



## RESIDENTIAL SERVICES SUBSCRIBER AGREEMENT

ZiPLY™ Fiber agrees to provide you with the Services (defined below) you have ordered under the terms and conditions of this Agreement.

By using the Services, you (i) agree to abide by, and require others using your 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 Residential Services Subscriber Agreement can be found at [www.ziPLYfiber.com/corporate/terms](http://www.ziPLYfiber.com/corporate/terms), or another online location designated by ZiPLY Fiber ("ZiPLY Website"), or can be obtained by calling 866-699-4759 (866-MYZIPLY).

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.

Some of the Services may be provided to you under the terms of a Tariff. You can access ZiPLY Fiber's Tariffs at <https://tariffs.ziPLYfiber.com/>.

ZiPLY Fiber will notify you of material changes to the Agreement, typically as a message on ZiPLY Fiber's bill to you. Any such changes shall become effectively immediately except where applicable law requires a notice period, in which case the change will become effective at the end of the required notice period. If you do not agree to the changes, you have the right to cancel Services. However, if you continue to use the Services, you will have accepted the changes.

The Agreement constitutes the entire agreement between ZiPLY Fiber and you. The Agreement supersedes all previous written or oral agreements between ZiPLY Fiber and you. You are not entitled to rely on any oral or written statements by ZiPLY Fiber's representatives if these statements are not consistent with this Agreement. The use of your Services by any person other than you is also subject to this Agreement.

### 1) Definitions

- a) "Agreement" means this Residential Services Subscriber Agreement and any applicable Tariffs, as it may be amended from time to time by ZiPLY Fiber, any accompanying Work Order, and the corresponding Terms of Use for your Services and related Price Lists.
- b) "Customer Equipment" means any equipment provided by you to access or use the Services, including without limitation, a television, telephone inside wiring and outlets, a powered electrical outlet, modems, wifi access points, routers, remote control units and base stations.
- c) "Data Service" means data transport and Internet access services.
- d) "Price List" means the prices for Services offered in your area that (a) are not covered by a Tariff and (b) are applicable to ZiPLY Fiber's Services in your area, all as published by

Zipty Fiber on, among other places, the Zipty Website, and as may be amended from time to time.

- e) "Services" means the services provided to you by Zipty Fiber, which may include Cable Service, Data Service, Telephone Service and equipment-based services such as digital video recorder services or wifi access services and any other related services, including without limitation installation, features and support.
- f) "Software" means the computer software and mobile applications, if any, license by Zipty Fiber to you to facilitate installation, access or use of the Services. "Software" also refers to any executable code that may be included in, downloaded to, or used by Zipty Equipment.
- g) "Subscriber Materials" means the handbooks, manuals and other guide and disclosure materials provided by or posted online by Zipty Fiber or Zipty Fiber's suppliers regarding use of the Services of Zipty Equipment.
- h) "Subscriber Privacy Notice" means the Subscriber Privacy Notice described in Section 12(a) below, as it may be amended from time to time by Zipty Fiber.
- i) "Tariff" means any tariff, price plan, price list, price catalog or similar filing made by Zipty Fiber with the applicable governmental authority concerning certain services provided by Zipty Fiber.
- j) "Telephone Service" means (a) the local and long distance telephone calling services as set forth in Zipty Fiber's Tariffs or (b) any access to Zipty Fiber's Internet Protocol voice network to make local or long distance calls.
- k) "Terms of Use" means all rules, terms and conditions set forth in the Agreement or otherwise established now or hereafter by Zipty Fiber regarding permissible or impermissible uses of or activities related to the Services, including but not limited to Zipty Fiber's Acceptable Use Policy and Network Management Policy, as may be amended from time to time by Zipty Fiber. Zipty Fiber will post the Terms of Use on the Zipty Website.
- l) "TV Service" means video and/or audio programming services such as basic, standard, digital and premium video services, provided on a per-channel or per-program basis, pay-per-view or video on demand, all as provided by Zipty Fiber. "TV Service" does not include streaming video services delivered over the internet.
- m) "Work Order" means the Zipty Fiber work order or service order provided to you, if any, in connection with the installation or commencement of your Services.
- n) "You" means the account holder identified on the Work Order as being authorized by Zipty Fiber to access and use the Services.
- o) "Zipty Equipment" means any equipment provided by Zipty Fiber to you, including without limitation wire, cable, cable conduit, splitters, junction boxes, converter boxes (also known as "set top boxes"), decoders, terminals, modems, remote control units, digital video recorders, voice service access units and any other equipment or materials provided to you by Zipty Fiber for use in connection with the Services.
- p) "Zipty Fiber" means Northwest Fiber, LLC and any of its affiliates and subsidiaries who are providing the Services, all doing business as "Zipty Fiber", and their respective directors, officers, employees and agents.

