

EL RENO MUNICIPAL AUTHORITY FIBER INTERNET ACCESS SERVICES USE POLICY

"TERMS AND CONDITIONS"

1. SERVICES PROVIDED TO CUSTOMER

1.1 Subject to the terms and conditions as stated herein, the El Reno Municipal Authority as El Reno Fast Connect a wholly owned subsidiary of the City of El Reno, (referred to as ERMA), as a non-common carrier, hereby provides Fiber Internet Access Service (collectively the "Service" or "Services") to Customer for its exclusive use. Customer agrees to be bound by all the terms and conditions contained herein and in the Customer Acknowledgement & Authorization.

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

1.3 In some instances, ERMA may use a temporary drop connection to provide service to the Customer. Customer agrees to the use of a temporary connection and approves ERMA 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. Customer understands that a return trip(s) will be necessary to remove the ground level temporary fiber cable drop and install a permanent underground fiber cable drop and further understands that there will be a temporary loss of service during this process.

1.4 ERMA will use its best efforts to deliver the Service on the installation appointment date. In no event shall ERMA be liable for any failure to deliver the Broadband Service 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 Broadband Service at the designated network demarcation, which shall be one or more ports on the ERMA-provided Optical Network Terminal, unless otherwise agreed by ERMA in advance of the installation of Service. The installation of facilities up to the designated network demarcation shall be made by ERMA or a third party on behalf of ERMA.

1.6 Upon reasonable notice thereof and without any notice in the event of an emergency, nothing in these Terms and Conditions shall prevent ERMA or any ERMA 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, ERMA 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, ERMA 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 ERMA 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 ERMA for the reasonable costs and expenses thereof.

1.8 For its Wireless Internet Gateway service, ERMA will support connectivity to wireless enabled PC or MAC desktops or laptops that are able to connect to a wireless access point with WPA or WPA2 encryption. ERMA will not guarantee nor support the use of devices other than those listed above. The Customer assumes responsibility for connectivity and will be instructed to contact the appropriate manufacturer. ERMA will not guarantee the operable range of the wireless device due to building structure. Customer agrees to use the equipment for its intended use and not for any other purpose. If at any time, Customer becomes aware that the equipment has been stolen or fraudulently used, Customer agrees to contact ERMA immediately by contacting our Customer Service department. The Customer has the option to set up a network name and password at the time of installation. Customer agrees to keep all passwords confidential and accept liability for any damages resulting from Customer failure to maintain password confidentiality.

2. ACCESS TO PREMISES, MAINTENANCE AND OWNERSHIP OF EQUIPMENT

2.1 ERMA 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. 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 the equipment to ERMA at El Reno City Hall, 101 N. Choctaw, El Reno, OK 73036.

2.2 Customer agrees to allow ERMA to enter his or her property for the purposes of installing, adjusting, repairing, replacing, maintaining, moving, auditing or removing any equipment if necessary. ERMA shall also have the right to periodically audit the Service connections to confirm compliance with section 5.1(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 ERMA to install any necessary equipment and wiring to provide the Service. Customer should always ask for proper identification anytime an ERMA employee or contractor requests entry to the property. If identification is not provided, Customer should not allow access. ERMA will not enter any home/residence, business, or other structure without an adult present.

2.3 "ERMA Equipment" means all new or reconditioned equipment that ERMA or our agent provides or leases to Customer, including, but not limited to, cabling or wiring (except for Inside Wiring) and related electronic devices, modems, routers, and any other hardware and includes all software and programs contained within ERMA Equipment or downloaded to Customer Equipment by ERMA. Customer expressly agree that Customer will use the ERMA Equipment exclusively in connection with the Service. Customer agrees that except for the wiring installed inside the Premises ("Inside Wiring"), or equipment purchased by Customer from ERMA, all ERMA Equipment belongs to ERMA or other third parties and will not be deemed fixtures or in any way part of the Premises. ERMA may remove or change the ERMA Equipment at its discretion at any time the Service is active or following the termination of Service. Customer acknowledges that any addition to, removal of, relocation of, or change to the ERMA Equipment may interrupt your Service. Customer may not sell, lease, abandon, or give away the ERMA Equipment, or permit any other service provider to use the ERMA

