

BUSINESS SERVICES CUSTOMER TERMS AND CONDITIONS

The Customer named on the Service Order Agreement and Joytel agree that the terms and conditions on the Service Order Agreement and these terms and conditions constitute the agreement (the "Agreement") for the provision of the Services selected by Customer and designated on a Service Order. Services may include wired fiber high-speed internet services, and wireless high-speed internet services (each a "Service" and collectively "Services").

The terms and conditions in the "GENERAL TERMS AND CONDITIONS" section below are applicable to all Services.

GENERAL TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

Affiliate: Any entity that controls, is controlled by or is under common control with Joytel.

Agreement: Consists of the Service Order Agreement executed by Customer and accepted by Joytel, these Business Services Customer Terms and Conditions, and each Service Order accepted by Joytel under the Agreement.

Joytel: The operating company that owns and/or operates the fiber system in your area.

Joytel Equipment: Any and all facilities, equipment or devices provided by Joytel or its authorized contractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks.

Joytel Website or Website: The Joytel website where the General Terms and Conditions and other Joytel security and privacy policies applicable to the Agreement will be posted.

Confidential Information: All information regarding either party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the parties' communications regarding such items.

Customer-Provided Equipment: Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.

Licensed Software: Computer software or code provided by Joytel or required to use the Services, including without limitation, associated documentation, and all updates thereto.

Party: A reference to Joytel or the Customer; and in the

plural, a reference to both companies.

Service(s): The wired and wireless fiber services provided by Joytel to Customer described in one or more Service Order(s). All Services are for domestic U.S., commercial, non-residential use only. Services are subject to availability.

Service Commencement/Activation Date: The date(s) on which Joytel first makes Service available for use by Customer. A single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates. In the case of self-install customers, the Activation Date is the first date of data transfer or fourteen (14) days, whichever comes first. In the event that the Activation Date is delayed as a result of Customer's failure to provide access or any site condition necessary to make the Connection operational, the term of this Agreement shall commence on the date on which Joytel first attempts to install the Joytel Equipment.

Service Order: A request for Joytel to provide the Services to Service Location(s) submitted by Customer to Joytel (a) on a then-current Joytel form designated for that purpose or (b) if available, through a Joytel electronic or verbal order processing system designated for that purpose. Customer's first Service Order is included as part of the Service Order Agreement.

Service Order Agreement: The agreement under which all Service Orders are submitted to Joytel.

Service Location(s): The Customer location(s) where Joytel provides the Services. For multi-tenant buildings, Service Location shall mean the customer's leased and/or owned business space.

Service Term: The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Service Order.

Tariff: A federal or state Joytel tariff and the successor documents of general applicability that replace such tariff in the event of detariffing.

Termination Charges: Except as otherwise provided herein, charges that may be imposed by Joytel if, prior to the end of the applicable Service Term (a) Joytel terminates Services for cause or (b) Customer terminates any Service without cause. Termination Charges with respect to each Service terminated during the initial and any subsequent Service Term shall equal, in addition to all amounts payable by Customer in accordance with Section 5.3, one hundred percent (100%) of the remaining monthly fees that would have been payable by Customer under the applicable Service Order if the terminated Service(s) had been provided until the end of the Service Term and one hundred percent (100%) of any amount paid by Joytel in connection with Custom Installation, as that term is defined in Section 2.7, for the Services provided by Joytel under such Service Order.

ARTICLE 1A. CHANGES TO THE AGREEMENT TERMS

Joytel may change or modify the Agreement, and any related policies from time to time ("Revisions") by posting such Revisions to the Joytel Website. The Revisions are effective upon posting to the Website. Customer will receive notice of the

Revisions in the next applicable monthly invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide Joytel with written notice that the Revisions adversely affect Customer's use of the Service(s). If after notice Joytel is able to verify such adverse effect but is unable to reasonably mitigate the Revision's impact on such Services, then Customer may terminate the impacted Service(s) without further obligation to Joytel beyond the termination date, including Termination Charges, if any. This shall be Customer's sole and exclusive remedy.

ARTICLE 2. DELIVERY OF SERVICES

2.1 Orders. A Service Order must be completed to initiate Service to a Service Location(s). A Service Order shall become binding on the parties when (i) it is specifically accepted by Joytel either electronically or in writing, (ii) Joytel begins providing the Services described in the Service Order or (iii) Joytel begins installation of the Services described in the Service Order, whichever is earlier. When a Service Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

2.2 Speed. Joytel makes no representation regarding the speed of the Internet Service. Actual speeds may vary and are not guaranteed. Many factors affect speed including, without limitation, the number of workstations using a single connection.

2.3 Access. Customer, at no cost to Joytel, shall secure and maintain all necessary rights of access to Service Location(s) for Joytel to install and provide the Services, unless Joytel has secured such access prior to this Agreement. In addition, Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Joytel Equipment used to provide the Services within the Service Location(s). Joytel and its employees and authorized contractors will require free ingress and egress into and out of the Service Location(s) in connection with the provision of Services. Upon reasonable notice from Joytel, Customer shall provide all required access to Joytel and its authorized personnel.

2.4 Service Commencement Date. Upon installation and connection of the necessary facilities and equipment to provide the Services, Joytel shall notify Customer that the Services are available for use, and the date of such notice shall be called the "Service Commencement Date." Any failure or refusal on the part of Customer to be ready to receive the Services on the Service Commencement Date shall not relieve Customer of its obligation to pay applicable Service charges.

2.5 Joytel Equipment. Joytel Equipment is and shall remain the property of Joytel regardless of where installed within the Service Location(s), and shall not be considered a fixture or an addition to the land or the Service Location(s). At any time Joytel may remove or change Joytel Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Joytel Equipment or permit others to do so, and shall not use the Joytel Equipment for any purpose other than that authorized by the Agreement. Joytel shall maintain Joytel Equipment in good operating

condition during the term of this Agreement; provided, however, that such maintenance shall be at Joytel's expense only to the extent that it is related to and/or resulting from the ordinary and proper use of the Joytel Equipment. Customer is responsible for damage to, or loss of, Joytel Equipment caused by its acts or omissions, and its noncompliance with this Section, or by fire, theft or other casualty at the Service Location(s), unless caused by the negligence or willful misconduct of Joytel. Customer agrees not to take any action that would directly or indirectly impair Joytel's title to the Joytel Equipment, or expose Joytel to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Following Joytel's discontinuance of the Services to the Service Location(s), Joytel retains the right to remove the Joytel Equipment including, but not limited to, that portion of the Joytel Equipment located within the Service Location(s). To the extent Joytel removes such Joytel Equipment, it shall be responsible for returning the Service Location(s) to its prior condition, wear and tear excepted.

