

# COMPORIUM SERVICE AGREEMENT

**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO CHAPTER 48 (SECTION 15-48-10) OF THE SOUTH CAROLINA CODE OF LAWS**

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Thank you for choosing Comporium as your service provider. BY ORDERING OR USING ANY OF THE FOLLOWING SERVICES PROVIDED BY COMPORIUM, YOU AGREE TO BE BOUND BY THE COMPORIUM TERMS AND CONDITIONS OF SERVICE SET OUT BELOW AND ATTACHED HERETO. THE COMPORIUM TERMS AND CONDITIONS OF SERVICE, INCLUDING ALL APPLICABLE COMPORIUM POLICIES, ARE LOCATED AT [WWW.COMPORIUM.COM](http://WWW.COMPORIUM.COM). THESE TERMS AND CONDITIONS OF SERVICE CREATE A BINDING CONTRACT BETWEEN YOU AND COMPORIUM (THE "AGREEMENT"). BY ORDERING OR USING COMPORIUM SERVICES YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE AGREEMENT AND AGREE TO BE BOUND BY THE TERMS THEREOF.

## 1. SERVICES

Comporium agrees to provide you with the following service packages as detailed at [www.comporium.com](http://www.comporium.com).

**INTERNET:**

**DIGITAL TV:**

**SECURITY/HOME AUTOMATION:**

**HOME PHONE:**

\*If Security service is included, customer must sign a separate Security contract.

## 2. USE OF COMPORIUM'S EQUIPMENT; OBLIGATION TO RETURN EQUIPMENT

While you are using these services, you may have the right to use certain Comporium equipment, either for a fee or for no additional charge. Within 5 days of termination, downgrade, or disconnection of the services described in this Agreement, you agree to return all such equipment in good operating condition, normal wear and tear excepted, to any Comporium retail store. If you fail to return such equipment as set forth herein, you agree to pay Comporium's standard charge for each item.

## 3. MONTHLY FEE

Comporium agrees to charge an initial monthly service fee of:

Unless otherwise terminated, the services provided hereunder, and this Agreement shall automatically renew each month on the first day of Subscriber's monthly billing cycle. Subscriber acknowledges that upon such renewal all pricing is subject to change and all promotional discounts and bundled service discounts are subject to being changed, discontinued, or terminated. All service and equipment fees are subject to increase at monthly renewal upon Comporium giving you 30 days prior notice. The taxes, fees or charges imposed by federal, state, or local governments are good faith estimates and are subject to change at any time during the term of this Agreement. The attached Comporium Terms and Conditions of Service are hereby provided to you, incorporated herein by reference, and shall govern the provision of services by Comporium.

## COMPORIUM RESIDENTIAL TERMS AND CONDITIONS OF SERVICE

This Agreement sets forth the terms and conditions under which you (“you” or “Subscriber”), and you on behalf of all members of your household, all guests, and any other person who uses the services, agree to use the services and equipment provided by Comporium Inc. All references to “Comporium” means Comporium Inc. and any of its affiliates or subsidiaries providing services to you.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THE SERVICES AND CONTACT COMPORIUM IMMEDIATELY TO TERMINATE THE SERVICES. YOUR ACCEPTANCE OF THIS AGREEMENT OCCURS IN CONNECTION WITH AND UPON THE EARLIER OF ANY OF THE FOLLOWING: (A) YOUR WRITTEN OR ELECTRONIC SIGNATURE; (B) INFORMING COMPORIUM ELECTRONICALLY OR ORALLY OF YOUR ACCEPTANCE; (C) YOUR SUBMISSION OF AN ORDER FOR OR ACTIVATION OF ONE OR MORE OF THE SERVICES OR EQUIPMENT PROVIDED BY COMPORIUM; OR (D) YOUR USE OF ONE OR MORE OF THE SERVICES OR EQUIPMENT PROVIDED BY COMPORIUM.

THESE TERMS AND CONDITIONS OF SERVICE CONTAIN (1) A BINDING ARBITRATION PROVISION; (2) A WAIVER OF YOUR RIGHT TO BRING CLAIMS AS CLASS ACTIONS; (3) A LIMITATION ON YOUR RIGHT TO BRING CLAIMS AGAINST COMPORIUM MORE THAN 1 YEAR AFTER THE RELEVANT EVENTS OCCURRED; AND (4) THE RIGHT TO OPT OUT OF ARBITRATION. THESE PROVISIONS AFFECT YOUR RIGHTS UNDER THESE GENERAL TERMS AND CONDITIONS WITH RESPECT TO ALL SERVICES. SEE SECTION 6 FOR DETAILS ON THESE PROVISIONS.

### 1. Comporium’s Responsibilities

- a. Properly install the necessary Comporium equipment to provide the services.
- b. Maintain the Comporium equipment and services according to reasonable industry standards and according to the terms of this Agreement.
- c. Provide reasonable advance written notice to you of any changes to the rates, services, or other commercial terms of service. If you do not agree with the changes, you may cancel the services without penalty. However, if you continue to receive the services after the changes take effect, this means you have accepted the changes.
- d. Comply with the terms and conditions of this Agreement and all laws and regulations applicable to this Agreement.

