

ESTES PARK POWER AND COMMUNICATIONS TERMS AND CONDITIONS OF USE FOR FIBER INTERNET ACCESS

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THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

Introduction

These Terms and Conditions of Use for Fiber Internet Access are entered into by and between you and the Estes Park Power and Communications, an enterprise of the Town of Estes Park, Colorado (referred to in these Terms of Use as “we,” “us,” “our” or “EPPC”). The following terms and conditions of use, together with any documents they expressly incorporate by reference (collectively, these “Terms of Use”), govern your access to and use to the fiber internet services provided by EPPC.

Estes Park Power and Communications Privacy Policy

As a community-owned electric and broadband utility, EPPC is dedicated to protecting the privacy of our Customer-owners. It has long been EPPC policy that customer-specific information will not be shared with third parties without the customer’s written permission or a court order consistent with the requirements of the Colorado Open Records Act (“CORA”).

Estes Park Power and Communications Net Neutrality Policy

Regardless of any changes in federal regulations, EPPC will always abide by net neutrality principles. Specifically, EPPC will not: 1) throttle your speed; 2) create “fast lanes” and “slow lanes” for services and content based on paid prioritization; or 3) “zero-rate” content based on paid prioritization. EPPC Customers will always be permitted to utilize EPPC internet service to the fullest extent that their equipment and our terms and conditions allow. All EPPC net neutrality policies will be written, publicly posted to the customer, and easy to understand.

1. SERVICES PROVIDED TO CUSTOMER

1.1 Subject to the terms and conditions as stated herein, the Town of Estes Park, through its enterprise EPPC, hereby provides fiber internet access and/or digital voice over internet protocol (“VoIP”) services (collectively the “Service” or “Services”) to Customer for its exclusive use. Customer agrees to be bound by these Terms of Use, the Customer Acknowledgement & Authorization form, and all other agreements incorporated herein by reference.

1.2 The Service shall be provided to Customer by EPPC in accordance with EPPC’s technical specifications.

1.3 In some instances, EPPC may use a temporary drop connection to provide service to the Customer. Customer agrees to the use of a temporary connection and approves EPPC or its contractor to place a temporary fiber cable drop at ground level across his or her property. Customer understands that he or she is solely responsible for his or her own safety, health, and welfare until such time as the fiber cable drop may be buried underground, and it is solely Customer’s responsibility to assess and avoid any clear or hidden dangers and to avoid actions that could prove potentially hazardous or dangerous to those who access the property.

1.4 EPPC will use its best efforts to deliver the Service on the installation appointment date. In no event shall EPPC be liable for any failure to deliver Fiber Internet Access on the original appointment date.

1.5 Customers operating as commercial entities shall be responsible for obtaining the facilities necessary to connect to the Service. Customer shall connect to the Fiber Internet Access at the designated network demarcation, which shall be one or more ports on the EPPC-provided Optical Network Terminal, unless otherwise agreed by EPPC in advance of the installation of Service. The installation of facilities up to the designated network demarcation shall be made by EPPC or a third party on behalf of EPPC.

1.6 Upon reasonable notice thereof and without any notice in the event of an emergency, nothing in these Terms and Conditions shall prevent EPPC or any EPPC contracted third party from taking such actions as are necessary to repair and maintain the facilities by which the Service is provided hereunder but in either event, EPPC shall not incur any liability as a result thereof even though, for example, the actions may render the Service unusable for a period of time. Notwithstanding the foregoing, and except for emergencies, EPPC shall attempt to perform routine repair and maintenance at such times that will have minimum disruptive impact on the continuity or performance of the Service.

1.7 If EPPC determines that the reason for repair and maintenance is due to Customer-provided facilities or Customer's actions or omissions, or the facilities, acts or omissions of any party with whom Customer has a relationship, such as a Customer of Customer, Customer shall compensate EPPC for the reasonable costs and expenses of the repair and maintenance.

2. COMPENSATION AND PAYMENTS

2.1 In consideration of the Service(s) provided by EPPC to Customer, in addition to the connection costs referred to in Section 1.5 above, Customer agrees to pay to EPPC the fees set forth on the EPPC Broadband Rate Card ("Fees"), any fees set forth in a statement of work for commercial customers, plus local, state and federal taxes or other fees including regulatory charges, if any, for the Service(s), plus any fees assessed as a result of this Agreement under any state or federal universal service fund, such as the Universal Service Fund set forth in Section 254 of the Telecommunications Act of 1996, as applicable.

