

# COMMERCIAL TERMS OF SERVICE

These Commercial Terms of Service, including all Attachments, Service Orders and other documents identified hereunder, each of which are incorporated herein by reference (collectively, the "Service Agreement" or "Master Agreement") by and between Customer and SimpleFiber Business Solutions Communications Operating, LLC on behalf of those operating subsidiaries providing the Service(s) hereunder ("SimpleFiber Business Solutions") (collectively, the "Parties" or each individually a "Party") for the services specified (the "Services") in each respective service order (each a "Service Order"). The Attachments to these Commercial Terms of Service ("Attachments") further describe SimpleFiber Business SimpleFiber Business Solutions' Services.

Customer should consult SimpleFiber Business SimpleFiber Business Solutions' website [www.simplefiber.com](http://www.simplefiber.com) to be sure Customer is aware of and remains in compliance with the Service Agreement, including all incorporated documents governing the services provided to the Customer ("Service" or "Services") by SimpleFiber Business Solutions. Customer's continued use of the Services shall be deemed acknowledgment that Customer has read and agreed to the provisions set forth in this Service Agreement.

Customer understands and agrees that certain Services may not be available in all SimpleFiber Business Solutions service areas and that upon entering into a Service Order with Customer, SimpleFiber Business Solutions, at its discretion, may utilize one or more third parties to deliver the Services (the latter, "Third Party Services"). The Third Party Services may be subject to additional terms and conditions.

## GENERAL

- 1. SERVICE AGREEMENT TERM.** This Service Agreement shall be effective upon the latest date of the signatures required hereto. This Service Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Service Agreement.
- 2. SERVICES.** Customer shall request Services hereunder by submitting orders in a manner required by SimpleFiber Business Solutions which may include orders placed via telephone, online or paper. Upon SimpleFiber Business SimpleFiber Business Solutions' acceptance of a service order(s), as indicated either by SimpleFiber Business SimpleFiber Business Solutions' written acceptance or by SimpleFiber Business SimpleFiber Business Solutions' delivery of the Services, such service order(s) shall be deemed an "Order" (or Service Order) hereunder and shall be deemed incorporated into this Service Agreement.
- 3. ORDER TERM.** "Order Term" (or "Service Period") is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).

Unless otherwise set forth in an accepted Service Order, the initial (or minimum) term for Service is one (1) month from the Turn-up Date and the minimum charge is the established MRC (defined below) for one (1) month.

Upon expiration of the initial Order Term, the applicable Service Order shall automatically renew for 12 months unless either SimpleFiber Business Solutions or Customer elects to not renew the Order Term by written notice provided to the other at least 60 days in advance of the expiration of the then-current Order Term.

- 4. SERVICE LOCATION.** SimpleFiber Business Solutions shall provide the Services to Customer at the Service address ("Service Location").
- 5. AVAILABILITY OF FACILITIES.** Services and associated products, facilities, equipment, features and functions will be available in accordance with the Service Agreement, where technically and operationally feasible. SimpleFiber Business SimpleFiber Business Solutions' obligation to furnish Services is dependent upon its ability to secure and retain, without unreasonable expense, suitable facilities and rights for the construction and maintenance of the necessary facilities, pole lines, circuits and equipment and to provide for the installation of those facilities required incident to the furnishing and maintenance of that Service.

SimpleFiber Business Solutions may limit communications, refuse to provide Services or discontinue Services when necessary because of (i) the lack of transmission medium, transmission capacity or any other facilities or equipment, (ii) the lack of available services from or interconnection with the services or facilities of other providers, (iii) any cause

beyond SimpleFiber Business SimpleFiber Business Solutions' control, (iv) any order, law, rule, regulation or ordinance that in any way restricts the provision or operation of the Services or iv) in the event of any prohibited use, as described herein or in any Attachment.

## 6. SERVICE LOCATION ACCESS AND INSTALLATION.

- (a) Access. SimpleFiber Business Solutions will require reasonable access to each Service Location as necessary for SimpleFiber Business Solutions to review, install, inspect, maintain or repair any SimpleFiber Business Solutions-provided equipment ("Equipment") necessary to provide the Services.
- (b) If Customer owns or controls the Service Location(s), Customer grants SimpleFiber Business Solutions permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with SimpleFiber Business Solutions' reasonable assistance, appropriate right of access. If such right of access for SimpleFiber Business Solutions is not obtained by either Party, then SimpleFiber Business SimpleFiber Business Solutions' obligations with respect to such Service Location shall terminate and be considered null and void. Customer shall perform interconnection of the Services and SimpleFiber Business Solutions Equipment with any Customer or End User equipment, unless otherwise set forth in an Attachment or agreed in writing between the Parties. (c) Installation Review. SimpleFiber Business Solutions may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide SimpleFiber Business Solutions with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review.

