



MASTER PRODUCTS AND/OR SERVICES AGREEMENT

General Terms and Conditions

Agreement # ONLINE 082022

Between:

	"Customer"	"EZEE FIBER TEXAS"
Company Name		Ezee Fiber Texas, LLC
Street, Suite		PO Box 131835
City, State ZIP		The Woodlands, Texas 77393-1835
State / Entity Type		A Delaware Corporation

With addresses for notices sent to:

	Customer	EZEE FIBER TEXAS
Company Name		Ezee Fiber Texas, LLC
Street, Suite		PO Box 131835
City, State ZIP		The Woodlands, Texas 77393-1835
Attention		Legal Department (legal@ezeefiber.com)
Fax		(713) 255-7500

These General Terms and Conditions together with all Supplements, Order Form(s), Exhibits and other addenda attached hereto from time to time constitute the Master Products and Services Agreement ("Agreement") which is effective as of the last date of execution below ("Effective Date") by and between EZEE FIBER TEXAS and Customer, hereinafter collectively referred to as the "Parties" or individually as a "Party".

I. DEFINITIONS

"**Commencement Date**" means the date upon which EZEE FIBER TEXAS begins to provide an ordered Product or Service as more fully described in the relevant Supplement or Order Form.

"**Customer Location**" refers to a location designated in an Order Form for connection to the EZEE FIBER TEXAS Network.

"**EZEE FIBER TEXAS Network**" means, collectively, the fiber optic network, system capacity and related facilities (including, without limitation, routers, switches and communication channels) owned or controlled by EZEE FIBER TEXAS to the extent it applies to the Product or Service.



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“Order Form” refers to any, mutually executed, product order (“Product Order”), service order (“Service Order”), schedule (“Schedule”), or statement of work (“Statement of Work”) to these General Terms and Conditions and respective Supplement, detailing the Products or Services, the Term, Customer charges, the estimated Commencement Date and any other relevant terms agreed upon by the Parties.

“Products or Services” means the products or services provided by EZEE FIBER TEXAS (including, without limitation, Leased Fiber, In-Building Fiber, Co-location, Bandwidth, Managed Services, Managed Wavelengths and Capacity) to Customer.

“Supplement” means a fully executed supplement to these General Terms and Conditions each containing additional terms and conditions that govern the related Products or Services provided by EZEE FIBER TEXAS.

“Term” means the period in which EZEE FIBER TEXAS provides Products or Services to Customer pursuant to an Order Form and any renewals thereto.

II. STRUCTURE OF AGREEMENT

- 2.1 From time to time, the Parties will execute one or more Supplement(s) and Order Forms for EZEE FIBER TEXAS to provide Products or Services, each of which is automatically incorporated into this Agreement and subject to these General Terms and Conditions.
 1. 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 order effected without liability; or otherwise, Customer is deemed to accept the increase.
- 2.2 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 order effected without liability; or otherwise, Customer is deemed to accept the increase.

III. INVOICING AND PAYMENT

- 3.1 **Installation Charge, Setup or Other Non-Recurring Charge.** If a non-recurring installation charge or setup fee (“NRC”) is specified in an Order Form, EZEE FIBER TEXAS will invoice Customer for the same upon the effective date of the Order Form (“Order Form Effective Date”), and unless otherwise specified in the applicable Order Form, Customer will pay such invoice upon the Order Form Effective Date.
- 3.2 **Monthly or Other Recurring Charge or MRC.** If a recurring charge (“MRC”) (e.g., Monthly Charge, Quarterly Charge, Annual Charge, etc.) is specified in an Order Form, EZEE FIBER TEXAS will invoice Customer for and Customer will pay the Recurring Charge in advance for each period and within twenty (20) days from the date of such invoice. EZEE FIBER TEXAS will begin to invoice the Recurring Charge on the Commencement Date. Invoices for partial months will be pro-rated. Multiple types of Recurring Charge may be set forth in the Order Form.



