

## ERWIN UTILITIES - ERWIN FIBER TERMS AND CONDITIONS OF SERVICE

**Acceptable Use of Services.** By using Erwin Utilities and Erwin Fiber's service, you consent to be bound by the terms of this agreement. The Service(s) provided herein are for your use only, and you shall not use or permit the use of these services for any other purpose. You shall not make the Service(s) or permit the Service(s) to be made available for resale or to provide video, telecommunications, internet or similar services to one or more third parties. Erwin Utilities (EU) has published acceptable use Terms and Conditions of Service. Customers who knowingly violate these terms may have their use of services revoked or suspended. Copies of these acceptable use Terms and Conditions of Service are available at EU's office and at [www.erwinfiber.com](http://www.erwinfiber.com). Customers are encouraged to read and follow these Terms and Conditions of Service, including any updates that may be published on EU's website. The Service and Equipment are provided to you for your personal use. You may not resell or transfer the Service or the Equipment to any other person for any purpose, or charge others to use the Service; use the Service in any manner that is contradictory to EU's Terms and Conditions of Service that is available at [www.erwinfiber.com](http://www.erwinfiber.com); tamper with, disrupt or "hack" the Equipment, or make use of the Service in any way that is inconsistent with its intended purpose. You also agree to comply with the Terms and Conditions of all end-user license agreements that accompany the Equipment or are otherwise applicable to your use of the Equipment and the Services. All such agreements are incorporated herein by reference. Upon termination of this Agreement, all end-user licenses also terminate; you agree to return to us or destroy at that time all versions and copies of all software received in connection with the Services. EU reserves the right to terminate your Service should you, in EU's sole discretion, commit any of the actions listed above or any other reason. You are responsible for any liability or charges billed by any program provider. EU reserves the right in its sole discretion to enforce bandwidth allotments depending upon your level of usage and the level of Service(s) purchased. If you have exceeded the appropriate level of internet usage in any given month, EU will notify you by phone or in writing. You agree to pay additional charges upon notice from EU.

**Assignment.** This service agreement is non-assignable without the express written consent of EU - Erwin Fiber.

**Billing and Payments.** EU will bill all charges, applicable taxes, and fees monthly in advance (except for usage based charges or service charges, which will be billed monthly in arrears). Applicable charges will be set forth in EU's then-current fee schedule found at [www.erwinfiber.com](http://www.erwinfiber.com). Some government imposed fees and taxes may be imposed or become applicable retroactively, and you will be responsible for paying any such charge. If you are exempt from payment of such taxes, you must provide EU with an original certificate that satisfies all applicable legal requirements. A tax exemption will only apply from and after the date we receive it. Failure to pay the total balance when due may be grounds for disconnecting service and/or imposing a late fee. EU may charge a reasonable fee for all returned check and bankcard chargebacks. The returned amount plus fee must be paid by cash, cashier's check or money order. If EU retains an agency or attorney to collect any amount owed, you will be obligated to pay all of EU's costs of collection, including attorneys' fees. If you dispute any charges, you must notify EU within sixty (60) days of the date of your EU invoice, or any such dispute will be waived. EU does not offer credit for disrupted service. When service is disrupted call EU for support and EU will make every effort to restore your service in a reasonable amount of time.

**Changes to Service Terms and Conditions of Service.** Subject to applicable law, we have the right to change our Services, Equipment and rates or charges at any time with or without notice. We may also change, add or remove programming features or offerings contained in the Service or other Terms and Conditions related to the Service. We will provide you notice of changes to the Service and to these Terms and Conditions of Service consistent with applicable law. We may also post notice of such changes at [www.erwinfiber.com](http://www.erwinfiber.com), and we may send notice to you to the email address on EU's account records for you. Because we may from time to time notify you about important information concerning the Terms and Conditions of Service, you agree to regularly check your postal mail, email and all postings on [www.erwinfiber.com](http://www.erwinfiber.com) or on another website about which you have been notified. You bear the risk of failing to do so. If you find a change in Service or a change in these Terms and Conditions of Service unacceptable, you may cancel the Service. If you continue to receive the Service, we will consider you to have accepted these changes and accept these terms of service.

