

# Wi-Fi Terms & Conditions of Service

April 4, 2015

## WI-FI WARNING AND DISCLAIMER

The City of Deming provides a free wireless internet hotspot in the Girl Scout Park. By using the City of Deming's free Wi-Fi hotspot you agree to be bound by the following terms and conditions which are a binding agreement between you and the City of Deming, you represent you are of legal age and agree to be bound by this agreement.

Wireless Fidelity (Wi-Fi) lets you access the Internet without cables or wires. With a wireless networking card in your privately owned Laptop, PDA or any Wi-Fi enabled device, you can go online from various locations in the Girl Scout Park.

As the configuration of each manufacturer's device is unique, please refer to your documentation for connection instructions. The City of Deming Staff cannot be responsible for assisting you in making changes to your devices.

## SECURITY WARNING AND DISCLAIMER

### Your Responsibilities

You understand that the City of Deming Public Wi-Fi, which utilizes wireless technologies, is not inherently secure and that wireless communications can be intercepted by technology designed and intended for that purpose. We will not be liable to you or any other party for any lack of security that may result from your use of the City of Deming Public Wi-Fi. You agree that you are responsible for providing security measures that are suited for your intended use of the City of Deming Public Wi-Fi. For example, you shall take full responsibility for taking adequate measures for safeguarding your data from loss. Also, other than the Wi-Fi signal provided by the City of Deming, you must provide all equipment, technology and software to use the City of Deming Public Wi-Fi.

**WARNING:** This free service is an open network provided for your convenience and its use is at your own risk. It is available to the general public, and is NOT INHERENTLY SECURE. The City of Deming cannot and does not guarantee the privacy of your data and communication while using the service.

There are potentially serious security issues with any computer connected to the Internet without the appropriate protection, ranging from viruses, worms and other programs that can damage the user's computer, to attacks on the computer by unauthorized or unwanted third parties. By using this service, you acknowledge and knowingly accept the potentially serious risks of accessing the Internet over an unsecured network. It is recommended that users take steps to protect their own computer system, such as installing current anti-virus software and maintaining appropriate firewall protection. For further information on how to protect yourself on this open network, consult a security professional.

You acknowledge and agree that YOUR USE OF THIS SERVICE IS SOLELY AT YOUR OWN RISK.

By using the Service, you also agree to all terms set forth in the following Disclaimer.

# Terms & Conditions of Service

By using the City of Deming Public Wi-Fi Internet Service, you agree to be bound by the following terms and conditions which are a binding agreement between you and the City of Deming.

## Disclaimer

I. **Service provided “AS IS”**. This Service provides access to the Internet on an “as is” basis with all risks inherent in such access. The City of Deming makes no warranty that the Service or that any information, software, or other material accessible on the Service is free of viruses, worms, Trojan horses or other harmful components. By connecting, the user acknowledges and accepts the risks associated with public access to the Internet and public use of an unsecured wireless network.

II. **Service provided “AS AVAILABLE”**. The Service is provided on an “as available” basis without warranties of any kind, either express or implied, that the Service will be uninterrupted or error-free, including but not limited to vagaries of weather, disruption of service, acts of God, warranties of title, noninfringement, NOR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No advice or information given by The City of Deming, its affiliates, or contractors of the service or their respective employees shall create such a warranty.

III. **Indemnity**. Under no circumstances shall The City of Deming, its employees, agents, or contractors thereof, be liable for any direct, indirect, incidental, special, punitive or consequential damages that result in any way from user’s use of or inability to use the Service or to access the Internet or any part thereof, or user’s reliance on or use of information, services or merchandise provided on or through the Service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance. You agree to indemnify and hold harmless The City of Deming, including its employees, agents, and contractors thereof, 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 any violation of law or regulation, or any breach of this agreement.

IV. **Access**. The City of Deming reserves the right to deny or restrict access to any user who abuses the network, such as excessive bandwidth consumption or using the network for any type of activity or purpose deemed by the City to be unlawful, harassing, abusive, criminal or fraudulent. The City of Deming also reserves the right to monitor, intercept and disclose any transmissions over or using the network, and to provide user information, or use records, and other related information under certain circumstances (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect the City’s rights, users or property) to appropriate authorities.