## **2) Payment; Charges**

- a) You agree to pay Ziplly Fiber for (i) all use of the Services, (ii) Ziplly Equipment, (iii) all applicable local, state and federal fees, assessments, charges and taxes, and (iv) any other charges set forth in the Price List or Tariff. Charges for the Services are set forth in the applicable Price List and Tariff. You will be billed monthly in advance for recurring monthly charges. Other charges will be billed in the next practicable monthly billing cycle following use, or as otherwise specified in the applicable Price List or Tariff. Ziplly Fiber may change both the fees and type of charges for your Services.
- b) Charges for a standard installation of Services and related Ziplly Equipment are described in the Price List or Tariff. Non-standard installations, if available, may result in additional charges as described in the applicable Price List or Tariff. In addition, unless otherwise covered in a service protection plan purchased by you, you agree to pay charges for repair service calls resulting from your misuse of Ziplly Equipment or for issues caused by Customer Equipment or other equipment not supplied by Ziplly.
- c) You will be responsible for all expenses (including reasonable attorneys' fees and costs) incurred by Ziplly Fiber in collecting any amounts due under the Agreement and not paid by you.
- d) All charges are payable on the due date specified. You agree that late charges may be assessed, subject to applicable law, on amounts that are past due. The current late fees are included in the Price List or Tariff and will not exceed the maximum late fees under applicable law. Ziplly Fiber reserves the right to change the late fees.
- e) You agree that if your Service account with Ziplly Fiber is past due, Ziplly Fiber may terminate any of your Services or accounts, including Telephone Service, in accordance with applicable law. If you have a credit due to you or a deposit is being held on any account with Ziplly Fiber, you agree that the deposit or credit may be used to offset amounts past due on any other account you may have with Ziplly Fiber without notice to you. To reconnect any terminated Services, you may be required, in addition to payment of all outstanding balances, to pay reconnect charges or trip charges (where applicable) and/or security deposits before reconnection.
- f) Ziplly Fiber may verify your credit standing with credit reporting agencies and require a deposit based on your credit standing or other applicable criteria. Ziplly Fiber may require a security deposit, or bank or credit card or account debit authorization from you as a condition of providing or continuing to provide Service. You agree that Ziplly Fiber may deduct amounts from your security deposit, bill any bank or credit card submitted by you, or use any other means of payment available to Ziplly Fiber, for any past due amounts payable by you to Ziplly Fiber, including in respect of damaged or unreturned Ziplly Equipment. Following termination, Ziplly Fiber will return to you a sum equal to the deposit, without interest unless required by law, minus any amounts due on your account, including, without limitation, any amounts due for unreturned or damaged Ziplly Equipment.
- g) If you have elected to be billed by credit card, debit card or ACH transfer, you agree that you will automatically be billed each month for any amounts due under the Agreement.
- h) Ziplly Fiber may charge fees for all returned checks and account debit, bank card or credit card chargebacks.
- i) All use of your Services, whether or not authorized by you, will be deemed your use and you will be responsible for all such use, including payment of all charges attributable to your account (for example, video on demand movies, international long distance, etc.).

ZiPLY Fiber is entitled to assume that any communications made through your Services or from the location at which you receive the Services are your communications and have been authorized by you.

- j) You acknowledge that from time to time regulatory classification of some of the Services may change resulting in changes to fees, taxes and surcharges ZiPLY Fiber may collect from its customers. Accordingly, you agree that ZiPLY Fiber has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities and/or to pay and pass them through to you. You may understand a list of the fees, taxes and surcharges that ZiPLY Fiber currently collects by writing to ZiPLY Fiber at the following address: Northwest Fiber, LLC dba ZiPLY Fiber, 135 Lake Street South, Suite 1000, Kirkland, WA 98033, Attention: Subscriber Tax Inquiries.
- k) You agree that it is your responsibility to report to ZiPLY Fiber billing errors within 30 days from your receipt of the bill so that service levels and all payments can be verified. If not reported within 30 days, you agree that all such billing errors are waived.

### **3) Installation; Equipment and Cabling**

- a) If you are not the owner of the house, apartment or other premises upon which the ZiPLY Equipment is to be installed, you warrant that you have obtained the consent of the owner of the premises for ZiPLY Fiber personnel and/or its agents to enter the premises for the purposes described in this Agreement. You agree to indemnify and hold ZiPLY Fiber harmless from and against any claims of the owner of the premises arising out of the performance of the Agreement (including costs and reasonable attorneys' fees).
- b) You authorize ZiPLY Fiber to make any preparations to the premises necessary for the installation, maintenance or removal of equipment. You authorize ZiPLY Fiber to place equipment and cables on the premises to facilitate the provision of Services to you and other locations in the area. ZiPLY Fiber shall not be liable for any effects of normal Service installation and workmanship, such as holes in walls, which may remain after installation or removal of the ZiPLY Equipment, except for damage caused by the gross negligence or willful misconduct on the part of ZiPLY Fiber. You agree to provide ZiPLY Fiber access to the premises during regular business hours upon reasonable notice to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove the ZiPLY Equipment or to install Software, to conduct service theft audits or to check for signal leakage. You agree that ZiPLY Fiber may have reasonable access to easements and ZiPLY Equipment located on the premises.
- c) The ZiPLY Equipment is and at all times shall remain the sole and exclusive personal property of ZiPLY Fiber and you agree that you do not become an owner of any ZiPLY Equipment by virtue of the payments provided for in the Agreement or the attachment of any portion of the ZiPLY Equipment to your residence or otherwise. You will not remove any markings or labels from the ZiPLY Equipment indicating ownership or serial or identification numbers.
- d) You will not use the ZiPLY Equipment for any purpose other than to use the Services in accordance with the Agreement. ZiPLY will repair and maintain all ZiPLY Equipment during the term of the Agreement. You will not allow the ZiPLY Equipment to be serviced by anyone other than ZiPLY Fiber or its agents. You will not sell, transfer, lease, encumber or assign the ZiPLY Equipment to anyone. If any ZiPLY Equipment is lost, stolen, unreturned, damaged, or otherwise disposed of by you, you will pay ZiPLY Fiber

