



InfoRelay Online Systems, Inc. (SiteLutions / MultipleHost) Colocation and Dedicated Hosting Service Level Agreement

Our Service Level Agreements commit InfoRelay Online Systems, Inc. to delivering a specified quality of service, including network and service quality. Network latency is monitored by pinging the routers at our service provider's core nodes, and measured periodically.

The full details of the InfoRelay Service Level Agreement can be found in the InfoRelay Terms and Conditions. Our customers are encouraged to review the entire document prior to purchasing any InfoRelay Products and services.

Network Service Availability

InfoRelay provides between 99.9% and 100% monthly network service availability to its customers (depending on location).

Hurricane Electric, Fremont, CA:	99.9%
Equinix, Chicago, IL:	100%
Colo4Dallas, Dallas, TX:	99.9%
Equinix, Ashburn, VA:	99.99%

InfoRelay network service availability is defined as percentage of network up time, averaged over core nodes in a calendar month. Network service availability is calculated as follows:

$(\text{Hours in month} - \text{Outage Hours in month}) / \text{Hours in month} \times (\text{Guaranteed Uptime } \%)$

The service will be considered unavailable in the event of any unscheduled service outage on the InfoRelay network due to transmission or equipment failure. InfoRelay will provide 72 hours advanced notice prior to conducting any scheduled maintenance.

Network service availability excludes:

- Planned service outages or routine maintenance.
- An interruption during any period when the Customer elects not to release the Service for testing or repair and continues to use the Service on an impaired basis.
- Interruptions during any period when the Customer has not released the Service to InfoRelay for maintenance or for the implementation of a Customer Service Order.
- Interruptions due to failure of power, equipment or Customer access circuit provided by Customer or other third parties.
- Interruptions caused by the negligence (including the provision of inaccurate information) of the Customer.
- Interruptions not reported to InfoRelay.
- Interruptions occurring prior to Service Date.
- Interruptions due to any Force Majeure event.
- Interruptions due to Customer non-payment or tardy payment.

Packet

Packet Delivery is defined as the percentage of packets that are successfully transported between the ingress and egress port as recorded at each core node in a calendar month. Packet Delivery is measured every five (5) minute interval and averaged on monthly basis per region for each class of service. InfoRelay guarantees packet loss of not more than 1% during any given calendar month. Monthly reports are available upon customer request.

Network Latency

Network Latency is defined as the average round-trip delay between the ingress and egress router port at core nodes. InfoRelay monitors the round trip network latency between core nodes using 64-byte ICMP Ping messages every five (5) minute interval. The measurements are recorded and the results are averaged on a monthly basis. The network latency standard is as follows:

- Average latency within the European backbone will not exceed 65ms
- Average latency within the North American backbone will not exceed 65ms
- Average latency between North America and Europe will not exceed 120ms
- Average latency between North America and Asia will not exceed 250ms

Service Install Lead Time

InfoRelay guarantees the service will be installed within 10 business days ARO (After Receive Order) and ARE (After Receiving Equipment) for collocated equipment. Dedicated servers will be installed within 20 business days. Where transmission facilities are required and being provided by InfoRelay, lead times will be subject to standard delivery intervals provided by the underlying access provider.

Additional Services

InfoRelay makes every attempt, in good faith to keep customers satisfied and to be fair. For standard collocation and dedicated server clients, we do not guarantee 24/7 support unless otherwise specified in our service order. We do, however, monitor our networks on a 24/7 basis and pro-actively respond to network problems. We will perform reboots during regular business hours of 9AM to 5PM EDT. If you require 24/7 reboots, it is suggested that you purchase the APC Masterswitch remote reboot option from InfoRelay. Unless otherwise specified, dedicated and collocated servers shall be considered "unmanaged" by InfoRelay. This means that any server maintenance provided will be billable at an hourly rate. Server maintenance shall be performed only during business hours, unless otherwise agreed to in writing. "Server maintenance" includes but is not limited to operating system installations, kernel upgrades, server debugging, and hardware maintenance. InfoRelay will not bill for hardware repairs on dedicated server equipment provided by us, however in the event that we determine the problem to be non-hardware related, maintenance time shall be billable.

