Carrier Terms and Conditions

These Wholesale Terms and Conditions ("Terms") govern the wholesale provision of Services provided by Comporium ("Service Provider") to reseller ("Customer"). By submitting an Order, accepting a Quotation, submitting an ASR, accepting delivery of Service, or purchasing Services, Customer agrees to be bound by these Terms. These Terms, together with the Exhibits, the applicable Quotation, Order, ASR, and applicable Tariffs and Schedules (collectively, the "Agreement"), constitute the entire agreement between the parties regarding the Services.

Service Provider and Customer agree as follows:

1. GENERAL

1.1. **Definitions**. Capitalized terms are defined in this Section 1.1. or in the Exhibits.

1.1.1. "Early Termination Charge" means the amount of termination charges payable by Customer for failing to meet its commitment to purchase Services under this Agreement, Order, or Exhibit.

1.1.2. "Effective Date" means the date Customer first submits an Order, accepts a Quotation, submits an ASR, or accepts delivery of Service, whichever occurs first.

1.1.3. "End Users" mean Customer's customers.

1.1.4. "Exhibit" means an Exhibit to this Agreement which is attached and incorporated into this Agreement.

1.1.5. "LEC" means local exchange carrier.

1.1.6. "MRC" means monthly recurring charge.

1.1.7. "NRC" means non-recurring charge.

1.1.8. "Order" is a communication by Customer agreeing to purchase Services, including ASR's, which shall be in a form approved by Service Provider.

1.1.9. "Quotation" is Service Provider's offer to provide Services.

1.1.10. "Services" or "Service Provider Services" means any products or services that Service Provider provides to Customer under this Agreement, including access, as specifically defined in the Exhibits, Service Provider Schedules, and the Service Provider Tariffs.

1.1.11. "Service Provider Schedule" or "Schedule" means the applicable schedule posted by Service Provider on Service Provider's web site.

1.1.12. "Tariffs" or "Service Provider Tariffs" means any applicable Tariff filed by Service Provider with a state regulatory commission for intrastate Services or a foreign PTT for international Services.

1.1.13. "Term" means the period beginning on the Effective Date and continuing until all Services have expired or been terminated or disconnected, as provided in Section 8.

1.2. **Conflicts Provision.** If there is a conflict between or among the documents referenced in these Wholesale Terms and Conditions the Quotation or Order will control solely as to pricing, quantities, and the description of products and services, and the Terms will control as to all other matters; provided that, as between these Terms and an Exhibit or Attachment, the Exhibit or Attachment will control as to the Services it describes. Service Provider's Tariff will control matters not covered by the Quotation or these Terms.

2. SERVICES

2.1. **Reselling Services**. Customer is purchasing Services under this Agreement for resale to its End Users. Notwithstanding any other provision of this Agreement, Customer is fully responsible for all use of the Services by any End User of Customer, and for ensuring that all such End User usage of the Services is in full compliance with the terms and conditions of this Agreement.

2.2. **Services.** Service Provider provides Services under the terms and conditions in this Agreement, the Exhibits, any Orders, and the applicable Service Provider Tariffs. Service Provider will provide products and services for Customer as described in the applicable Order and Exhibits. Customer must submit an Order to obtain Services and, unless expressly stated otherwise, all Orders will be subject to the terms and conditions of this Agreement. All Orders submitted by Customer to Service Provider will be binding on Customer when Service Provider accepts the Order. The Exhibits to this Agreement are:

2.2.1. Exhibit 1: Data Terms and Conditions
2.2.2. Exhibit 1: Attachment 1 Internet Access Terms and Conditions
2.2.3. Exhibit 1: Attachment 2 Cable or Other Broadband Internet Services

2.3. **Delivery**. Service Provider will deliver Service on a date agreed upon by Service Provider and Customer.

2.4. **Access.** When Customer, or Service Provider as Customer's agent, orders access for Services, LEC tariffs and charges may apply. Service Provider and Customer each are responsible for their own compliance with LEC tariffs. Service Provider is not responsible for delays in provisioning Service caused by the LEC. If Customer terminates Service Provider-provided access before the expiration of the Service Term, Early Termination Charges may apply as described in Section 11.

2.5. **Services Suspension.** In addition to its rights and remedies under this Agreement and applicable law, Service Provider may suspend the performance of its obligations without liability if:

2.5.1. Customer fails to make payments when due for undisputed amounts;

2.5.2. Service Provider terminates this Agreement according to the termination provisions under this Agreement;

2.5.3. Service Provider is required to suspend the performance as necessary to comply with any law or a request by any governmental authority with jurisdiction; or

2.5.4. Customer or its End Users perform actions which jeopardize the integrity of Service Provider's, or its underlying carrier's, network. In such case, Service Provider may terminate Service(s) to Customer's End Users which are at issue with Service Provider's network health but may not otherwise suspend its performance of its obligations under this Agreement. Service Provider will promptly notify Customer in writing of such issues to allow Customer to take action with End Users to mitigate impacts to both End Users and Service Provider's network.

3. MINIMUM COMMITMENT

Any applicable minimum commitment for Services will be in the Exhibit(s), or the applicable Order(s).

4. RATES

4.1. **Rates and Pricing**. All rates and pricing are set forth in the applicable Exhibit(s) or an Order or otherwise communicated as agreed upon by the parties.

