

## **DMU Internet Access Services Terms and Conditions**

### **Privacy Policy**

DMU's first priority is to serve our customers, including the homeowners associations at Purgatory Resort (individual associations will hereafter be referred to as the "Association"). It has long been our policy that customer-specific information will not be shared with third parties without the customer's written permission or a court order. Our policy is also in compliance with governing state and federal requirements.

### **Net Neutrality Policy**

Regardless of any changes in federal regulations, DMU will not throttle internet speed and will not create "fast lanes" and "slow lanes" for users or services based on paid prioritization. The Association will be able to harness the power of DMU's internet service to the fullest extent that its equipment and these Terms and Conditions allow. DMU will be transparent in our commitment to its customers.

## **1. SERVICES PROVIDED TO CUSTOMER**

1.1 DMU provides Internet Services to properties in and around Purgatory Resort (collectively the "Service" or "Services"). Depending upon the delivery location, delivery of the Services is accomplished via fiber and/or wireless delivery systems, in accordance with the relevant delivery system and technical specifications applicable thereto. The Services do not include the delivery of any specific television or other programming.

1.2 Subject to these Terms and Conditions, DMU will provide the Services to the Association for use by the owners, residents and/or occupants of the properties governed by the Association (collectively, the "Property"). The Association agrees to be bound by all the terms and conditions contained herein and in the Customer Acknowledgement & Authorization Letter (the "Letter"). The Letter and these Terms and Conditions will collectively be referred to herein as this "Agreement".

1.3 The Service shall be provided to the Property by DMU via fiber and/or wireless delivery systems, depending upon the location of the Property.

1.4 The Association shall be responsible for obtaining the facilities necessary to distribute the Service throughout the relevant property.

1.6 Upon reasonable notice thereof and without any notice in the event of an emergency, nothing in these Terms and Conditions shall prevent DMU or any third party contracted by DMU from taking such actions as are necessary to repair and maintain the facilities by which the Service is provided hereunder but in either event, DMU shall not incur any liability as a result thereof even though, for example, the actions may render the Service unusable for a period of time. Notwithstanding the foregoing, and except for emergencies, DMU shall attempt to

perform routine repair and maintenance at such times that will have minimum disruptive impact on the continuity or performance of the Service.

1.7 If DMU determines that the reason for repair and maintenance is due to the Association-provided facilities or the Association's actions or omissions, or the facilities, acts or omissions of any party with whom the Association has a relationship, such as a member of the Association, the Association shall compensate DMU for the reasonable costs and expenses thereof.

1.8 DMU will maintain 24/7 call center support to provide immediate help in the event issues regarding Service arise.

## 2. COMPENSATION AND PAYMENT

2.1 In consideration of the Services provided by DMU to the Association, and in addition to any connection costs referred to herein, the Association agrees to pay to DMU the monthly pricing applicable at the time the Services are activated (collectively "Fees"), plus any applicable local, state and federal taxes or other fees including regulatory charges. All pricing is subject to change at any time and from time to time

2.2 The Association's obligation to pay the Fees shall commence upon the date the Service is available for use by the Association. Except as otherwise provided herein, the Fees for any period of time under this Agreement that is less than a calendar month shall be prorated based on the actual days of such month.

2.3 DMU will generally bill the Association monthly, in advance, for recurring monthly Service charges, equipment charges (if any), and fees. The Association will be required to pay the first month's service charges, any equipment charges, deposits, and installation charges on or before the date DMU installs any or all of the Services.

2.4 The Association may pay by credit card, debit card, check, or certain third-party services, and DMU reserves the right to change the payment methods it accepts from time to time. If DMU does not receive the Association's payment by the due date, the Association agrees to pay any amounts due upon demand, regardless of the Association's selected payment method. If the Association pays by check, the Association authorizes DMU to collect the check electronically. The Association may not make restrictive endorsements (such as "paid in full") or other statements or releases on or with checks or other payments accepted by DMU. If the Association does so, DMU may disregard the restrictive endorsement or reject the payment.

