

## AGREEMENT FOR RESIDENTIAL FIBER OPTICS SERVICES

### ACCEPTANCE OF THIS AGREEMENT

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The Electric Power Board of Chattanooga ("EPB") residential fiber optics television, Internet, and telephone services ("Services") and any equipment that is owned and provided by EPB ("EPB Equipment") in connection with the Services will be provided to the customer of record as shown on the EPB bill (collectively "Customer", "you" or "your"). If the Customer does not receive an EPB bill for the Services, the Customer shall be the person who uses and/or otherwise accepts the Services or EPB Equipment. The Customer shall be solely responsible for complying with all the terms and conditions of this Agreement. The address as shown on the EPB bill shall be the address of record or if the Customer does not receive a bill for the Services it shall be the location where EPB provides the Services and EPB Equipment to Customer ("Premises"). The purchase, sale, and use of the Services and EPB Equipment shall be according to the terms and conditions contained in this Agreement (the "Agreement"). If you use or otherwise accept any Services or EPB Equipment, you are accepting this Agreement and you agree to be bound by its terms. The Customer may not modify this Agreement by making any typed, handwritten, or any other changes for any purpose.

### ACCEPTABLE USE OF SERVICES

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The Services and EPB Equipment provided to Customer shall only be used by the Customer for your personal, residential, noncommercial use. Customer shall not: (i) make the Services and/or EPB Equipment available, nor permit the Services and/or EPB Equipment to be made available, or to provide television, Internet, telephone or similar services to one or more third parties; (ii) use Pay-Per-View for commercial gain or public viewing without EPB's prior express authorization; (iii) resell or transfer the Services or EPB Equipment to any other person for any purpose, or charge others to use the Services or EPB Equipment; (iv) use the Services in any manner that is contradictory to EPB's Acceptable Use Policy; (v) tamper with, disrupt, or "hack" any Service or EPB Equipment; (vi) make use of the Services or EPB Equipment in any way that is inconsistent with their intended purpose. A Customer's use of the Services is subject to EPB's Acceptable Use Policy and Privacy Notice and you agree to be bound by these policies. Copies of this Agreement,

the Acceptable Use Policy and the Privacy Notice are available at [www.epb.com/legal](http://www.epb.com/legal). A Customer who violates any terms contained in this Agreement or in any applicable policy are subject to have their Services suspended or terminated. It is your responsibility to read and understand this Agreement and all applicable policies prior to accepting any Services and EPB Equipment. It is your sole responsibility for ensuring that other users of the Services and EPB Equipment understand and comply with this Agreement and all applicable policies.

### UNAUTHORIZED USE OF THE SERVICES OR TAMPERING

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Customer agrees not to use or assist any other person to use any unauthorized equipment or device to access or tamper with EPB's fiber optic network, the Services, or EPB Equipment for any purpose including, but not limited to, the unauthorized use and reception of the Services. EPB may terminate the Services and seek damages from Customer if you perform any action described above. The unauthorized use, access or tampering of the EPB fiber optic network, Services, or EPB Equipment may result in criminal prosecution.

### INSTALLATION AND ACCESS

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Customer agrees that EPB, its employees, contractors, and agents may enter the Premises where the Services are provided and/or EPB Equipment is installed at reasonable times for the purposes of installing, adjusting, repairing, replacing, maintaining, upgrading, moving, auditing, or removing any EPB Equipment, as necessary. Customer represents that you either own the Premises or have the proper rights and permissions from the Premises owner to grant EPB access to perform the activities specified above. Customer also agrees to allow access for the purpose of checking the operation and performance of the Services and EPB Equipment. Customer may always ask for proper identification anytime an EPB employee, contractor, or agent requests entry to the Premises. If proper identification is not provided, please do not allow access to the Premises.

## **EPB OWNED EQUIPMENT**

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All EPB Equipment that is issued and not sold to Customer by EPB which includes, but is not limited to, devices, software, and hardware, shall remain the property of EPB at all times and will not be deemed a fixture or in any way a part of the Premises. Customer expressly agrees that you will use the EPB Equipment exclusively for the Services. Customer agrees to be responsible for any loss, theft, or damage to the EPB Equipment. EPB may replace or remove any EPB Equipment, at EPB's discretion, at any time the Services are active or following the termination of the Services. Customer understands that if you make any addition to, removal of, or change to the EPB Equipment this may interrupt the Services. Customer may not sell, lease, abandon, or give away any EPB Equipment. The Services and EPB Equipment may only be used at the Premises unless expressly authorized by EPB. At Customer's request, EPB may relocate the EPB Equipment for a charge. Customer understands and acknowledges that if you attempt to install or use the Services or EPB Equipment at a location other than the Premises or as otherwise expressly authorized by EPB, the Services and EPB Equipment may fail to function or may function improperly.