Service Outage Credits

Service Outage Credit will be granted to Customer if the outage is caused by InfoRelay's data carriers backbone network failure. Service Outage Credit will be granted for cumulative service outage incidents in a month that are verifiable and confirmed by InfoRelay.

InfoRelay Online Systems, Inc. (Sitelutions / MultipleHost) Acceptable Use Policy

1. Purpose

This Acceptable Use Policy outlines certain types of activity that are expressly prohibited by InfoRelay Online Systems, Inc. ("InfoRelay") to Users of InfoRelay's Network and related products and Services (the "Services"). This Policy is in addition to any restrictions or other limitations on use that a User may be subject to by virtue of its Service Agreement with InfoRelay. InfoRelay may modify this Policy at any time, effective upon posting of the modified policy to: <http://www.InfoRelay.com/>, <http://www.sitelutions.com/>, or <http://www.multiplehost.com/>.

2. Application

This Policy applies to all Users of InfoRelay's Network. For the purposes of this Policy, a User includes, collectively, a InfoRelay customer, its customers or end users, resellers, distributors, or any person or entity that utilizes the InfoRelay Network for any purpose whatsoever. This terms of use contained in this Policy are intended to be in addition to any contractual terms included in a User's Service Agreement.

3. Use of the InfoRelay Network

By accessing and utilizing the InfoRelay Network and related services, Users understand and acknowledge that:

- InfoRelay does not routinely monitor the content of its User's communications and except for violations of this Policy, does not attempt to control, edit or otherwise police the content of its Users' communications or other use of its Network or its Services;
- Notwithstanding the foregoing, InfoRelay reserves the right to monitor its Network, including, but not limited to, User communications and mailboxes, in order to ensure compliance with this Policy, maintain its own network security, or to address and resolve system problems with the InfoRelay Network or Services. InfoRelay's Network is not considered a secure communications medium.
- User is responsible for the security of its account(s) and password(s);
- except for products or services identified as being supplied by InfoRelay, InfoRelay does not operate, control, or endorse any information, product or services available on the Internet;
- the Internet contains unedited materials, some of which may be sexually explicit or offensive. A User accesses such materials at its own risk.

4. Prohibited Activities

a. Illegal Use

The InfoRelay Network may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

b. System and network security

Violations of system or network security are prohibited, and may result in criminal and civil liability. InfoRelay will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any User, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.
- Use of IRC bots or clonebots.

c. Email

Sending unsolicited mail messages, including, without limitation, commercial advertising and informational announcements, is explicitly prohibited. A User shall not use another site's mail server to relay mail without the express permission of the site. A User shall not cause IPs assigned by InfoRelay to be listed in DNS blacklists such as SPEWS, relays.osirussoft.com, or any other DNS blacklists.

d. Usenet

Posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting, also known as "SPAM") is explicitly prohibited.

e. Other Types of Misuse

InfoRelay reserves the right to protect its Network and its Users from any activity that it deems, in its sole discretion, to be an abuse or misuse of its Network. Such misuse or abuse may include, but is not limited to, unauthorized attempts to gain root access or access to any account not belonging to that User, use of InfoRelay's Network as a "staging ground" to disable other systems or networks, or any other use that adversely affects the ability of other Users or systems to use InfoRelay's Network.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A INFORELAY USER, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH USER.

5. Investigation and Remedial Action

Complaints regarding any violation of this Policy should be sent to abuse@InfoRelay.com.

It is InfoRelay's policy to investigate complaints in a commercially reasonable and prompt manner. InfoRelay reserves the right to take such actions as it, in its sole discretion, deems necessary to secure the InfoRelay Network or the rights of any User, including, without limitation, suspension of service. A violation of this Policy by a User may also be a breach of its contractual obligations to InfoRelay.