4.2. **Rate Adjustments.** Rate adjustments may apply under the applicable Exhibits. Furthermore, and notwithstanding anything to the contrary, Service Provider reserves the right to eliminate any Service offerings and/or pass through any changes in regulatory charges (e.g. tax, governmental or regulatory related fees or surcharges). Notwithstanding any other provision in the Agreement, (including Orders, Exhibits or any other part of this Agreement) changes in service rates may be implemented by Service Provider upon renewal of any service term. Such changes will occur with thirty (30) days written notice to Customer.

5. PAYMENT TERMS

5.1. **Payment Obligation.** Customer must pay Service Provider for Service charges under the terms of this Agreement, applicable Service Provider Exhibits, Orders and Tariffs.

5.2. **Payment Procedure.** Service Provider will bill Customer for the total amount of the MRC in advance and for usage based charges in arrears on a monthly basis, and except as provided in Section 5.2.5 or otherwise herein, Customer shall pay for installation and other NRC's on the first invoice after Service is provisioned by Service Provider. On the first billing for Services billed in advance, Service Provider will charge a prorated amount for all MRC from the date of activation to the end of the month in addition to charging the total amount for all MRC one month in advance. Payment for invoices must be received by Service Provider within thirty (30) days from the invoice date (the "Due Date"). The invoice date is defined as the later of (i) the date shown on the invoice provided to Customer or (ii) the date when Customer receives comprehensive billing information that allows for the allocation of all charges to individual service locations. Service Provider shall invoice Customer for all Services provided within ninety (90) days of the normal invoice date for the applicable Service period. Service Provider's failure to invoice for Services within this ninety (90) day period bars future back billing for such Service(s) Undisputed charges that Customer fails to pay (i.e. received by Service Provider) by the Due Date are subject to interest from the invoice date at the maximum rate allowed by law, not to exceed one and one-half percent (1.5%) per month.

5.2.1 If Service Provider has not received payment of any invoice by the applicable Due Date and such non-payment remains uncured for more than ten (10) business days, in addition to any other remedies available to it, including but not limited to the late fees described above, Service Provider may suspend or terminate Services until payment has been made.

5.2.2 The Customer shall remain responsible for all charges related to the Services in accordance with this Agreement.

5.2.3 In the event that either party prosecutes a legal action against the other to perform any provision of the Agreement, the losing party shall pay the prevailing party's costs of the action including reasonable attorneys' fees.

5.2.4 The Customer agrees to pay all collection costs incurred by Service Provider in enforcing its rights under this Agreement to collect amounts payable by the Customer (including, without limitation, reasonable attorneys' fees).

5.2.5 All NRC's that exceed ten thousand dollars ($10,000) shall be paid by Customer in advance of any work hereunder, installation, or provisioning of Services

5.3. **Taxes.** Service Provider's prices exclude applicable taxes or surcharges. Customer will pay applicable taxes, which will be stated separately on each invoice, including, but not limited to, sales, use, gross receipts, excise, VAT, bypass or other local, state, national taxes or charges imposed on or based on the provision, sale, or use of Services. Service Provider will not bill Customer for exempt taxes if Customer provides Service Provider with certificates from appropriate taxing authorities exempting Customer from taxes. Service Provider will bill all applicable taxes until exempt certificates are provided by Customer and exemption will only apply to taxes charged and collected after the certificate is actually received by Service Provider.

5.4. **Carrier Universal Service Charge / Annual Universal Service Fund Recertification.** Service Provider will not invoice Customer for the Carrier Universal Service Charge if Customer provides Service Provider with an appropriate Universal Service Fund certification validating that it is exempt from that charge. Service Provider will invoice Customer for the Carrier Universal Service Charge if it fails to provide Service Provider with written proof of its USF exemption each year during the Term of the Agreement.

5.5. **Billing Disputes:**

5.5.1. Customer must pay according to the terms of this Agreement all invoiced charges that are not disputed pursuant to this Subsection 5.5.

5.5.2. An invoiced charge will be deemed disputed by Customer if, and only if: (i) Customer believes in good faith that the charge was invoiced in error; (ii) Customer provides Service Provider written notice of the disputed charge no later than forty-five (45) days from the date the charge first appeared on an invoice; and (iii) Customer's notice of the disputed charge includes the amount of the disputed charge, the reason the charge is disputed, and documentation supporting the dispute.

5.5.3. Customer may withhold payment of a disputed charge if, and only if, written notice of the dispute is received by Service Provider on or before the due date of the invoice on which the charge first appears.

5.5.4. Service Provider will investigate all billing disputes and notify Customer in writing that: (i) a credit will be issued to reverse any amount that Service Provider determines was incorrectly billed, or (ii) Service Provider has determined that the disputed charge was invoiced correctly. Customer will notify Service Provider in writing if it disagrees with Service Provider's determination and the parties will make a good faith effort to expeditiously resolve the dispute. If the dispute cannot be resolved expeditiously following Customer's notice, then either party may initiate the dispute resolution procedures set forth in Subsection 16.5 of this Agreement.

5.5.5. After a billing dispute is resolved:

5.5.5.1. if the dispute is resolved in Service Provider's favor, Customer will, within five (5) business days of such resolution, remit to Service Provider any required payment;

5.5.5.2. if the dispute is resolved in Customer's favor, and Customer properly withheld payment of the disputed amount under Subsection 5.5.3, then Service Provider will issue a credit to reverse the amount incorrectly billed;

5.5.5.3. if the dispute is resolved in Customer's favor, and Customer previously paid the disputed amount, then Service Provider will issue a credit on Customer's next invoice to reverse the amount incorrectly billed.

