

## Hardware Purchase Agreement

The following Hardware Purchase Agreement (“HPA”) is between the client (“Client”) and ZIP Telecom Inc. (“ZIP”).

The Parties hereby agree that ZIP will sell and Client will purchase certain new equipment and devices, “Purchased Hardware”, originally manufactured by certain third parties on terms and subject to the conditions set forth herein. For purposes of this HPA, and unless otherwise stated, the term Purchased Hardware includes any associated firmware and software as an integral part of the Purchased Hardware.

### 1. Definitions

“Acceptable Use Policy” or “AUP” is the acceptable use policy located at [www.ziptel.ca](http://www.ziptel.ca).

“Support Policy and Service Level Commitment” or “SLC” is the support policy and service level commitment with respect to the Services located at [www.ziptel.ca](http://www.ziptel.ca).

“Hardware Purchase Agreement” or “HPA” is the hardware purchase agreement located at [www.ziptel.ca](http://www.ziptel.ca).

“Professional Services Agreement” or “PSA” is the professional services agreement located at [www.ziptel.ca](http://www.ziptel.ca).

“Agreement” means the Client Services Agreement as well as any Schedules, order forms, quotations and all documents supplementing, amending or confirming the Agreement.

“Equipment” means any equipment, facilities and products, including but not limited to modems and routers that ZIP uses in order to deliver Service to the Client.

“Client Premise Equipment” or “CPE” means any Equipment located at Client premise.

“Client Owned Hardware” or “COH” means any hardware or equipment owned by the Client whether purchased from ZIP or another supplier.

“Fees” means the rates and charges set out in the Service Applicable as well as any additional usage charges, surcharges, pricing and features applicable to any specific Service.

“Parties” means Client and ZIP and “Party” means either one.

“Service” or “Services” means the communication services, whether telecom, cloud or internet, that ZIP provides to Client on an ongoing basis

“Professional Services” means the one-time or per incident services such as consultation, installation, or training that ZIP provides to the Client.

“Estimate” means the estimate for products, Services and/or Professional Services provided by ZIP to the Client.

“Schedule” means all additional schedules that are attached to this Agreement and any additional

schedules executed from time to time by the Parties.

“User” includes any person (including but not limited to Client), firm, corporation or other entity that utilizes the Services or otherwise through Client’s authorization or other means utilizes the Services. Derivative terms such as “Usage” and “Use” will have corresponding meanings.

“Upstream Provider” is a third party that interoperates with the Service by providing certain aspects of the Service that are outside of ZIP’s control.

“Upstream Provider Issue” is an issue with the Upstream Provider’s services that affects the Services.

“Regular Operating Hours” means Monday –Friday, 9:00AM to 5:00PM EST, with the exception of statutory or public holidays.

“Network Operations Center” or “NOC” is an operations center that monitors all ZIP owned and/or operated Equipment 24/7/365. If there is a network wide outage, it will be serviced immediately by the ZIP NOC.

“MACD” means a Move, Add, Change, or Delete request with respect to the Services. This includes but is not limited to requests for changes to system and/or services functionality.

“ZIP Network” means any servers, services, or other Equipment owned and/or operated by ZIP.

“Internet Service Provider” or “ISP”: The service provider, whether ZIP or third party, that delivers Internet Service to Client premise.

“Measurement Period” is the measurement period begins on the first day of each month and ends on the last day of such month. For service initiation, the measurement period begins on the first day of the next full month after service is initiated. For service termination, the final measurement period is considered the last full month prior to service termination.

## 2. Prices & Payment

### a. Prices

- i. **Generally:** The prices for Purchased Hardware or other deliverables purchased hereunder are set forth in the Estimate.
- ii. **Certain Taxes:** Prices quoted do not include taxes, and Client shall pay, indemnify and hold ZIP harmless from all personal property (from the date of shipment onward), sales/use, gross receipts, value-added, HST or other domestic or foreign tax or levy (including interest and penalties imposed thereon) on the Purchased Hardware or the transaction contemplated herein, other than taxes based on the net income or profits of ZIP. If Client tenders a certificate of tax exemption accepted by ZIP, the Client shall pay any amount subsequently determined to be due hereunder if that exemption certificate is for any reason not honored by the taxing authority.