### 2. Your Responsibilities

- a. Allow Comporium and its representatives to install, replace, or repair the Comporium equipment where the services will be provided.
- b. Provide Comporium and its representatives with a safe working environment during any installation, replacement, or repair visit.
- c. Billing and Payment Terms: Billing will commence upon activation of any service or Comporium equipment. Subscriber shall pay all service, equipment and installation fees, charges, taxes, fees, and surcharges incurred in connection with this Agreement within thirty (30) days from the due date appearing on the invoice. Subscriber shall pay all applicable taxes, surcharges and fees imposed on or in connection with this Agreement, including but not limited to applicable federal, state, and local sales, use, property, excise, telecommunications, or other taxes, franchise fees, federal and state universal service fund fees, and other state or local governmental charges or regulatory fees. Comporium shall have the right to increase all service and equipment fees at monthly renewal upon thirty (30) days prior notice to Subscriber. If you fail to submit payment by the provided due date, you will be assessed a late fee equal to 1.5% per month on any outstanding balance on your account.
- d. Monthly Subscription Services: Services and use of Comporium equipment are provided on a monthly subscription basis and shall automatically renew on the first day of Subscriber’s monthly billing cycle. Customer shall be responsible for the full monthly charge (without pro-ration) and unless Customer cancels service on or before the last day of the current monthly subscription period, Customer will be charged in full for services the next monthly subscription period.
- e. Payment Authorization: If you have elected to pay recurring amounts due under this agreement by ACH or payment/credit card, you will provide your bank or card account information to Company (either directly or through Company’s third-party processor, as applicable). You authorize Company (including its third-party processor) to initiate debits from your bank account or charges to your payment card account with the applicable financial institution or issuer for the payment of all such recurring amounts as payments become due. You agree that no prior notification will be provided unless the payment date or amount changes, in which case Company will provide you notice at least 10 days prior to the payment being debited from or charged to your account, as applicable. You understand that this authorization will remain in effect until you cancel it in writing, and you agree to notify Company in writing of any changes to your account information, payment method, or termination of this authorization at least 15 days prior to the next payment date. You understand that changes to your payment method or authorization may cause an increase to your service charges. If your payment date in any month falls on a weekend or holiday, you understand that the payment may be executed on the next business day. In the case of ACH payment, you understand that because this is an electronic transaction, these funds may be withdrawn from your account as soon as your payment date each month. In the case of an ACH transaction being rejected for Non-Sufficient Funds (NSF), you understand that Company may at its discretion attempt to process the charge again within 30 days and agree to an additional \$20.00 charge for each attempt returned NSF. You acknowledge that the origination of ACH transactions to your account must comply with the provisions of U.S. law. You certify that you are an authorized user of this bank account or payment/credit card, as applicable, and will not dispute this recurring billing of any of these payments with your financial institution or issuer so long as the transactions correspond to the terms stated herein.
- f. Comply with the terms and conditions of this Agreement and all laws and regulations applicable to this Agreement.

### 3. Use of Software and Comporium Equipment

- a. To the extent you need licensed software to use services provided under this Agreement, you shall have a personal, nonexclusive, and nontransferable license to use such software in object code only and solely to the extent necessary to use the applicable service during the term outlined in this Agreement. You agree not to copy, duplicate, reverse engineer, sell, or lease the licensed software.
- b. Other provisions in this Agreement may give you the right to use certain equipment provided by Comporium. This equipment will be owned by Comporium at all times and must be returned upon termination of this Agreement, in the event services are changed or downgraded, or if the services are otherwise disconnected for any reason at any time.
- c. Upon termination of services, you agree to return all Comporium equipment within five (5) days of the termination in good operating condition, normal wear and tear excepted, to any Comporium retail store.

- d. If you fail to return the Comporium equipment, you agree to pay a charge for each piece of Comporium equipment not returned according to the terms of this Agreement.
- e. You may not reverse engineer or tamper with the Comporium equipment.
- f. You may not attach any unauthorized devices to Comporium equipment. Comporium assumes no responsibility for the condition or repair of any equipment not provided by Comporium. You are responsible for the repair and maintenance of such equipment. Comporium is not responsible or liable for any loss or impairment of service due in whole or in part to a malfunction or defect in equipment not provided by Comporium.
- g. You may only use the Comporium equipment to receive the services ordered from Comporium under this Agreement.
- h. You may not use the services in a way that disrupts or prevents Comporium from providing the services to other customers.
- i. Comporium will repair or replace the Comporium equipment at no additional charge as long as the reason for the repair or replacement is not the result of your fault or theft. Comporium does not repair or replace equipment owned by you.
- j. By using Comporium equipment, you agree to the service restrictions outlined in this Agreement.
- k. Comporium is not responsible for the integrity or loss of content or data stored by you in connection with Comporium services.
- l. Comporium services may only be used for personal, residential, and non-commercial purposes.

#### 4. Termination of Service

- a. Unless otherwise terminated, the services provided hereunder, and this Agreement shall automatically renew each month on the first day of Subscriber's monthly billing cycle. Subscriber acknowledges that upon such renewal all pricing is subject to change and all promotional discounts and bundled service discounts are subject to being changed, discontinued, or terminated.
- b. You must provide advance notice to Comporium of your intent to terminate services. To terminate any recurring service, Subscriber must either call Comporium Customer Service, visit a local Comporium retail store, or cancel service online through your My Comporium account.
- c. Subscriber agrees that upon termination of one or more services, Subscriber will pay Comporium in full for the terminated service(s) and equipment through the end of the then current monthly subscription service period.
- d. Comporium may terminate services provided hereunder in the event of any breach of these terms and conditions by Subscriber. In addition, Comporium may terminate services provided hereunder, for any reason, including but not limited to, if:
  - i. Subscriber violates any user policy or term or condition of service;
  - ii. Subscriber threatens, verbally abuses or harasses any Comporium employee, agent, contractor or representative;
  - iii. The amount of technical support required to be provided to Subscriber is excessive as determined by Comporium, in its sole discretion; or
  - iv. Subscriber engages in any illegal activity using any services provided hereunder.
- e. If Comporium fails to provide any service in a manner consistent with reasonable industry standards, you may terminate the service, as your sole and exclusive remedy.
- f. Subscriber further agrees that Comporium shall have no liability to Subscriber upon termination of this Agreement or any services provided hereunder.

