

# CONSOLIDATED FIBER

## Terms and Conditions of Service

Consolidated Fiber's Terms and Conditions apply to Residential and Small Business services (individually and collectively as "Service" or "Services") provided by Consolidated Fiber ("Consolidated") on its access network. If Customer has entered into a Service Contract ("Contract"), such is subject to the terms and conditions set forth herein. If there is any inconsistency between these Terms and Conditions of Service and any service agreement, these Terms and Conditions will govern.

### Definitions

**Residential** Consolidated's Residential class of internet is provided as a best effort service. The network is designed and maintained to support enormous bandwidth with low latency but is also subject to high traffic periods based on the usage patterns of active subscribers, so no bandwidth is truly dedicated to a particular subscriber.

**Small Business** Consolidated's Small Business class of internet is provided as a best effort service and backed by a service level agreement (SLA) with a restoration target time and accompanying service credits beyond fixed periods.

**Force Majeure events** Any failure of performance due to any cause beyond our reasonable control including acts of God, fire, explosion, vandalism, terrorism, cable cut, major weather disturbance, national emergencies, pandemic, riots, wars, labor difficulties, supplier failures, shortages, breaches, any law, order, regulation, direction, action, or request by any government, civil, or military authority, or suspension of existing service in compliance with state and/or federal law, rules, and regulations, or delays caused by you or your equipment.

### 1. ELECTRONIC/ONLINE ACCOUNT MANAGEMENT

Customer is strongly encouraged to complete registration through and continue to utilize Consolidated's electronic/online system (currently SmartHub) for managing all or most interactions between Customer and Consolidated. All monthly bills will be distributed via United States Postal Service with the option to request electronic billing via email and/or SmartHub. Customers are encouraged to use automated payment programs to ensure regular and timely remission of monthly payments.

### 2. AID-TO-CONSTRUCTION COSTS

Customers who have entered into Contract acknowledges and agrees that Consolidated will incur costs to construct fiber to the Customer's location and the Customer is obligated to reimburse Consolidated for such incurred costs. If Customer with Contract remains in good standing and makes all payment for Services for a period of 24 months consecutively, such Aid-To-Construction reimbursement obligation will be waived by Consolidated. Should Customer with Contract terminate Service or if such Service is terminated due to a breach of these Terms and Conditions by Customer prior to a period of 24 months from date Service was first provided, Customer will be obligated to reimburse Consolidated for any unpaid Aid-To-Construction costs remaining at the time of termination as calculated by Consolidated. The reimbursement for Aid-To-Construction costs is in addition to any other amounts due and owing by Customer associated with termination of Service.

### **3. LATE/OTHER CHARGES AND SECURITY DEPOSIT**

Customer understands Consolidated may require a security deposit. Customers who are not members of Consolidated Cooperative, and who are not receiving other services provided by Consolidated Cooperative may be subject to a credit check and/or security deposit to establish Service.

Consolidated will issue late fees in the amount of five percent for monthly charges not paid by stated due date.

Customer understands that Consolidated may in the future opt to require a service plan adjustment fee for individual subscribers or across their entire body of subscribers, based on the financial and temporal burden created by service plan adjustments.

If Service is disconnected or otherwise modified for cause, Consolidated may impose a reconnect charge and/or security deposit, in addition to collecting any outstanding balance, including late fees, before Service is restored. If Customer's check is returned for insufficient funds, Consolidated may impose an additional service charge. If Customer has not paid amounts due within five days of the due date, account may be subject to disconnect and a third party may be engaged to collect unpaid amounts. Customer agrees to pay Consolidated for any amounts due, and all reasonable agency and attorney fees incurred, including, without limitation, court costs.

