

EPB SMART NET BASIC TERMS AND CONDITIONS

ACCEPTANCE OF TERMS AND CONDITIONS

These Terms and Conditions and any other documents incorporated by reference compromise the entire agreement between Customer and the Electric Power Board of Chattanooga, an independent board of the City of Chattanooga (“EPB”) with respect to EPB’s Smart Net Basic (“Service”). By accepting the Service, Customer agrees to be bound by the Terms and Conditions contained herein.

DESCRIPTION OF SERVICE

Upon purchase of the Service, Customer shall be eligible to receive the following services via in-home installation, a direct tech support number, or webchat:

Equipment/Installation

- Install a Wireless Router
 - A wireless router will be provided by EPB and will be placed in a mutually agreeable location with an attempt to achieve optimal wireless network coverage. Customer may connect up to three wireless devices to a wireless router. Wireless devices shall include smartphones, tablets, PCs, laptops, gaming consoles, and printers capable of wireless connection.
- Install anti-virus software and activate account.
- Additional Internet wall outlets installed at then-current rates.

Anti-virus Protection

- Install anti-virus software. The limit on devices will be determined by the current anti-virus protection provider. Anti-virus software will not load if there are existing viruses.
- EPB may change the anti-virus protection provider at any time in its sole discretion.
- Set up virus scan frequency based on Customer’s preference.

Dedicated Technical Support

- 24/7/365 technical support
- Direct-dial technical support number
- 100% local technical support

Virus Removal

- One-time fee at the then-current rates per computer, per removal. Virus removal only applies to EPB Smart Network subscribers and the computers that are networked and shall only be available for PCs, laptops and Mac computers.

- Customer should backup data on flash drive prior to virus removal.
- On-site visit.

BILLING AND PAYMENT

Customer agrees to pay for the Service at EPB’s then-current rates. All fees and charges are nonrefundable. Customer may cancel the Service at any time.

TERMINATION

Upon termination, you will be charged for all Service up to the termination date and any unreturned EPB Equipment. You agree that immediately upon termination you will stop using the Service and return all EPB Equipment to EPB. EPB may invoice you for the full replacement cost of any EPB Equipment that is not returned after thirty (30) days of termination or if the returned EPB Equipment has been damaged or destroyed.

MODIFICATIONS TO TERMS AND SERVICE

EPB may modify these Terms and Conditions of the Service from time to time. Upon any change in these Terms and Conditions, EPB will notify Customer by posting the updated Terms and Conditions to its website located at <https://epb.com/legal>. EPB reserves the right to modify or discontinue the Service with or without notice and shall not be liable to you or any third party if EPB chooses to exercise its right to modify or discontinue the Service. Customer’s continued use of the Service constitutes an affirmative agreement by Customer to abide by and be bound by these Terms and Conditions and any modifications to them.

CUSTOMER’S RESPONSIBILITY TO BACKUP DATA

Prior to EPB performing any of the Service, Customer agrees to (1) back up any data, software, information, or other files stored on Customer’s computer disk drives, and/or on any other electronic storage devices; and (2) remove all external electronic media that is connected to the Customer’s equipment. EPB shall not be liable under any circumstances for any loss, disclosure, alteration or corruption of any data, software, information, files, pictures or other media.

FORCE MAJEURE

EPB shall not be liable for any failure of performance

due to causes beyond its control, including without limitation, acts of God, fire, earthquake, flood, the elements, or other catastrophes; strikes, lock-outs, work stoppages or other labor difficulties.

INDEMNITY

CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS EPB FROM ALL LIABILITIES, DAMAGES, CLAIMS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) THAT ARISE FROM (i) CUSTOMER'S USE OR MISUSE AND FROM ALL OTHER PERSONS WHO MAY USE OR MISUSE THE SERVICE AND EPB EQUIPMENT; (ii) ANY VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY OF ANY THIRD PARTY FROM CUSTOMER'S USE OF THE SERVICE OR USE OF ANY EPB EQUIPMENT IN CONJUNCTION WITH THE SERVICE; (iii) AND FROM CUSTOMER'S BREACH OF ANY PROVISION OF THESE TERMS AND CONDITIONS. WHERE CUSTOMER IS OBLIGATED TO INDEMNIFY OR HOLD EPB HARMLESS ANYWHERE IN THIS AGREEMENT, THOSE OBLIGATIONS RUN NOT ONLY TO EPB, BUT ALSO TO ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS.

