

ZiPLY Fiber Services Agreement (“ZFSA”)

ZiPLY Fiber agrees to provide Customer with the Services that have been ordered under the terms and conditions of this Agreement. By using the Services, Customer (i) agrees to abide by, and require others using Customer’s account to abide by, the terms of this Agreement and (ii) represent and warrant that you are at least 18 years of age. A copy of this ZiPLY Fiber Services Agreement can be found at www.ziPLYfiber.com/corporate/terms, or another online location designated by ZiPLY Fiber (“ZiPLY Website”), or can be obtained by calling 866-947-5988 (866-ZIPLY88). ZiPLY Fiber reserves the right to modify the terms of this Agreement and/or prices for the Services and may discontinue or revise any or all aspects of the Services at any time by posting changes online. Any change will be effective when ZiPLY Fiber posts the changes on the ZiPLY Website. Your continued use of the Services after changes are posted constitutes your acceptance of the Agreement as modified. The updated, online version of the Agreement shall supersede any prior version of the Agreement that may have been included in any software or related materials provided by ZiPLY Fiber.

1. Provision of Services and Equipment

- a. ZiPLY Fiber will provide and the Customer agrees to pay for the communications, installation and maintenance services (collectively “Service”), and/or purchase or lease equipment (“Equipment”), described in this ZFSA and Schedules executed by Customer.
- b. Customer acknowledges that certain Services may be governed by tariff or price schedule filed with the Federal Communications Commission and/or the state public utilities commission. In the event of any inconsistencies between this ZFSA and an applicable tariff, the tariff shall control except with respect to pricing, early termination charges or cancellation charges for which this ZFSA shall control.
- c. ZiPLY Fiber will provide, maintain and repair the ZiPLY Fiber owned facilities and equipment used to provide the Services (“ZiPLY Fiber’s Network”), up to and including the point at which ZiPLY Fiber’s Network is made available for interconnection to Customer’s premises equipment or inside wiring. Customer shall provide ZiPLY Fiber reasonable access to Customer’s premises during normal business hours for the purpose of installing, inspecting, testing, rearranging, repairing or removing any ZiPLY Fiber Network components, including obtaining approvals, permits or licenses from third parties as necessary. Customer will cooperate in good faith and provide all reasonable information and authorizations required by ZiPLY Fiber for the purpose of installing Services and/or Equipment, performing routine network grooming, maintenance, upgrades, and addressing emergencies, including but not limited to design layout records of any Customer or third party network elements to be connected to the Services and Letters of Agency allowing ZiPLY Fiber to act on the Customer’s behalf related to the Services and auxiliary third party services.
- d. Only authorized agents and representatives of ZiPLY Fiber may perform maintenance work with respect to ZiPLY Fiber’s Network. Any repair, alteration, configuration or servicing of ZiPLY Fiber’s Network, Services or Equipment by Customer or third parties without the written consent of ZiPLY Fiber is a material breach of this ZFSA and cause for termination at ZiPLY Fiber’s option.
- e. If ZiPLY Fiber is unable to commence performance hereunder due to circumstances within Customer’s control, any related costs incurred by ZiPLY Fiber, including but not limited to travel at normal rate and overtime labor rate expenses, will be reimbursed by Customer. Customer will reimburse ZiPLY Fiber for all costs incurred for installation, maintenance and repair if: (i) ZiPLY Fiber’s Network is altered, maintained or repaired by any party other than ZiPLY Fiber, without ZiPLY Fiber’s prior written consent, (ii) the malfunction of the Service or Equipment is the result of mishandling, abuse, misuse, improper operation, improper storage, or improper installation by anyone other than ZiPLY Fiber (including use in conjunction with equipment electrically or mechanically incompatible); or (iii) if the problem originated from a source unrelated to ZiPLY Fiber’s Network.
- f. Customer will provide (i) suitable building facilities (including but not limited to space, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of ZiPLY Fiber’s Network in accordance with manufacturer’s documentation and ZiPLY Fiber’s installation standards, more fully described in the applicable Schedule; and (ii) a well-lighted and safe working area that complies with all local safety standards and regulations.
- g. The Services or Equipment may be connected with the services or facilities of other carriers. ZiPLY Fiber may, when authorized by Customer and as may be agreed to by ZiPLY Fiber, act as Customer’s agent for ordering facilities provided by other carriers to allow such connection of Customer’s locations to ZiPLY Fiber’s Network or to the network of an underlying carrier or service.
- h. Customer is responsible for all charges billed by other carriers or third parties. ZiPLY Fiber shall not be responsible for the installation, operation, repair or maintenance or performance of equipment, facilities, software or service not provided directly by ZiPLY Fiber. Customer is responsible to provide equipment compatible with the Service or Equipment and ZiPLY Fiber’s Network, and any wiring required to extend a communications termination and/or demarcation at the Customer premises. Customer will provide suitable building facilities for the provision of Services in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes, and ZiPLY Fiber’s installation standards.
- i. Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of the Services and Equipment. Customer is solely responsible for (a) ensuring that all of Customer’s data is adequately secured, documented and backed-up at all times and (b) reimbursing ZiPLY Fiber for costs incurred by ZiPLY Fiber related thereto. ZiPLY Fiber and its contractors are not responsible or liable for data loss and/or unauthorized or fraudulent use of Customer Services or Equipment for any reason and Customer agrees to reimburse ZiPLY Fiber for costs incurred by ZiPLY Fiber related thereto.

- j. ZiPLY Fiber will manage the ZiPLY Fiber Network in ZiPLY Fiber’s sole discretion, and reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Services or provisioning the Equipment. ZiPLY Fiber will endeavor to provide reasonable notice prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or disruption in Service. ZiPLY Fiber reserves the right to suspend Service for emergency maintenance to ZiPLY Fiber’s Network without notice to Customer. Customer shall designate a primary contact for receipt of such notice.
- k. Customer represents and warrants that its use of the Service and Equipment will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this ZFSA and Customer will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities with respect to such use.
- l. Except as expressly identified in a Schedule, Customer and its employees shall be the only permitted end-user of the Services and leased Equipment. Customer shall not resell or bundle the Services or leased Equipment, nor permit any third party to access the Services or leased Equipment in exchange for compensation of any kind.

