

# TERMS AND CONDITIONS

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These terms and conditions (“Terms and Conditions”) are entered into by the City of Loveland through its Electric and Communications Enterprise (“Pulse”) and the customer (“Customer”). These Terms and Conditions shall be effective from the date Customer acknowledges and approves them and shall terminate upon Customer’s cancellation of Service (defined below) and return of Equipment (defined below), provided, however, that certain terms and obligations shall survive termination.

Customer hereby takes for Customer’s exclusive use one or more of the following services (both individually and collectively, as applicable to the Customer, “Service”): fiber Internet access, wireless Internet access, digital voice, and video. These Terms and Conditions incorporate by reference the terms and conditions of all other agreements, acknowledgments, and policies referenced herein, including, but not limited to, Pulse’s Privacy Notice and Acceptable Use Policy. These Terms and Conditions are hereby incorporated into any service order made by Customer or services rendered by Pulse to Customer. By accepting the Service, Customer agrees to be bound and abide by these Terms and Conditions and require others using the Customer’s Service to abide by these Terms and Conditions.

## **SERVICE PROVIDED TO CUSTOMER**

Pulse shall provide the Service in accordance with these Terms and Conditions and Pulse’s technical specifications available at [www.PulseFiber.org/PerformanceCharacteristics](http://www.PulseFiber.org/PerformanceCharacteristics). Pulse will update and test the Service on a continuous basis and Customer agrees to be included in such testing without notice.

Testing may be done to any aspect of the Service, including, but not limited to: service level, Pulse’s website, user interfaces, plans, promotional features, availability of content, delivery, and pricing. The Service is provided solely to Customer for Customer’s use at the Premises (defined below). The Customer shall be liable for all applicable Charges (defined below) relating to unpermitted use of the Service.

## **PAYMENT FOR SERVICE**

Customer shall pay all rates, charges, taxes, and fees (collectively “Charges”) monthly in advance (except for usage based Charges, which will be billed monthly in arrears). Charges for any period of Service that is less than a month shall be prorated based on the actual days of Service with the exception of certain taxes and fees that cannot be prorated. Applicable Charges for the Service, including federal, state, and local taxes and fees, will be set forth in Pulse’s then-current Broadband Rate Card found at [www.PulseFiber.org](http://www.PulseFiber.org).

Monthly recurring Charges as well as one-time non-recurring Charges shall be due in full before or on commencement of Service. This includes but is not limited to any and all extraordinary costs or



administrative fees incurred by Pulse, including those costs that are associated with, or a consequence of, any changes or delays by the Customer or Customer's representatives or third-party contractors. Pulse may require Customer to pay a deposit acceptable to Pulse for the Service prior to activation of the Service. The deposit will be refunded upon Customer's full termination of Service.

Customer's failure to pay the total Charges when due is grounds for disconnecting or suspending Service and imposing a late fee. If Customer's Service is suspended or terminated for failing to pay the total Charges when due, Pulse may require Customer to pay a reconnection fee. This reconnection fee is in addition to past due Charges and any other Charges. Pulse may charge a reasonable fee for all returned checks and bankcard chargebacks. The returned amount and fee must be paid by cash, cashier's check, or money order. If Pulse retains an agency or attorney to collect any amount owed, Customer shall pay all of Pulse's costs of collection, including attorneys' fees.

The Customer will be billed a monthly reoccurring charge for Services until those Services are cancelled by either Party. Notwithstanding any other term or condition, either Party may cancel the Services at any time, subject to payment by Customer to Pulse of all outstanding amounts due for the Services up to the date the cancellation takes, the Services are disconnected, and Pulse receives all applicable returned Pulse-Supplied Equipment. Services may be cancelled online, in person at Pulse Offices or by contacting Pulse Customer Service. However, if Customer does not keep the Service for at least 90 days after the last installation activity takes place, whether exterior or interior, Pulse reserves the right to recover from Customer all costs associated with the cancellation. Cancellation costs include, but are not limited to, the number porting fee, off-net circuit contracts and penalties, Customer-specific hardware, survey and permit fees, internal and external installation costs, expediting fees, cancellation fees, and a minimum of one month of monthly recurring Service fees.