Where a User is the subject of multiple or repeated complaints for the same or similar conduct, in addition to any other rights InfoRelay may have, InfoRelay may charge that User the reasonable costs of its investigation into such complaints.

6. NO WARRANTIES; LIMITATION OF LIABILITY

- **INFORELAY'S SERVICES ARE OFFERED ON AN "AS IS, AS AVAILABLE BASIS".**

INFORELAY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- INFORELAY SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES, WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL, OR SPECIAL, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR LOST PROFITS, ARISING OUT OF USER'S USE OF THE INFORELAY NETWORK OR ITS RELATED PRODUCTS AND SERVICES. IN ANY JURISDICTION THAT DOES NOT PERMIT A PARTY TO DISCLAIM ALL LIABILITY, THEN INFORELAY'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- ANY AND ALL CLAIMS BY USER ARE GOVERNED EXCLUSIVELY BY ITS SERVICE AGREEMENT WITH INFORELAY.

InfoRelay Online Systems, Inc. (Sitelutions / MultipleHost) Terms of Service

This Agreement

This agreement between _____, hereafter known as "Customer" and InfoRelay Online Systems, Inc. (creators of Sitelutions and MultipleHost services), also referred to as "InfoRelay." Customer agrees to uphold this agreement and abstain from violation of any of its tenants.

- 1. Intended Use of the Service.** Customer agrees to use the Services only for lawful purposes. Unauthorized transmission or storage of any information, data, or material in violation of any Federal or State law or regulation, including without limitation illicit transmission or use of copyrighted material, obscene material, material protected by trade secrets or materials designed to harass or interfere with others, is strictly prohibited. Customer shall at all times strictly comply with InfoRelay Online Systems, Inc.'s Acceptable Use Policy located on InfoRelay's website at: www.inforelay.com, www.sitelutions.com, or www.multiplehost.com. InfoRelay reserves the right to amend its Acceptable Use Policy in its sole discretion from time to time. Customer shall strictly comply with the rules of any other network Customer accesses through the use of the Services. InfoRelay Online Systems, Inc. undertakes no obligation to monitor the content of communications sent, posted, linked or otherwise conveyed by Customer but reserves the right to do so including, but not limited to, where directed to do so by law enforcement authorities. For the purposes of this Agreement, to the extent that an employee or third party uses the Services provided hereunder, such employee, agent or third party use shall be deemed Customer's use for the purposes of this Agreement.
- 2. IP Addresses.** Internet Protocol numbers ("IP numbers") provided or assigned by InfoRelay Online Systems, Inc. in connection with the Services at all times remain the property of InfoRelay Online Systems, Inc. and are not portable, and Customer shall have no rights with respect thereto. Assignment of IP Numbers subject to ICANN guidelines and is not guaranteed, and InfoRelay Online Systems, Inc. may modify such assignments at any time in its sole discretion. Customer shall provide an accurate host count at the time of the contract signing; such count shall be subject to verification by InfoRelay Online Systems, Inc..
- 3. Invoice/Payment.**
 - a. InfoRelay Online Systems, Inc. may commence billing as of the Service activation date. Equipment and any one-time charges associated with installation of the Service, if any, will be included in the first months' invoice. Charges for fixed services or components, such as colocation, access costs and minimum commitments ("Fixed Charges"), shall be billed in advance each month. Payment is due within thirty (30) days of the invoice date. Charges for usage-based services ("Variable Charges") will be calculated in accordance with Section 4 below and billed in arrears. Payment for Variable Charges is due within ten (10) days of the date of the invoice.
 - b. Overdue accounts are subject to a finance charge of the lesser of 1.5 percent per month or the maximum allowed by law. Accounts shall be deemed in default if not timely paid. If Customer's payment is returned to InfoRelay Online Systems, Inc. unpaid due to insufficient funds, Customer shall be subject to a returned check charge of \$35. If Customer fails to pay invoices in full when due, InfoRelay Online Systems, Inc. may terminate or suspend Services to Customer without any penalty or liability to InfoRelay Online Systems, Inc.. Such termination or suspension shall not relieve Customer from its obligation to make payment under this Agreement. In the event that InfoRelay Online Systems, Inc. suspends Services to Customer, an account reinstatement fee of \$99 shall be required to reactivate each of such Services. Claims of fraudulent use of the Services or bad debt shall not operate to relieve Customer of its obligation to pay any charges when due.