2. Service Descriptions

- a. Ethernet Internet Access is a data transport configuration comprised of a physical User Network Interface (UNI). EIA can be used to support delivery of eligible ZiPLY Fiber services to a designated Customer Location (e.g. ZiPLY Fiber Connect – Cloud). ZiPLY Fiber provides EIA on a standard best efforts’ basis and subject to unspecified variable bit rate, latency, and packet loss with dependencies on current traffic load(s) within ZiPLY Fiber’s core network Infrastructure. Physical termination shall conform to applicable rules and regulations with respect to Minimum point of entry (MPOE) and demarcation point. If Customer requests extensions beyond the MPOE, such extension (s) shall be subject to ZiPLY Fiber’s cabling service policies and ZiPLY Fiber’s charges related thereto per separate ZiPLY Fiber Cabling Service and Fee Schedule.
- b. Business Fiber Internet (BFI) is a data transport configuration comprised of a physical User Network Interface (UNI) and bandwidth connectivity to the public Internet. ZiPLY Fiber provides BFI on a standard best efforts’ basis and subject to unspecified variable bit rate, latency, and packet loss with dependencies on current traffic load(s) within ZiPLY Fiber’s Shared Infrastructure. Physical termination shall conform to applicable rules and regulations with respect to Minimum point of entry (MPOE) and demarcation point. If Customer requests extensions beyond the MPOE, such extension (s) shall be subject to ZiPLY Fiber’s cabling service policies and ZiPLY Fiber’s charges related thereto per separate ZiPLY Fiber Cabling Service and Fee Schedule.
- c. Broadband Internet (DSL) is a data transport configuration comprised of a physical User Network Interface (UNI) and bandwidth connectivity to the public Internet. ZiPLY Fiber provides DSL on a standard best efforts’ basis and subject to unspecified variable bit rate, latency, and packet loss with dependencies on current traffic load(s) within ZiPLY Fiber’s Shared Infrastructure. Physical termination shall conform to applicable rules and regulations with respect to Minimum point of entry (MPOE) and demarcation point. If Customer requests extensions beyond the MPOE, such extension (s) shall be subject to ZiPLY Fiber’s cabling service policies and ZiPLY Fiber’s charges related thereto per separate ZiPLY Fiber Cabling Service and Fee Schedule.
- d. Ethernet Virtual Private Line (EVPL) is a data transport configuration providing point-to-point or point-to-multipoint Ethernet connections between a pair of User Network Interfaces (UNIs). EVPL as a point-to-point configuration can be used to support delivery of eligible ZiPLY Fiber services to a designated Customer. Location (e.g. ZiPLY Fiber Connect—Cloud). EVPL is a carrier grade data networking service featuring Quality of Service (QoS) and the following progressively higher Class of Service (CoS) levels: Standard Service, Gold Service (Priority Data), or Platinum Service (Real Time). ZiPLY Fiber provides EVPL Standard Service on a standard best efforts’ basis and subject to unspecified variable bit rate, latency, and packet loss with dependencies on current traffic load(s) within ZiPLY Fiber’s core network Infrastructure. EVPL will be designed, provisioned and implemented according to standard switched Ethernet components consisting of service multiplexed capability over UNIs and Ethernet Virtual Connections (EVCs) through the use of Virtual Local Area Networks (VLANs) in order to secure traffic separation, privacy and security between Customer’s Service Locations over ZiPLY Fiber’s shared switch and backbone infrastructure. Ethernet Virtual Private Line will accept and carry untagged and or tagged traffic as described per IEEE 802.1Q networking standards specific to ZiPLY Fiber’s Ordering Guidelines for this Service. Physical termination shall conform to applicable rules and regulations with respect to Minimum point of entry (MPOE) and demarcation point. If Customer requests extensions beyond the MPOE, such extension (s) shall be subject to ZiPLY Fiber’s cabling service policies and ZiPLY Fiber’s charges related thereto per separate ZiPLY Fiber Cabling Service and Fee Schedule.
- e. Ethernet Private Line (EPL) is a data transport configuration providing point-to-point or point to multipoint switched Ethernet connections between a pair of User Network Interfaces (UNIs). EPL is a carrier grade data networking service featuring Quality of Service (QoS) with the following Class of Service (CoS) levels: Standard Service, Gold Service (Priority Data), or Platinum Service (Real Time). ZiPLY Fiber provides EPL Standard Service on a standard best efforts basis and subject to unspecified variable bit rate, latency, and packet loss with dependencies on current traffic load(s) within ZiPLY Fiber’s core network Infrastructure. EPL will be designed, provisioned and implemented according to standard switched Ethernet components consisting of a one to one, port based, non-service multiplexed Ethernet Virtual Circuit (EVC) and User Network Interface (UNI).
- f. Ethernet Local Area Network (E-LAN) is a data transport configuration providing multipoint-to-multipoint Ethernet connections to each Customer User Network Interface (UNI). E-LAN consists of two (2) or more locations, providing full mesh connectivity for all locations. ZiPLY Fiber provides E-LAN on a standard best efforts’ basis and subject to unspecified variable bit rate, latency, and packet loss with dependencies on current traffic load(s) within ZiPLY Fiber’s Shared Infrastructure. E-LAN will be designed, provisioned and implemented

with standard switched Ethernet components. Each access circuit is given its own ingress / egress bandwidth profile. Connectivity is provided to all E-LAN access circuits through a single non-deterministic Standard Ethernet Virtual Circuit (EVC) carrying all bandwidth profiles. The E-LAN Standard EVC provides secure traffic separation, and privacy for Customer Service Locations over ZiPLY Fiber’s core network infrastructure. ZiPLY Fiber E-LAN features two design variations: 1) All-to-One Bundled Access which accepts and carries Customer VLAN (Virtual LAN) tagged and/or untagged traffic and supports Layer-2 Control Protocol (L2CP) tunneling upon request. This Service is also referred to as Ethernet Private Local Area Network (EP-LAN). 2) Multiplexed Access which accepts and carries multiplexed EVCs preserving the Customer’s VLAN ID. This traffic needs to be tagged by the Customer. This Service is also referred to as Ethernet Virtual Private Local Area Network (EVP-LAN). Multiplexed Access does not support Layer 2 Control Protocol (L2CP). EVP-LAN can be used to support delivery of eligible ZiPLY Fiber services to a designated Customer Location (e.g. ZiPLY Fiber Connect – Cloud). Physical termination shall conform to applicable rules and regulations with respect to Minimum point of entry (MPOE) and demarcation point. If Customer requests extensions beyond the MPOE, such extension (s) shall be subject to ZiPLY Fiber’s cabling service policies and ZiPLY Fiber’s charges related thereto per separate ZiPLY Fiber Cabling Service and Fee Schedule.

- g. ZiPLY Fiber SIP/PBX Trunking Service is a business voice communications service using Internet Protocol (IP) technology. It provides voice communications between a station on an IP-capable PBX (IP-PBX) on Customer’s local area network (LAN) and (i) for off-net Services, a station on the Public Switched Telephone Network (“PSTN”); (ii) for on-net Services, a station on ZiPLY Fiber’s converged services network, in each case using IP technology and SIP Trunking service functionality.
 - i. ZiPLY Fiber SIP Trunking Service provides the following:
 - Access to the PSTN, or additional ports on ZiPLY Fiber’s converged services network
 - VoIP service using the Session Initiation Protocol (SIP) to provide telephone services to Customer’s equipped with a SIP-based private branch exchange (IP-PBX)
 - Access to 9-1-1 Emergency Services, subject to the limitations and terms in this Schedule.
- h. ZiPLY Fiber Hosted Voice Service is a business voice communications service using Internet Protocol (“IP”) technology. It provides voice communications between a station on the Customer’s Local Area Network (“LAN”) and (a) for Services provisioned over a third-party network, a station on the Public Switched Telephone Network (“PSTN”); (b) for Services provisioned over ZiPLY Fiber’s network, a station on ZiPLY Fiber’s converged Services network, in each case using IP technology. Hosted Voice Service provides basic IP voice communications standard features such as completing calls to the PSTN, abbreviated dialing and basic calling features/call management services; and access to 9-1-1 Emergency Service, subject to the limitations and terms described herein.
- i. OneVoice Business Line Service (OneVoice) is a business line telephone service. OneVoice is available only for customers with a maximum of twenty-five (25) business lines. OneVoice is not available with Centrex lines, foreign exchange central office services or public telephone services and analog to digital conversion, digital PBX services or the equivalents of any such services.
 - OneVoice Nationwide Unlimited- Unlimited domestic LD plus unlimited local (voice traffic only), Acceptable Use Policy applies. No call detail record provided for OneVoice Nationwide.
 - OneVoice 100 – Includes 100 minutes per month of domestic LD plus unlimited local (voice traffic only), Acceptable Use Policy applies. No call detail record provided for OneVoice
 - OneVoice Local – Includes unlimited local (voice traffic only), Acceptable Use Policy applies. No call detail record provided for OneVoice