If Customer disputes any charge on Customer's bill or if Customer is eligible to receive a bill credit, Customer must contact Pulse Customer Service at (970) 541-4990 or Customer waives such dispute or credit. Billing adjustments cannot be made after two years from the date of a billing error.

Customer is solely responsible for all third-party charges that Customer may incur such as, calling phone numbers that charge for services, purchasing or subscribing to offers through the Internet, or for television content that is available but separate and apart from the Service charged by Pulse. Where Pulse must undertake remedial or maintenance activities resulting from Customer's actions or omissions, Customer-provided facilities, or the acts or omissions or facilities of any party with whom Customer has a relationship, such as a customer or agent of Customer, Customer shall be liable to Pulse for the reasonable costs and expenses thereof. The determination of fault shall be made in Pulse's sole discretion.

Customer understands that applicable Charges may change in accordance with federal, state, or local law. If Customer wishes to claim an exemption from payment of any Charges, Customer must provide Pulse



with an exemption certificate that satisfies all applicable legal requirements. Such exemption will only apply after Pulse receives a valid exemption certificate from Customer and will not apply retroactively. If at any point governmental entities adopt retroactively applicable taxes or fees, Customer shall be responsible for payment of such Charges.

## **INSTALLATION, MAINTENANCE, AND GRANT OF ACCESS TO PREMISES**

Pulse will use its best efforts to deliver the Service on the installation appointment date. In no event, though, shall Pulse be liable for any failure to deliver the Service on the original appointment date or time. Customer agrees that Pulse and its agents may enter the property and premises (collectively, the "Premises") where the Service is to be provided and/or Pulse equipment ("Equipment") is installed. Customer further agrees that Pulse is permitted to take such actions as are necessary for purposes of installing, adjusting, repairing, replacing, maintaining, upgrading, moving, protecting, auditing, checking operation and performance, or removing the Service or any Equipment, as necessary. Pulse will undertake such actions only after reasonable notice to and consent by Customer and shall attempt to perform routine repair and maintenance at such times that will have minimum disruptive impact on the continuity or performance of the Service. By accepting the Service and approving the Terms and Conditions, Customer grants Pulse reasonable access for such installation, repair, and maintenance activities. Pulse shall not incur any liability as a result of any installation, repair, or maintenance activities performed on the Premises even though, for example, the actions may render the Service unusable for a period of time.

Customer represents that Customer either owns the Premises or has all applicable rights and permissions from the Premises owner to grant Pulse access to perform the activities specified above. If Customer is not the owner of the Premises, Customer shall obtain any necessary approval from the owner, whether required by Pulse or the owner, to allow Pulse and its agents onto and into the Premises to accomplish all actions needed for provision and maintenance of the Service. Customer agrees to supply Pulse or Pulse's agent, if requested, the owner's name, address, and phone number and evidence that the owner has provided such authorization.

Customer shall connect to the Service at the designated network demarcation, which shall be one or more ports on the Pulse-provided optical network terminal, unless otherwise agreed by Pulse in advance of the installation of the Service. The installation of facilities up to the designated network demarcation shall only be made by Pulse or Pulse's agents. Customers operating as commercial entities shall be responsible for obtaining the facilities necessary to connect to the Service.

Customer further understands that installation of the Services often requires disturbance of ground, including trenching. To the extent reasonably possible, Pulse shall minimize disturbance to the Premises during installation and shall return the Premises to a condition approximating the condition of the premises prior to installation.



In some instances, Pulse may use a temporary fiber drop connection to provide service to the Customer. Customer agrees to the use of a temporary connection and approves Pulse or its agents to place a temporary fiber cable drop at ground level across the Premises. Pulse or its agents are permitted to return to the Premises, possibly multiple times, to remove the ground level temporary fiber cable drop and install a permanent underground fiber cable drop. During such fiber replacement processes, there will be a temporary loss of Service. Where Pulse uses a temporary fiber drop cable, Pulse and its agents will take appropriate measures to secure and stabilize the drop cable. Regardless of Pulse's measures, Customer assumes responsibility for themselves and others who access the Premises, to avoid the potential hazards related to the fiber drop cable location. Neither Pulse nor its agents shall be liable for any claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by and on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership relating to the installation or use of a temporary drop cable on the Premises.

Customer may always ask for proper identification any time a Pulse employee, contractor, or agent requests entry to the Premises. If identification is not provided, please do not allow access to the Premises.