If SimpleFiber Business Solutions determines that safe installation and/or activation of one or more of the Services will have negative consequences to SimpleFiber Business SimpleFiber Business Solutions' personnel or communications network ("Network") or otherwise cause technical difficulties to SimpleFiber Business Solutions or its customers, SimpleFiber Business Solutions may terminate the respective Service(s) effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

- (d) Subsequent Interference. If during the initial or any renewal Order Term, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than SimpleFiber Business Solutions or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure SimpleFiber Business SimpleFiber Business Solutions' personnel, Equipment, or Network and/or cause technical difficulties to SimpleFiber Business Solutions or its customers, SimpleFiber Business Solutions may terminate the affected Service Order(s) without liability upon written notice to Customer.
- (e) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by SimpleFiber Business Solutions.

Customer shall not charge SimpleFiber Business Solutions, and shall ensure that SimpleFiber Business Solutions does not incur, any fees or expenses whatsoever in connection with Customer's provision of space, power, or access as described herein, or otherwise in connection with Customer's performance of its obligations pursuant to this section; and any such fees or expenses charged by any other end user accessing or using the Services ("End User") shall be borne solely by Customer.

- (f) Installation. SimpleFiber Business Solutions will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation.

If during the course of installation SimpleFiber Business Solutions determines additional work is necessary to enable SimpleFiber Business Solutions to deliver the Services to the Service Location, SimpleFiber Business Solutions will notify Customer of any one time charges ("OTC"). If Customer does not agree to pay such OTC by executing a revised Service Order within five business days of receiving the same, Customer and SimpleFiber Business Solutions shall each have the right to terminate the applicable Service Order. OTC may include construction costs, additional Service installation charge(s), repair, replacement, and/or any other nonrecurring costs or charges. Customer shall connect Customer's computer or network to applicable Equipment to enable access to the Services.

SimpleFiber Business Solutions shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation and for those damages directly caused by SimpleFiber Business SimpleFiber Business Solutions' faulty workmanship or installation of the Service, provided that the boring of holes or insertion of fasteners through the surface of walls for attachment of peripheral equipment will not be deemed damages but rather part of normal workmanship.

At the Customer's request, SimpleFiber Business Solutions may perform installation or maintenance on weekends or times other than during normal business hours; provided, however, Customer may be assessed reasonable, additional OTC based on SimpleFiber Business SimpleFiber Business Solutions' actually incurred labor, material or other costs for such non-routine installation or maintenance.

If the installation and maintenance of Service are requested at locations which are or may become, in SimpleFiber Business SimpleFiber Business Solutions' sole opinion, hazardous or dangerous to SimpleFiber Business SimpleFiber Business Solutions' employees or the public or property, SimpleFiber Business Solutions may refuse to install and maintain such Service, and, if such Service is furnished, may require the Customer to install and maintain such Services. In the event of such hazardous or dangerous conditions, Customer shall defend, indemnify, and hold SimpleFiber Business Solutions harmless from any claims, loss, damage, or other liability arising from the installation or maintenance of such Service.

SimpleFiber Business Solutions shall use reasonable efforts to make Services available by the estimated service date set forth in the Service Order. SimpleFiber Business Solutions shall not be liable for any damages whatsoever resulting from delays in meeting the estimated service date due to delays resulting from normal installation procedures or events beyond SimpleFiber Business SimpleFiber Business Solutions' control.

Examples of delays of installation include, without limitation, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right-of-way approvals, delays in actual construction work being done by SimpleFiber Business SimpleFiber Business Solutions' vendor(s), and any delays due to any other provider(s) where SimpleFiber Business Solutions is relying upon such provider(s) to meet such estimated due date which is beyond SimpleFiber Business SimpleFiber Business Solutions' control.

In the event that SimpleFiber Business Solutions is unable to install the Service in accordance with the agreed upon schedule as a result of

(i) Customer's (or any End User's) failure to deliver any required materials, support or information to SimpleFiber Business Solutions; (ii) Customer's (or any End User's) failure to provide access to a Service Location; or (iii) SimpleFiber Business Solutions not being able to obtain access to equipment or software at the Service Location as necessary for installation of the Service, then Customer shall pay SimpleFiber Business Solutions a OTC at SimpleFiber Business SimpleFiber Business Solutions' then prevailing rates for any installation trip made by SimpleFiber Business Solutions and an additional OTC for each subsequent trip necessary to perform the Service installation.

(g) Ongoing Visits. SimpleFiber Business Solutions will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, SimpleFiber Business Solutions will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering the Service Location. At SimpleFiber Business SimpleFiber Business Solutions' request, Customer, or a representative designated by Customer, will accompany SimpleFiber Business SimpleFiber Business Solutions' employees or agents into any unoccupied unit for any purpose relating to the Equipment.

## **7. EQUIPMENT AND MATERIALS.**

(a) Responsibilities and Safeguards. Except as otherwise provided in this Service Agreement or any Service Order(s), neither Party shall be responsible for the maintenance or repair of cable, electronics, structures, equipment or materials owned by the other Party; provided, however, that subject to the indemnification limitations set forth in this Service Agreement, each Party shall be responsible to the other for any physical damage or harm such Party causes to the other Party's personal or real property through the negligence or willful misconduct of such damage causing Party. Customer shall:

i. Safeguard Equipment against others;

ii. Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment; iii. Not hire nor permit anyone other than personnel authorized by SimpleFiber Business Solutions, acting in their official capacity, to perform any work on Equipment; and

iv. Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of SimpleFiber Business Solutions.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, Termination of this Service Agreement and/or legal action, and SimpleFiber Business Solutions shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Service Agreement, in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed at the Service Location which interferes with the Services, SimpleFiber Business Solutions shall not be obligated to distribute a signal to the

Service Location better than the highest quality which can be furnished without additional cost to SimpleFiber Business Solutions as a result of such interference, until such time as the interference is eliminated.