5.6. **Collection from End Users.** Customer is responsible for amounts it cannot collect from End Users, including, but not limited to, fraudulent charges, billing adjustments or credits it grants End Users, including adjustments for fraudulent charges, and Customer's inability to charge or collect for Services used by End Users. Customer is solely responsible for End User solicitation, service requests, creditworthiness, customer service, billing and collection. Under provisions of this section 5.6. the terms do not limit Customer's ability to dispute charges as stated within section 5.5 and Service Provider will work in good faith to provide any supplemental documentation necessary to assist Customer in collecting such charges.

6. EQUIPMENT, HARDWARE, OR SOFTWARE.

6.1. Hardware or Software Not Provided by Service Provider. Customer is responsible for the installation, operation, and maintenance of hardware or software not provided by Service Provider. Service Provider is not responsible for the transmission or reception of information by such hardware or software.

6.2. Hardware Compatibility. Customer is responsible for the selection, use and compatibility of hardware or software not provided by Service Provider. If hardware or software not provided by Service Provider impairs Customer's use of the Service, Customer is nonetheless liable for payment for Services. If Service Provider notifies Customer that the hardware or software not provided by Service Provider is causing or is likely to cause hazard, interference, or service obstruction, Customer must eliminate the hazard, interference, or service obstruction. Service Provider may suspend the provision of Service until the hazard, interference, or service obstruction is corrected. If requested by Customer, Service Provider may, at its then-current rates, assist Customer with resolving technical difficulties caused by hardware or software not provided by Service Provider.

6.3. Service Changes. If any changes in Service cause hardware or software not provided by Service Provider to become obsolete, require modification or alteration, or otherwise affect performance of such hardware or software Customer, not Service Provider, is responsible.

6.4. Customer-Provided Equipment. If Customer provides its own equipment to interface with the Services, Customer is responsible for the installation, maintenance, and configuration of the equipment. Service Provider must approve in advance the make, model or software revision of Customer-provided equipment. Service Provider has the right, in cooperation with Customer, to set the initial configuration for the equipment interface into the Service.

6.5. License. For the sole purpose of enabling Customer to use Services, for the term of this agreement only, Service Provider grants to Customer a non-exclusive and non-transferable license to use software that may be provided with or included in the Services.

6.6. Service Provider Equipment. Service Provider or its suppliers retain title and property rights to Service Provider-provided software and Customer Premise Equipment ("CPE"), whether or not it is embedded in or attached to realty. Customer acknowledges that CPE may be removed or changed by Service Provider or its underlying vendors as required to provide service to Customer's End User. Customer shall cause End User to reasonably cooperate to provide access to such CPE as requested by Service Provider. Customer's End User shall not remove, attempt to repair or otherwise tamper with any CPE, nor shall it permit others to do so. If any of the foregoing occur, Customer shall have committed a material breach of the Agreement and shall be responsible for payment of service charges in the event maintenance, inspection, repair or replacement of CPE is required. Customer is responsible for fire, theft or other casualty at its End User's locations. Upon Expiration of the term of a service order or of the Agreement, Customer shall, within twenty (20) days after such expiration of termination, return CPE to Service Provider or its underlying vendors as directed by Service Provider. If CPE is not returned as directed, or returns the CPE in a damaged condition (reasonable wear and tear excepted), Customer shall pay Service Provider the replacement cost of such CPE as reasonably determined by Service Provider or as specified by Service Provider's underlying vendors. Customer neither owns nor will it acquire any claim or right of ownership to:

6.6.1. Service Provider-provided equipment not purchased by Customer;

6.6.2. software (including the original media and all subsequent copies of the software, regardless of the media's form) and associated documentation (including copies);

6.6.3. any Service Provider patents, copyrights, trademarks, or other intellectual property, as described in Section 13; or

6.6.4. IP addresses assigned to Customer.

7. CUSTOMER RESPONSIBILITIES

7.1. Obligations. Customer will and, if applicable, require End Users to:

7.1.1. provide, at its own expense, all necessary preparation required to comply with Service Provider's installation and maintenance specifications;

7.1.2. pay the costs of relocation of Services once installed;

7.1.3. provide reasonable access for Service Provider and its suppliers to Customer's or End User's premises to perform any acts required by an Order; and

7.1.4. comply with Service Provider network interface procedures when it orders its own access facilities.

7.2. Use of Services. All use of the Service provided by Service Provider shall comply with Service Provider's Acceptable Use Policy ("AUP") as defined on the Service Provider website at https://www.comporium.com/service-agreementacceptable-use-policy/. Customer agrees to defend, indemnify and hold harmless Service Provider, its affiliates, and contractors from any and all liabilities, costs and expense, including reasonable attorneys' fees, arising from or related to use of the Service by Customer or Customer's users. Any violation of the AUP or conduct that Service Provider, in its reasonable discretion, believes may subject Service Provider to civil or criminal litigation or liability, charges and/or damages will be considered to be a breach of this Agreement and

for which Service Provider may suspend or terminate Services. If Service Provider suspends the Service pursuant to this Section, Service Provider may require a reinstatement fee in order to resume Service.

