

TexasData General Service Agreement

1. Agreement

- a. The following “terms and conditions of use” constitute the legal Agreement (hereinafter referred to as “Agreement”) between Broadband Data Services of Texas, LLC (“TexasData”) and the User regarding the provision of Internet Access Services (“the Service”) to the User and his or her use of these Services. By subscribing to the Service, signing the Specific Service Agreement, and/or using the Service, the User acknowledges that he/she understands all the terms and conditions of use and agrees to be bound by them.
- b. The terms and conditions of this Agreement may be amended from time to time at the sole discretion of TexasData. Notification of any amendments to these terms and conditions will be provided to the User at least fifteen days prior to any proposed change. Such notification shall be made, at TexasData’s discretion, either by electronic mail to the User’s TexasData email address or by post to the address provided by the User to TexasData.

2. General Service Obligation

- a. TexasData agrees that it will, on a best efforts basis, provide access to the internet as set forth in this Agreement.
- b. Except as expressly set out in this Agreement, all conditions or warranties which may be implied or incorporated into this contract by law or otherwise, including but not limited to those of merchant ability or fitness for a particular purpose, are expressly excluded to the extent permitted by law. In no circumstances whatsoever will TexasData be liable for economic, indirect, or consequential loss.

3. Term, Suspension, and Termination of Service

- a. TexasData will provide the User with access to the Internet through the Service for a term equal to the subscription period paid by the User, until the expiration of that subscription period or until the Agreement terminates in accordance with the terms specified herein.
- b. TexasData may, at its choice, elect to suspend or terminate the Service immediately and without prior notice, on breach of any of the terms and conditions of this Agreement including but not limited to late or non-payment of sums due. TexasData shall notify the User of such termination either by electronic mail to the User’s TexasData email address or by post to the last address provided by the User to TexasData. The receipt of such notice shall legally terminate this Agreement.
- c. TexasData may, at its choice, elect to suspend or terminate the Service immediately and without prior notice, based on the bandwidth consumption patterns of the customer.
- d. If, for any reason, User terminates this Agreement or materially breaches any of its terms, the balance (calculated by determining the number of unpaid months in the Agreement period and multiplying that by the monthly rate specified in the Service Contract) shall become immediately due.

- e. For brief periods of time, certain points of presence, servers, or the whole or part of the Service may not be available due to routine maintenance. TexasData will give as much notice as is reasonably practicable and will attempt to carry out such work during the scheduled maintenance period.
- f. Any suspension or termination or unavailability of the Service shall be without prejudice to any other right or remedy which may be competent to TexasData, but shall not give rise to any claim by the User including, without limitation, to any claim for rebate or refund or any fees paid by the User.
- g. Upon termination of this Agreement, TexasData reserves the right to delete all the User's personal files, mailboxes, and data.
- h. In the event this Agreement is terminated for any reason, User agrees to make available for collection all property of TexasData including radios, reflectors, power supplies, routers, switches, hubs, computer hardware, computer software, and any other equipment and services associated with the Service.

4. Improper Use

- a. The User acknowledges that he/she may only use the Service for lawful purposes. Violation of any of the following prohibitions will result in immediate termination of Service without refund or recourse. Specifically, the User:
 - i. Agrees to refrain from peer-to-peer file sharing services such as but not limited to: BitTorrent, LimeWire, Hotwire, etc.
 - ii. Agrees not to use or authorize or permit any other party to use the Service to receive, transmit, or store material which is in violation of any law or regulation, which is obscene, pornographic, threatening, defamatory, in breach of confidence or security, in breach of any intellectual property rights, including copyright, or is otherwise unlawful:
 - iii. Agrees not to allow any individual under the age of 18 to use this Service in such a way as to be exposed to indecent or sexually explicit materials. User accepts full responsibility for monitoring the activities of individuals using the Service with User's permission who are under 18.
 - iv. Agrees not to knowingly transmit any electronic material (including viruses, worms, adware, spyware, malware, etc.) through the Service which will cause or is likely to cause detriment or harm in any degree to computer systems owned by TexasData or other Internet Users.
 - v. Agrees not to impersonate anyone else online via electronic mail, IRC (internet relay chat) or any other forum. Impersonation includes but is not limited to using someone else's Internet address, username, or legal name. Remaining anonymous is acceptable.
 - vi. Is responsible for his/her account and he/she will keep the password secure and will not let it become public knowledge. The User is solely and wholly responsible for the security of the User's own computer systems.
 - vii. Agrees to notify TexasData within one week, in the event User's access becomes compromised by any unauthorized party.
- b. User shall not access the computer, software or data of other entities without prior authorization. Any attempt on the part of the User to access or modify without express authorization, computer system hardware, software, or information or to interfere with normal system operations, whether on the equipment of TexasData or of any computer system or network that is accessed