## **CUSTOMER OWNED EQUIPMENT**

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EPB is not responsible for the maintenance, operation, service, repair, or replacement of any equipment owned by Customer that is connected to or used in conjunction with the Services and EPB Equipment including, without limitation, televisions, computers, tablets, telephones, routers, or any other equipment you own. Customer agrees to allow EPB and its contractors to send software and application updates to your equipment and to configure your equipment when necessary to provide the Services, even if doing so changes, adds, or removes features or functionality or impacts the performance of such equipment. EPB makes no representation or warranty that any software or application installed or downloaded on Customer equipment does not contain a virus or other harmful software. It is Customer's sole responsibility to take appropriate precautions to protect your equipment from damage to its software, files, and data as a result of any such virus or other harmful software. Upon Customer's request, EPB may install or run virus check software on your equipment. EPB makes no representation or warranty that the virus check software will detect or correct any or all viruses.

Customer acknowledges that you may incur additional charges for any service call related to a virus or other harmful feature detected on your equipment. Absent gross negligence or willful misconduct, EPB will not be responsible for any damage to Customer equipment arising from such activities. If Customer is not the owner of the equipment, you are responsible for obtaining any necessary approval from the owner to allow EPB to access this equipment and to perform the activities listed above.

## **WIRING**

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All inside wiring located in the Premises is owned by the Customer and is the Customer's responsibility regardless if EPB installed the inside wiring. Ownership of the inside wiring begins twelve (12) inches from where the wiring enters the outside of the Premises. EPB has no responsibility for the operation, maintenance, repair, replacement, or support of any inside wiring. At Customer's request, EPB may install or repair Customer's inside wiring and will charge you for this service.

## **CREDIT POLICY AND DEPOSIT**

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By making a request for Services, you agree that EPB may review your previous billing history with EPB and you authorize EPB to make credit inquiries and access your credit history from third parties. You further authorize EPB to disclose this credit information to appropriate third parties for reasonable business purposes according to applicable law. EPB may require you to pay a deposit acceptable to EPB for the Services and/or the EPB Equipment prior to activation of the Services or providing you with the EPB Equipment. The deposit will be refunded to you upon the termination of all your Services and after all EPB Equipment is returned to EPB.

## **BILLING AND PAYMENTS**

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EPB will bill all charges associated with the Services and EPB Equipment monthly in advance (except for usage based charges, which will be billed monthly in arrears) plus applicable federal, state, and local taxes, and all other regulatory and governmental fees including, but not limited to, public, educational, and governmental access, universal service, and 911/E911 fees. Service charges and EPB Equipment charges will be billed at EPB's then-current fee schedule. You may find EPB's current fee schedule online at [www.epb.com](http://www.epb.com) or by

calling EPB's Customer Service Center at 423-648-1372. Some regulatory and government imposed fees and taxes may be imposed or become applicable retroactively and Customer will be responsible for paying any such fees and taxes. If you are exempt from payment of taxes, you must provide EPB with an original certificate that satisfies all applicable legal requirements for tax exempt status. A tax exemption will only apply from and after the date EPB receives it. You agree to pay all charges as shown on your bill within twenty (20) days from the date of the bill. Your failure to pay the total bill balance when due may result in a late fee equal to the greater amount of \$5.00 or 1.5% per month of the amount that is past due. The late fee charged is liquidated damages for the reasonable estimate of EPB's costs resulting from late payments or nonpayment of bills. EPB may, in its sole discretion and according to applicable law, suspend or terminate your Services and remove EPB Equipment from your Premises if you fail to pay the total bill balance when due. If your Services are suspended or terminated for failing to pay the total bill balance when due, EPB may require you to pay a reconnection fee. This reconnection fee is in addition to all past due charges and any other fees. If you pay by credit card but EPB does not receive payment from your credit card issuer or its agents, you agree to pay this amount upon EPB demand. EPB may charge a reasonable fee for all returned checks and credit and debit card chargebacks and the unpaid amount plus the fee must be paid by cash, cashier's check, or money order. If your payment is returned as unpaid more than once, EPB may require you to make all future payments by cash, cashier's check, or money order. If EPB retains an agency or attorney to collect any amount owed by you, you will be obligated to pay all of EPB's costs of collection, including court costs and attorneys' fees. If you dispute any charge on your bill or if you are eligible to receive a bill credit, you must contact the EPB Customer Service Center at 423-648-1372 within one hundred twenty (120) days after the date on your EPB bill or you waive such dispute or credit. By using the Services, you are solely responsible for all charges payable to third parties that you may incur such as, but not limited to, calling phone numbers that charge for services, purchasing or subscribing to offers through the Internet, or for television content that is available but separate and apart from the Services charged by EPB.