2.5 If the Association fails to pay the full amount due for any or all charges, DMU may suspend or disconnect any or all of the Services to the Property without reducing fees or charges for the Services, in its sole discretion and subject to applicable law. If the Association asks DMU to resume any Services after a suspension or disconnection, DMU may charge the Association additional installation or activation fees. These fees are in addition to all past-due charges and other fees. Reconnection of the Services is subject to these Terms and Conditions and applicable law.

2.6 The Association shall pay an early termination fee if Service is terminated prior to the end of any term package the Association has subscribed to. The charge will include the full amount of the monthly recurring service fee for the terminated service, multiplied by the remaining months of the term.

2.7 If the Association does not keep the Service for at least 30 days after exterior and/or interior install takes place, DMU reserves the right to recover from the Association all costs associated with the cancellation. These costs include, but are not limited to, Association-specific hardware, survey and permit fees, internal and external installation costs, expedite fees, and a minimum of one month of monthly recurring service fees.

### 3. SERVICE USAGE RESTRICTIONS AND COOPERATION

3.1 The Association, and any users of the Services provided to the Association (“Other Users”), shall take no action, knowingly or unknowingly, that constitutes a prohibited use. Prohibited uses and activities include, but are not limited to, using the Service, Customer Equipment, or the DMU Equipment, either individually or in combination with one another, to:

- (a) Interfere in any way with, impair, or adversely affect the facilities used by DMU to provide the Service(s);
- (b) Expose DMU or its facilities to any claim, lien, encumbrance or legal process;
- (c) Violate these Terms and Conditions or any law, rule or regulation, including, but not limited to, any transmission the Association or any Other Users intentionally or knowingly sends or the content thereof that violates any copyright or export control laws, or that is libelous, slanderous or an invasion of privacy;
- (d) Resell, repackage, or share the Service, either through a wired or wireless connection to any party outside the residences located on the Property, unless prior written authorization has been provided by DMU. For the avoidance of doubt, the Association may not share or resell the service with or to other commercial entities within the Property, or extend the Service beyond the Property;
- (e) Use the Service for operation as an Internet service provider or for any business, other legal entity, or organization purpose (whether or not for profit). This limitation does not prohibit the Association from offering internet service on a temporary basis to a transient public guest so long as there is no additional fee charged to that user for this service;
- (f) Connect the DMU Equipment to any computer outside of the Property;
- (g) Impede others’ ability to use, send, or retrieve information;
- (h) Restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any DMU (or DMU supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any DMU (or DMU supplier) facilities used to deliver the Service;
- (i) Restrict, inhibit, or otherwise interfere, regardless of intent, purpose or knowledge, with the ability of any other person to use or enjoy the Service (except for tools for safety and security functions such as parental controls, for example), including, without limitation,

posting or transmitting any information or software which contains a worm, virus, or other harmful feature;

- (j) Interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to “crash” a host; or
- (k) Access and use the Service with anything other than a dynamic Internet Protocol (“IP”) address that adheres to the dynamic host configuration protocol (“DHCP”). The Association, and any Other User, may not configure the Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless the Association is subject to a Service plan that expressly permits the Association and any Other User to do so.

The Association shall promptly notify DMU of any event that would be reasonably likely to give rise to any such interference, impairment, affect, exposure, reselling, or service usage violation.

3.2 If DMU reasonably determines the Association or any Other User is using the Services in violation of Section 3.1 above, DMU may immediately terminate the Services. The Association accepts liability for any damages resulting from the failure of the Association or any Other User to comply with Section 3.1 service usage restrictions.

3.3 The Association and DMU each agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder imposed by any governmental or quasi-governmental authority.

3.4 DMU requires the Association to maintain a valid email address by which DMU may contact the Association on file at all times. Notices, monthly bills, system updates, and notifications of changes to the Association’s account are sent via email.

#### 4. ASSOCIATION EQUIPMENT AND INSIDE WIRING

4.1 The Association may use its own Customer Equipment. “Customer Equipment” means software, hardware, or services used in connection with the Services that DMU (or its agents) do not provide or lease.