2.2 Customer's obligation to pay the Fees shall commence upon Delivery, which is the date the service is available for use by Customer. The Fees for any period of time under this Agreement that is less than a calendar month shall be prorated based on the actual days of such month.

3. SERVICE USAGE RESTRICTIONS AND COOPERATION

3.1 Customer shall take no action, knowingly or unknowingly, that constitutes a prohibited use. Prohibited uses and activities include, but are not limited to, using the Service, Customer Equipment, or the EPPC Equipment, either individually or in combination with one another, to:

(a) interfere in any way with, impair, or adversely affect the facilities used by EPPC to provide the Service(s);

(b) expose EPPC or such facilities to any claim, lien, encumbrance or legal process;

(c) violate these Terms and Conditions or any law, rule or regulation, including, but not limited to, any transmission Customer intentionally or knowingly sends or the content thereof that violates any copyright or export control laws, or that is libelous, slanderous, an invasion of privacy, harmful to the property of another, or is transmitted with the intention of aiding in theft, espionage, or any other crime as recognized by state, federal, or local law;

(d) resell, repackage, or share the Service, either through a wired or wireless connection to any party outside the Customer premises, unless prior written authorization has been provided by EPPC.. For the purposes of this restriction the Customer premises shall be defined as the Customer home or housing unit (e.g. apartment) for residential Customers, and for commercial Customers, the commercial space being occupied and used solely by the commercial entity subscribing to the service. For the avoidance of doubt, a commercial Customer may not share or resell the service with or to other commercial entities within the same commercial premises, nor extend the Service beyond the Customer premises;

(e) use the Service for operation as an Internet service provider or for any business, other legal entity, or organization purpose (whether or not for profit); This limitation does not prohibit Customer from offering internet service on a temporary basis to a transient public guest so long as there is no additional fee charged to that user for this service.

(f) connect the EPPC Equipment to any computer outside of Customer premises;

(g) impede others' ability to use, send, or retrieve information;

(h) restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any EPPC (or EPPC supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any EPPC (or EPPC supplier) facilities used to deliver the Service;

(i) restrict, inhibit, or otherwise interfere, regardless of intent, purpose or knowledge, with the ability of any other person to use or enjoy the Service (except for tools for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, malware, or other harmful feature;

(j) interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host;

(k) access and use the Service with anything other than a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). Customer may not configure the Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless Customer is subject to a Service plan that expressly permits Customer to do so.

(l) for residential customer, commercial use which substantially interferes with the management and operation of the EPPC network.

Customer shall promptly notify EPPC of any event that would be reasonably likely to give rise to any such interference, impairment, affect, exposure, reselling, or service usage violation.

3.2 If EPPC reasonably determines that Customer is using the Service(s) in violation of Section 3.1 above, EPPC may immediately terminate or suspend the Service(s). Customer accepts liability for any damages resulting from Customer failure to comply with Section 3.1 service usage restrictions.

3.3 Customer and EPPC each agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder imposed by any governmental or quasi-governmental authority.

3.4 EPPC requires customer to maintain a valid email address on file at all times. Notices, monthly bills, system updates, and notifications of changes to the customers' account are sent via email.

4. EMERGENCY SERVICES ACKNOWLEDGEMENT

4.1 EPPC VoIP Services includes E911 emergency service. EPPC's E911 service facilitates the routing of emergency calls from Customers to an E911 service bureau; which routes calls to the appropriate Public Safety Access Point ("PSAP") or call center; based on the physical location currently registered by the Customer with EPPC, or its designee.

4.2 REQUIREMENT TO REGISTER AND UPDATE LOCATION INFORMATION. CUSTOMER IS REQUIRED TO REGISTER A VALID AND VERIFIED PHYSICAL LOCATION WITH EPPC, OR ITS DESIGNEE, OF EACH CUSTOMER'S VOICE EQUIPMENT (PHONE OR SOFTPHONE) UPON ORIGINAL PROVISIONING OF VOIP SERVICES AND IMMEDIATELY UPON ANY LOCATION CHANGE. CUSTOMER ACKNOWLEDGES THAT THE PHYSICAL LOCATION REGISTERED FOR THE END USER'S EQUIPMENT WILL BE THE ONLY LOCATION TRANSMITTED TO THE EMERGENCY CALL TAKER AND FAILURE TO MAINTAIN ACCURATE LOCATION INFORMATION, E911 COMMUNICATIONS MAY NOT FUNCTION PROPERLY. WHEN CUSTOMER NOTIFIES EPPC, OR ITS DESIGNEE, OF A CHANGE IN THE REGISTERED LOCATION OF THE CUSTOMER, THERE MAY BE A DELAY IN MAKING THE NEW REGISTERED LOCATION AVAILABLE TO ROUTE 911 CALLS AND TO ADVISE THE APPROPRIATE EMERGENCY CALL TAKER OF THE NEW REGISTERED LOCATION.