### THIRD PARTY LICENSES

The Services and EPB Equipment may require the use of third party licenses and may be subject to end-user license agreements. All such licenses and agreements are incorporated herein by reference. You are granted a revocable, nonexclusive license to use the third party licenses strictly in accordance with this Agreement. You agree to comply with all end-user license agreements that accompany the Services and EPB Equipment or are otherwise applicable to your use of the Services. Upon termination of your Services, all third party licenses and end-user license agreements shall terminate, you agree to return all EPB Equipment to EPB, and you agree to return or destroy all versions and copies of any software received related to third party licenses and end-user license agreements. You agree not to use or assist any other person to use any unauthorized equipment or device to access or tamper with EPB's fiber optic network, the Services, or EPB Equipment for any purpose, including, but not limited to, the unauthorized use and reception of the Services. EPB may terminate your Services and seek damages from you if you perform any action described above.

### CUSTOMER SERVICE, TERMINATION, OR CHANGES

You may call the EPB Customer Service Center at 423-648-1372 at any time for customer service inquiries or to terminate or make changes to your Services. Prior to making any changes to your Services, EPB may verify your and confirm your elections. Upon termination, you will be charged for all Services up to the termination date and any unreturned EPB Equipment. EPB will refund all prepaid monthly charges for the Services after the date of termination. You agree that immediately upon termination you will stop using the Services 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, as requested by EPB, or if the returned EPB Equipment has been damaged or destroyed. You agree that when contacting the EPB Customer Service Center, EPB may monitor and record any telephone calls or other voice, data, or communications that are transmitted between EPB and its agents and you, your agents, or any user of your Services and EPB Equipment.

## CHANGES TO SERVICE TERMS AND CONDITIONS

Subject to applicable law, EPB has the right to change Services, EPB Equipment, rates and charges at any time with or without notice to you. EPB may also change, add, or remove features or offerings contained in the Services including, but not limited to, changes in programming, functionality, equipment requirements, and any terms and conditions related to the Services. EPB may provide you notice of the changes by posting these notices on EPB's website at [www.epb.com](http://www.epb.com). Notice may also be provided by mail to your billing address, by email to your email address associated with your account, or by including notice in your bill for the Services. You agree that any one of the foregoing will constitute sufficient and effective notice under this Agreement.

## E911 NOTICE

EPB must have Customer's correct Premises address in order for 911 telephone calls to be properly directed. If Customer moves a telephone or uses Fi Phone Services from a different location other than the Premises, a 911 call may not be properly directed. Customer agrees to call the EPB Customer Service Center at 423-648-1372 to notify EPB of an address change prior to changing the location of where the Fi Phone Services are being used. It may take up to five (5) business days for the Premises address to be updated in the 911 system. EPB's Fi Phone service requires the electric power from your Premises. In the event of a power outage, 911 calling may be interrupted if battery back-up is not installed, fails, or is exhausted. Further, telephone calls may not be completed in the event of problems with network facilities or other technical problems. EPB may provide a twenty-four (24) hour battery backup in order to maintain the ability to make 911 calls during a power outage. Please call the EPB Customer Service Center at 423-648-1372 to see if a twenty-four (24) hour battery backup is available for your Premises.

## INTELLECTUAL PROPERTY

All intellectual property associated with the Services and EPB Equipment including, but not limited to, all content, firmware, software, trademarks, trade names, and service marks are owned by EPB, its suppliers, or their licensors and nothing in this Agreement or the use of the Services or EPB Equipment shall grant Customer any right, title, license or any other interest in the intellectual property. Upon termination of the Services, Customer

agrees to return to EPB or destroy all intellectual property in the possession of the Customer.

## Fi TV

Customer acknowledges that EPB has the right at any time to insert specific advertised video programming and to substitute other video programming without notice.

## PARENTAL CONTROL

Parental control features are available for your use with the Services. Parents and legal guardians of minors can use this feature to block or filter video content that may not be appropriate for minors.

## NO WARRANTIES

EPB MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICES OR THE EPB EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS. THE SERVICES AND THE EPB EQUIPMENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. THE SERVICES ARE NOT FAIL-SAFE AND MAY BE DISRUPTED. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS IN WHICH AN ERROR OR INTERRUPTION COULD LEAD TO INJURY TO BUSINESS, PERSONS, PROPERTY, OR THE ENVIRONMENT. WITHOUT LIMITING THE FOREGOING, EPB DOES NOT WARRANT THAT THE SERVICES AND EPB EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF QUALITY AND PERFORMANCE, OR LOSS OF CONTENT, DATA OR INFORMATION. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES OR EPB EQUIPMENT, IF ANY, BY EPB OR BY EPB'S AUTHORIZED REPRESENTATIVES ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

