

TERMS AND CONDITIONS of the Clear Creek Broadband Residential Customer Agreement



TERMS OF SERVICE

The Terms of Service Agreement (the “Agreement”), in its entirety, shall consist of the Service Order Agreement (“SOA”) and the Acceptable Use Policy (“AUP”).

The Agreement between you (the “Customer”) and Clear Creek Broadband (the “Company”) sets forth the legal rights and obligations governing Customer’s subscription to applicable service(s) provided by the Company (the “Service”). Customer shall contract for and order Service by signing an SOA. Upon completion of the SOA by the Customer and acceptance by the Company this Agreement becomes legally binding. Company and Customer hereby represent and warrant that each is authorized to enter into the Agreement and perform its obligations thereunder.

The Company reserves the right to change this Agreement at any time and for any reason. The Company shall provide notice to Customer at least thirty (30) days before the effective date of such changes if they materially or adversely affect the Customer so that Customer may elect to discontinue service and avoid the effects of the changes. Notice may be delivered by telephone, email, or postal mail. Notice of other revisions and/or modifications will generally consist of updating the terms on the Clear Creek Broadband web site at <http://www.clearcreekbroadband.com>.

GENERAL TERMS AND CONDITIONS

1.0 CUSTOMER ACCOUNT

1.1 Account Information. All contact information provided by Customer must be accurate. Customer is responsible for updating The Company of any changes to such information in writing by email or postal mail.

1.2 Account Security. Customer agrees to keep account access confidential and is solely responsible for any liability or damages resulting from failure to maintain such confidentiality. Customer agrees to notify The Company if they suspect any breach of security of their Customer Account or payment accounts.

2.0 BILLING AND PAYMENT

2.1 Customer Responsibility for Payment. Customer agrees to pay the Company for the Service at the applicable recurring and non-recurring charges. The charges for the Services shall be effective during the initial term of Service and during any automatic renewal term. Company may modify the applicable charges for month-to-month terms with at least thirty (30) days’ notice given to Customer by telephone or email.

2.2 Billing Period and Invoicing. Company will notify Customer when Service is available for use. The date of such notice shall be the start of Service Date, and Customer’s invoicing will occur on that date and recur on the same day of each month, billed in advance. All invoices are due and payable within thirty (30) days of invoice date.

2.3 Third-Party Payment Processor: The applicable recurring and non-recurring charges will be processed through a third-party payment processor hereby referred to as “Bill.com, LLC”. The processing of the payment will be subject to the terms, conditions and privacy policies of the payment processor. Company does not control or cannot be held liable for the security or performance of the payment processor. Company may elect to use a different third-party payment processor with at least thirty (30) days’ notice given to Customer by telephone or email. All payment information provided by Customer must be accurate. Customer is responsible for keeping payment information up to date with the Third-Party Payment Processor. Customer agrees to notify Third-Party Payment Processor if they suspect any breach of security of their payment accounts.

3.0 AGREEMENT TERM, TERM RENEWAL, SUSPENSION, AND TERMINATION

3.1 Initial Term. The initial term of Service (“Initial Term”) shall be month to month-to-month and shall begin on the Start of Service Date.

3.2 Term Renewal. If neither: Company notifies Customer of its intent not to renew the Agreement or any Service provided pursuant to the Agreement, nor the Customer requests disconnection of Service before the end of the Initial Term or any renewal term, then the Agreement shall automatically convert to a month to month term at the then prevailing rates, pursuant to the terms and conditions contained in the Agreement.

3.3 Non-Renewal by Customer. If Customer elects not to renew the Agreement or any Service provided pursuant to the Agreement, Customer must, at least thirty (30) days prior to the expiration of the then current term request disconnection of Service. In the event Customer elects to disconnect Service, Customer will continue to be billed for such Service up to and including the requested disconnection date, but for no less than thirty (30) days from the date of Company’s receipt of Customer’s disconnection request. Customer may not place a disconnection request more

than ninety (90) days prior to an actual disconnection date and will be responsible for all charges incurred up to and including the date of disconnection.