the full manufacturer's suggested retail price for its replacement, together with any incidental costs that we incur relating to its replacement. You will not relocate the Ziplly Equipment to any other location and Ziplly Fiber shall not be liable for any damages, injuries or other occurrences resulting from any relocation.

- e) Any use of the Ziplly Equipment for unauthorized reception, theft or diversion of Services, or assisting such theft, diversion or unauthorized reception is a breach of the Agreement and potentially punishable under law (including by way of statutory damages, fines or imprisonment).
- f) If the Services are terminated, you agree that you have no right to possess or use the Ziplly Equipment. You agree that you must arrange for the return of the Ziplly Equipment to Ziplly Fiber in the same condition as when received (excepting ordinary wear and tear) upon termination of the Service. If you do not promptly return the Ziplly Equipment or schedule an appointment with Ziplly Fiber for its removal, Ziplly Fiber may enter any premises where the Ziplly Equipment may be located for the purposes of disconnecting and retrieving the Ziplly Equipment. You will pay any expense incurred by Ziplly Fiber in any retrieval. Subject to any applicable law, Ziplly Fiber shall not be obligated to retrieve any Ziplly Equipment. Ziplly Fiber will not be deemed to have abandoned the Ziplly Equipment if it does not retrieve it.
- g) If you use Customer Equipment with the Services, you represent that you either own the Customer Equipment or have the right to use it. Ziplly Fiber shall have no obligation to provide, maintain or service Customer Equipment. Any Customer Equipment must meet Ziplly Fiber's current minimum technical and other requirements as posted from time to time on the Ziplly Website. If you install or use Customer Equipment that does not meet these requirements ("Nonstandard Equipment"), you agree (i) you will not be entitled to any customer support relating the Nonstandard Equipment, and (ii) the following limitation of liability shall apply: NEITHER ZIPLY FIBER NOR ANY OF ITS AFFILIATES OR AGENTS WARRANT THAT THE NON-STANDARD EQUIPMENT WILL ENABLE YOU SUCCESSFULLY TO INSTALL, ACCESS, OPERATE OR USE THE SERVICES. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION OR USE COULD CAUSE DAMAGE TO THE NONSTANDARD EQUIPMENT. NEITHER ZIPLY FIBER NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. THE FOREGOING IS IN ADDITION TO AND SHALL NOT LIMIT ANY OTHER LIMITATION OF LIABILITY SET FORTH IN THE AGREEMENT.

#### **4) Residential Use of Services and Software**

- a) You agree that Ziplly Fiber has the right to add, modify or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements). If Ziplly Fiber changes its equipment requirements with respect to any Service, you acknowledge that you may not be able to receive such Services using your equipment.
- b) If you participate in a promotional offer for any Service that covers a specified period of time, you agree that you are assured only that you will be charged the promotional price for such Service during the time specified and, thereafter, you will be charged standard rates.
- c) You agree that the Services you have requested are residential Services, offered for reasonable personal, non-commercial use only. You will use the Services for lawful

purposes only. You will not resell or redistributed (whether for a fee or otherwise) the Services, or any portion thereof, or charge others to sue the Services of any portion thereof. You will not use the Service for any enterprise purpose, whether or not the enterprise is directed toward making a profit. You agree that, among other things, transmission or distribution of the Service to persons outside the location identified in the Work Order (even if to a limited group of people or to other residences that you own or have the right to use) will constitute an enterprise purpose. If you use a Service for an enterprise purpose, in addition to any other rights and remedies, Zply Fiber may charge you its standard commercial rate for the Service for all periods of such use (including, if applicable, back-billing you for any periods of past enterprise use).