### **4. OWNERSHIP OF EQUIPMENT - RISK OF LOSS**

"Equipment" includes all Equipment installed by Consolidated in or on Customer premises including, without limitation, inside or outside optical network units (ONT, also known as a "Fiber Gateway") and cabling. This equipment and other Consolidated property and facilities, such as but not limited to, conduits, cabling, and pull boxes (Equipment), delivered to Customer and/or installed on the premises to receive the Service shall remain the sole and exclusive property of Consolidated. Customer assumes the risk of loss, theft, or damage to all Equipment at all times prior to the removal of the outside units by Consolidated or return of the inside units by Customer. Upon termination of Service for any reason, Customer agrees to immediately return all inside Equipment in the operating condition as when received (reasonable wear and tear excepted) directly to Consolidated within 5 days of the termination. If the Equipment is destroyed, damaged, lost, or stolen, or the inside unit(s) is/are not returned to Consolidated for any reason within 5 days of termination, including fire, flooding, storm, or other incident beyond Customer's control, Customer shall be liable to Consolidated for the equipment costs detailed in the Schedule of Charges for any unreturned or damaged Equipment. Further, Customer understands and agrees that Consolidated may charge the credit card on file at time of termination of Service for the cost for any unreturned or damaged Equipment, in accordance with applicable law.

### **5. TAMPERING/MISUSE**

Customer shall not alter, misuse, repair, or in any manner tamper with the Equipment or outlets or remove from the Equipment any markings or labels. Equipment cannot be removed from Customer premises and used in another location. Customer is responsible for the safekeeping of all Equipment.

### **6. TERMINATION OF SERVICE BY CUSTOMER**

If Customer receives Service according to the terms of Contract and terminates Service prior to completion of the term of Contract, Customer will be obligated to pay an Early Termination Fee, unless otherwise agreed to in writing. An Early Termination Fee will equal the number of Contract months remaining on Contract term multiplied by the monthly service fee minus the aggregate of service fees paid to date (including during voluntary account suspension). The Early Termination Fee will be in addition to all amounts which may be due and owing pursuant to paragraph Two. Ancillary services, such



as, Managed Wi-Fi or Phone service, may be on different minimum term lengths and therefore, may impose different termination fees.

All account holders may terminate Service in person at a Consolidated office or by telephone. Account holders are liable for all Services rendered by Consolidated up to the time the account has been deactivated and all inside Equipment has been returned. Fees will apply for Equipment that is not returned within 5 days after termination of the billed service period. Consolidated requires a minimum of 30 days advanced notice prior to termination of Service.

## **7. TRANSFER OF ACCOUNT/CHANGE OF RESIDENCE**

The Service shall be provided only at the address where Consolidated completes installation (Service Address). Account holder may not transfer Customer's rights or obligation to Service to any successor tenant or occupant, or to any other address without providing Consolidated with written consent from both parties or one party and a copy of the death certificate of the second party.

## **8. THEFT OF SERVICE**

The receipt of Services without authorization is a crime. Customer understands that the law prohibits willful damage, alteration, or destruction of Equipment. Sharing, resale, or use of Service beyond the address where Service is delivered is prohibited. Customer may be subject to both civil and criminal penalties for such conduct. Customer shall not move Equipment to another location or use it at an address other than the Service Address without prior written authorization from Consolidated.

## **9. TERMINATION OF SERVICE BY SERVICE PROVIDER**

Consolidated will strive to give Customer at least five (5) days' prior notice of disconnection of all or part of Service, except if the disconnection is requested by Customer or is for emergency purposes. If Customer's bill is not paid on or before the due date, Consolidated may limit or disconnect Service. Upon termination for any reason, Consolidated may charge additional fees on any unpaid balance. Further, Customer understands and agrees that Consolidated may charge credit card on file at termination of Service in the amount of any outstanding balance, fees, and for the cost for any unreturned or damaged Equipment, in accordance with applicable law.

## **10. CHANGES IN SERVICE/CHARGES**

Services not subject to minimum term lengths will be billed according to the published rates as they may vary from month to month. Services provided, subject to minimum term lengths, will be billed at the initial rate for the minimum term, and thereafter according to the published monthly rates. The Cooperative will provide, when possible, at least 30 days' advance notice of any changes in Services and/or rates to conform to applicable laws.