## V. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL EITHER THE CITY OF DEMING OR ITS OFFICIALS, REPRESENTATIVES, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY NATURE, OR FOR ANY LOST REVENUES, LOST PROFITS OR LOSS OF BUSINESS REGARDLESS OF THE CAUSE AND WHETHER OR NOT FORESEEABLE. In addition, the City of Deming and its officials, representatives, employees, agents or affiliates will not be responsible for any damages, losses, expenses or costs that you suffer AS A RESULT OF: (i) any interruption or failure of the Services OR Products; (ii) the

downloading or use of any information, data or materials obtained via the Services OR FROM THE Internet; (iii) any failure to complete a transaction on the Internet OR USING THE SERVICES or ANY loss of data due to delays, non-deliveries, mis-deliveries, or Service interruptions; (iv) ANYTHING BEYOND THE REASONABLE CONTROL OF THE CITY OF DEMING, INCLUDING BUT NOT LIMITED TO any interruption or failure of a third party's services, software, equipment or network; (v) any unauthorized use or modification of Services or Products or combination of Services or Products with other services, products or equipment; (VI) viruses, worms, Trojan horses, or other undesirable data or software; or (vii) the attempt by unauthorized users (e.g., hackers) to obtain access to your data, web-site, computers, or networks.

**VI. Personal Use Only.** You may use the service provided to you by the City of Deming for the sole purpose of accessing the internet. The City of Deming will give you an IP address each time you access the City of Deming Public Wi-Fi and it may change. You may not use the City of Deming Public Wi-Fi for any other reason, including reselling any aspect of the Public Wi-Fi service. Other examples of improper activities include, without limitation:

- Modifying, adapting, translating, or reverse engineering any portion of the City of Deming Public Wi-Fi network
- Attempting to break security, access, tamper with or use any unauthorized areas of the City of Deming Public Wi-Fi
- Attempting to collect or maintain any information about other users of the City of Deming Public Wi-Fi (including usernames and/or email addresses) or other third parties for unauthorized purposes
- Creating or transmitting unwanted electronic communications such as "spam," or bulk commercial messages to other users or otherwise interfering with other user's enjoyment of the service
- Engaging in any activity that infringes or misappropriates the intellectual property, publicity, privacy or other proprietary rights of others, including patents, copyrights, trademarks, service marks, trade secrets, or any other proprietary right of any third party, or that is defamatory, objectionable, unlawful or promotes or encourages illegal activity
- 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
- Distribution of any Internet viruses, worms, ping, flooding, mail bombing, denial of service attacks, defects, Trojan horses or other items of a destructive nature
- 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; or
- Using City of Deming Public Wi-Fi for any unlawful, harassing, abusive, criminal or fraudulent purpose. We have the right to monitor, intercept and disclose any transmissions over or using our facilities, and to provide user information, or use records, and other related information under certain circumstances (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect our rights, users or property)

## **Changes in the City of Deming Terms of Service and City of Deming Public Wi-Fi; Termination**

We may modify or terminate the City of Deming Public Wi-Fi service and these Terms of Service and any accompanying policies, for any reason, and without notice, including the right to terminate the service with or without notice. Please review these City of Deming Terms of Service from time to time so that you will be apprised of any changes. Upon any such termination, any and all rights granted by the City of Deming to you shall terminate.

## **Privacy Policy**

You understand and agree that the City of Deming may access, preserve, and disclose your personal information if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to comply with legal process or protect the rights and property of the City of Deming or the public.

## **Miscellaneous Provisions**

These City of Deming Terms and Conditions of Service will be governed by and construed in accordance with the laws of the State of New Mexico with venue in Luna County New Mexico. If for any reason a court of competent jurisdiction finds any provision or portion of the City of Deming Terms and Conditions of Service to be unenforceable, the remainder of the City of Deming Terms and Conditions of Service will continue in full force and effect.

These City of Deming Terms and Conditions of Service constitute the entire agreement between the parties and supersede and replace all prior understandings or agreements, written or oral, regarding the City of Deming Public Wi-Fi. Any waiver of any provision of the City of Deming Terms and Conditions of Service will be effective only if in writing and signed by the City Administrator of the City of Deming.