7.3. Representations and Warranties. Customer represents and warrants that:

7.3.1. it has obtained and will maintain all required certificates of public convenience and necessity, licenses, and regulatory approvals, and that it is authorized to provide service to End Users;

7.3.2. it will immediately notify Service Provider if any required certificate of public convenience and necessity, license, or other regulatory approval is revoked, suspended, or otherwise ceases to be effective;

7.3.3. it will comply with all applicable laws, rules, and regulations; and

7.3.4. it will provide Service Provider with copies of all required certificates of public convenience and necessity, licenses, and regulatory approvals in advance of service installation.

7.4. Trade Secret Protection. Service Provider Services are valuable trade secrets of Service Provider or its suppliers. Customer will protect any software it uses that is provided with or included in Services if such software is provided by Service Provider and will make no attempt to examine, copy, alter, reverse engineer, tamper with, or otherwise misuse the software.

8. TERM

The term of each Service ("Service Term") shall be as specified in the applicable Quotation or Order. This Agreement shall remain in effect with respect to each Service for the duration of the applicable Service term, including any renewal terms expressly set forth in the applicable Quotation or Order. Upon expiration of the applicable Service term, if the Service is not renewed, terminated, or disconnected, the Service shall automatically continue on a month-to-month basis at Service Provider's then-current undiscounted rates and charges. During such month-to-month period, either party may terminate the Service upon thirty (30) days' prior written notice to the other party. Notwithstanding anything to the contrary contained herein, this Agreement shall continue to govern any active Service until such Service is terminated or disconnected.

9. LIMITATIONS OF LIABILITY

9.1. Unauthorized Access to Customer or End User Facilities. Service Provider will not be liable in contract or in tort to Customer or its End Users for unauthorized access to transmission facilities or premise equipment, or for unauthorized access to or alteration, theft, or destruction of data files, programs, procedure, or information through accident, wrongful means or devices, or any other method.

9.2. Disclaimers. Service Provider will not be liable for claims or damages resulting from or caused by:

9.2.1. Customer's fault, negligence or failure to perform Customer's responsibilities;

9.2.2. claims against Customer by any other party (except for claims indemnified under Section 10);

9.2.3. any act or omission of any other party, including End Users; or

9.2.4. equipment or services furnished by a third party, including End Users.

9.3. Limitation of Liability. Service Provider's entire liability for its failure to perform any of its obligations under this Agreement will not exceed an amount equal to the Customer's monthly Service charges net of any discounts or credits for the affected Services during the preceding twelve (12) months. Service Provider will not be liable for any unavoidable damage to Customer's premises. This limitation of liability will not apply to claims arising from the parties' indemnification obligations under the Agreement.

9.4. Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES, DATA LOSS, AND LOSS OF BUSINESS OPPORTUNITY, AND INCIDENTAL DAMAGE TO CUSTOMER'S OR CUSTOMER'S END USERS' PREMISES FOR SERVICE INSTALLATION, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 10 OF THE AGREEMENT.

9.5. Disclaimer of Warranties. SERVICE PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, THAT ARE NOT EXPLICITLY STATED IN THIS AGREEMENT, AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES RELATED TO THIRD PARTY EQUIPMENT, MATERIAL, SERVICES, OR SOFTWARE. THE SERVICES AND ANY MATERIALS OR EQUIPMENT ARE SUPPLIED "AS IS" TO THE FULL EXTENT PERMITTED BY LAW.

9.6. Liability for Content. Service Provider is not responsible for the content of any information transmitted or received through the Services.

10. INDEMNIFICATION

10.1. Property & Personal Injury Indemnity. Each party will indemnify and defend the other party, its directors, officers, employees, agents and their successors from and against all third party claims for personal injury, death, or damage to personal property caused by the negligent or willful acts or omissions of the indemnifying party or its subcontractors, directors, officers, employees, or agents.

10.2. Third party Claims. Customer will indemnify and defend Service Provider from and against all third party claims arising from or related to the use or misuse of the Services by Customer, any End User, or any third party located at a Customer or End User location, including data breach claims resulting from such use or misuse.

10.3. Proper Notification. The party seeking indemnification under this Section must (a) promptly notify the other party in writing of any claim, (b) give the indemnifying party full and complete authority to resolve the matter, and (c) provide information and assistance for the claim's defense. The indemnifying party will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The indemnified party will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the indemnifying party will retain sole control of the claim's settlement or defense. To be indemnified under this Section, the party seeking indemnification must not by any act, including any admission or acknowledgement, materially impair or compromise a claim's defense.

11. TERMINATION.

11.1.Customer Breach.

11.1.1. If (i) Customer fails to make payment pursuant to, or otherwise breaches, Section 5.2, or (ii) Customer or Customer's End User's violate the Service Provider AUP as outlined in Section 7, and Customer fails to cure that breach or AUP violation to Service Provider's reasonable satisfaction within five (5) business days of receiving written notice from Service Provider, Service Provider may, in addition to any other remedies available to it, at law or in equity, do one or more of the following:

11.1.1.1. Refuse to accept, install or activate any new or existing additional Orders for Services;

11.1.1.2. Disconnect or block ANIs (automatic number identification), circuits, or other Service elements if Customer has not paid undisputed invoices in full to Service Provider.