- c. Customer hereby grants to InfoRelay Online Systems, Inc. a lien on any Customer equipment located in InfoRelay Online Systems, Inc.'s facilities. In the event of termination for non-payment or other default, InfoRelay Online Systems, Inc. may hold such equipment until Customer satisfies all outstanding balances due InfoRelay Online Systems, Inc.. In the event that Customer fails to pay all amounts due within sixty (60) days of the effective date of termination, then InfoRelay Online Systems, Inc. may retain or sell, in its sole discretion, any such equipment without liability to Customer.

4. Usage-based Dedicated Internet Access Burstable/Usage-based Billing

- a. **Usage/Burstable-based Billing.** The minimum interface rate for burstable billing option is DS-3. For burstable billing, the Customer contracts for a selected Committed Access Rate and InfoRelay provides Customer the capability to burst up to the physical capacity of the port. The amount of Burstable Bandwidth is derived from the 95th percentile calculation described below. The 95th percentile calculation is based on industry standard 'Base 10' method where 1 Kbyte equals 1,000 bits. The Committed Access Rate bandwidth will be invoiced as Fixed Charges in accordance with Section 3 above. The Burstable Bandwidth Charge described below will be invoiced to the Customer as a Variable Charge in accordance with Section 3 above and is in addition to the Flat Rate Billing for the selected Committed Access Rate.
- b. **"Burstable Bandwidth" calculation.** InfoRelay polls the routers for Customer ingress and egress usage at five-minute intervals. The higher usage number for each poll is stack ranked. The top 5% of the usage number is discarded. The next highest measurement is the Burstable Bandwidth.

The "Burstable Bandwidth Charge" = (Burstable Bandwidth - Committed Access Rate) *
(Burstable Bandwidth price per Megabit)

5. Term/Commitments/Rates.

- a. Customer agrees to continue to purchase the Services for the complete term identified on the Customer Order Form ("Term"). Unless otherwise stated on the Order Form, the Term for Services shall commence on the service activation date. This is the date that InfoRelay notifies Customer in writing that the Service is operational. Customer has seventy-two (72) hours from its receipt of InfoRelay's notice to advise InfoRelay, in writing, that the Service is not performing in accordance with InfoRelay's specifications. Such notice shall describe with specificity the deficiencies in the Service. If Customer fails to notify InfoRelay within the timeframe referenced above, then the Service will be deemed accepted, and billing will commence, as of the date of InfoRelay's notice. For the avoidance of doubt, InfoRelay may commence billing for the Service even if the Service is not operational if the delay is solely due to Customer's failure to provide information, access, equipment or other services necessary to operate the Service.
- b. This Agreement shall commence upon InfoRelay Online Systems, Inc.'s execution of this Agreement and shall continue in full force and effect until the expiration or other termination of the last Order issued hereunder. InfoRelay Online Systems, Inc. reserves the right to perform a credit check on or seek other reasonable assurances of payment from Customer, prior to the final approval of the Agreement or initiation of Services.
- c. InfoRelay Online Systems, Inc. reserves the right to pass through to Customer any additional fees or charges created by a change in regulation, new tax or similar surcharge or a change in the telephone or telecommunications fees with respect to services that InfoRelay Online Systems, Inc. purchases from a third party to provide the Services. Such change in rates shall not give rise to any right of Customer termination.
- d. InfoRelay Online Systems, Inc. may, in its sole discretion, change rates and fees by notifying

Customer sixty (60) calendar days in advance of the effective date, provided, however, that Customer may terminate this Agreement by providing InfoRelay Online Systems, Inc. written notice of termination during the sixty (60) calendar days following the date of such notice. Such cancellation shall be without penalty only if it explicitly references the rate change.

