

# EPB Smart Network Terms and Conditions

## Acknowledgement and Acceptance of Terms of Service

These Terms and Conditions and any other documents incorporated by reference comprise 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 Network (“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 web chat:

### Equipment/Installation

- Install and Secure Wireless Router
  - A wireless router, provided by EPB, will be placed in a mutually agreeable location for optimal wireless network coverage. If a second router is needed to provide wireless coverage to your home, EPB will install an additional Internet jack at then-current rates and will provide a second router for no additional cost. The cost estimate for outdoor wireless coverage or coverage in a separate structure will be determined on a case by case basis.
- Connect up to ten wireless devices to wireless router. Wireless devices shall include PCs, Laptops, smartphones, tablets, gaming consoles, and printers capable of wireless connections.
- Activate account and install anti-virus software.
- Setup epbFi.com email accounts and migrate contacts to epbFi.com account. Limit ten email accounts (seven included with Fi-Speed Internet; three additional available at then-current rates).
- Setup parental controls on router and Fi TV set top box.
- Additional Internet jacks at then-current rates.

### Anti-virus Protection

- Install anti-virus software. Limit five devices. Anti-virus software will not load if there are existing viruses.
- EPB will pass through any updates from its current anti-virus protection provider and may change anti-virus protection at any time in its sole discretion.
- Set up virus scan frequency based on customer’s preference.

### Dedicated Technical Support.

- 24/7/365 Tech Support to include unlimited calls and web chat
- Direct technical support number.
- 100% local tech support

### Virus Removal (EPB Smart Network subscribers only)

- 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.
- Data backup 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.

## **Modifications to Terms and Service**

EPB may modify the Terms and Conditions of the Service from time to time. Upon any change in the Terms and Conditions, EPB will notify Customer by posting the changes to its website. EPB reserves the right to modify or discontinue the Service with or without notice to the Customer and shall not be liable to Customer or any third party in the event that 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 and be bound by these Service Terms and any modifications.

## **Customer's Responsibility to Backup Data**

Prior to EPB servicing any of Customer's equipment, Customer agrees to (1) back-up any data, software, information or other files stored on Customer's computer disk drives, peripherals, MP3 player, DVD player, camcorder, digital camera and/or on any other electronic storage device; and (2) remove all videotapes, compact disks, floppy disks, laser disks, cassettes, DVDs, film or other media from 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, flood or other catastrophe, adverse weather conditions, material or facility shortages or unavailability, lack of transportation, imposition of law, regulation, ordinance, restriction, governmental code or rules, national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties

## **Indemnity**

Customer agrees to indemnify, defend, and hold harmless EPB (and its affiliates and their respective officers, directors, employees and agents) from and against any and all losses, costs, obligations, liabilities, damages, actions, suits, causes of action, claims, demands, liens, encumbrances, security interests, settlements, judgments, and other expenses, (including but not limited to cost of defense, settlement, and reasonable attorneys' fees) of whatever type or nature, including, but not limited to, damage or destruction to property, injury (including death) to any person or persons, which are asserted against, incurred, imposed upon or suffered by EPB by reason of, or arising from: (a) Customer's breach of these Terms and Conditions; (b) Customer's actual or alleged infringement of any patent, copyright, trademark, trade secret or other property or contract right of any other person; (c) Customer's actual or alleged failure to promptly pay sums due EPB or any third party; (d) Customer's failure to comply with applicable laws, regulations or ordinances; or (e) the acts or omissions of Customer (or its officers, directors, employees or agents).

## **Disclaimer of Warranties**

Customer expressly agrees that use of the Service is at customer's sole risk. The Service is provided on an "as is" and "as available" basis. EPB expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. EPB makes no warranty that the Service will meet customer's requirements, or that the Service will be uninterrupted, timely, secure, or error free; nor does EPB make any 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 material and/or data downloaded or otherwise obtained through the use of the Service is done at

customer's own discretion and risk and that customer will be solely responsible for any damage to customer's computer/system or loss of data that results from the download of such material and/or data. No advice or information, whether oral or written, obtained by customer from EPB or through the Service shall create any warranty not expressly made herein.

### **Limitation of Liability**

EPB shall not be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or the inability to use the Service or for cost of procurement of substitute goods and services or resulting from any goods or services purchased or obtained or messages received or transactions entered into through the Service or resulting from unauthorized access to or alteration of customer's transmissions or data, including but not limited to, damages for loss of profits, use, data or other intangible, even if EPB has been advised of the possibility of such damages. Customer shall be responsible for backing up the software and data that is stored on Customer's computers, hard disk drive(s), and/or on any other storage devices Customer may have, and EPB shall not be responsible at any time for any loss, alteration, or corruption of any software, data, or files. EPB shall not be liable in any way for damages arising from any part, equipment, peripheral, software or other product supplied to Customer by EPB. Notwithstanding any language to the contrary, EPB's maximum liability to Customer arising from or related to EPB under the Terms and Conditions (or any other documents incorporated by reference) shall be limited to the sums paid by Customer to EPB under the Terms and Conditions (any other documents incorporated by reference) during the month prior to the time the cause of action arose.

### **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

### **Forum Choice**

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 out of this Agreement.

### **Headings**

Headings provided in these Terms and Conditions are provided solely for the convenience of the parties and shall not in any manner affect the meaning or interpretation of the Terms and Conditions.

### **Notices**

Any notices required to be provided hereunder shall be provided in writing, unless verbal communications is expressly permitted or verbal communication is appropriate because of exigencies of time, in which case such verbal communication shall be confirmed in writing at the earliest possible time. All notices shall be delivered or mailed to the addresses set forth below or to such other address as the parties may from time to time designate in writing. All notices shall be delivered or mailed. If mailed, the notices shall be deemed given when deposited, postage prepaid, with the United States Postal Service.

Notice Address for EPB  
Electric Power Board of Chattanooga  
Attn: Legal Services Division  
P.O. Box 182255  
Chattanooga, TN 37422

## **Entire Agreement**

These Terms and Conditions and any other documents incorporated by reference constitute the entire agreement and understanding between the parties with respect to the Services and supersedes all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral, by or between the parties, except as expressly referenced and adopted herein. These Terms and Conditions may be modified only in writing signed by both 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 to prevent the future exercise of such right or power.

## **Relationship of Parties**

EPB and Customer hereby certify that they are independent parties. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between EPB and Customer, and neither party shall have the authority to bind the other party in any respect.

## **No Third Party Beneficiaries**

Nothing contained in these Terms and Conditions shall be construed as creating rights in third parties, and the parties hereby express their intent that these Terms and Conditions are not intended to benefit third parties in any manner.

## **Government Tort Liability**

Nothing contained in these Terms and Conditions or in bond or in any certificate or policy of insurance or in any provision of indemnity shall be construed to constitute a waiver by 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.