

Legal Information

Commercial Services Agreement

This **COMMERCIAL SERVICES AGREEMENT** (including any exhibits and attachments incorporated herein by reference, “**Agreement**”) is made as of the Effective Date by and between Swyft Fiber and Customer (as defined by the Service Order to which this Agreement is referenced). This Agreement is intended to set forth the general terms and conditions pursuant to which Swyft Fiber will provide Services to Customer, as specified and agreed upon in the referenced Service Order. In consideration of the mutual covenants and agreements contained herein the parties agree as follows:

1. DEFINITIONS.

“**Fastwyre Powered By Swyft**” means with respect to the Services provided hereunder, the particular Fastwyre Powered By Swyft entity providing Service in the state and locality in which such Service is being provided, which may include the following, without limitation: (i) in the State of Louisiana or Texas – Cameron Telephone Company, L.L.C., Elizabeth Telephone Company, L.L.C. or LBH, L.L.C.; (ii) in the State of Alabama – Moundville Telephone Company, Inc. The foregoing listing is set forth as a matter of convenience and expressly does not create any joint liability with respect to the Services.

“**Force Majeure Event**” means an unforeseeable event beyond the reasonable control of a party, including without limitation: act of God; fire; flood; labor strike or unrest; sabotage; cable cuts; acts of terror; power shortage or power failure (e.g., rolling blackouts); material shortages or unavailability or other delay in delivery not resulting from Swyft Fiber’s failure to timely place orders therefore; lack of or delay in transportation; government codes, laws, regulations, ordinances, rules, or restrictions; war or civil disorder; pandemic or epidemic; or failures of suppliers of goods and services.

“**Service**” means each of the services described in the Service Order.

“**Service Location**” means the location designated in each Service Order where the Services are to be provided.

“**Service Order**” means the order for Services on Swyft Fiber’s standard Service Order form to which this Agreement is attached. The Service Order will contain specific provisions with respect to prices, features, Service Location, descriptions of Service, Service Term and other specifics as appropriate.

“**Service Term**” means the duration of the term in which the Services will be provided, consisting of: (i) the initial term commitment set forth in the Service Order (the “**Initial Term**”), commencing upon installation of the Services (the “**Effective Date**”); and (ii) following the Initial Term, the Services will automatically renew for successive 12-month periods (each, a

“Renewal Term”), unless either party provides written notice of nonrenewal (in which case Services will continue on a month-to-month basis at undiscounted rates without additional notice) or termination (in which case Services will terminate at the end of the Initial Term or applicable Renewal Term) at least 30 days but no more than 90 days prior to the expiration of the Initial Term or applicable Renewal Term. Notwithstanding the foregoing, if Customer delays installation or is not ready to receive Services on the agreed-upon installation date, Swyft Fiber may begin billing for Services on the date Services would have been installed. Swyft Fiber will use reasonable efforts to make the Services available by the requested service date. Swyft Fiber will not be liable for damages for delays in meeting service dates due to a Force Majeure Event. If Customer delays installation for more than 90 days after Customer’s execution of a Service Order, Swyft Fiber reserves the right to terminate this Agreement by providing written notice to Customer and Customer will be liable for Swyft Fiber’s reasonable costs incurred.

2. SCOPE AND ORDER OF PRECEDENCE. The Service Order is subject to all of the terms and conditions contained in this Agreement. If any of the terms or conditions in a Service Order are inconsistent or in conflict with the terms and conditions of this Agreement, then the terms and conditions of this Agreement will control.

2. 3. TERM. This Agreement will be for the duration of the Service Term, unless earlier terminated pursuant to this Agreement.

4. PAYMENT.

(a) Charges. Installation and all other non-recurring charges, if any, and monthly recurring charges for the Services will be at the rates set forth in the Service Order. Except for usage-based Services, which are billed in arrears, the Services are billed one month in advance and the first billing cycle may include a partial month Service and a full month Service charge if the Service is installed and activated during a partial month of Service. All fees and charges are payable for the duration of the Service Term, regardless of whether Customer actually uses the Services. Swyft Fiber reserves the right to increase rates for any or all Services by providing at least 30 days’ notice to Customer.