**Copyright.** Any firmware or software used to provide the Service and all Services, information, documents and materials provided by EU in written or electronic form are protected by trademark, copyright or other intellectual property laws. Your use of this firmware, software and the Services is subject to these laws. All names, service marks, trademarks, trade names, logos, content, photographs, sound or image files and domain names (collectively "marks") of EU are and shall remain the exclusive property of EU, and nothing in these Terms and Conditions Service shall grant you the right or license to use any of such marks.

**Credit Policy.** EU reserves the right to review your previous billing history with EU or access your credit history through a credit reporting agency. EU may deny or disconnect service with you in the event your credit does not meet a certain threshold.

**Equipment.** All equipment issued to you by EU shall remain the property of EU at all times with the exception of equipment sold to you by EU. Any equipment sold to you by EU is your equipment and EU does not offer any warranty on such equipment. You agree to be responsible for any loss, theft or damage of EU Fiber Optics' Equipment. EU will bill you for any unreturned equipment 3 business days after your service has been terminated. If equipment is lost or damaged, please contact your insurance company to file a claim. EU is not responsible for the maintenance, operation, service or repair of any of your equipment connected to the Services, including without limitation television, computer, telephone or any other device. You agree to allow EU or its agents to send software to your equipment and to configure your equipment when necessary to provide Services, even if doing so disrupts service, changes, adds or removes features or functionality of any such equipment. EU will not be responsible for any damage to your equipment arising from such activities. If you are not the owner of the equipment, you are responsible for obtaining any necessary approval from the owner to allow us to access this equipment and to perform the activities listed above.

**E911 Notice.** In order for 911 calls to be properly directed, EU must have your correct service address. EU Voice uses the electrical power in your home. In the event of a power outage, 911 calling may be interrupted if battery back-up is not installed, fails or is exhausted. Calls may not be completed in the event of problems with network facilities or other technical problems. Prior to changing your address, please call (423)743-1820 to provide EU with notice. EU will require several business days to update your service address in the 911 system.

**Force Majeure.** EU shall not be liable for any failure, interruption or diminution of service in the event that such failure, interruption or diminution is caused by or due to causes beyond its control, including, but not limited to, acts of God; fire, earthquake, flood, water, 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, including cable, fiber, switching and other network equipment of third parties; unavailability of transportation; acts or omissions of third parties; or any other cause beyond EU's reasonable control.

**Governing Law.** These Terms and Conditions of Service and the relationship between you and EU shall be governed by the laws of the State of Tennessee.

**Indemnity.** You agree to indemnify and hold harmless EU from all liabilities, damages, claims and expenses, including without limitation attorneys' fees, that arise from your or a User's use of misuse of the Service; from any violation or infringement of contractual rights, privacy, confidentiality, copyright, patent, trademark, trade secret or other intellectual property; 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; and from your breach of any provision of these Terms and Conditions of Service. Where you are obligated to indemnify or hold EU harmless anywhere in these Terms and Conditions of Service, those obligations run not only to EU but also to its employees, representatives, affiliates, agents, officers and directors.

**Installation and Access.** As the customer, you agree to allow EU the right to enter your property for the purposes of adjusting, repairing, replacing, maintaining, moving, auditing or removing any equipment if necessary. You represent that you either own the property or have the right to allow EU to install any necessary equipment and wiring to provide you service. You also agree to allow access for the purpose of checking signal quality. You should always ask for proper identification anytime an EU employee or contractor requests entry to your property. If identification is not provided, please do not allow access.

**Limitation of Liability.** IN NO EVENT SHALL EU BE LIABLE TO CUSTOMER OR TO ANY USER OF CUSTOMER'S SERVICE FOR LOSS OF PROFITS OR FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM THE RELATIONSHIP OR THE CONDUCT OF BUSINESS UNDER THE AGREEMENT, EVEN IF EU HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. WITHOUT LIMITATION OF THE FOREGOING, EU SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM OTHERS ACCESSING CUSTOMER'S COMPUTERS AND EQUIPMENT, SECURITY BREACHES, VIRUSES, EASVESDROPPING, INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICES, OR ANY USE OF THE EQUIPMENT OR SERVICES OF EU THAT INFRINGES UPON ANY PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY OR INTELLECTUAL PROPERTY OR CONTRACTUAL OR OTHER RIGHTS OF ONE OR MORE THIRD PARTIES. It is expressly understood that EU shall have no liability for any damage to you or any other person claimed to have resulted from your use of the Service(s).

