**Terms and conditions – enterprise**

1. PAYMENT & BILLING TERMS. Customer shall pay the fees and other charges for each Order.  
1.1. Billing. Billing shall begin on the date Ezee Fiber notifies Customer that services are fully available for Customer’s use (the “Commencement Date”) regardless of whether Customer has procured services from third‐party vendors (i.e., equipment suppliers, software developers, telecommunication Customers, etc.) required to operate the services, and regardless of whether Customer is otherwise prepared to accept delivery of ordered services.

1.2. Invoicing. Ezee Fiber bills for one (1) full month of Monthly Recurring Charges (“MRC”) in advance. Each MRC covers services delivered from the first of the month through the end of the month. Ezee Fiber will bill services in arrears or as otherwise provided by the Order.

1.3. First Invoice. If Customer elects to receive an invoice, the first invoice will be sent to the Customer following the Commencement Date. The invoice will include prorated MRC from the Commencement Date to the end of the month. When multiple services are included in a single Order, Customer agrees to pay Ezee Fiber the MRC and any additional charges associated with those services that are installed or activated even though the Commencement Date for the entire Order has not commenced. Invoices shall be delivered via email.

1.4. Payment of Invoices. All invoices are due upon receipt and become past due thirty (30) days from the invoice date (the “Delinquency Date”). If Ezee Fiber is not in receipt of full payment of the invoice on or before the Delinquency Date, such payment becomes a Late Payment. At Ezee Fiber’s discretion, in addition to the Customer’s obligation to pay such Late Payment, Customer will pay a Late Charge of $30.00. Additionally, interest will be charged on the Late Payment (“Late Payment Interest”) at a rate equal to 1.5% (or the highest amount permitted by law) per month. Any late payment will incur a minimum interest charge of $1.00. In no event, however, shall the charges permitted under this Section, to the extent the same are interest under applicable law, exceed the maximum lawful interest rate. Ezee Fiber shall not be prevented from exercising any of the other rights and remedies available to Ezee Fiber hereunder or under any applicable laws. Ezee Fiber shall have the right to suspend or terminate services if an account is past due for more than thirty (30) days after the Delinquency Date and Customer will be subject to a reconnect fee of $125.00 to reestablish service. If Ezee Fiber has to take action of any kind to collect any balance due, then Customer agrees to pay Ezee Fiber’s reasonable expenses, including but not limited to all reasonable and necessary attorney and collection agency fees.

1.5. Taxes and Fees. Except for taxes based on Ezee Fiber’s net income and ad valorem, personal and real property taxes imposed on Ezee Fiber’s and not Customer’s owned or leased property, Customer is responsible for payment of all property, sales, use, gross receipts, excise, building access, bypass, franchise, or other local, state, and federal taxes and/or fees, however designated, imposed on, or based upon the provision of the services.

1.6. Disputed Invoices. If Customer reasonably disputes any portion of an Ezee Fiber invoice, Customer must pay the undisputed portion of the invoice in accordance with the terms and conditions of these Terms and Condition or associated Order and submit a written claim to Ezee Fiber for the disputed amount. All claims must be submitted to Ezee Fiber within sixty (60) days from the invoice date for those services. Customer waives the right to dispute any charges not disputed within the time frame set forth above. In the event the dispute is resolved against Customer in accordance with the procedures hereunder, Customer shall pay such amounts plus interest within ten (10) business days of receipt of notice of the determination from Ezee Fiber.

1.7. Credit Review and Other Assurances. In order to support Customer’s payment obligation, Ezee Fiber may perform a credit review of Customer from time to time. Based on Customer’s credit review and/or other information available to Ezee Fiber (including any history of delinquent payments), Ezee Fiber may require at any time Customer provide adequate assurances that Customer will pay all obligations as they become due. To avoid confusion, Customer understands that Ezee Fiber may require Customer to provide a deposit either as a condition precedent to the beginning new Services and/or any time during existing Services.

