

Terms of Service for Heath Internet High-Speed Broadband Internet

What This Document Is

This document contains your Terms of Service. It is an agreement made between you and Heath Internet, Inc. ("Heath Internet"), 201 Laurence Dr., Suite 102, Heath, TX 75032, explaining the rights and responsibilities of Heath Internet and Heath Internet's customers.

By ordering Internet service from Heath Internet or by using the Heath Internet provided Equipment or Service, you accept the terms and conditions contained in this Agreement and agree to comply with its requirements. Heath Internet is also bound by this agreement, although we have the right to update the terms of service and other policies.

We have done our best to make this document and the other Heath Internet policies understandable. However, sometimes it is necessary to include strict legal language.

The section headings are there for your convenience.

Definitions

"Customer" or "you" ("your," "yourself") means a person, a corporation, or a legal entity who contracts to use the Heath Internet Service, agreeing to pay for service and installation of equipment.

"User" means you (the customer) and anyone else who uses your Heath Internet service and equipment.

"Service" means basic network access from your premises to the Internet and transport of data via a wireless modem as provided by Heath Internet.

"Equipment" means certain software, a wireless outlet (if necessary), a wireless modem, and any other Heath Internet-supplied equipment necessary to provide the Service.

"Heath Internet" or "we" ("us," "our") mean Heath Internet, 201 Laurence Dr., Suite 102, Heath, TX 75032 (HeathInternet.com).

Scope of This Agreement

This Agreement shall be governed by, construed under, and enforced in accordance with, the laws of the state of Texas. In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. This Agreement, which incorporates by reference the Heath Internet Acceptable Use Policy and Privacy Policy embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Heath Internet may amend the terms and conditions of this Agreement by giving you thirty (30) days' notice. This notice may be in writing or may appear online. This Agreement is subject to modification by any authorized regulatory agency. Heath Internet may assign this Agreement without limitation, but you may not assign this Agreement without Heath Internet's prior written consent. This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns.

Your Responsibilities

You agree to purchase Internet service from Heath Internet, in accordance with the terms and conditions of this Agreement.

Customer Responsibility

You have certain responsibilities as a party to this agreement. Another section describes Heath Internet's responsibilities.

- You acknowledge that you accept this Agreement on behalf of yourself, your users, and all persons who use the Equipment and/or the Service through your computer.
- You have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement.
- You acknowledge and agree that you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach is the result of use of the Service and/or Equipment by you or by another user of your computer.
- You agree to use your Heath Internet wireless broadband service from your own premises.
- You agree to provide Heath Internet with accurate and complete billing information, including your legal name, address, and telephone number. If your address, phone number, name, or other billing information changes, you will notify us of the changes within 30 days.
- By ordering and paying for a Heath Internet account, or by using the Heath Internet service, you affirm that you are 18 years of age or older, or that you have parental or guardian consent to use the service.

What happens if you break this agreement ("default")

If you default (break this agreement), Heath Internet may temporarily suspend or permanently close some or all of your Service. Heath Internet alone makes this decision. Suspending or closing your service does not limit Heath Internet's remedies or incur any liability to you (that is, we do not have to credit you for down time if you lose access because you defaulted). "Default" means failure on your part to comply with this Agreement. This includes getting behind on payments and breaking the provisions of this agreement or the associated policies, but is not limited to these situations.

If you use your own equipment with Service provided by Heath Internet in violation of any of the provisions of this agreement, Heath Internet will notify you and take such action as is necessary for the protection of the Service for use by its other customers. This may include discontinuing your Service.

Heath Internet reserves the right to charge a reconnect fee for any discontinued Service that is subsequently reconnected.

Heath Internet's Responsibilities

Heath Internet has certain responsibilities as a party to this agreement. Another section describes your responsibilities.