Customer shall be solely responsible for securing and maintaining any and all Customer equipment, including, but not limited to, Private Branch Exchanges (including other non-SimpleFiber Business Solutions switches, collectively, "PBXs") and Trunk Equipment (as defined in Attachment B), where applicable.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service Location, Service and/or Equipment. SimpleFiber Business Solutions may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
- (c) Customer shall ensure that all Equipment at Customer's and End Users' Service Locations (i) remains free and clear of all liens and encumbrances, (ii) is not modified or altered by any person or entity other than SimpleFiber Business Solutions, (iii) is not subject to accident, misuse, abnormal wear and tear, neglect, or mistreatment, (iv) is not damaged in connection with any equipment or software with which the Equipment is used and not supplied by SimpleFiber Business Solutions, (v) is not damaged by liquids, and (vi) is not used with any software not supplied by SimpleFiber Business Solutions for use with such Equipment.
- (d) Ownership. Notwithstanding any other provision contained in this Service Agreement to the contrary, all Equipment and materials installed or provided by SimpleFiber Business Solutions are and shall always remain the property of SimpleFiber Business Solutions, shall not become a fixture to the Service Location, and must be returned to SimpleFiber Business Solutions at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Service Agreement.

Customer is solely responsible for securing any Customer-owned or provided CPE (i.e., any customer premises equipment including without limitation PBXs), and shall be solely responsible for any charges associated with such CPE or Third Party Services (including those associated with PBXs, calling card(s) and/or access numbers, regardless of whether such use (i) is authorized by Customer management or (ii) involves fraudulent activity).

- (e) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Service Agreement and/or Service Order(s) ("Termination"), at the discretion of SimpleFiber Business Solutions, Customer shall return or allow SimpleFiber Business Solutions to retrieve the Equipment. Failure of Customer to return or allow SimpleFiber Business Solutions to retrieve the Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to either SimpleFiber Business Solutions' applicable unreturned equipment charge or the retail cost of replacement of the unreturned Equipment. If applicable, Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by SimpleFiber Business Solutions in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.

**8. STANDARD PAYMENT TERMS.** Customer shall pay recurring and non-recurring charges/fees for the Services in the amount specified on the Service Order and other applicable charges as described in this Service Agreement.

- (a) Charges. Monthly recurring charges ("MRCs") specific to the Service(s) provided by SimpleFiber Business Solutions and Third Party Services and charges for non-use-based Services, are due prior to the month the Service is delivered. Customer may be charged an OTC for construction, Service installation charge(s), repair, replacement, and/or any other nonrecurring costs or charges.

Usage-based charges will be invoiced typically within one-month of delivery of the respective use-based Service (e.g., pay-per view charges). Certain MRCs are subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon SimpleFiber Business Solutions. SimpleFiber Business Solutions shall provide at least 30 days prior notice to Customer of any increase in the MRCs.

SimpleFiber Business Solutions will not defer any charges while Customer awaits reimbursement, subsidy, discount or credit from any third party or government entity, and Customer shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit.

- (b) Taxes, Surcharges, and Fees. MRCs and OTCs do not include taxes, fees or surcharges that Customer must pay, including but not limited to applicable sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Service Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. If a Customer wishes to claim tax-exempt

status, then Customer must supply SimpleFiber Business Solutions with a copy of Customer's tax exemption document within 15 days of installation of applicable Services. If Customer supplies such documentation after that time, SimpleFiber Business Solutions will apply it to Customer's account on a prospective basis, allowing SimpleFiber Business Solutions at least 30 days for processing. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse SimpleFiber Business Solutions for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

Tax-exempt status shall not relieve Customer of its obligation to pay applicable franchise fees or other non-tax fees and surcharges. SimpleFiber Business Solutions reserves the right, from time to time, to change the surcharges for Services under this Service Agreement to reflect incurred costs, charges, or obligations imposed on SimpleFiber Business Solutions to the extent permitted, required, or otherwise not prohibited under applicable law (e.g., universal service fund ("USF") charges, etc.).

Furthermore, SimpleFiber Business Solutions shall have the right to recover from Customer the amount of any state or local fees or taxes arising as a result of this Service Agreement, which are imposed on SimpleFiber Business Solutions or its services, or otherwise assessed or calculated based on SimpleFiber Business Solutions' receipts from Customer.

To the extent that a dispute arises under this Service Agreement as to which Party to this Service Agreement is liable for fees or taxes based on such Party's net income, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon SimpleFiber Business Solutions' net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on SimpleFiber Business Solutions' net income.

Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services SimpleFiber Business Solutions provides and, consequently, uncertainty about what fees, taxes and surcharges are due from SimpleFiber Business Solutions and/or its customers. Customer agrees that SimpleFiber Business Solutions 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 Customer. Customer hereby waives any claims it may have regarding SimpleFiber Business Solutions' collection or remittance of such fees, taxes and surcharges.