1.8. The Service Term for each order will commence on the date the Service is made available to the Customer (the “Commencement Date”).The Service Term for each Service will automatically extend for consecutive one (1) year renewal terms, unless either party notifies the other party of its intent not to renew the Service at least thirty (30) calendar days prior to the expiration of the then-current Service Term. Upon each renewal, the MRC for the Service will be rerated to Ezee Fiber’s then-current standard rates unless otherwise provided in the applicable Service order.

2. **INSTALLATION, CANCELLATION, ASSIGNMENT AND SERVICE PORTABILITY.**  
2.1. Customer may cancel an existing Service (a “Cancelled Service”) without incurring any cancellation or early termination fees or penalties, so long as:

2.1.1. The Cancelled Service has not been installed, constructed fully or partially, and is not in use; and

2.1.2. The Cancelled Service is replaced with another On‐Net Service having equal or greater On‐Net Service MRCs and equal or greater term commitment (the “Replacement Service”); and

2.1.3. The Replacement Service is ordered within thirty (30) calendar days of the effective date of the cancellation of the Cancelled Service (the effective date of cancellation being the “Cancellation Date”); and

2.1.4. Ezee Fiber determines, in its sole discretion, that adequate capacity is available on the Ezee Fiber Network for the Replacement Service; and

2.1.5. Customer is not otherwise in breach of the Agreement.

2.2. If Customer fails to meet any of the above criteria for any Cancelled Service, Customer shall pay all applicable early termination fees for such Cancelled Service. Customer shall also be liable for any third‐party expenses, Special Construction costs, permitting or any charges which are charged to Ezee Fiber by a third party because of any Cancelled Service. Additionally, if the Service has been delivered, an Early Termination fee equal to the amount of 100% of the remaining Term, plus any outstanding amounts due.

2.3. If the Customer sells, transfers or substantially transitions 51 percent or more of its ownership by way of investors, mergers or reorganization of the Company and the new ownership or controlling party has a financial standing and creditworthiness equal to or better than the original Customer/Company, and that controlling party accepts the terms of the original order(s) by means of a written notice by the customer to the company within 30 days of the transition, the new controlling party will become the Customer of record to the order(s). If the new controlling party does not accept these terms, the Customer will be subject to and immediately owe all early termination fees, construction costs, plus any discounts, waved fees, and any waved or discounted installation charges received by the original Customer/Company.

2.4. To exercise this portability option, Customer must, prior to the date that Customer cancels the Service, notify Ezee Fiber in writing of its intent to replace a Cancelled Service with a Replacement Service. Ezee Fiber shall credit Customer all applicable early termination fees and or construction charges charged to Customer’s account if Customer orders the Replacement Service within thirty (30) days of the Cancellation Date. Notwithstanding the foregoing, in no event shall Customer be credited back for any On‐Net Service installation non‐recurring costs or any third‐party expenses that were charged for any Cancelled service which Customer cancels pursuant to this Section.

3. **Special Construction, Non-Recurring or Acquisition** Costs. Notwithstanding anything to the contrary in this Agreement, If Customer cancels this Agreement or any Service Order involving construction or acquisition after the acceptance of a Service Order but prior to the Service Commencement Date, Customer shall reimburse Ezee Fiber for all unpaid costs and expenses incurred by Ezee Fiber in connection with the construction or acquisition up to the time of cancellation. This payment obligation is in addition to any early termination charges and or any other rights and remedies Ezee Fiber may have at law, in equity, or as provided in this Agreement and or Service Order.

4. **Prior to Installation**, Ezee Fiber may notify Customer in writing (including by email) of any price increase due to an off-net vendor increasing the cost or increased construction costs to deliver the service. Customer will have 5 business days following the notice to terminate the affected order without liability; or otherwise, Customer is deemed to accept the increase.

5. **The Customer agrees and will be responsible to pay any Building access charge**, fees or other costs that your Building ownership, Management or Landlord or sub-lessor may levy in the course of Ezee Fiber delivering service to you. Any charges received by Ezee fiber from your building management, ownership, sub-lessor or landlord will be passed through to you on your monthly invoice.

