

Please read this AUP carefully before you start to use the service. **By using the service, you accept and agree to be bound and abide by this Acceptable Use Policy and our other applicable terms of service, all of which have been provided to you and may be accessed at [www.metc.net/forms-and-policies/](http://www.metc.net/forms-and-policies/).** If you do not agree to this Acceptable Use Policy or our other applicable terms of service, you should not access or use the service.

**1. Services Covered.** This Acceptable Use Policy (“AUP”) governs wireline and/or wireless high speed Internet, IP/Ethernet, IP video and/or other data, video, or voice communications service (“Service”) provided to you by Marne Elk Horn (together with any subsidiaries or affiliates providing your Service, hereafter “we” “us” or “Marne Elk Horn”) and includes the following terms and provisions as the same may be amended or modified from time to time as provided herein. The terms and provisions of this AUP are without limitation of any rights to suspend or terminate Service that Marne Elk Horn otherwise possesses under your Service Contract, our Standard Terms and Conditions of Service, or applicable law. In delivering Service, we may utilize wholesale or other “upstream” providers. This Acceptable Use Policy is specific to Marne Elk Horn’s network and Service, and Service may also be subject to the acceptable use policies and practices of our upstream providers.

**2. Applicability.** This AUP applies to you as a customer and to any other person, authorized or abusive, using your Service (each such person, a “User”). For purposes of this AUP, your use includes, and you are responsible for, the use of all Users who access Service through your account. It is your responsibility to take precautions to limit access to Service to approved Users. If you are a contract customer, this AUP is incorporated into your Service Contract. For non-contract customers, by establishing a Service account and using Service, you agree to be bound by this AUP.

**3. Compliance Required.** Pursuant to your Service Contract as a contract customer or by establishing a Service account and using Service as a non-contract customer, all customers have agreed to and must comply with this AUP. Marne Elk Horn reserves the right to terminate or suspend Service immediately or to otherwise disconnect, remove, block, filter or restrict your use of Service if Marne Elk Horn determines, in its sole discretion, that such use is illegal or violates this AUP. Marne Elk Horn will cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. If Marne Elk Horn believes that you have used Service for an unlawful or abusive purpose, Marne Elk Horn may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to Marne Elk Horn’s forwarding of any such communications and information to these authorities. In addition, Marne Elk Horn may provide information in response to law enforcement requests, lawful government requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to you or others. Marne Elk Horn also reserves the right to take action on abuse which is not specifically named in this AUP at the sole discretion of Marne Elk Horn. Use of the Marne Elk Horn’s systems and network constitutes understanding and agreement of this policy.

**4. Prohibited Uses and Activities.** This AUP identifies certain uses and activities that Marne Elk Horn considers to be unlawful or abusive and therefore strictly prohibited. The examples listed herein are non-exclusive and are provided solely for guidance to customers. Marne Elk Horn, at its sole discretion, reserves the right to discontinue Service for any unlawful use. In the event of uncertainty as to whether any contemplated use or activity is permitted, please contact a customer service representative for assistance. In addition to any other illegal or abusive uses or activities, the following constitute violations of this AUP:

**a. Unlawful Use:** Using Service in any manner that violates local, state or federal law, including without limitation using Service to transmit any material (by email, facsimile, or otherwise) whose transmission is unlawful under any local, state or federal law applicable to such transmission.

**b. Copyright or Trademark Infringement:** Using Service to transmit any material (by email, file sharing software, direct download, FTP sites or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of Marne Elk Horn or any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, the digitization and distribution of copyrighted video or music, and the unauthorized transmittal of copyrighted software. You may not rebroadcast, transmit, or perform video programming service, charge admission for its viewing, or transmit or distribute running accounts of it.

**c. Violation of the Digital Millennium Copyright Act (DMCA):** Using Service to circumvent any technological measures used by copyright owners to protect their works or using Service to produce or disseminate technology primarily designed or produced to circumvent DMCA protections, that have only limited commercially significant purpose or use other than to circumvent; or that are marketed for use in circumventing DMCA protections. For additional information concerning your rights and responsibilities in connection with reporting or responding to claims of copyright infringement, see *Reporting Claims of Copyright Infringement*, below.

