



Terms of Service (Home/Residential Services)

Version 1 – August 1st, 2024

1. INTRODUCTION.

This document, Terms of Service (“TOS”), is applicable to access HMP&L’s fiber optic network requested by an individual or entity (“Subscriber”).

READ THE AGREEMENT CAREFULLY. ALL OF THESE TERMS AFFECT SUBSCRIBER’S LEGAL RIGHTS BY, AMONG OTHER THINGS, LIMITING HMP&L’S LIABILITY AND REQUIRING MANDATORY ARBITRATION OF DISPUTES.

2. AGREEMENT.

Subscriber agrees to be bound by the Agreement and to use the Service in compliance with the Agreement. If Subscriber does not agree to all the terms and conditions of the Agreement, including any future revisions, Subscriber shall not use the Service and must cancel Service immediately. Certain provisions of the Agreement will survive cancellation or termination.

We may change this TOS by posting a new version of this TOS on our Website, and it is your responsibility to review this policy periodically. When we do change the policy, we will also revise the “Version” date at the end of the TOS and may notify you or post a message on the Website and/or through the Mobile App. Your continued use of the Service constitutes your agreement to this TOS, as amended from time to time.

By use of Service, you agree that you have read, understood, and accept this Agreement, as may be amended from time to time. Please read it very carefully and let us know if you have any questions. If you do not agree to or consent to any of the terms herein, do not use the Services.

3. HMP&L’S RIGHT TO MAKE CHANGES.

HMP&L may, in its sole discretion, change, modify, add or remove (collectively “Revisions”) portions of this TOS, including the Acceptable Use Policy referenced herein (“AUP”), at any time. HMP&L may give Subscriber notice of any Revisions that HMP&L determines, in its sole discretion, to be material to Subscriber’s Service or the Agreement. Notice of Revisions shall be deemed given when the Revisions are posted on HMP&L’s website at www.hmplfiber.com. Notice that Revisions have occurred shall also be deemed given when reference to the Revisions are either: (a) transmitted to Subscriber’s last known email address or other electronic means, (b) mailed as a letter, bill message, bill insert, postcard or other notice via the US mail to Subscriber’s last known address, or (c) delivered by hand to Subscriber. The revised TOS or AUP will be effective upon the earliest of any of the above notice methods, including posting to HMP&L’s website. Any revised TOS or AUP will supersede any prior version of same. Subscriber’s continued use of the Service following such notice shall be deemed as Subscriber’s acceptance of any Revisions. If Subscriber does not agree to the Revisions, Subscriber’s only recourse will be to cancel Service as set forth within the Agreement. Subscriber may not modify the Agreement, this TOS or the AUP by making any typed, handwritten, or other changes to same for any purposes.

4. SUBSCRIPTION.

Subscriber must be at least 18 years of age, and have legal authority to enter into the Agreement. The Subscriber represents that it lawfully owns the real property at which the Subscriber is to receive the service, or that the Subscriber has the permission of such owner(s) to enter this Agreement. If permission is required, the Subscriber

must have the property owner sign and submit the Landlord Letter of Permission for Service Installation. Subscriber represents that all information provided during the subscription process is accurate and complete and that Subscriber will update such information with HMP&L should any such information change.

5. PRICING.

Current installation prices and monthly fees for each Level of Service offered by HMP&L are posted on HMP&L's website at www.hmplfiber.com. All prices, fees, charges, packages, features, functionality and offers are subject to change without notice. Any upgrades or modifications to existing Service may incur additional charges.

6. PAYMENT OBLIGATIONS OF SUBSCRIBER.

Subscriber's installation fee, if any, shall be paid by the earlier of the due date as set by HMP&L or the date Service is made available. The monthly Service fee will begin upon the date Service is made available. Service is offered and billed in full calendar month increments. The exception is the first and last month of service, which will be pro-rated. Subscriber is responsible for all charges to Subscriber's account. All charges are considered valid unless disputed in writing within 30 days of the billing date. Adjustments will not be made for charges that are more than 45 days old. Default in payment, including failure to timely pay may, at HMP&L's sole discretion, result in late fees, reconnection fees, and/or disconnection of the Service.

7. EQUIPMENT.

Depending on Level of Service available to and selected by Subscriber, certain equipment (the "Equipment") will be required for Service. This Equipment may include an Optical Network Terminal, Wi-Fi extender, network switch, power strip, and battery back-up unit or other Equipment. HMP&L will provide Subscriber with the Equipment, which shall at all times remain the property of HMP&L. The Equipment shall not be tampered with, and upon termination or cancellation of Service, shall be returned to HMP&L in the same condition as existed at the time of delivery, reasonable wear and tear excepted, within ten days from the date of termination or cancellation. All Equipment must be returned to HMP&L's business address, which can be found on HMP&L's website, www.hmplfiber.com. Failure to return the Equipment to HMP&L will result in Subscriber being liable for and charged the cost of the Equipment.