(b) Taxes and Other Fees. Prices established in this Agreement and the Service Order are exclusive of taxes, surcharges and other fees which may be imposed on Swyft Fiber or Customer for the provision or use of the Services. Customer is responsible for all such taxes, surcharges and other fees that apply to the Services at issue. Tax exempt status will be granted to Customer upon presentation of a satisfactory certificate of exemption.

(c) Assurance of Payment. If Customer has failed to timely pay for any Services on two occasions during any six-month period, then Swyft Fiber may require Customer to provide an advance deposit or other form of security in an amount and form reasonably satisfactory to Swyft Fiber . Upon expiration or termination of this Agreement and Customer’s compliance with its financial obligations hereunder or under any Service Order, all amounts on deposit will be returned to Customer.

(d) Invoicing and Payment. Customer will pay all amounts owed under each Service Order

within 20 days after the invoice date (the “**Due Date**”). Swyft Fiber reserves the right to charge interest on delinquent amounts at the lower of one and one-half percent (1.5%) per month or such other rate or rates as may be permitted under applicable law.

(e) Disputed Payments. In the event Customer in good faith disputes any charges invoiced by Swyft Fiber, Customer will promptly pay all undisputed charges, and notify Fastwyre Broadband in writing of any such disputed amounts on or before the Due Date, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely (by the Due Date) and appropriately disputed will be deemed final and not subject to further dispute. Swyft Fiber will review the amounts in dispute within 30 days after its receipt of such notice. If Swyft Fiber determines that Customer was billed in error, a credit for the amount billed incorrectly will be made to the next invoice. If Swyft Fiber and Customer determine that the amount was billed correctly, Customer will pay the amount by the Due Date of the next invoice.

5. INTERNET USAGE. To the extent the Services are used in connection with Customer’s use of the Internet, Customer warrants and represents to Swyft Fiber that (i) the Services will be used only for lawful purposes, and Customer will not transmit, retransmit or store material in violation of any applicable federal or state laws or regulations; (ii) Customer will comply with the applicable Acceptable Use Policy, as amended from time to time (“**AUP**”), and which is posted on Swyft Fiber’s website at <https://fastwyrebyswyft.com/legal-information/>; (iii) Customer will comply with the applicable Privacy Policy, as amended from time to time (“**Privacy Policy**”), and which is posted on Swyft Fiber’s website at <https://fastwyrebyswyft.com/legal-information/>; and (iv) that Customer will ensure that its end users accept and comply with the AUP and Privacy Policy.

6. EQUIPMENT. For purposes of this Agreement, “**Equipment**” means the modem(s), router(s) and other equipment (which may include without limitation media converter(s) and ethernet switch(es)) provided by Swyft Fiber to enable use of the Service. Swyft Fiber owns the Equipment. Customer agrees: (i) the Equipment is Swyft Fiber’s property, notwithstanding the installation within or attachment to the Service Location, and Customer may not assign, rent, encumber or transfer the Equipment or its rights or duties under this Agreement to another without Swyft Fiber’s prior written consent; (ii) not to remove any of the Equipment from the Service Location and not damage, alter or tamper with any of the Equipment; (iii) to grant Swyft Fiber the right at reasonable times to enter the Service Location to inspect, service, remove or replace the Equipment; (iv) not to mishandle, abuse, misuse, or improperly store or operate the Equipment, including using the Equipment with equipment electrically or mechanically incompatible with, or of inferior quality to, it; (v) if the Equipment is damaged by Customer and/ or non-operational or malfunctioning for reasons other than a manufacturing defect at any time during the Service Term or upon termination of this Agreement, Swyft Fiber may charge Customer for its full retail cost (the “**Equipment Charge**”); (vi) if the Service is discontinued by either party for any reason, Customer will be responsible for the return of the Equipment to Swyft Fiber in the same condition as received, ordinary wear and tear excepted, as set forth in this Agreement; and (vii) if Customer fails to return the Equipment, or to return the Equipment in the required condition to Swyft Fiber as required by this Agreement, then Customer will be liable to Swyft Fiber for the Equipment

Charge, plus any costs, including reasonable attorney's fees, to collect such amounts.

