reasonable efforts, or if Customer fails to schedule the reasonable return of the device, Brainiacs shall dispose of the computer or device, and Customer hereby explicitly and fully waives any and all claims against Buckeye based on that disposal.

12. INDEMNIFICATION

Customer agrees to indemnify, defend and hold harmless the Brainiacs, its employees, officers, directors, agents and affiliates from and against any and all losses, costs, obligations, liabilities, damages, actions, suits, causes of action, claims, demands, liens, encumbrances, security interests, settlements, judgments and other expenses of whatever type of nature including, but not limited to, damage or destruction of property, injury and or death of any person or persons which are asserted against, incurred, imposed upon or suffered by the Brainiacs by reason of, or arising from the Customer's: (a) breach of this agreement; (b) actual or alleged infringement of any patent, copyright, trademark, trade secret or other property or contract right of another person or entity; (c) failure to pay the Brainiacs or a third party; (d) failure to comply with applicable terms, laws, rules, regulations and ordinances; or (e) acts or omissions of the Customer or its agents.

13. DISCLAIMER OF WARRANTIES

CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. BRAINIACS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BRAINIACS MAKES NO WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT

THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES BRAINIACS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. CUSTOMER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER/SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM BRAINIACS OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

14. LIMITATION OF LIABILITIES

BRAINIACS SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR REPLACEMENT OF A COMPUTER OR OTHER DEVICE ON WHICH IT IS WORKING, OR FOR ANY CONTENT CONTAINED ON SUCH COMPUTER OR DEVICE. BRAINIACS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE; OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE; OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER'S TRANSMISSIONS, INFORMATION, OR DATA, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF BRAINIACS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, BRAINIACS MAXIMUM LIABILITY TO THE CUSTOMER ARISING FROM OR RELATED TO THE PROVISION OF SERVICES UNDER THIS AGREEMENT SHALL BE LIMITED TO THE SUMS RECEIVED FROM THE CUSTOMER FOR SERVICES UNDER THIS AGREEMENT ONLY DURING THE SIX MONTHS PRIOR TO THE TIME THE CAUSE OF THE ACTION AROSE.

15. GOVERNING LAW

These Terms of Service shall be governed by the laws of the State of Ohio. Customer and Brainiacs agree to submit to the exclusive jurisdiction of the state and federal courts located in Lucas County, Ohio. Any cause of action arising out of or related to this Service whether in contract, tort, or any other theory of liability must be brought within one year after the cause of the action arose. If any part of this agreement is found to be in conflict with the law, the remainder of the agreement shall be in full force and effect as if the conflicting language had never been written.

16. Dispute Resolution; Arbitration; Class Action Waiver

YOU HAVE THE RIGHT TO OPT OUT OF THIS DISPUTE RESOLUTION PROVISION (EXCEPT ITS JURY TRIAL WAIVER) WITHIN 30 DAYS OF RECEIPT OF THIS AGREEMENT, IF YOU FOLLOW THE PROCEDURES SET FORTH IN SECTION BELOW. OTHERWISE, YOU WILL BE BOUND TO SETTLE ANY DISPUTES YOU MAY HAVE WITH THE BRAINIACS THROUGH THE FOLLOWING DISPUTE RESOLUTION PROCEDURES.

a. You and the Brainiacs agree to arbitrate rather than litigate in court and any and all claims or disputes between us (including any parents, subsidiaries, affiliates, officers, directors, employees, or agents of the Brainiacs) that arise out of or in any way relate to: (1) this Agreement; (2) Services that the Brainiacs provide to you in connection with this Agreement; (3) Equipment or Software that the Brainiacs make available to you; (4) bills that the Brainiacs send to you or amounts that Brainiacs charges you for services or goods provided under this Agreement; and (5) any services or goods that the Brainiacs or any of its affiliated entities provide to you under any other agreement; provided, however, that in no event, shall this provision prevent you from filing or joining a complaint with the Federal Communications Commission or any state public service commission or public utility commission that has jurisdiction to hear such complaint, or any federal, state, or local government agency that is authorized by law to seek relief against the Brainiacs on your behalf. The arbitration between you and the Brainiacs will be binding and judgment on the award rendered in the arbitration may be entered in any court having jurisdiction thereof.

b. In arbitration, there is no judge and no jury, and review of arbitration decisions in the courts is very limited. Instead, our disputes will be resolved by an arbitrator, whose authority is governed by the terms of this Agreement. You and the Brainiacs agree that an arbitrator may only award such relief as a court of competent jurisdiction could award, limited to the same extent as a court would limit relief pursuant to the terms of this Agreement. An arbitrator may award attorneys' fees and costs if a court would be authorized to do so, and may issue injunctive or declaratory relief if that relief is required or authorized by the applicable law, but that injunctive or declaratory relief may not extend beyond you and your dealings with the Brainiacs. Discovery may be limited in arbitration, and procedures are more streamlined than in court. Notwithstanding this arbitration agreement, you and the Brainiacs may bring appropriate claims against each other in small claims court, if the claims fall within the small claims court's jurisdiction, or before the Federal Communications Commission, the relevant state public utilities commission, or any other federal, state, or local government agency authorized by law to hear your claims.

c. Class Action Waiver: You and the Brainiacs agree that all claims or disputes between you and the Brainiacs will be arbitrated individually, and that there will be no class, representative, or consolidated actions in arbitration. If you or the Brainiacs bring a claim in small claims court, the class action waiver will apply, and neither of us can bring

a claim on a class or representative basis. Furthermore, neither you nor Buckeye may participate in a class or representative action as a class member if the class action asserts claims that would fall within the scope of this arbitration agreement if they were directly asserted by you or the Brainiacs.