6. **INDEMNITY & LIMITATIONS OF LIABILITY**. Subject to any other provision, Customer shall defend, indemnify and hold harmless Ezee Fiber from and against any loss, debt, liability, damage, obligation, claim, demand, judgement or settlement of any nature or kind, known or unknown, liquidated or unliquidated, of any third party, including without limitation all reasonable costs and expenses, such as reasonable litigation costs and attorneys’ fees (“Claim”), relating to damage to tangible property or bodily injury, or wrongful death, to the extent such Claim arises out of the negligence or willful misconduct of the Customer or Ezee Fiber, its employees, agents or contractors in connection with these Terms and Conditions or the provision of Services hereunder. THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION SHALL APPLY PROPORTIONALLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF EZEE FIBER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS

6.2. Customer Indemnity. Customer agrees to release, defend, indemnify and hold harmless Ezee Fiber, its officers, directors, employees, contractors and agents from and against any Claim to the extent such Claim is brought by Customer and arises out of an alleged defect in or failure of Service; or (ii) arises out of or relates to the content transmitted over Ezee Fiber’s network, whether sent by Customer, including without limitation, claims relating to any violation of copyright law, export control laws, or that such transmissions are libelous, slanderous or an invasion of privacy or illegal. THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION SHALL APPLY PROPORTIONALLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF EZEE FIBER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.

6.3. Damages / Causes of Action.

6.3.1. For purposes of this Section, the term “Ezee Fiber” shall be deemed to include Ezee Fiber, its Affiliates, owners, directors, officers, employees, and any person or entity assisting Ezee Fiber in its performance pursuant to this Agreement.

6.3.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF EZEE FIBER TO CUSTOMER, (A) FOR BODILY INJURY OR DEATH TO ANY PERSON OR FOR DAMAGE TO ANY REAL OR TANGIBLE PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EZEE FIBER SHALL BE LIMITED TO CUSTOMER’S RIGHT TO PROVEN DIRECT DAMAGES, AND (B) FOR ALL OTHER DAMAGES OTHER THAN THOSE SET FORTH IN SUBSECTION (A) AND NOT OTHERWISE EXCLUDED OR LIMITED BY THIS AGREEMENT, SHALL, IF EZEE FIBER IS JUDICIALLY DETERMINED TO HAVE SOME LIABILITY TO CUSTOMER, FOR WHATEVER REASON, ARISING UNDER OR RELATED TO ACTS OR OMISSIONS RELATED TO THIS AGREEMENT, IN THE AGGREGATE FOR ALL SUCH ACTS OR OMISSIONS, BE LIMITED TO AN AMOUNT EQUAL TO THE RECURRING CHARGES UNDER THIS AGREEMENT FOR THE FIRST TWO (2) MONTHS OF THE TERM HEREOF.

6.3.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EZEE FIBER SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY CUSTOMER OR ANY END USER ARISING FROM OR RELATED TO ANY FORCE MAJEURE EVENT.

6.3.4. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL CUSTOMER OR EZEE FIBER OR THEIR RESPECTIVE AFFILIATES BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE (OTHER THAN SUCH DAMAGES AS MAY BE INCLUDED AS A COMPONENT OF LIQUIDATED DAMAGES OR TERMINATION CHARGES UNDER THESE TERMS AND CONDITIONS) SUFFERED BY SUCH OTHER PARTY AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS, OR ITS ACTS OR OMISSIONS RELATED TO THESE TERMS AND CONDITIONS WHETHER OR NOT ARISING FROM SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF INDEMNITY PROVISIONS, BREACH OF WARRANTY OR ANY OTHER THEORY OR SOURCE, WHETHER OR NOT FORESEEABLE AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY THEREFROM. IN ADDITION, EZEE FIBER SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, AUTHORIZED EQUIPMENT, SERVICES, CONTENT OR NETWORKS NOT PROVIDED BY EZEE FIBER; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS (EXCEPT TO THE EXTENT OF SERVICE CREDIT ALLOWANCES SPECIFIED IN THE RELEVANT PRODUCT SUPPLEMENT) OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER’S OR ANY THIRD PARTY’S APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