3. Term

The term of this ZFSA will commence as of the date identified in the introductory paragraph above or the date the ZFSA is executed by both Parties, whichever is later (the “Effective Date”) and will continue through the Service Term with respect to any Service or Equipment provided pursuant to this ZFSA. Customer will purchase the Services, or lease Equipment, identified in each Schedule for the period of time stated in the Schedule (the “Service Term”). Unless otherwise stated in the Schedule, the Service Term and billing for the Service, will begin upon the earlier of (i) Customer’s use of the applicable Service(s) or Equipment or (ii) five (5) days following ZiPLY Fiber’s installation of such Service(s) or Equipment, and such date is deemed the commencement of the applicable Service Term. If neither party provides the other with written notice of its intent to terminate a Service at least sixty (60) days prior to expiration, the Service Term of each Service will automatically renew for additional one-year periods, subject to the terms and conditions of this ZFSA and at the then applicable one-year term rate, excluding promotional rates. If the parties agree to negotiated renewal terms, such terms will not be effective unless and until documented in writing and executed by both parties.

4. Payment

- a. Customer shall pay all charges set forth in the Schedules and in applicable tariffs during the Service Term. ZiPLY Fiber will invoice Customer any nonrecurring charges (“NRC”), monthly recurring charges (“MRC”), and usage based charges.
- b. In addition to the applicable charges set forth in the tariffs and Schedules, Customer shall pay all applicable federal, state or local sales, use, privilege, gross receipts, utility, value added, excise or other taxes (excluding taxes based on ZiPLY Fiber’s net income), or any charges in lieu thereof, and any applicable surcharges or fees, whether government mandated or ZiPLY Fiber initiated including but not limited to Primary Interexchange Carrier Charge, Federal Pre-Subscribed Line Charge, Carrier Cost Recovery Surcharge, E-911, and Universal Service and Local Number Portability, in the amounts applicable at the time of billing. Customer shall also be responsible for third party

charges and penalties incurred as a result of Customer’s use of the Services or Equipment and/or unauthorized or fraudulent use thereof due to Customer’s conduct.

- c. All payments shall be due within thirty (30) days of the invoice date and, in addition to and not in lieu of any other remedies ZiPLY Fiber may have hereunder or under the law as a result of Customer’s failure to pay, late payments shall be subject to a late payment fee of the lesser of one and one-half percent (1.5%) per month or the maximum allowed by law. In the event Customer disputes any invoiced amount, Customer will pay all charges not disputed, and notify ZiPLY Fiber of the dispute in writing, providing an explanation of the basis for the dispute. If ZiPLY Fiber does not receive notice of a payment dispute by Customer within ninety (90) calendar days after the date of an invoice, such invoice will be final and not subject to further challenge. For the purpose of computing partial month charges, a month will consist of thirty (30) calendar days. ZiPLY Fiber reserves the right to immediately suspend or terminate any or all Services or the installation or lease of any or all Equipment if Customer is overdue more than thirty (30) days for payments that have not been disputed in good faith.

5. Special Construction

All Services are subject to availability and ZiPLY Fiber Network limitations. The rates identified in this Schedule are estimated based on standard installation costs and Services may not be available at all service locations at the rates identified. If ZiPLY Fiber determines, in its reasonable discretion, that the costs of provisioning Service to any service location are materially higher than normal, ZiPLY Fiber will notify Customer of the additional costs associated with provision of the Services and request Customer’s acceptance of such costs as a condition to proceeding (“Special Construction”). Upon notification that Special Construction is required, Customer will have ten (10) business days to notify ZiPLY Fiber of its acceptance. If the Customer does not agree to the Special Construction within ten (10) business days, the Customer shall be deemed to have cancelled the Service Schedule without further liability. If the Customer agrees to the Special Construction, ZiPLY Fiber and Customer will execute a replacement Schedule.

6. Obligations of Customer.

Customer is responsible to ensure appropriate processes and protocols are in place for rate shaping to the amount of throughput ordered. Customer acknowledges that failure to comply with this responsibility may negatively impact Service performance.

- a. Except as otherwise expressly stated herein, Customer is responsible for obtaining, installing, configuring and maintaining all equipment (including, but not limited to, SIP phones, and firewalls), software, wiring, power sources, telephone connections and/or communications services necessary for interconnection with ZiPLY Fiber’s network or otherwise for use in conjunction with IP Service (Facilities). Customer is responsible for ensuring that such Facilities are compatible with ZiPLY Fiber’s requirements and that they continue to be compatible with subsequent revision levels of Company-provided equipment, software and services. ZiPLY Fiber is not responsible for the availability, capacity and/or condition of any Facilities not provided by ZiPLY Fiber. Customer is responsible for operation and configuration of its computer(s) and LAN/WAN. If Customer connects any Facilities to IP Service that Customer reasonably should know may not be compatible with IP Service, Customer is solely responsible for any effects that arise from that connection and Customer waives any claims against ZiPLY Fiber relating to the performance of IP Service. Customer may purchase CPE necessary for use of the Services, as well as extended Maintenance in such CPE from ZiPLY Fiber under the terms of a separate Equipment Purchase, Installation and Maintenance agreement.
- b. Use of IP Service, like other network-based services, carries certain security risks to the systems and networks of Customer, ZiPLY Fiber and third parties including, but not limited to: misuse; unauthorized access; alterations; theft; destruction; corruption; and attacks (“Occurrences”). Customer shall, at its own expense, take security measures including but not limited to use of firewalls, passwords, access restrictions, encryption, policies, and physical access restrictions (“Security Measures”) to protect from Occurrences all Services, IP traffic, Facilities and other equipment, software, data and systems located on Customer’s premises or otherwise in Customer’s control and used in connection with IP Service, whether owned by Customer, ZiPLY Fiber, or ZiPLY Fiber’s subcontractors.
- c. Customer agrees that ZiPLY Fiber is not liable, in contract, tort, or on any other basis, for any loss resulting from any Occurrences or use of Services, Facilities or other equipment, software, data and systems. Customer is responsible for all security measures, even if Customer uses a third party or ZiPLY Fiber to configure and implement them.
- d. Customer Facilities: Except as otherwise expressly stated herein, Customer is responsible for obtaining, installing, configuring and maintaining all equipment (including, but not limited to, SIP phones, and firewalls), software, wiring, power sources, telephone connections and/or communications services necessary for inter-connection with ZiPLY Fiber’s network or otherwise for use in conjunction with IP Service (“Facilities”). Customer is responsible for ensuring that such Facilities are compatible with ZiPLY Fiber’s requirements and that they continue to be compatible with subsequent revision levels of ZiPLY Fiber’s Network relevant to the Services, and for meeting the minimum requirements outlined for Hosted Voice Service at www.ZiPLY Fiber.com/terms. ZiPLY Fiber is not responsible for the availability, capacity and/or condition of any Facilities not provided by ZiPLY Fiber. Customer is responsible for operation and configuration of its computer(s) and LAN/WAN. If Customer connects any Facilities to IP Service, Customer is solely responsible for any effects that arise from that connection and Customer waives any claims against ZiPLY Fiber relating to the performance of IP Service.
- e. Security:
 - i. Use of IP Service, like other network-based services, carries certain security risks to the systems and networks of Customer, ZiPLY Fiber, and third parties, including but not limited to: misuse; unauthorized access; alterations; theft; destruction; corruption; and