- Heath Internet agrees to provide you with the Service and the Equipment, providing that you comply with all of the terms and conditions of this Agreement. We also agree to maintain the Equipment provided by Heath Internet, and repair or replace it if necessary.
- We will do our best to provide uninterrupted Internet connectivity. However, like any other Internet service provider, the Service may experience temporary slowdowns or interruptions caused by:
 - Overload
 - Abuse
 - Equipment modifications, upgrades, relocations, or repairs, and similar activities necessary for the proper operation of the Service

- Disasters (please read about "force majeure")
- Heath Internet will provide basic instructions on how to use the Service. These instructions will appear on the Heath Internet website. You are also entitled to technical support for the Heath Internet provided Equipment or Service via phone or email. We cannot provide technical support for operating systems, your personal hardware, or software not provided by Heath Internet.
- If Heath Internet wireless broadband Service cannot be made to work at your location because of distance, hills, trees, or any other cause, you will be refunded 100% of any payments you have made to us, subject to this agreement. You must return the equipment in good condition. Heath Internet has no other liability if your location proves impossible to provide the Service for.

Force Majeure (Disasters, Etc.)

Neither you nor Heath Internet is liable for any delay or failure in performance of any part of this Agreement caused by any event beyond your (our) control and without your (our) fault or negligence.

These events include, but are not limited to, the kinds of situations known legally as "Force Majeure." Force Majeure refers to a number of situations that could affect you and Heath Internet in performing your obligations:

- acts of civil or military authority
- terrorist acts
- nuclear accidents
- inability to secure transportation facilities, hardware or software products, or services of other persons
- government regulations
- riots
- strikes
- acts or omissions of transportation or common carriers
- embargoes
- insurrections
- extended power blackouts
- natural disasters
- epidemics
- fires
- severe weather conditions
- environmental disturbances
- war
- explosions
- legal and/or regulatory constraints

If a Force Majeure condition occurs, the party injured by the other party's inability to perform has two options (detailed below). You (we) have 30 days to choose which one. If you do not inform Heath Internet (or vice versa) of your selection within 30 days of being notified of a Force Majeure situation, the second option goes into effect.

- You or Heath Internet, whichever is the injured party, may terminate the Agreement if such Force Majeure condition results in a delay or failure to perform which continues for more than 30 calendar days
- You or Heath Internet, whichever is the injured party, may suspend the Service for the duration of the delaying cause and buy or sell a similar service. You may deduct the time you have contracted for with some other provider from the time you contracted for with Heath Internet. Then, after the emergency is over, you may resume Heath Internet service under your original agreement.

Paying for Your High-Speed Broadband Internet

Price

You will pay Heath Internet the monthly rate and other fees and charges associated with the Service and the Equipment, including applicable sales taxes, as established from time to time by Heath Internet.

Heath Internet reserves the right to modify the rates, fees and charges at any time.

You have the right to be notified of price changes at least 30 days before the new rate takes effect.

You acknowledge that you may incur additional charges while using the Service. If you make purchases over the Internet, those transactions are between you and the seller, and have nothing to do with your relationship with Heath Internet.

Payment

Heath Internet will charge your credit card periodically as agreed when you signed up for the service. You will be sent a statement by email. Payment will be deemed made when received by Heath Internet.

Heath Internet's billing software automatically charges your card and maintains your account status. If your card is declined, which can be caused by a variety of reasons, the software will notify you and try again in two days for a total of three tries.

If your account becomes overdue, you will receive a notice by email. If your payment is more than 5 days late, your service is automatically suspended by Heath Internet's billing software. If you have not paid for 10 days, we reserve the right to close your service. You will still owe for the 10 days.

A late fee of \$25 will be assessed for payments more than 5 days late.

Heath Internet does not issue partial refunds for prepaid services less than six months long.

A service charge of \$25 will be assessed for each check that is returned to Heath Internet for insufficient funds.

You will get your statement by email to your Heath Internet email address. If you prefer to get your emailed statement at another address, you must arrange this with us. It is your responsibility to check your Heath Internet email address for billing information and Heath Internet announcements.