- d) If you receive TV Service, you agree that programs and other material that you receive as part of the TV Service remain part of the TV Service even if you record or capture all or a portion of any such program or material in a data file or on a hard drive, digital video recorder or similar device.
- e) If you receive Telephone Service, you agree not to use the Service for telemarketing, call center, medical transcription or facsimile broadcasting. Further, if you use the Telephone Service for an enterprise purpose, you assume all risk of failure of the Telephone Service, including the risk of any damages from high-risk activities involving vital communications in which an error interruption in the Telephone Service could lead to material injury to business, persons, property or the environment. You shall indemnify Zply Fiber from any claims arising from an enterprise use, including but not limited to attorneys' fees and costs.
- f) If you receive Data Service, you agree that, among other things, your use of any form of transmitter or wide area network that enables a person or entities outside of the location in the Work Order to use your Service, whether a fee is sought, will constitute an enterprise purpose. Further, if you use a wireless network within your residence, you will limit wireless access to the Data Service (by establishing and using a secure password or similar means) to the members of your household.
- g) You agree that to the extent any Software is licensed or sublicensed to you by Zply Fiber, such Software is provided for the limited purpose of facilitating your use of the Services as described the Agreement. You will not engage in, or permit, any additional copying, or any translation, reverse engineering or reverse compiling, disassembly or modification of or preparation of any derivative works based on the Software, all of which are prohibited. You will return or destroy all Software provided by Zply Fiber and any related written materials promptly upon termination of the associated Services to you for any reason.
- h) You agree to be responsible for protecting the confidentiality of your screen names, passwords, personal identification numbers, parental control passwords or codes and any other security measures. You acknowledged that the Services may from time to time include interactive features, the use of which may result in the transmission to, and use by, Zply Fiber or certain third parties of the information that may constitute personally identifiable information (as such term is used in the Communications Act of 1934) about you and for which Zply Fiber may be required, under that Act, to obtain your consent. You agree that Zply Fiber may seek such consent or indications of your election to "opt in" to certain programs electronically, including through the use of a "click through" screen. Any such consent or opt in election communicated through your Services or from the location at which you receive the Services may be treated by Zply

Fiber as your consent or opt in election for the use of the personally identifiable information.

## 5) Special Provisions for Certain Services

- a) **Telephone Service.** This section applies only to those customers who subscribed to Telephone Services from Ziplly Fiber.
- i) You agree that Ziplly Fiber will not be responsible for any losses or damages arising as a result of the unavailability of the Telephone Service or the inability to contact your home security system, fire alarm system or remote medical monitoring service provider. You acknowledge that Ziplly Fiber does not guarantee that Telephone Service will operate with your home security, fire alarm and/or medial monitoring systems, and that you must contact your service provider in order to test your system's operation with the Telephone Service. You agree that a service outage due to a suspension of your account as a result of billing or other issues will prevent ALL services from being provided to you, including any 911 emergency response services.
  - ii) You acknowledge that the existing telephone wiring inside your home may not support both Telephone Service and digital subscriber line service ("DSL") internet service. If you intend to use Telephone Service on all of your phone jacks, you may be required to maintain separate wiring, not provided by Ziplly Fiber, within your home specifically for DSL or to disconnect your DSL prior to receiving Telephone Service over your existing in-home wiring.
  - iii) YOU AGREE AND UNDERSTAND THAT ZIPLY FIBER WILL NOT BE LIABLE FOR ANY TELEPHONE SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE TELEPHONE SERVICE, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL DUE TO THE 911/E911 FEATURE. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS ZIPLY FIBER, ITS OFFICERS DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICE TO YOU IN CONNECTION WITH THE TELEPHONE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES) BY, OR ON BEHALF OF, ANY THIRD PARTY OR USER OF TELEPHONE SERVICE RELATING TO THE FAILURE, OUTAGE OR MALFUNCTION OF THE TELEPHONE SERVICE, INCLUDING THOSE RELATED TO 911/E911 OF THE FAILURE, OUTAGE OR MALFUNCTION OF THE ZIPLY FIBER EQUIPMENT OR FACILITIES.
- b) **Transferring your Telephone Number**
- i) If you are switching to Telephone Service from another provider, you may transfer your existing phone number to the Telephone Service provided that (i) you request the phone number transfer when you place your order for Telephone Service, (ii) your current service provider releases your existing phone number at our request without delay or charge, (iii) the transfer of your exiting phone number to the Telephone Serviced would not, in Ziplly Fiber's view, violate applicable law or our processes and procedures, (iv) when applicable, you acknowledge and agree that if your equipment is set up before the date that the number transfer becomes effective ("Port Effective Date"), you may only be able to make limited outgoing calls. In that event, you should keep another phone connected to an existing phone extension at