- e. Following completion of the Term, this Agreement will automatically renew for an additional 12 month period until such time as either Party provides advance written notice to the other of its intent to terminate the Agreement. Such notice shall be provided at least sixty (60) calendar days prior to the annual Agreement termination date.
- f. If Customer cancels the Services before the end of the Term, such cancellation shall be deemed a breach of this Agreement for the purposes of Section 11 below. It is expressly understood and agreed by Customer that the charges for the Services purchased by Customer hereunder are based on the Customer's term commitment. The early termination fees set forth in Section 11 represent the Parties' good faith estimate of InfoRelay Online Systems, Inc.'s damages in the event Customer terminates this Agreement prior to the end of the Term.

6. Service Level Agreements. InfoRelay Online Systems, Inc. shall provide the Services in compliance with the Service Level Agreements ("SLAs") posted on InfoRelay Online Systems, Inc.'s website (which you hereby acknowledge you have read and will in the future read), and Customer shall, upon written request, be entitled to service credits as set forth in such SLAs if InfoRelay Online Systems, Inc. fails to provide Services in compliance with such SLAs.

7. Warranties and Liability.

- a. **EXCEPT AS MAY BE SET FORTH IN THE SLAS, CUSTOMER, EXPRESSLY ACKNOWLEDGES AND AGREES THAT ALL USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. INFORELAY ONLINE SYSTEMS, INC. MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, FOR THE GOODS, SERVICES OR SOFTWARE IT PROVIDES. INFORELAY ONLINE SYSTEMS, INC. ALSO DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- b. For those Services for which InfoRelay Online Systems, Inc. offers a system of credits or rebates for service interruptions, regardless of cause, such credits or rebates shall be Customer's sole remedy therefor.
- c. For direct, proven damages arising out of its performance or failure to perform hereunder, InfoRelay Online Systems, Inc.'s liability shall be limited to an amount equivalent to the charges actually paid by Customer under this Agreement for the Services during the period which such damages occur.
- d. Notwithstanding the foregoing, neither InfoRelay Online Systems, Inc. nor its affiliates, officers, directors, employees or agents shall be liable to Customer or to any third party for any indirect, consequential, incidental, exemplary, or punitive losses or damages, including, without limitation, lost profits or data, regardless of the cause thereof, even if InfoRelay Online Systems, Inc. is advised of the possibility of such loss.

8. Indemnification. Customer will defend, indemnify and hold InfoRelay Online Systems, Inc. harmless from and against any and all liabilities, causes of action, lawsuits, penalties, claims or demands ("Claims") brought by third parties and resulting from or arising out of Customer's use of the Services.

9. Third Party Vendors. To the extent that InfoRelay Online Systems, Inc. is acting as a reseller with respect to hardware and software offered under this Agreement ("Equipment"), InfoRelay Online

Systems, Inc. will provide Customer with the same warranties and support services that InfoRelay Online Systems, Inc. receives from its vendors. Malfunctioning equipment will be repaired or replaced, at InfoRelay Online Systems, Inc.'s option.

10. Notice. Notice to InfoRelay Online Systems, Inc. shall be deemed given to InfoRelay Online Systems, Inc. upon actual delivery when delivered to InfoRelay Online Systems, Inc. at InfoRelay Online Systems, Inc. America, Inc., 12100 Sunset Hills Road, Suite 300, Reston, VA 20190 or such other address as may be select by InfoRelay Online Systems, Inc. from time to time.