**d. Harm to Minors:** Using Service to harm, or attempt to harm, minors in any way; including but not limited to activities involving child pornography or the sexual exploitation of children.

**e. Threats:** Using Service to transmit any material (by email or otherwise) that illegally threatens or encourages bodily harm or destruction of property.

**f. Harassment and Cyberbullying:** Using Service to transmit any material (by email or otherwise) that unlawfully harasses another.

**g. Fraudulent Activity:** Using Service to make fraudulent offers to sell or buy products, items or Services, or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes", unregistered sales of securities, securities fraud and "chain letters."

**h. Forgery or Impersonation:** Adding, removing or modifying identifying network, message or article header information in an effort to deceive or mislead is prohibited while using Service. Attempting to impersonate any person by using forged headers or other identifying information is prohibited.

**i. Unsolicited Commercial/Unsolicited Bulk Communications** Using Service to transmit any unsolicited commercial or bulk email, faxes or other communications in violation of applicable federal or state law. Activities that have the effect of facilitating illegal, unsolicited commercial or bulk email, faxes or other communications are prohibited. Using deliberately misleading headers in emails sent to multiple parties is prohibited.

**j. Intentional Network Disruptions and Abusive Activity:** Using Service for any activity that adversely affects the ability of other people or systems to use Service. This specifically but without limitation includes excessive consumption of network or system resources whether intentional or unintentional. This also includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. The transmission of viruses, malware, or engaging in "mail bombing," "chat flooding," cybersquatting, and similar unlawful behavior is also prohibited. Attempting to circumvent user authentication or security of any host, network, or account on Marne Elk Horn's systems or the Internet at large ("cracking"). This includes scanning or probing ports without the consent of the owner of the machine being scanned.

**k. Unauthorized Access:** Using Service to access, or to attempt to access without authority, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Marne Elk Horn's or a third party's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in disruption of Service or the corruption or loss of data.

**l. Collection of Personal Data:** Using Service to collect, or attempt to collect, personal information about third parties without their knowledge or consent in violation of applicable state or federal law.

**m. Resale of Service:** Service is available for individual customer internal use only and not for resale. Reselling Service without our written authorization is strictly prohibited.

**5. Network Management Practices.** Marne Elk Horn reserves the right to protect its network from harm, which may impact legitimate data flows. Marne Elk Horn reserves the right to limit throughput or amount of data transferred, and to deny or discontinue Service, without notice, to anyone it believes is using an unlimited data plan or feature in any unauthorized or abusive manner or whose usage adversely impacts our or other users' network or Service levels. Specific management practices and Service descriptions and disclosure of Service pricing can be obtained by contacting us. You can also find these descriptions and disclosures on our website at: [www.metc.net](http://www.metc.net). In addition to this AUP, our broadband Internet access services are subject to our Network Transparency Statement, the most recent version of which can be found at: <https://www.metc.net/forms-and-policies/>.

**6. Content.** You will be liable for any and all liability that may arise out of the content transmitted by you. You shall assure that your use of Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. Marne Elk Horn reserves the right to disconnect or suspend your Service and remove your content from Service if Marne Elk Horn determines, in its sole and absolute discretion, that such use or content does not conform with any applicable law, the requirements set forth in this AUP or interferes with Marne Elk Horn's ability to provide Service to you or others. Marne Elk Horn's action or inaction under this Section will not constitute any review, waiver or approval of your usage or content.

**7. Service Monitoring.** Marne Elk Horn is under no obligation to monitor a customer's usage, bandwidth, transmissions and/or content of Service. However, Marne Elk Horn may monitor the usage, bandwidth, transmissions and content of Service periodically to (i) comply with any necessary laws, regulations or other governmental requests or (ii) operate Service properly or to protect itself, its network and its customers and subscribers. Marne Elk Horn reserves the right to modify, reject or eliminate any information residing on or transmitted to its server that it, in its sole discretion, believes is unacceptable or in violation of this AUP or any other terms and provisions applicable to Service.