2.6 Customer-Provided Equipment. Joytel shall have no obligation to install, operate, or maintain Customer-Provided Equipment. Customer alone shall be responsible for providing maintenance, repair, operation and replacement of all inside wiring and equipment and facilities on the Customer's side of the modem, route and/or coaxial/fiber input connection. All Customer-Provided Equipment and wiring that Customer uses in connection with the Services must be fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Joytel's employees or authorized contractors when the difficulty or trouble report results from Customer-Provided Equipment. Joytel shall not be responsible to the Customer if changes in any of the facilities, operations or procedures of Joytel utilized in the provision of Service render any Customer-Provided Equipment or other equipment provided by a Customer obsolete or require modification or alteration of such equipment or system or otherwise affect its use or performance. Customer understands that the Connection operates through an Ethernet connection. The Ethernet card shall be provided and installed by Customer, at Customer's expense.

2.7 Maintenance. Routine maintenance and periodic system repairs, upgrades and reconfigurations, Public emergency or necessity, force majeure, restrictions imposed by law, acts of God, labor disputes and other situations, including mechanical or electronic breakdowns, may result in temporary impairment or interruption of service. As a result, Joytel does not guarantee continuous or uninterrupted service and reserves the right, from time to time, to temporarily reduce or suspend service without notice. Customer shall indemnify and hold Joytel and its directors, officers, employees, and agents harmless from any and all obligations, charges, claims, liabilities and fees incurred as the result of interruptions or omissions of service un this Agreement.

2.8 Engineering Review. Each Service Order submitted by Customer shall be subject to an engineering review by Joytel. The engineering review will determine whether the cable plant must be extended, built or upgraded in order to provide the ordered

Services at the requested Service Location(s), or whether Service installation has to be expedited to meet the Customer's requested Service Commencement Date ("Custom Installation"). Joytel will provide Customer written notification in the event Service installation at any Service Location will require an additional one-time installation fee ("Custom Installation Fee"). Customer will have five (5) days from receipt of such notice to reject the Custom Installation Fee and terminate, without further liability, the Service Order with respect to the affected Service Location(s).

2.9 Administrative Web Site. Joytel 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"). Joytel 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 Joytel 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 Joytel shall be entitled to rely on all Customer uses of and submissions to the Administrative Web Site as authorized by Customer. Joytel shall not be liable for any loss, cost, expense or other liability arising out of any Customer use of the Administrative Web Site or any information on the Administrative Web Site. Joytel 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.

2.10 Upgrade. Customer may, at any time during the course of this agreement, upgrade its services from Joytel, or take advantage of rate reductions to its current service without affecting the remaining term or conditions in this agreement.

2.11 Internet. Through the Connection, Joytel provides Customer access to the Internet. Customer hereby acknowledges that the Internet is a separate and independent network of computers which is not owned, operated or managed by Joytel or in any way affiliated with Joytel or any of its affiliates. Customer's use of the internet shall be solely at Customer's own risk and is subject to all applicable local, state, national, and international laws and regulations. Access to the Internet is dependent on numerous factors, technologies, and systems, many of which are beyond Joytel's authority and control.

2.12 Permitting And Landlord Approval. It is Customer's sole responsibility to obtain any required permits or Landlord approval for the installation of Joytel Equipment on property not owned by Customer or subject to any restriction or building code provision requiring a building permit for such installation. In the event a Landlord or building code dispute results in the termination of Service, Customer will be fully, completely, and solely responsible for all Termination Charges and fees incurred by Joytel, payable immediately.

ARTICLE 3. CHARGES, BILLING AND PAYMENT

3.1 Charges. Customer shall pay Joytel one hundred percent (100%) of the Installation and/or Custom Installation Fee prior to the installation of Service. Customer further agrees to pay all charges associated with the Services, as set forth or referenced in the applicable Service Order(s) or invoiced by Joytel. These charges may include, but are not limited to installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of Joytel Equipment, per-call charges, charges for service calls, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). Some Services such as measured and per-call charges, may be invoiced after the Service has been provided to Customer. Except as otherwise indicated herein or on the applicable Service Order(s), monthly recurring charges for Internet Services shall not increase during the initial Service Term.

3.2 Third-Party Charges. Customer may incur charges from third party service providers that are separate and apart from the amounts charged by Joytel. These may include, without limitation, charges resulting from accessing on-line services, calls to parties who charge for their telephone based services, purchasing or subscribing to other offerings via the Internet or the Cloud Solutions Marketplace, or selecting interactive options on Public View Video, Video, or otherwise. Customer agrees that all such charges, including all applicable taxes, are Customer's sole responsibility. In addition, Customer is solely responsible for protecting the security of credit card information provided to others in connection with such transactions.

3.3 Payment of Bills. Except as otherwise indicated herein or on the Service Order(s), Joytel will invoice Customer via email in advance on a monthly basis for all monthly recurring Service charges and fees arising under the Agreement in addition to all amounts due and owing to Joytel. Customer shall make payment to Joytel for all invoiced amounts within thirty (30) days after the date of the invoice. Any amounts not paid to Joytel within such period will be considered past due and Customer's Connection may be suspended. If a Service Commencement Date is not the first day of a billing period, Customer's next monthly invoice shall include a *prorated* charge for the Services, from the date of installation to the first day of the new billing. In certain cases, Joytel may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between Customer and the third party. Joytel shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party. Payment shall be in the form of a company check.