### b. Payment

The purchase price for Purchased Hardware shall be invoiced and due in full upon acceptance of the Estimate. In certain cases, and at ZIP’s sole discretion, ZIP will accept a purchase order from a pre-approved Client.

3. **Shipping, Title & Risk of Loss**

Purchased Hardware will be shipped to the Client upon receipt of full payment. Purchased Hardware may be drop shipped from the manufacturer or supplier in original packaging or shipped from ZIP to the Client if Purchased Hardware is to be pre-provisioned by ZIP. In the case of the latter, ZIP will re-package according to its normal procedures and reasonable commercial practice. Client shall pay all associated shipping, insurance and handling charges. Risk of loss, damage or destruction to the Purchased Hardware, and title thereto, shall pass to Client once the goods are received by the Client. ZIP reserves the right to cancel shipments expected to be delayed by more than sixty (60) days beyond the expected shipping date and may in its sole discretion allocate among its customers hardware in short supply.

4. **Installation, Testing & Acceptance**

a. **Site Preparation**

It is the Client's responsibility to ensure that: (i) a continuous, uninterrupted and suitable power supply (including surge protection devices) and temperature, humidity and other environmental conditions recommended by ZIP or required by local building codes have been implemented, tested and are fully operational; (ii) all cabling and other equipment and services not supplied by ZIP necessary or appropriate for operation of the Purchased Hardware have been properly installed; (iii) no other equipment, software or extraneous devices having an adverse impact on the Purchased Hardware have been introduced, and (iv) the Purchased Hardware has not (except pursuant to a risk of loss specifically assumed by ZIP hereunder) been mishandled, neglected, abused, vandalized, dropped, jolted, damaged by fire, lightning or water or otherwise put to unusual electrical or physical stress beyond the manufacturer's specified operating capabilities.

b. **Installation**

This HPA does not provide for any installation services with respect to the purchase, use and operation of the Purchased Hardware. If the Estimate includes installation, the terms of the Professional Services Agreement will apply to the installation services.

c. **Testing & Acceptance**

Upon receipt of Purchased Hardware, Client shall perform necessary inspection of the Purchased Hardware. The Purchased Hardware shall be deemed accepted unless ZIP is notified in writing of a material defect within three (3) business days of receipt of the Purchased Hardware by the Client. ZIP shall have a reasonable opportunity to correct, replace or provide functional "workarounds" for all items or to commence corrective action and proceed with reasonable diligence to completion.

d. **Returns**

Notwithstanding the terms contemplated under Warranties, ZIP does not accept returns of any Purchased Hardware after it has been received and accepted by the Client.

5. **Support**

a. **Maintenance**

ZIP is not expected to provide any support or maintenance of the Purchased Hardware beyond any warranty coverage described in Section 7 ("Warranties").

b. **Training**

This HPA does not provide for any training with respect to the purchase, use and operation of the Purchased Hardware. If the Estimate includes training, the terms of the Professional Services Agreement will apply.

## 6. **Certain Proprietary Materials**

### a. **License to Firmware, Software**

ZIP (or the applicable third party owner, as the case may be) retains all right, title and interest in all firmware and associated software delivered under this HPA, subject only to the following license rights. Any firmware delivered as a component of Purchased Hardware is licensed for use on a non-exclusive basis strictly as an integral part of the Purchased Hardware and for no other purpose. Any associated software delivered with the Purchased Hardware is licensed according to the terms and conditions of the software license agreement included with the documentation or, if not so included, then under a non-exclusive license in object code form to install, store, load, execute and display (collectively, "Use") the software strictly as an integral part of using the Purchased Hardware and for no other purpose. The firmware and software may not be disassembled, decompiled or reverse engineered and any information obtained in violation of this provision shall be deemed confidential information owned exclusively by the owner of such firmware or software (and shall be safeguarded and protected as such). If Client resells the Purchased Hardware, it shall obtain the purchaser's written commitment to be bound by the terms hereof.

### b. **Use of Documentation**

With respect to each item of Purchased Hardware, an electronic copy of documentation describing in reasonable detail understandable by a user of general proficiency the use and operation of the Purchased Hardware and any associated software shall be made available online. The documentation may be distributed by Client for purposes authorized herein. Client shall not alter or remove from any documentation any copyright, trademark or other proprietary legend.