## **11. SERVICE AND REPAIRS**

Consolidated will repair Equipment damaged due to reasonable wear and tear or technical malfunction. Physical damage to Equipment caused by intentional misuse or Customer's negligence is Customer's responsibility and Customer is responsible to pay the cost of repair or replacement in such cases.

For Service classified as Small Business Service, Consolidated will respond as soon as practical and will strive to have Service restored within eight (8) hours after Customer notifies Consolidated Fiber Support. Customers with Small Business Service may request service credits in writing within 30 days of a qualifying outage that exceeds twenty-four (24) hours of continuous length, according to conditions outlined below. Service credits will not exceed maximum monthly recurring charges (MRC) for each service type in a single monthly service period.



- a) **Credit Allowances** Unless otherwise addressed in a separate service level or other written Ancillary Agreement between Customer and Consolidated, and except as provided below, in the event of complete failure of Service due to a technical malfunction within Consolidated’s control for twenty-four (24) consecutive hours or more, you are entitled to a prorated credit upon request. To qualify for an adjustment, you must request a credit within thirty (30) days of the failure. Notwithstanding the foregoing, Consolidated shall have no liability for interruption of any Service as referenced in Section 15. 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 \$5.00, unless required under applicable law.

<b>Small Business Service Availability per Month</b>	<b>Credit</b>
<b>100 - 97%</b>	<b>0%</b>
<b>96.9 - 95%</b>	<b>25%</b>
<b>94.9 - 93.3%</b>	<b>33%</b>
<b>93.2 - 90%</b>	<b>50%</b>
<b>&lt; 90%</b>	<b>100%</b>

CUSTOMER AGREES THAT SUCH CREDIT IS CUSTOMER’S SOLE REMEDY FOR A DISRUPTION OF SERVICE. CONSOLIDATED AND ITS AFFILIATES, AGENTS AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED.

- b) **Exceptions to Credit Allowances** Except as provided by applicable law or in an applicable service level or other Ancillary Agreement, 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 Consolidated, 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 these Terms and Conditions. The remedies set forth in this Section shall be Customer’s sole and exclusive remedy for any interruption in the Services, outage, unavailability, delay, or other degradation in the Services, or any failure by Consolidated to meet the objectives of the Services.

## **12. ACCESS ON PREMISES**

As a condition of receiving Services, Customer grants to Consolidated authorization to enter premises to construct, install, maintain, inspect, and/or replace all Equipment necessary to provide Services. An adult, 18 years of age or older, must be present for Consolidated to enter the inside premise. Furthermore, as the owner of the premises at which Services are provided, Customer will, upon request, grant to Consolidated a perpetual easement without charge both on and through premises to construct, install, maintain, inspect, and/or replace Consolidated’s facilities and all Equipment necessary to provide Services to Customer and others.



- a) If Customer is not the owner of the premises, Customer warrants that he/she has authority to grant such access to Consolidated or that he/she has obtained the consent from the owner of the premises for Consolidated to install and maintain Equipment it deems necessary to provide Services.

Customer understands that Services may not be available to non-permanent structures, including, but not limited to, mobile homes, recreational vehicles and other mobile home units as such structures may not be suitable for the installation and maintenance of fiber Services.

### **13. ACCOUNTS**

Customer warrants that no monies are owed to Consolidated from a previous account and that Customer has no accounts with an affiliated company of Consolidated which are currently delinquent. Consolidated shall have the right to apply any amounts payable hereunder to any affiliate company account of Customer without the consent of the Customer. Should Customer fail to pay the amounts applied to the affiliate account in full, Customer understands such could result in termination of service by the affiliated company. If Consolidated applies amounts payable hereunder to an affiliate company account, Consolidated will notify Customer who will still be obligated to pay all amounts due hereunder for services.

### **14. WARRANTY DISCLAIMER; LIMITATION ON DAMAGES**

SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. CONSOLIDATED DOES NOT WARRANT THAT SERVICE WILL BE UNINTERRUPTED OR ERROR FREE.