3.4 Partial Payment. Partial payment of any bill will be applied to the Customer's outstanding charges in the amounts and proportions as solely determined by Joytel. No acceptance of partial payment(s) by Joytel shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

3.5 Payment by Credit Card. Upon Customer's written request and Joytel's acceptance of such request, Joytel will accept certain credit card payments for charges generated under the Agreement. By providing Joytel with a credit card number, Customer authorizes Joytel to charge the card for all charges generated under this Agreement, until (i) this Agreement is terminated or (ii) Customer provides sixty (60) days prior notice that Joytel stop charging the credit card. Customer agrees to provide Joytel with updated credit card or alternate payment information on a timely basis prior to the expiration or termination of the credit card on file or in the event that Customer's credit card limit is or will be insufficient to cover payment. If Joytel is unable to charge Customer's credit card for any reason, Customer agrees to pay all amounts due, including any late payment charges or bank charges, upon demand by Joytel. Joytel may limit the option to pay by credit card to specific Services or may discontinue acceptance of credit card payments in whole or in part upon thirty (30) days prior notice to Customer.

3.6 Credit Approval and Deposits. Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide Joytel with credit information requested by Joytel. Customer authorizes Joytel to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to Joytel will be true and correct. Joytel, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, Joytel may require Customer to make a deposit (in an amount not to exceed an estimated two-month's charge for the Services) as a condition to Joytel's provision of the Services, or as a condition to Joytel's continuation of the Services. The deposit will not, unless explicitly required by law, bear interest and shall be held by Joytel as security for payment of Customer's charges. If the provision of Service to Customer is terminated, or if Joytel determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit will be credited to Customer's account or will be refunded to Customer, as determined by Joytel.

3.7 Taxes and Fees. Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes or fees (however designated). Customer will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively.

3.8 Other Government-Related Costs and Fees. Joytel reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees (if any), regardless of whether Joytel or its Affiliates pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. These obligations may include those imposed on Joytel or its affiliates by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction, as well as those that Joytel or its affiliates are required to collect from the Customer or to pay to others in

support of statutory or regulatory programs. Taxes and other government-related fees and surcharges may be changed with or without notice,

3.9 Disputed Invoice. If Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to Joytel for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve the dispute. However, should the parties fail to mutually resolve the dispute within sixty (60) days after the dispute was submitted to Joytel, all disputed amounts shall become immediately due and payable to Joytel. Under no circumstances may Customer submit a billing dispute to Joytel later than sixty (60) days following Customer's receipt of the applicable invoice.

3.10 Past-Due Amounts. Any undisputed payment not made when due will be subject to a reasonable late charge not to exceed the highest rate allowed by law on the unpaid invoice. If Customer's account is delinquent, Joytel may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any Joytel Equipment that Customer fails to return in accordance with the Agreement. If Joytel is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned Joytel Equipment, Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Joytel under the Agreement or at law or in equity.

3.11 Rejected Payments. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

3.12 Fraudulent Use of Services. Customer is responsible for all charges attributable to Customer with respect to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. Joytel may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Customer. Joytel reserves the right to restrict, suspend or discontinue providing any Service in the event of fraudulent use by Customer.

ARTICLE 4. TERM

4.1 Agreement Term. This Agreement shall terminate upon the expiration or other termination of the final existing Service Order entered into under this Agreement. The term of a Service Order shall commence on the Service Commencement Date and shall terminate at the end of the stated Service Term of such Service. Unless otherwise stated in these terms and conditions, if a Service Order does not specify a term of service, the Service Term shall be one (1) year from the Service Commencement Date.

4.2 Service Order Renewal. Upon the expiration of the initial Service Term, this Agreement and each applicable Service Order shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)" and unless otherwise distinguished herein, is also referred to as "Service Term(s)"),

unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least sixty (60) days before the expiration of the then current Service Term. Such termination shall be effective sixty (60) days after Joytel's receipt of the termination notice. Joytel may change the monthly charges payable under this Agreement for any Renewal Term by notifying Customer at least sixty (60) days prior to the beginning of any Renewal Term of such a rate change.

4.3 Changes in Monthly Recurring Service Charges.

Except as otherwise identified in the Agreement, at any time during initial Service Term and from time to time thereafter, Joytel may increase the monthly recurring charges for wired and wireless fiber services subject to thirty (30) days prior notice to Customer. Effective at any time after the end of the initial Service Term and from time to time thereafter, Joytel may modify the monthly recurring charges for Internet Services subject to thirty (30) days prior notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing. Nothing within this Section 4.3 is intended to limit Joytel's ability to increase charges associated with the Services as set forth in Section 3.1.

ARTICLE 5. TERMINATION OF AGREEMENT AND/OR A SALES ORDER

5.1 Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order or this Agreement (termination without cause), in whole or part, at any time during the Service Term upon sixty (60) days prior notice to Joytel, and be subject to payment to Joytel of all outstanding amounts due for the Services, any and all applicable Termination Charges, the return of any and all Joytel Equipment, full payment of and for the remaining monthly recurring charges outstanding in the term, plus any additional fees for disconnection and removal of equipment from Customer's premises. Such termination shall be effective sixty (60) days after Joytel's receipt of the termination notice.

5.2 Termination for Cause.

(a) If Customer is in breach of a payment obligation (including failure to pay a required deposit), and fails to make payment in full within ten (10) days after receipt of notice of default, or has failed to make payments of all undisputed charges on or before the due date on three (3) or more occasions during any twelve (12) month period, Joytel may, at its option, terminate this Agreement, terminate the affected Service Orders, suspend Service under the affected Service Orders, and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Service Orders as a condition of continuing to provide the Services. However, Joytel will not take any such action as a result of Customer's non-payment of a charge that is the subject of a timely billing dispute, unless the parties have reviewed the dispute and determined in good faith that the charge is correct.

(b) If either party breaches any material term of this Agreement and the breach continues without remedy for thirty (30) days after notice of default, the non-defaulting party

may terminate for cause any Service Order materially affected by the breach.

