

TERMS OF SERVICE

If you execute these Terms of Service, or use or otherwise indicate your acceptance of the Service, you have accepted these Terms of Service and you agree, on behalf of yourself and your household, to be bound by these Terms of Service, become a customer of Au Wireless and be subject to the rights and obligations of customers set forth in the Terms of Service.

1 Agreement

- 1.1 Entry into this Agreement. These Terms of Service set forth the legal rights and obligations governing the Service provided by AU Wireless to you (“you” or “your”) and all persons who use the Service. You hereby represent and warrant that you are at least 18 years of age. If you are a legal entity or household, you hereby represent and warrant that you have authority to enter into these Terms of Service for your legal entity or household. AU Wireless and you hereby represent and warrant that each is authorized to enter into these Terms of Service and perform its obligations thereunder.
- 1.2 Amendment. AU Wireless reserves the right to modify these Terms of Service at any time, for any reason, and without liability, *provided that* at least thirty (30) days’ notice is given to you. AU Wireless may deliver any notice to you by email to the address for your Service account in our records or by including it on or with your bill for the Service. You agree that any of the foregoing will constitute sufficient and effective notice under these Terms of Service. Your continued use of the Service for more than thirty (30) days after we deliver notice of the change, however, will constitute your acceptance of the change.
- 1.3 Privacy Policy. Your personal information is subject to AU Wireless’s Privacy Policy, available for reference at www.auwireless.net/privacy-policy
- 1.4 Entire Agreement. These Terms of Service, incorporating all the applicable documents referenced herein, represents the entire agreement between the parties with respect to the Service, and supersedes all other prior agreements between the parties, whether written or oral.

2 Service Description

- 2.1 General Description. As part of the Service, AU Wireless provides Internet access by means of a broadband connection between your residence/business and an Access Point (AP) on AU Wireless’s Internet access network.
- 2.2 Fixed Wireless CPE. AU Wireless will install antenna/modem equipment on your roof with a Cat5 Ethernet cable that runs into your home and connects to a PoE adapter that provides power and an Ethernet connection to your router. In the case of On-Net buildings, AU Wireless will connect to your router via building cabling. All equipment owned, installed or maintained by AU Wireless is referred to as the “AU Wireless Equipment”
- 2.3 Router CPE. Your router must provide NAT on the WAN/Internet interface and will connect to the PoE adapter (or cable in On-Net buildings) installed by AU Wireless. You will be solely responsible for all personal router maintenance, management, and support. Any assistance provided by AU Wireless is without warranty of any kind, and in consideration for such assistance you expressly waive any and all claims against AU Wireless that may arise from such assistance.
- 2.4 Service Demarcation. The point of demarcation (“demarc”) for the Service is the PoE adapter or wall jack in On-Net buildings. AU Wireless’s responsibility for maintenance and troubleshooting ends at the demarc.
- 2.5 Access to Premises. You agree to allow AU Wireless and its agents the right to enter your property at which the Service and/or AU Wireless Equipment will be provided (the “Premises”) at reasonable times with your permission, for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Service and/or AU Wireless Equipment. You warrant that you are either the owner of the Premises or that you have the authority to give us access to the Premises.

- 2.6 Connection Speeds. Bandwidth is delivered as a 'Best Effort' service so the speeds specified are maximum service capability speeds and are not guaranteed. You agree that actual Internet speeds obtained will vary based on a number of factors, including the capabilities of your devices, in-home Wi-Fi signal level or interference, performance of other interconnected Internet networks, and any network management methods employed by AU Wireless.
- 2.7 IP Addresses. The Service will include an IPv4 address for the router WAN/Internet interface. The IPv4 address will be assigned via DHCP from a pool of private IP addresses per RFC 1918. Public IPv4 addresses are available upon request.
- 2.8 Maintenance. The Service may from time to time require hardware or software maintenance, which may result in temporary loss of service. While it is the policy of AU Wireless to provide as much notice as possible via email to the address for your Service account in our records when a scheduled maintenance window will be used, from time to time, unscheduled or urgent maintenance will require temporary loss of service without prior notice. You hereby consent to such maintenance activity without notice. Normal maintenance windows are from 0300 – 0430 on Saturday and Sunday mornings. Maintenance performed during this window will not be announced in advance unless outages longer than 5 minutes are expected.
- 2.9 Changes to Service. AU Wireless reserves the right to modify or discontinue the Service at any time, for any reason, and without liability, *provided that* at least thirty (30) days' notice is given to you via email to the address for your Service account in our records.
- 2.10 No Tampering. After installation, you agree:
- 2.10.1 not to work with, touch, handle, repair or in any manner contact any of the poles, wires, antennas, radios or other property of AU Wireless, or permit another person to do so;
- 2.10.2 not to construct or place any property in such close proximity to the sensitive equipment; and
- 2.10.3 to indemnify and hold AU Wireless harmless from any and all claims, loss, damage and expenses arising from injury to the person, or damage to the property of you, your agents or employees, or any person whomsoever resulting from any of the above restricted acts.

