

## Terms of Service for Wi-Five High-Speed Broadband Internet

### What This Document Is

This document contains your Terms of Service. It is an agreement made between you and Wi-Five LLC, 201 Laurence Dr, PMB 209, Heath, TX 75032, explaining the rights and responsibilities of Wi-Five and Wi-Five's customers.

By ordering Internet service from Wi-Five or by using the Wi-Five provided Equipment or Service, you accept the terms and conditions contained in this Agreement and agree to comply with its requirements. Wi-Five 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 Wi-Five 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 Wi-Five Service, agreeing to pay for service and installation of equipment. "User" means you (the customer) and anyone else who uses your Wi-Five 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 Wi-Five.

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

"Wi-Five" or "we" ("us," "our") mean Wi-Five, 201 Laurence Dr., PMB 209, Heath, TX 75032. 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 Wi-Five 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. Wi-Five 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. Wi-Five may assign this Agreement without limitation, but you may not assign this Agreement without Wi-Five'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 Wi-Five, 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 Wi-Five'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 Wi-Five wireless broadband service from your own premises.
- You agree to provide Wi-Five 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 Wi-Five account, or by using the Wi-Five 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), Wi-Five may temporarily suspend or permanently close some or all of your Service. Wi-Five alone makes this decision. Suspending or closing your service does not limit Wi-Five’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 Wi-Five in violation of any of the provisions of this agreement, Wi-Five 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. Wi-Five reserves the right to charge a reconnect fee for any discontinued Service that is subsequently reconnected. Wi-Five’s Responsibilities  
Wi-Five has certain responsibilities as a party to this agreement. Another section describes your responsibilities.

- Wi-Five 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 Wi-Five, 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:
  - o Overload
  - o Abuse
  - o Equipment modifications, upgrades, relocations, or repairs, and similar activities necessary for the proper operation of the Service
  - o Disasters (please read about “force majeure”)
- Wi-Five will provide basic instructions on how to use the Service. These instructions will appear on the Wi-Five website. You are also entitled to technical support for the Wi-Five provided Equipment or Service via phone or email. We cannot provide technical support for operating systems, your personal hardware, or software not provided by Wi-Five.

- If Wi-Five 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. Wi-Five has no other liability if your location proves impossible to provide the Service for.

Force Majeure (Disasters, Etc.)

Neither you nor Wi-Five 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 Wi-Five 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 Wi-Five (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 Wi-Five, 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 Wi-Five, 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 Wi-Five. Then, after the emergency is over, you may resume Wi-Five service under your original agreement.

Paying for Your High-Speed Broadband Internet

Price

You will pay Wi-Five 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 Wi-Five.

Wi-Five 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 Wi-Five.

Payment Wi-Five 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 Wi-Five.

Wi-Five'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 Wi-Five'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.

Wi-Five 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 Wi-Five for insufficient funds.

You will get your statement by email to your Wi-Five 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 Wi-Five email address for billing information and Wi-Five 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 Wi-Five Service. However, your credit card is not charged until you are online with your Wi-Five account.

This is automatically determined by Wi-Five's computer systems. The date you successfully go online through Wi-Five 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 Wi-Five account is closed by you or by Wi-Five.

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 Wi-Five for more than 24 hours. In such a case, we will credit you with 1/30 of the monthly charge for each twentyfour 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 Wi-Five 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 Wi-Five'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 Wi-Five has billed you in error, you must contact us by email at [accounting@Wi-Five.com](mailto:accounting@Wi-Five.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 Wi-Five 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 Wi-Five, you must notify us via email, fax, or letter. To add services or close an account, you must identify yourself to Wi-Five'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 Wi-Five 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 Wi-Five, 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 Wi-Five.
- You will allow Wi-Five employees or contractors to access your premises to remove the Equipment. This may mean coming in your house and climbing on your roof.
- You will return all of the Equipment to Wi-Five. Not returning the equipment in good condition is considered a default.

Credit for closed accounts

If you cancel your Wi-Five 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 Wi-Five service. For this agreement to be valid, your computer must meet minimum requirements (as

determined solely by Wi-Five). It must:

- Be technically and operationally compatible with the Service. Wi-Five'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 Wi-Five from secondary computers on a home network within the limits of the Acceptable Use Policy. Your home network is not part of your Wi-Five Service or Equipment. By accepting this agreement, you explicitly acknowledge that Wi-Five will not provide technical support for equipment or software that is not part of the Wi-Five Service or Equipment.

Allowing someone to connect to your home network from outside your premises and use your Wi-Five service is strictly prohibited. If you do this, we will close your account. Giving someone outside your household your Wi-Five 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 Wi-Five 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. Wi-Five 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 Wi-Five

Wi-Five agrees to maintain the Equipment in working condition for the lifetime of this agreement. In case of Equipment failure, Wi-Five 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 Wi-Five, except for any item that you buy and pay for in full, remains the property of Wi-Five. 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 Wi-Five the full retail cost of the repair or replacement. If Wi-Five 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 Wi-Five and Wi-Five can relocate the Equipment for you at a time that you and Wi-Five agree on.

If equipment, including network components, is moved or modified by anyone other than Wi-Five personnel (employed or contract), and damage to the equipment results so that Wi-Five 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 Wi-Five and its employees, agents, contractors and

representatives to enter your premises in order to install, maintain, inspect, repair, and remove the Equipment. Wi-Five agrees to arrange a convenient time with you for these activities.

#### Limitation of Liability

Wi-Five 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 Wi-Five, NOR SHALL Wi-Five BE LIABLE FOR PERFORMANCE DEFICIENCIES CAUSED OR CREATED BY YOUR OR YOUR USERS' EQUIPMENT. YOU (THE CUSTOMER) AND YOUR USERS HEREBY RELEASE Wi-Five FROM LIABILITY ARISING FROM ANY CONTENT ACCESSED VIA THE SERVICE. WI-FIVE 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. Wi-Five 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 Wi-Five 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 Wi-Five 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. Wi-Five 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, Wi-Five 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. Wi-Five 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 Wi-Five'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 Wi-Five service. Any security risks associated with your wireless or wired home network are independent of the Service. Wi-Five has no responsibility for the security or operation of computer equipment other than the Wi-Five 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. Wi-Five reserves the right to limit the use of server software.

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

**Indemnity** You and your users shall indemnify and hold harmless Wi-Five 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 tortious 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 Wi-Five or its suppliers, in connection with delivering the Service, whether or not developed at your specific request, remain the property of Wi-Five. 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 Wi-Five to use the name, trademarks, service marks, or trade names of the other party for any purpose whatsoever. If either you or Wi-Five 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 Wi-Five 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 Wi-Five 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 Wi-Five 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 any, 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 Wi-Five 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 Rockwall 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 Wi-Five 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.