(c) A Service Order may be terminated by either party immediately upon notice if the other party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

(d) If Customer's use of the Connection is terminated by Joytel for violation of Joytel's Acceptable Use Policy, Customer shall be subject to, and immediately pay to Joytel all outstanding amounts due for the Services, any and all applicable Termination Charges, the return of any and all Joytel Equipment, full payment of the remaining monthly recurring charges outstanding in the term, any additional fees for disconnection and removal of equipment from Customer's premises, plus a fee assessed for the extra time and effort for Joytel's staff enforcing the Acceptable Use Policy ("AUP").

(e) Termination by either party of a Service Order does not waive any other rights or remedies that it may have under this Agreement.

5.3 Effect of Expiration or Termination of the Agreement or a Service Order.

Upon the expiration or termination of a Service Order for any reason: (i) Joytel may disconnect the applicable Service; (ii) Joytel may delete all applicable data, files, electronic messages, voicemail or other information stored on Joytel's servers or systems; (iii) if Customer has terminated the Service Order prior to the expiration of the Service Term for convenience, or if Joytel has terminated the Service Order prior to the expiration of the Service Term as a result of material breach by Customer, Joytel may assess and collect from Customer applicable Termination Charges; (iv) Customer shall, permit Joytel access to retrieve from the applicable Service Locations any and all Joytel Equipment (however, if Customer fails to permit access, or if the retrieved Joytel Equipment has been damaged and/or destroyed other than by Joytel or its agents, normal wear and tear excepted, Joytel may invoice Customer for the full replacement cost of the relevant Joytel Equipment, or in the event of minor damage to the retrieved Joytel Equipment, the cost of repair, which amounts shall be immediately due and payable); and (v) if used in conjunction with the terminated Service, Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return the Licensed Software to Joytel.

5.4 Regulatory and Legal Changes. The parties acknowledge that the respective rights and obligations of each party as set forth in this Agreement upon its execution are based on law and the regulatory environment as it exists on the date of execution of this Agreement. Joytel may, in its sole discretion, immediately terminate this Agreement, in whole or in part, in the event there is a material change in any law, rule, regulation, Force Majeure event, or judgment of any court or government agency, and that change affects Joytel's ability to provide the Services herein.

**ARTICLE 6. LIMITATION OF LIABILITY;
DISCLAIMER OF WARRANTIES;
WARNINGS**

6.1 NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, PROVIDED, HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY JOYTEL OR FOR EARLY TERMINATION CHARGES AND THOSE CHARGES REFERENCED IN SECTION 5.2 AND 5.2. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ENTIRE LIABILITY OF JOYTEL AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS OR CONTRACTORS ("ASSOCIATED PARTIES") FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE JOYTEL EQUIPMENT SHALL BE LIMITED TO A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

6.2 THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, JOYTEL EQUIPMENT, OR LICENSED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, JOYTEL DOES NOT WARRANT THAT THE SERVICES, JOYTEL EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, JOYTEL EQUIPMENT, OR LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES, JOYTEL EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

6.3 JOYTEL MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, JOYTEL EQUIPMENT, OR LICENSED SOFTWARE FOR USE BY THIRD PARTIES.

6.4 IN NO EVENT SHALL JOYTEL, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER,

ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT, (v) ANY LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MIS-DELIVERIES, OR SERVICE INTERRUPTION, HOWEVER CAUSED. USE OF ANY INFORMATION OBTAINED THROUGH JOYTEL'S NETWORK SHALL BE AT THE CUSTOMER'S OWN RISK. JOYTEL SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH THE CONNECTION.

6.5 **Disruption Of Service.** The Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. Customer expressly assumes the risks of any damages resulting from High Risk Activities. Joytel shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances, including, but not limited to, causes attributable to Customer or Customer- Equipment; inability to obtain access to the Service Locations; failure of any television signal at the transmitter; failure of a communications satellite; loss of use of poles or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Services. Joytel is further not be liable for fiber cut from 3rd party Local Exchange Carrier ("LEC"), repair or restoration of any structure or surface altered or penetrated by Joytel during the installation or removal of the antenna, fiber, mast, tripod, wiring, or any other Joytel Equipment located at Customer's location. Customer understands that Service requires a direct Connection between the Joytel Point of Presence ("POP") and the Equipment located at Customer's location ("Demarcation Point"). In the event Service is interrupted by the Customer, Customer's agents and/or assigns, directors, officers, employees, including but not limited to cutting of cables, destruction of Equipment, signal blocking, etc., Joytel will attempt to correct and restore Service and/or the Connection. Customer may incur charges for any extra hardware and/or service labor at that time.

6.6 **Service Level Agreement.** Joytel's liability for Wired Fiber Connection Connectivity performance shall be limited to the amounts set forth in the Service Level Agreement ("SLA") posted at (XXXXXXXXXXXXXXXX) and attached hereto. Joytel may change or modify the SLA ("SLA Revisions") by posting such SLA Revisions to the Website. The SLA Revisions are effective upon posting to the Website. This SLA

6.7 Remedies. Customer's sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Joytel and its affiliates and agents is limited to the maximum extent permitted by law.

ARTICLE 7. INDEMNIFICATION

7.1 Subject to Article 6, each Party ("Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party"), its affiliates, officers, directors, employees, stockholders, partners, providers, independent contractors and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts, arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, "Claims") relating to: (i) any Claim of any third party resulting from the negligence or willful act or omission of Indemnifying Party arising out of or related to the Agreement, the obligations hereunder, and uses of Services, Joytel Equipment, and Licensed Software; and (ii) any Claim of any third party alleging infringement of a U.S. patent or U.S. copyright arising out of or related to this Agreement, the obligations hereunder, and the use of Services, Joytel Equipment, and Licensed Software.

7.2 The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand ("Actions") that is the subject of Article 7 hereof. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel of its own choosing, but which is reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 7A. BINDING ARBITRATION

7A.1 Purpose. If Customer has a Dispute (as defined below) with Joytel that cannot be resolved through an informal dispute resolution process between the parties, Customer or Joytel may elect to arbitrate that Dispute in accordance with the terms of this arbitration provision ("Arbitration Provision") rather than litigate the Dispute in court. Arbitration means the parties will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury. Proceeding in arbitration may result in limited discovery and may be subject to limited review by courts.