- your service location to receive incoming calls until the Port Effective Date, and (v) you acknowledge and agree that to avoid an interruption in your Telephone Service, you must have the proper equipment installed before the Port Effective Date. Your existing phone service for the number you are transferring will be disconnected on the Port Effective Date; if your equipment is not yet activated, you will not have access to the Telephone Service.
- ii) To transfer your phone number from Ziplly Fiber to another provider, you must place the transfer order through your new service provider and then terminate your Telephone Service with Ziplly Fiber. Ziplly Fiber will release your phone number to your new service provider, provided that (i) your new service provider requests the transfer upon termination of your account (ii) your new service provider is willing to accept transfer of the phone number without delay or charge, and (iii) transfer of your exiting phone number to the new service provider would not, in Ziplly Fiber's view, violate applicable law or our processes and procedures.
- c) **Voice-over-Internet Protocol.** In the event you have Telephone Service which uses Ziplly Fiber's Voice-over-Internet Protocol ("VOIP") transmission service, the following additional terms will apply.
- i) The Ziplly Equipment for VOIP must be installed according to Ziplly Fiber specifications and you may not alter the equipment or your inside wiring in any way. The Ziplly Equipment is electrically powered and the Telephone Service may not operate in the event of an electrical power outage. You acknowledge that, in the event of a power outage in your home, any battery you are using, whether received from Ziplly Fiber or otherwise, may enable back-up service for a limited period of time or not at all, depending on the circumstances, and that the addition of a battery does not ensure that Telephone Service will be available in all circumstances, and that performance of any battery is not guaranteed. You also acknowledge that, in the event of a loss of power that disrupts the local Ziplly Fiber system, the battery will not provide back-up service and Telephone Service will not be available. You acknowledge and understand that the Ziplly Equipment may not have battery backup of another power source of its own. You may receive back-up batteries from Ziplly Fiber. Please see the Ziplly Website for details. If there is a power outage, you may be required to reset or reconfigure the equipment you are using prior to being able to use the VOIP Telephone Service again.
  - ii) You acknowledge that the VOIP Telephone Service may not be compatible with certain data transmission service, including but not limited to fax transmission and dial up Internet access. Other services or equipment that may not be compatible with the VOIP Telephone Service include monitored home security systems, fire alarms, medical monitoring systems and any such systems will not be available with your VOIP Telephone Service during any power outage. You may be required to maintain a separate telephone line or obtain separate equipment from your services provider in order to access such services.
  - iii) For 911/E911 to work in accordance with Ziplly Fiber's specifications, Ziplly Fiber must have a correct service address for the location of your Ziplly Equipment. If you do not provide the correct address when you register for the Telephone Service or if you relocate your Ziplly Equipment to a new address and do not register the new address with Ziplly Fiber, 911/E911 may fail: (i) the calls may be misdirected to the wrong emergency authorities or (ii) emergency authorities will be given the wrong address for the origin of the call. If you wish to relocate the Ziplly Equipment and



continue to use the VOIP Telephone Service, you must seek authorization for Telephone Service at your new service address (if available) and update your service address with Ziplly Fiber.

- iv) The VOIP Telephone Service is provided over the broadband Internet network. If there is an outage of this network, the VOIP Telephone Service will not be able to make 911 calls. Any 911 calls made using the VOIP Telephone Service may be subject to network congestion or reduced routing or processing speed. If you have Call Forwarding, Do Not Disturb, Simultaneous Ring or other features programmed and in use at the time you dial 911 and your call is interrupted, the emergency dispatcher may not be able to call you back at the phone from which you dialed the 911 call.
  - v) The VOIP Telephone Service does not allow you to make 500, 700, 900, 950, 976, 00, 01, 0+, calling card calls or dial-around calls. Nor does it allow you to accept collect calls or third number billed calls. The current charges and rates for international calling are available at [get.zipllyfiber.com/international-rates/](http://get.zipllyfiber.com/international-rates/)
  - vi) If unlimited minutes are used for non-voice calls, such as but not limited to auto dialers or data calls, we may convert the VOIP Telephone Service to a plan that charges for all long distance calls or where our systems allow, charge a 10 cents per minute rate for such calls. If your usage is inconsistent with normal residential voice applications and usage patterns and you exceed 3,000 minutes per month, we may charge you a 10 cents per minute rate for such calls.
- d) **Data Service:** This section applies only to those customers who subscribe to Data Services from Ziplly Fiber.
- i) You acknowledge that the Data Service may be offered on a tiered basis and each tier may have throughput limits (namely, limits on the maximum rate at which you may send and receive data at any time), consumption limits (namely, limits on the amount of data that you may send or receive during the course of a month or shorter periods) and other similar limits, all as set forth in the Price List or the Terms of Use. You agree that Ziplly Fiber may change the throughput, consumption and other applicable limits of any tiers by amending the Price List of the Term of Use. Your continued use of the Data Service will constitute your acceptance of any new limits. You also agree that Ziplly Fiber may use technical means, including but not limited to suspending or reducing the speed of your service, to ensure compliance with these limits and the Terms of Use, and that Ziplly Fiber may move you to a higher tier of Data Service or impose other charges and fees if your use exceeds these limits. You further agree that Ziplly Fiber has the right to monitor your usage patterns to facilitate the provision of the Data Service and to secure your compliance with the Terms of Use. Ziplly Fiber may take such steps as it determines appropriate in the event your usage of the Data Service does not comply with the Terms of Use.
  - ii) You acknowledge that, although the Data Service provides a connection to the Internet, the Internet is an international computer network that is not owned, operated or managed by, or in any way affiliated with Ziplly Fiber. Ziplly Fiber cannot and does not guarantee that the Data Service will provide Internet access that is sufficient to meet your needs. You understand that any speeds mentioned in connection with the Data Service are “up to” the mentioned speed and are not guaranteed. The actual speed and reliability of the Data Service can be affected by a number of factors, including, without limitation, the level of network traffic, the number and type of devices in use at any one time in your house, the distance

between your device and any wireless transmitting equipment, the capacity of the server you are attempting to connect to across the internet, and configuration of your computer or other device.