11.1.1.3. Discontinue any applicable promotional pricing, international discount rates, or other discounts;

11.1.1.4. Stop providing Service to Customer and/or its End Users not in compliance with Section 7;

11.1.1.5. Terminate the applicable Order, Exhibit or the Agreement.

11.1.2. If Customer materially breaches any provision of this Agreement or an Exhibit, other than Section 5.2 or 7, and fails to cure that breach to Service Provider's reasonable satisfaction within thirty (30) days of receiving written notice of the breach from Service Provider (or other period as may be specified in a particular Section), Service Provider may, in addition to other remedies available in law or equity, do one or more of the actions in Sections 11.1.1.1 through 11.1.1.5.

11.1.3. Customer's declaration of insolvency, corporate debt restructuring, arrangement with creditors to the extent such action has a material impact on its ability to pay Service Provider; receivership, or dissolution without Service Provider's prior written consent (which consent will not be unreasonably withheld) is a breach of the Agreement.

11.1.4. In the event of any breach by Customer, in addition to any other rights or remedies, Service Provider shall have the right to withhold, and offset against its damages, any amounts due Customer from Service Provider under this Agreement, or any other Agreement between the parties.

11.2. Termination Without Cause. Customer may terminate this Agreement and Exhibits at any time without cause by providing ninety (90) days prior written notice to Service Provider and may terminate a specific Order at any time without cause by providing fifteen (15) days prior written notice to Service Provider, and paying Service Provider the applicable Early Termination Charge as outlined in this Section 11.

11.3. Early Termination Charges. If Customer (a) terminates any Service, in whole or in part, prior to the end of the then current term applicable to that Service, or (b) breaches its obligations and fails to cure to Service Provider's reasonable satisfaction, and Service Provider terminates the Service, or this Agreement, an Exhibit or an Order(s) under Section 11.1, then in addition to any outstanding invoices (including previously disputed invoice amounts) and any other remedy or recovery to which Service Provider is entitled, Customer must pay Service Provider an Early Termination Charge as outlined in this Section. Unless otherwise noted in an Exhibit or Order and where applicable, the Early Termination Charge for a Service terminated prior to the end of the applicable initial Service Term shall be as follows:

(a) For broadband internet services, the Early Termination Charge shall be 25% of the MRC for the remaining months of the Service Term.
(b) For Dedicated Internet Access ("DIA") services the Early Termination Charge shall be 100% of the MRC for the remaining months of the first year of the initial Service Term of the terminated Service; plus 50% of the MRC for the remaining months of the second year and any additional years.
(c) For all other Service offerings, the Early Termination Charge shall be 100% of the MRC for the remaining months of the initial Service Term of the terminated Service.

11.4. Service Provider Breach. If Service Provider materially breaches the Agreement and fails to cure the breach within thirty (30) days after receiving written notice of the breach from Customer, Customer may terminate the affected Service without incurring an Early Termination Charge. A material breach by Service Provider does not include any failure to perform that is due to a failure caused by the local exchange carrier, underlying providers, suppliers, customer premise equipment, failure to invoice correctly, or any other failure caused by circumstances not within Service Provider's reasonable control.

11.5. Portability; Substitution of Services. At any time during the Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Service Provider will waive the Early Termination Charge associated with the termination of the then-existing Services as long as: (i) the fees payable to Service Provider in connection with the substitute Services are equal to or greater than the fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for the remainder of the Service term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Service Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Service Provider by the time of the substitution.

12. CONFIDENTIAL INFORMATION.

12.1. Nondisclosure Agreement. If the parties have executed a Nondisclosure Agreement, this Agreement and any information concerning its terms and conditions constitute confidential information governed by that Nondisclosure Agreement. The term of the parties' Nondisclosure Agreement and the obligations contained in it will extend for two (2) years after the termination of all Services under this Agreement. Customer and Service Provider agree not to disclose the terms and conditions of this Agreement to any third party.

12.2. Confidentiality Provisions.

12.2.1. If the parties have not executed a Nondisclosure Agreement, the following provisions will govern their exchange of information.

12.2.1.1. During the Term and for a two (2) year period after the Term, neither party will disclose any Agreement terms, including pricing, or the other party's confidential information. Confidential information will remain the property of the disclosing party.

12.2.1.2. The receiving party may use the confidential information only to further the proposed relationship between the parties. Confidential information may not be disclosed to any third party except on written consent of the disclosing party, and may only be disclosed to the receiving party's employees or authorized representatives on a need to know basis. No rights, licenses, trademarks, inventions, copyrights, or patents are granted under this Agreement.

12.2.1.3. Confidential information disclosed to the other party must be clearly identified. Written confidential information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as confidential. Confidential information that is not written must be identified as confidential information at the time of disclosure, and then confirmed in a writing delivered to the receiving party within fifteen (15) days following its disclosure. Confidential information includes, but is not limited to, all tangible, intangible, visual, electronic, present, or future information, such as:

12.2.1.3.1. trade secrets;

12.2.1.3.2. financial information, including pricing;

12.2.1.3.3. technical information, including research, development, procedures, algorithms, data, designs and know-how;

12.2.1.3.4. business information, including operations, planning, marketing interests and products; and

12.2.1.3.5. the terms of any agreement between Service Provider and Customer, and the discussions, negotiations, and proposals related to that agreement.