## **EQUIPMENT OWNERSHIP**

### **Pulse Owned Equipment**

All Equipment issued and not sold to Customer by Pulse, including without limitation, devices, software, and hardware, shall always remain the property of Pulse and will not be deemed a fixture or in any way a part of the Premises. Customer expressly agrees that they will use the Equipment exclusively for the Service. Customer is responsible for any loss, theft, or damage to the Equipment. Customer may not sell, lease, abandon, or give away any Equipment. At Pulse's sole discretion, Pulse may replace or remove any Equipment at any time Service is provided or after Service terminates. If Customer adds to, removes, or changes the Equipment, such action may interrupt the Service. The Service and Equipment may only be used at the Premises unless expressly authorized by Pulse and Customer understands violation of this requirement may result in Service or Equipment failure and is grounds for termination or suspension of Service. At Customer's request, Pulse may relocate the Service and Equipment for a charge.

Pulse may require Customer to pay a deposit acceptable to Pulse for the Equipment prior to providing Customer with the Equipment or activating the Service. The deposit will be refunded upon Customer's full termination of Service and return of all Equipment to Pulse. Upon cancellation or termination of the Service, Customer shall return Equipment within seven (7) days to Pulse Offices – 815 14th St SW, Suite C240, Loveland, CO 80537..

### **Customer Owned Equipment**

Pulse is not responsible for the maintenance, operation, service, repair, or replacement of any equipment owned by Customer. Customer agrees to allow Pulse and its agents to send software and application



updates to Customer's equipment and to configure Customer's equipment when necessary to provide the Service, even if doing so changes, adds, or removes features or functionality or impacts the performance of such equipment. Pulse makes no representation or warranty that any software or application installed or downloaded on Customer equipment does not contain a virus or other harmful software. It is Customer's sole responsibility to take appropriate precautions to protect Customer's equipment from damage to its software, files, and data. Upon Customer's request, Pulse may install or run virus check software on Customer's equipment. Pulse makes no representation or warranty that the virus check software will detect or correct any or all viruses. Customer acknowledges that Customer may incur additional charges for any service call related to a virus or other harmful feature detected on Customer's equipment. Pulse is not responsible for any damage to Customer equipment arising from such activities. If Customer is not the owner of the equipment, Customer is responsible for obtaining any necessary approval from the owner to allow Pulse to access this equipment and to perform the activities listed above.

### **Wiring Ownership**

All inside wiring located in the Premises is owned by the Customer and is the Customer's responsibility even if Pulse installs the inside wiring. Ownership of the inside wiring begins twelve (12) inches from where the wiring enters the outside of the Premises. Pulse has no responsibility for the operation, maintenance, repair, replacement, or support of any inside wiring. At Customer's request, Pulse may install or repair the inside wiring and will charge Customer for this service.

Pulse shall own and maintain the wiring external to the Premises as well as the optical network terminal and any other Equipment necessary to provide the Service. Notwithstanding the foregoing, Customer shall be responsible for damages and repairs to any such Equipment caused by Customer's acts or omissions.

### **Intellectual Property and Third Party Licenses**

All intellectual property associated with the Services and Equipment including, but not limited to, all content, firmware, software, trademarks, trade names, and service marks are owned by Pulse, its suppliers, or their licensors. Services and Equipment may require the use of third-party licenses and may be subject to end-user license agreements. All such licenses and agreements are incorporated herein by reference and Customer shall comply with all such licenses or agreements. Nothing in these Terms and Conditions or use of the Service or Equipment shall grant Customer title to such intellectual property. Customer is granted a revocable, nonexclusive license to use the third-party licenses strictly in accordance with these Terms and Conditions. Upon termination of the Service, all third-party licenses and end-user license agreements shall terminate, Customer shall return to Pulse or destroy all intellectual property remaining in Customer's possession, and Customer shall return all Equipment to Pulse, and Customer agrees to return or destroy all versions and copies of any software received related to third-party licenses and end-user license agreements



## **VOIP SERVICE - EMERGENCY SERVICE REQUIREMENTS**

Pulse digital voice service (“Digital Voice Service”) is expressly conditioned on Customer understanding the provisions of the emergency services acknowledgement (“[Emergency Services Acknowledgement](#)”) detailing the limitations of VOIP E911 services as compared to traditional wireline service. Customer acknowledges reading, understanding, and accepting the limitations of Pulse Digital Voice Service relative to emergency services and 911 dialing as set forth more specifically in the [Emergency Services Acknowledgment](#) and acknowledges that Pulse must have Customer’s correct Premises address for 911 telephone calls to be properly directed.