#### 5. Disruption of Service

- a. Comporium services may be interrupted by regularly scheduled maintenance or by unanticipated maintenance in response to a service disruption. Comporium will use all reasonable efforts to minimize all service disruptions and to notify you in advance if Comporium will require access to your property to complete the necessary maintenance.
- b. Comporium services are not fail-safe and are not designed or intended for use in situations regarding guaranteed performance or in which a service disruption could lead to damage to people or property, including the loss of data, profits, earnings, or business opportunities. Comporium is not liable for any loss or damage resulting from a disruption in service, including but not limited to loss of data, profits, earnings, or business opportunities.
- c. Comporium shall not be responsible for any delay or failure in service due to causes beyond its control, including but not limited to, fire, flood, explosion, extreme weather, or other catastrophes; any law, order, regulation, action, or request of a Federal, state, or local governmental authority; or strikes, lockouts, work stoppages, or other labor difficulties.

#### 6. Dispute Resolution

- a. You agree to attempt to resolve all disputes with Comporium informally before resorting to arbitration. You agree to notify Comporium of the dispute within fourteen (14) days of discovery by visiting or calling your local Comporium retail store. If Comporium does not resolve your claim with fourteen (14) days of receiving notice, you may pursue the claim in arbitration as described in this Section.
- b. INSTEAD OF SUING IN COURT, YOU AND COMPORIUM AGREE TO ARBITRATE ANY AND ALL DISPUTES THAT ARISE OUT OF OR IN ANY WAY RELATE TO: (1) THIS AGREEMENT; (2) ANY OTHER AGREEMENT(S) WITH COMPORIUM; OR (3) THE SERVICES PROVIDED BY COMPORIUM. ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ROCK HILL, SOUTH CAROLINA AND ARBITRATION SHALL BE BEFORE A SINGLE ARBITRATOR. THE ARBITRATOR SHALL HAVE THE EXCLUSIVE AUTHORITY TO RESOLVE ANY DISPUTE RELATING TO THE INTERPRETATION, APPLICABILITY, SCOPE, OR ENFORCEABILITY OF THESE ARBITRATION PROVISIONS AND THESE TERMS AND CONDITIONS OF SERVICE.
- c. SUBSCRIBER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, SUBSCRIBER AND COMPORIUM ARE WAIVING THE RIGHT TO A TRIAL BY JUDGE OR JURY.
- d. SUBSCRIBER AND COMPORIUM AGREE THAT CLAIMS MAY ONLY BE BROUGHT IN A PARTY'S INDIVIDUAL CAPACITY AND NOT ON BEHALF OF, OR AS PART OF, A CLASS ACTION OR REPRESENTATIVE PROCEEDING. FURTHERMORE, UNLESS BOTH SUBSCRIBER AND COMPORIUM AGREE OTHERWISE IN WRITING, SUBSCRIBER AND COMPORIUM EACH WAIVE ANY RIGHT TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON, CLASS OR ENTITY OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION, OR OTHER PROCEEDING. IF FOR ANY REASON ANY COURT OR ARBITRATOR HOLDS THAT THIS SECTION 6(d) IS UNENFORCEABLE, THEN OUR AGREEMENT TO ARBITRATE DOES NOT APPLY, AND THE DISPUTE MUST BE BROUGHT IN COURT. IF SUCH A DISPUTE IS BROUGHT IN COURT, YOU AND COMPORIUM AGREE THAT ANY LITIGATION WILL BE CONDUCTED BEFORE A JUDGE AND NOT A JURY.
- e. RIGHT TO OPT OUT. IF SUBSCRIBER DOES NOT WISH TO BE BOUND BY ARBITRATION, SUBSCRIBER MUST NOTIFY COMPORIUM IN WRITING WITHIN 30 DAYS OF COMMENCEMENT OF THE SERVICE(S). SUBSCRIBER'S WRITTEN NOTIFICATION TO COMPORIUM MUST INCLUDE SUBSCRIBER'S NAME, ADDRESS, AND COMPORIUM ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT SUBSCRIBER DOES NOT WISH TO

RESOLVE DISPUTES WITH COMPORIUM THROUGH ARBITRATION. NOTICE MUST BE SENT TO: COMPORIUM INC., ATTN: GENERAL COUNSEL, 330 EAST BLACK STREET, ROCK HILL SC 29730, WITH PROOF OF DELIVERY.

- f. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN THE EVENT IT IS DETERMINED THAT ONE OR MORE OF THESE ARBITRATION PROVISIONS IS UNENFORCEABLE FOR ANY REASON, OR IF A CLAIM IS BROUGHT THAT IS EXCLUDED FROM THE SCOPE OF THESE ARBITRATION PROVISIONS (INCLUDING THOSE WITH RESPECT TO WHICH SUBSCRIBER HAS OPTED OUT OF THESE ARBITRATION PROVISIONS), BOTH PARTIES AGREE TO WAIVE, TO THE FULLEST PERMITTED UNDER APPLICABLE LAW, ANY TRIAL BY JURY AND ANY RIGHT TO PARTICIPATE IN CLASS ACTIONS, AND THE DISPUTE MUST BE BROUGHT IN STATE OR FEDERAL COURT IN THE STATE OF SOUTH CAROLINA.
- g. SUBSCRIBER HAS ONE (1) YEAR TO BRING ANY CLAIM AGAINST COMPORIUM. IF SUBSCRIBER DOES NOT BRING A CLAIM WITHIN ONE (1) YEAR AFTER THE DATE ON WHICH THE CLAIM AROSE, SUBSCRIBER WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS SUBSCRIBER HAS TO SUCH CLAIM, AND COMPORIUM WILL HAVE NO LIABILITY WITH RESPECT TO SUCH CLAIM.
- h. THIS SECTION SHALL SURVIVE ANY TERMINATION OF SERVICES OR TERMINATION OF THIS AGREEMENT.