attacks (“Occurrences”). Customer shall, at its own expense, take security measures including but not limited to use of firewalls, passwords, access restrictions, encryption, policies, and physical access restrictions (“Security Measures”) to protect from Occurrences all IP traffic, Facilities and other equipment, software, data and systems located on Customer’s premises or otherwise in Customer’s control and used in connection with IP Service, whether owned by Customer, ZiPLY Fiber, or ZiPLY Fiber’s subcontractors. CUSTOMER AGREES THAT ZIPLY FIBER IS NOT LIABLE, IN CONTRACT, TORT, OR ON ANY OTHER BASIS, FOR ANY LOSS RESULTING FROM ANY OCCURRENCES OR USE OF ZIPLY FIBER’S NETWORK, IP TRAFFIC, FACILITIES OR OTHER EQUIPMENT, SOFTWARE, DATA AND SYSTEMS. CUSTOMER IS RESPONSIBLE FOR ALL SECURITY MEASURES, EVEN IF CUSTOMER USES A THIRD PARTY OR ZIPLY FIBER TO CONFIGURE AND IMPLEMENT THEM.

- ii. Customer shall properly use any equipment or software, and all pass codes, personal identification numbers (“PINs”) or other access capability obtained from ZiPLY Fiber or an affiliate or vendor of ZiPLY Fiber and shall surrender the equipment and software in good working order to ZiPLY Fiber at a place specified by ZiPLY Fiber and terminate all use of any access capability upon termination or expiration of this Schedule. Customer shall be responsible for all uses of PINs, pass codes or other access capability during or after the term hereof. Customer’s use of any software component of the Service is limited to use with the Service, subject to and in strict compliance with the end user license agreement embedded in the software. Title and all other rights to the software shall remain at all times with ZiPLY Fiber or its suppliers. Customer is responsible for all costs and procedures associated with fraud, such as subscription fraud, cloning fraud, fraud associated with the use of the Service, hacking, or usage on lost or stolen devices that Customer has failed to notify ZiPLY Fiber should be deactivated.
- iii. Customer is solely responsible for the security of its own networks, equipment, hardware, software and software applications, including security features for protection against unauthorized or fraudulent use of the Equipment or the Service. Customer is solely responsible for ensuring that all of Customer’s data files are adequately duplicated and documented at all times. ZiPLY Fiber and its contractors are not responsible or liable for data loss for any reason. Abuse that occurs as a result of Customer’s systems or account being compromised or as a result of activities of third parties permitted by Customer may result in suspension of Customer’s accounts or Internet access by ZiPLY Fiber. Customer will defend and indemnify ZiPLY Fiber and its affiliates with respect to claims arising from Customer’s or third parties’ usage of the Hosted Voice or ZiPLY Fiber Internet access through Customer’s hardware or software.
- iv. **ZiPLY Fiber disclaims any express or implied warranty or condition that the Services prevent toll fraud, unauthorized access, loss or theft of electronic data, or invasion of privacy (collectively, “fraudulent activity”). ZiPLY Fiber shall have no liability to Customer in the event of such fraudulent activity.**

7. Equipment or Software Not Provided by ZiPLY Fiber.

- a. Upon notice from ZiPLY Fiber that the facilities, services, equipment or software not provided or approved by ZiPLY Fiber is causing or is likely to cause hazard, interference or service obstruction, Customer shall immediately eliminate the likelihood of hazard, interference or service obstruction. If Customer requests ZiPLY Fiber to troubleshoot difficulties caused by the equipment or software not provided by ZiPLY Fiber, and ZiPLY Fiber agrees to do so, Customer shall pay ZiPLY Fiber at its then current rates.
- b. ZiPLY Fiber reserves the right to approve/reject the make, model and or software of the Customer-provided router and modem to be used as the gateway to the ZiPLY Fiber network. ZiPLY Fiber will identify for Customer makes or models of routers and modems with which it has experience, but no such information shall be deemed a recommendation, representation or warranty with respect to such equipment.
- c. ZiPLY Fiber and Customer will cooperatively establish the initial configuration for the Customer-provided router’s interface with the ZiPLY Fiber network.
- d. ZiPLY Fiber may, from time to time, procure Services or facilities from an affiliate of ZiPLY Fiber, and in doing so, may act as an agent and not a principal for the affiliated entity with respect to the procurement and provision of the Service or facility. The Service or facility may be provided by an affiliate or vendor that is a common carrier, in which case the provision of the service or facility may be provided pursuant to terms and conditions stated in a filed federal or state tariff, which Customer agrees will govern the provision of the service or the facility.

8. After Hours/Holiday Labor Hours.

If Customer desires coordinated turn up services (“After Hours”) during non-business hours, defined below, then the After Hours services shall be provided at the rate of \$175.00 per hour. Non-business hours include: (1) weeknights between the hours of 5:00 p.m. and 7:59 a.m. local time; (2) weekends, including Saturday and/or Sunday and (3) the ZiPLY Fiber designated holidays (New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day and Christmas Day).

Such After Hours services may be subject to change, based upon ZiPLY Fiber’s reasonable determination of increases in actual costs to provide such After Hours services, determined in accordance with generally accepted commercial accounting practices, and consistent with After Hours service charges for projects comparable to the project outlined in this Schedule

Minimum point of entry (MPOE) and demarcation point. If Customer requests extensions beyond the MPOE, such extension (s) shall be subject to ZiPLY Fiber’s cabling service policies and ZiPLY Fiber’s charges related thereto per separate ZiPLY Fiber Cabling Service and Fee Schedule.