### **Requirement to Register and Update Location**

Pulse Digital Voice Service includes E911 emergency service. Pulse’s E911 service facilitates the routing of emergency calls from Customer to an E911 service bureau; which routes calls to the appropriate public safety access point (“PSAP”) or call center; based on the physical location currently registered by the Customer with Pulse, or its designee. CUSTOMER IS REQUIRED TO REGISTER WITH PULSE A VALID AND VERIFIED PHYSICAL LOCATION OF CUSTOMER'S VOICE EQUIPMENT (PHONE OR SOFTPHONE) UPON ORIGINAL PROVISIONING OF VOIP SERVICES AND IMMEDIATELY UPON ANY LOCATION CHANGE.

### **Electric Power Requirement**

Pulse Digital Voice Service requires electric power from Customer’s Premises. In the event of a power outage, 911 calling may be interrupted if battery backup is not installed, fails, or is exhausted. Further, telephone calls may not be completed in the event of problems with Pulse network facilities, other network facilities, or other technical problems. Pulse may make available a battery backup in order to maintain the ability to make 911 calls during a power outage. Residential customers may, if they choose, utilize a battery backup for their Pulse Digital Voice Service. Supply and replacement of this battery is solely the Customer’s responsibility.

## **LIMITATIONS ON LIABILITY**

IN NO EVENT SHALL PULSE, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS BE LIABLE TO CUSTOMER OR TO ANY USER OF THE SERVICES OR EQUIPMENT FOR LOSS OF PROFITS OR FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICE OR EQUIPMENT PROVIDED BY PULSE UNDER THESE TERMS AND CONDITIONS, OR THE DELIVERY OR FAILURE TO DELIVER THE SERVICES OR EQUIPMENT EVEN IF PULSE HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. WITHOUT LIMITATION OF THE FOREGOING, PULSE SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS, ARISING IN CONTRACT, TORT, OR OTHERWISE, RESULTING FROM:

- (i) OTHERS ACCESSING THE SERVICES OR ANY EQUIPMENT RELATED TO THE SERVICES;



- (ii) SECURITY BREACHES, VIRUSES, EAVESDROPPING, OR INTERCEPTION OR INTERRUPTION OF THE SERVICES;
- (iii) ANY MISTAKES, OMISSIONS, FAILURES, MALFUNCTIONS, THEFT, DELETION, CORRUPTION OF FILES, ERRORS, DEFECTS, OR FAILURES OF PERFORMANCE RELATED TO THE SERVICES AND EQUIPMENT; AND
- (iv) ANY USE OF THE SERVICES OR EQUIPMENT THAT INFRINGES UPON ANY PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, CONTRACTUAL RIGHTS OR ANY INTELLECTUAL PROPERTY RIGHTS OF ONE OR MORE THIRD PARTIES.

PULSE SHALL NOT BE LIABLE FOR ANY MISTAKES, ERRORS, OMISSIONS, INTERRUPTIONS, DELAYS, OUTAGES OR DEFECTS IN THE SERVICE OR EQUIPMENT WHICH ARE CAUSED BY FORCE MAJEURE, REPAIR AND MAINTENANCE, OR THE CUSTOMER OR THIRD PARTIES WITH WHOM CUSTOMER HAS A RELATIONSHIP, SUCH AS A CUSTOMER OF CUSTOMER. PULSE SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION ASSOCIATED WITH SERVICES OR EQUIPMENT IT DOES NOT FURNISH. IN NO EVENT SHALL AN OUTAGE BE DEEMED A DEFAULT UNDER THESE TERMS AND CONDITIONS.