**8. Domain Name Service.** Keeping registry information updated and accurate is the responsibility of the domain holder and not Marne Elk Horn. Acceptable use of the domain name service does NOT include falsifying or omitting valid domain contact information, including the administrative, technical, zone, and billing contacts. Such usage will result in termination of Service.

**9. Web/FTP Sites.** Acceptable use of Marne Elk Horn's web/FTP space does NOT include: Distribution of illegal pornographic or otherwise indecent or offending materials, distribution of restricted software or materials in violation of copyrights or distribution licenses, or any other illegal activity prohibited under Paragraph 4, above.

**10. Theft of Service.** You must notify Marne Elk Horn immediately if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you provide such notification, you must provide your account number and a detailed description of the circumstances of the theft, fraudulent or abusive use of Service. Failure to do so in a timely manner may result in the disconnection of your Service, additional charges to you, and civil or criminal liability. Until such time as Marne Elk Horn receives notice of the theft, fraudulent use or abusive use, you will be liable for all stolen, fraudulent or abusive use of Service. Marne Elk Horn reserves all of its rights at law and otherwise to proceed against anyone who uses Service illegally or improperly.

**11. Indemnification.** By signing your Service Contract (for contract customers) and/or by activating or using Service (for non-contract customers), you agree to use Service only for authorized, lawful purposes in accordance with this AUP. In addition to being subject to other remedies, liabilities and obligations under law or applicable agreements, you shall defend, indemnify, and hold Marne Elk Horn harmless from any claims, damages, losses, or expenses (including without limitation attorneys' fees and legal costs) incurred in connection with all claims, suits, judgments and causes of action for damages arising from the breach by you or your Users of any provision of this AUP. Marne Elk Horn shall not be liable to customers or third parties for any loss, costs, or damage to customer's personal computer or the contents thereof caused by or resulting from Marne Elk Horn's performance of Remote PC Support Services for customer, and customer shall indemnify and hold Marne Elk Horn harmless therefor.

**12. Network Security.** Marne Elk Horn maintains network security policies and implements security measures designed to meet or exceed accepted industry standards. As part of our network security program, we engage in commercially reasonable efforts to monitor and identify security incidents and threats to our network. Marne Elk Horn will regularly re-evaluate and may modify its network security policies and security measures at its discretion as generally accepted industry standards evolve, as new technologies emerge, or as new threats are identified. Marne Elk Horn's standard Service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Marne Elk Horn does not monitor individual Customer network activity for security incidents except when part of a managed security service provided pursuant to a supplemental service agreement. Each customer is solely responsible for selecting and using the level of security protection appropriate for its selected Service(s), including any customer or third party data stored or transmitted via such Service(s). Customer is responsible for using reasonable information security practices, including those relating to the encryption of data. Services offered by Marne Elk Horn have varying levels of inherent security risk, and Marne Elk Horn does not represent or guarantee that its network security policies and the security standards, controls and procedures it employs will prevent the loss or theft of, alteration of, or improper access to Service or any customer or third party data stored or transmitted via such Service(s). Marne Elk Horn's security policies do not supersede a customer's responsibility for establishing and implementing policies and procedures designed to safeguard its data and Service against unauthorized access or use

**12. Termination of Service.** Access to and use of Service is subject to strict compliance with this AUP and all applicable law and contractual provisions. Marne Elk Horn has the right to terminate access to or use of Service as provided in this this AUP, your Service Contract, and our Terms and Conditions of Service, as applicable. If Service is suspended or disconnected for violation of this AUP, you will be responsible for all fees and/or recovery charges associated with termination of Service, as set forth in our Terms and Conditions of Service.

**13. Modifications.** Marne Elk Horn may modify the terms and conditions of this AUP in a commercially reasonable manner from time to time and shall provide you notice of such changes by publication on our website, bill message or other commercially

reasonable notice. If you continue to use Service after receiving notice of such changes, your continued use of Service will be in accordance with this AUP, as amended.