(c) Change Requests. Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable Service Location are the sole financial responsibility of Customer. SimpleFiber Business Solutions shall notify Customer of any additional OTCs and/or adjustments to MRCs associated with or applicable to such Customer change requests prior to making any such change. Customer's failure to accept such additional charges within 5 business days of receiving such notice shall be deemed a rejection by Customer, and SimpleFiber Business Solutions shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MRCs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).

(d) Site Visits and Repairs. If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to a Service Location for inspection, correction or repair, SimpleFiber Business Solutions may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.

If SimpleFiber Business Solutions responds to a service call initiated by Customer, and SimpleFiber Business Solutions reasonably determines that the cause of such service call is not due to a problem arising from SimpleFiber Business Solutions' Network, but rather is due to Customer-provided or Customer-owned equipment or facilities, or a third party not under SimpleFiber Business Solutions' control or direction, Customer must compensate SimpleFiber Business Solutions for the service call at SimpleFiber Business Solutions' then-prevailing commercial rates.

9. Invoicing Disputes. Customer must provide written notice to SimpleFiber Business Solutions of any disputed charges within 90 days of the invoice date on which the disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged. Customer shall not be entitled to dispute service charges nor request credits more than 90 days from the payment date on invoice for such Service.

- (a) Late Fees. Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of 1.5% per month or the maximum amount permitted by law.
- (b) Non-payment. If Services are suspended due to late payment, SimpleFiber Business Solutions may require that Customer pay all past due charges, a reconnect fee, and one or more MRCs in advance before reconnecting Services.
- (c) Collection Fees. SimpleFiber Business Solutions may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by SimpleFiber Business Solutions in collecting any unpaid amounts due under this Service Agreement.
- 10.** Customer shall also be responsible for all costs of collection of overdue amounts incurred by SimpleFiber Business Solutions (including reasonable attorneys' fees).
- 11.** If SimpleFiber Business Solutions fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the Services to which it relates, and Customer shall be responsible for and pay such charges when invoiced in accordance with these payment terms.
- (a) SimpleFiber Business Solutions shall have the right to verify Customer's credit standing at any time. Additionally, SimpleFiber Business Solutions may at any time require Customer to make a deposit and/or advance payment. The deposit requested will be in cash, the equivalent of cash, or a bank, credit card or account debit authorization and does not relieve Customer of the responsibility for the prompt payment of invoices on presentation. SimpleFiber Business Solutions may deduct amounts from the deposit, bill any bank or credit card provided, or utilize any other means of payment available to SimpleFiber Business Solutions, for past due amounts.
- (b) Bundled Pricing. If Customer has selected a bundled offer, meaning a discounted MRC for receiving more than one SimpleFiber Business Solutions Service ("Bundle"), then the following conditions shall apply:
- i. In consideration for Customer's purchase of all Services in the Bundle, and only with respect to that period of time during which Customer continues to purchase the specific Services in such Bundle and during which such Bundle is in effect, the correlating discount to the Services in such Bundle, ordered pursuant to the SimpleFiber Business Solutions program governing such Bundle, will be reflected in the MRC for the respective Services.
- ii. Upon discontinuation or termination by Customer of any Service component of the applicable Bundle, the pricing for the remaining Service(s) shall revert to SimpleFiber Business Solutions' unbundled pricing for such Service(s) in effect at the time. Termination liability applicable to the Services under this Service Agreement shall otherwise remain unchanged.
- 12. ADMINISTRATIVE WEB SITE.** SimpleFiber Business Solutions may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). SimpleFiber Business Solutions may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify SimpleFiber Business Solutions if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and SimpleFiber Business Solutions shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer. SimpleFiber Business Solutions shall not be liable for any loss, cost, expense or other liability arising out of any Customer use of the Administrative Web Site. SimpleFiber Business Solutions may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.
- 13. NO THIRD PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third party hardware and/or software, including without limitation any necessary for the use of third party services. SimpleFiber Business Solutions does not support third party hardware or software used in conjunction with third party services or supplied by Customer. Any questions concerning third party hardware or software should be directed to the provider of that product. SimpleFiber Business Solutions assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, or any Customer-supplied hardware or software with the Services. If such third party equipment or software impairs the Services, Customer shall remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment.

SimpleFiber Business Solutions has no responsibility to resolve the difficulties caused by such third party equipment or software. If, at Customer's request, SimpleFiber Business Solutions should attempt to resolve difficulties caused by such third party equipment or software, such efforts shall be performed at SimpleFiber Business Solutions' discretion and at then-current commercial rates and terms.