11. Termination/Breach.

- a. InfoRelay may suspend Services or, in its sole discretion, terminate this Agreement immediately without liability to Customer if: (i) Customer is in default of its payment obligations hereunder and has failed to remedy such default within seven (7) days of the date of InfoRelay Online Systems, Inc.'s written notice thereof; or (ii) Customer is in violation of InfoRelay's Acceptable Use Policy and fails to remedy its non-compliance within seventy-two (72) hours of InfoRelay Online Systems, Inc.'s written notice thereof. No such termination or suspension shall relieve Customer of its obligations to make any payments when due.
- b. In addition to InfoRelay Online Systems, Inc.'s rights set forth in Section 11(a), either Party may terminate this Agreement in the event that the other Party has committed a material breach of its obligations under this Agreement and has failed to remedy such breach within thirty (30) days of its receipt of the non-breaching Party's written notice thereof.
- c. In the event that (i) InfoRelay Online Systems, Inc. terminates this Agreement for cause as set forth in this Section 11 or elsewhere in the Agreement, or (ii) Customer terminates this Agreement prior to the end of the Term without cause, then Customer shall be liable to pay to InfoRelay Online Systems, Inc. the following early termination fees:
 - i) an amount equal to two-thirds (2/3) of the aggregated monthly payments which Customer would have paid over the remainder of the Term, and,
 - ii) all fees to third-party telecommunications providers that InfoRelay Online Systems, Inc. committed to pay in connection with Customer's commitment under this Agreement for the duration of the Agreement.

12. Force Majeure. InfoRelay Online Systems, Inc. shall not be liable if its failure to perform under the Agreement is caused by damages, losses or other factors beyond InfoRelay Online Systems, Inc.'s control, including without limitation, failure or impairment of essential facilities, governmental action, war, civil disturbance, weather, general material shortages, labor strikes or walkouts, acts of God or other similar events.

13. No Waiver. InfoRelay Online Systems, Inc.'s failure to enforce any right hereunder shall not be deemed a waiver of such right or any other right hereunder.

14. Assignment. Customer may not assign its rights or obligations under this Agreement without the express written consent of InfoRelay Online Systems, Inc.. InfoRelay Online Systems, Inc. may assign or novate all or part of its rights, benefits (including, without limitation, the benefits of this clause), interest, obligations and liabilities in connection with the Agreement to any party.

15. Modification. Except as may be stated otherwise herein, this Agreement may only be modified by an instrument in writing duly executed by authorized representatives of each of the Parties, making specific reference to this Agreement. No custom, industry standard or course of dealing between the Parties shall in any way serve to vary or alter the terms and conditions of this Agreement.

16. Relationship of the Parties/No Joint Venture. The Parties declare and agree that each Party is engaged in a business that is independent from that of the other party and that nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the Parties hereto.

17. Governing Law/Choice of Venue. This Agreement and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the State of New Jersey, excluding its laws relating to conflicts of laws. The Parties agree that any appropriate state or district court located in Monmouth County, NJ shall have exclusive jurisdiction over any case or controversy arising hereunder and shall be the proper forum in which to adjudicate such case or controversy.

18. Survival. The obligations of this Agreement which by their nature should survive the expiration or termination, including but not limited to Sections 7, 8, 10 and 11 of this Agreement, shall survive.

19. Severability. If any portion of this Agreement shall be deemed invalid or unenforceable, such invalidity or non-enforceability shall not invalidate or render unenforceable any other portion of this Agreement.

20. No Third Party Beneficiaries. No provision of this Agreement is intended, nor shall any be interpreted, to provide any person not a party to this Agreement with any remedy, claim, liability, reimbursement or cause of action or create any other third-party beneficiary rights.

21. Entire Agreement. This Agreement, including any attachments or exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise stated herein, this Agreement supercedes all oral or written communications and understandings between the Parties with respect to the subject matter of this Agreement.

Part II:

INFORELAY TERMS AND CONDITIONS (Wholesale Products)

SECTION 1. DEFINITIONS

Collocation Space: The location(s) within a InfoRelay Data Center where Customer-owned equipment is collocated with InfoRelay equipment pursuant to an accepted Customer Order.

Committed Data Rate: Where applicable, the minimum data rate committed by Customer and set forth in the Customer Order (expressed in Megabits per second (Mbps)).