3.4 Service Suspension by Customer: Customer may request to suspend their service from thirty (30) to one hundred eighty (180) days. Suspension request must be made at least thirty (30) days prior to the expiration of the then current term. Customer will not be billed for Service during the suspension period. Normal billing resumes after the suspension period. Customer can suspend Service once within a twelve (12) month period at no cost. Additional Service Suspensions are subject to any pass-through fees occurred by the Company for suspension and reactivation of Service.

3.5 Month-to-Month Termination. The term of the Agreement is month-to-month. Either party may terminate the Agreement (and Service) by providing the other party with written notice of termination at least thirty (30) days prior to the intended termination date.

3.7 Termination for Cause: Non-Payment. Except as required by law or regulation, if, after the Start of Service Date, Customer fails to pay any amount required under the Agreement for more than sixty (60) days after invoice date, Company may terminate all Customer Service and the underlying Agreement. In the event of such termination for cause, Customer will be required to pay all amounts due and owing Company.

3.8 Termination for Cause: Other. The Company, without notice and without incurring any liability, may terminate the Service if: (a) it determines such action is necessary to (i) prevent or protect against fraud, tricks, or tampering, (ii) protect its personnel, agents, facilities or services, or (iii) protect against actual or potential adverse financial effects; (b) the Customer provides false information to the Company regarding the Customer's identity, address, creditworthiness, past or current use of Service; (c) the Customer is in violation of the AUP; (d) the Customer indicates it will not comply with a request for security for the payment for Service or will not pay any amounts due and owing the Company; or (e) if Customer becomes insolvent, makes assignments for the benefit of creditors, files for bankruptcy or reorganization, fails to discharge an involuntary petition for bankruptcy within the time permitted by law, or otherwise abandons Service. In the event of such termination for cause, Customer will be required to pay all amounts due and owing Company.

4.0 INSTALLATION AND SERVICE

4.1 Customer acknowledges and agrees that use of the Service will require certain equipment to be installed by the Company (the "Company Equipment") at the Customer location. Company Equipment includes, but is not limited to, an outdoor antenna, wiring, and router.

4.2 Company will not be liable for any alterations to the Premises that result from the installation or removal of the Equipment, including, but not limited to: holes in walls, cable wiring or antenna mounting brackets.

4.3 Any custom installation work that Customer requests, including but not limited to placing cable under carpet, through interior walls or inside molding, may require an additional charge.

4.4 Availability of Facilities. Service is offered and furnished subject to access to, and the availability of, all necessary facilities, including those acquired by the Company from other entities. Company may decline to accept a request for Service if it determines that facilities are not available.

4.5 Right to Alter Service. In its sole discretion and without liability to Customer, Company may: (a) alter the methods, processes or suppliers by or through which it provides Service; (b) change the facilities used to provide Service; or (c) substitute comparable Service for that being provided to Customer. If necessary due to the potential impact on affected Customers, the Company will furnish prior notice of any alterations, changes or substitutions.

4.6 Network Management. Company reserves the right to engage in reasonable network management practices to protect its network from harm, compromised capacity, degradation in network performance or service levels, or uses of the Service which may adversely impact access to or the use of the Service by other Customers.

4.7 Acceptable Use Policy. Customer's use of the Service is subject to the Company's AUP, which is incorporated by reference herein into the Agreement.

5.0 INTERNET ACCESS

5.1 Since you are being provided with a direct connection to the Internet, you accept responsibility for the usage of such. Any illegal use thereof, such as spamming practices, introduction of viruses, etc., traced to your location will be your responsibility. All legal fees associated with such practices and/or the restoration of the good standing of The Company with the internet community or legal authorities will be borne by you. Access of materials on the Internet is at your own risk. You should take all measures necessary to protect your PC(s), property, and assets from outside tampering.

5.2 The Company will assign to you a Company owned and administered dynamic Internet Protocol address ("IP Address") which is utilized by The Company for connectivity and is not portable. The Company may change the IP Address at any time without liability or notice to Customer.