#### **14. CUSTOMER USE**

- (a) **NO RESELLING:** Customer shall not re-sell or re-distribute (whether for a fee or otherwise) access to the Service(s) or system capacity, or any part thereof, in any manner other than for Customer's internal business without the express prior written consent of SimpleFiber Business Solutions.
- (b) **NO ILLEGAL PURPOSE/UNAUTHORIZED ACCESS** Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by SimpleFiber Business Solutions, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material.
- (c) **NO INTERFERENCE.** Customer shall not interfere with other customers' use of Equipment or Services or disrupt the SimpleFiber Business Solutions Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Service Agreement and/or all Service Orders in addition to any other rights or remedies SimpleFiber Business Solutions may have.
- (d) **APPLICABLE LAWS.** With respect to Customer's use of the Service (including the transmission or use of any content via the Service), Customer shall comply with all applicable laws and regulations in addition to the terms of this Service Agreement. SimpleFiber Business Solutions shall have the right to audit Customer's use of the Service remotely or otherwise, to ensure compliance with this Service Agreement.
- (e) **ACCEPTABLE USE.** Customer shall not use, or allow the Services to be used, in any manner that would violate the applicable SimpleFiber Business Solutions Acceptable Use Policies or that would cause, or be likely to cause, SimpleFiber Business Solutions to qualify as a "Covered 911 Service Provider" as defined in 47 C.F.R. §12.4 or any successor provision of the rules of the Federal Communication Commission. For avoidance of doubt, Customer and SimpleFiber Business Solutions agree that any failure to satisfy the covenants set forth in the preceding sentence shall constitute a material breach of the Master Agreement.

#### **15. GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to SimpleFiber Business Solutions (a) that

Customer has the authority to execute, deliver and carry out the terms of this Service Agreement and associated Service Orders and (b) that its End Users and any person who accesses any Services through Customer's equipment at the Service Location, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Service Agreement. Customer is responsible for ensuring its End Users comply with the terms of this Service Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service.

As between the parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service by Customer, any End User or any unauthorized person or entity, which use shall be deemed Customer's use for purposes of this Service Agreement, (b) all content that is viewed, stored or transmitted via the Service, as applicable, and (c) all third-party charges incurred for merchandise and services accessed via the Service, if any. Customer agrees to conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by SimpleFiber Business Solutions from time to time.

#### **16. PERFORMANCE.** SimpleFiber Business Solutions will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond SimpleFiber Business Solutions' reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by SimpleFiber Business Solutions to perform its obligations under this Service Agreement, and Customer will not hold SimpleFiber Business Solutions at fault for loss of Customer revenue or lost employee productivity due to Service outages.

#### **17. MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.** SimpleFiber Business Solutions has the right, but not the obligation, to upgrade, modify and enhance the SimpleFiber Business Solutions network (including Equipment and related firmware) and the Service and take any action that SimpleFiber Business Solutions deems appropriate to protect and/or improve the Service and its facilities.

SimpleFiber Business Solutions shall have the right, but not the obligation, to monitor and record oral communications with Customer regarding Customer's account or Services for the purpose of service quality assurance.

**18. DEFAULT, SUSPENSION OF SERVICE, AND TERMINATION.** No express or implied waiver by SimpleFiber Business Solutions of any event of noncompliance shall in any way be a waiver of any further subsequent event of noncompliance. Nothing herein, including termination of this Service Agreement or any Service Order(s), shall relieve Customer of its obligation to pay SimpleFiber Business Solutions all amounts due.

(a) Default by Customer. Customer shall be in default under this Service Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice ("Default"):

i. Customer is more than 30 days past due with respect to any payment required hereunder; ii.

Customer otherwise has failed to comply with the terms of this Service Agreement.

(b) Termination for Convenience. Notwithstanding any other term or provision in this Service Agreement, Customer shall have the right to terminate a Service Order, or this Service Agreement in whole or part, at any time upon thirty (30) days prior written notice to SimpleFiber Business Solutions, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any SimpleFiber Business Solutions Equipment. In the event Customer cancels a Service Order prior to SimpleFiber Business Solutions actually delivering Services, and in the event that SimpleFiber Business Solutions incurs construction or installation costs or charges prior to such cancellation, then Customer shall reimburse SimpleFiber Business Solutions for such charges actually incurred.

(c) SimpleFiber Business Solutions' Right to Suspend, Terminate and apply a Termination Charge. If Customer is in Default, SimpleFiber Business Solutions shall have the right, at its option, without prior notice, and in addition to any other rights of SimpleFiber Business Solutions expressly set forth in this Service Agreement and any other remedies it may have under applicable law to:

i. Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay SimpleFiber Business Solutions any amounts due under this Service Agreement (e.g., the MRCs) as if such suspension of Services had not taken place; ii. Terminate the Services, this Service Agreement or the applicable Service Order(s).

If Termination is due to Customer' Default or is elected/done by Customer for convenience, Customer must pay SimpleFiber Business Solutions a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 100% of the unpaid balance of the MRCs that would have been due throughout the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

iii. The provisions of sections 8-11, 14, 20-21, 23-26 and the Attachments shall survive the termination or expiration of the Service Agreement.

(d) Default by SimpleFiber Business Solutions. SimpleFiber Business Solutions shall be in default under this Service Agreement if SimpleFiber Business Solutions fails to comply with the terms of this Service Agreement and/or any or all of the applicable Service Order(s), and SimpleFiber Business Solutions fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance ("SimpleFiber Business Solutions Default").