9. Voice Service Availability

- a. Customer’s Local Area Network (“LAN”) environment must meet the requirements for speed, duplex, bandwidth, and appropriate “Managed Switch” support. LAN wiring must be Category 5 (CAT5) or better. Any IP-PBX used by Customer must be validated by ZiPLY Fiber for service availability. ZiPLY Fiber’s IP-VPN (without limitation) is not available at all locations, depending on the availability of appropriate enabling facilities and the condition of the facilities serving Customer’s location.
- b. Customer is responsible for the correct setup and Customer is responsible for maintaining the quality and condition of its LAN, and thus, ZiPLY Fiber is not responsible for poor quality or outages of the Service that result from the quality or condition of Customer’s LAN. ZiPLY Fiber reserves the right to reject any order for Services for any reason, including without limitation the inability or impracticality of providing such Service in a particular geographic area in which ZiPLY Fiber does not have sufficient presence, capacity, corporate infrastructure or network technical infrastructure to effectively support the requested Service. In addition, Customer understands that use of the Services is restricted in the following manner: (i) At any given time, Customer may only place as many concurrent calls as it has purchased simultaneous calling capacity; (ii) Customer may modify ZiPLY Fiber installed design and/or configuration at their own risk; (iii) Customer may not utilize auto-dialers or any similar type of device in connection with ZiPLY Fiber SIP Trunking Service; and (iv) Customer may not use ZiPLY Fiber SIP Trunking Service for telemarketing, fax broadcasting, fax blasting, or continuous or extensive call forwarding. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT ANY VIOLATION OF THE FOREGOING RESTRICTIONS ON ITS USE OF THE SERVICE MAY RESULT IN THE IMMEDIATE TERMINATION OF THE SERVICE BY ZIPLY FIBER.
- c. Availability, Limitations, and Exclusions.
- d. Service Availability: Customer’s eligibility to receive IP Service, Customer’s Local Area Network (“LAN”) environment must be at least 10Mb/100Mb/1000Mb Ethernet; LAN ports used for voice must be set to full-duplex; Customer’s LAN must have adequate bandwidth and ports to support the minimum amount of concurrent voice and data traffic ordered by Customer.
- e. Limitations: Customer understands that use of the Services is restricted in the following manner: (a) at any given time, Customer may only place as many concurrent calls as it has purchased simultaneous calling capacity; (b) Customer’s modification of ZiPLY Fiber installed design and/or configuration is at Customer’s risk; (c) Customer may not utilize auto-dialers or any similar type of device in connection with ZiPLY Fiber Hosted Voice Service; (d) Customer may not utilize Hosted Voice Service in any call center environment or in connection with any similar such application; and (e) Customer may not use Hosted Voice Service for telemarketing, fax broadcasting, fax blasting, or continuous or extensive call forwarding. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT ANY VIOLATION OF THE FOREGOING RESTRICTIONS ON ITS USE OF THE SERVICE WILL IMMEDIATELY VOID AND INVALIDATE ZIPLY FIBER’S OBLIGATIONS AND PROVISION OF SERVICE UNDER THIS AGREEMENT AND WILL RESULT IN THE IMMEDIATE TERMINATION OF THE SERVICE BY ZIPLY FIBER.
- f. Exclusions. The Service does not include reliability, redundancy, disaster recovery or business continuity features, functions, capabilities or services. The Service is provided over broadband networks, as a reasonable best efforts service without warranty, guarantees or service level commitments. Customer will not be able to make or receive calls with the Service if the ZiPLY Fiber network or DSL service is down or impaired or if any third-party network or service used in conjunction with the Service is down or impaired. Service may also be adversely impacted by congestion on the Customer’s LAN, ZiPLY Fiber’s network or DSL service and/or third- party network or service.
- g. Changes. Throughout the Service Term, Customer may add subsequent lines at the rates and terms applicable under this Service Schedule, reduce the number of lines reflected in this Service Schedule without payment of the termination charge (please note, cancellation of entire account will be subject to the early termination charge), or make modifications to existing Services provided that such changes may be subject to a change fee (collectively “Changes”). Customer may request Changes via telephone, provided that ZiPLY Fiber may (but will not be required to) ask Customer to validate such Change request via email or other document. All such Changes and the resulting Services will be subject to the terms and conditions of this Schedule.
- h. Training. If Customer orders Equipment from ZiPLY Fiber for use with the Hosted Voice Service, such Equipment purchase will be based on the terms and conditions outlined in ZiPLY Fiber’s standard Equipment purchase schedule (“Equipment Schedule”). In the event that onsite training is requested, additional charges will apply and must be noted as an exception to the standard Installation Services Scope of Work.

10. Emergency 911 Service.

- a. **E911 Limitation Issues: Customer acknowledges that the Service is provided directly to Customer’s IP PBX server, and the outgoing telephone number or numbers (Emergency Location Identification Numbers, or “ELIN”) sent to ZiPLY Fiber’s network and used for Automatic Number Identification (“ANI”) for locating the origination position of an E911 call is/are provisioned and programmed into the PBX. Customer understands and acknowledges that changing the Service location affects emergency 911 location services, and agrees that the SIP Trunking Service will not be used at any location other than the Primary Service Location identified in this Schedule. Customer requests and agrees that all emergency 911 calls made through ZiPLY Fiber’s network will be sent to the Public Safety Answering Point serving the Primary Service Location. If Customer wishes to change the Primary Service Location, Customer will contact ZiPLY Fiber, and ZiPLY Fiber will provide Customer with information about how to update the registered location of the Equipment. Customer is responsible for managing and maintaining the accuracy of ANI with respect to the Services, including but not limited to providing timely, accurate and inclusive information to ZiPLY Fiber for submission into the E911 database. ZiPLY Fiber assumes no liability for use of the Service other than as described herein. Customer is responsible for notifying each individual using the Service that the Equipment can not be used for any calls (including but not limited to emergency calls) if the broadband connection**