**14. Survival.** The provisions of this AUP that by their sense and context are intended to survive the discontinuance or disconnection of your use of Service shall survive such discontinuance or disconnection.

**15. Governing Law.** This AUP and the relationship between you and Marne Elk Horn shall be governed by and construed in accordance with the substantive laws of the State of Iowa, without regard to the principles of conflict of law.

**16. No Waiver of Rights.** Marne Elk Horn's failure to exercise or enforce any right under or provision of this AUP shall not constitute a waiver of such right or provision.

**17. Severability.** If any part or provision of this AUP is legally declared invalid or unenforceable, that part or provision will be construed consistent with applicable law as nearly as possible, and the remaining parts and provisions will remain in full force and effect. Such invalidity or non-enforceability will not invalidate or render unenforceable any other part or provision of this AUP.

**18. Applicability to Attached Sites.** Sites directly attached to our Internet backbone are expected to adhere to this AUP. The account owner is responsible for educating site users on acceptable use policies. Violations of the AUP by directly attached sites will be referred to the account owner for resolution. The account owner will be held responsible for any violations of the AUP.

**19. Applicability to Wi-Fi Hotspots.** If your agreed terms of Service permit establishing one or more Wi-Fi Hotspots, this AUP applies to the use of such Service. Without limiting the preceding, (a) you may not resell Service and (b) you are responsible for compliance with this AUP, including compliance of all Users.

**20. Reporting Claims of Copyright Infringement.** We take claims of copyright infringement seriously. We will respond to notices of alleged copyright infringement that comply with applicable law. If you believe a User of this service has infringed your copyright, you may report the alleged violation by submitting notification to our Copyright Agent that satisfies the requirements of the DMCA (designated below).

In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ("**DMCA**"), the written notice (the "**DMCA Notice**") must include substantially the following:

- Your physical or electronic signature.
- Identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works on the Website, a representative list of such works.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow us to locate that material.
- Adequate information by which we can contact you (including your name, postal address, telephone number, and, if available, 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.

Our designated copyright agent to receive DMCA Notices is:

Davis Brown Law Firm  
215 10th St, Ste. 1300  
Des Moines, Iowa 50309  
515.288.2500  
dmca@davisbrownlaw.com

If you fail to comply with all the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective.

Copyright owners may use their own notification of claimed infringement form that satisfies the requirements of Section 512(c)(3) of the U.S. Copyright Act. Under the DMCA, anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Marne Elk Horn, the alleged infringer, and the affected copyright owner for any damages (including costs and fees) incurred in connection with the removal, blocking, or replacement of allegedly infringing material under Section 512(f) of the DMCA.

#### Counter-Notification Procedures

If you believe that material you posted on the Website was removed or access to it was disabled by mistake or misidentification, you may file a counter-notification with us (a “**Counter-Notice**”) by submitting written notification to our copyright agent designated above. Pursuant to the DMCA, the Counter-Notice must include substantially the following:

- Your physical or electronic signature.
- An identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access disabled.
- Adequate information by which we can contact you (including your name, postal address, telephone number, and, if available, email address).
- A statement under penalty of perjury by you that you have a good faith belief that the material identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled.
- A statement that you will consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or if you reside outside the United States for any judicial district in which the Website may be found) and that you will accept service from the person (or an agent of that person) who provided the Website with the complaint at issue.

Upon receipt of a Counter Notice, Marne Elk Horn shall promptly provide the complaining party with a copy of the Counter-Notice and inform the party we will replace the removed material or cease disabling access to it within 10 business days. The DMCA allows us to restore the removed content no less than 10, but not more than 14 business days after receipt of the Counter-Notice, if the party filing the original DMCA Notice does not file a court action against you.

Please be aware that if you knowingly materially misrepresent that material or activity on the Website was removed or disabled by mistake or misidentification, you may be held liable for damages (including costs and attorneys’ fees) under Section 512(f) of the DMCA.

#### Repeat Infringers

It is our policy in appropriate circumstances to disable and/or terminate the accounts of users who are repeat infringers. For additional information concerning termination of accounts due to DMCA violations, see *DMCA Termination*, below.

