

TERMS & CONDITIONS FOR ZENCROSSCONNECT SERVICES

These Terms and Conditions together with Customer's Order Summary constitute the agreement (the "Agreement") by and between Provider and Customer for the provision of the ZenCross Connect ("zXc") services (the "Services") set forth in the Order Summary by the Provider to the Customer. Provider for the Services will be designated by ZenFi, Inc. and Cross River Fiber LLC and communicated to Customer. Payment due hereunder shall be made to such Provider as set forth below. The individual accepting these Terms and Conditions represents that he or she is authorized to do so on behalf of the Customer.

1. SERVICE COMMENCEMENT

The Service Commencement Date shall be the first day following the date on which Provider notifies Customer in writing that the Services are operational. Services that include the lease of dark fiber will comply with the Fiber Specifications set forth at Exhibit A. Unless Customer notifies Provider notice within five (5) business days of the Service Commencement Date that the Services are not operational, the Services will be deemed accepted as of the Service Commencement Date. If the Services are not delivered within fifteen (15) days (or 30 days for 100 GB Services), Customer may terminate the Service by providing Provider written notice of such termination, provided that such termination notice is received by the Provider prior to the date that Provider notifies Customer that the Services are operational. For non-credit approved Customers, the delivery interval shall be measured from the date of the receipt by the Provider of the Initial Payment (defined below). Such termination rights shall constitute Customer's sole remedy in the event Provider does not meet the delivery timeframe.

2. INVOICING AND PAYMENT

2.1 Charges. The first month's monthly recurring charge ("MRC") and the non-recurring charge ("NRC") specified in an Order Summary (collectively the "Initial Payment") shall be due upon issuance of the Order Summary, provided, however, that for Customers ordering Service for a 12-month term, the Initial Payment shall be equal to the first two months' MRC. Subsequent MRCs are due in advance for each period of Services and within thirty (30) days from the date of invoice. MRCs shall be incurred starting as of the Service Commencement Date through the termination date of the Services.

2.2 Applicable Taxes. In addition to other amounts due hereunder, Customer shall be responsible for paying all Applicable Taxes. "Applicable Taxes" means all governmental taxes and fees of any kind or nature levied or imposed upon Provider or its zXc service partner or Customer, arising from or relating to the provision of the Services to

Customer (including, without limitation, sales, gross receipt taxes, universal service fees, any other FCC or state PUC fees, and any state or local utility or telecommunications taxes). Customer shall not be responsible for and Applicable Taxes shall not include taxes on the property or net income of Provider or its zXc service partner. Customer represents and warrants that the communications traffic to be carried by the Provider shall be interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule"(47 CFR 36.154), unless Customer provides Provider written certification otherwise.

3. TERM, TERMINATION AND PRICING

3.1 All Services are provided on a month-to-month basis providing the Customer and Provider the right to terminate any Services by providing the other party 30 days' written notice of such termination, provided that for Services for which the Customer has chosen a 12-month term without an NRC, the term of the Service shall be 12 months and Customer shall be responsible for payments through the end of such 12-month term. Upon the expiration of any 12-month term, Services will be provided on a month-to-month basis. The term of the Services shall commence as of the Service Commencement Date.

3.2 Provider has the right to terminate this Agreement (and/or any applicable Order Summary) in the event Customer fails to make payment of any amount due within 10 days of the applicable date of payment or in the event that Customer fails to cure any breach of any material term of this Agreement within 30 days of Provider sending written notice of breach.

3.3 Provider agrees that the Transport Charge set forth in the Order Summary will not increase for the first twelve (12) months after the Service Commencement Date for any Services. Location Charges shall be subject to adjustment at any time to reflect changes in the cost incurred by Provider and zXc service partner from providing connections within the relevant data center locations.

4. USE OF SERVICES AND NETWORK

4.1 Customer may use the Services for any lawful purpose, including for the provision of telecommunications services, information services and capacity to its customers, provided it may not sell, lease or grant any rights of use in any fiber as "dark fiber", as such term is commonly understood in the telecommunications industry. The demarcation point for the Services (the "Demarcation Point") is at Provider's (or provider partner's) rack in the locations set forth in the Order Summary unless otherwise noted by Provider. Customer is responsible for ordering and paying for any cross connects or ports required to connect to the Demarcation Point. Provider (or provider partner) will provide an LOA/CFA to enable Customer to order a connection to the Demarcation Point from the relevant data center provider.

4.2 The network used to provide the Services is the sole and exclusive property of Provider and its zXc service partner and nothing contained herein shall give or convey to Customer any right, title, or interest whatsoever in such network. Customer may not adjust, encumber, repair or attempt to repair the network, and may not cause any liens to be placed on the network. Customer is liable to Provider for any loss or damage to network caused by Customer.

4.3 Provider reserves the right to deny Services to and terminate this Agreement with any franchised New York City telecommunications providers to the extent necessary to comply Provider's or its zXc service partner's underlying fiber lease agreements or rights-of-way.

4.4 Provider and Provider's zXc service partner may use Customer's information for the purpose of marketing services to Customer.