12.2.1.4. The receiving party does not have an obligation to protect confidential information that is:

12.2.1.4.1. in the public domain through no action of the receiving party;

12.2.1.4.2. within the receiving party's legitimate possession with no confidentiality obligations to Service Provider or a third party;

12.2.1.4.3. lawfully received from a third party having rights in the information without restriction and without notice of any restriction against its further disclosure;

12.2.1.4.4. independently developed by the receiving party without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the confidential information; or

12.2.1.4.5. disclosed with the disclosing party's prior written consent.

12.2.1.5. If the confidential information is required to be produced by law, court order, or government authority, the receiving party must immediately notify the disclosing party of that obligation. The disclosing party may move the ordering court or authority for a protective order or other appropriate relief, and the receiving party must cooperate with the disclosing party in that effort.

13. USE OF NAME, SERVICE MARKS, TRADEMARKS, OR TRADE SECRETS

13.1. Name Use. Subject to exceptions contained in this Agreement, neither party will use the other party's service marks, trademarks, trade secrets, for any purpose, including, but not limited to, resale of services or press releases, without the other party's prior written consent. No license is granted under this Agreement authorizing use of the Service Provider name or marks. Customer must not:

13.1.1. promote or advertise Service Provider's name or capabilities to End Users or prospective End Users;

13.1.2. attempt to sell its service using the Service Provider name;

13.1.3. represent to End Users or prospective End Users that they will be Service Provider's customers or that they may obtain Service Provider's service from Customer; or

13.1.4. use Service Provider's name, registered copyrights or service marks.

13.1.5. Notwithstanding the foregoing, Customer may use the Service Provider's name in its communications with its business partners and customers representing Service Provider as one of the service providers utilized within Customer's solution.

13.2. Customer Breach. If Service Provider notifies Customer that Customer has breached this Section 13, Customer must use its best efforts to cure the breach immediately and must advise Service Provider of its corrective action. If, in Service Provider's opinion, Customer fails to cure within ten (10) business days after Service Provider's notice, then Service Provider may, in addition to any other remedy it has, terminate this Agreement subject to the provisions contained in Section 11.

14. Service Provider SCHEDULES AND TARIFFS

14.1. Schedule or Tariff Changes. Service Provider may modify or withdraw Service Provider Schedules or Tariffs from time to time upon ninety (90) days prior written notice to Customer, which may result in the discontinuation of any Service, without incurring any liability.

14.2. Withdrawn Schedule or Tariff. If Service Provider withdraws or no longer files Service Provider Schedules or Tariffs, references to applicable Service Provider Schedule or Tariff terms and conditions will mean the standard rate tables and terms and conditions that replace the Service Provider Schedules or Tariffs. After withdrawal of the applicable Service Provider Schedules or Tariffs, the terms of this Agreement will control over any inconsistent provision in the former Service Provider Schedule or Tariff, subject to standard contract interpretation rules.

15. FORCE MAJEURE

Neither party will be responsible for any delay, interruption, or other failure to perform under this Agreement due to acts beyond its control including, without limitation: Acts of God (e.g., natural disasters, lightning); wars, riots, terrorist activities, and civil commotions; inability to obtain equipment from third party suppliers; cable cuts by third-parties, a LEC's activities, and other acts of third-parties; explosions and fires; embargoes, strikes, and labor disputes; and laws, orders, rules, regulations, directives, or actions of any government authority. In the event that Service Provider is unable to deliver the services due to a Force Majeure event, Customer shall be exempt from any obligation to pay for the affected Services during the period of such Force Majeure event. If the Force Majeure event persists for more than thirty (30) days, Customer may terminate affected Services without incurring any termination liability.

16. MISCELLANEOUS

16.1. Independent Contractor. Service Provider provides Services as an independent contractor under this Agreement. The parties' relationship and this Agreement do not constitute or create an association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees, or affiliates.

16.2. No Waiver Of Rights. If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

16.3. No Third party Beneficiaries. This Agreement's benefits do not extend to any third party.

16.4. Governing Laws. This Agreement is governed by the laws of the State of South Carolina without regard to conflicts of law principles. Where applicable, the English version of this Agreement will prevail over any foreign language versions. Venue and jurisdiction for any action arising out of this Agreement shall be in the applicable state or federal court located in Rock Hill, SC, and the parties each hereby submit to such venue and jurisdiction in all respects.

16.5. Dispute Resolution.

16.5.1. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY COURT ACTION ARISING BETWEEN THE PARTIES, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, AND WHETHER MADE BY CLAIM, COUNTER-CLAIM, THIRD PARTY CLAIM OR OTHERWISE. THIS SUBSECTION SURVIVES THE EXPIRATION OR TERMINATION OF THE AGREEMENT.

16.5.2. Arbitration. If for any reason the jury trial waiver in this Agreement is held to be unenforceable, or if the parties agree in writing to resolve a dispute in arbitration instead of in court, the parties agree to binding arbitration of any dispute arising out of this Agreement or any claim arising under any federal, state or local laws or regulations, under the applicable commercial rules of the American Arbitration Association and 9 U.S.C. § 1, et. seq. Any arbitration must be held in the Rock Hill, South Carolina, metropolitan area and will be subject to the Governing Law provision of this Agreement. Discovery in the arbitration will be governed by the Local Rules applicable in the United States District Court South Carolina.