**Miscellaneous.** These Terms and Conditions of Service and any other documents incorporated by reference constitute the entire agreement and understanding between you and EU with respect to EU's provision of the Service(s) and related equipment. They replace any and all prior written or verbal agreements. If any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. If EU fails to insist upon or enforce strict performance of any provision of these Terms and Conditions of Service, it shall not thereby waive any provision or right, neither the course of conduct between the parties nor trade practice shall modify these Terms and Conditions of Service.

**No Warranties.** EU 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 service or the equipment will meet customer's requirements. The Service and the Equipment are provided to you on an "as is" basis. The Service is not fail-safe and may be disrupted. The service is 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, EU does not warrant that the service will be without failure, delay, interruption, error, degradation of quality, or loss of content, data or information. Neither EU nor its officers, directors, employees, contractors or any other service provider who furnishes services or products to customer in connection with these Terms and Conditions of Service will be liable for unauthorized access to facilities, premises or equipment or for unauthorized access to, or alteration, theft or destruction of customer's data or information regardless of whether such damage occurs as a result of negligence by EU, its contractors or service providers. Statements and descriptions concerning the Service or Equipment, if any, by EU or by EU's authorized representatives are informational and are not given as a warranty of any kind.

**Service Termination or Changes.** As with all our utility services, a call to our office will take care of your needs. Please call (423)743-1820 should you decide to alter your services, move or make any other changes. EU and the customer have the right to terminate the service at any time for any reason. EU will no longer bill for the service once they been terminated.

**Survival.** Certain obligations under these Terms and Conditions of Service by their terms continue beyond termination of the Service including, but not limited to, provisions dealing with access to property, disclaimers of warranties, limitations of liability and indemnity. The termination, expiration or cancellation of Service under these Terms and Conditions of Service shall in no way affect the survival of such obligations.

**Wiring.** In a single dwelling unit, all inside wiring is the customer's property. In a multiple dwelling unit or a commercial premises, wiring is not the customer's property unless purchased by the customer. Customer owns all wiring beyond the demarcation point at customer premise. The demarcation point is defined as the network interface device (NID) where EU's drop fiber transitions to indoor fiber/wiring. Any damage to wiring/fiber inside the customers home is the customers responsibility. If the wiring/fiber is damaged and requires EU to come onsite to repair a service charge may be imposed.

**On-site Charges.** EU may bill the customer any time a technician is sent to the customers premise with or without written consent. These charges may vary depending on the day of the week and time of day. Applicable charges will be set forth in EU's then-current fee schedule found at [www.erwinfiber.com](http://www.erwinfiber.com). EU will not send a technician onsite between 9:00PM and 7:00AM.

**Internet Speed.** EU makes no guarantee of speed customer is subscribed to. Speedtest's done over the internet or to EU's speedtest site that do not meet the subscribed speed in no way constitute a credit to the customer's account. All speeds subscribed to are maximum speed achievable, actual speeds may vary.

**Round Up program.** Erwin Utilities utilizes an opt-out Round Up program to round the customer's monthly bill to the next whole dollar in compliance with the applicable laws and regulations of the State of Tennessee. Customers may opt out of the Round Up program at any time by notifying our Customer Service office in person or by phone or email. Customer acknowledges that Erwin Utilities may contact customer by means provided to Erwin Utilities by the customer including mail, telephone, and email.

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### 911 DISCLAIMER

PLEASE READ THIS INFORMATION REGARDING 911 VERY CAREFULLY. BY ACTIVATING AND PAYING FOR THE SERVICE, YOU ACKNOWLEDGE AND AGREE TO THE LIMITATIONS OF ERWIN FIBER 911 EMERGENCY DIALING SERVICE, AND UNDERSTAND THE DISTINCTIONS BETWEEN SUCH SERVICE AND TRADITIONAL 911 OR E911 CALLS.

