

City of Marion, North Carolina
Wireless Access Terms of Service and Acceptable Use Policy [AUP]

The City of Marion provides this free, public Internet access via an unsecured wireless network. It is strongly recommended that you do not use this network to transmit any personal, financial or legal data. It is not possible for the City of Marion to protect you against malicious theft or the interception of any data transmitted over this network. The City of Marion is not responsible for the quality of transmissions, interruptions in connectivity or loss of data/information as a result of using this wireless service. This wireless network is intended for lawful purposes only. This public wireless service may not be used to violate any standards, laws or regulations of local, state or federal governments/agencies, or International treaty. **Therefore, before you use this Service, you must agree to the following Terms of Service and Acceptable Use Policy [AUP]:**

City of Marion Wireless Terms of Service and Acceptable Use Policy [AUP]

Access to the Service

The Service is a free public service provided by The City of Marion and the City's Internet Service Provider [ISP] and their contract or on site Information Technology [IT] Provider. Your access to the Service is completely at the discretion of the City of Marion and the City's ISP and your access to the Service may be blocked, suspended, or terminated at any time for any reason including, but not limited to, violation of this Agreement, actions that may lead to liability for the City of Marion, disruption of access to other Users or networks, and violation of applicable laws or regulations. The City of Marion may revise this Agreement at any time. **You must accept this Agreement each time you use the Service and it is your responsibility to review this Agreement for any changes each time you accept the Agreement.**

Acceptable Use of the Service:

Your access to the Service is conditioned on legal and appropriate use of this Service. Your use of the Service and any activities conducted online through the Service shall not violate any applicable law or regulation or the rights of the City of Marion or any third party.

THE USE OF THIS SERVICE FOR THE FOLLOWING ACTIVITIES IS PROHIBITED:

Intellectual Property Right Violations Prohibited

Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including patents, copyrights, trademarks, service marks, trade secrets, or any other proprietary right of any third party. This includes the viewing of or downloading of movies, songs, manuscripts or materials without proper permission or payment.

Spamming and Invasion of Privacy Prohibited

Sending of unsolicited bulk and/or commercial messages over the Internet using the Service or using the Service for activities that invade another's' privacy.

Defamatory or Abusive Language Prohibited

Using the Service to transmit, post, upload, or otherwise making available defamatory, harassing, abusive, or threatening material or language that encourages bodily harm, destruction of property or harasses another.

Obscene or Indecent Speech or Materials Prohibited

Using the Service to advertise, solicit, transmit, store, post, display, or otherwise make available obscene or indecent images or other materials. The City of Marion will notify and fully cooperate with law enforcement if it becomes aware of any use of the Service in any connection with any illegal activity. Certain content or web sites may be filtered or unavailable due to inappropriate content.

Hacking Prohibited

Accessing illegally or without authorization computers, accounts, equipment or networks belonging to another party, or attempting to penetrate security measures of another system. This includes any activity that may be used as a precursor to an attempted system penetration, including, but not limited to, port scans, stealth scans, or other information gathering activity.

Posing as Another Person or Entity—Identity Theft Prohibited

Representing yourself as another existing person or legal entity without authorization.

Forging of Headers Prohibited

Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message.

Distribution of Internet Viruses, Trojan Horses, or Other Destructive Activities Prohibited

Distributing information regarding the creation of and sending Internet viruses, worms, Trojan Horses, ping, flooding, mailbombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the Node or any connected network, system, service, or equipment. Certain high bandwidth or potentially destructive protocols may not be available on the Service.

Facilitating a Violation of this Agreement of Use Prohibited

Advertising, transmitting, or otherwise making available any software product, product, or service that is designed to violate this Agreement, which includes the facilitation of the means to spam, initiation of ping, flooding, mailbombing, denial of service attacks, and piracy of software.

Export Control Violations Prohibited

The transfer of technology, software, or other materials in violation of applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and Executive Orders.

Resale Prohibited

The sale, transfer, or rental of the Service to customers, clients or other third parties, either directly or as part of a service or product created for resale.