7. RIGHT OF ACCESS. Customer hereby grants to Swyft Fiber and its authorized representatives a non-exclusive right of access across, under, over, within and through the Service Location (including within buildings and other improvements and the right to use all conduits, poles, moldings, risers, raceways, shafts and similar pathways and areas at the Service Location) to permit Swyft Fiber to exercise its rights and fulfill its obligations under the Agreement ("**Right of Access**"), including the right, to (a) install, operate, use, maintain, repair, upgrade, replace and/or remove the Equipment and Services; and (b) offer, provide and market Services. This Right of Access commences upon Customer's execution of the Service Order and automatically terminates concurrently with the Agreement, except that Swyft Fiber will have an additional 60-day period after the Service Term to access the Service Location to remove or dispose of the Equipment as permitted by the Agreement. If the owner (or authorized party) of the Service Location does not execute and return the foregoing Right of Access Agreement, then Swyft Fiber will have no obligation to perform any of its obligations under the Agreement with respect to the Service Location (including providing Services).

8. INDEMNIFICATION. Customer agrees to indemnify, defend, and hold harmless Swyft Fiber, its affiliates, and their respective contractors, officers, directors, employees, or agents from any and all third-party claims, liabilities, costs, and expenses, including reasonable attorney fees and punitive damages arising from: (a) violation of any provision of this Agreement by Customer or others who use the Services; (b) installation, modification, or use of the Services by Customer and/or any parties who use such Services through Customer, with or without Customer's permission; (c) claims for libel, slander, invasion of privacy, or infringement of any intellectual property rights arising from the use of the Services or the Internet; (d) patent infringement arising from Customer's acts combining or using the Service in connection with facilities or equipment (circuit, apparatus, system or method) furnished by Customer; (e) negligent acts, errors, or omissions by Customer; or (f) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of Swyft Fiber.

9. TERMINATION. Either party in accordance with the following may terminate this Agreement and the Service Order:

(a) Default by Customer. If (i) Customer makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Customer is filed and not dismissed within 60 days; (iii) Customer fails to make any payment required hereunder when due, and such failure continues for a period of five business days after written notice from Swyft Fiber; or (iv) Customer fails to observe and perform any material term of this Agreement (other than payment terms) and such failure continues for a period of 30 days after written notice from Swyft Fiber; then Swyft Fiber may: (A) terminate this Agreement and the Service Order, in whole or in part, in which event

SwyftFiber will have no further duties or obligations thereunder, and/or (B) subject to Section 15, pursue any remedies Swyft Fiber may have under this Agreement, at law or in equity.

(b) Default by Swyft Fiber. If (i) Swyft Fiber makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Swyft Fiber is filed and not dismissed within 60 days; or (iii) Swyft Fiber fails to observe and perform any material term of this Agreement and/or Service Order and such failure continues for a period of 30 days after written notice from Customer; then Customer may:

(A) terminate this Agreement and the Service Order, in whole or in part, in which event Customer will have no further duties or obligations thereunder, and/or **(B)** subject to Section 15, pursue any remedies Customer may have under this Agreement, at law or in equity.

(c) Early Termination. If Customer terminates or cancels Service under any Service Order prior to its agreed expiration date, Customer will pay Swyft Fiber a termination charge (as liquidated damages and not as a penalty) including all nonrecurring, disconnection or termination charges reasonably incurred by Swyft Fiber on Customer's behalf, and the remaining monthly recurring charges for the remainder of the Service Term of the Service Order.

10. NON-DISCLOSURE. Each of the parties agrees to maintain the confidentiality of, and not to use for any purpose whatsoever, any confidential or proprietary information disclosed during the course of the parties' relationship pursuant to this Agreement or the Service Order, except for the performance of their respective obligations pursuant to this Agreement and the Service Order.

11. INTELLECTUAL PROPERTY RIGHTS. Unless otherwise expressly provided in this Agreement, all aspects of the Service are the property of Swyft Fiber and are protected by trademark, copyright or other intellectual property laws and international treaty provisions. Swyft Fiber grants Customer a revocable, limited, nonexclusive, nontransferable, non-assignable right and license to use the Service in accordance with the terms and conditions of this Agreement and the Service Order. No other license or rights are granted by Swyft Fiber or will be implied or arise by estoppel, with respect to any Service.