16.6. Assignment. Neither party may assign any rights or obligations under this Agreement without the other party's prior written consent such consent not to be unreasonably withheld, except that either party may assign this Agreement to a parent company, controlled affiliate, or affiliate under common control. Any assignee that assumes Customer's obligations under this Agreement must meet Service Provider's credit approval requirements.

16.7. Amendments. This Agreement may only be modified by a written amendment signed by authorized representatives of each party.

16.8. No Construction Against Drafter. Customer acknowledges that this Agreement is made available to Customer before it submits an Order and that Customer has had the opportunity to review it with counsel of its choosing. This Agreement shall be deemed to have been drafted jointly by the parties. Accordingly, the parties waive the application of any law, regulation, rule of construction, or other legal requirement that would interpret or construe any ambiguities in this Agreement against the drafter.

16.9. Severability. If any provision of this Agreement is found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.

16.10. Survivability. The terms and conditions of this Agreement regarding confidentiality, indemnification, warranties, payment and all others that by their context are intended to survive the expiration or termination of this Agreement will survive and continue in effect.

16.11. Entire Agreement. This Agreement, including all referenced documents, constitutes the entire agreement and understanding between the parties. It supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter.

16.12. Quotation Expiration. Unless otherwise stated in a Quotation, a Quotation will expire if Customer does not accept it within thirty (30) days after the date of the Quotation.

Exhibit 1
Data Terms and Conditions

This Exhibit is part of and subject to the Wholesale Terms and Conditions.

1. **TERM**.

1.1. **Exhibit 1 Termination**. Services used by Customer after the applicable Service Term expires or terminates will be provided by Service Provider on a month-to-month basis pursuant to applicable terms of the Agreement.

1.2. **Exhibit 1 Term of Services.** The initial Term for Services ("Initial Service Term") included in this Exhibit will be stated on the Order and will begin on the date the Service is installed and available. If Customer orders a Service with a Term (for example, three (3) years) that extends beyond the Agreement's Term, the Agreement and pricing will remain in effect for that Service until the Term for that Service expires.

2. **SERVICE ACTIVATION AND DISCONNECTION**.

2.1. **Service Activation**. Service Provider will make reasonable efforts to provide Services as soon as possible after Customer's order or by the requested Order delivery date, whichever is later. The Order delivery date is subject to change for activation errors or incomplete or inaccurate Customer information. Additional charges will apply for Customer requested expedited Service installation.

2.1.1. Service Provider will provide Customer notice that the Service is ready for Customer's acceptance through written notification which may be in the form of an email that service is available for use. Customer will be deemed to have accepted the Service on the Start of Service Date. As used herein, the "Start of Service Date" is the earliest to occur of: (a) the date on which Customer first places live traffic on the Service; or (b) the day on which Service Provider notifies Customer that service is available for use, unless Customer notifies Service Provider, in writing before this date, that the Service or any Service Provider Local Access Service associated with the Service is in material non-compliance with applicable performance specifications, if any. Following timely notice by Customer of material non-compliance with applicable performance criteria, Service Provider will use reasonable efforts to correct any such non-compliance and will notify Customer that the Service is ready for acceptance, thereby restarting the process described in this Section 2.1.

2.1.2. If Service Provider-provided Local Access Service to any Port is delayed beyond the date upon which Service Provider provides Customer notice of the Service availability for use or testing, the Start of Service Date will be delayed until the Service Provider provided Local Access Services are available to Customer (at which time billing will begin for the Service).

2.1.3. In the event Customer utilizes Customer Provided Access, then unavailability, incompatibility, delay in installation, or other impairment of such Customer Provided Access will not delay the Start of Service Date, regardless of whether or not the Customer Provided Access is functioning or the Port is being used by Customer.

3. **CHARGES**

3.1. **Pricing.** Service Provider data Services' pricing are contained in the applicable Order.

3.2. **Fixed Prices.** Prices (except those subject to Service Provider Tariffs) are fixed for the Term except as otherwise provided for in the Agreement.

4. **PROPRIETARY CLAIMS.**

4.1. **Customer Indemnification**. Customer will indemnify and defend Service Provider from and against all loss, liability, damage and expense, including attorney's fees, caused by any third party claims arising from information, data, or messages transmitted over the Service Provider network by Customer, or Customer's own customers or agents, including, but not limited to:

4.1.1. claims for libel, slander, invasion of privacy, infringement of copyright, and invasion or alteration of private records or data;

4.1.2. claims for infringement of patents arising from the use of hardware and software not provided by Service Provider in connection with the Services; and

4.1.3. claims based on transmission and uploading of information that contains viruses, worms, or other destructive media or other unlawful content.

4.2. **Notice**. If Service Provider seeks indemnification under this Section, the provisions in the Agreement's Section 10.3 apply.

Exhibit 1: Attachment 1
Internet Access Terms and Conditions

The following additional terms and conditions, apply specifically to Dedicated Internet Access Service as described herein.

1. **Product Description.** Dedicated Internet Access Service provides Customer and its End Users with access to the Internet via a connection ("Port") on the Service Provider internet network ("Service Provider Link"). Dedicated Internet Access Service Customers are considered Internet Service Providers ("ISPs") because Customer is using the services to resell dedicated Internet connections to the end-user.

2. **Pricing Components.** The price components of Dedicated Internet Access Service are listed below.

   2.1. Local Access Facilities. Local Access Facilities are provided pursuant to Service Provider quotes or Order. Customer will be charged a MRC and NRC for Local Access, unless as otherwise specified on an Order.

