

## EPB SMART NETWORK TERMS AND CONDITIONS

### ACKNOWLEDGEMENT AND ACCEPTANCE OF TERMS OF SERVICE

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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

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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 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. If a second router is needed to provide wireless coverage to your home, EPB will install an additional Internet wall outlet at then-current rates and will provide a second router at 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 and additional fees may apply.
- Connect up to ten wireless devices to a wireless router. Wireless devices shall include PCs, Laptops, smartphones, tablets, gaming consoles, and printers capable of wireless connections.
- Install anti-virus software and activate account.
- Setup epbFi.com email accounts if requested by Customer and migrate contacts to epbFi.com account. Limit ten email accounts per Customer (seven included with Fi-Speed Internet; three additional accounts available for purchase at then-current rates).
- Setup parental controls on wireless router and Fi TV set top box.
- 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 will pass through any updates from its current anti-virus protection provider and 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.
- Data backup on flash drive prior to virus removal.
- On-site visit

### BILLING AND PAYMENT

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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.

### MODIFICATIONS TO TERMS AND SERVICE

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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 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 by and be bound by these terms and conditions and any modifications to them.

### CUSTOMER’S RESPONSIBILITY TO BACKUP DATA

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Prior to EPB performing any of the Services, 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**

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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**

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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**

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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, implied, or statutory 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 use of the Service or 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 or other property and any loss of data that results from the use of the Service. No advice or information, whether oral or written, obtained by Customer from EPB or through the Service shall create any warranty or guarantee of any kind.

### **LIMITATION OF LIABILITY**

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EPB shall not be liable for any direct, indirect, incidental, punitive, exemplary, 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, loss of data or other intangibles, and computer or system failure even if EPB has been advised of the possibility of such damages. Customer shall be responsible for backing up all 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 for any loss, alteration, or corruption of any software, data, or files. EPB shall not be liable in any way for damages to equipment, peripherals, software or other products supplied to Customer by EPB. Notwithstanding any language to the contrary, EPB's maximum liability to Customer arising from or related to EPB from Customer's use of the Service (or any other documents incorporated by reference) shall be limited to the fees paid by Customer to EPB for the Service during the last twelve (12) months prior to the date of the claim under which such damages arise.

### **GOVERNING LAW**

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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.

### **ENTIRE AGREEMENT**

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These terms and conditions and any other documents incorporated by reference constitutes the final, complete,

and entire agreement for the Service and supersedes 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 of its rights with respect to these terms and conditions 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 these terms and conditions. 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 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.