### **DISCLAIMER OF WARRANTIES**

PULSE MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PARTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE SERVICE, EQUIPMENT, OR ANY OTHER MATTER WHICH IS THE SUBJECT OF THESE TERMS AND CONDITIONS, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. THE SERVICE AND EQUIPMENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. THE SERVICE IS NOT FAIL-SAFE AND MAY BE DISRUPTED. THE SERVICE IS NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS IN WHICH AN ERROR OR INTERRUPTION COULD LEAD TO INJURY TO BUSINESS, PERSONS, PROPERTY, OR THE ENVIRONMENT. WITHOUT LIMITING THE FOREGOING, PULSE DOES NOT WARRANT THAT THE SERVICE AND EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF QUALITY AND PERFORMANCE, OR LOSS OF CONTENT, DATA OR INFORMATION. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR EQUIPMENT, IF ANY, BY PULSE OR ITS AGENTS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

### **INDEMNIFICATION**

THE CUSTOMER RELEASES AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS PULSE, ITS AGENTS, OFFICERS, EMPLOYEES AND VOLUNTEERS FROM AND AGAINST ALL DAMAGES, CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, JUDGMENTS, COSTS, EXPENSES OF EVERY KIND AND NATURE, PREDICATED UPON INJURY TO OR DEATH OF ANY PERSON OR



LOSS OF OR DAMAGE TO ANY PROPERTY, ARISING, IN ANY MANNER, FROM THE CUSTOMER'S USE OR MISUSE OF THE SERVICE OR EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY; FROM USE OR FAILURE OF THE 911/E911 FUNCTIONALITY OR ANY OTHER DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, MEDICAL MONITORING OR OTHER SIMILAR SYSTEM; AND FROM CUSTOMER'S BREACH OF ANY PROVISION OF THESE TERMS AND CONDITIONS.

## **NO WAIVER OF GOVERNMENTAL IMMUNITY OR MONETARY LIMITATIONS**

Notwithstanding any other provision of these Terms and Conditions or any other document or policy referenced herein, Pulse does not waive any rights, immunities, privileges, monetary limitations to judgments and defenses available to Pulse under common law or the Colorado Governmental Immunity Act, Sec. 24-10-101 et seq. C.R.S.

## **VIDEO SERVICES**

### **Content and Advertising**

Customer acknowledges that Pulse has the right at any time to insert specific advertised video programming and to substitute other video programming without notice.

### **Parental Controls**

Parental control features are available for your use with the Services. Parents and legal guardians of minors can use this feature to block or filter video content that may not be appropriate for minors.

### **Charges and Fees**

If Customer subscribes to video services, then Customer understands that Pulse may pass through increases in the amount Pulse must pay video content providers to which Customer subscribes. This may result in an increase to Customer's Monthly Charge.

### **Customer Behavior Expectations**

Customers are expected to treat all Pulse staff, agents, contractors, and vendors with respect and courtesy at all times. Using abusive, offensive, threatening, or discriminatory language and behavior is strictly prohibited.

Discrimination based on race, ethnicity, gender, age, religion, pregnancy, sexual orientation, disability, or any other basis protected by federal, state, or local laws will not be tolerated.

Any form of physical or verbal harassment, threats, intimidation, or coercion towards Pulse staff, agents, contractors, or vendors is strictly prohibited.

In the event of a disagreement or dispute, customers are encouraged to engage in constructive dialogue and seek resolution through appropriate channels provided by Pulse. Aggressive behavior or threats will not be tolerated.



### **Termination of Services by Pulse**

Inappropriate use or abuse of the Services by Customer, as determined in the sole discretion of Pulse, may result in account suspension, termination, and/or legal action, following notice from Pulse.

Pulse may terminate Customer's account immediately if it determines, in its sole discretion, that Customer has violated any of the provisions of the Terms and Conditions or Acceptable Use Policy. Pulse reserves the right to unilaterally terminate or suspend an account at any time, without providing a reason. Further, Pulse may terminate Customer's Service for any reason by providing written notice to Customer at least thirty (30) days prior to the termination date.

If a Customer's service is terminated by Pulse for any reason, Customer will remain fully liable and responsible to pay any fees that are still owed to Pulse and for all costs Pulse incurs to collect such amounts, including, without limitation, collection costs and attorney's fees.

### **MISCELLANEOUS**

**Customer Representations.** In addition to representations and warranties Customer made elsewhere in these Terms and Conditions, Customer also represents and warrants that: (i) they are at least 18 years of age; (ii) that they have provided information that is accurate, complete, and current, including, without limitation, their legal name, address, telephone number(s), email address(es), the number of devices on which or through the Service is being used, and payment information; (iii) Customer agrees to immediately notify Pulse if there is any change in the information that Customer has provided to Pulse; (iv) Customer owns or has a legal right to occupy the Premises; and (v) that the Service and Equipment shall not be used for any illegal purpose or in any way that may violate the law.