If you prefer to get a statement mailed or faxed to you, a processing and handling charge of \$2.00 applies.

Term

This Agreement becomes effective on the date on which you order Heath Internet Service. However, your credit card is not charged until you are online with your Heath Internet account. This is automatically determined by Heath Internet's computer systems. The date you successfully go online through Heath Internet is your start-of-service date. This agreement remains in effect for 12 months from your start-of-service date or until terminated. It will continue in effect on a year-to-year basis after the first year until such time as your Heath Internet account is closed by you or by Heath Internet.

Credit for down time

Although we intend to maintain your connectivity at all times, you have the right to be credited if through our negligence you lose connectivity via Heath Internet for more than 24 hours. In such a

case, we will credit you with 1/30 of the monthly charge for each twenty-four hour period from the time of notice of interruption until Service restoration.

- The 24 hours must be continuous. You cannot add up shorter periods.
- To receive credit you must [notify](#) the Heath Internet office that your service is not working.
- Most types of outage do not qualify for credit. Please read the next subsection for more information.

Events that don't qualify for credit

Most temporary service outages do not qualify for credit.

- You will not get credit for problems in the Service caused by your own or others' negligence or willful act (except as provided above) or for problems caused by weather or disaster-like situations. Please see Force Majeure. "Willful acts" include system failures caused by viruses, "hacking," "cracking," and other forms of remote malice.
- You will not get credit for loss of connectivity caused by technicians working to modify or repair Heath Internet's equipment.
- You will not get credit for interruptions of service less than 24 hours long.
- You will not get credit for not using your Service.

If you believe that Heath Internet has billed you in error, you must contact us by email at accounting@HeathInternet.com or call us within 60 days of the invoice or transaction date of the charge. Refunds or adjustments will not be given for any charges more than 60 days old.

Deposit

At this time Heath Internet does not require a deposit. However, we reserve the right to collect a deposit from you as security for your performance of all of your obligations under this Agreement. Some types of accounts may always require a deposit.

Closing Your Account

To close your account with Heath Internet, you must notify us via email, fax, or letter. To add services or close an account, you must identify yourself to Heath Internet's satisfaction. This is to protect you from someone else making changes to your account.

For annual accounts: If you cancel your account within six months of your start-of-service date, you are liable for a \$150 early cancellation fee.

You agree that upon termination of this Agreement:

- You will pay Heath Internet in full for your use of the Equipment and the Service up to the effective date of termination of this Agreement or the date on which the Service and Equipment have been disconnected and returned to Heath Internet, whichever is later. You will not receive a refund if you terminate service part-way through a month. If you have a six-month or annual prepaid service, you will get a refund for the part you did not use, possibly excluding some charges determined by Heath Internet.
- You will allow Heath Internet employees or contractors to access your premises to remove the Equipment. This may mean coming in your house and climbing on your roof. We agree to arrange a time that is convenient for you.
- You will return all of the Equipment to Heath Internet. Not returning the equipment in good condition is considered a default.

Credit for closed accounts

If you cancel your Heath Internet service, we will refund that part of your latest payment which covers time you will not use. Your setup and installation fees are non-refundable. You will always be refunded at the rate you paid. That is, if you got a discount, you will be refunded at the discount level, not at the standard level.

Computer Equipment

Your own computer equipment

You are responsible for your own equipment that you use with the Heath Internet service. For this agreement to be valid, your computer must meet minimum requirements (as determined solely by Heath Internet). It must:

- Be technically and operationally compatible with the Service. Heath Internet's responsibility for your Internet connectivity stops at the downstream end of the Equipment. You are responsible for providing equipment capable of receiving and transmitting electronic data through a standard port.
- Be compliant with applicable Federal Communications Commission rules and regulations.

Home networks

You may access the Internet via Heath Internet from secondary computers on a home network within the limits of the Acceptable Use Policy. Your home network is not part of your Heath Internet Service or Equipment. By accepting this agreement, you explicitly acknowledge that Heath Internet will not provide technical support for equipment or software that is not part of the Heath Internet Service or Equipment.