6.3.5. THE INDEMNIFIED PARTY SHALL PROMPTLY NOTIFY THE INDEMNIFYING PARTY IN WRITING OF ANY CLAIMS WHICH ARE SUBJECT TO THE TERMS OF THIS SECTION 6. THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT AT ITS OWN EXPENSE TO APPOINT ITS OWN COUNSEL WHO SHALL BE ENTITLED TO PARTICIPATE IN ANY SETTLEMENT NEGOTIATIONS OR LITIGATION REGARDING ANY MATTER FOR WHICH IT IS ENTITLED TO BE INDEMNIFIED HEREUNDER. THE INDEMNIFYING PARTY SHALL NOT AGREE TO ANY SETTLEMENT OR CONSENT TO ANY DECREE, ORDER OR JUDGMENT WITHOUT OBTAINING THE CONSENT OF THE INDEMNIFIED PARTY, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD.

6.4. Limitation of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, EZEE FIBER MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, INFRINGEMENT, TITLE, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SERVICES PROVIDED OR NOT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY EZEE FIBER ARE HEREBY EXCLUDED AND DISCLAIMED. CUSTOMER AGREES THAT EZEE FIBER DOES NOT MONITOR, EXERCISE CONTROL OVER, NOR ACCEPT RESPONSIBILITY FOR THE CONTENT OF THE INFORMATION OR DATA PASSING THROUGH OR CONTAINED WITHIN EZEE FIBER’S FACILITIES, HOST COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE (THE “EZEE FIBER NETWORK”) OR THE INTERNET, OR THE CONTENT OF THE INFORMATION RESIDING ON THE CUSTOMER’S EQUIPMENT OR TRANSMITTED OVER ITS NETWORK, AND IS NOT LIABLE FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM THE CUSTOMER OR STORED BY CUSTOMER OR ANY OF CUSTOMER’S CLIENTS VIA THE SERVICES PROVIDED BY EZEE FIBER. CUSTOMERS SHALL INDEMNIFY AND HOLD EZEE FIBER HARMLESS FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR RELATED TO CUSTOMER’S CONTENT OR USE OF ANY INFORMATION RESIDING ON CUSTOMER’S EQUIPMENT OR TRANSMITTED OVER ITS NETWORK. USE OF ANY INFORMATION OBTAINED VIA EZEE FIBER’S SERVICES IS AT CUSTOMER’S OWN RISK. EZEE FIBER SPECIFICALLY DENIES ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH ITS SERVICES. IN THE EVENT THAT EZEE FIBER PROVIDES CUSTOMER WITH PRODUCTS IN CONJUNCTION WITH THE SERVICES (I.E., THIRD PARTY SOFTWARE PRODUCTS OR EQUIPMENT), EZEE FIBER ALSO PROVIDES SUCH PRODUCTS AS IS WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, OR IMPLIED. No Service Level Agreement or service credits shall apply to the services provisioned under a Business Class Internet Service Order.

6.5. Survival and Duration. These indemnification provisions and obligations shall survive these Terms and Conditions and as set forth, represent the entire liability of Ezee Fiber and Customer’s sole and exclusive remedies, with respect to any claim subject to indemnification under these Terms and Conditions.

7. **NETWORK DISRUPTIONS & SECURITY**

7.1. Ezee Fiber shall have no liability whatsoever for any damage to, loss or destruction of any of Customer’s hardware, software, files, data or peripherals caused by network disruptions. The installation, use, inspection, maintenance, repair and removal of the Authorized Equipment may result in network disruptions, service outages or potential damage to Customer’s network operations. Customer therefore agrees to take reasonable precautions during use of the Services. In the event of an emergency, Ezee Fiber has the right to perform maintenance and/or restoration of its facilities, including but not limited to actions required to restore continuity to a severed or partially severed fiber optic cable, restore dysfunctional power and ancillary support Authorized Equipment, or correction of any potential jeopardy conditions. Ezee Fiber shall notify Customer as soon as is reasonably practicable of any further disruptions to Services related to the emergency event.