4.2 The Association agrees DMU (or its agents) may access Customer Equipment in order to configure, maintain, inspect, or upgrade it, set up Services, or install or download software. For example, DMU may send software, downloads, or updates remotely to modems, gateways, and routers. These updates may change, add, or remove features or functionality of Customer’s Customer Equipment or the Services.

4.3 The Association represents and warrants that it owns its Customer Equipment or has obtained the authority to give DMU access to its Customer Equipment. If the Association does not own its Customer Equipment, the Association agrees to supply the owner’s name, address, and phone number, and evidence that the owner has approved DMU’s access, upon request.

4.4 The Association is solely responsible for its Customer Equipment. DMU has no responsibility for the operation, support, maintenance, or repair of any Customer Equipment, including Customer Equipment to which DMU (or third parties) send software or downloads.

4.5 DMU may certify certain Customer Equipment or recommend particular configurations as other Customer Equipment or configuration may not meet DMU's minimum technical or other specifications (a "Non-Recommended Configuration"). DMU reserves the right to deny support for the Services, or terminate the Services, if the Association uses a Non-Recommended Configuration. DMU AND THE RELEASED ENTITIES (AS DEFINED BELOW) MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT NON-RECOMMENDED CONFIGURATIONS, WHICH COULD CAUSE CUSTOMER EQUIPMENT TO FAIL OR OTHERWISE CAUSE DAMAGE. DMU AND THE RELEASED ENTITIES ARE NOT LIABLE FOR SUCH FAILURE OR DAMAGE.

4.6 The Association is solely responsible for Inside Wiring. Wiring inside the Premises, including additional cable wiring, telephone wiring, and outlets, is "Inside Wiring." Inside Wiring must not interfere with the Services or the normal operations of DMU's network. The Inside Wiring is the Association's property, or the property of whomever owns the property where Service is being delivered. DMU has no responsibility for the operation, support, maintenance, or repair of Inside Wiring, except as set forth herein.

## 5. DMU EQUIPMENT

5.1 "DMU Equipment" means all new or reconditioned equipment that DMU or its agent provides to the Association, including, but not limited to, cabling or wiring (except for Inside Wiring, as defined above) and related electronic devices, modems, routers, and any other hardware and includes all software and programs contained within DMU Equipment or downloaded to Customer Equipment by DMU.

5.2 DMU owns all DMU Equipment. The Association expressly agrees it will use the DMU Equipment exclusively in connection with the Services. The Association agrees that all DMU Equipment belongs to DMU or other third parties and will not be deemed fixtures or in any way part of the property receiving Service. DMU may remove or change the DMU Equipment at its discretion at any time the Services are active or following the termination of Association's Services. The Association acknowledges that any addition to, removal of, or change to the DMU Equipment may interrupt Services. The Association may not sell, lease, abandon, or give away the DMU Equipment, or permit any other service provider to use the DMU Equipment. The DMU Equipment may only be used in the property receiving Service unless expressly permitted by DMU. At the Association's request, DMU may relocate the DMU Equipment for an additional charge. THE ASSOCIATION UNDERSTANDS AND ACKNOWLEDGES THAT IF THE ASSOCIATION ATTEMPTS TO INSTALL OR USE THE DMU EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN AS EXPRESSLY AUTHORIZED BY DMU, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. The Association agrees it will not allow anyone other than DMU or its agents to service the DMU Equipment. The Association is responsible for loss, repair, replacement, and other costs, damages, fees, and charges if the DMU Equipment is returned in a damaged condition.

## 6. TERMINATION

6.1 This Agreement will remain in effect from Service activation until terminated by DMU or by the Association, as described below. This Agreement may also be terminated if it is replaced by a revised agreement.

6.2 If the Services are subject to a minimum term agreement, and the Association terminates all or any portion of the Services under the minimum term agreement before the end of the minimum term, the Association may be charged an early termination fee.