4.3 VoIP 911 LIMITATIONS AND RESTRICTIONS. CUSTOMER ACKNOWLEDGES THAT E911 SERVICE DOES NOT HAVE THE SAME FUNCTIONALITY OR AVAILABILITY AS THAT ASSOCIATED WITH TRADITIONAL WIRELINE 911 SERVICES AND IS SUBJECT TO CERTAIN LIMITATIONS AND RESTRICTIONS INCLUDING THOSE DESCRIBED HEREIN. CUSTOMER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IT HAS BEEN INFORMED BY EPPC THAT E911 SERVICES WILL NOT FUNCTION OR WILL NOT FUNCTION PROPERLY FOR ANY OF THE FOLLOWING REASONS:

- a. Customer fails to provide EPPC with an accurate, verified and up to date physical location of the voice handset.
- b. Loss or interruption of electrical power to a user's telephone, ATA, modem, router, switch or any other devices in the critical path between the user's Device and EPPC's, or its designee's, Cloud Voice Platform.
- c. Loss or interruption of Internet access at the user's location.
- d. Improper installation or failure of Device, software or any other devices in the critical path between the user's telephone handset and EPPC's, or its designee's, Cloud Voice Platform.
- e. Suspension, disconnection, termination or failure of the service to function for any reason.
- f. The user attempts a 911 call from a location/address different than the location/address registered with EPPC.
- g. Due to technical factors in network design or due to network congestion there may be a possibility of a busy signal or abnormal wait times

4.4 Customer understands and acknowledges that provision of EPPC VoIP Services is expressly conditioned on Customer agreeing that customer understands the provisions of this Section 4, entitled "Emergency Services Acknowledgement" detailing the limitations of VoIP E911 Services as compared to traditional wireline service.

4.5 Use of EPPC VoIP and E911 services are subject to the provisions of Section 5 below.

5. LIMITATIONS ON LIABILITY; DISCLAIMER OF WARRANTIES

5.1 In no event shall EPPC be liable to the Customer for any indirect, special, incidental, punitive or consequential damages, whether or not foreseeable, including loss of revenue, loss of Customers, loss of goodwill, or loss of profits arising out of or in relation to these Terms and Conditions or the performance or non-performance of any obligation hereunder, whether arising out of contract or tort.

5.2 EPPC MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER THIRD PARTY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE SERVICE(S) OR ANY OTHER MATTER WHICH IS THE SUBJECT OF THESE TERMS AND CONDITIONS, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

5.3 EPPC shall not be liable for any mistakes, errors, omissions, interruptions, delays, outages or defects in the Service(s) which are caused by force majeure event or the improper repair and maintenance by the Customer or third parties with whom Customer has a relationship, such as a Customer of Customer. For the purposes of the is subsection a force majeure event has the same meaning as in section 6 below. EPPC shall not be liable for any act or omission associated with systems, the Service(s), or facilities which EPPC does not furnish, including acts or omissions associated with the operation of Customer's system, Service(s), or facilities.

5.4 In no event shall an outage be deemed a default under these Terms and Conditions.

5.5 Notwithstanding any other provisions of these Terms or Conditions, the Customer Acknowledgement & Authorization, or the EPPC Broadband Rate Card, EPPC does not waive any rights, immunities, privileges, monetary limitations to judgments and defenses available to EPPC under common law or the Colorado Governmental Immunity Act, Sec. 24-10-101 *et seq.* C.R.S.

5.6 Customer understands that EPPC and its contractors have taken appropriate measures to secure and stabilize the temporary fiber drop cable. However, regardless of those measures, Customer assumes responsibility for themselves and others who access the property, to avoid the potential hazards related to the fiber drop cable location. Neither EPPC nor its contractors shall be liable for any claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by and on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership relating to the use of a temporary drop on the Customer premises.