- iii) You acknowledge that the Data Service provides a connection to the Internet that may be unfiltered and that Ziplly Fiber neither controls nor assumes responsibility for any content on the Internet or content that is posted by a subscriber. Although Ziplly Fiber may make available certain parental control features, you acknowledge that such parental control features may not be entirely effective or foolproof and that, notwithstanding such features, you or members of your household may be exposed to unfiltered content.
- iv) You agree that Ziplly Fiber has the right, but not the obligation, to edit, refuse to post or transmit, request removal of, or remove or block any material transmitted through, submitted to or posted on the Data Service, if it determines in its sole discretion that the material is unacceptable or violates the terms of the Agreement or the Terms of Use. Such material might include personal home pages and links to other sites. In addition, you agree that Ziplly Fiber may suspend or cancel your account for using all or part of the Data Service to post content to the Internet or to engage in "peer to peer" file exchanges or other forms of file exchanges that violate the Agreement, the law or the Terms of Use.

## **6) Support and Repairs**

- a) You may request reasonable service and maintenance to check and correct problems with the Service. Ziplly Fiber will, at its own expense, repair damage to or, at its option, replace Ziplly Equipment and otherwise attempt to correct interruptions in the Service that may be due to Ziplly Equipment or technical malfunction of the system or network operated by Ziplly Fiber. The Ziplly Website contains information regarding contacting Ziplly Fiber for this support.
- b) Unless you have obtained a Ziplly Fiber service protection plan, you agree that Ziplly Fiber has no responsibility for the operation of any equipment, software or service other than the Services and the Ziplly Equipment. For example, if you receive Data Service, Ziplly Fiber has no responsibility to support, maintain or repair any equipment, software or service that you elect to use in connection with the Data Service if not provided by Ziplly Fiber. For assistance with technical problems arising from such equipment, software or services, you should refer to the materials provided by the manufacturer or provider of the software equipment or services. Further, Ziplly Fiber is not responsible for any wiring inside your home or premises. If Ziplly Fiber determines that non-Ziplly Equipment or cabling connecting your residence to the Ziplly Equipment installed on the side of or adjacent to your residence is the cause of a service problem, you agree that Ziplly Fiber may charge you to resolve such problem.

## **7) Service Interruptions and Force Majeure**

- a) You agree that Ziplly Fiber has no liability for delays in or interruption to your Services, except that if for reasons within Ziplly Fiber's reasonable control, for more than 24 hours there is a complete failure of Service. In such event, Ziplly Fiber will provide you a prorated credit for the period of such interruption or failure if you request one within 30 days of the interruption or failure. In no event shall Ziplly Fiber be required to credit you

an amount in excess of applicable service fees for the Service that was interrupted. Ziplly Fiber will make any such credit on the next practicable bill for your Services. State and local law or regulation may impose other outage credit requirements with respect to some or all of your Services. In such event, the relevant law or regulation will control.

- b) You agree that Ziplly Fiber may conduct maintenance from time to time that may result in interruption of your Service.
- c) Ziplly Fiber shall have no liability for interruption of Services due to circumstances beyond its reasonable control, including without limitation acts of God, flood, natural disaster, vandalism, terrorism, regulation or government acts, strikes, labor unrest, civil disturbance, fire, electrical power outage, computer viruses or worms.

## **8) Enforcement and Protection of Network**

- a) Ziplly Fiber may suspend or terminate all or a portion of your Services without prior notification if Ziplly Fiber determines in its discretion that you have violated the Agreement, including without limitation the Acceptable Use Policy, even if the violation was a one-time event. You agree that Ziplly Fiber shall have the right to take any action that Ziplly Fiber deems appropriate to protect the Services, Ziplly Fiber's network and facilities or the Ziplly Equipment. If all or a portion of your Services are suspended, you will not be charged for the relevant Service during the suspension. If your account is terminated, you will be refunded any pre-paid fees minus any amounts due to Ziplly Fiber.