(e) Customer's Right to Terminate and Termination Charge.

i. In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described in Section 18(b) above.

ii. Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of SimpleFiber Business Solutions Default is limited to Services provided under the applicable Service Order(s), or to terminate this Service Agreement, if the underlying event of such SimpleFiber Business Solutions Default is not so limited.

iii. If Termination is due to a SimpleFiber Business Solutions Default, SimpleFiber Business Solutions shall reimburse Customer for any pre-paid, unused MRCs attributable to such terminated Service Order(s). In addition, if Termination is due to SimpleFiber Business Solutions Default within one year of the applicable Turn-Up Date, SimpleFiber Business Solutions shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to SimpleFiber Business Solutions relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination times b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.



**19. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.**

**DISCLAIMER OF WARRANTY.** CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK.

- (a) SIMPLEFIBER BUSINESS SOLUTIONS EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND SIMPLEFIBER BUSINESS SOLUTIONS EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SERVICE AGREEMENT, THE SERVICE, EQUIPMENT AND ANY RELATED MATERIALS ARE PROVIDED "AS IS, WITH ALL FAULTS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ADVICE OR INFORMATION GIVEN BY SIMPLEFIBER BUSINESS SOLUTIONS, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY.

SIMPLEFIBER BUSINESS SOLUTIONS DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR WITHOUT LOSS OF CONTENT, DATA OR INFORMATION, OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME.

EXCEPT AS SET FORTH IN THE SERVICE AGREEMENT, SIMPLEFIBER BUSINESS SOLUTIONS DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY SIMPLEFIBER BUSINESS SOLUTIONS WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE.

IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE.

CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR ANY END USER'S CPE (WHETHER COMPUTER SYSTEM OR OTHER EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR RESULTING FROM, CUSTOMER'S OR ANY END USER'S USE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, VIA SENDING OR RECEIVING, UPLOADING OR DOWNLOADING, OR OTHER TRANSMISSION OF SUCH DATA, MATERIAL OR TRAFFIC.

IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT SIMPLEFIBER BUSINESS SOLUTIONS' THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS SERVICE AGREEMENT, AND SIMPLEFIBER BUSINESS SOLUTIONS DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS SERVICE AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

- (b) Limited Warranty. At all times during the Service Period, SimpleFiber Business Solutions warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS SERVICE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS SERVICE AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY OF CUSTOMER'S PAYMENT OR INDEMNIFICATION OBLIGATIONS UNDER THIS SERVICE AGREEMENT. SIMPLEFIBER BUSINESS SOLUTIONS' MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCS, PAID OR PAYABLE BY CUSTOMER TO SIMPLEFIBER BUSINESS SOLUTIONS FOR THE

APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

SIMPLEFIBER BUSINESS SOLUTIONS SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR ANY OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES OR SERVICES.

Any warranty claim by Customer must be made within 90 days after the applicable Services have been performed. SimpleFiber Business SimpleFiber Business Solutions' sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (c) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which SimpleFiber Business Solutions does not exercise and disclaims any control. SimpleFiber Business Solutions neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. SimpleFiber Business Solutions specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and SimpleFiber Business Solutions assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (d) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by SimpleFiber Business Solutions at its sole risk. SimpleFiber Business Solutions does not manufacture the Equipment, and the Services and Equipment are provided on an "as is, with all faults basis" without warranties of any kind. SimpleFiber Business Solutions assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. SimpleFiber Business Solutions does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (e) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate Termination of Customer's Service by SimpleFiber Business Solutions without liability for SimpleFiber Business Solutions. SimpleFiber Business Solutions is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall defend, hold harmless, and indemnify the SimpleFiber Business Solutions Indemnified Parties (defined hereafter) from and against any claims, losses, or damages arising from such use. SimpleFiber Business Solutions is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.
- (f) Force Majeure Event. Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such Party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of

war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive conditions shall not be considered a Force Majeure Event.

**20. INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Service Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless SimpleFiber Business Solutions and its parents, directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by SimpleFiber Business Solutions Indemnified Parties, including reasonable attorney fees and court costs incurred by SimpleFiber Business Solutions Indemnified Parties under this Service Agreement, to the full extent that such arise from:

- (a) Customer's misrepresentation with regard to or noncompliance with the terms of this Service Agreement and any or all Service Orders,
- (b) Customer's failure to comply with any applicable law, order, rule, regulation or ordinance, (c) Customer's negligence or willful misconduct, and/or

(d) any fees, fines or penalties incurred by SimpleFiber Business Solutions as a result of Customer's violation of the 10% Rule as set forth in any Attachment(s).

SimpleFiber Business Solutions Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with SimpleFiber Business Solutions Indemnified Parties in such case.

**21. TITLE.** Title to the Equipment shall remain with SimpleFiber Business Solutions during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, SimpleFiber Business Solutions shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. SimpleFiber Business Solutions shall have the right to remove the Equipment and all components within 60 days after such termination.

