

Professional Services Agreement

This Professional Services Agreement (“PSA”) is between ZIP Telecom Inc. (“ZIP”) and the Client (“Client”).

BY USING, APPLYING FOR, OR PURCHASING PROFESSIONAL SERVICES THE CLIENT ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS AND ACCEPTS THE TERMS AS PRESENTED HEREIN. THE PROFESSIONAL SERVICES ARE PROVIDED ON A PER REQUEST BASIS AND ARE NOT ONGOING OR MANAGED SERVICES.

The PSA set forth below constitutes a binding agreement between the Client and ZIP with respect to the Client’s use or purchase of the Professional Services. Client agrees that any failure to abide by the terms herein shall void any and all obligations of ZIP hereunder.

1. Definitions

“Acceptable Use Policy” or “AUP” is the acceptable use policy located at 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.

“Hardware Purchase Agreement” or “HPA” is the hardware purchase agreement located at www.ziptel.ca.

“Professional Services Agreement” or “PSA” is the professional services agreement located at 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. **Services**

- a. ZIP may be engaged for Professional Services by accepting an Estimate for Professional Services or through a new or existing service ticket.
- b. ZIP may require access to certain COH including but not limited to network components, systems, or other IT infrastructure (the “Systems”). Client authorizes ZIP to perform work on its Systems as required.
- c. ZIP makes no representations or warranties regarding the availability or quality of the Professional Services or that the Professional Services will be performed at or by a specific time unless otherwise specified in a statement of work.
- d. All Professional Services shall be provided using commercially reasonable efforts. ZIP makes no representations or warranties that commercially reasonable efforts will resolve or restore the Systems or meet the Client’s specific requirements unless explicitly defined by ZIP in a statement of work.

- e. Professional Services may impact or affect other Systems outside the scope of work. Client is responsible for making ZIP aware of all Systems that may be adversely impacted by the Professional Services.
- f. Client authorizes ZIP to accept, download, and install software on the Systems as required.

3. **Access**

ZIP may be required to access the Systems either remotely or at the Client's premises in order to provide the Professional Services. Additional software may be required for ZIP to access the Systems. Client gives ZIP express permission to install, configure, and use such software on Client's Systems. The Client agrees to allow access to the Client's premises as required. Client's failure to provide access to the Systems may result in ZIP's inability to perform the Professional Services. Client warrants that use of the Professional Services complies with all applicable computer and network policies. Prior to delivery of the Professional Services, Client must have administrator rights to the Systems, have a back-up of all data and configuration files related to the Systems, and provide ZIP with correct and accurate information to access the Systems.

4. **Limitations**

ZIP does not guarantee against the loss of any file, information, or data. Client is solely responsible for backing up and safely storing its data, information, and files. ZIP does not guarantee that it will recover lost or corrupted data, lost or deleted work, or lost or damaged personal files. The Professional Services do not cover hardware repair services, lost or expected profits. ZIP makes no representations or warranties regarding the availability or the provisioning of the Professional Services.

5. **Scope of the Professional Services**

The scope and extent of the Professional Services shall be limited to the ticket, estimate or statement of work referenced in the Estimate.

6. **Acceptance of the Professional Services**

ZIP will provide notice by email of completion of the Professional Services to the Client including a summary of the Professional Services and Systems involved. ZIP may, at its discretion and in accordance with the volume of Professional Services rendered, deliver an acceptance document to the Client.

7. **Term and Termination**

This Professional Services Agreement shall be terminated once the Client accepts the Professional Services in accordance with the acceptance document. In the absence of an acceptance document, the Professional Services will be deemed accepted when three days have passed since a ZIP representative has notified Client of the completion of Professional Services. In addition, ZIP may cancel the Professional Services at any time if ZIP, in its discretion, determines that Client's use of the Professional Services is excessive, inconsistent with the scope of the Professional Services, abusive, or inappropriate. If the statement of work includes contradictory acceptance and termination terms, an amendment to this PSA must be completed by both parties.

Notice of the natural expiration of this PSA may not be provided, and ZIP is not liable for any damages that may result from expiration or termination of the PSA. Client may purchase additional

subscriptions to the Professional Services by re-engaging ZIP. Any breach of this PSA shall immediately terminate Client's subscription to the Professional Services and may limit Client's access to the Professional Services in the future. No refunds shall be provided upon termination of the PSA.