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- 3.3 **Additional Charges.** If applicable, EZEE FIBER TEXAS will invoice Customer and Customer will pay invoices for any additional charges for Products or Services which are specified in an Order Form. Unless otherwise specified on the invoice, payment is due within thirty (30) days from the date of such invoice.
- 3.4 **Late Payments.** All invoices must be paid in accordance with their terms without setoff or deduction, and late payments will accrue interest on the unpaid sum as of the date of the invoice at the lesser of (i) the highest legal rate of interest permitted in the State of Texas or (ii) one and one-half percent (1.5%) per month.
- 3.5 **U.S. Dollars.** Unless otherwise specified on an Order Form, all payments must be made by Customer to EZEE FIBER TEXAS in U.S. dollars

IV. APPLICABLE TAXES

- 4.1 In addition to other amounts due hereunder, Customer shall be responsible for paying all Applicable Taxes. "Applicable Taxes" means all taxes, levies, fees, imposts, duties, charges, surcharges, assessments or withholdings of any kind or nature levied or imposed upon EZEE FIBER TEXAS or Customer, arising from or relating to the provision by EZEE FIBER TEXAS of the Services to Customer (including, without limitation, sales, excise taxes, universal service fees, any other FCC or state PUC fees, and any state or local utility or telecommunications taxes), together with any penalties, fines or interest (resulting from Customer's failure to pay Applicable Taxes hereunder after being invoiced for such) by any U.S. federal, state, provincial or local government, public authority, including its agencies, commissions and tribunals, or their designated agents, having jurisdiction over this transaction. Customer shall not be responsible for, and Applicable Taxes shall not include taxes on the property or income of EZEE FIBER TEXAS.
- 4.2 Notwithstanding the foregoing, Customer may provide EZEE FIBER TEXAS with a certificate evidencing Customer's exemption from payment of or liability for any Applicable Taxes.

V. TERM

- 5.1 This Agreement commences on the Effective Date and continues through the latest expiration of all Order Form Term(s) subject to this Agreement, unless earlier terminated as provided herein.
- 5.2 The Term for each Order Form begins on the Commencement Date of the related Product or Service and remains in effect until the expiration of the initial period so specified. Upon expiration of the initial term each Order Form will automatically renew for additional periods of one (1) year unless one Party provides the other written notice that it is terminating such Order Form not less than sixty (60) days prior to the end of the Term then in effect.

VI. DEFAULT

- 6.1 The following events are "**Events of Default**", the occurrence of which gives the non-defaulting Party the right to terminate the affected Order Form(s), or the entire Agreement for a nonpayment default, by written notice following the expiration of any stated cure periods and pursue its remedies under the Agreement:
- 6.2 Customer fails to fully pay any of the payments (including Early Termination Charges) required hereunder within five (5) days after receipt of written notice of such failure; or
- 6.3 Breach of any material term or condition of this Agreement (including Order Forms) and such breach remains uncured thirty (30) days after delivery to the breaching Party of written notice of such breach. If



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the breach is of a nature or involves circumstances reasonably requiring more than thirty (30) days to cure, the time period may be extended provided the breaching Party proceeds diligently to cure the breach;

- 6.4 Either Party files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law.
- 6.5 If Customer is in default, as set forth above, then, after expiration of the cure period, EZEE FIBER TEXAS may, in addition to any other remedies that it may have under this Agreement or by law, suspend, disconnect and/or repossess any Products or Services, provided, however, that Customer will remain responsible to perform its obligations hereunder.