- or electrical power to the Equipment fails. **CUSTOMER SPECIFICALLY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDS THE LIMITATIONS OUTLINED HEREIN. CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD ZIPLY FIBER HARMLESS FROM ANY LOSS, COST, EXPENSE OR LIABILITY (I) ARISING FROM OR IN ANY WAY RELATED TO CUSTOMER’S FAILURE TO PROVIDE THE REQUIRED NOTICES, OR (II) OTHERWISE RELATED TO THE USE OF E-911 SERVICES, EXCEPT TO THE EXTENT CAUSED BY ZIPLY FIBER’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**
- b. **Disclaimer: 911 SERVICE IS OFFERED SOLELY AS AN AID IN CONTACTING AN APPROPRIATE PSAP IN CONNECTION WITH FIRE, POLICE AND OTHER EMERGENCIES. ZIPLY FIBER IS NOT RESPONSIBLE FOR ANY LOSSES, CLAIMS, DEMANDS, SUITS OR ANY LIABILITY WHATSOEVER, WHETHER SUFFERED, MADE, INSTITUTED OR ASSERTED BY CUSTOMER OR BY ANY OTHER PARTY OR PERSON FOR ANY PERSONAL INJURY TO OR DEATH OF ANY PERSON OR PERSONS, AND FOR ANY LOSS, DAMAGE OR DESTRUCTION OF ANY PROPERTY, WHETHER OWNED BY CUSTOMER OR OTHERS, CAUSED OR CLAIMED TO HAVE BEEN CAUSED BY: (1) MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR OTHER DEFECTS IN THE PROVISION OF EMERGENCY 911 SERVICE, OR (2) INSTALLATION, OPERATION, FAILURE TO OPERATE, MAINTENANCE, REMOVAL, PRESENCE, CONDITION, LOCATION OR USE OF ANY EQUIPMENT AND FACILITIES FURNISHING THIS SERVICE. ZIPLY FIBER IS NOT RESPONSIBLE FOR ANY INFRINGEMENT OR INVASION OF THE RIGHT OF PRIVACY OF ANY PERSON OR PERSONS, CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE INSTALLATION, OPERATION, FAILURE TO OPERATE, MAINTENANCE, REMOVAL, PRESENCE, CONDITION, OCCASION OR USE OF EMERGENCY 911 SERVICE AND THE EQUIPMENT ASSOCIATED THEREWITH, OR BY ANY SERVICES FURNISHED BY ZIPLY FIBER INCLUDING, BUT NOT LIMITED TO, THE IDENTIFICATION OF THE TELEPHONE NUMBER, ADDRESS OR NAME ASSOCIATED WITH THE PHONE USED BY THE PARTY OR PARTIES ACCESSING EMERGENCY 911 SERVICE, AND WHICH ARISE OUT OF THE NEGLIGENCE OR OTHER WRONGFUL ACT OF ZIPLY FIBER, CUSTOMER, ITS END USERS, AGENCIES OR MUNICIPALITIES, OR THE EMPLOYEES OR AGENTS OF ANY ONE OF THEM.**
- c. Customer acknowledges that IP phones and Softphones are portable and may be used at the Service Location or elsewhere. **IF THE IP PHONE OR SOFTPHONE IS MOVED, CUSTOMER MUST CALL ZIPLY FIBER AT 855-438-7273 TO REGISTER THE PHONE’S NEW LOCATION FOR EMERGENCY CALLING PURPOSES.** There are additional charges for each new location that Customer would like to register phones. These locations must be ordered in advance, in order to properly register the phones’ new location. If the new locations are not ordered in advance, 911 calls will not be delivered to the correct Public Safety Answering Point (“PSAP”) until the new location is ordered, configured in the system, and the phone properly registered to the new location. **IN ADDITION, CUSTOMER IS RESPONSIBLE FOR ENSURING THAT ANY WARNING LABELS PROVIDED BY ZIPLY FIBER OUTLINING THE LIMITATIONS OF 911 SERVICES OVER IP PHONES ARE PLACED ON AND/OR NEAR THE EQUIPMENT USED IN CONJUNCTION WITH THE IP PHONE SERVICE.**
- d. Customer shall notify and inform each user that (a) 911 calls may not be delivered to the correct PSAP in some locations and that delays may occur in making a new location available through the PSAP’s database; (b) 911 calls will be misdirected if the IP phone or Softphone is moved without registering its new location and that in such case if it becomes necessary for the user to seek assistance by using E-911 Service, any such call from an IP phone will identify such user’s location as being at the prior location, and will be directed to the E-911 PSAP associated with the prior location, and not where the user is physically located, and (c) the IP phones cannot be used for any calls, including emergency calls, if the broadband connection used by the phone fails, or if electrical power is not available to power the phone. **IN ADDITION, CUSTOMER IS RESPONSIBLE FOR ENSURING THAT ANY WARNING LABELS PROVIDED BY ZIPLY FIBER OUTLINING THE LIMITATIONS OF 911 SERVICES OVER IP PHONES ARE PLACED ON AND/OR NEAR THE EQUIPMENT USED IN CONJUNCTION WITH THE IP PHONE SERVICE.**
- e. Customer is advised that the operation of e-911 requires accurate information be provided by Customer to ZiPLY Fiber for storage in ZiPLY Fiber’s database, which Customer is solely responsible for updating. Further, Customer acknowledges and agrees that e-911 service will not be available, and ZiPLY Fiber assumes no liability: (a) if there is a power failure or some other type of failure of the equipment installed at the Service Location; (b) if there is a failure or congestion of the access connection (such as dsl or t-1 connection) or associated equipment provided to connect the Service Location to the VOIP service network; (c) if there is a failure or congestion of the VOIP network providing Customer’s VOIP service, the public switched telephone network (pstn), the 911 service provider’s network or the emergency services network; (d) if Customer is using the Services outside of the United States; (e) if Customer has moved the VOIP device, delayed in providing or failed to provide accurate location information to ZiPLY Fiber, or the information provided has not yet been updated by or is inaccurate; (f) if the Services have been disconnected or suspended for non-payment or any other reason; (g) for those circumstances under which 911 service may be limited to traditional 911 service rather than enhanced 911 (or ‘e-911’). With e-911 the Customer address and callback information is automatically provided to the emergency services systems; or (h) failure of emergency services under certain circumstances, including but not limited to, those circumstances in which Customer is using call forwarding, call redirection or blocking services, and/or when the emergency callback number is configured to ring a phone at a different location than the Customer’s VOIP device. If e-911 service is not available in Customer’s area or at the time of the 911 call, then, the system may default to traditional 911 service and the Customer may be required to verbally inform the 911 call taker or emergency responder of their address and phone number.
- f. 911 service is offered solely as an aid in contacting an appropriate PSAP in connection with fire, police and other emergencies. **ZIPLY FIBER IS NOT RESPONSIBLE FOR ANY LOSSES, CLAIMS, DEMANDS, SUITS OR ANY LIABILITY WHATSOEVER, WHETHER SUFFERED, MADE, INSTITUTED OR ASSERTED BY CUSTOMER OR BY ANY OTHER PARTY OR PERSON FOR ANY PERSONAL INJURY TO OR DEATH OF ANY PERSON OR PERSONS, AND FOR ANY LOSS, DAMAGE OR DESTRUCTION OF ANY PROPERTY, WHETHER OWNED BY CUSTOMER OR OTHERS, CAUSED OR CLAIMED TO HAVE BEEN CAUSED BY: (a) MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR OTHER**

DEFECTS IN THE PROVISION OF EMERGENCY 911 SERVICE, OR (b) INSTALLATION, OPERATION, FAILURE TO OPERATE, MAINTENANCE, REMOVAL, PRESENCE, CONDITION, LOCATION OR USE OF ANY EQUIPMENT AND FACILITIES FURNISHING THIS SERVICE, OR (c) CUSTOMER’S FAILURE TO NOTIFY ZIPLY FIBER WHEN A PHONE IS MOVED IN A TIMELY MANNER.

- g. ZIPLY FIBER IS NOT RESPONSIBLE FOR ANY INFRINGEMENT OR INVASION OF THE RIGHT OF PRIVACY OF ANY PERSON OR PERSONS, CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE INSTALLATION, OPERATION, FAILURE TO OPERATE, MAINTENANCE, REMOVAL, PRESENCE, CONDITION, OCCASION OR USE OF EMERGENCY 911 SERVICE AND THE EQUIPMENT ASSOCIATED THEREWITH, OR BY ANY SERVICES FURNISHED BY ZIPLY FIBER INCLUDING, BUT NOT LIMITED TO, THE IDENTIFICATION OF THE TELEPHONE NUMBER, ADDRESS OR NAME ASSOCIATED WITH THE PHONE USED BY THE PARTY OR PARTIES ACCESSING EMERGENCY 911 SERVICE, AND WHICH ARISE OUT OF THE NEGLIGENCE OR OTHER WRONGFUL ACT OF ZIPLY FIBER, CUSTOMER, ITS SERVICE USERS, AGENCIES OR MUNICIPALITIES, OR THE EMPLOYEES OR AGENTS OF ANY ONE OF THEM.**
- h. Customer specifically acknowledges receipt of and understanding of these limitations on emergency calling capabilities. Customer shall defend, indemnify and hold harmless ZiPLY Fiber from any loss, cost, expense or liability arising from or in any way related to Customer’s failure to provide the required notices, or otherwise related to any use of E-911 Services, not caused by the negligence or willful misconduct of ZiPLY Fiber.**