#### **7. Privacy**

- a. By accessing or using our services, you acknowledge that you have reviewed and agree to Comporium's Privacy Policy located at <https://www.comporium.com/29707/privacy-policy/> and all other User Policies located at [www.Comporium.com](http://www.Comporium.com). If you do not accept the terms of the Privacy Policy or other User Policies, you must stop using our services immediately. Comporium will treat your personally identifiable information provided to us in accordance with our Privacy Policy. Comporium is not responsible for any information provided by you to third parties, and such information is not subject to any provisions of this Agreement. You assume all privacy and other risks associated with personally identifiable information you provide to third parties via Comporium services.

#### **8. Changes to this Agreement**

- a. The current version of the terms of this Agreement will be available on <https://www.comporium.com/terms-and-conditions/>. From time to time, Comporium may make revisions to these terms and conditions, terms of service and to its policies. You agree to visit the Comporium website periodically to review the applicable terms of service and user policies. Your continued use of services after any updates to these terms and conditions and policies shall be considered your acknowledgement and acceptance of the changes. Subscriber may not modify these terms and conditions or any other terms of service by making any typed, handwritten, or any other changes to it for any purpose.

#### **9. Limitation of Liability**

- a. COMPORIUM'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY, WILL NOT EXCEED IN TOTAL, THE AMOUNT YOU PAID FOR COMPORIUM SERVICES OVER THE SIX-MONTH PERIOD IMMEDIATELY BEFORE THE DATE OF THE EVENT GIVING RISE TO THE RELEVANT CLAIM SUBJECT TO A MAXIMUM OF \$1,000. COMPORIUM SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF ANY SERVICES, INCLUDING THE INABILITY TO REACH 911 OR ANY OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER.
- b. NOTWITHSTANDING SECTION 9(A), NEITHER YOU NOR COMPORIUM SHALL BE LIABLE TO THE OTHER FOR (1) ANY LOSS OF PROFITS, ANTICIPATED SAVINGS, OR GOODWILL; (2) LOSS OF OPPORTUNITY, BUSINESS INTERRUPTION, OR WASTED EXPENDITURE; OR (3) ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGE OR LOSS WHATSOEVER, ARISING IN CONNECTION WITH THIS AGREEMENT.
- c. THE LIMITATIONS IN THIS SECTION 9 SHALL NOT LIMIT YOUR RESPONSIBILITY TO PAY ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.
- d. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, COMPORIUM PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT WITH RESPECT TO COMPORIUM SERVICES, COMPORIUM EQUIPMENT, OR LICENSED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPORIUM DOES NOT WARRANT THAT COMPORIUM SERVICES, COMPORIUM EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE COMPORIUM SERVICES, COMPORIUM EQUIPMENT, OR LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.
- e. THIS SECTION SHALL SURVIVE ANY TERMINATION OF SERVICES OR TERMINATION OF THIS AGREEMENT.

#### **10. Third Party Claims**

- a. Comporium agrees at its expense to defend or settle any third party claim against you or to pay all damages that a court awards against you for a claim alleging that a service or equipment provided to you under this Agreement infringes any intellectual property right, except if the alleged infringement arises or results from: (i) your content; (ii) modifications to the service or equipment by you; (iii) Comporium's adherence to your written requirements; or (iv) use of a service or equipment in violation of this Agreement.
- b. You agree at your expense to defend or settle any third party claim against Comporium or to pay all damages that a court awards against Comporium for a claim that: (i) arises or results from your access or use of the services or equipment; (ii) alleges that a service or equipment infringes any intellectual property right and falls within the exceptions to Section [10(a)]; or (iii) alleges a breach by you of a software license agreement governing software provided in connection with the services.
- c. If Comporium is liable to you under Section [10(a)], Comporium may at its option either: (i) procure the right for you to continue to use the service or equipment; or (ii) modify or replace the service or equipment to avoid the infringement.
- d. The party seeking defense or settlement of a third-party claim under this Section will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought; however, failure to do so will have no effect except to the extent the other party is prejudiced by such delay. The indemnifying party will have control of the defense or settlement, and the indemnified party shall reasonably cooperate with the indemnifying party, provided that the indemnifying party may not enter into a final settlement without the indemnified party's consent.

#### **11. Other Miscellaneous Terms**

- a. You agree to meet all minimum technical requirements for the services as outlined in this Agreement.
- b. By providing a telephone number to Comporium, you consent to receive informational calls or text messages related to your Agreement with us.
- c. If you order additional services by telephone or other means, acceptance of the new services is subject to the terms and conditions then in effect without further documentation.
- d. All business-related services are governed by Comporium's Business Services Terms and Conditions.

- e. If any term of this Agreement is invalid or not enforceable, the term will be severed from this Agreement. The remaining terms will still be valid and enforceable. Comporium will work with you to find a replacement for the invalid term.
- f. This Agreement will be governed by the laws of South Carolina without regard to its conflicts of law provisions.

## SERVICE SPECIFIC TERMS AND CONDITIONS

### 1. Voice Specific Terms and Conditions

- a. Your physical address is used for purposes of providing 911 emergency services. You agree to the following limitations associated with 911 access via Comporium wireline or voice-over Internet protocol services.
  - i. Should you move Comporium equipment from its original location and then attempt to call 911, the emergency call dispatcher will receive the wrong address information.
  - ii. In the case of a complete power loss, network outage, broadband Internet outages or congestion, disconnection of service, or other conditions beyond Comporium's reasonable control, you may either be unable to access 911 or your access to 911 may be delayed or impaired. Comporium is not liable for any service disruption resulting from power outage.
  - iii. Comporium has no responsibility or liability with respect to 911 dialing.
  - iv. Comporium reserves the right both during the term of this Agreement and upon termination to delete your voicemail, call detail, data, files, or information that is stored on Comporium's system in accordance with our storage policies. Comporium will have no liability resulting from the loss or removal of any such voicemail, call detail, data, file, or other information.
- b. All local voice services you receive from Comporium are subject to the terms and conditions of the applicable tariffs, as amended from time to time ("Applicable Local Voice Tariffs"). The Applicable Local Voice Tariffs are available for review by contacting Comporium.
- c. All long distance voice services you receive from Comporium are subject to the terms and conditions of the applicable tariffs, as amended from time to time ("Applicable Long Distance Voice Tariffs"). The Applicable Long Distance Voice Tariffs are available for review by contacting Comporium.
- d. For Phone Services, additional per minute long distance charges may apply. For applicable long-distance rates, visit: <https://www.comporium.com/rates-terms-conditions/>.