### c. **Injunctive Relief**

Client acknowledges that violation of the provisions of this Section could cause irreparable harm to ZIP not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

## 7. **Warranties**

### a. **Good Title & Noninfringement**

ZIP represents and warrants that it will convey to Client good and marketable title to the Purchased Hardware free and clear of all liens and encumbrances, except for certain rights specifically reserved under Section 2 ("Prices & Payment"). ZIP represents and warrants that the Purchased Hardware (including any associated software), when properly used as contemplated herein, will not infringe or misappropriate any copyright, trademark, patent, or the trade secrets of any third persons. Upon being notified of such a claim, ZIP shall: (i) defend through litigation or obtain through negotiation the right of Client to continue using the Purchased Hardware; (ii) rework the Purchased Hardware to make it non-infringing while preserving the original functionality, or (iii) replace the Purchased Hardware with functionally equivalent Purchased Hardware. If none of the foregoing alternatives provide an adequate remedy, Client may terminate all or any part of this HPA and recover amounts paid for the infringing Purchased Hardware.

### b. **Limited Performance Warranty**

ZIP hereby assigns, to the extent assignable, all third party manufacturers' warranties with respect to the Purchased Hardware (including any associated software) and Client will look solely to the original manufacturer with respect to any performance claims. In addition, ZIP represents and warrants for a period of ninety (90) days ("Warranty Period") that it will make a reasonable effort to

ensure the Purchased Hardware operates substantially in accordance with the applicable documentation; provided, that (i) the Purchased Hardware is operated in accordance with all instructions supplied by ZIP; (ii) Client notifies ZIP of any such defect within ten (10) calendar days after the appearance thereof; (iii) Client has properly installed all updates made available with respect to any associated software, and updates recommended by ZIP with respect to any third party software products that materially affect the performance of the Purchased Hardware; (iv) Client has properly maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards; (v) Client has not introduced other equipment or software creating an adverse impact on the Purchased Hardware; (vi) Client has paid all amounts due hereunder and is not in default of any provision of this HPA; (vii) any specification provided by Client is an accurate and complete rendering of the relevant features, applicable interfaces and associated operating environment, and (viii) Client has made no unauthorized repair attempts to the Purchased Hardware. All repairs shall be as fully warranted as the original Purchased Hardware through expiration of the original Warranty Period.

**c. Year 2000 Standards**

ZIP represents and warrants that during the Warranty Period and for so long as Client continuously subscribes to any Support Services that may be available it will make a reasonable effort to ensure the Purchased Hardware (to the extent relevant) records, stores, recognizes, interprets, processes and presents both 20th and 21st century dates using four digit years substantially according to formats and assumptions specified in the documentation. This warranty does not apply insofar as the Purchased Hardware derives date functions from other programs (e.g., operating system run-time libraries, databases or firmware) nor does it require ZIP to work around or accommodate other programs or hardware that are not compliant with Year 2000 Standards.

**d. Warranty Disclaimer**

EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION ("WARRANTIES") ZIP HEREBY DISCLAIMS WITH RESPECT TO ALL PURCHASED HARDWARE (INCLUDING ASSOCIATED SOFTWARE), SERVICES OR OTHER DELIVERABLES PROVIDED HEREUNDER, ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE.

**8. Limitation of Remedies & Liabilities**

The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk:

**a. Remedies**

Except for certain injunctive relief authorized under Section 6 ("Certain Proprietary Materials"), Client's sole and exclusive remedies for ZIP's default hereunder shall be (i) to obtain the repair, replacement or correction of the defective Purchased Hardware to the extent warranted under Section 7 ("Warranties") or, if ZIP reasonably determines that such remedy is not economically or technically feasible, (ii) to obtain an equitable partial or full refund of amounts paid with respect to the defective Purchased Hardware. If Client fails to make timely payment under Section 2 ("Prices & Payment") or otherwise materially breaches this HPA, ZIP is hereby irrevocably authorized to disable or repossess the Purchased Hardware and pursue all other rights and remedies available to a secured Party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive.

**b. Liabilities**

ZIP SHALL NOT BE LIABLE FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF

THE PURCHASED HARDWARE PRICE ACTUALLY PAID BY CLIENT. IN NO EVENT SHALL ZIP BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS, LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF ZIP IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OR ZIP'S EXERCISE OF ITS RIGHTS UNDER THIS HPA. THIS LIMITATION IS INDEPENDENT OF REMEDY LIMITS.