8. CANCELLATION.

Subscriber may cancel Service only as follows:

Call: 270-631-0640 or 270-826-2726

9. AUTHORIZED USER.

Subscriber and members of Subscriber's household, including guests of Subscriber, are the only authorized users of the Service and must comply with the Agreement. Subscriber may not sell, transfer, lease, encumber or assign all or part of the Service. If Subscriber installs a wireless router, no one outside of Subscriber's household may access the Service through Subscriber's account. Subscriber is responsible for all traffic coming into or from Subscriber's account even if it is an unauthorized user. Subscriber shall assure that any use of the Service complies with all applicable laws, regulations and rules. This limitation on authorized users includes, but is not limited to, hosting applications such as the provision of e-mail, FTP, HTTP, VoIP, and Telnet access. Although resale of such services is prohibited, a business rate plan allows for the hosting of these services for the business' own purpose (e.g., employee email, basic business website for marketing).



10. INSTALLATION.

Installation of the Service means that Service has been made available to Subscriber, which, depending on the Level of Service available to and selected by Subscriber, may include access to a data or voice connection. HMP&L cannot guarantee that the Service can be provisioned to a specific location. HMP&L may, in its sole discretion, accept or reject any potential Subscriber. Because of the complex nature of the Service, availability, and the underlying infrastructure, it may not be possible to provide the Service to everyone. HMP&L may, in its sole discretion, require Aid-In-Construction (“AIC”), fees, or charges, to cover the cost of installation of the Service, if the costs of installation of Service is deemed excessive or unreasonable (as determined by HMP&L). Where, after installation has begun for a Subscriber, it is learned that Service is not reasonably possible, HMP&L will cancel the installation process and refund any money Subscriber paid for installation.

11. ACCESS TO SUBSCRIBER'S PREMISES.

Subscriber shall allow HMP&L and its agents the right to enter Subscriber’s real property and premises at reasonable times, for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Service and Equipment.

12. EASEMENT ON SUBSCRIBER’S PROPERTY.

In consideration of receiving Service from HMP&L, Subscriber hereby grants or will grant to HMP&L or agent of HMP&L any easements required by HMP&L or agent of HMP&L on, under, over or through Subscriber’s real estate for purposes of extending fiber optic cable to provide Service to Subscriber and others as well as to perform maintenance, service upgrades, and periodic clearing of rights-of-way. When economically feasible, all extensions shall follow any existing utility easements.

13. CREDIT INQUIRIES.

Subscriber authorizes HMP&L to make inquiries and to receive information about Subscriber’s credit experience from others, to enter such information into Subscriber’s file, and to disclose such information to appropriate third parties for reasonable business purposes. Subscriber further authorizes and consents to HMP&L reporting any late payment or non-payment of any Service Fees by Subscriber to credit grantors or credit reporting agencies.

14. HMP&L USE OF EQUIPMENT.

Subscriber agrees and understands HMP&L may utilize the Equipment provided by HMP&L to the Subscriber to extend coverage of the fiber optic network for HMP&L’s or other subscribers’ use. Such use will utilize an account and network independent of the Subscriber’s Service and will not impede or restrict Subscriber’s Service.

15. GENERAL RESTRICTIONS ON THE SERVICE.

The Service speeds and quality identified in HMP&L’s marketing materials and other communications reflect Service speed and quality capability and are dependent upon the Level of Service selected and available. The high-end of the speed or quality range for Service represents the potential wired maximum speed and quality capability for a Level of Service, but is not a statement or guarantee of the maximum speed or quality Subscriber will receive. HMP&L may contract with third parties to provide portions of the Service.

16. MONITORING THE SERVICE.

HMP&L has no obligation to monitor the Service, but may do so and disclose information regarding use of the Service for any reason if HMP&L, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself and its Subscribers. HMP&L may immediately remove Subscriber material or information from HMP&L servers, in whole or in part, which HMP&L, in its sole and absolute discretion, determines to infringe another's property rights or to violate the Agreement.

17. ACCEPTABLE USE OF THE SERVICE.

Subscriber shall not use or allow others to use the Service for illegal or inappropriate activities, including but not limited to: invading another person's privacy; unlawfully using, possessing, posting, transmitting or disseminating obscene, profane or pornographic material; posting, transmitting, distributing or disseminating content that is unlawful, threatening, abusive, harassing, libelous, slanderous, defamatory or otherwise offensive or objectionable. HMP&L has no responsibility for the accuracy, completeness, value or usefulness of any content, advice or opinions contained in any emails, third party web sites, message boards, chat rooms, social networks or online services. The internet may contain material that is unsuitable for minors, and Subscriber agrees to supervise and to accept sole responsibility and liability for any use of the Service by minors through Subscriber's account. Subscriber shall comply with HMP&L's AUP, which HMP&L may modify at any time. The current AUP is available for review at the following address, subject to change: www.hmplfiber.com. HMP&L may take any legal and technical remedies to enforce or prevent the violation of the AUP.