**21. DMCA Termination.** It is Marne Elk Horn’s policy to comply with the “safe harbor” provisions for Internet Service Providers set forth in the DMCA. Without limiting any other rights or remedies available to any copyright owner or of Marne Elk Horn under this AUP or applicable law, Marne Elk Horn may terminate Service for repeated and willful violations of the DMCA.

**21A. Termination of Service (Residential Accounts).** Marne Elk Horn will suspend or disconnect Service if four (4) DMCA offenses are recorded on a residential account in any twelve (12) month period. Service will be suspended or disconnected for a minimum period of 12 months. If Service is suspended or disconnected under this Section, you will be responsible for all fees and/or recovery charges associated with termination of Service, as set forth in our Terms and Conditions of Service.

**21B. Termination of Service (Business Accounts).** Marne Elk Horn will suspend or disconnect Service if any DMCA offenses are recorded on a business account. Service will be suspended or disconnected for a minimum period of 12 months. If Service is suspended or disconnected under this Section, you will be responsible for all fees and/or recovery charges associated with termination of Service, as set forth in our Terms and Conditions of Service.

**22. Email Compliance Policies.** The following rules apply to all email addresses issued by Marne Elk Horn. Marne Elk Horn does reserve the right to temporarily suspend your email address, if we feel any of the following are being abused.

- a. **Email Storage Space:** Storage space is a measure of how much disk space your e-mail occupies on Marne Elk Horn's e-mail server. Marne Elk Horn imposes 500MB of storage for each e-mail account. Email storage in excess of 500MB will be charged at \$2.00/per 250MB. Please call us if you have questions regarding storage space and how to properly store your valuable information.
- b. **Email Inactivity Limits:** Marne Elk Horn defines an inactive e-mail account as one that is not logged into for more than 60 days. An inactive account will be disabled from future use and all saved messages will be deleted. All incoming mail will be returned to sender. The account can be reactivated within a 6-month period by calling our office; however, all mail received during that time will be inaccessible.
- c. **Email Size Limits:** Size limit is the amount of information you can send or receive in a single e-mail message. The maximum size is 80 MB per e-mail message. Emails that are larger than 80MB will not be sent or received. If you would like the ability to send or receive messages larger than 80MB per message, please contact our office.
- d. **Email Outgoing Message Restrictions:** Marne Elk Horn places restrictions on the number of outgoing email messages you can send in a day. This is to minimize the chance that our e-mail service will be used to send out spam (unsolicited bulk commercial email). Outgoing limits are based on the total number of recipients for the messages you are sending. The maximum number of outgoing messages that a single user can send is 150 in a 5-minute period. We do have other resources available if you need a mailing list manager, please contact our office.
- e. **Email Storage:** Marne Elk Horn places restrictions of time and space of e-mail messages stored on our server. Any single e-mail stored on our server in excess of 365 days will be deleted permanently and no longer be accessible. Please note any and all e-mails accessed via our webmail ARE stored on our server and will adhere to the above-mentioned policy.

Acceptable use of email does NOT include:

- Sending unsolicited mass mailings of any nature, including those with a "negative option" for continuation. The negative option is inviting those who do not wish to receive more email to reply to you.
- Sending a large number of email messages, or singularly large email messages, to a single address in order to flood someone's mailbox.
- Forging email headers to obscure the true originator of the message.
- Creating or participating in pyramid schemes or chain letters.
- Sending harassing email, either by language, size, or frequency. This includes sending email (or real time) messages to a person who has asked explicitly that you do not.
- Using email in any manner that violates local, state or federal law, including without limitation using email to transmit any material whose transmission is unlawful under any local, state or federal law applicable to such transmission.

**23. Redress Options.** If you have any questions or concerns regarding this Acceptable Use Policy, please contact Marne Elk Horn as follows:

Marne Elk Horn  
Elk Horn Office  
4242 Main Street  
PO Box 120  
Elk Horn, IA 51531  
712-764-6161  
1-888-764-6141  
[www.metc.net](http://www.metc.net)