### 2. Internet Specific Terms and Conditions

- a. You agree to use services provided by Comporium in compliance with Comporium's Acceptable Use Policy, located at [https://www.comporium.com/uploads/legal/internet\\_acceptable\\_use\\_policy.htm](https://www.comporium.com/uploads/legal/internet_acceptable_use_policy.htm). The Acceptable Use Policy may be updated from time to time.
- b. The Acceptable Use Policy contains the following prohibition on copyright and trademark infringement for which Comporium reserves the right to suspend or terminate your account:

*Copyright or trademark infringement. Using our services to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, the unauthorized transmittal of copyrighted software, and the unauthorized uploading and downloading of music and/or video. We reserve the right to suspend or terminate your account upon receipt of notice that you have engaged in such activities, regardless of whether or not infringement has been proven.*

### 3. Video Specific Terms and Conditions

- a. You agree that video programming provided by Comporium will be used solely for your personal use and will not be unlawfully duplicated or distributed.
- b. Comporium is not responsible or liable for any programming or information distributed over the cable system, unless produced exclusively by Comporium. Comporium is not responsible for any products, merchandise, or prizes promoted on or purchased through the use of Comporium services, unless such products, merchandise, or prizes are provided exclusively by Comporium.

### 4. Security System and Monitoring Specific Terms and Conditions

The following terms and conditions shall apply to the purchase by Subscriber ("you", "your", "Customer" or the "Subscriber") of a security and/or alarm system, consisting of equipment and related accessories ("Equipment" or "System") and any interactive and/or alarm monitoring service (the "Service" or "Services") from Comporium Inc. ("Company"). By ordering any security Equipment or Services you acknowledge that you have read, understand, and agree to the following Terms of Service.

- a. **ALARM MONITORING SERVICE.** If Subscriber purchases alarm monitoring Services, Company or its Supplier will monitor signals from Subscriber's System (except for self-monitored Equipment as described below) for twenty-four hours per day seven days per week. If an alarm signal is received from monitored Equipment, Company shall use all reasonable efforts to create two-way voice communication by telephone with an emergency contact provided in writing by the Subscriber to the Company, failing which, or if directed by the contact, Company or its designee shall use all reasonable efforts to dispatch the appropriate emergency authorities. Subscriber agrees to notify Company of Subscriber's disposition with regards to any signal within twenty-four hours. This Section contains Company's sole monitoring and response obligations.
- b. **SELF-MONITORED SYSTEM/EQUIPMENT. SUBSCRIBER ACKNOWLEDGES AND UNDERSTANDS THAT SELF-MONITORED SYSTEMS AND CERTAIN EQUIPMENT, INCLUDING BUT NOT LIMITED TO VIDEO CAMERAS, ACCESS CONTROL EQUIPMENT, DOORBELL CAMERAS AND HOME AUTOMATION EQUIPMENT (INCLUDING LIGHTS, LOCKS, THERMOSTATS) ARE NOT MONITORED BY COMPANY AND COMPANY WILL NOT DISPATCH EMERGENCY AUTHORITIES OR PROVIDE EMERGENCY NOTIFICATION OR ANY OTHER VERIFICATION SERVICES COMMONLY PROVIDED WITH SECURITY ALARM SYSTEMS.**