DISCLAIMER OF WARRANTIES

CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICE AND EPB EQUIPMENT IS AT CUSTOMER'S SOLE RISK. EPB MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, OF ANY WARRANTY THAT THE SERVICE OR THE EPB EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS. THE SERVICE AND THE EPB EQUIPMENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. THE SERVICE ARE NOT FAIL-SAFE AND MAY BE DISRUPTED. THE SERVICE ARE NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS IN WHICH AN ERROR IN INTERRUPTION COULD LEAD TO INJURY TO BUSINESS, PERSONS, PROPERTY, OR THE ENVIRONMENT. WITHOUT LIMITING THE FOREGOING, EPB DOES NOT WARRANT THAT THE SERVICE AND EPB EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF QUALITY, DEGRADATION OF

PERFORMANCE, OR LOSS OF CONTENT, DATA, OR INFORMATION. EPB MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. CUSTOMER UNDERSTANDS AND AGREES THAT ANY USE OF THE SERVICE OR EPB EQUIPMENT IS MADE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER OR OTHER PROPERTY AND ANY LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE AND EPB EQUIPMENT. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR EPB EQUIPMENT BY EPB OR BY EPB'S AUTHORIZED REPRESENTATIVES ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM EPB SHALL CREATE ANY WARRANTY OR GUARANTEE OF ANY KIND.

LIMITATION OF LIABILITY

IN NO EVENT SHALL EPB, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, OR SERVICE PROVIDERS BE LIABLE TO CUSTOMER OR TO ANY USER OF THE SERVICE AND EPB EQUIPMENT FOR LOSS OF PROFITS OR FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICE AND EPB EQUIPMENT UNDER THIS AGREEMENT EVEN IF EPB HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. WITHOUT LIMITATION OF THE FOREGOING, EPB SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM (i) OTHERS ACCESSING THE SERVICE OR EPB EQUIPMENT RELATED TO THE SERVICE; (ii) SECURITY BREACHES, VIRUSES, EAVESDROPPING, LOSS OF DATA OR INTERCEPTION OR INTERRUPTION OF THE SERVICE; (iii) ANY MISTAKES, OMISSIONS, FAILURES, MALFUNCTIONS, THEFT, DELETION, CORRUPTION OF FILES, ERRORS, DEFECTS, OR FAILURES OF PERFORMANCE RELATED TO THE SERVICE AND EPB EQUIPMENT; (iv) AND ANY USE OF THE SERVICE OR EPB EQUIPMENT THAT INFRINGES UPON ANY PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, CONTRACTUAL RIGHTS, OR ANY INTELLECTUAL PROPERTY RIGHTS OF ONE OR MORE THIRD PARTIES. IT IS EXPRESSLY AGREED THAT EPB SHALL HAVE NO LIABILITY

TO CUSTOMER OR ANY OTHER PERSON FOR ANY DAMAGES CLAIMED TO HAVE RESULTED FROM THE USE OF THE SERVICE AND/OR EPB EQUIPMENT. IN THE EVENT THAT EPB IS HELD LIABLE FOR DAMAGES ARISING OUT OF OR RELATED TO THE SERVICE AND/OR EPB EQUIPMENT BY A COURT OF COMPETENT JURISDICTION, CUSTOMER AGREES THAT EPB'S AGGREGATE LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO EPB FOR THE SERVICE FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY.

EPB of any provision, substantive or procedural, of the Tennessee Governmental Tort Liability Act, as amended, Tenn. Code Ann. 29-20-101, et seq., or of any other provision of federal, state, or local law affording EPB protection from or limitation of tort or other liability.

GOVERNING LAW

This Agreement shall be governed by and interpreted and enforced under the laws of the State of Tennessee, without regard to conflicts of law provisions. Customer hereby submits to the personal jurisdiction of the courts of Hamilton County, Tennessee and agrees that they shall be the exclusive venue for resolution of any disputes that may arise from the use of the Service and EPB equipment.

MISCELLANEOUS

These Terms and Conditions and any other documents incorporated by reference constitutes the final, complete, and entire agreement for the Service and supersede all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral, by or between the parties.

NO WAIVER

No delay or failure of EPB in exercising any right or power under these Terms and Conditions shall operate as a waiver of such right or power or to prevent the future exercise of such right or power. Any waiver at any time by EPB or its rights with respect to these Terms and Conditions shall not be deemed a continuing waiver or waiver with respect to any other failure to comply with any other obligation, right, or duty of these Terms and Condition. Any waiver of these Terms and conditions shall only be provided in writing by EPB.

NO THIRD PARTY BENEFICIARIES

Nothing contained in these Terms and Conditions shall be construed as creating rights in third parties and Customer agrees that the Service is not intended to benefit a third party in any manner.

GOVERNMENT TORT LIABILITY

Nothing contained in this Agreement or in any bond or certificate or policy of insurance or in any provision of any indemnity shall be construed to be a waiver by