11. Cancellation and Early Termination Charges

- a. If Customer cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, Customer shall pay a cancellation charge equal to the NRC and one (1) month of MRC for the Service, plus the total costs and expenditures of ZiPLY Fiber in connection with establishing the Service prior to ZiPLY Fiber’s receipt of notice of cancellation, including but not limited to any Equipment restocking fees.**
- b. Following installation, Customer may terminate a Service or Equipment by providing at least thirty (30) days prior written notice to ZiPLY Fiber. All unpaid amounts shall be due upon termination of any Service identified in a Schedule for any reason. In addition, and unless otherwise specifically provided in the applicable Schedule, if any Service or Equipment is terminated by Customer for any reason other than breach by ZiPLY Fiber or by ZiPLY Fiber due to Customer’s breach, then Customer shall pay ZiPLY Fiber a termination charge equal to the applicable MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term. Partial months shall be prorated.**
- c. Customer agrees that ZiPLY Fiber’s damages in the event of early termination will be difficult or impossible to ascertain, and that the charges identified in this Section are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.**

12. Limitation of Liability and Warranty Provisions

- a. The liability of ZiPLY Fiber and its affiliates related to this ZFS or the Service or Equipment provided under this ZFS, shall in no event exceed the limitations of liability set forth in the applicable tariffs, or regulatory rule or order. If there is no applicable tariff, regulatory rule or order, the total amount paid for the applicable Service or Equipment during the prior 12 months. In cases of an Outage, ZiPLY Fiber’s liability shall be limited to 1/720 of the MRC for each hour after ZiPLY Fiber is notified of the Outage. An “Outage” is an interruption in Service or use of the Equipment caused by a failure of ZiPLY Fiber’s Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside ZiPLY Fiber’s direct control. Notwithstanding the above, ZiPLY Fiber will not be liable to Customer for interruptions in Services or Equipment caused by failure of hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of ZiPLY Fiber. In addition, there will be no credits, reductions or set-offs against charges for Services or Equipment, or for interruptions of Services or Equipment, except as expressly set forth herein.**
- b. IN NO EVENT WILL ZIPLY FIBER OR ITS AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. ZIPLY FIBER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, LOSS OF USE, COST, CLAIM OR EXPENSE EXPERIENCED OR INCURRED BY CUSTOMER OR THIRD PARTIES RESULTING FROM THE USE OF THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR LOSS OF USE OF CUSTOMER DATA OR FRAUD BY THIRD PARTIES.**
- c. ZiPLY Fiber warrants that ZiPLY Fiber’s Network will be maintained in good working order. If any Service does not function substantially in accordance with applicable Service specifications as a result of ZiPLY Fiber’s failure to maintain ZiPLY Fiber’s Network (excluding degradation related to the acts or omissions of Customer or anyone using the Services, a force majeure event, or scheduled maintenance), ZiPLY Fiber’s sole obligation is to repair the affected Service at ZiPLY Fiber’s expense. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ZIPLY FIBER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO ZIPLY FIBER’S NETWORK, SERVICES OR EQUIPMENT PROVIDED PURSANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION. ZIPLY FIBER DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT OR ACCESS OR OPERATION OF THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER’S NEEDS, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.**
- d. This ZFS shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by ZiPLY Fiber. Customer agrees that ZiPLY Fiber has not made, and that there does not exist, any warranty, express or implied, that the use by Customer of ZiPLY Fiber’s Services**

and/or the Equipment provided under this ZFSA will not give rise to a claim of infringement, misuse, or misappropriation of any intellectual property right.

- e. Customer agrees that the Services and Equipment, and ZiPLY Fiber’s performance hereunder are subject to the terms, conditions and restrictions contained in any applicable agreements (including software or other intellectual property license agreements) between ZiPLY Fiber and ZiPLY Fiber’s vendors.
- f. No action, regardless of form, arising out of this ZFSA or the Schedules may be brought more than two (2) years after the cause of action has arisen or charges have been billed whichever is earlier. The parties hereby waive the right to invoke any different limitation on the bringing of actions provided under applicable law.

13. Indemnification

Customer shall indemnify, defend and hold ZiPLY Fiber and its affiliates, and their respective directors, officers, employees, successors, assigns and agents, harmless from and against any and all claims, loss, damage, cost or expense (including reasonable attorneys’ fees) to the extent arising out or relating to any claim, action or proceeding brought by any third party based upon: (i) Customer’s breach of this ZFSA; (ii) Customer’s negligence or willful misconduct in the performance of its obligations under this ZFSA; (iii) use of the Equipment or Services, including but not limited to the content of communications transmitted thereby; (iv) any infringement of intellectual property or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right arising from Customer’s or any other person’s use of the Equipment or Services, any combination of the Equipment or Services with other products or services not provided by ZiPLY Fiber, or any modification of the Equipment or Services by anyone other than ZiPLY Fiber; (v) any bodily injury (including illness or death) or property damage caused by Customer or anyone within its control. The obligations under this Section 6 are independent of any other obligation under this ZFSA.

14. Confidentiality

- a. Both parties agree that all terms and conditions set forth in this ZFSA shall be considered confidential, and that details of the terms of this ZFSA, shall not be disclosed to third parties, other than affiliates, employees, agents or contractors who have a need to know such information in the scope of their employment or engagement, without the prior written consent of the other party, unless required by law.
- b. Customer and ZiPLY Fiber may disclose to each other information that is confidential in nature. In order to receive confidential treatment, all such information (hereafter “Information”) shall be either (i) clearly marked as confidential if written, or clearly identified as confidential if oral or (ii) reasonably understood by the recipient, based on the nature of the Information or the circumstances of disclosure, to be confidential or proprietary to the discloser. Except as required by law or regulation, Customer and ZiPLY Fiber agree not to disclose any Information to any third party and to keep Information in a secure place available only to employees, affiliates, contractors or agents who are subject to obligations of confidentiality no less restrictive than those set forth herein, and who need to know the Information for purposes of the business dealing between Customer and ZiPLY Fiber, and to use Information only in connection with such business dealings. This Section is enforceable by injunction.
- c. Information will lose its confidential status if obtained legitimately from a third party without restriction or upon the expiration of five (5) years from delivery of each item of Information. Information shall remain the property of the disclosing party and shall be returned to such party on request or upon termination of the business dealing between Customer and ZiPLY Fiber.
- d. Notwithstanding anything herein to the contrary, ZiPLY Fiber shall have the right to include Customer’s name in a public list of current customers who use ZiPLY Fiber’s services, provided ZiPLY Fiber does not make any representation with respect to Customer and does not attribute any endorsements to Customer, without Customer’s prior written consent. In addition, ZiPLY Fiber may publicly identify Customer as a new customer of ZiPLY Fiber or an existing customer obtaining expanded or additional services from ZiPLY Fiber, as the case may be.