Equipment. The ERMA Equipment may only be used in the Premises unless expressly permitted by ERMA. At Customer's request, ERMA may relocate the ERMA Equipment for an additional charge. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT IF CUSTOMER ATTEMPTS TO INSTALL OR USE THE ERMA EQUIPMENT OR SERVICE AT A LOCATION OTHER THAN THE PREMISES OR OTHERWISE EXPRESSLY AUTHORIZED BY ERMA, THE SERVICE MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. Customer agrees that Customer will not allow anyone other than ERMA or our agents to service the ERMA Equipment. Customer is responsible for loss, repair, replacement and other costs, damages, fees and charges if Customer does not return the ERMA Equipment to ERMA in an undamaged condition.

3 CUSTOMER EQUIPMENT.

3.1 Responsibility: ERMA has no responsibility for the operation, support, maintenance or repair of any Inside Wiring or Customer Equipment.

3.2 Non-Recommended Configurations: Customer Equipment that does not meet ERMA minimum technical or other specifications constitutes a "Non-Recommended Configuration", including, but not limited to, modems not currently certified by ERMA as compatible with Internet; Customer Equipment, including, but not limited to: certain makes or models of alarm and security systems or devices, certain medical monitoring devices, personal emergency alert, and home detention devices, certain fax machines, and certain "dial-up" modems, rotary-dial phone handsets, pulse-dial phone handsets, private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units. ERMA reserves the right to deny support for the Service and/or terminate Service if Customer use a Non-Recommended Configuration. NEITHER ERMA NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANTS THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE CUSTOMER TO SUCCESSFULLY INSTALL, ACCESS, OPERATE OR USE THE SERVICE. CUSTOMER ACKNOWLEDGES THAT INSTALLATION, ACCESS, OPERATION OR USE OF A NON-RECOMMENDED CONFIGURATION COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, CUSTOMER, CUSTOMER PREMISES OR ERMA EQUIPMENT. NEITHER ERMA NOR ANY ERMA AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE.

3.3 No Unauthorized Devices or Tampering: Customer agrees not to attach or assist any person to attach any unauthorized device to, or otherwise tamper with, ERMA network, ERMA Equipment or the Service for any purpose, including, but not limited to the unauthorized reception of the Service. If Customer makes or assist any person to make any unauthorized connection or modification to or otherwise tamper with ERMA Equipment or the Service or any other part of our network, ERMA may terminate the Service and recover damages resulting from Customer actions. Customer also agrees that Customer will not attach anything to the Inside Wiring, ERMA Equipment, or Customer Equipment, whether installed by Customer or ERMA, which impairs the integrity of the ERMA network or degrades the network. The unauthorized reception of the Service may result in criminal fines and/or imprisonment.

3.4 Inside Wiring. Customer may install Inside Wiring, such as additional cable wiring and outlets, provided that doing so does not interfere with the normal operations of the ERMA network. If Customer has ERMA install, repair or maintain Inside Wiring, ERMA will charge Customer for that service. Regardless of who installed it, the Inside Wiring is Customer property or the property of whomever owns the Premises. If Customer does not own the Premises, then Customer should contact their landlord or building manager about the installation, repair or maintenance of Inside Wiring.

3.5 End User Software Licenses. Software or applications may be required to use certain features of the Service. Customer agrees to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed or used in connection with the Service, as these agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. When this Agreement terminates, all end user licenses also terminate and Customer agrees to destroy all versions and copies of all software received by Customer in connection with the Service.

3.6 Revocable License. The Service and ERMA Equipment, including, but not limited to, any firmware or software embedded in the ERMA Equipment or used to provide the Service, are protected by trademark, copyright, patent and/or other intellectual property laws and international treaty provisions. Customer is granted a revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. Customer acknowledges and understands that Customer are not granted any other license to use the firmware or software embedded in the ERMA Equipment or used to provide the Service. Customer shall not take any action nor allow anyone else to take any action that will reverse compile, disassemble, reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software.