7.2. Ezee Fiber shall not be liable for any third‐party network breaches or hacks of or into Customer’s, equipment, software or hardware. Customer assumes the risk of any unauthorized third‐party access or hack to Customer’s network. Ezee Fiber makes an effort to keep its network secure but no network is perfect. Customer should take whatever steps it deems necessary to ensure its data is not accessed by unauthorized third parties.

8. **GENERAL TERMS**

8.1. Severability. If any provision of these Terms and Conditions shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of these Terms and Conditions shall remain in full force and effect.

8.2. Force Majeure. Neither party shall be liable to the other or in default of these Terms and Conditions, nor shall any credit allowance or other remedy be extended, for any failure of performance or Authorized Equipment due to causes beyond such party’s reasonable control including but not limited to any catastrophic event, earthquakes or other Acts of God, wars, civil disturbances, revolts, sabotage, theft, vandalism, transportation disasters, explosions, fire, acts or omissions of suppliers, fiber/cable cut, equipment or power failure, rodent damage, flood, any law, order or regulations or requests of any governmental entity, national emergency, terrorist activities, insurrections, riots, any acts or restraints of government or any regulatory authority, work stoppages or disruptive labor activities, global or natural disasters or like events, lack or delay in transportation, or failure of a third party to grant or recognize a right beyond the reasonable control of the party delayed. Both parties shall be excused from such performance to the extent, but only to the extent, that it is prevented, hindered or delayed by such causes. Upon the occurrence of any of such events, the party whose performance is prevented, interrupted, hindered or delayed shall give reasonable notice to the other party, updating such notice at regular intervals regarding such event and the effect thereof and use reasonable efforts to continue performance notwithstanding such cause. Financial inability to perform shall never be deemed a force majeure event unless it is caused by a moratorium on banking operations.

8.3. Notices. Any Notice required hereunder shall be in writing. Notices hereunder shall be deemed properly given when delivered. If delivered in person, or when sent via facsimile, overnight courier, electronic mail or when deposited with the U.S. Postal Service and properly addressed. Customer shall notify Ezee Fiber of any changes to its address listed on any Service Order. For Service Discontinuation, Customer must send a request to support@ezeefiber.com or to Ezee Fiber at 5959 Corporate Dr Suite 2000, Houston, TX US 77036, or such other address as Ezee Fiber may specify from time‐to‐time.

8.4. Governing Law. The validity, interpretation, enforceability and performance of these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Texas.

8.5. Jurisdiction & Venue. ALL PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE DISTRICT COURT OF HARRIS COUNTY, TEXAS AND HEREBY AGREE THAT ANY SUCH COURT AND ONLY SUCH COURT SHALL BE THE PROPER FORUM AND VENUE FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER. EACH PARTY WAIVES ALL DEFENSES OF EACH OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS. PROCESS MAY BE SERVED ON EITHER PARTY IN THE MANNER AUTHORIZED BY APPLICABLE LAW OR COURT RULE. ALL PARTIES EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ISSUE OR DISPUTE BETWEEN THEM AND EXPRESSLY AGREE ANY CLAIM WHICH IS TRIED WILL BE TRIED TO THE COURT WITHOUT A JURY.

9. **CONTRACT INTERPRETATION**. Ambiguities, inconsistencies, or conflicts in this Agreement shall not be strictly construed against the drafter of the language but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties’ intentions at the time this Agreement is entered into.

10. **ATTORNEYS’ FEES**. The Parties agree that if either Party to these Terms and Conditions brings any civil action related in any manner to these Terms and Conditions, the prevailing party in such civil action shall recover all its reasonable attorneys’ fees and litigation expenses incurred from the non‐prevailing Party.

11. **DISPUTE RESOLUTION**. Except under circumstances requiring immediate injunctive relief, any dispute, controversy or claim arising out of or relating to these Terms and Conditions, the Parties’ performance under it, or its breach (“Dispute”) shall, upon the written request of either Party, be dealt with in accordance with the dispute resolution process described below before resorting to litigation.