   2.2. Port or Dedicated IP Port (flat rate). Customer will be charged a MRC and NRC for each Dedicated IP Port, unless as otherwise specified on an Order.

   2.3. CPE. Certain CPE may be used with Service Provider Dedicated IP Services. Customer may purchase (at a one-time purchase price) or rent (at a monthly recurring rental charge) CPE from Service Provider with a Service Provider CPE order form. Service Provider will charge Customer a one-time installation charge for CPE installed by Service Provider.

3. **MMC Contributory Service.** Only the monthly recurring Port charges for Dedicated Internet Access Service purchased under this Agreement contribute to meeting Customer's minimum monthly commitment ("MMC"). MMC Contributory Service Usage Charges are calculated after all available discounts and credits have been applied.

4. Pricing

   4.1. **Flat Rate Ports**. Customer will be charged a fixed MRC and NRC for each flat rate port purchased during the term, unless as otherwise specified on an Order.

5. **ISP Connection Equipment**. The equipment required for connection to the Dedicated Internet Access Service consists of the following: IP Router and Network Interface Device (NID). Specific requirements regarding connection equipment are listed below:

   5.1. Customer may rent/lease the IP Router. NID will be provided by Service Provider.

   5.2. If equipment is Customer-provided, Customer is responsible for installing, configuring and maintaining equipment. If equipment is Service Provider-provided, Service Provider is responsible for installing, configuring and maintaining equipment.

   5.3. Service Provider will maintain the Dedicated Internet Access Services provided under the Order, but Customer is responsible for resolving problems that are isolated to any Customer provided equipment, or its local network environment and applications.

6. **Trouble Reporting and Problem Resolution**. Once the Dedicated Internet Access Service has been implemented, Customer will follow standard Service Provider trouble reporting procedures. Service Provider's Customer Network Operations Center ("CNOC") is Customer's single point of contact for resolving troubles with the Dedicated Internet Access Service once initial implementation has been completed. Service Provider's CNOC is available twenty-four (24) hours per day, seven (7) days per week. When reporting trouble, Customer must provide the following information:

   6.1. Customer's name and telephone number.

   6.2. Name and telephone number of Customer's affected customer.

   6.3. Hours of Availability

   6.4. Name of person with the authority to close trouble ticket.

   6.5. Network address and IP address for the IP router experiencing trouble.

   6.6. Description of the trouble.

Exhibit 1: Attachment 2
Cable or other Broadband Internet Services

The following additional terms and conditions apply specifically to Cable or other Broadband Internet Services as described herein.

1. **Scope.** Subject to an applicable Order, Service Provider will provide coaxial cable, fiber optic, wireless or other Internet Access Services to Customer as described in the Order and supplemented by this Attachment and at the rates and terms set forth in the applicable Order(s).

2. **Description of Services: Cable or other broadband Internet such as fiber, wireless, Ethernet, Etc.** Such Services consist of a dedicated internet connection using an existing coaxial cable, fiber optic or other facilities from one of several underlying carriers. Customer may be responsible for providing, or paying for Customer Premise Equipment.

    2.1. Customer acknowledges that the service at times may not deliver the full selected upstream and downstream rate of the selected bandwidth. Customer further acknowledges that Service Provider makes no warranties or guarantees regarding any minimum bandwidth. Such services are provided by Service Provider's underlying carriers as best efforts to meet the speeds quoted.

    2.2. Customer acknowledges that additional construction costs to be paid for by Customer may be identified during the order and installation process. Once a site survey or other process utilized by Service Provider's underlying carrier has identified any construction cost that would be paid for by Customer, Service Provider shall provide such costs in writing. Customer must pay those construction costs before the installation process begins. It is the expectation and understanding of the Parties that once such constructions costs have been determined and quoted by the underlying service provider, they shall not change. If construction costs in excess of those quoted are identified, Customer will have the option to cancel the order for the affected site without penalty. Service Provider shall use all commercially reasonable and good faith efforts to identify and accurately quote any construction costs.

3. **IP Addresses.** Customer agrees that any IP address assignments and allocations from Service Provider are based on the address lending policy of American Registry for Internet Numbers and applicable agencies. It is an express condition of this Exhibit and the loan of such IP addresses that such assignments and allocations shall terminate and the IP addresses be returned to Service Provider when the applicable Service, this Agreement and/or any applicable Exhibit or Order are terminated. Service Provider reserves the right to change Statically assigned IP addressing at any time upon 30 days' notice to Customer. Service Provider reserves the right to recover any address space due to inadequate utilization or an AUP violation.

4. **Disclosure and Use of Registration Information.** Service Provider will make domain name registration information available to the Internet Corporation for Assigned Names and Numbers ("ICANN"), to the registry administrators, and to other third parties as ICANN and applicable laws may require or permit. Service Provider may also make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information End User guidelines, limits and restrictions on disclosure or use of, information provided by End User in connection with the registration of a domain name (including any updates to such information), whether during or after the term End User's registration of the domain name,. Customer hereby irrevocably waives any and all claims and causes of action its End Users may have arising from such disclosure or use of End User domain name registration information. Service Provider will take reasonable precautions to protect the information Service Provider obtains from Customer concerning End User from loss, misuse, unauthorized access or disclosure, alteration or destruction of that information.