**22. COMPLIANCE WITH LAWS.** Customer shall not use or permit its End Users or other third parties to use the Services in any manner that violates applicable law or causes SimpleFiber Business Solutions to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

**23. ARBITRATION.** EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS SERVICE AGREEMENT, INCLUDING WITHOUT LIMITATION THE ARBITRABILITY OF THE CONTROVERSY OR CLAIM, SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS SERVICE AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS SERVICE AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

**24. PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

(a) SimpleFiber Business Solutions' Proprietary Rights. All materials including, but not limited to, any SimpleFiber Business Solutions Equipment (including related firmware), software, data and information provided by SimpleFiber Business Solutions, any identifiers or passwords used to access the Service or otherwise provided by SimpleFiber Business Solutions, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by SimpleFiber Business Solutions to provide the Service (collectively "SimpleFiber Business Solutions Materials") shall remain the sole and exclusive property of SimpleFiber Business Solutions or its suppliers. Customer shall acquire no interest in the SimpleFiber Business Solutions Materials by virtue of the payments provided for herein other than the limited non-exclusive and non-transferable license to use the SimpleFiber Business Solutions Materials solely for Customer's use of the Service. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the SimpleFiber Business Solutions Materials, in whole or in part, or use them for the benefit of any third party. All rights in the SimpleFiber Business Solutions Materials not expressly granted to Customer herein are reserved to SimpleFiber Business Solutions. Customer shall not open, alter, misuse, tamper with or remove the Equipment or SimpleFiber Business Solutions Materials as and where installed by SimpleFiber Business Solutions, and shall not remove any markings or labels from the Equipment or SimpleFiber Business Solutions Materials indicating SimpleFiber Business Solutions (or its suppliers) ownership or serial numbers.

(b) Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the SimpleFiber Business Solutions Materials and any other information and materials provided by SimpleFiber Business Solutions in connection with this Service Agreement, including but not limited to the content of this Service Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the contents of this service Agreement and any service Order(s).

(c) Software. If software is provided to Customer hereunder ("Software"), SimpleFiber Business Solutions grants Customer a limited, nonexclusive and non-transferable license to use such Software, in object code form only, for the sole and limited purpose of using the Service for Customer's internal business purposes during the Term. Customer agrees not

to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any Software related to the Services.

- 25. PRIVACY.** SimpleFiber Business Solutions treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. SimpleFiber Business Solutions also maintains a Privacy Policy with respect to the Services in order to protect the privacy

of its customers. The Privacy Policy may be found on SimpleFiber Business SimpleFiber Business Solutions' website at [www.simplefiber.com](http://www.simplefiber.com). The Privacy Policy may be updated or modified from time-to-time by SimpleFiber Business Solutions, with or without notice to Customer.

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "Telecommunications Act"), the Federal Cable Communications Act (the "Cable Act"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in an Attachment, the Privacy Policy, and, if applicable, in SimpleFiber Business SimpleFiber Business Solutions' tariff, which are incorporated into, and made a part of, this Service Agreement by this reference. In addition to the foregoing, Customer hereby acknowledges and agrees that SimpleFiber Business Solutions may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("ARIN") or any similar agency, or in accordance with the Privacy Policy or, if applicable, tariff(s). In addition, SimpleFiber Business Solutions shall have the right (except where prohibited by law), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

- 26. NOTICES.** Any notices to be given under this Service Agreement shall be validly given or served only in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to SimpleFiber Business Solutions Communications:  
SimpleFiber Business Solutions Communications  
ATTN: Commercial Contracts Management  
Dept: Corporate - Legal Operations  
2701 Brown Trail ste 308 Bedford,  
Tx. 76021

Notices to Customer shall be sent to the Customer billing address. Each Party may change its respective address(es) for legal notice by providing notice to the other Party.

## **27. MISCELLANEOUS.**

- (a) Entire Agreement; Signatures. This Service Agreement including without limitation all Attachments, incorporated documents and any related, executed Service Order(s) constitute the entire agreement and understanding between the Parties with respect to the Services, Network and Equipment. This Service Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the Parties with respect to the subject matter of this Service Agreement. This Service Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile or other electronic copy will have the same force and effect as execution of an original, and a facsimile or electronic signature will be deemed an original and valid signature.
- (b) Order of Precedence. Each Service shall be provisioned pursuant to the terms and conditions of this Service Agreement. In the event that SimpleFiber Business Solutions permits Customer to use its own standard purchase order form to order the Service, the parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Attachment or Order are inconsistent with the terms of this Service Agreement, the terms of this Service Agreement shall control.
- (c) No Amendments, Supplements or Changes. Except for pricing terms as set forth in this Service Agreement, this Service Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both Parties' prior written consent.
- (d) No Assignment or Transfer. The Parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Service Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other Party, which consent shall not be unreasonably

withheld; provided, however, that without Customer's consent, SimpleFiber Business Solutions may assign this Service Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with SimpleFiber Business Solutions, or to its successor-in-interest if SimpleFiber Business Solutions sells some or all of the underlying communications system(s).