12. FORCE MAJEURE. Swyft Fiber is not liable, nor will any credit allowance or other remedy be extended, for any failure of performance or equipment due to a Force Majeure Event. In the event Swyft Fiber is unable to deliver Service as a result of a Force Majeure Event, Customer will not be obligated to pay Swyft Fiber for the affected Service for so long as Swyft Fiber is unable to deliver the affected Service.

13. LEGAL NOTICES. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the parties at the addresses set forth on the Service Order (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), email, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if: (a) the receiving party has received the Notice; and (b) the party giving the Notice has complied with the

requirements of this Section.

1. DISCLAIMER OF WARRANTIES. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. SWYFT FIBER PROVIDES THE SERVICES WITHOUT WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINTERFERENCE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING OR COURSE OF TRADE AND DISCLAIMS ANY SUCH WARRANTIES. SWYFT FIBER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERRORFREE, SECURE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NO ADVICE OR INFORMATION GIVEN BY SWYFT FIBER, ITS AFFILIATES, OR THEIR RESPECTIVE AGENTS, CONTRACTORS OR EMPLOYEES WILL VARY THE TERMS OF THIS AGREEMENT OR CREATE ANY WARRANTY. SWYFT FIBER IS NOT RESPONSIBLE FOR DEFAACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. SWYFT FIBER TECHNICAL SUPPORT IS NOT WARRANTED AND IS USED AT CUSOMTER’S OWN RISK. SWYFT FIBER MAKES NO WARRANTY REGARDING TRANSACTIONS EXECUTED AND CONTENT AND INFORMATION ACCESSED BY USING THE SERVICES. TO THE EXTENT THAT ANY LIMITATION IN THIS SECTION IS NOT PERMITTED BY APPLICABLE LAW, SUCH LIMITATION WILL NOT APPLY TO CUSTOMER TO THE EXTENT IT IS BARRED BYAPPLICABLE LAW.

15. LIMITATION OF LIABILITY. IN NO EVENT WILL SWYFT FIBER OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING FROM OR RELATED TO THE SERVICES OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. SWYFT FIBER’S LIABILITY HEREUNDER TO CUSTOMER WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE MONTHLY RECURRING CHARGE PAID BY CUSTOMER FOR THE PARTICULAR SERVICE, OR SERVICE ORDER TO WHICH THE CLAIM PERTAINS.

16. ASSIGNMENT. Customer may not assign any rights or obligations under this Agreement or the Service Order without Swyft Fiber’s prior written consent. Any assignment in violation of the foregoing will be deemed null and void. Swyft Fiber may freely assign its rights and obligations under this Agreement or the Service Order at any time. Subject to the limits on assignment stated above, this Agreement and the Service Order will inure to the benefit of, be binding on, and be enforceable against each of the parties hereto and their respective successors and permitted assigns.

17. GOVERNING LAW. This Agreement will be governed by and be construed in accordance with the laws of the state in which the Services are performed (as designated in the Service

Order) without reference to its laws governing conflicts of law. Each party hereby irrevocably agrees that any legal action or proceeding with respect to this Agreement will be brought in the courts of the foregoing state or in any United States District Court located within such state, and by execution and delivery of this Agreement, each party irrevocably submits to each such jurisdiction and hereby irrevocably waives any and all objections which it may have as to venue in any of the above courts.

18. GENERAL PROVISIONS.

(a) If any provision or part thereof of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from.

(b) This Agreement, the Service Order, together with any Exhibits, attachments and schedules (referenced herein or thereby), all of which are incorporated herein as part of this Agreement by this reference, contains the entire agreement between the parties with respect to the subject matter set forth in this Agreement and the Service Order and supersedes all other previous agreements, whether written or oral.

(c) No amendment to this Agreement or to the Service Order will be binding upon either party hereto unless it is in writing and executed on behalf of each party hereto by a duly authorized representative and expressly specified as such.

(d) This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which together will constitute but one and the same instrument.