18. DISCLAIMER OF WARRANTIES and LIMITATION OF LIABILITY.

THE SERVICE AND THE EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. HMP&L AND ITS SUPPLIERS DO NOT WARRANT THE PERFORMANCE OF THE SERVICE, THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. HMP&L AND ITS SUPPLIERS MAKE NO EXPRESS WARRANTIES REGARDING THE SERVICE AND THE EQUIPMENT AND DISCLAIM ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HMP&L AND ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, AGENTS, SUPPLIERS AND VENDORS (COLLECTIVELY "HMP&L PARTIES") WILL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS IN CONNECTION WITH THE SERVICE AND THE EQUIPMENT RESULTING FROM: (I) AVAILABILITY OR QUALITY WITHIN THE COVERAGE AREA REGARDLESS OF THE CAUSE(S) OF THE PROBLEM; (II) OTHER USERS ACCESSING SUBSCRIBER DEVICE; (III) VARIATIONS IN THE SPEED OR BANDWIDTH AVAILABILITY TO EACH DEVICE CONNECTED TO THE HMP&L NETWORK; (IV) SECURITY BREACHES; (V) EAVESDROPPING; INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICE; (VI) SUBSCRIBER'S RELIANCE ON OR USE OF THE SERVICE; (VII) INTERRUPTIONS (INCLUDING DUE TO MAINTENANCE), DELETION OF FILES, ERRORS, OR DEFECTS REGARDLESS OF WHETHER SUBSCRIBER'S DATA IS MAINTAINED ON THE HMP&L SERVERS OR SUBSCRIBER DEVICE(S); (VIII) DELAYS IN OPERATION, TRANSMISSIONS, CORRUPTION OF DATA, INVALID DESTINATIONS OR ANY FAILURE OF PERFORMANCE OF THE SERVICE; (IX) USE OF THE SERVICE BY SUBSCRIBER OR A THIRD PARTY THAT INFRINGES A THIRD PARTY'S COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OTHER INTELLECTUAL PROPERTY, PROPRIETARY, OR CONTRACTUAL RIGHTS; OR (X) ACCURACY, COMPLETENESS, AND USEFULNESS OF ANY THIRD PARTY PRODUCTS, SERVICES OR INFORMATION OR THE MERCHANTABILITY OF

SUCH ITEMS (INCLUDING ANY SUCH ITEMS OFFERED THROUGH CO-BRANDED WEB SITES LINKED FROM THE HMP&L WEB SITES). THE HMP&L PARTIES WILL HAVE NO LIABILITY WHATSOEVER FOR (I) SUBSCRIBER FAILURE TO PROPERLY INSTALL, USE OR OPERATE THE EQUIPMENT OR (II) ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY OF SUBSCRIBER'S DEVICES, SOFTWARE, FILES, DATA, PERIPHERALS OR PROPERTY DUE TO SUBSCRIBER'S INSTALLATION, ATTEMPTED INSTALLATION, USE, REPAIR OR REMOVAL OF THE EQUIPMENT. THE FOREGOING LIMITATIONS APPLY TO THE ACTS, OMISSIONS, NEGLIGENCE AND GROSS NEGLIGENCE OF THE HMP&L PARTIES WHICH, BUT FOR THIS PROVISION, WOULD GIVE RISE TO THE CAUSE OF ACTION AGAINST ANY HMP&L PARTY IN CONTRACT, TORT, OR ANY OTHER LEGAL DOCTRINE. SUBSCRIBER'S EXCLUSIVE AND ONLY REMEDIES UNDER THE AGREEMENT ARE AS EXPRESSLY SET FORTH IN THE AGREEMENT. THE CUMULATIVE LIABILITY OF ANY HMP&L PARTY TO SUBSCRIBER FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE AND THE EQUIPMENT WILL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE THREE MONTHS IMMEDIATELY PRECEDING A CLAIM. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NO HMP&L PARTIES WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS. SUBSCRIBER MAY HAVE OTHER RIGHTS UNDER CERTAIN LAWS IN CERTAIN STATES WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES.

19. WAIVER AND PERFORMANCE.

HMP&L's failure to require strict performance of any term of the Agreement will not be a waiver of HMP&L's right to require performance of any term or condition of the Agreement.