8. Payment

Client shall pay ZIP the amount set forth on the Estimate or the current rate for remote support and/or on premise support for any un-quoted work. The amount will be invoiced upon completion of the work and due in full upon receipt of invoice.

9. Privacy

Information collected and used by ZIP is governed by the ZIP privacy policy, which is available at www.ziptel.ca. By accepting this PSA, Client is also acknowledging that it has read, understands and agrees to the privacy policy.

A ZIP support representative may need to download, run, or use software on the Client's computer to assist in diagnosing and resolving System problems. The use of all software is subject to the license agreements and terms and conditions associated with the software. Client shall be bound by all such license agreements.

ZIP may monitor and record the provision of the Professional Services, including any online sessions. These recordings are primarily for improving customer service, internal training, knowledge base articles, and internal market research. ZIP may disclose these recordings and any other information to satisfy any law, regulation or other governmental request, to operate the Professional Services properly, or to protect ourselves and/or ZIP's customers.

10. Disclaimer

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ZIP DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, IN EQUITY OR AT LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, AND NON-INFRINGEMENT. ZIP DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS CLIENT MAY HAVE OR THAT THE SERVICE WILL BE PROVIDED IN AN UNINTERRUPTED FASHION.

11. Limitation of Liability

EXCEPT AS EXPRESSLY PROVIDED HEREIN, ZIP AND ITS AFFILIATES, EMPLOYEES, AGENTS, LICENSORS, AND SUPPLIERS SHALL NOT BE LIABLE FOR (I) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNATIVE OR CONSEQUENTIAL DAMAGES RESULTING FROM (A) THE USE OF THE PROFESSIONAL SERVICES, (B) ANY EXISTING SYSTEM DEFICIENCIES, (C) ANY DELAY OR INABILITY TO USE OR CLAIM THE PROFESSIONAL SERVICES, (D) ANY INFORMATION, PRODUCTS OR PROFESSIONAL SERVICES OBTAINED IN CONNECTION WITH THE PROFESSIONAL SERVICES, OR (E) UNAUTHORIZED THIRD PARTY ACCESS TO A SYSTEM. ZIP IS NOT LIABLE FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR PROFESSIONAL SERVICES. THESE LIMITATIONS APPLY WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE AND APPLY EVEN IF ZIP, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS, LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. IN NO EVENT WILL ZIP'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE PROFESSIONAL SERVICES EXCEED THE FEES PAID BY CLIENT TO ZIP FOR THE PROFESSIONAL SERVICES.

13. Force Majeure

ZIP is not responsible for any cessation, interruption or delay in the operation of the Professional Services or the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God or the public enemy, war, armed conflict, terrorist action, strike, lockout, boycott, riot, release of hazardous or toxic substances, explosion, accident, or any other causes whether or not of the same class or kind as those specifically above named, which are not within the reasonable control of a party. ZIP is not liable for any failure or delay caused by problems with Internet connections.

14. 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.

15. 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.

16. Notices

Any notice or other communication required or permitted by this PSA 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

17. Entire Agreement

Notwithstanding other agreements that may exist between ZIP and the Client, the PSA shall constitute the entire agreement between the parties with respect to **Professional Services**. Any waiver of this PSA shall only be effective if it is in writing and signed by both parties. ZIP may change, modify, amend, suspend or discontinue any aspect of the Professional Services in its sole discretion, including pricing and scope of the Professional Services. Such changes will be made without notice or liability to Client or to any third party. ZIP may impose limits on certain features of the Professional Services at any time. ZIP may amend this PSA at any time by posting a copy of the amended PSA on the ZIP web site. Such amendments may be made in ZIP's sole discretion and are binding when posted. Client must review the PSA periodically to obtain notice of any changes. Continued use of the Professional Services constitutes acceptance of any changes. Section headings are for convenience only and shall not be considered in the interpretation of this PSA.

ZIP is not bound by any representation of (i) any agent, representative or employee of any third party; or in (ii) information posted on the ZIP web site of a general informational nature.

18. Survival

Provisions regarding proprietary rights, indemnity, warranty disclaimers, and limitation on actions shall survive this PSA.

19. Limitation on Actions

Neither party may bring any action, regardless of form, arising out of nor relating to this PSA more than three (3) months after the cause of action has accrued.

20. Assignment

Client may not assign or transfer the rights or obligations under this PSA without first obtaining ZIP's written consent. Any attempt to assign or transfer the rights and interests granted herein shall render the PSA voidable in ZIP's discretion. ZIP may assign and transfer its obligations under this PSA as it sees fit.