7A.2 Definitions. The term "Dispute" means any dispute,

claim, or controversy between you and Joytel regarding any aspect of Customer's relationship with Joytel, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Provision. "Dispute" is to be given the broadest possible meaning that will be enforced. As used in this Arbitration Provision, "Joytel" means Joytel and its parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents.

7A.3 Right to Opt Out. IF CUSTOMER DOES NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, CUSTOMER MUST NOTIFY JOYTEL IN WRITING WITHIN THIRTY (30) DAYS OF THE DATE COMPANY EXECUTED THE AGREEMENT BY MAIL TO JOYTEL 800 WATER STREET, SUITE 202, JACKSONVILLE, FL 32202 ATTN: LEGAL DEPARTMENT/COMMERCIAL SERVICES ARBITRATION. YOUR WRITTEN NOTIFICATION TO JOYTEL MUST INCLUDE THE CUSTOMER'S NAME, ADDRESS AND JOYTEL ACCOUNT NUMBER, THE NAME AND POSITION OF THE PERSON SUBMITTING THE NOTIFICATION ON BEHALF OF THE CUSTOMER, AS WELL AS A CLEAR STATEMENT THAT CUSTOMER DOES NOT WISH TO RESOLVE DISPUTES WITH JOYTEL THROUGH ARBITRATION. CUSTOMER'S DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON CUSTOMER'S RELATIONSHIP WITH JOYTEL OR THE DELIVERY OF SERVICE(S) TO CUSTOMER BY JOYTEL. IF CUSTOMER HAS PREVIOUSLY NOTIFIED JOYTEL OF ITS DECISION TO OPT OUT OF ARBITRATION, CUSTOMER NEED NOT PROVIDE NOTICE AGAIN.

7A.4 Initiation of Arbitration Proceeding/Selection of Arbitrator. If Customer or Joytel elect to resolve a Dispute through arbitration pursuant to this Arbitration Provision, the party initiating the arbitration proceeding may open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-493- 4185, www.adr.org under the Commercial Arbitration Rules of the American Arbitration Association "AAA."

7A.5. Arbitration Procedures.

(a) Because the Service(s) provided to Customer by Joytel concerns interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all Disputes. However, applicable federal law or the law of the state where Customer receives the Service from Joytel may apply to and govern the substance of any Disputes. No state statute pertaining to arbitration shall be applicable under this Arbitration Provision.

(b) If there is a conflict between this Arbitration Provision and the rules of the arbitration organization, this Arbitration Provision shall govern. If the AAA will not enforce this Arbitration Provision as written, it cannot serve as the arbitration organization to resolve Customer's dispute with Joytel. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall

mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will enforce this Arbitration Provision as written. If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern.

(c) A single arbitrator will resolve the Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information.

(d) The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.

(e) If an award granted by the arbitrator exceeds \$75,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The members of the three-arbitrator panel will be selected according to the rules of the arbitration organization. The arbitration organization will then notify the other party that the award has been appealed. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which exists under the FAA.

7A.6 **Restrictions:**

(a) CUSTOMER MUST CONTACT JOYTEL WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE (EXCEPT FOR BILLING DISPUTES, ABOUT WHICH CUSTOMER MUST CONTACT JOYTEL WITHIN SIXTY (60) DAYS AS PROVIDED IN SECTION 3.9 OF THE GENERAL TERMS AND CONDITIONS), OR CUSTOMER WAIVES THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.

(b) ALL PARTIES TO THE ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS.

7A.7 **Location of Arbitration.** The arbitration will take place at a location convenient to Customer in the area where Customer receives Services from Joytel.

7A.8 **Payment of Arbitration Fees and Costs.** JOYTEL WILL ADVANCE ALL ARBITRATION FILING FEES AND ARBITRATOR'S COSTS AND EXPENSES UPON CUSTOMER'S WRITTEN REQUEST GIVEN PRIOR TO THE COMMENCEMENT OF THE ARBITRATION. CUSTOMER IS RESPONSIBLE FOR ALL ADDITIONAL COSTS THAT CUSTOEMR INCURS IN THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, FEES FOR ATTORNEYS OR

EXPERT WITNESSES. IF THE ARBITRATION PROCEEDING IS DECIDED IN JOYTEL'S FAVOR, CUSTOMER SHALL REIMBURSE JOYTEL FOR THE FEES AND COSTS ADVANCED TO CUSTOMER ONLY UP TO THE EXTENT AWARDABLE IN A JUDICIAL PROCEEDING. IF THE ARBITRATION PROCEEDING IS DETERMINED IN CUSTOMER'S FAVOR, CUSTOMER WILL NOT BE REQUIRED TO REIMBURSE JOYTEL FOR ANY OF THE FEES AND COSTS ADVANCED BY JOYTEL. IF A PARTY ELECTS TO APPEAL AN AWARD TO A THREE-ARBITRATOR PANEL, THE PREVAILING PARTY IN THE APPEAL SHALL BE ENTITLED TO RECOVER ALL REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THAT APPEAL. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARBITRATION PROVISION, JOYTEL WILL PAY ALL FEES AND COSTS THAT IT IS REQUIRED BY LAW TO PAY.

7A.9 **Severability.**

(a) If any clause within this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of this Arbitration Provision will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, the entire Arbitration Provision will be unenforceable, and the dispute will be decided by a court.

(b) In the event this entire Arbitration Provision is determined to be illegal or unenforceable for any reason, or if a claim is brought in a Dispute that is found by a court to be excluded from the scope of this Arbitration Provision, Customer and Joytel have each agreed to waive, to the fullest extent allowed by law, any trial by jury.