Notwithstanding the foregoing, this arbitration agreement shall not prohibit you or the Brainiacs from participating in any judgment or settlement in any litigation brought by a federal, state, or local government on behalf of you or us, excluding litigation brought by any relator or party in its capacity as a private attorney general. We both agree that this class action waiver is an essential part of our arbitration agreement and that if this class action waiver is found to be unenforceable by any court or arbitrator then the entire arbitration agreement set forth in this Section will not apply to any claim or dispute between you and the Brainiacs, except for the provisions of this Section waiving the right to jury trial. This class action waiver may not be severed from our arbitration agreement.

d. Informal Dispute Resolution: You and the Brainiacs agree that you will try to resolve disputes informally before resorting to arbitration. If the dispute cannot be resolved by telephone, you agree to notify the Brainiacs of the dispute by sending a written description of your claim to Buckeye Cablevision, Inc., 5566 Southwyck Blvd., Toledo, Ohio 43614, Attention: Customer Service, so that the Brainiacs can attempt to resolve it with you. If the Brainiacs do not satisfactorily resolve your claim within 30 calendar days of receiving notice of it, then you may pursue the claim in arbitration. Neither you nor the Brainiacs may initiate arbitration without first providing the other notice of the claim and following the informal dispute resolution procedure provided in this paragraph.

e. Arbitration Procedures: You and the Brainiacs agree that this Agreement affects interstate commerce and that the Federal Arbitration Act applies. All arbitrations shall be conducted by the American Arbitration Association ("AAA"). The AAA's rules are available on its website at www.adr.org or by calling 1-800-778-7879. If the claim asserted in arbitration is for less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply. If the claim asserted is for \$75,000 or more, the Commercial Arbitration Rules will apply. If there is a conflict between the AAA's rules and this dispute resolution agreement, this dispute resolution agreement shall control. To initiate arbitration, you must send a letter requesting arbitration and describing your claims to Buckeye Cablevision, Inc., 5566 Southwyck Blvd., Toledo, Ohio 43614, Attention: Office of the President. You must also comply with the AAA's rules regarding initiation of arbitration. The Brainiacs will pay all filing fees and costs for commencement of arbitration, but you will be responsible for your own attorneys' fees and costs unless otherwise determined by the arbitrator pursuant to the terms of this Agreement or applicable law. The Brainiacs will not seek to recover its fees and costs from you in the arbitration unless your claim has been determined to be frivolous. If you obtain an award from the arbitrator greater than the Brainiacs' last written settlement offer, the Brainiacs will pay you \$1,000 in addition to what you have been awarded in

the arbitration. The arbitration will be held in a mutually convenient location. If you seek less than \$10,000, then you may choose to hold the arbitration in person, via phone, or to have it decided based on written submissions.

f. Jury Trial Waiver: If for any reason this arbitration agreement is found to be unenforceable, including without limitation, that the class waiver is found unenforceable, or if you opt out of this dispute resolution agreement, you and the Brainiacs expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY. This means that a judge rather than a jury will decide disputes between you and the Brainiacs if, for any reason, the arbitration agreement is not enforced.

g. Opt Out: You may opt out of this dispute resolution provision (except for the jury trial waiver above) by notifying the Brainiacs of that intent within 30 days of the date of this Agreement. You may opt out by sending a letter stating your intent to Buckeye Cablevision, Inc., 2700 Oregon Road, Northwood, Ohio 43619, Attention: Office of the President. Please include your name, address, and Buckeye Broadband account number on the communication. Exercising this right, should you choose to do so, will not affect any of the other terms of this Agreement or other contracts with the Brainiacs and you may remain a Brainiacs subscriber. If you opt out of the dispute resolution provision, you will not be required to do so again if the Brainiacs modifies this Section in the future or you agree to a new term of service. IF YOU OPT OUT OF THIS DISPUTE RESOLUTION PROVISION, YOU MUST MAKE THAT ELECTION AT THE INITIAL PROVISION OF SERVICE AND YOU MAY NOT OPT OUT LATER UPON CHANGES TO THE SERVICE OR CHANGES TO THIS AGREEMENT.

h. Survival: This dispute resolution provision survives the termination of your Agreement with the Brainiacs. If you bring a claim against the Brainiacs after termination of your Agreement that is based in whole or in part on events or omissions that occurred while you were a Brainiacs subscriber, this dispute resolution provision shall apply.