

## Acceptable Use Policy (AUP)

1. Subscriber and Subscriber's employees, faculty, patrons, students, visitors, or any other person that is granted access to Subscriber's facilities or services (referred to collectively as "Users") shall avoid unnecessary network traffic and interference with other Users.
  - a. Subscriber and its Users shall not use the Service for any unlawful purpose. Without limiting the foregoing, Subscriber shall not permit its users to use the Services in violation of laws relating to copyright, trademark or libel/slander.
  - b. Unsolicited advertising by Subscriber or Subscriber's Users is strictly forbidden. For the purpose of this Policy, "unsolicited advertising" includes any transmission that describes goods or services and that is initiated by a vendor, provider, retailer, reseller, distributor or manufacturer of the described goods or services, or by a third party retained by, affiliated with, or related to the vendor, provider, retailer, reseller, distributor or manufacturer, or that meets the definition of any federal or relevant state law concerning unsolicited advertising sometimes referred to as "SPAM." This prohibition does not include either (i) discussions of a product or service's relative advantages and disadvantages by users of those products or services (unless the user is also the vendor, provider, retailer, reseller, distributor, or manufacturer, or related to or affiliated with the vendor, provider, retailer, reseller, distributor or manufacturer), (ii) responses to questions, but only if such responses are direct replies to those who inquired via electronic mail, (iii) mailings to individuals or entities on a mailing list so long as the individual or entity voluntarily placed his/her or its name on the mailing list, or (iv) exceptions recognized by federal or relevant state law.
  - c. Any other type of mass mailing by Subscriber or Subscriber's Users resulting in unsolicited advertising or network spamming is strictly forbidden.
  - d. Neither Subscriber nor Subscriber's Users shall use the Services to stalk others, post, transmit, or originate any unlawful, threatening, abusive, fraudulent, hateful, defamatory, obscene, or pornographic communication, or any communication where the message, or its transmission or distribution, would constitute or would encourage conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, national, or international law.
  - e. Neither subscriber nor Subscriber's Users shall access or attempt to gain access to any other User's or non User's account or to any nonpublic or restricted portions of the ERC Broadband networks. Also, neither Subscriber nor Subscriber's Users shall intercept or attempt to intercept data transmissions of any kind.
2. Subscriber acknowledges and agrees that ERC Broadband has broad authority to interpret and apply these Acceptable Use Policies, in its sole discretion. ERC Broadband may modify or amend the AUP at any time. ERC Broadband shall provide notice of any such modifications or amendments by U.S. Mail, facsimile, email, or by posting a new policy on the ERC broadband



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website. Subscriber shall review regularly notices posted on-line. In the case of U.S. Mail, the modified AUP is effective three business days after mailing, for facsimile and emails, the modified AUP is effective as of the date sent by ERC Broadband, and when ERC Broadband posts a modified AUP it is effective upon posting. In all cases, the modified AUP is effective regardless of whether Subscriber actually reads such notice.

3. Upon receipt of notification by ERC Broadband that Subscriber or Subscriber's Users have violated either the Acceptable Use Policies as set out in this document or the Acceptable Use Policies incorporated into this agreement under Paragraph 5, subscriber shall immediately terminate internet access for the User in violation of the Acceptable Use Policies and shall provide ERC Broadband with written verification, through letter sent via US Mail, facsimile, or electronic mail, of such termination. If Subscriber either does not terminate internet access for the User in violation of the relevant AUP or that same User is again found in violation of the Acceptable Use policies, ERC Broadband may terminate Subscriber's service within 24 hours notice. If a total of four or more violations of the Acceptable Use Policies occur by Subscriber or any of Subscriber's Users (including a combination of different Users) within a one-month period, ERC Broadband may terminate Subscriber's service with 24 hours notice. Notice to Subscriber may be written or oral, with facsimiles and electronic mail qualifying as written notice. Any actual notice, through whatever means, constitutes notice to Subscriber by ERC Broadband.
4. Any violation of either this AUP or an AUP incorporated by reference as set out in paragraph 5 that allows ERC Broadband to terminate subscriber's service entitles ERC Broadband to terminate the ERC Broadband Master Service Agreement ("Agreement") and subjects subscriber to an early termination liability equal to the amount of monthly charges remaining on the term of the Agreement. Subscriber will indemnify ERC Broadband against any liabilities incurred by them as a result of any breach of this agreement or the AUP.
5. ERC Broadband's acceptable Use Policy fully incorporates, by reference, all Acceptable Use Policies and Network Policies of its current upstream network service providers. Both ERC Broadband and its upstream providers reserve the right to amend or modify these Acceptable Use Policies at any time. ERC Broadband also reserves the right to change or add providers at any time.
6. This Policy shall be governed by the laws of the State of North Carolina without regard to choice of law principles. Venue for any and all actions brought by either party to enforce the terms hereof shall reside in Buncombe County, North Carolina, and each party irrevocably submits to the personal jurisdiction of the courts located in such county.