6.3 If the Services are not subject to a minimum term agreement, the Association may terminate the Services and this Agreement for any reason at any time. The Association must notify DMU that they want to terminate in writing. Applicable fees and charges for the Services may accrue until the Services have been disconnected, any DMU Equipment has been returned, and this Agreement has been terminated, subject to applicable law. At DMU's election, and subject to applicable law, DMU may change its policy to continue all Services (or any part of them) through the end of the billing cycle in which it received the Association's notice, which means those Services will terminate at the end of the applicable billing cycle. DMU may refund all prepaid monthly service fees charged for the Services after the effective date of termination, and reserves the right to subtract from the Association's refund any outstanding amounts due to it for the Services, for any affiliate or third-party services, or for other applicable fees and charges. Certain fees and charges are non-refundable and are also excluded.

6.4 DMU reserves the right to immediately terminate or suspend the Services without notice for any reason or no reason. DMU also reserves the right to remove from the Services any information stored or transmitted by or to any users. DMU may take these actions if it reasonably determine that the use of the Services by the Association or any Other Users: (i) violates this Agreement, any applicable policies, or any laws, rules, or regulations; (ii) interferes with DMU's ability to provide the Services to the Association or to others; or (iii) interferes with or endangers the health or safety of DMU's personnel or third parties, including if Association, or any member or representative thereof, threatens, harasses, or uses vulgar or inappropriate language toward DMU personnel. DMU has discretion in deciding whether and why to terminate or suspend Services. If DMU continues to provide Services, this does not mean it has reviewed or approved any use of the Services, or any information transmitted through the Services.

6.5 The Association must cease all use of the Services as of the effective date of termination. The Association must pay in full for their use of the Services up to the date that this Agreement is terminated and the Services are disconnected. The Association must return all DMU Equipment within ten (10) days of the date on which the Services are disconnected. The Association must return the DMU Equipment in working order, with the exception of normal wear and tear. If the Association fails to return the DMU Equipment, the Association may be charged an "Unreturned Equipment Fee". As the owner of the DMU Equipment, DMU has the right to retrieve any equipment the Association fails to return. DMU (or its agents) may request

access to the property where Services were received to remove all DMU Equipment and other material provided by DMU during regular business hours at a mutually agreed upon time.

## 7. LIMITATIONS ON LIABILITY; DISCLAIMER OF WARRANTIES

7.1 In no event shall DMU be liable to the Association or any Other User for any indirect, special, incidental, punitive or consequential damages, whether or not foreseeable, including loss of revenue, loss of customers, loss of goodwill, or loss of profits arising out of or in relation to these Terms and Conditions or the performance or non-performance of any obligation hereunder, whether arising out of contract or tort.

7.2 DMU AND ITS SERVICE PROVIDERS, AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS, OR BUSINESS PARTNERS (OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, OR REPRESENTATIVES) (COLLECTIVELY, THE "RELEASED ENTITIES") MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER THIRD PARTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE SERVICE(S) OR ANY OTHER MATTER WHICH IS THE SUBJECT OF THESE TERMS AND CONDITIONS, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

7.3 DMU shall not be liable for any mistakes, errors, omissions, interruptions, delays, outages or defects in the Services which are caused by force majeure, repair and maintenance or the Association or third parties with whom the Association has a relationship, such as an Other User. DMU shall not be liable for any act or omission associated with systems, the Service(s), or facilities which DMU does not furnish, including acts or omissions associated with the operation of the Association's system, Service(s), or facilities.

7.4 In no event shall an outage be deemed a default under these Terms and Conditions.

7.5 Notwithstanding any other provisions of these Terms and Conditions, DMU does not waive any rights, immunities, privileges, monetary limitations to judgments and defenses available to DMU under Colorado law.

## 8. INDEMNIFICATION

The Association releases and agrees to indemnify, defend and hold harmless DMU and the Released Entities from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from the use or misuse of the Service(s) by the Association or Other Users, including but not limited to 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 the breach of any provision of these Terms and Conditions by the Association or any Other Users.