4.5 Services are subject to availability.

5. WARRANTIES AND LIMITATION OF LIABILITY

5.1 Service routes and route distances displayed on the zXc website or on marketing materials are for general informational purposes, do not constitute a warranty and are subject to change at any time by the Provider. Provider warrants that any Services will conform to generally accepted industry standards and comply in all material respects with all applicable laws and regulations. Except as otherwise expressly provided in this agreement, Provider does not make, and hereby disclaims, any and all other warranties, express or implied including any and all warranties of merchantability or fitness for a particular purpose.

5.2 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR: (i) ANY LOSS OF PROFIT OR REVENUE, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, WHETHER INCURRED OR SUFFERED AS A RESULT OF UNAVAILABILITY OF SERVICES OR FACILITIES, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION, OR FOR ANY OTHER REASON, EVEN IF CUSTOMER ADVISES Provider OF THE POSSIBILITY OF THIS LOSS OR DAMAGE; OR (ii) FOR ANY OUTAGE OR INCORRECT OR DEFECTIVE TRANSMISSIONS, OR ANY DIRECT OR INDIRECT CONSEQUENCES THEREOF, EXCEPT FOR THE OUTAGE CREDITS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY: (i) CUSTOMER AGREES THAT ITS SOLE REMEDY IN THE EVENT OF ANY BREACH OF THE WARRANTIES WILL BE THE OUTAGE CREDITS SET FORTH HEREIN AND, (ii) IN NO EVENT WILL THE CUMULATIVE LIABILITY OF Provider UNDER AN ORDER SUMMARY, INCLUDING ANY OUTAGE CREDITS, EXCEED THE TOTAL PAYMENTS PAID BY CUSTOMER TO Provider UNDER SUCH ORDER SUMMARY.

6. FORCE MAJEURE

Except for the payment of any monies due, neither party shall be liable hereunder for delays, failure to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to any cause beyond its control including but not limited to acts of God; acts, or failures to act, of any utility, rights-of-way or required rights owners, or other third party providing access to the rights-of-way; governmental action, inaction or delays; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; general material shortages, transportation delays, or labor strikes or walkouts that could not reasonably be avoided by the party claiming force majeure; or other similar events beyond such party's control (a "Force Majeure Event").

7. MAINTENANCE AND OUTAGES

7.1 Provider will perform all maintenance, repairs and relocations to the network as it deems necessary to ensure proper functioning of the Services. Should any condition exist in any portion of the network that may impair the integrity of the Services or if Provider determines that it is necessary to conduct tests, adjustments or relocations to maintain the efficient working order of the Services, Provider will initiate and coordinate planned maintenance or relocation (or will cause such action to occur) which may include the deactivation of a network segment or other facility that supports the Services. Except for emergency maintenance (where Provider shall provide such notice as is reasonably practicable), Provider will use all reasonable efforts to give Customer three (3) days or more prior notice of scheduled maintenance or relocation events.

7.2 A "Service Outage" is defined as the loss or material degradation of connectivity between the two Services locations set for in the Order Summary. A Service Outage is measured from the time that Customer reports such failure to Provider or when Provider opens a trouble ticket upon receiving a Services affecting alarm until such time that Provider notifies Customer that effective use of the Services has been restored.

7.3 Customer is entitled to a credit for each continuous four (4) hour period of a Service Outage (an "Outage Period") provided the Service Outage is not caused by or resulting from (i) a Force Majeure Event; (ii) an act or omission of Customer, its employees, agents or contractors; (iii) or planned outages for maintenance or repair that are scheduled in advance. For each Outage Period, Customer is entitled to a credit (the "Outage Credit") calculated at five percent (5%) of the MRC of the specific Services suffering a Service Outage set forth in the Order Summary.

7.4 The Outage Credits for a Service Outage occurring in any one calendar month shall not exceed the MRC for that month. Outage Credits will not be credited or payable in the event not requested in writing by Customer within 30 days of the Service Outage.

EXHIBIT A

In connection with the provision of dark fiber services, Provider will perform fiber testing, as described below, and will provide documentation of the estimated test results to Customer via e-mail.

1) **Power testing:** This end-to-end loss measurement will be conducted for each fiber strand in the span and from both directions using an industry-accepted laser source and power meter. The bi-directional average will be used to determine the end-to-end loss of the span at each appropriate wavelength. This test will be conducted at both 1310 nm and 1550 nm for Standard Single Mode Fiber.

2) **OTDR testing:** This testing will be conducted at both 1310 nm and 1550 nm wavelengths when the fiber consists of Standard Single Mode Fiber.

OTDR testing may be conducted on a bi-directional or unidirectional basis. The fiber span may be divided into shorter testing spans, to the extent reasonably possible, in order to obtain bi-directional analysis.

The turnover documentation package delivered to Customer will contain estimated test results based on an aggregate of the pre-spliced cable. The average bi-directional splice loss for all splices within each span will be of 0.15 dB or less while each connector pair (such as at a FDP) will have an average bi-directional loss of 0.5 dB or less. (Note that the front and end connector of the span can only be measured unidirectionally and will also have a loss equal to or less than 0.5 dB). In the event that OTDR acceptance testing is done on a unidirectional basis, an average per span splice loss will be 0.30 dB.

Customer should note that the loss and/or reflectance of the front-end connector (as measured using a launch cord) is only an indicator of a problem such as a defective port, bulkhead, or the like. Since a different patch cord will be used by Customer (that connects to their equipment, for example) to mate to this connector, a different loss and/or reflectance may occur.