**9. Notices**

Any notice or other communication required or permitted by this HPA shall be in writing and shall be provided by personal delivery, email, or by facsimile to the Client or ZIP to the address set out below, or to the last address notified by a Party to the other Party. Notices delivered in person shall be effective and deemed received on the first business day after such delivery, and notices delivered by facsimile or email shall be effective and deemed received on the date of transmission, provided printed proof of transmission is obtained.

**Addresses:**

If to ZipTel:

ZIP Telecom Inc.

4120 Ridgeway Drive, Unit 41

Mississauga, Ontario

L5L5S9

Attn: Chief Operating Officer

Facsimile: (416) 907-6055

If to Client:

The address specified on the Estimate

**10. Termination**

Either Party may, in addition to other relief, terminate this HPA and any license granted under Section 6 ("Certain Proprietary Materials") if the other Party breaches any material provision hereof and fails within ten (10) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion.

Either Party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in Bankruptcy is filed with respect to the Party and is not dismissed within thirty (30) days. Termination shall have no effect on the Parties' rights or obligations to safeguard and respect certain proprietary materials under Section 6 ("Certain Proprietary Materials"), rights or obligations under Section 7 ("Warranties"), Section 8 ("Limitation of Remedies & Liabilities") or Section 15 ("Compliance with Export Regulations").

**11. Jurisdiction**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada that are applicable therein, and each of the Parties hereby irrevocably attorns to the exclusive jurisdiction of the Courts of Ontario.

**12. Dispute Resolution**

If any dispute or question (in this Section called a "Dispute") shall arise between the Parties under this Agreement, the Parties shall in good faith attempt to resolve such Dispute promptly and in an amicable manner under the following informal dispute resolution procedure. If a Dispute arises which is not resolved by the operational personnel involved, the [Parties' Designated Contacts] shall be notified. The Designated Contacts shall meet within 15 days of being notified of a Dispute. If the Designated

Contacts are unable to resolve any such Dispute, the Dispute shall be submitted to binding mediation by one qualified mediator agreed to by the Parties, or by binding arbitration with one qualified arbitrator agreed to by the Parties and as such procedure is provided for under the Ontario Arbitration Act.

**13. Independent Contractor Status**

Each Party and its people are independent contractors in relation to the other Party with respect to all matters arising under this HPA. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the Parties. Each Party shall remain responsible, and shall indemnify and hold harmless the other Party, for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements now existing or hereafter enacted and attributable to themselves and their respective people.

**14. No Conflicts**

Each Party represents and warrants that its participation in this HPA does not conflict with any contractual or other obligation of the Party or create any conflict of interest and shall promptly notify the other Party if any such conflict arises during the Term.

**15. Insurance, Indemnity**

Each Party shall maintain adequate insurance protection covering its respective activities hereunder, including coverage for statutory worker's compensation, comprehensive general liability for bodily injury and tangible property damage, as well as adequate coverage for vehicles. Each Party shall indemnify and hold the other harmless from liability for bodily injury, death and, subject to Section 3 ("Shipping, Title & Risk of Loss"), tangible property damage resulting from the negligent or willfully injurious acts or omissions of its officers, agents, employees or representatives acting within the scope of their work. In the event that ZIP accepts a purchase order from the Client and delivers the Purchased Hardware to the Client prior to receipt of payment in full for the Purchased Hardware, Client shall maintain adequate casualty and theft insurance coverage for the Purchased Hardware at least until the entire purchase price is paid and, until such time, shall name ZIP on the policy as an additional loss payee.

**16. Compliance with Export Regulations**

Client shall not export or re-export, or cause to be exported or re-exported, Purchased Hardware or any of its underlying technology in contravention of applicable Canadian export laws and regulations without first obtaining applicable Canadian or other governmental licenses and approvals.

**17. Miscellaneous**

This document and the accompanying attachments specifically referenced herein constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This HPA may be modified or amended only by a writing signed by the Party against whom enforcement is sought. Except as specifically permitted herein, neither this HPA nor any rights or obligations hereunder may be transferred or assigned by Client without ZIP's prior written consent and any attempt to the contrary shall be void. The terms of any purchase order or similar Client documentation are specifically rejected. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.