- a) Consolidated makes no warranty, express or implied, including any warranty of merchantability, fitness for a specific purpose, or non-infringement of either the Equipment or Service furnished hereunder.
- b) **Limitation of Liability** Consolidated shall not be liable to Customer for indirect, special, incidental, consequential, punitive, or exemplary damages arising out of or in connection with the Service or any acts or omission associated therewith, including any acts or omissions by subcontractors of Consolidated, or relating to any services furnished, whether such claim is based on breach of warranty, contract, tort or any other legal theory and regardless of the causes of such loss or damages or whether any other remedy provided herein fails.
- c) **Customer Exclusive Remedy** Consolidated’s entire liability and Customer’s exclusive remedy with respect to the use of Services or any breach by Consolidated of any obligation Consolidated may have under these Terms and Conditions shall be Customer’s ability to terminate Service or to obtain the replacement or repair of any defective Equipment. In no event shall Consolidated’s liability to Customer for any claim arising out of this Agreement exceed the amount paid for Services by the Customer during the preceding 30-day period.

### **15. CUSTOMER INDEMNIFICATION**

CUSTOMER IS RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CONSOLIDATED AND ITS EMPLOYEES, AFFILIATES, SUPPLIERS, AGENTS, AND CONTRACTORS, AND SHALL REIMBURSE US FOR ANY DAMAGES, LOSSES, OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY’S FEES AND COSTS) INCURRED BY CONSOLIDATED RELATING TO ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (i) CUSTOMER USE OF THE SERVICE OR EQUIPMENT; (ii) VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS ARISING FROM CUSTOMER USE



OF THE SERVICE OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; AND (iii) CUSTOMER BREACH OF ANY PROVISION OF THIS AGREEMENT.

## **16. SERVICE INTERRUPTIONS**

Consolidated assumes no liability for interruption of Service beyond its control, including without limitation, acts of God, natural disaster, fire, civil disturbance, strike, or weather.

Scheduled or unscheduled Service interruptions for maintenance, testing or other purposes may occur at any time, with or without notice.

The Services do not have their own power source. You are responsible for obtaining a power source for each Service. A POWER OUTAGE AFFECTING YOUR PREMISES OR CONSOLIDATED'S NETWORK MAY INTERRUPT AVAILABILITY OF SERVICES. THAT WILL ALSO RESULT IN AN INTERRUPTION IN THE AVAILABILITY OR FUNCTIONING OF DEVICES AND SERVICES THAT DEPEND ON OUR SERVICES, SUCH AS ACCESS TO 911 EMERGENCY SERVICES AND HOME ALARM OR HEALTH MONITORING DEVICES OR SERVICES.

Further, Consolidated does not guarantee or warrant:

- a) continuous, uninterrupted or secure access to any service;
- b) that any service will be available on a specified date or time or that our network will have the capacity to meet demand during specific hours;
- c) any particular download or upload speed for any internet access service or any other characteristic of that or any other kind of service,
- d) compatibility of any service with your computers, telephone or video equipment, operating systems or software.

## **17. VOICE 911/E911 SERVICE LIMITATIONS AND LIMITATION OF LIABILITY**

Customer understands and acknowledges that access to Consolidated Phone service may be lost or the service may not function properly, including the ability to call for 911/E911 service, under certain circumstances, including but not limited to, the following: (i) CONSOLIDATED NETWORK OR FACILITIES ARE NOT OPERATING; (ii) BROADBAND CONNECTION IS LOST; (iii) CUSTOMER IS EXPERIENCING A POWER OUTAGE; (iv) ELECTRICAL POWER TO THE FIBER GATEWAY IS INTERRUPTED; (v) CUSTOMER FAILURE TO PROVIDE A PROPER SERVICE ADDRESS OR MOVING THE SERVICE TO A DIFFERENT ADDRESS.