4. COMPENSATION AND PAYMENTS

4.1 In consideration of the Service provided by ERMA to Customer, in addition to the connection costs referred to in this Agreement and elsewhere, Customer agrees to pay to ERMA the fees as established by ERMA, 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. ERMA may amend these Fees.

4.2 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.

4.3 Customer shall pay the Fees subject to the El Reno Code of Ordinances and other ERMA policies.

4.4 Customer will be billed monthly, in advance, for recurring Service charges, equipment charges, and fees. Customer may be billed for some Service(s) individually after they have been provided to Customer. ERMA does not waive its rights to collect the full balance owed to ERMA by accepting partial payment. ERMA will apply the partial payment to outstanding charges in amounts and in the order ERMA determines in its sole discretion.

4.5 Use of any credit card to pay for the Service(s) is governed by the applicable card issuer agreement. If ERMA does not receive payment from Customer credit card issuer or its agents, Customer agrees to pay all amounts due upon demand. If Customer pays by check, Customer authorizes ERMA to collect Customer's check electronically. Customer agrees that Customer may not amend or modify this Agreement with any restrictive endorsements (such as "paid in full"), or other statements or releases on or accompanying checks or other payments accepted by ERMA and any such notations shall have no legal effect.

5. SERVICE USAGE RESTRICTIONS AND COOPERATION

5.1 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 ERMA Equipment, either individually or in combination with one another, to:

- (a) interfere in any way with, impair, or adversely affect the facilities used by ERMA to provide the Service(s);
- (b) expose ERMA 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 or an invasion of privacy;
- (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 ERMA. For 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 ERMA 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 ERMA (or ERMA supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any ERMA (or ERMA 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, 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; or
- (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.

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

5.2 If ERMA reasonably determines that Customer is using the Service(s) in violation of Section 5.1 above, ERMA may immediately terminate the Service(s). Customer accepts liability for any damages resulting from Customer failure to comply with Section 5.1 service usage restrictions.

5.3 Customer and ERMA 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.

5.4 Under federal law, Customer has the right to confidentiality, and ERMA has a duty to protect and keep confidential information about the amount, type, and destination of Customer's internet usage. Customer's personal and usage information is not public and will not be released except to satisfy laws, regulations, or other governmental or legal requirements or requests, to operate the services properly, or to protect itself and its subscribers.

6. LIMITATIONS ON LIABILITY; DISCLAIMER OF WARRANTIES

6.1 In no event shall ERMA 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.

6.2 The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property, or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business, or personal communications, or activities where absolutely accurate data or information is required. Customer expressly assume the risks of any damages resulting from High Risk Activities.

6.3 ERMA 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.

6.4 ERMA shall not be liable for any mistakes, errors, omissions, interruptions, delays, outages or defects in the Service which is caused by force majeure, repair and maintenance or the Customer or third parties with whom Customer has a relationship, such as a Customer of Customer. ERMA shall not be liable for any act or omission associated with systems, the Service, or facilities which ERMA does not furnish, including acts or omissions associated with the operation of Customer's system, Service, or facilities.

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

6.6 ERMA does not waive any rights, immunities, privileges, monetary limitations to judgments and defenses available to ERMA under common law or the Oklahoma Governmental Tort Act.

6.7 Customer understands that ERMA 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 ERMA 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.

7. INDEMNIFICATION

The Customer releases and agrees to indemnify, defend and hold harmless ERMA, its agents, 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, 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.

8. FORCE MAJEURE

Without limiting any other provision of these Terms and Conditions, ERMA shall not be held liable for any loss, damage, delay or failure to provide or maintain the Services 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, pandemics, 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.

9. 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 Oklahoma. The Customer agrees that the federal and state courts of Oklahoma 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.

10. RELATIONSHIP OF THE PARTIES

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

11. MISCELLANEOUS

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

11.4 These Terms and Conditions and any other documents incorporated by reference constitute the entire agreement and understanding between Customer and ERMA with respect to ERMA'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.