## **9) Term and Termination**

- a) The Agreement will remain in effect until terminated by either party or superseded by revisions as provided in the Agreement.
- b) Either Ziplly Fiber or you may terminate all or any portion of your Services at any time for any or no reason, in its sole discretion, in accordance with applicable law and the terms of any marketing offers specified in the Agreement. The Agreement and/or any of the Services may be terminated by Ziplly Fiber at any time without prior notice if (i) you fail to comply in full with all the terms and conditions of the Agreement, (ii) you harass or make any express or implied threat of violence, or use derogatory language, towards any employee, representative, agent or contractor of Ziplly Fiber, or (iii) Ziplly Fiber loses the right or ability to use public rights-of-way necessary to serve you.
- c) If you are moving or wish to terminate all or any portion of your Service for any reason you must notify Ziplly Fiber as described at the Ziplly Website. All applicable fees and charges will accrue until the date of termination, but Ziplly Fiber will refund all prepaid monthly fees charged for Services after the date of termination, less any amounts due to Ziplly Fiber.
- d) You cannot terminate your Services by writing "Cancelled" (or any other messages) on your bill or check or by making a disconnect appointment that does not result in Ziplly Fiber's physical recovery of the Ziplly Equipment. In addition, you agree that any restrictive covenants (such as "paid in full"), releases or other statements on or accompanying checks or other payments accepted by Ziplly Fiber shall have no legal effect.

## 10) Disclaimer of Warranty; Limitation of Liability

- a) You agree that the Services are provided by Ziplly Fiber on an “as is” and “as available” basis without warranties of any kind, either express or implied, including without limitation warranties of title or noninfringement, or implied warranties of merchantability or fitness for a particular purpose, other than those warranties that are incapable of exclusion, restriction or modification under applicable law. Ziplly Fiber makes no warranty that the Services will be uninterrupted or error free or that the Ziplly Equipment will operate as intended. Without limiting the foregoing, Ziplly Fiber does not make any warranty as to the security of your communications or that third parties will not gain unauthorized access to or monitor your computers or online or voice communications. You agree that Ziplly Fiber will not be liable for such unauthorized access. You have the sole responsibility to secure your computer and other communications.
- b) You acknowledge that Ziplly Fiber’s installation, use, inspection, maintenance, repair, replacement or removal of the Services, Ziplly Equipment or Software may result in damage to your computers, telephones and telephone answering devices, televisions, recording and playback devices, audio equipment, and Customer Equipment, including software and data files stored thereon. You are solely responsible for backing up all existing computer or other software or data files. Ziplly Fiber shall have no liability for any damage to or loss or destruction of any equipment, software, data or electronic files resulting from a virus or other harmful feature or any attempt to remove it.
- c) In no event will Ziplly Fiber be liable for any direct, indirect, incidental, special or consequential damages arising out of the use or inability to use the Services, including the use of or inability to use emergency 911 services, or for any action taken by Ziplly Fiber to protect the Services or Ziplly Fiber’s network or facilities. **Ziplly Fiber’s liability for all categories of damages shall not exceed a pro rata credit for the monthly fees (excluding all nonrecurring charges, regulatory fees, surcharges, fees and taxes) you have paid to Ziplly Fiber for the service during the ninety (90) day period prior to when such claim arose, which shall be your sole and exclusive remedy regardless of the type of claim or nature of the cause of action, to the extent the foregoing is not limited by applicable law.**
- d) When Ziplly Fiber makes available a directory listing or telephone number publication option, if (i) any telephone number for which you have requested nonpublished status is included in any directory, any directory assistance database, or is otherwise disclosed to any unauthorized persons, (ii) any telephone number which you requested be published or listed in any directory or directory assistance database is not so published or listed, and (iii) any published or listed telephone number contains material errors or omissions, then the total liability of Ziplly Fiber and any other provider in connection with the described error or omission shall not in the aggregate exceed the monthly charges for the Telephone Service which you have actually paid to Ziplly Fiber regarding the publication or nonpublication. You shall hold Ziplly Fiber and any other provider who furnishes services to you in connection with the Agreement harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the errors and omissions described above.

## 11) Indemnification

- a) You agree to defend, indemnify and hold harmless Ziplly Fiber, its parents, affiliates and subsidiaries, and their respective owners, equity holders, officers, directors, employees,

agents, contractors and service providers from claims or damages relating to or arising out of (i) your breach of the Agreement, (ii) your use (or any use on your account) of the Services or any Zply Equipment, including but not limited to any claims or damages arising out of the malfunction or lack of 911/E911 or dialing associated with a security system, (ii) your use of the Services in violation of applicable laws or regulations, or (iv) any claims for infringement of any intellectual property rights arising from or in connection with the use of the Service on your account. You agree that none of the parties listed in this paragraph shall be responsible for any third-party claims that arise from use of the Services or the Zply Equipment and you agree to reimburse Zply Fiber for all costs and expenses related to the defense, settlement or judgement with respect to any such claims.