15. Breach

- a. Breach by Customer: If Customer fails to make any payment when due and such failure continues for five (5) days after notice, or Customer fails to comply with any other term or condition of this ZFSA or any Schedule and such failure continues for thirty (30) days after notice, then ZiPLY Fiber may either suspend the applicable Schedule (or any portion thereof) until the breach is remedied, terminate the applicable Schedule (or any portion thereof), or terminate this ZFSA and all Schedules. Notwithstanding the foregoing, ZiPLY Fiber may immediately suspend Services and, after giving notice to Customer with an opportunity to respond appropriate to the circumstances and Customer’s failure to respond, ZiPLY Fiber may terminate any or all Services, retrieve ZiPLY Fiber Network elements from the service location and Equipment for which title has not transferred to Customer, in the following circumstances: (i) in the event of unauthorized, unlawful or improper use or abuse of the ZiPLY Fiber Network or Service; (ii) if, in the reasonable judgment of ZiPLY Fiber, Customer’s use of the ZiPLY Fiber Network or Service has or will damage or have an adverse effect on ZiPLY Fiber’s Network, its personnel, property or service; (iii) such action is necessary to meet the exigencies of an emergency; or (iv) a court or other governmental authority having jurisdiction issues an order prohibiting ZiPLY Fiber from furnishing the Equipment or Services to Customer.
- b. Breach by ZiPLY Fiber: If ZiPLY Fiber has not remedied any breach within thirty (30) days after ZiPLY Fiber’s receipt of written notice from Customer of such breach (providing reasonable detail), Customer may terminate the Service which is the subject of such breach. This is Customer’s exclusive remedy for a breach by ZiPLY Fiber.

16. Force Majeure

In no event will ZiPLY Fiber or its affiliates be liable for any delay in performance directly or indirectly caused by events beyond their control, including, but not limited to: acts or omissions of Customer, its agents, employees or contractors; acts of God; acts of the public enemy; acts of the United States, a state or other political subdivision; fire, floods or other natural disasters; accidents; wars; terrorism; cyber security events; labor disputes or shortages; and inability to obtain material, power, equipment or transportation.

17. Assignment

This ZFSA may not be assigned by either party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, except that ZiPLY Fiber may assign this ZFSA to any successor to the business of ZiPLY Fiber by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with ZiPLY Fiber. ZiPLY Fiber may subcontract portions of the work to be performed hereunder to provision the Services or Equipment.

18. Work Site Conditions

- a. If asbestos, or material containing asbestos, or any other hazardous or toxic materials are discovered during work pursuant to this ZFSA, ZiPLY Fiber will suspend its work for a reasonable period of time to permit Customer to engage a qualified firm to remove and dispose of the asbestos or other toxic or hazardous materials from the site. Such suspension may result in an equitable adjustment to the charges identified in the related Schedule, based on any increase in costs incurred by ZiPLY Fiber.
- b. Customer agrees to release, indemnify, defend and hold harmless ZiPLY Fiber from and against any damages, losses, claims, demands or lawsuits arising out of or relating to the presence, removal or disposal of asbestos or any other hazardous or toxic material from the Customer's premises or location where Services or Equipment will be installed.

19. Title and Risk of Loss

- a. Risk of loss or damage for ZiPLY Fiber Network elements installed at a Customer designated service location shall pass to Customer at time of delivery to Customer.
- b. Any ZiPLY Fiber Network elements or Equipment installed at Customer's premises or location where Services or Equipment will be installed (which is leased or for which title has not transferred to Customer) remain the personal property of ZiPLY Fiber or ZiPLY Fiber's assignee, notwithstanding that it may be or become attached to or embedded in realty, and upon termination of this ZFSA or any Schedule (in whole or in part), all ZiPLY Fiber property shall be returned to ZiPLY Fiber in the same condition as installed, normal wear and tear excepted. Customer will not tamper with, remove or conceal any ZiPLY Fiber identifying plates, tags or labels. In the event ZiPLY Fiber property is not returned to ZiPLY Fiber in accordance with this Section, Customer will be billed for and pay to ZiPLY Fiber an amount equal to the retail value of the ZiPLY Fiber property, except to the extent such failure is caused by the negligence or willful misconduct of ZiPLY Fiber or its agents.

20. Competition

Customer recognizes the availability of competitive alternatives for receiving the Services and Equipment provided under this ZFSA, and has freely elected to enter into this ZFSA in order to receive the benefits it offers.

21. Government Regulation

To the extent that any Service(s) provided hereunder are subject to the jurisdiction of the Federal Communications Commission ("FCC") or any state public utilities commission or other regulatory agency, this ZFSA shall at all times be subject to changes, modifications, orders and rulings by the FCC and/or state public utilities commission or other regulatory agency. ZiPLY Fiber reserves the right to suspend, modify or terminate any Service without liability where any statute, regulation and/or ruling, including modifications thereto, by any regulatory agency (including the FCC), legislative body or court of competent jurisdiction, (i) prohibits, restricts or otherwise prevents ZiPLY Fiber from furnishing such Service, or (ii) has a material negative impact on ZiPLY Fiber's performance hereunder or the benefits provided by this ZFSA. If provision of any Service pursuant to this ZFSA is subject to advance approval of the FCC and/or any state public utilities commission, this ZFSA shall not become effective with respect to such Service until after receipt by ZiPLY Fiber of written notice of such approval.

22. Governing Law

This ZFSA shall be governed by and construed according to the laws of the State in which Services or Equipment are being provided hereunder without regard to its conflicts of laws provisions. Any related litigation may be brought in any State or Federal courts of competent jurisdiction within such State. Customer and ZiPLY Fiber consent to personal jurisdiction in such courts.

23. No Waiver

If either party fails, at any time, to enforce any right or remedy available to it under this ZFSA, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

24. Severability



A declaration by any court, or other binding legal source, that any provision of this ZFSA or any Schedule is illegal and void, will not affect the legality and enforceability of any other provisions of this ZFSA, unless the provisions are mutually dependent.

25. Notice

All notices provided pursuant to this ZFSA will be in writing and delivered by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, or by regular mail and shall be deemed delivered either on the date of return receipt acknowledgment (in the case of certified US Mail), or on the next day after the sending of the notice if sent overnight mail, or three (3) days after mailing if by regular mail to the address of the party designated to receive such notice.

26. Independent Relationship

Each party understands and agrees that it and its personnel are not employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times.

27. Dispute Resolution

Except as otherwise specifically provided in or permitted by this ZFSA, all disputes arising in connection with this ZFSA shall first be resolved through good faith negotiation. If, after negotiating in good faith for a period of ninety (90) calendar days or any agreed further period, the parties are unable to resolve the dispute, then each party may seek resolution by exercising any rights or remedies available at law or in equity. Customer and Ziplly Fiber agree that each may only bring claims against the other in an individual capacity and not as a plaintiff or class member in any purported class, representative, or private attorney general proceeding.

28. Authorization and Entire Agreement

Each party represents that the person executing this ZFSA is authorized to enter into this ZFSA on its behalf. This ZFSA and any Schedules executed by the parties constitute the entire agreement between the parties pertaining to the subject matter herein and supersedes all prior oral and written proposals, correspondence and memoranda with respect thereto. This ZFSA may not be modified, amended or supplemented except by written agreement signed by an authorized representative of each party. Notwithstanding anything otherwise stated, a Customer purchase order document (whether signed by one or both parties) shall be construed solely as evidence of Customer’s internal business processes, and the terms and conditions contained thereon shall be void and of no effect or application toward this ZFSA.