11.1. Executive‐Level Negotiations. If any Dispute is not resolved promptly in the ordinary course of business, either Party may request to resolve such Dispute through face‐to‐face executive level negotiations, as provided herein, before resorting to litigation. Any such executive level negotiations shall be initiated within five (5) business days (or such other period as the Parties shall otherwise agree) of the date of written notice from the requesting Party to the other Party of the Dispute (“Negotiation Notice”), which Negotiation Notice shall be delivered to the other Party in accordance with the notice section of the applicable, disputed Service Order, and shall: (i) outline the allegations that form the basis of any anticipated compliant; (ii) invite a written response within a reasonable period of time; and (iii) request to initiate to executive level negotiations within the aforementioned five (5) day time period. All executive Level negotiations shall be conducted by a management representative of each Party with authority to settle the Dispute. Either Party may elect, upon two (2) business days written notice to the other Party, to bring its legal counsel to such executive level negotiations. The location, form, frequency, duration and conclusion of the executive level negotiations will be at the discretion of the Parties’ representatives; provided, however, that either Party shall be entitled to terminate executive level negotiations at any time.

11.2. Non‐Binding Mediation. If the Parties do not resolve the Dispute in accordance with the negotiation process set forth above, the Dispute must be submitted to non‐binding mediation before an independent mediator, who shall be mutually designated and agreed upon by the Parties. All costs associated with non‐binding mediation shall be borne equally by the Parties.

11.3. Settlement. Completion of Dispute Resolution Process. All matters resolved pursuant to this Section shall be documented through the Parties’ execution of a written settlement agreement. The Parties agree that the refusal or failure of either Party to participate in executive level discussions, as described herein, or to otherwise engage in good faith informal dispute resolution efforts, including but not limited to non‐binding mediation above, shall constitute an unjust and unreasonable practice. In the event any Dispute is not resolved through the dispute resolution process set forth herein, either Party may seek any legal remedies to which it may be entitled before any Harris County State District Court.

11.4. Effect of Dispute Resolution. All conferences, discussions and correspondence that occur in connection with the dispute resolution procedures conducted shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence, or used for impeachment or for any other purpose, in any current or future litigation. Unless otherwise agreed, each Party shall bear its own costs and expenses, including attorneys’ fees, incurred in connection with the dispute resolution process, except that the expenses and fees for independent mediation services, and for any independent facilities used for mediation, if any, shall be shared equally between the Parties.

12.0. **Amendment, Revision or Modification.** This Agreement and Terms and Conditions may be amended, revised or modified by Ezee Fiber Texas, LLC at any time and without notice to Customer, provided that the amended, revised or modified document is reasonably made available to customer within 30 days of any amendment, revision or modification.

**13. CONSENT TO COMMUNICATIONS FROM EZEE FIBER**

Customer agrees that Ezee Fiber or third parties acting on Ezee Fiber’s behalf may call, text, or email Customer at any telephone number or email address that Customer provide to Ezee Fiber or that Ezee Fiber issues to Customer, and may do so for any purpose relating to Customer account and/or the Services to which Customer subscribe. Call, message, and data rates may apply depending on Customer wireless plan. If Customer has any questions about Customer SMS/Text or data plan, please consult Customer wireless provider. Customer expressly consent to receiving such calls, texts and emails and agree that these calls, texts, and emails are solicited. Customer understand and acknowledge that calls and texts may entail the use of an automatic telephone dialing system and/or artificial or prerecorded messages. Additionally, Customer may text "STOP" to 713-352-0100 to cancel SMS messaging. After Customer send the message "STOP", we will send Customer a reply message to confirm that Customer have unsubscribed from this SMS/Text message service. Once the unsubscribed message is received from Ezee Fiber, Customer will no longer receive SMS/Text messages from us. Customer understand and acknowledge that these are the exclusive means of opting out of such communications. Customer may not opt-out of receiving certain communications pertaining to Customer account, including but not limited to communications regarding emergencies, fraud or other violations of law, security issues, and harm caused to the network. Message frequency may vary and depends on Customer activity with Customer Services. To join again, Customer may subscribe as Customer originally had, and we will continue sending these informational messages to Customer once again. If Customer have any questions regarding Customer privacy while using this service, please read our Privacy Policy. For all questions regarding our SMS/Text message service, Customer may send an email to support@ezeefiber.com.