via TexasData's communication Services, will result in the immediate termination of the Users' Services. User will also be subject to all appropriate criminal and civil penalties. These unauthorized activities include, but are not limited to: guessing at or using passwords other than the User's own, sharing the User's own password(s) and accounts(s) with others not authorized by TexasData to use said passwords and accounts, accessing or attempting to access information that is restricted from public access.

5. "Netiquette"

- a. The User acknowledges that there is certain etiquette ("netiquette") which he/she agrees to observe when using the Service. The User agrees to abide by the rules of netiquette including but not limited to the following rules:
 - i. The Service shall not be used to send unsolicited bulk and or commercial messages over the internet ("spamming"). "Spamming includes, but is not limited to mass unsolicited e-mailings to 20 or more people, posting 20 or more copies of a single article to a newsgroup, cross posting to 20 or more newsgroups, and repetitive posting of off-topic articles to any newsgroup.
 - ii. The Service shall not be used for the distribution of Internet viruses, worms, Trojan horses, adware, or other destructive activities.
 - iii. The Service shall not be used to engage in activities that are illegal including advertising, transmitting, or otherwise making available pyramid schemes, fraudulently charging credit cards or pirating software.
 - iv. The Service shall not be used to engage in activities, whether lawful or unlawful that TexasData deems harmful to its subscribers, operations, reputation, goodwill or customer relations.

6. Specific Service Information

- a. User warrants that his/her service use information is complete and correct and agrees to notify TexasData of any substantial change affecting the use of bandwidth. The User also warrants that the personal information which he/she has provided to TexasData is complete and correct and undertakes to inform TexasData without delay of any changes to such information.

7. Assignment

- a. TexasData shall be entitled to assign this Agreement either in whole or part.
- b. The User can not assign, re-sell, sub-lease, or in any other way transfer his/her rights or obligations under this Agreement excepts as specifically authorized in a written agreement between the parties

8. Indemnity,

- a. User expressly agrees that the installation and use of the Service is at User's sole risk. Neither TexasData nor any of its information providers, licensors, employees, or agents warrant that the Service will be uninterrupted or error free; nor does Texas Data or any of its information providers, licensors, employees or

agents make any warranty as to the results to be obtained from use of the Service. THE SERVICE IS DISTRIBUTED ON A “BEST EFFORTS” AND “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. Neither TexasData nor anyone else involved in creating, producing or delivering the Service shall be liable for any direct, indirect, incidental, special or consequential damages arising out of use of the Service or inability to use the Service or out of any breach of any warranty. User expressly acknowledges that the provision of this paragraph shall also apply to the Third Party Content.

- b. It is expressly understood that TexasData is not responsible for damages resulting from lightning. In requesting and using the Service, the User accepts certain risks associated with the fixed-wireless technology TexasData uses to provide Service. These risks, and the associated liability, are fully and completely borne by the User.

9.

- a. In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been set forth herein, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.
- b. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled under or in connection with this Agreement shall not constitute a waiver thereof, and any waiver of any default shall not constitute a waiver of any subsequent default.
- c. This Agreement is, and shall be governed by and construed in accordance with the law of the State of Texas applicable to Agreements, made and performed in Texas.