- (e) Severability. If any term, covenant, condition or portion of this Service Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Service Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (f) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Service Agreement, (A) except to the extent superseded by federal law or (B) in the event the Services are provided in multiple states, the law of the State of New York shall govern. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND SIMPLEFIBER BUSINESS SOLUTIONS EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (g) Joint Preparation. Both parties had the opportunity to review and participate in the negotiation of the terms of this Service Agreement and the Service Order(s) and, accordingly, no court construing this Service Agreement and any Service Order(s) shall construe it more stringently against one Party than against the other.
- (h) No Third Party Beneficiaries. The terms of this Service Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a Party to this Service Agreement, and the consideration provided by each Party hereunder only runs to the respective parties hereto, and that no person or entity not a Party to this Service Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.
- (i) Waiver. Except as otherwise provided herein, the failure of SimpleFiber Business Solutions to enforce any provision of this Service Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.
- (j) Remedies Cumulative and Nonexclusive. Unless stated otherwise herein, all rights and remedies of the Parties under this Service Agreement shall be cumulative, nonexclusive and in addition to, but not in lieu of, any other rights or remedies available to the Parties whether provided by law, in equity, by statute or otherwise. The exercise of any right or remedy does not preclude the exercise of any other rights or remedies

## Attachment C Business Internet Access

**Internet Access Services:** These terms shall apply, in addition to the Commercial Terms of Service and the respective Service Order (if applicable) (collectively, the "Service Agreement"), if Customer elects to receive one or more of the Services described herein (for purposes of this Attachment, the "Data Services"). Continued use or receipt of the Data Services is subject to this Service Agreement. *SimpleFiber Business SimpleFiber Business Solutions' provision of any Data Service is subject to availability.*

SimpleFiber Business SimpleFiber Business Solutions' Data Services are comprised of the following:

**Business Internet Access ("BIA Service"):** BIA Service is Internet access service implemented using a fiber access network. The Customer interface to a cable modem is via Ethernet connection. BIA Service enables a variety of symmetrical upstream and downstream rates. If Customer selects to receive the BIA Service, SimpleFiber Business Solutions shall provide connectivity from the Customer site(s) to the Customer's data network.

Customer shall (i) maintain certain minimum equipment and software to receive the Data Service (see [www.simplefiber.com](http://www.simplefiber.com) (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Data Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Service Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Data Services.

1. **Data Service Speeds.** SimpleFiber Business Solutions shall use commercially reasonable efforts to achieve the Internet speed attributable to the Data Services selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection. Each tier or level of Data Services has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally shall not be sustained on a consistent basis. The throughput rate experienced by Customer at any time shall vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and SimpleFiber Business Solutions network congestion, time of day and the accessed website servers, among other factors.
2. **Electronic Addresses.** All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by SimpleFiber Business Solutions are the property of SimpleFiber Business Solutions. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.
3. **Changes of Address.** SimpleFiber Business Solutions may change addressing schemes, including e-mail and IP addresses.
4. **No Liability for Risks of Internet Use.** The Service, SimpleFiber Business SimpleFiber Business Solutions' network and the Internet are not secure, and others may access or monitor traffic.
5. **No Liability for Purchases.** Customer shall be solely liable and responsible for all fees or charges for online services, products or information. SimpleFiber Business Solutions shall have no responsibility to resolve disputes with other vendors.
6. **Blocking and Filtering.** Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Data Service. Except to the extent set forth in the Supplemental SimpleFiber Business Solutions Business Security Service Section, SimpleFiber Business Solutions shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. SimpleFiber Business Solutions does not warrant that others will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does SimpleFiber Business Solutions warrant that the data or files will be free from computer viruses or other harmful components. SimpleFiber Business Solutions has no responsibility and assumes no liability for such acts or occurrences.
7. **Acceptable Use Policy.** Customer shall comply with the terms of SimpleFiber Business SimpleFiber Business Solutions' Acceptable Use Policy ("AUP") found at [www.simplefiber.com](http://www.simplefiber.com) (or the applicable successor URL) and that policy is incorporated by reference into this Service Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by SimpleFiber Business Solutions with or without notice to Customer. SimpleFiber Business Solutions may suspend Service immediately for any violation of the SimpleFiber Business Solutions AUP.

8. Managed WiFi Services. Managed WiFi Services include SimpleFiber Business Solutions owned equipment to establish wireless access points to enable designated users of the Customer's choice to wirelessly access the Data Service. Access to the Data Service via Managed WiFi is subject to all of the same terms under this Agreement.
  
9. Supplemental Managed Security Service. This subsection shall only apply in the event SimpleFiber Business Solutions' supplemental Managed Security Service has been selected by and is being delivered to Customer. The Managed Security Service maybe include software, firmware, and hardware components. SimpleFiber Business Solutions makes no warranties of any kind (express or implied) regarding the Managed Security Service and hereby disclaims any and all warranties pertaining thereto (including without limitation implied warranties of title, noninfringement, merchantability, and fitness for a specific purpose). SimpleFiber Business Solutions does not have title to and is not the manufacturer nor supplier of any software, firmware, or hardware components of the Managed Security Service. Customer shall return or destroy all such components provided to Customer upon the termination of the applicable Service Order, and in the case of destruction thereof, shall upon request, provide SimpleFiber Business Solutions with certification that such components have been destroyed. IN NO EVENT SHALL SIMPLEFIBER BUSINESS SOLUTIONS BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE, NONPERFORMANCE, OR USE OF ANY SUPPLEMENTAL SERVICES.