## 12) Arbitration

- a) If you have a Dispute with Zply Fiber that cannot be resolved through discussions and you wish to continue to pursue the Dispute, you must submit the Dispute for arbitration rather than litigate the Dispute in state or federal court, except as described in Subsection 12(e) below. The term "Dispute" means any dispute, claim or controversy between you and Zply Fiber, whether based in contract, statute, regulation, ordinance, tort (including without limitation intentional acts or omissions) or any other legal theory, including the validity, enforceability or scope of this Section 12. Arbitration means that you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. You agree that the Federal Arbitration Act governs the arbitrability of all Disputes, even if the substance of the Dispute is government by state laws or regulations.
- b) To initiate arbitration, you may open a case with the American Arbitration Association ("AAA"). The arbitration will be governed by the Commercial Arbitration Rules of the AAA. A single arbitrator will resolve the dispute and will make any award in writing with a statement of the reasons supporting the award. Any arbitrator award may be entered in any court having jurisdiction over the parties for the purposes of enforcement. The arbitration will take place at a location reasonably convenient to you and Zply Fiber in the area where you receive Service from Zply Fiber. The parties will bear their own costs and fees of arbitration.
- c) **You agree that you shall not bring any dispute to be arbitrated or litigated on a class action, consolidated or aggregated basis or based on claims brought in a purported representative capacity on behalf of the general public, other subscribers or persons. No claim or dispute subject to arbitration under the agreement may be combined with a claim subject to resolution before a court of law.**
- d) **You must give us notice of a dispute within one (1) year of the occurrence of the event or facts giving rise to the dispute (except for billing disputes about which you must contact us within thirty (30) days as provided in section 2 above). If you do not do so, you waive the right to pursue any claim or dispute based on such event or facts.**
- e) You agree that the following Disputes you may have with Zply Fiber will not be subject to arbitration: (i) any claim filed by you in which the amount in controversy is properly within the jurisdiction of court that is limited to hearing small claims, (ii) any Dispute over the validity of any party's intellectual property rights, (iii) any Dispute arising or related to allegations associated with unauthorized use or receipt of Service, and (iv) any Dispute

that can only be brought before the local franchise authority in your area under the terms of Ziplly Fiber's franchise.

### **13) Privacy**

- a) Your privacy interests, including your ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Communications Act of 1934, as amended, the Federal Communications Commission's rules regarding Customer Proprietary Network Information ("CPNI") and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in Ziplly Fiber's Privacy Policy and Subscriber Privacy Notice, each as may be amended, available on the Ziplly Website. These policies form a part of the Agreement. In addition to actions and disclosures specifically authorized by law or statute or elsewhere in the Agreement, Ziplly Fiber shall have the right (except where prohibited by law notwithstanding your consent), but not the obligation, to disclose information to protect its rights, property and operations, or where circumstances suggest that individual or public safety is in peril. You consent to such actions and disclosures.
- b) If you are a Telephone Service customer, you consent to Ziplly Fiber's disclosure of your name, address and/or telephone number to the general public in connection with Caller ID functions, telephone directories, 411 and 911 services. You also consent to Ziplly Fiber's disclosure of your personally identifiable information to the telephone companies serving those end users to whom you make calls so that the calls can be completed. If you wish to have Ziplly Fiber remove this information from one or more of these services, you understand that you must notify Ziplly Fiber to do so and pay any applicable fees.
- c) You consent to Ziplly Fiber calling or texting the phone numbers and emailing the email address you supply to it for any purpose, including the marketing of its current and future services. You agree that these emails, phone calls or texts may be made using any method, including an automatic dialing system or an artificial or recorded voice, even if the number you provide is a wireless number. Upon your request, the email address or phone number you have previously provided will be removed from Ziplly Fiber's phone and text marketing list. You can make this request by contacting Ziplly Fiber and asking to be placed on Ziplly Fiber's "Do Not Call or Email" list. You acknowledge that being included in any state or federal "do not call" registry will not be sufficient to remove you from Ziplly Fiber's email, phone and text marketing list.

### **14) Consent to Electronic Notice**

You agree that all notices required or contemplated hereunder may be provided by Ziplly Fiber via electronic means by either email or online posting at the Ziplly Website. These notices may include notices of changes to the Agreement or any associated policies and price lists. An online version of the Agreement and associated policies and price lists, as may be amended from time to time, will be available at the Ziplly Website or by calling Ziplly Fiber.

### **15) Assignment**

You understand that the Services are being provided only to the location identified on your Work Order and that you are not allowed to transfer all or any portion of the Services, or Zply Equipment, to any other person, entity or location, including a new residence. You agree that you may not assign the Agreement. Zply Fiber may transfer or assign any portion or all of the Agreement, subject to any applicable laws.

#### **16) Effect of Applicable Law**

The Agreement is subject to all applicable federal state or local laws in effect in the relevant jurisdiction in which you receive Service. If any provision of the Agreement contravenes or is in conflict with any such law or regulation, or if you are entitled to more favorable rights under any law or regulation that are set forth in any provision in the Agreement, then the terms of such law or regulation shall take priority over the relevant provision of the Agreement. To the fullest extent permitted by law, you agree that any claim you may have against Zply Fiber must be filed within one (1) year of the date such claim arose or be forever barred.

May 1, 2020