- c. **LIMITATION OF TECHNOLOGY.** Subscriber understands and agrees that for the Services and System to operate properly, Subscriber is required to maintain broadband ("Internet") (with a level minimum of 512 kbps) and adequate cellular service. Inherent in this System is a failure when the Subscriber's Internet and/or cellular service fails or there is an interruption in service. In this event, the System and any Services provided hereunder will likewise be interrupted. Subscriber understands and agrees that Company does not control or guarantee either Internet service or cellular coverage. Subscriber also understands and agrees that broadband (Internet) at Subscriber's location may be wireless and is dependent on what is commonly called wireless local area network. Anytime Subscriber's wireless local area network is non-operational, the Services and System will likewise be non-operational.
- d. **SYSTEM COMMUNICATION.** Subscriber understands that (a) the System communicates over Internet; (b) Internet service is maintained and serviced solely by the applicable provider; (c) such transmission may be affected by faulty or failed equipment, weather conditions, power outages, upgrade or maintenance work, or other interruptions in service; and (d) any such conditions or changes made to the required transmissions may disrupt communications to or from the System. In some cases, Company may be aware of ongoing issues and may contact you regarding the issue so that it may attempt to resolve the issue; in other cases, Company may not be aware of these sort of transmission issues. In such as case, you understand that it is your responsibility to notify Company. **YOU AGREE TO COOPERATE WITH COMPANY TO RESOLVE ANY ISSUES WITH YOUR SYSTEM AND THAT IF YOU DO NOT CONTACT COMPANY OR RESPOND TO ATTEMPTS BY COMPANY TO ADDRESS THE ISSUE, YOUR SYSTEM MAY NOT OPERATE AS INTENDED, SIGNALS FROM THE SYSTEM MAY NOT BE TRANSMITTED, RECEIVED AND/OR MONITORED, EMERGENCY AUTHORITIES MAY NOT BE DISPATCHED, AND NOTIFICATION AND OTHER VERIFICATION SERVICES MAY NOT BE PROVIDED.**
- e. **LICENSES, PERMITS and COMPLIANCE WITH LAW.** Subscriber shall comply with all applicable federal, state and local laws, statutes, regulations and ordinances required for installation, use or monitoring of the System and the provision of Services. If the law in your area requires that you hold a license or permit for the installation, use or monitoring of the System, you agree to maintain such a license or permit and to provide Company with the applicable license or permit number upon Company's request.
- f. **REMOTE and WIRELESS ACCESS.** The Services may include certain remote viewing, access and control features and functionality, including through the use of a Supplier provided mobile application or website. The ability of those features and functionality to work with the System and Services will be dependent upon various factors, some of which may be outside the control of Company, including, but not limited to, faulty equipment or software, faulty transmission systems, limitations inherent in wireless services, power outages, and other factors. Company is not liable if Supplier applications and related features and functionalities fail to work. Access to the Services via wireless device is dependent upon the capabilities in your wireless device and network. Company shall not be liable for issues arising from your access to the Services via a wireless device. Your access to Services from your wireless device is subject to your agreement with your wireless carrier. You are responsible for reviewing and responding to any signals transmitted by the System which are sent to your wireless or other devices, including, but not limited to, contacting emergency authorities directly if you believe that an emergency condition exists.
- g. **SECURITY SYSTEM/ SECURITY EQUIPMENT.** All security Equipment purchased and paid for by Subscriber belongs to the Subscriber, and you do not need to return it to Company at the end of any applicable term. Company may change the Equipment required for use of Services provided hereunder, at any time, in its discretion, and may require the removal of Equipment purchased hereunder and/or the installation of new or additional equipment for the continued use of Services and/or the System. **YOU UNDERSTAND THAT SOME EQUIPMENT MAY NEED TO BE REPLACED, AT YOUR COST, SO THAT THE SYSTEM AND SERVICES CONTINUE TO OPERATE AS INTENDED. YOU ACKNOWLEDGE THAT IF YOU DO NOT RESPOND TO COMPANY'S RECOMMENDATIONS, YOUR SYSTEM MAY NOT OPERATE AS INTENDED, SIGNALS FROM THE SYSTEM MAY NOT BE TRANSMITTED, RECEIVED AND/OR MONITORED, AND NOTIFICATION AND OTHER VERIFICATION SERVICES MAY NOT BE PROVIDED.**
- h. **INTERACTIVE SERVICES REQUIRED.** To obtain full functionality of the Equipment and/or System(s) purchased hereunder, including but not limited to certain remote viewing, access and control features, including through the use of Supplier provided mobile applications or websites, Customer will need to subscribe to interactive Services or purchase a Service package that includes interactive Services. Upon termination of the interactive Services provided hereunder, continued functionality of the System and Equipment will require Customer to subscribe to or obtain the same or similar interactive services through one or more third party providers, which may require Customer to purchase additional services and/or additional software, firmware and/or equipment. **INTERACTIVE SERVICES DO NOT INCLUDE ALARM MONITORING SERVICES. ALARM MONITORING SERVICES MUST BE PURCHASED SEPERATELY.**
- i. **SUPPLEMENTAL SMOKE DETECTOR(S) (If Any).** To the extent Company provides any fire or smoke protection Equipment to you, such Equipment is intended to be supplemental and is not intended to replace any primary fire alarm systems in the premises. Company recommends that you have and maintain a primary fire alarm system from a licensed provider that satisfies building code and fire protection requirements in your area in addition to any supplemental smoke detector(s) you purchase from Company. You are responsible for determining whether your fire/smoke alarm system complies with applicable building code and fire protections requirements in your area and ensuring that any such system is tested on a weekly basis and working properly.
- j. **LIMITED WARRANTY.** Company agrees to repair or replace at its option any security Equipment which, within (1) one year of purchase, is defective due to faulty materials or workmanship. Thereafter, Subscriber shall be responsible for all repair or replacement costs, including labor and material costs, related to the security Equipment.
- k. **DISCLAIMER OF WARRANTIES.** Company does not represent or warrant that the Services or System may not be compromised or circumvented or that the Services or System will prevent any personal injury, loss of life, or property loss or damage or that the Services or System will in all cases provide the notification which is intended, and the Subscriber has not relied upon any such representation or warranty. The Subscriber acknowledges that any affirmation of fact or promise made by Company or its agents, servants, or employees, shall not be deemed to create an express warranty unless included in this Agreement in writing. The limited warranty shall not cover defective Equipment that results from use or installation of the Equipment by Subscriber in a manner not in compliance with the Company's or the manufacturer's written instructions or industry standards. **COMPANY MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, EQUIPMENT,**

**SYSTEMS OR LICENSED SOFTWARE PROVIDED HEREUNDER. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY DOES NOT WARRANT THAT THE SERVICES, EQUIPMENT, SYSTEMS OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, EQUIPMENT, SYSTEMS OR LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.**