VII. REPRESENTATIONS AND WARRANTIES

- 7.1 EZEE FIBER TEXAS warrants that any Products and Services to be provided to Customer will be at a professional level of quality conforming to generally accepted industry standards and in compliance in all material respects with all applicable laws and regulations. Except as otherwise expressly provided in this agreement, EZEE FIBER TEXAS does not make, and hereby disclaims, any and all other warranties, express or implied including any and all warranties of merchantability or fitness for a particular purpose.
- 7.2 Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it has all requisite power and authority to enter into and perform its obligations under this Agreement and all Order Forms, (iii) it will comply with all applicable federal, state and local laws, statutes, rules and regulations in connection with the provision and use of the Products and Services and (iv) this Agreement and all Order Forms, when executed, are the legal, valid and binding obligation of such Party.
- 7.3 Customer acknowledges that EZEE FIBER TEXAS has no ability to determine whether the communications traffic carried by the Products or Services utilizing the EZEE FIBER TEXAS Network is jurisdictionally interstate or intrastate. Customer represents and warrants that the communications traffic to be carried by the EZEE FIBER TEXAS Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule"(47 CFR 36.154, 4 FCC Rcd. 1352), unless Customer provides EZEE FIBER TEXAS written notice otherwise. In either case, Customer will pay all relevant FCC and state Public Utilities Commission taxes and fees.

VIII. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 8.1 THE TOTAL LIABILITY OF EITHER PARTY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN ORDER FORM (EXCLUDING EARLY TERMINATION CHARGES (AS DEFINED IN THE RELATED SUPPLEMENT)) IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES PAYABLE BY CUSTOMER DURING THE TERM, FOR EACH PERIOD DELIVERED, SET FORTH THEREIN. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE OR LOST BUSINESS OPPORTUNITIES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), WHETHER FORESEEABLE OR NOT, EVEN IF A PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF THE DAMAGE AND EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY TO CLAIMS OF CUSTOMER, WHETHER OCCASIONED BY ANY CONSTRUCTION, INSTALLATIONS, RELOCATIONS, SERVICE, REPAIR OR MAINTENANCE PERFORMED BY, OR FAILED TO BE PERFORMED BY EZEE



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FIBER TEXAS, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA OR TECHNOLOGY.

- 8.2 EZEE FIBER TEXAS agrees to indemnify, defend and hold Customer, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorney's fees and expenses) by reason of any claims or actions by third parties against Customer for (i) bodily injury or death, and damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to EZEE FIBER TEXAS's gross negligence or willful misconduct or (ii) infringement or misappropriation by EZEE FIBER TEXAS of any intellectual property rights under this Agreement.
- 8.3 Customer agrees to indemnify, defend and hold EZEE FIBER TEXAS, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorney's fees and expenses) by reason of any claims or actions by third parties against EZEE FIBER TEXAS for (i) bodily injury or death or damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to Customer's gross negligence or willful misconduct, (ii) infringement or misappropriation by Customer of any intellectual property rights under this Agreement, or (iii) Customer's or its customer's use of the Products or Services, including without limitation, defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortious or illegal conduct.

IX. CONFIDENTIALITY AND PUBLICITY

- 9.1 Each Party agrees that the terms of this Agreement and all information furnished to it by the other Party, including maps, pricing, financial terms, network routes, design information, methodologies, specifications, locations or other information to which it has access under this Agreement, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and will remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). Each Party will treat the Proprietary Information and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, neither Party may directly or indirectly disclose the same to anyone other than its employees on a need-to-know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party. Information will not be deemed Proprietary Information if it (i) becomes publicly available other than through the actions of the Receiving Party; (ii) is independently developed by the Receiving Party; or (iii) becomes available to the Receiving Party without restriction from a third party. If the Receiving Party is required by a governmental or judicial law, order, rule, regulation or permit to disclose Proprietary Information, it must give prompt written notice to the Disclosing Party of the requirements of such disclosure and cooperate fully with the Disclosing Party to minimize such disclosure, and disclosure after such notice shall not be a breach hereof.
- 9.2 Neither Party may issue any advertising or other publicity material using the other Party's name or marks or describing in any way the terms of this Agreement without first receiving the other Party's written consent as to form and content, which consent may not be unreasonably withheld, conditioned, or delayed.