## 9. FORCE MAJEURE

Without limiting any other provision of these Terms and Conditions, DMU and the Released Entities shall not be held liable for any loss, damage, delay or failure to provide or maintain the Service(s) caused by anything beyond its control, such as acts of God, acts of civil or military authority, government regulations, eminent domain, embargoes, labor stoppage, epidemics, war, police actions, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, severe weather conditions, inability to secure facilities, products or services of other persons including transportation facilities.

## 10. GOVERNING LAW

These Terms and Conditions and any issues arising out of or in relation hereto shall be governed by the laws of the State of Colorado, without regard to its choice-of-law provisions. The Association agrees that the federal and state courts of Colorado alone have jurisdiction over all disputes arising under these Terms and Conditions and the Association consents to personal jurisdiction of those courts with respect to any disputes arising under these Terms and Conditions.

## 11. RELATIONSHIP OF THE PARTIES

The Association is independent from DMU and nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent, or employer and employee relationship between the parties.

## 12. MISCELLANEOUS

12.1 The Association recognizes that DMU may enter into agreements with third parties to perform all or part of its obligations hereunder and that references herein to DMU include, where applicable, its agents and independent contractors.

12.2 DMU shall own and maintain the wiring external to the premises with the Services, the modem and any other equipment necessary to provide the Services. Notwithstanding the foregoing, the Association shall be responsible for damages and repairs to any such equipment caused by the acts or omissions of the Association or any users of the Services provided to the Association. Upon cancellation or termination of the Services, the Association shall return the equipment within seven (7) days to DMU.

12.3 The Association agrees to allow DMU to enter the property for the purposes of installing, adjusting, repairing, replacing, maintaining, moving, auditing or removing any equipment if necessary. DMU shall also have the right to periodically audit the Service connections to confirm compliance with section 3.1(d), and the Association agrees to provide access to the property, equipment, and attached wiring for the purposes of the audit. The Association represents that it either owns the property or has the right to allow DMU to install any necessary equipment and wiring to provide the Service. The Association should always ask for proper identification anytime a DMU employee or contractor requests entry to the property. If identification is not provided, the Association should not allow access.

12.4 These Terms and Conditions and any other documents incorporated by reference, including but not limited to the Customer Acknowledgement & Authorization Letter, constitute the entire agreement and understanding between the Association and DMU with respect to DMU's provision of the Service 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. No waiver of any breach or default under these Terms and Conditions shall be a waiver of any other breach or default. Neither the course of conduct between the parties nor trade practice shall modify these Terms and Conditions.

### **DMU Copyright Compliance Policy**

DMU acting by and through its broadband enterprise takes claims of copyright infringement seriously. DMU accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials. DMU will take appropriate action in response to notices of alleged copyright infringement that comply with applicable law.

#### **Notice to DMU Subscribers:**

DMU reserves the right, but not the obligation, to terminate or suspend a user's license to use DMU's broadband internet service if DMU determines, in its sole and absolute discretion, that the user is involved in copyright infringing activity. It is DMU's policy in appropriate circumstances to disable and/or terminate the accounts of users who are repeat infringers.

#### **Reporting Claims of Copyright Infringement**

In accordance with the Digital Millennium Copyright Act (17 U.S.C. § 512) ("DMCA"), written notices of copyright infringement (the "DMCA Notice") must include substantially the following:

- The physical or electronic signature of a person authorized to act on behalf of the copyright holder
- Identification of the copyrighted work or works claimed to have been infringed.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow DMU to locate that material.
- Adequate information by which DMU can contact you (including your name, postal address, telephone number, and email address).
- A statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the written notice is accurate.
- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

DMU's designated copyright agent to receive DMCA Notices is: Durango Mountain Utilities LLC, P.O. Box 4314, Durango, CO 81302. If anyone seeking redress under the DMCA fails to comply with all of the requirements of Section 512(c)(3) of the DMCA, their DMCA Notice may not be effective. Please be aware that if the party seeking redress knowingly materially misrepresents that material or activity is infringing their copyright, they may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.