- l. ADDITIONAL EQUIPMENT DISCLAIMER.** Subscriber acknowledges that Company representative has presented the availability of additional equipment, systems and protections which are available from Company and others for additional charges, but Subscriber has decided not to request or contract for such additional equipment, systems, or protections.
- m. CHARGES/FEEES.** You agree to pay all charges, fees and expenses associated with the Services and Equipment, including false alarm charges, third party charges, and applicable federal, state, and local taxes, permitting and regulatory fees.
- n. MEDICAL AND/OR FALSE ALARM CHARGES.** In the event of an alarm, Subscriber does hereby authorize Company to seek to notify emergency responders and attempt to obtain assistance. To the extent that any fees or costs result from such notification (such as, without limitation, medical expenses, ambulance charges, false alarm fines, etc.), Subscriber and/or its insurer shall be obligated for and agrees to pay and hold Company harmless for any and all costs and expenses. Subscriber acknowledges its obligation to prevent or reduce false alarms. If there are repeated false alarms at the premises, Company may terminate Services provided under this Agreement. If Company notifies Subscriber of a malfunction which results in repeated false alarms, Subscriber will disconnect the Equipment/System until the malfunction is repaired or replaced. This may result in an interruption of Services and possible additional cost to Subscriber.
- o. BINDING NATURE.** THE TERMS AND PROVISIONS ON ALL PAGES OF THIS AGREEMENT ARE AN INTEGRAL PART OF THIS AGREEMENT AND ARE BINDING ON COMPANY AND SUBSCRIBER. ALL TERMS AND CONDITIONS ON ALL PAGES SHOULD BE READ CAREFULLY.
- p. ANCILLARY EQUIPMENT AND CHARGES.** The Subscriber agrees to supply and pay any charges for 24-Hour 110-volt circuit as required to power the System and the appropriate communications services or other equipment necessary to operate the System. Company shall not be responsible for any costs for parts and/or labor associated with adapting the Subscriber's internet communications service and equipment for use with the System.
- q. BATTERY-POWERED DEVICES / SUBSCRIBER'S TESTING OBLIGATION.** Some of the Equipment, such as motion detectors, smoke detectors, thermostats, door and window contact transmitters, and other detection sensors may be battery-powered and not connected to the electrical system of the premises. Such detection sensors require batteries to operate. **THESE BATTERY-POWERED DEVICES WILL NOT OPERATE IF THE BATTERIES ARE LOW OR DEAD.** You are responsible for maintaining and replacing the batteries in these battery-powered devices and you should regularly inspect and test all Equipment weekly to ensure that the System is operating properly and in accordance with your preferences. It is solely the Subscriber's responsibility to test the operation of the Equipment used in the operation of the System. **COMPANY STRONGLY RECOMMENDS THAT YOU READ THE OWNER'S MANUAL FOR ALL EQUIPMENT AND LEARN ABOUT ITS FUNCTIONALITY. THE OWNER'S MANUAL CONTAINS VERY IMPORTANT INFORMATION SUCH AS OPERATING INSTRUCTIONS AND EQUIPMENT TESTING AND MAINTENANCE INFORMATION. YOU SHOULD ALSO READ ALL INSTRUCTIONS, WARNINGS AND OTHER INFORMATION ON THE EQUIPMENT ITSELF.**
- r. DELAYS AND FAILURES.** Company assumes no liability for delays or interruption of Services due to strikes, riots, floods, fires, acts of God, pandemics, mechanical or electrical equipment failures or any cause beyond the control of Company. Company may terminate the provision of Services if it cannot maintain transmission privileges and shall not be liable for any damages or penalties as a result of such termination. Company may also cancel this Agreement, without prior notice, in the event its central operating station is destroyed or damaged by a catastrophe and it is impracticable to continue or restore service.
- s. TERMINATION.** Company shall have the right to terminate Services provided hereunder, in whole or in part, upon giving (10) days written notice to Subscriber if any of the following occurs: (i) Subscriber violates any part of these Terms of Service, (ii) Subscriber fails to pay all fees or charges when due, (iii) Subscriber abandons or sublets the premises where Services are provided or (iv) upon written notice to Subscriber for any other reason or for no reason. Any Sections herein that by their nature should survive the termination of Services, shall survive and be enforceable after termination of Services.
- t. RELEASE FROM LIABILITY AND WAIVER OF SUBROGATION.** Subscriber hereby waives, releases, discharges and agrees to hold Company, its directors, officers, employees and agents harmless from any and all claims, liabilities, damages, losses or expenses arising from or caused by any hazard covered by insurance whether said claim is made by Subscriber or by any other party claiming under or through Subscriber, including any insurer, by way of subrogation or otherwise.
- u. INDEMNIFICATION FROM THIRD PARTY ACTION.** In the event any person not a party to this Agreement, including Subscriber's insurance company, shall make any claim or file any lawsuit against Company, its officers, employees or agents ("Indemnities") for any reason whatsoever, including, but not limited to, the operation or non-operation of the Equipment and/or Services, Subscriber agrees to indemnify, defend and hold the Indemnities harmless to the maximum extent allowed by law from any and all claims and lawsuits including the payment of all damages, expenses, costs and attorney's fees whether these claims and lawsuits are based on alleged intentional conduct, active or passive negligence or strict or product liability on the part of the Indemnities.
- v. FORCIBLE ENTRY.** If Subscriber purchases alarm monitoring Services, Subscriber acknowledges consent for emergency responders, including but not limited to fire, law enforcement and emergency medical personnel contacted by Company to enter the premises, with force, if necessary. Subscriber does hereby release Company from any and all liability whatsoever as a result of said forcible entry.
- w. LIMITATION OF COMPANY'S LIABILITY.** IT IS UNDERSTOOD THAT COMPANY IS NOT AN INSURER OF PERSON, LIFE, LIMB OR PROPERTY AND THAT ADEQUATE INSURANCE COVERING PERSONAL INJURY, LIFE AND PROPERTY LOSS SHALL BE OBTAINED BY THE SUBSCRIBER AS A CONDITION OF THIS AGREEMENT. **SUBSCRIBER ASSUMES ALL RISKS FOR ANY LOSS, DAMAGE OR INJURY TO ANY PERSON OR ANY PROPERTY UNDER ANY**