X. ASSIGNMENT

- 10.1 Customer shall not assign or transfer this Agreement without the EZEE FIBER TEXAS prior written consent, except that either Party may assign this Agreement upon notice and without the other Party's consent to a



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person, firm, corporation, partnership, association, trust or other entity (i) that controls, is controlled by or is under common control with the assigning Party or (ii) which purchases all or substantially all of its assets; provided that the assignee assumes all liabilities hereunder in writing prior to the effectiveness of such assignment. Any assignment or transfer without the required consent is void and is considered a material breach of this Agreement. Upon any permitted assignment, the assigning Party will remain jointly and severally responsible for the performance under this Agreement, unless released in writing by the other Party, and this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

XI. FORCE MAJEURE

- 11.1 Neither party will be considered in breach of this Agreement nor liable under this Agreement for any delays, failures to perform, damages or losses, or any consequence thereof, caused by or attributable to an event of "Force Majeure," which is defined as any cause beyond the reasonable control of the party claiming relief, including without limitation the action by a governmental authority (such as a moratorium on any activities related to this Agreement or changes in government codes, ordinances, laws, rules, regulations, or restrictions occurring after the Effective Date), third-party labor dispute, flood, earthquake, fire, lightning, epidemic, war, act of terrorism, riot, civil disturbance, act of God, sabotage, fiber cut caused by a third-party or failure of a third party to recognize a permit, authorization, right-of-way, easement, right, license or other agreement obtained by EZEE FIBER TEXAS to construct and operate its facilities or network.

XII. NOTICES

- 12.1 All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with an overnight delivery service for next day delivery, or (iii) three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to the recipient Party at the address set forth on first page hereof. In addition, EZEE FIBER TEXAS may send Customer notices, other than notices for default or termination, to Customer's email address as contained on EZEE FIBER TEXAS's customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

XIII. MISCELLANEOUS

- 13.1 **Governing Law and Venue.** This Agreement will be interpreted and construed in accordance with the internal laws of the State of Texas without giving effect to its principles of conflicts of laws. This Agreement and the duties and obligations of the Parties hereunder shall be enforceable against any of the Parties in the courts of Harris County, Texas.
- 13.2 **Survival.** The Parties' respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.
- 13.3 **No Third-Party Beneficiaries.** The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the Parties or their respective successors or permitted assigns.
- 13.4 **Relationship of the Parties.** The relationship between the Parties hereunder is not that of partners or agents for one another and nothing contained in this Agreement may not be deemed to constitute a partnership, joint venture or agency agreement between them.



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- 13.5 **Remedies Not Exclusive.** Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or in equity.
- 13.6 **Headings and Severability.** The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions, or conditions hereof. In the event any term of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will be in any way affected.
- 13.7 **No Implied Waiver.** No failure to exercise and no delay in exercising, on the part of either Party, any right, power or privilege hereunder will operate as a waiver, except as expressly provided herein.
- 13.8 **Execution and Counterparts.** This Agreement may be executed in counterparts, including by facsimile or other electronic transmission, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.
- 13.9 **Order of Precedence.** If any conflict or contradiction exists between these General Terms and Conditions and a Supplement, the terms of a Supplement will control. If any conflict or contradiction exists between a Supplement and the terms of an Order Form, the terms of the Order Form will control. If any conflict or contradiction exists between these General Terms and Conditions and the terms of an Order Form, the terms of the Order Form will control.

XIV. ENTIRE AGREEMENT - AMENDMENT - EXECUTION

This Agreement, including all Supplements, Order Forms, Exhibits and addenda attached hereto is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings, and agreements, whether oral or written. This Agreement may be amended only by a written instrument executed by the Parties.



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The Parties have executed this Agreement as of the last date of execution below.

By EZEE FIBER TEXAS

By Customer

Signature

Signature

Print Name and Title

Print Name and Title

Dated

Dated