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, 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’ 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 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. 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.

3. 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 non-recurring 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.

4. 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.

5. Limitation of Liability and Warranty Provisions

a. The liability of Ziply Fiber and its affiliates related to this ZFSA or the Service or Equipment provided under this ZFSA, shall in no event exceed the limitations of liability set forth in any 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 INFRINGEMENT 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 PURSUANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, 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 ZFSA 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.
6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 reality, 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 Ziply 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.

21. 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.
Ziply Fiber

Signature: ____________________________
Printed Name: _______________________
Title: _______________________________
Date: _______________________________

Contractual Notice: Ziply Fiber
135 Lake Street South, Suite 155
Kirkland, WA  98033
Attn: Legal Department

Insert Customer Full Legal Name

Signature: ____________________________
Printed Name: _______________________
Title: _______________________________
Date: _______________________________

Contractual Notice: address above

Attn: Legal Department