6. INDEMNIFICATION

The Customer releases and agrees to indemnify, defend and hold harmless EPPC, its agents, contractors, elected officials, officers, employees, and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from the Customer's use or misuse of the Service(s), including but not limited to any violation or infringement of contractual rights, privacy, confidentiality, copyright, patent, trademark, trade secret or other intellectual property; from use or failure of the 911/E911 functionality or any other dialing associated with a home security, home detention, medical monitoring or other similar system; and from Customer's breach of any provision of these Terms and Conditions.

7. FORCE MAJEURE

Without limiting any other provision of these Terms and Conditions, EPPC shall not be held liable for any loss, damage, delay or failure to provide or maintain the Service(s) caused by anything beyond its control, such as acts of God, acts of civil or military authority, government regulations, eminent domain, embargoes, labor stoppage, epidemics, war, police actions, terrorist acts, riots, insurrections, fires,

explosions, earthquakes, nuclear accidents, floods, power blackouts, severe weather conditions, inability to secure facilities, products or services of other persons including transportation facilities, cyber-attacks or any other events or circumstances not within the reasonable control of EPPC, whether similar or dissimilar to any of the foregoing.

8. GOVERNING LAW

These Terms and Conditions and any issues arising out of or in relation hereto shall be governed by the laws of the State of Colorado, without regard to its choice-of-law provisions. The Customer agrees that the federal and state courts of Colorado alone have jurisdiction over all disputes arising under these Terms and Conditions and the Customer consents to personal jurisdiction of those courts with respect to any disputes arising under these Terms and Conditions.

9. RELATIONSHIP OF THE PARTIES

The Customer is independent from that of EPPC and nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent, or employer and employee relationship between the parties.

10. MISCELLANEOUS

10.1 Customer recognizes that EPPC may enter into agreements with third parties to perform all or part of its obligations hereunder and that references herein to EPPC include, where applicable, its agents and independent contractors.

10.2 EPPC shall own and maintain the wiring external to the premises with the Services, the Optical Network Terminal and any other equipment necessary to provide the Services. Customer shall own and maintain all equipment internal to the premises unless specifically leases or rented from EPPC. Notwithstanding the foregoing, Customer shall be responsible for damages and repairs to any such equipment caused by Customer's acts or omissions. Upon cancellation or termination of the Services, Customer shall return all EPPC equipment within seven (7) days to EPPC at a location designated by EPPC

10.3 By accepting the Services provided by EPPC and agreeing to these Terms and Conditions, the Customer agrees to grant EPPC a right of entry to Customer's property. Specifically, Customer agrees to allow EPPC to enter his or her property for the purposes of installing, adjusting, repairing, replacing, maintaining, moving, auditing, or removing any equipment if necessary. EPPC shall also have the right to periodically audit the Service connections to confirm compliance with section 3.1(d), and Customer agrees to provide access to the property, equipment, and attached wiring for the purposes of the audit. Customer represents that Customer either owns the property or has the right to allow EPPC to install any necessary equipment and wiring to provide the Service. Customer should always ask for proper identification anytime an EPPC employee or contractor requests entry to the property. If identification is not provided, Customer should not allow access. The right of entry granted to EPPC pursuant to this subsection shall remain in effect so long as Customer accepts Services from EPPC and for such time as may be reasonably necessary to remove facilities installed by EPPC after discontinuation of EPPC Services.

10.4 These Terms and Conditions and any other applicable documents incorporated by reference and attached to these Terms and Conditions, including but not limited to the Customer Acknowledgement & Authorization, the Statement of Work for commercial customers, MDU Right of Entry Agreement, Residential Easement, and the EPPC Broadband Rate Card, as applicable, constitute the entire agreement and understanding between Customer and EPPC with respect to EPPC's provision of the Service and related equipment. They replace any and all prior written or verbal agreements. If any portion of this agreement is held to be unenforceable, the unenforceable portion shall be construed in

accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. No waiver of any breach or default under these Terms and Conditions shall be a waiver of any other breach or default. Neither the course of conduct between the parties nor trade practice shall modify these Terms and Conditions.

10.5 EPPC may update these Terms and Conditions from time to time with notification to the Customer, but no further consent from the customer shall be required.