5.3 The Company collects and uses aggregate information about Internet usage such as, bit rates, and number of bytes passed. The Company collects and uses personally identifiable information for billing purposes, as well as to anticipate and resolve problems with the Service. The Company will not use or disclose any personally identifiable information regarding Internet usage unless compelled by a court order or subpoena; or your request for the use or disclosure; or to protect The Company's services and facilities.

6.0 DISCLAIMER OF WARRANTIES

Company and its officers, directors, employees, agents, and partners makes no representations or warranties, whether express, implied or statutory, regarding the Service, system equipment or Company-owned or provided equipment used by Customer. This disclaimer includes, but is not limited to, any implied warranties of merchantability, fitness for a particular purpose, or non-infringement of any third-party rights.

7.0 LIMITATION OF LIABILITY

Customer expressly understands and agrees that Company and its officers, directors, employees, agents, and partners will not be liable for any direct, indirect, incidental, special, consequential, or exemplary damages or losses resulting from; (a) use of the Service; (b) cost of procurement of substitute service; (c) unauthorized access or alterations of Customer communications or data; (d) statements or conduct of any third party on the Service; (e) incompatibility of Customer devices; or (f) any other matter relating to the Service.

8.0 FORCE MAJEURE

Company shall not be liable for any failure of performance due to any cause beyond its control, including but not limited to: acts of God, fire, explosion, vandalism, terrorism, cable cut, major weather disturbance, national emergencies, riots, wars, labor difficulties, supplier failures, shortages, breaches; any law, order, regulation, direction, action, or request by any government, civil or military authority; or suspension of existing service in compliance with state and/or federal law, rules and regulations; or delays caused by you or your equipment.

9.0 INDEMNIFICATION

Customer agrees to indemnify and hold harmless Company and its officers, directors, employees, agents, and partners from any claim or demand, including reasonable attorneys' fees, made by any third party arising from Customer's misuse or abuse of the Service, or violation of this Agreement or applicable law. Company agrees to indemnify and hold harmless Customer and its officers, directors, employees, agents, and partners from any claim or demand, including reasonable attorneys' fees, made by any third party arising from Company's violation of this Agreement or applicable law.

10.0 NOTICES

All notices required to be given under the terms of the Agreement shall be deemed to have been duly and properly given when delivered in person; or three (3) days after mailed by first class, certified, postage prepaid; or by email, directed to the address of the respective party indicated on the Agreement or any installation work-order; or to such other address as the parties hereto may from time to time designate by written notice or email to the other; or which may appear among the books and records of the Company.

11.0 AMENDMENTS TO THIS AGREEMENT

The Agreement cannot be orally changed, modified, or amended. Any change, modification, or amendment can only be made as outlined in Terms of Service above.

12.0 WAIVER OF BREACH OF AGREEMENT

If either party waives enforcement of a breach of any term or provision of the Agreement by the other party, that waiver shall not operate or be construed as a waiver of subsequent similar breaches.

13.0 SEVERANCE

If one or more of the provisions of the Agreement shall be found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired.

14.0 NO JOINT VENTURE

The Agreement does not to construe, create, or give effect to a joint venture agency, partnership, or formal business organization of any kind. Rights and obligations of each party shall be limited to those expressly set forth in the Agreement and these Terms and Conditions.

15.0 CONSTRUCTION AND ENFORCEMENT

The Agreement shall be construed and enforced pursuant to the laws of the State of Colorado. Furthermore, the Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their successors and assigns; provided however, that you will not be able to assign your rights and obligations under the Agreement without the express consent of The Company, said consent may be withheld at the sole discretion of The Company

16.0 DISPUTE RESOLUTION

Customer agrees that all unresolved disputes and claims with Company shall be resolved through binding arbitration, and that any such arbitration shall be conducted on an individual basis; class arbitrations and class actions are not permitted. The arbitration shall be conducted by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration is bound by the terms of this Agreement. The decision and award of the arbitrator shall be final, binding, and not appealable.