## LIMITATION OF LIABILITY

IN NO EVENT SHALL EPB, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS BE

LIABLE TO CUSTOMER OR TO ANY USER OF THE SERVICES AND EQUIPMENT FOR LOSS OF PROFITS OR FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICES AND EQUIPMENT PROVIDED BY EPB UNDER THIS AGREEMENT, OR THE DELIVERY OR FAILURE TO DELIVER THE SERVICES AND EQUIPMENT 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 SERVICES OR ANY EQUIPMENT RELATED TO THE SERVICES; (ii) SECURITY BREACHES, VIRUSES, EAVESDROPPING, OR INTERCEPTION OR INTERRUPTION OF THE SERVICES; (iii) ANY MISTAKES, OMISSIONS, FAILURES, MALFUNCTIONS, THEFT, DELETION, CORRUPTION OF FILES, ERRORS, DEFECTS, OR FAILURES OF PERFORMANCE RELATED TO THE SERVICES AND EQUIPMENT; AND (iv) ANY USE OF THE SERVICES OR 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 FOR ANY DAMAGE TO CUSTOMER OR ANY OTHER PERSON CLAIMED TO HAVE RESULTED FROM THE USE OF THE SERVICES AND/OR EPB EQUIPMENT. IN THE EVENT THAT EPB IS HELD LIABLE FOR DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES, THIS AGREEMENT, OR ITS OBLIGATIONS UNDER THIS AGREEMENT FROM A COURT WITH JURISDICTION, EPB'S AGGREGATE LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO EPB FOR THE SERVICES FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY.

#### 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 SERVICES AND 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 SERVICES OR USE OF ANY EQUIPMENT IN CONJUNCTION WITH THE SERVICES; (iii) 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; (iv) AND FROM CUSTOMER'S BREACH OF ANY PROVISION OF THIS AGREEMENT OR APPLICABLE POLICY. 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, EMPLOYEES, DIRECTORS, REPRESENTATIVES, CONTRACTORS, AGENTS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS.

#### MISCELLANEOUS

This Agreement and any other documents incorporated by reference constitutes the final, complete, and entire written agreement between EPB and Customer and supersedes all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral. If any provision of this Agreement is held to be unenforceable, the unenforceable provision shall be replaced with a valid provision in accordance with applicable law and shall have substantially the same commercial effect as the unenforceable provision to reflect the original intentions of the parties, and the remainder of this Agreement shall remain in full force and effect. If EPB fails to insist upon or enforce strict performance of any provision of this Agreement, it shall not thereby waive any provision or right. Any waiver by EPB with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Any waiver of this Agreement shall only be valid if provided in writing. Neither the course of conduct between the parties nor trade practice shall modify this Agreement. This Agreement may not be assigned without the express written consent of EPB. EPB and Customer hereby certify that they are independent parties and nothing herein shall be construed to create a partnership, joint venture, agency, or any other type of fiduciary or service relationship

between EPB and Customer, and neither party shall have the authority to bind the other party in any respect.

## **FORCE MAJEURE**

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Without affecting any other limitation on liability or disclaimer contained herein, EPB shall in no case be liable for any harm caused to Customer or to others or to your successors and assigns if the event or circumstance causing such harm is beyond EPB's reasonable control, including, but not limited to, acts of God, fire, earthquake, flood, the elements, or other catastrophes; strikes, lock-outs, work stoppages or other labor difficulties; utility curtailments, power failures, explosions, insurrections, riots, wars or civil disturbances; any law, order, regulation, or requests of any government or of any civil or military authority; national emergencies; shortages or failure of equipment or supplies; unavailability of transportation; acts or omissions of third parties; or any other cause beyond EPB's reasonable control.

## **GOVERNING LAW**

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This Agreement and the relationship between Customer and EPB shall be governed by the laws of the State of Tennessee without regard to conflict of laws principles, and Customer agrees to the personal jurisdiction of the courts of Hamilton County, Tennessee and that these courts shall be the exclusive venue for resolution of any dispute that may arise out of the Services or this Agreement.

## **SURVIVAL**

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Certain obligations under this Agreement, by their terms, shall continue beyond termination of the Services including, but not limited to, provisions dealing with payment for the Services and EPB Equipment, access to the Premises, disclaimers of warranties, limitations of liability, and indemnity. The suspension, termination, expiration, or cancellation of the Services under this Agreement shall in no way affect the survival of such obligations.

## **ADDITIONAL REPRESENTATIONS AND WARRANTIES**

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In addition to representations and warranties Customer made elsewhere in this Agreement, Customer also represents and warrants that: (i) you are at least 18 years of age; (ii) you have provided EPB with information that

is accurate, complete, and current, including, without limitation, your legal name, address, telephone number(s), email address(es), the number of devices on which or through the Services are being used, and payment information; (iii) you agree to immediately notify EPB if there is any change in the information that you have provided to EPB; (iv) you own or have a legal right to occupy the Premises; and (v) that the Services and EPB Equipment shall not be used for any illegal purpose or in any way that may violate the law.