- 911 SERVICE WILL NOT WORK IF THERE IS AN ELECTRICAL OR INTERNET SERVICE OUTAGE DUE TO ANY CAUSE AND IF BACKUP POWER IS UNAVAILABLE FOR ANY REASON.
- 911 SERVICE WILL NOT WORK IF YOUR SERVICE HAS BEEN CANCELLED BY YOU OR TERMINATED BY ERWIN FIBER
- YOU INDEMNIFY ERWIN FIBER FOR ANY FAILURE IN THE 911 SERVICE

With E911 service, when you dial 911, your telephone number and registered address is simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. If you live in locations where the emergency center is not equipped to receive your telephone number and address, you have basic 911. With basic 911, the local emergency operator answering the call will not have your call back number or your exact location, so you must be prepared to give them this information. Until you give the operator your phone number and location, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak.

As additional local emergency centers become capable of receiving our customers' telephone number and address information, customers will need to register a valid E911 service address to upgrade the service to E911. ERWIN FIBER will not inform you that new local emergency centers have been added. If your address is not covered by E911 service, ERWIN FIBER advises you to attempt to register your address periodically to determine if a new local emergency center has been added to your area.

Certain customers do not have access to either basic 911 or E911 because there are no local emergency centers in their area or they did not register for an E911 service address. If you do not have access to basic 911 or E911, your 911 call will be sent to the national emergency call center. A trained agent at the emergency call center will ask for the name, telephone number and location of the customer calling 911, and then contact the local emergency center for such customer in order to send help.

In the event that a location is not setup for E911 service an emergency call will be routed to a National Emergency call center. Emergency personnel do not receive your phone number or physical location when your 911 call is routed to a national emergency call center. Therefore, you must be prepared to give the operator your phone number and location and any other information that the operator might request. You authorize the national emergency call center to disclose your name and address to the third party or parties involved with providing emergency services to you, including, without limitation, call routers, call centers and local emergency centers.

### Notify All Users

Subscribers are responsible for informing any household residents, guests or other third persons who may be present at the physical location where you utilize the 911 SERVICE of the important differences in and limitations of 911 SERVICE as compared with traditional 911 land line or cell phone service.

### Service Outages

You acknowledge and understand that the Service and 911 Service do not function in the event of power failure.

ERWIN FIBER has battery backup which provides power to its technical headend equipment and equipment in the network plant, which may not be sufficient to power individual customer premise equipment at the subscriber location for a prolonged period. ERWIN FIBER offers an optional battery backup equipment, capable of delivering up to eight (8) hours or twenty-four (24) hours of backup power, which can be purchased for an additional price. Consult ERWIN FIBER for pricing and to arrange receipt of this equipment. As with any electronic equipment, it is recommended that they be stored in a clean and dry environment. For additional information, see Appendix A below.

Should there be an interruption in the power supply, the Service and 911 Service will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure the Device and other CPE equipment prior to using the Service and 911 Service.

You acknowledge that ERWIN FIBER is not responsible for any service outage related to the loss of electrical power, connectivity, suspension or termination of your ERWIN FIBER Services/Account or any failures resulting from local or national disasters.

### Disclaimer of Liability and Indemnification

You acknowledge and understand that ERWIN FIBER will not be liable for any Service outage and/or inability to dial 911 using the ERWIN FIBER Service or to access emergency service personnel due to the characteristics and limitation of the ERWIN FIBER Service as set forth in this document. You agree to defend, indemnify, and hold harmless ERWIN FIBER, its officers, directors, employees, affiliates, and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs, and expenses (including, without limitation, reasonable attorney fees) by, or on behalf of, you or any third party user of the Service relating to the failure or outage of the Service, including those related to the 911 SERVICE.

In addition, ERWIN FIBER does not have any control over whether, or the manner in which, calls using the 911 SERVICE are answered or addressed by any local emergency response center. ERWIN FIBER disclaims all responsibility for the conduct of local emergency response centers and the national emergency calling center. ERWIN FIBER relies on third parties to assist us in routing 911 SERVICE calls to local emergency response centers and to a national emergency calling center. ERWIN FIBER disclaims any and all liability or responsibility in the event such third-party data used to route calls is incorrect or yields an erroneous result. Neither ERWIN FIBER nor its officers, directors, employees, affiliates, and agents and any other service provider who furnishes services to you in connection with the Service may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to the 911 SERVICE unless such claims or causes of action arose from ERWIN FIBER gross negligence, recklessness or willful

misconduct. You shall defend, indemnify, and hold harmless ERWIN FIBER, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 SERVICE, incorrectly routed 911 SERVICE calls, and/or the inability of any user of the Service to be able to use 911 SERVICE or access emergency service personnel. Furthermore, you acknowledge that ERWIN FIBER does not offer Lifeline service, and that if you are not comfortable with the limitations of the 911 SERVICE, ERWIN FIBER strongly recommends that you always have an alternative means of accessing emergency service.