20. ELECTRONIC COMMUNICATIONS AND PHONE COMMUNICATIONS.


Subscriber consents to receive notices, documents, disclosures and other communications from HMP&L about Subscriber's account or Service ("Communications") in an electronic format to Subscriber's contact email address and agrees that the Communications provided to Subscriber by HMP&L electronically will be deemed a writing. Subscriber agrees to regularly check his/her email account for Communications. If Subscriber does not want to receive Communications from HMP&L electronically or if Subscriber withdraws Subscriber's consent to receive such Communications electronically, then Subscriber must stop using the Service. The withdrawal of Subscriber's consent will not affect the legal validity and enforceability of any electronic Communications provided or business transacted between HMP&L and Subscriber prior to the time Subscriber withdraws Subscriber's consent.

20a. PHONE CALLING AND TEXTING.

In addition, Subscriber hereby agrees that Subscriber's execution of the Agreement or use of the Service constitutes Subscriber's express written consent to receive automated and manually dialed calls, text messages and pre-recorded messages at the phone number(s) that Subscriber provides HMP&L in connection with the Service. Consent to receiving autodialed calls, text messages, and/or pre-recorded messages from HMP&L is not required to purchase products or services from HMP&L.

20b. CHANGING SUBSCRIBER CONTACT PREFERENCES.

Subscriber may exercise Subscriber's option to not receive any marketing communications from and/or automated or manually dialed calls, text messages and pre-recorded messages from HMP&L by going to

A decorative graphic in the top right corner consisting of several overlapping blue triangles of varying shades, creating a dynamic, geometric shape.

www.hmplfiber.com. Subscriber may also text STOP in response to any text message from HMP&L to stop receiving text messages from HMP&L.

21. DISPUTE RESOLUTION BY BINDING ARBITRATION

HMP&L and Subscriber agree to resolve all disputes and claims between HMP&L (including HMP&L's Parties as defined herein) and Subscriber related to or associated with the Service through binding arbitration by the American Arbitration Association ("AAA"). This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to, all claims or disputes arising out of or relating to any aspect of the relationship between HMP&L and Subscriber, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory. It also includes all claims and disputes that arose before this or any prior agreement; claims that are currently the subject of purported class action litigation in which Subscriber is not a member of a certified class; and claims that may arise after the termination or cancellation of this Agreement.

Notwithstanding the foregoing agreement, HMP&L is not bound to use arbitration to initiate debt collection against Subscriber except in response to claims Subscriber may have made in arbitration. In addition, by agreeing to resolve disputes through arbitration, SUBSCRIBER AND HMP&L AGREE TO UNCONDITIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION AS A PLAINTIFF OR CLASS MEMBER.

A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). A Notice to HMP&L should be addressed to:

Henderson Municipal Power & Light
Attn: General Manager
1213 Barret Blvd.
Henderson, KY 42420

A Notice must include the Subscriber's name, account number, address, and telephone number, and must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). A Notice to Subscriber from HMP&L will be addressed to the billing address that HMP&L has on file for Subscriber.

If HMP&L and Subscriber do not reach an agreement to resolve the claim within 45 days after the Notice is received, Subscriber or HMP&L may commence an arbitration proceeding. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the AAA, as modified by this Agreement, and will be administered by the AAA or as mutually agreed to, in writing, by the Subscriber and HMP&L. The arbitrator is bound by the terms of the Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for a court to decide. Unless HMP&L and Subscriber agree otherwise, any arbitration hearings will take place at a location determined by HMP&L. The right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.



The arbitrator's decision shall be final and legally binding and judgment may be entered thereon. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable Rules of Arbitration. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

22. SEVERABILITY.

If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

23. GOVERNING LAW.

This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

24. NO THIRD-PARTY RIGHTS.

The Agreement is made solely for the benefit of the Subscriber and HMP&L and does not, and will not, be construed to grant any rights or remedies to any other person or entity other than expressly provided for in the Agreement.

25. MISCELLANEOUS.

The Agreement constitutes the entire agreement between Subscriber and HMP&L with respect to Subscriber's use of the Service. Subscriber may not assign any rights or delegate any duties under the Agreement without the prior written consent of HMP&L, and any attempted assignment or delegation without such consent will be void. If one or more provisions of this Agreement are held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired thereby. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration provision in Section 21; if that prohibition is found to be unenforceable, the entire DISPUTE RESOLUTION BY BINDING ARBITRATION provision (but only the DISPUTE RESOLUTION BY BINDING ARBITRATION provision) will be null and void and the dispute will be heard by a court. HMP&L may amend or replace such unenforceable provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of HMP&L as reflected in the original provision. Nothing in this Agreement or in the understanding of the parties confers upon the parties the status of agency, partnership, or other form of joint enterprise between the parties. HMP&L will not be liable for delays, damages or failures in performance because of causes beyond its reasonable control, including, but not limited to, acts of a government in its sovereign capacity, acts of war, terrorism, acts of a public enemy, fires, earthquakes, acts of God, labor disputes, strikes, work slow-downs or other labor-related activity.