7A.10 **Exclusions from Arbitration.** CUSTOMER AND JOYTEL AGREE THAT THE FOLLOWING WILL NOT BE SUBJECT TO ARBITRATION: (1) ANY CLAIM FILED BY CUSTOMER OR BY JOYTEL THAT IS NOT AGGREGATED WITH THE CLAIM OF ANY OTHER SUBSCRIBER AND WHOSE AMOUNT IN CONTROVERSY IS PROPERLY WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS; (2) ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS; (3) ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE; (4) ANY DISPUTE THAT ARISES BETWEEN JOYTEL AND ANY STATE OR LOCAL REGULATORY AUTHORITY OR AGENCY THAT IS EMPOWERED BY FEDERAL, STATE, OR LOCAL LAW TO GRANT A FRANCHISE UNDER 47 U.S.C. § 522(9); AND (5) ANY DISPUTE THAT CAN ONLY BE BROUGHT BEFORE THE LOCAL FRANCHISE AUTHORITY UNDER THE TERMS OF THE FRANCHISE.

7A.11 **Continuation.** This Arbitration Provision shall survive the termination of Customer's Agreement with Joytel and the provisioning of Service(s) thereunder.

ARTICLE 8. SOFTWARE & SERVICES

8.1 License. If and to the extent Customer requires the use of Licensed Software in order to use the Services supplied under any Service Order, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use the Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the Service Term. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto) and Customer shall execute any documentation reasonably required by Joytel, including, without limitation, end-user license agreements for the Licensed Software. Joytel and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.

8.2 Restrictions. Customer agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Joytel; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

8.3 Updates. Customer acknowledges that the use of the Services may periodically require updates and/or changes to certain Licensed Software resident in the Joytel Equipment or Customer-Provided Equipment. If Joytel has agreed to provide updates and changes, Joytel may perform such updates and changes remotely or on-site, at Joytel's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by Joytel.

8.4 Ownership of Telephone Numbers and Addresses. Customer acknowledges that use of the Services does not give it any ownership or other rights in any telephone number or Internet/on-line addresses provided, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses.

8.5 Intellectual Property Rights in the Services. Title and intellectual property rights to the Services are owned by Joytel, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, reselling, bundling or publication of the Services, in whole or in part, without express prior written consent from Joytel or other owner of such material, is prohibited.

ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY

9.1 Disclosure and Use. All Confidential Information shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees,

affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

9.2 Exceptions. Notwithstanding the foregoing, each party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation.

9.3 Remedies. Notwithstanding any other Article of this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.

9.4 Monitoring. Joytel shall have no obligation to monitor postings or transmissions made in connection with the Services, however, Customer acknowledges and agrees that Joytel and its agents shall have the right to monitor any such postings and transmissions from time to time and to use and disclose them in accordance with this Agreement, and as otherwise required by law or government request. Joytel reserves the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in Joytel's sole discretion, is unacceptable, undesirable or in violation of this Agreement.

ARTICLE 9A: CUSTOMER PRIVACY POLICIES

In addition to the provisions of Article 9, the privacy policy below applies to Joytel's handling of Customer confidential information. In the event of a conflict between the provisions of Article 9 and any provision of the privacy policy below, the applicable provision of the privacy policy shall prevail in the resolution of the conflict.

A copy of Joytel's privacy policy is available at <http://www.myjoytel.com/terms-of-service/> (or any successor URL).

9A.2 Privacy Note Regarding Information Provided to Third Parties. Joytel is not responsible for any information provided by Customer to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy policies. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

ARTICLE 10. PROHIBITED USES

10.1 Resale. Except as otherwise provided in the General Terms and Conditions, Customer may not sell, resell, sublicense, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the

Services or any component thereof.

10.2 Use Policies. Customer agrees to ensure that all uses of the Joytel Equipment and/or the Services installed at its premises (“use”) are legal and appropriate. Specifically, Customer agrees to ensure that all uses by Customer or by any other person (“user”), whether authorized by Customer or not, comply with all applicable laws, regulations, and written and electronic instructions for use. Joytel reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Joytel (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with Joytel’s ability to provide the Services to Customer or others, (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use, or (iv) reasonably believes that Customer’s use of the Service interferes with or endangers the health and/or safety of Joytel personnel or third parties. Furthermore, the Services shall be subject to one or more Acceptable Use Policies (“AUP”) that may limit use. The AUP and other policies concerning the Services are posted on Joytel’s web site(s) at http://www.myjoytel.com/wp-content/uploads/2016/03/JOYTEL_AUP.pdf (or any successor URL) or on another web site about which Customer has been notified, and are incorporated to this Agreement by reference. Joytel may update the use policies from time to time, and such updates shall be deemed effective seven (7) days after the update is posted online, with or without actual notice to Customer. Accordingly, Customer should check the above web addresses (or the applicable successor URLs) on a regular basis to ensure that its activities conform to the most current version of the use policies. Joytel’s action or inaction in enforcing acceptable use shall not constitute review or approval of Customer’s or any other users’ use or information.

10.3 Violation. Any breach of this Article 10 shall be deemed a material breach of this Agreement. In the event of such material breach, Joytel shall have the right to restrict, suspend, or terminate immediately any or all Service Orders, without liability on the part of Joytel, and then to notify Customer of the action that Joytel has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

ARTICLE 11. SERVICE CREDITS

11.1 Credit Allowances. Unless otherwise addressed in a service level agreement attached to this Agreement (see attached Schedule A-1 Service Level Agreement for Wired Fiber Connection only), Joytel will allow a pro-rata credit against future payment of the net monthly recurring charge (exclusive of nonrecurring charges, other one-time charges, per call charges, measured charges, regulatory fees and surcharges, taxes, and other governmental and quasi-governmental fees) for a Service Interruption, except as specified below or as may otherwise be legally required (“Credit”). “Service Interruption” shall mean a break in transmission that renders the Service unusable for transmission and reception. For the purposes of calculating a Credit allowance, the Service Interruption period begins when the Customer reports an interruption in the portion of the Service

to Joytel, a trouble ticket is opened, and the Service is released to Joytel for testing and repair. The Service Interruption ends when the affected portion of the Service has been restored and Joytel has closed the trouble ticket. Service Interruption time does not include interruptions of less than thirty (30) minutes’ duration. Credits will be as follows:

<u>Length of Service Interruption</u>	<u>Amount of Credit</u>
At least 4 hours and up to and including 24 hours	1 full day

The total number of credit allowances per month shall not exceed the total monthly recurring charge for the affected Service. Credit allowances will not be made for less than \$1.00, unless required under applicable law. To qualify, Customer must request the Credit from Joytel within 30 days of the Service Interruption. A service interruption credit will not be given to a Customer if it is determined by Joytel or its directors, officers, employees, and agents, in their sole discretion, that the service interruption was in any way caused and or exacerbated by the actions of Customer or its directors, officers, employees, and agents.