**CIRCUMSTANCES. SUBSCRIBER UNDERSTANDS THAT THE SERVICE IS INTENDED TO REDUCE, BUT NOT ELIMINATE, CERTAIN RISKS.** COMPANY IS BEING PAID FOR PROVIDING A SYSTEM DESIGNED TO PROVIDE NOTICE OF THE OCCURRENCE OF CERTAIN EVENTS. THE PAYMENTS YOU MAKE UNDER THIS AGREEMENT ARE NOT RELATED TO THE VALUE OF THE PREMISES, YOUR POSSESSIONS, OR THE PERSONS OCCUPYING OR AT ANY TIME PRESENT IN OR ON THE PREMISES, BUT RATHER ARE BASED ON THE COST OF THE EQUIPMENT AND THE SERVICE, AND TAKE INTO CONSIDERATION THE PROTECTIONS AND LIMITING CONDITIONS AFFORDED TO COMPANY UNDER THIS AGREEMENT. COMPANY AND THE SUBSCRIBER ACKNOWLEDGE THAT THE AMOUNTS BEING CHARGED BY COMPANY ARE NOT SUFFICIENT TO GUARANTEE IN ANY WAY THAT NO LOSS OR DAMAGE WILL OCCUR AND THAT COMPANY IS NOT ASSUMING RESPONSIBILITY FOR ANY PERSONAL INJURY, LOSS OF LIFE, OR PROPERTY LOSS OR DAMAGE WHICH MAY OCCUR EVEN IF DUE TO COMPANY'S NEGLIGENT PERFORMANCE OR WHICH MAY ARISE DUE TO THE FAULTY OPERATION OF THE SYSTEM, THE FAILURE OF SERVICES OR THE FAILURE TO PERFORM SAID SERVICES. **COMPANY AND SUBSCRIBER HEREBY AGREE THAT IF, NOTWITHSTANDING THE ABOVE PROVISIONS, THERE SHOULD ARISE ANY LIABILITY WHATSOEVER ON THE PART OF COMPANY, ITS AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, IT IS AGREED THAT SUCH LIABILITY SHALL BE LIMITED TO ONE THOUSAND DOLLARS (\$1,000).** THIS SUM SHALL BE COMPLETE AND EXCLUSIVE AND SHALL BE PAID AND RECEIVED AS AN EXCLUSIVE REMEDY AND NOT AS A PENALTY. THIS LIMITATION OF LIABILITY SPECIFICALLY COVERS LIABILITY FOR, BUT IS NOT LIMITED TO: LOST PROFITS; LOST OR DAMAGED PROPERTY; LOSS OF USE OF PROPERTY OR THE PREMISES; GOVERNMENTAL FINES AND CHARGES; AND THE CLAIMS OF THIRD PARTIES. ALSO COVERED BY THIS LIMITATION OF LIABILITY ARE THE FOLLOWING TYPES OF DAMAGES: DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE AND ATTORNEYS' FEES. IN THE EVENT THAT THE SUBSCRIBER WISHES COMPANY TO ASSUME A GREATER LIABILITY, THE SUBSCRIBER MAY OBTAIN FROM COMPANY A HIGHER LIMIT BY PAYING AN ADDITIONAL AMOUNT PROPORTIONED TO THE INCREASE OF SAID POTENTIAL LIABILITY, BUT SUCH ADDITIONAL OBLIGATION SHALL IN NO WAY BE INTERPRETED TO HOLD OR CONSTITUTE COMPANY AS AN INSURER. ANY REQUEST BY THE SUBSCRIBER FOR A HIGHER LIMIT SHALL BE GIVEN TO COMPANY IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND SHALL BE ENFORCEABLE AGAINST COMPANY ONLY IF MEMORIALIZED IN A SEPARATE WRITTEN AGREEMENT SIGNED BY SUBSCRIBER AND A DULY AUTHORIZED REPRESENTATIVE OF COMPANY.

- x. **THIRD PARTY SUPPLIERS OF EQUIPMENT AND SERVICES - LIMITATIONS OF LIABILITY.** At its sole discretion, Company may use one or more subcontractors, suppliers, vendors or licensors (collectively, "Suppliers") to provide Services, Equipment, Systems and other services. Subscriber agrees and acknowledges that such Suppliers are not insurers and agrees the provisions **for RELEASE FROM LIABILITY AND WAIVER OF SUBRIGATION, INDEMNIFICATION FROM THIRD PARTY ACTION and LIMITATION OF COMPANY'S LIABILITY** as set forth in this Agreement shall apply for the benefit of all Suppliers, their directors, officers, employees, and agents as fully as if they had been specifically named herein in place of "Company" throughout. To the extent permitted by law, the limitations of liability set forth in this Agreement shall apply to the products and services that our Suppliers provide and shall apply to them and protect such Suppliers in the same manner as it applies to and protects Company. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOU HAVE NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH ANY THIRD PARTY SUPPLIER BEING RELIED UPON TO PROVIDE SERVICES TO YOU, OR ITS AFFILIATES OR CONTRACTORS, AND THAT YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN COMPANY AND ANY SUPPLIER. IN ADDITION, YOU ACKNOWLEDGE AND AGREE THAT ANY THIRD PARTY CELLULAR OR BROADBAND SERVICE PROVIDER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU AND YOU HEREBY WAIVE ANY AND ALL CLAIMS OR DEMANDS THEREFOR.
- y. **ASSIGNMENT.** It is specifically agreed that the Subscriber shall not be permitted to assign this Agreement without prior written consent of Company and any assignment without such consent shall be without effect and shall be deemed a breach of this Agreement. Company shall have the right to assign this Agreement to any other company engaged in a business similar to that of Company and upon such assignment shall be relieved of any obligations created herein.
- z. **GENERAL TERMS.** These Terms of Service shall be governed by the laws of the State of South Carolina, without giving effect to its rules of conflict of laws. These Terms of Service constitutes the full understanding by and between the parties hereto and may not be amended or modified except in writing and signed by both parties. If any provision or part of these Terms of Service is held to be invalid or unenforceable, the remainder of these Terms of Service shall continue in full force and effect as if such invalid or unenforceable provision had never appeared herein.