### Instructions for Proper Care and Use of Your Battery

Please follow the more detailed instructions included with your battery for proper use, storage and care of your battery to ensure that it will function as needed during a power outage. If you do not store your battery correctly, it may shorten its useful life. Environmental factors such as temperature can shorten your battery's useful life. We recommend that you store your battery above 41°F and below 104°F. These batteries are rechargeable; however, they will not last forever and should be replaced every 2 years, or when your device starts to make a loud beeping sound. That sound means that the battery is depleted and must be replaced. See the instructions above for purchase and replacement options. You should also periodically, as described in the instructions included with your battery, remove and test your battery to verify both the operation of the backup battery and its condition. Erwin Utilities will provide battery maintenance on any UPS purchased through Erwin Utilities at the current service call rate. Please call Erwin Fiber to schedule fiber maintenance. Erwin Fiber does not remotely monitor battery health.

### Appendix A

#### Backup Power for Home or Business Phone Services during Power Outages

For many years, your home or business phone would allow you to stay connected to emergency voice services during a power outage. However, many of today's advance phones services require battery backup power to continue functioning during an outage. To avoid disruption of home or business phone service during an outage- and to maintain the ability to connect to 911 emergency services – we at ERWIN FIBER offer you the option of purchasing backup power for your phones.

#### What Your Battery Can – and Can't – Do for You

Without a backup battery or alternate backup source such as a generator or UPS, customers will not be able to make any calls, including emergency calls to 911. The only way to maintain the ability to use your phone is by using some form of backup power or alternate backup source such as a generator

Our backup battery does not provide power to any services other than voice. Home security systems, medical monitoring devices and other equipment will not run on a home phone battery backup.

#### Purchase and Replacement Options

If you are concerned about being able to contact 911 emergency services during a power outage, a backup batter may be a good option for you. ERWIN FIBER offers 2 battery backup solutions, which can provide up to eight (8) hours or twenty-four (24) hours of backup power.

- Eight (8) Hour BBU - \$91.00
- Twenty-four (24) Hour BBU - \$241.00

#### If ERWIN FIBER provides the backup battery

You can purchase the backup battery through ERWIN FIBER. If you have any questions or simply want to purchase a backup battery unit through us, please call 423-743-1820.

#### If a third party provides the backup batteries

You can also purchase a backup battery or backup power source through many retail outlets or online.

A UPS must comply with the following specifications to be usable by the gateway:

- The UPS must be rated to deliver 120 VAC
- The UPS must operate at 60hz
- The UPS must have one or more NEMA 5-15R connectors on the battery backup
- The UPS must be installed to manufactures guidelines
- The UPS must be adequately and properly grounded to prevent damage to equipment
- NOTE: You should check to make sure the input receptacle for the UPS you purchase will fit your outlet. MOST but not all home outlets will accept NEMA 5-15 connectors

The typical load of an ONT is approximately 0.144 kWh. Listed below are suggested UPS systems based on approximate runtime:

- 8 hours
  - APC Smart-UPS XL 1000VA USB & Serial 120V + (1)SUA24XLBP Battery Unit
  - 7x daisy chained Eaton 5S1500LCD
- 24 hours
  - APC Smart-UPS XL 1000VA USB & Serial 120V + (3)SUA24XLBP Battery Unit
  - 21x daisy chained Eaton 5S1500LCD

The UPS can be acquired from familiar retail outlets such as Amazon, Best Buy, or other computer hardware stores. It is recommended that contact be made with your store of choice before making the trip as they may not regularly stock some of these items. Prices will vary from retailer to retailer. Approximate costs for the alternatives identified above begin at \$1,050.

Please contact ERWIN FIBER at 423-743-1820 if you have any questions on this topic.

11/10/20