11.2 Exceptions to Credit Allowances. Except as otherwise provided in the General Terms and Conditions, a Service Interruption shall not qualify for the Credits set forth herein if such Service Interruption is related to, associated with, or caused by: scheduled maintenance events; Customer actions or inactions; Customer-provided power or equipment; any third party not contracted through Joytel, including, without limitation, Customer’s users, third-party network providers; any power, equipment or services provided by third parties; or an event of force majeure as defined in this Agreement, unless otherwise provided under applicable law. The remedies set forth in this Article 11 shall be Customer’s sole and exclusive remedy for any Service Interruption in the Services, outage, unavailability, delay or other degradation in the Services or any Joytel failure to meet the objectives of the Services.

ARTICLE 12. INSURANCE

12.1 Joytel shall maintain during the Initial Term or any Renewal Term commercial general liability insurance that covers its liability and obligations hereunder including property damage and personal injury.

12.2 The liability limits under these policies shall be, at a minimum, one million (\$1,000,000) dollars per occurrence, with a combined single limit for bodily injury and property damage liability.

ARTICLE 13. MISCELLANEOUS TERMS

13.1 Force Majeure. Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of services or materials upon which the Services rely, or other causes beyond the party’s reasonable control, except that Customer’s obligation to pay for Services provided shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.

13.2 Assignment and Transfer. Neither Party shall assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld. The foregoing notwithstanding, Joytel may assign this Agreement to any affiliate, related entity, or successor in interest without Customer's consent. In addition, Joytel may partially assign its rights and obligations hereunder to any party that acquires from Joytel all or substantially all of the assets of a cable franchise(s) in which the Services is deployed to Customer. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

13.3 Export Law and Regulation. Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations, and any foreign use or transfer of such products, software, and technical information must be authorized under those regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Joytel, Customer also agrees to sign written assurances and other export-related documents as may be required for Joytel to comply with U.S. export regulations.

13.4 Notices. Except as otherwise provided in this Agreement, any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, overnight courier, or via U.S. Certified Mail, Return Receipt Requested. Notices to Customer shall be sent to the Customer billing address; notices to Joytel shall be sent to 800 Water Street, Suite 202, Jacksonville, FL 32202, Attn: Vice President of Business Services Sales Operations. All such notices shall be deemed given and effective on the day when delivered by overnight delivery service or certified mail.

13.5 Entire Understanding. The Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not expressly provided for in this Agreement are of no effect. Terms or conditions contained in any purchase order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect. Only specifically authorized representatives of Joytel may make modifications to this Agreement or this Agreement's form. No modification to the form or this Agreement made by a representative of Joytel who has not been specifically authorized to make such modifications shall be binding upon Joytel. No subsequent agreement among the parties concerning the Services shall be effective or binding unless it is executed in writing by authorized representatives of both parties.

13.6 Tariffs. Notwithstanding anything to the contrary in the Agreement, Joytel may elect or be required to file tariffs with

regulatory agencies for certain Services. In such event, the terms set forth in the Agreement may, under applicable law, be superseded by the terms and conditions of the Tariffs. Without limiting the generality of the foregoing, in the event of any inconsistency with respect to rates, the rates and other terms set forth in the applicable Sales Order shall be treated as individual case based arrangements to the maximum extent permitted by law, and Joytel shall take such steps as are required by law to make the rates and other terms enforceable. If Joytel voluntarily or involuntarily cancels or withdraws a Tariff under which a Service is provided to Customer, the Service will thereafter be provided pursuant to the Agreement and the terms and conditions contained in the Tariff immediately prior to its cancellation or withdrawal. In the event that Joytel is required by a governmental authority to modify a Tariff under which Service is provided to Customer in a manner that is material and adverse to either party, the affected party may terminate the applicable Sales Order upon a minimum thirty (30) days' prior written notice to the other party, without further liability.

13.7 Construction. In the event that any portion of this Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

13.8 Survival. The rights and obligations of either party that by their nature would continue beyond the expiration or termination of this Agreement or any Service Order, including without limitation representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order.

13.9 Choice of Law. Any claim not covered by the Arbitration Provision shall be brought in the State of Florida, of the Fourth Judicial Circuit, Duval County, Florida only, and the prevailing party shall be entitled to attorney's fees, expenses and costs., except to the extent superseded by federal law.

13.10 No Third Party Beneficiaries. This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

13.11 No Waiver. No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

13.12 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

13.13 Article Headings. The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

13.14 Compliance with Laws. Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

competent jurisdiction, such shall not affect the validity of any other provision/s or part/s of the Agreement.

ARTICLE 14. PROVISION OF SERVICE/USE.

14.1 Subject to the terms and conditions herein, Internet Services are intended for commercial use only. Customer is prohibited from reselling Hospitality Internet Services, except that Customer may use such Services to provide internet service to its short-term lodging accommodation end users. Joytel shall provide Hospitality Internet Service to a demarcation point at the Service Location. Customer shall be responsible for any and all facilities, equipment and/or devices required to use Hospitality Internet Services on the customer-side of the demarcation point. The connection is intended solely for use within the office building in which it is originally installed. Client may not share the Connection/Services with other locations, unrelated parties, other business entities or their employees. Reselling Services obtained through the Connection is strictly prohibited.

ARTICLE 15. PUBLIC RECORDS REQUESTS.

15.1 Joytel shall comply and may be subject to the provisions of Chapter 119, Florida Statutes.

ARTICLE 16. SEVERABILITY

16.1 If any provision of the Agreement or any part of any provision of the Agreement is found to be invalid by a court of

**JOYTEL SERVICES ATTACHMENT
FIBER SERVICES**

**SCHEDULE A-1
SERVICE LEVEL AGREEMENT**

Ethernet Transport Version 1.1

Joytel’s fiber Services is backed by the following Service Level Agreement (“SLA”):

Definitions:

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Ethernet Services PSA or the General Terms and Conditions.