**Credit Check Approval.** By making a request for Service, Customer agrees that Pulse may review Customer's previous billing history with Pulse, and authorizes Pulse to make credit inquiries and access Customer's credit history from third parties. Customer further authorizes Pulse to disclose this credit information to appropriate third parties for reasonable business purposes according to applicable law.

**Governing Law.** These Terms and Conditions and any disputes related thereto shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to its choice of law rules. Any claim or dispute arising out of or relating to these Terms and Conditions shall be subject to the exclusive jurisdiction of state or federal courts located in Larimer County, Colorado. Customer hereby submits to the personal jurisdiction of such courts.

**Relationship of the Parties.** The Customer is independent from Pulse and nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent, or employer and employee relationship between the parties.

**IP Addresses.** Internet Protocol ("IP") addresses are not portable and are not assigned for independent administration or distribution. Customer understands that IP assignments are not guaranteed and may be modified as required by Pulse or the American Registry for Internet Numbers. Static IP addressing is not available on residential service tiers.



**Pulse Agents.** Customer recognizes that Pulse may enter into agreements with third parties to perform all or part of its obligations hereunder and that references herein to Pulse includes, where applicable, its agents and independent contractors.

**Force Majeure.** Without limiting any other provision of these Terms and Conditions, Pulse shall not be held liable for any loss, damage, delay or failure to provide or maintain the Service caused by anything beyond its control, such as acts of God, acts of civil or military authority, government regulations, eminent domain, embargoes, labor stoppage, epidemics, war, police actions, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, severe weather conditions, inability to secure facilities, products or services of other persons including transportation facilities.

**Incorporation by Reference.** These Terms and Conditions incorporate by reference any policies, documents, agreements, or acknowledgements referenced herein. Such policies, documents, agreements, or acknowledgements include, but are not limited to, Pulse's Acceptable Use Policy, Customer Proprietary Network Information Policy, Copyright Policy, Emergency Services Acknowledgement for Voice Service Users, Internet Transparency Policy, Privacy Notice, and Pulse Rates Card (addressing Pulse's rates, fees, and charges).

**Merger.** These Terms and Conditions and any other document incorporated by reference constitute the entire agreement and understanding between Customer and Pulse with respect to Pulse's provision of the Service and Equipment. They replace any and all prior written or verbal agreements. Neither the course of conduct between the parties nor trade practice shall modify these Terms and Conditions.

**Severability.** If any portion of these Terms and Conditions is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect.

**No Waiver of Breach.** No waiver of any breach or default under these Terms and Conditions shall be a waiver of any other breach or default.

**Changes to Service and Terms and Conditions.** Subject to applicable law, Pulse has the right to change Services, Equipment, rates and charges at any time without notice to Customer. Pulse may also change, add, or remove features or offerings contained in the Service including, without limitation, changes in programming, functionality, equipment requirements, and any terms and conditions related to the Service. Pulse may provide Customer notice of changes by posting these notices on Pulse's website at [www.PulseFiber.org](http://www.PulseFiber.org), by mail to Customer's billing address, by email to the email address associated with Customer's account, or by including notice in Customer's bill for the Service. Customer agrees that any one of the foregoing will constitute sufficient and effective notice under these Terms and Conditions.

**Survival.** Certain obligations under these Terms and Conditions shall continue beyond termination of the Service including, but not limited to, provisions dealing with payment for the Service and Equipment, access to the Premises, disclaimers of warranties, limitations of liability, and indemnity. The suspension,



termination, expiration, or cancellation of the Service under these Terms and Conditions shall in no way affect the survival of such obligations.

**Customer to Maintain Email Address on File with Pulse.** Customer shall maintain a valid email address on file with Pulse at all times. Notices, monthly bills, system updates, and notifications of changes to the Customer's account will be sent to the email address on file with Pulse. Pulse disclaims all liability and Customer releases Pulse from any liability arising from Customer's failure to provide a current and accurate email address to Pulse.

**Agreement to Cooperate.** Customer and Pulse each agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder imposed by any governmental or quasi-governmental authority.