Customer understands and acknowledges that in order for 911/E911 calls to be properly directed, Consolidated must have current Service Address and that if Service is moved to a different address without Consolidated's approval, 911/E911 calls may be directed to the wrong emergency authority or may transmit the incorrect location address for responding. Customer also understands and acknowledges that:

- a) Consolidated's Phone service (including 911/E911) may fail altogether.
- b) Customer is required to notify Consolidated of any change of address of the voice-enabled advanced equipment for 911/E911 calling service to work properly.

Customer agrees that, to the maximum extent allowed by law Consolidated shall have no liability for any damages caused, directly or indirectly, by Customer's inability to access the Services, including the Consolidated Phone and 911/E911 services. Customer agrees to defend, indemnify, and hold harmless Consolidated, its officers, directors, employees, affiliates, and agents, and any others who furnish services



relating to this Agreement or Service, from any and all claims, losses, damages, fines, penalties, costs, and expenses (including, without limitation, reasonable attorney fees) by, or on behalf of, Customer or any third party or user of account relating to the absence, failure, or outage of Service, including 911 dialing and/or inability of Customer or any third person or party or user of Service to be able to dial 911 or to access emergency service personnel.

## **18. INTERNET ACCESS SPEEDS**

The internet access speeds quoted are the best-effort maximum rates by which downstream internet access data may be transferred between Consolidated facilities and the fiber gateway (the network point of demarcation) at Customer premises. The maximum rate is not guaranteed and may vary. The quoted speeds should not be confused with the speed at which Customer receives and sends internet access data through the public internet since such speeds are impacted by many factors beyond control of Consolidated. Actual internet speeds vary due to many factors, including the capacity or performance of a computer and its configuration, wiring and any wireless configuration, destination and traffic on the internet, internal network or other factors at the internet site with which Customer is communicating, congestion on the network, and the general speed of the public internet. The actual speed may affect Customer online experience, including ability to view streaming video and speed of downloads. Except as otherwise provided by law, Consolidated reserves the right to implement network-management controls to optimize and ensure that adequate speed and data transfer is available to all internet Service customers.

## **19. INTERNET USE**

Customer understands that use of Services is subject to the [Consolidated Fiber Acceptable Use Policy](#) (AUP), which is incorporated herein and made part of this Agreement, which may be amended from time to time. The Policy can be found online at [www.consolidated.coop](http://www.consolidated.coop) or by contacting Consolidated. The failure to abide by the terms of the Policy may result in the immediate termination of Service without notice. Consolidated does not provide support for devices that access Service under this Agreement. Customer assumes all responsibility and liability for the security of information on personal devices, including but not limited to computer, and/or information transmitted or received through Services. Consolidated assumes no responsibility and disclaims any liability for the security of any information on Customer personal devices, or the security or accuracy of any information or data transmitted or received through Services. Consolidated has no responsibility and disclaims any liability for unauthorized access by third persons to Customer personal devices, files, or data, or any loss or destruction of files or data.

## **20. TROUBLESHOOTING**

Customer may contact Consolidated by phone at 800-421-5863 regarding any issues, questions, or comments regarding their provided Services.

## **21. COMPLIANCE WITH AGREEMENT**

Consolidated strives to maintain high levels of Service delivery for its customers. We reserve the right to alter the performance of Service, and to suspend or terminate Service for the breach of any of these Terms and Conditions or other policies related to Services, for specific customers that violate any of these Terms and Conditions or other policies.

## **22. SEVERABILITY**

If any provision of this Agreement is found by a court or agency of competent jurisdiction to be unenforceable, the parties agree that the remaining provisions of these terms and conditions shall remain in full force and effect.



### **23. WAIVER**

Consolidated's failure at any time to insist upon strict compliance with any of the provisions of this Agreement shall not be construed to be a waiver of such terms in the future.

### **24. CHOICE OF LAW/VENUE**

This Agreement shall be construed in accordance with and governed by the law of the State of Ohio. Any legal action or other legal proceeding relating to this Agreement or the enforceability of any provision of this Agreement shall be brought or otherwise commenced in a court located in Delaware County, Ohio.