“Planned Service Interruption” means any Service Interruption caused by planned work such as scheduled maintenance or planned enhancements or upgrades to the network.

“Service Interruption” means a complete loss of signal that renders the Service unusable.

Service Level Agreement (SLA)

Company’s liability for any Service Interruption (individually or collectively, “Liability”), shall be limited to the amounts set forth in Table 1 below. For the purposes of calculating credit for any such Liability, the Liability period begins when the Customer reports an interruption in the portion of the Service to Company, provided that the Liability is reported by Customer during the duration of the Liability, and, a trouble ticket is opened; the Liability shall be deemed resolved upon closing of the same trouble ticket or the termination of the interruption, if sooner, less any time Joytel is awaiting additional information or premises testing from the Customer. In no event shall the total amount of credit issued to Customer’s account on a per-month basis exceed 50% of the total monthly recurring charge (“MRC”) set forth in the Sales Order. Service Interruptions will not be aggregated for purposes of determining credit allowances. To qualify, Customer must request the Credit from Joytel within thirty (30) days of the interruption. Customer will not be entitled to any additional credits for Service Interruptions. Joytel shall not be liable for any Liability caused by force majeure events, Planned Service Interruptions or Customer actions, omission or equipment.

TABLE 1

Length of Service Interruption:	Amount of Credit:
Less than 4 minutes	None
At least 4 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	30% of Total MRC
At least 16 hours but less than 24 hours	40% of Total MRC
At least 24 hours or greater	50% of Total MRC

THE TOTAL CREDIT ALLOWANCES PER MONTH IS CAPPED AT 50% of THAT MONTH’S MRC FOR THE INTERRUPTED SERVICE. SERVICE INTERRUPTIONS ARE NOT AGGREGATED FOR THE PURPOSES OF DETERMINING CREDIT ALLOWANCES.

Monitoring, Technical Support and Maintenance

1. **Network Monitoring.** Joytel monitors Service on a 24x7x365 basis.
2. **Technical Support.** Joytel provides a toll-free trouble reporting telephone number to the Services Network Operations Center (“NOC”) that operates on a 24x7x365 basis. Joytel provides technical support for service-related inquiries. Technical support will not offer consulting or advice on issues relating to CPE or other equipment not provided by Joytel.
 - a. **Escalation.** Reported troubles are escalated within the Joytel NOC to meet the response/restoration interval described below (Response and Restoration Standards). Service issues are escalated within the Joytel NOC as follows: to a Supervisor at the end of the applicable time interval plus one (1) hour; to a Manager at the end of the applicable time interval plus two (2) hours, and to a Director at the end of the applicable time interval plus four (4) hours.
 - b. **Maintenance.** Joytel’s standard maintenance window is Sunday to Saturday from 12:00am to 6:00am local time. Scheduled maintenance is performed during the maintenance window and will be coordinated between Joytel and the Customer. Joytel provides a minimum of forty-eight (48) hour notice for non-service impacting scheduled maintenance. Joytel provides a minimum of seven (7) days’ notice for service impacting planned maintenance. Emergency maintenance is performed as needed without advance notice to Customer.
3. Joytel provides certain Joytel Equipment for provisioning its services and the delivery of the UNI, which will reside on the Customer-side of the Demarcation Point. Joytel will retain ownership and management responsibility for this Joytel Equipment. This Joytel Equipment must only be used for delivering Services. Customers are required to shape their egress traffic to the Committed Information Rate (“CIR”) identified in the Sales Order. Joytel will be excused from paying SLA credits if the Service Interruption is the result of Customer’s failure to shape their traffic to the contracted CIR or utilizing Joytel Equipment for non-Joytel provided services.

Response and Restoration Standards

Joytel has the following response and restoration objectives:

CATEGORY	TIME INTERVAL	MEASUREMENT	REMEDIES
<i>Mean Time to Respond Telephonically to Call</i>	15 minutes	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore Equipment</i>	4 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore Fiber</i>	6 hours	Averaged Over A Month	Escalation (see above)

Customer shall bear any expense incurred, e.g., dispatch/labor costs, where a Service Interruption is found to be the fault of Customer, its end users, agents, representatives or third-party suppliers.

Emergency Blocking

The parties agree that if either party hereto, in its reasonable sole discretion, determines that an emergency action is necessary to protect its own network, the party may, after engaging in reasonable and good faith efforts to notify the other party of the need to block, block any transmission path over its network by the other party where transmissions do not meet material standard industry requirements. The parties further agree that none of their respective obligations to one another under the Agreement will be affected by any such blockage except that the party affected by such blockage will be relieved of all obligations to make payments for charges relating to the circuit(s) which is so blocked and that no party will have any obligation to the other party for any claim, judgment or liability resulting from such blockage.

Remedy Processes

All claims and rights arising under this Service Level Agreement must be exercised by Customer in writing within thirty (30) days of the event that gave rise to the claim or right. The Customer must submit the following information to Joytel with any and all claims for credit allowances: (a) Organization name; (b) Customer account number; and (c) basis of credit allowance claim (including date and time, if applicable). Joytel will acknowledge and review all claims promptly and will inform the Customer by electronic mail or other correspondence whether a credit allowance will be issued or the claim rejected, with the reasons specified for the rejection.

Exceptions to Credit Allowances

A Service Interruption shall not qualify for the remedies set forth herein if such Service Interruption is related to, associated with, or caused by: scheduled maintenance events; Customer actions or inactions; Customer-provided power or equipment; any third party not contracted through Joytel, including, without limitation, Customer's users, third-party network providers, any power, equipment or services provided by third parties; or an event of force majeure as defined in the Agreement.

Other Limitations

The remedies set forth in this Service Level Agreement shall be Customer's sole and exclusive remedies for any Service Interruption, outage, unavailability, delay, or other degradation, or any Joytel failure to meet the service objectives.