You acknowledge and agree that AU Wireless may terminate your Service account if you violate any of the provisions of this Section 2.10.

3 Fees

- 3.1 Installation Fee. You agree to pay AU Wireless a one-time installation fee that is refundable if you cancel service within 30 days of installation. After 30 days, that installation fee is non-refundable. Installation fee is due 30 days from invoice date. Installation fees are waived in on-network buildings.
- 3.2 Monthly Fees. You agree to pay AU Wireless monthly fees for service per the fee schedule on our website (<https://www.auwireless.net/packages>) and will be invoiced for the monthly fees on the 1st day of each month. Monthly fees are due 30 days from invoice date.
- 3.3 Method of Payment. Payments may be made by Credit Card, check or ACH/eCheck.
- 3.4 Late Payment. You will be notified after twenty-five (25) days from invoice date as a reminder. At forty-five (45) days from invoice date, you will be sent a late payment notice. At sixty (60) days past invoice date, you will be notified via email to the address for your Service account in our records and the Service will be automatically suspended until payment is received in full.
- 3.5 Technician Visits. If a technician visit is requested by you for service issues and the problem is found to be with your router, in-home cabling, in-home WiFi or any equipment not provided or managed by AU Wireless, you may be charged a service fee of \$65. If service issues are found with AU Wireless Equipment, no service fee will be charged.
- 3.6 Refunds. Service is pre-paid at the beginning of each calendar month. Please contact us at billing@auwireless.net if you feel you are needing a refund for monthly service.

4 Termination, Cancellation, and Refusal of Service

- 4.1 Termination by You. You are entitled to terminate your Service account at any time for residential accounts and upon thirty (30) days advance notice for commercial accounts. Termination notice must be sent to AU Wireless via email and will be deemed to have been given (a) on the date sent by email if sent during normal business hours of AU Wireless, and on the next business day if sent after normal business hours of AU Wireless.
- 4.2 Termination by AU Wireless. AU Wireless may terminate your Service account immediately for cause at any time without notice for any of the following reasons: (a) non-payment for more than sixty (60) days; (b) providing false or misleading information to AU Wireless; (c) violation of these Terms of Service; or (d) engaging in conduct that is abusive to AU Wireless Equipment or other members of AU Wireless.
- 4.3 Effect of Termination. Termination of your Service account will not affect your continuing responsibility for any and all fees relating to your account prior to the date of termination. Termination of your Service account will result in the immediate termination of your membership in AU Wireless. Upon termination of service, you agree to allow AU Wireless reasonable access to your premise for the purpose of retrieving AU Wireless Equipment. Failure to allow this may result in a fee of \$200 to cover the cost of equipment.