Other Illegal Activities Prohibited

Using the Service in violation of applicable law and regulation, including, but not limited to, advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, pirating or inappropriately distributing copy written material, or making fraudulent offers to sell or buy products, items, or services.

Disclaimer

You understand and accept (i) that the Service may be interrupted or have errors; (ii) that viruses or other harmful applications may be available through the Service and may infect your device; (iii) that the City of Marion does not guarantee the security of the Service and that unauthorized third parties may access your computer or files or otherwise monitor your connection; (iv) that the City of Marion's ability to provide the Service without charge is based on the limited warranty, disclaimer and limitation of liability specified in this Section and it would require a substantial charge if any of these provisions were unenforceable. THE SERVICE IS PROVIDED ON AN "AS

IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE CONTENT OR SERVICE AND THE OPERATION, CAPACITY, SPEED, FUNCTIONALITY, QUALIFICATIONS, OR CAPABILITIES OF THE SERVICE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE CITY OF MARION, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

No Consequential Damages

UNDER NO CIRCUMSTANCES WILL THE CITY OF MARION, CITY MANAGER, MAYOR, COUNCIL, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF CUSTOMER, ITS APPOINTEES OR ITS OR THEIR CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, UNAUTHORIZED ACCESS, DAMAGE, OR THEFT OF YOUR SYSTEM OR DATA, CLAIMS FOR LOSS OF GOODWILL, CLAIMS FOR LOSS OF DATA, USE OF OR RELIANCE ON THE SERVICE, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, OR DAMAGE CAUSED TO EQUIPMENT OR PROGRAMS FROM ANY VIRUS OR OTHER HARMFUL APPLICATION), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY THAT THE CITY OF MARION MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED \$50. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS SECTION WILL NOT APPLY ONLY IF AND TO THE EXTENT THAT THE LAW OR A COURT OF COMPETENT JURISDICTION REQUIRES LIABILITY UNDER APPLICABLE LAW BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

Indemnity

You agree to indemnify and hold harmless the City of Marion and its employees or agents from any claim, liability, loss, damage, cost, or expense (including without limitation reasonable attorney's fees) arising out of or related to your use of the Service, any materials downloaded or uploaded through the Service, any actions taken by you in connection with your use of the Service, any violation of any third party's rights or an violation of law or regulation, or any breach of this agreement. This Section will not be construed to limit or exclude any other claims or remedies that the City of Marion may assert against you under this Agreement or by law.

Arbitration

You agree to submit any and all controversies or claims arising out of or relating to this Agreement to an arbitrator under the "Revised Uniform Arbitration Act" in Article 45C of Chapter 1 of the North Carolina General Statutes, as the statutes may be amended from time to time . The arbitrator may grant injunctive relief, award punitive damages, exemplary relief and reasonable expenses of arbitration. The arbitral award will be the exclusive remedy of the parties for all claims, counterclaims, or issues presented or plead to the arbitrator.

Interpretation

This Agreement shall not be construed as creating a partnership, joint venture, agency relationship or granting a franchise between the parties. The City makes no guarantees for access and reserves the right to limit bandwidth per connection. Except as otherwise provided above, any waiver, amendment or other modification of this Agreement will not be effective unless in writing and signed by the party against whom enforcement is sought. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement. The City of Marion's performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement

shall waive or impede the City of Marion's right to comply with law enforcement requests or requirements relating to your use of this Service or information provided to or gathered by the City of Marion with respect to such use.

Consideration

This Agreement constitutes the complete and entire statement of all terms, conditions and representations of the agreement between you and the City of Marion with respect to the Service and supersedes all prior writings or Agreements. The City of Marion's consideration for this Agreement is the availability of the Service and your consideration is your acceptance of and your compliance with the terms of this Agreement and your agreement to use this Service only for lawful purposes and to indemnify and hold the City harmless for any damages that you may cause the City if you use this Service inappropriately.

By continuing with access to this free, public, wireless service, I, the user, agrees to and accepts the City of Marion's Terms of Service and Acceptable Use Policy [AUP]

_____ I have read and do accept the City of Marion's Terms of Service and Acceptable Use Policy [AUP] and agree to comply with these Terms of Service and only to use this Service for acceptable and lawful uses.