Allowing someone to connect to your home network from outside your premises and use your Heath Internet service is strictly prohibited. If you do this, we will close your account.

Giving someone outside your household your Heath Internet login name and password is called "account sharing" and is strictly prohibited.

Backing up your data before installation or repair

There is an extremely remote possibility that the installation, use, inspection, maintenance, repair, and removal of the Heath Internet Equipment may result in damage to your computer. You therefore agree to back up all existing computer files by copying them to another storage medium before installation of the Equipment. **Heath Internet has no liability whatsoever for any damage to or loss or destruction of any of your equipment, software, files, data, or peripherals.**

Equipment supplied by Heath Internet

Heath Internet agrees to maintain the Equipment in working condition for the lifetime of this agreement. In case of Equipment failure, Heath Internet will troubleshoot, diagnose, repair, or replace the Equipment within 24 hours. In some cases diagnosing and repairing equipment can take more than 24 hours. In those cases we will provide a loaner set of Equipment to you.

All equipment supplied by Heath Internet, except for any item that you buy and pay for in full, remains the property of Heath Internet. You may not mortgage, sell, transfer, lease, encumber, or assign all or part of the equipment.

If you lose or break the equipment, or turn it over to someone else as described in the previous paragraph, you must pay Heath Internet the full retail cost of the repair or replacement. If Heath Internet spends money in the effort to get the equipment back, you must also pay those costs.

You will not modify, tamper with, or move the Equipment. If you need the equipment moved, call or send a request to Heath Internet and Heath Internet can relocate the Equipment for you at a time that you and Heath Internet agree on.

If equipment, including network components, is moved or modified by anyone other than Heath Internet personnel (employed or contract), and damage to the equipment results so that Heath Internet personnel or contractors are called out to your location to repair or replace it, you will be charged \$75.00 for the visit in addition to any other charges specified in the Terms of Service.

You authorize Heath Internet and its employees, agents, contractors and representatives to enter your premises in order to install, maintain, inspect, repair, and remove the Equipment. Heath Internet agrees to arrange a convenient time with you for these activities.

Limitation of Liability

HEATH INTERNET SHALL NOT BE LIABLE FOR INTERRUPTIONS CAUSED BY FAILURE OF EQUIPMENT OR SERVICE NOT PROVIDED BY ITS, FAILURE OF COMMUNICATIONS, POWER OUTAGES, OR OTHER INTERRUPTION NOT WITHIN THE COMPLETE CONTROL OF HEATH INTERNET, NOR SHALL HEATH INTERNET BE LIABLE FOR PERFORMANCE DEFICIENCIES CAUSED OR CREATED BY YOUR OR YOUR USERS' EQUIPMENT. YOU (THE CUSTOMER) AND YOUR USERS HEREBY RELEASE HEATH INTERNET FROM LIABILITY ARISING FROM ANY CONTENT ACCESSED VIA THE SERVICE. HEATH INTERNET'S PERFORMANCE UNDER THIS AGREEMENT SHALL BE EXCUSED IN CASE OF LABOR DIFFICULTIES, GOVERNMENTAL ORDERS, CIVIL COMMOTIONS, ACTS OF GOD, OR OTHER CONDITIONS OR CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL. HEATH INTERNET SHALL NOT BE LIABLE IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR (THE CUSTOMER'S) OR YOUR USERS' EQUIPMENT, RENDER THE SAME OBSOLETE, OR OTHERWISE AFFECT ITS PERFORMANCE. IN NO EVENT SHALL HEATH INTERNET BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, LOSS OF USE, ETC. THE LIABILITY OF HEATH INTERNET FOR ACTUAL PROVEN DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OF OR DISRUPTION OF SERVICE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO CHARGES PAYABLE BY YOU (THE CUSTOMER) UNDER THIS AGREEMENT FOR THE SERVICE DURING THE PERIOD SUCH DAMAGES OCCUR. HEATH INTERNET MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, CONCERNING THE SERVICE, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY, AND ANY OTHER WARRANTY IMPLIED BY LAW. WITHOUT LIMITATION OF THE FOREGOING, HEATH INTERNET SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO THE FOLLOWING CIRCUMSTANCES:

- **Eavesdropping.** Heath Internet uses an encryption technology to transmit data. Even so, there is a slight risk that you could be subject to "eavesdropping." This means that other parties may be able to access, monitor, and/or decode your traffic. This risk of eavesdropping exists not only over Heath Internet's network, but also on the Internet and all other electronic data networks. Because of this risk, you should not send any sensitive or confidential information, such as credit card numbers or other financial information, medical information, or trade secrets, over the network except via secure technologies such as SSL (secure, encrypted web pages). Any information you send over the network is sent at your sole risk. Email is not secured unless encrypted, and sometimes not even then.
- **Home Networks.** Your home network is not part of your Heath Internet service. Any security risks associated with your wireless or wired home network are independent of the Service. Heath Internet has no responsibility for the security or operation of computer equipment other than the Heath Internet Equipment.

- **FTP/HTTP Server Setup.** If you install an FTP server or an HTTP server on a computer connected to the Internet, other people may be able to gain access to your computer. If you run any such applications, you must take the appropriate security measures. Heath Internet reserves the right to limit the use of server software.

Heath Internet has a right to claim economic damages from you if you violate the Heath Internet Terms of Service or its associated policies and cause Heath Internet significant economic harm.

Indemnity

You and your users shall indemnify and hold harmless Heath Internet from and against any loss, cost, claim, liability, damage, or expense (including reasonable attorneys' fees) to third parties, relating to or arising from the use of the Service by you, your users, or others using your access, whether or not you know of or have authorized such access or use, including, without limitation, claims for libel, slander, invasion of privacy, infringement of copyright, patent infringement (where you or your users have used, connected, or combined the Service with the products or services of others), negligence, or tortuous behavior.

Intellectual Property

Ownership of Newly Developed Systems

All past, present, and future computer programs, software, drawings, diagrams, specifications, and other materials licensed or developed by Heath Internet or its suppliers, in connection with delivering the Service, whether or not developed at your specific request, remain the property of Heath Internet. You do not acquire sublicense or rights in these items by virtue of this Agreement or the provision of the Service.

Service Marks and Trade Names

Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for you or Heath Internet to use the name, trademarks, service marks, or trade names of the other party for any purpose whatsoever. If either you or Heath Internet intend to use the other's corporate or trade name, logo, trademark, or service mark in any kind of published material, you must show the proposed use to the other party and get their approval in writing before you publish or release the material. This requirement covers advertising, sales promotions, press releases, or other publicity matter relating to this Agreement.

Dispute Resolution

Both you and Heath Internet desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, you and Heath Internet agree to use the following alternative dispute resolution procedure as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

At a written request, you and Heath Internet will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. Both parties intend that business representatives who are not lawyers conduct these negotiations. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may use alternative dispute resolution procedures such as mediation to assist in the negotiations.

Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from

discovery and production, which shall not be admissible in the arbitration described below without the concurrence of all parties. Documents identified in or provided with such communications that are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration.

If the negotiations do not resolve the dispute within 60 days of the initial written request, the parties shall submit the dispute to binding arbitration before a single accredited arbitrator (pursuant to the Commercial Arbitration Rules of the American Arbitration Association). You or Heath Internet may demand such arbitration in accordance with the procedures set out in those rules. Discovery in such arbitration shall be controlled by the arbitrator.

The arbitration hearing shall be commenced within 120 days of the demand for arbitration. The arbitration shall be held in Tarrant County, Texas. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

You and Heath Internet will each bear your own costs of these procedures. Anyone seeking discovery will reimburse the other party for the costs of production of documents, which includes search time and reproduction costs.