**14.0 Third Party Software.**

14.1 Software License. The software which is embedded in the Service equipment in order to provide the Service (the “Software”) is only licensed to Customer. Ezee Fiber and its providers retain title, all ownership and intellectual rights and interests in the Software. Customer will not modify, adapt, alter, decompile, disassemble, reverse assemble, reverse engineer or otherwise attempt to derive source code of the Software. Customer may not distribute, license, lease, rent, loan, or otherwise transfer the Software. Customer will not create derivative works based on the Software. Customer may not export the Software or the underlying technology in contravention of the applicable U.S. and foreign export laws and regulations. Customer will be required to accept the end use license agreement presented to Customer in a click-to-agree format during the initial license installation login process.

14.2 Content Liability. Customer is solely liable and responsible for the content, data and communications applicable to the Service. Customer acknowledges that Ezee Fiber will have network access to communicate with the Service equipment for purposes such as authentication and Software updates; and will have access to, and may utilize for any purpose all information regarding networking characteristics, usage, performance and related information involved in the use of the Service.

14.3 Fraudulent Use of Service. Ezee Fiber will not be held liable for any usage, charges and / or damages resulting from Customer’s fraudulent, illegal or unauthorized use of the Service, Software and / or Service equipment. Customer will not use the Service in any unlawful, abusive, or fraudulent manner. If Ezee Fiber has reason to suspect Customer is abusing the Service or using them fraudulently or unlawfully, Ezee Fiber reserves the right to immediately suspend, restrict, or terminate the Service without notification. In such an event, Customer will be held liable for all usage, including but not limited to, any and all fraudulent usage. Further, Customers with unlimited usage plans may be subject to usage charges for use deemed excessive or atypical outside of standard business customer usage, as determined by Ezee Fiber.

**15. E911.**

E911 services will not operate in the event that Customer’s internet connection or electrical power fails for any reason or the Service has been suspended for any reason, include, for example, nonpayment. Once customer’s internet connection and Service has been restored, Customer may be required to reset or reconfigure equipment before Customer will be able to use the Service to dial E911.

15.1 Customer shall notify and inform each end-user that: (a) E911 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) E911 calls will be misdirected if the IP phone or Softphone is moved without registering its new location, and (c) the IP phones and softphones 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.

15.2 End-users must provide Ezee Fiber with their correct physical service address, including providing updated physical service address , or E911 service calls may be routed to incorrect emergency personnel who will not be able to provide assistance. End-users must contact Ezee Fiber to update end-user location information.

15.3 Ezee Fiber recommends that end users maintain an alternate means of contacting E911 services (e.g. cellular network, home phone, desk phone) and suggests that Customer advise its end-users that using an alternate means of dialing E911 from a fixed location is preferable.

15.4 To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless Ezee Fiber and its parent, subsidiaries, Affiliates, partners, directors, officers, employees, representatives, agents, successors, and assigns (each, an “Indemnified Party”) from and against any and all liabilities, obligations, proceedings, actions, suits, claims, damages, costs, fines, penalties, expenses and fees (including reasonable legal fees and costs) arising out of or related to the absence, failure or outage of the Service, including access to E911, incorrectly routed E911 calls, and / or the inability of any end-user of the Service to be able to access E911 services or access emergency service personnel, or Customer's obligations, liabilities, performance, breach or failure to perform herein.

15.5 Ezee Fiber is not responsible for any losses, claims, demands, suits or any liability whatsoever (“**Losses**”), including without limitation (i) Losses to or relating to Customer or a third party; (ii) Losses for any bodily injury or property damages; or (iii) Losses claimed to have been caused by: (a) mistakes, omissions, interruptions, delays, errors or other defects in the provision of E911, or (b) installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of any equipment and facilities furnishing the Service. Further, Ezee Fiber is also 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 E911 service and the equipment associated therewith, or by any Services furnished by Ezee 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 E911 service, and which arise out of the negligence or other wrongful acts of Ezee Fiber, Customer, its users, agencies or municipalities, or the employees or agents thereof.