5 Restrictions on Use

- 5.1 No Resale. You agree not to resell or redistribute the Service except as expressly authorized by Au Wireless in writing.
- 5.2 No Sharing. You agree not to share service by providing access to passwords, WiFi, network equipment or any other network access means to members not residing in your immediate place of residence or your work place. This is not meant to stop landlords or short term rentals from providing service to tenants in the unit you have purchased Internet for.
- 5.3 Use by Minors. You are responsible to determine appropriate restrictions on use of the Service by minors under your supervision.
- 5.4 Network Management. AU Wireless reserves the right to engage in reasonable network management practices subject to AU Wireless's Net Neutrality Policy, which is incorporated by reference herein into these Terms of Service and is available for reference at <https://www.auwireless.net/net-neutrality-policy>.
- 5.5 Illegal Use. AU Wireless reserves the right to terminate your Service account if you, or any persons who uses the Service via your account, are found to be using the Service to commit illegal acts or violating applicable laws. This may include, but is not limited to, downloading illegal software, video or audio files. AU Wireless will cooperate with legal requests from law enforcement or other authorized entities. This includes Digital Millennium Copyright Act (DMCA) takedown notices found to be originating from AU Wireless IP address space. Per the Privacy Policy at <https://www.auwireless.net/privacy-policy>, AU Wireless will not provide any personally identifiable information unless required to do so via a subpoena or court order.

6 Data Management; Content; Tracking Cookies; Malware

- 6.1 Data Management. You are solely responsible for management of your data. AU Wireless is not responsible for the loss, backup, or restoration of any of your data.
- 6.2 Content. You are solely responsible for all risks associated with content you send or receive via the Service. AU Wireless is not responsible for any content accessed via links it provides on its websites to other websites or resources.
- 6.3 Tracking Cookies. You acknowledge that accessing certain websites via the Service may result in tracking cookies being installed on your device. You are solely responsible for managing and tracking cookies on your device.

6.4 **Malware.** The term malware encompasses all types of malicious software. You acknowledge that using the Service and the very nature of being on the public Internet may result in malware being installed on your device. You are solely responsible to protect your device and data by installing firewall and anti-malware software.

7 Disclaimer of Warranties

THE SERVICE AND THE AU WIRELESS EQUIPMENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER AU WIRELESS NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND PARTNERS MAKES ANY REPRESENTATION OR WARRANTIES THAT THE SERVICE OR THE AU WIRELESS EQUIPMENT WILL MEET YOUR REQUIREMENTS, THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY DISCLAIMED AND EXCLUDED UNLESS OTHERWISE PROHIBITED OR RESTRICTED BY APPLICABLE LAW.

8 Limitation of Liability

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER AU WIRELESS NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR PARTNERS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TORT OR CONTRACT) HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR (1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH YOUR RELIANCE ON OR USE OF THE SERVICE OR THE AU WIRELESS EQUIPMENT; OR (2) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE SERVICE OR THE AU WIRELESS EQUIPMENT BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

9 Force Majeure

AU Wireless shall not be liable for any damages or failures due to any act of force majeure, including but not limited to: acts of God, fire, explosion, vandalism, terrorism, cable cut, major weather disturbance, national emergencies, riots, wars, labor difficulties, supplier failures, shortages, breaches, any law, order, regulation, direction, action, or request by any government, civil or military authority, or suspension of existing service in compliance with state and/or federal law, rules and regulations, or delays caused by anyone, including you.

10 Indemnification

You shall indemnify and hold harmless AU Wireless and its directors, officers, employees, agents, stockholders, affiliates, subcontractors and customers from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to or result from any act or omission of your use of the Service (or the use of or any persons who uses the Service via your account), including but not limited to misuse, illegal use, or abuse of the Service, or violation of these Terms of Service or applicable law.

11 Dispute Resolution

You agree that all unresolved disputes and claims with AU Wireless including the interpretation of any provision of these Terms of Service or the performance of any of the terms of these Terms of Service, such matter or matters in dispute shall be resolved through binding arbitration, and that any such arbitration shall be conducted on an individual basis; class arbitrations and class actions are not permitted. The arbitration shall be conducted by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. The Language shall be in English. The City and State of Arbitration shall be Denver, Colorado. The arbitration is bound by the terms of these Terms of Service. The decision and award of the arbitrator shall be final, binding, and not appealable.

12 Severability

Any provision found unlawful by a court or arbitrator having jurisdiction shall be deemed to be severed from these Terms of Service, but such severance shall have no effect on the enforceability of the remaining provisions of these Terms of Service.

13 No Waiver

No waiver of any of the provisions of these Terms of Service shall be binding unless made in writing and signed by the waiving party. The failure of either party to insist on the strict enforcement of any provision of these Terms of Service shall not be deemed to constitute a waiver of the provision, and all terms and conditions shall remain in full force and effect.

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