Connection Notice: Written notice from InfoRelay that the Service ordered by Customer has been installed by InfoRelay and has been tested and is functioning properly.

Customer: The person or entity identified as the "Customer" on any Customer Order.

Customer Order or Order Form: A request for InfoRelay Service submitted by Customer in the form designated by InfoRelay from time to time.

Customer Premises: The location or locations occupied by Customer or its end users to which Service is delivered.

CPE: Customer-provided telecommunications equipment, whether located at the Customer Premises or in the Collocation Space, used in connection with the Service(s).

Data Center: Buildings or facilities owned or leased by InfoRelay for the purpose of, among others, locating and collocating communications equipment.

Excused Outage: Any outage, unavailability, delay or other degradation of Service related to, associated with, or caused by scheduled maintenance events, Customer actions or inactions, Customer provided power or equipment, any third party, including, without limitation, Customer's end users, third party network providers, traffic exchange points controlled by third parties, or any power, equipment or services provided by third parties, or an event of force majeure as defined herein .

Facilities: Property owned or leased by InfoRelay and used to deliver Service, including terminal and other equipment, wires, lines, ports, routers, switches, channel service units, data service units, cabinets, racks, private rooms and the like.

Local Loop: The connection between Customer Premises and the InfoRelay backbone network.

Minimum Term: Binding commitment by Customer to take and pay for Services for an initial minimum term of 12 months (or as otherwise provided in the Order Form) commencing on the RFS Date.

Off-Net: Traffic that originates from or terminates to any location that is not on the InfoRelay network.

On-Net: Traffic that originates from and terminates to a location that is on the InfoRelay network.

Port Speed: This is the physical access data rate of the interface (or port).

Revenue Commitment: As applicable, a commitment by Customer to order and pay for a minimum volume of Services during an agreed term, as set forth in a Customer Order

Ready for Service (RFS) Date: The RFS Date is the first to occur of:

- (A)The date upon which Customer acknowledges in writing that the Service has been installed and is functioning properly; or
- (B)The date which is seventy two (72) hours after delivery of the Connection Notice for the Service (or, if two or more Services are designated as "bundled" in any Customer Order, seventy two (72) hours after delivery of the Connection Notice for all Services in the bundle); or
- (C)The date Customer begins using the Service.

Service(s): Any of InfoRelay's Services, as defined in the Service Descriptions attached hereto.

Service Description(s): The definition (specifications, branding, quality level, pricing) and additional terms and conditions specific to a particular Service.

SECTION 2. PROVISION OF SERVICE

2.1 Customer Order(s)

2.1.1 To order any Service, Customer may submit a Customer Order. Unless otherwise agreed, Customer is not obligated to submit Customer Orders.

2.1.2 Upon written acceptance by InfoRelay, InfoRelay will endeavour to provide each Service by the requested RFS Date, but all dates are targets. Unless expressly agreed in writing by InfoRelay in the acceptance notice, InfoRelay accepts no liability for failure to meet any requested RFS Date. InfoRelay will issue a written acceptance, signed by a duly authorized representative of InfoRelay. In the event that InfoRelay provides an RFS Date that exceeds the Customer's requested RFS Date by more than one hundred twenty (120) days, Customer cancel the Order, without penalty, by written notice within three (3) days of its receipt of InfoRelay's acceptance

notification. If Customer cancels an Order after said three (3) day period, it shall be liable to reimburse InfoRelay for any and all costs incurred as a result of InfoRelay's reliance on the Customer Order.

2.1.3 The Customer Order shall refer to this Agreement and shall be governed by these Terms and Conditions and the Service Description applicable thereto.

2.1.4 These Terms and Conditions shall not be deemed to have been amended by any pre-printed term or condition which accompanies any Customer Order and any such pre-printed term or condition shall be null and void. Any provisions in a Customer Order purporting to amend the terms and conditions of this Agreement shall be null and void unless separately agreed, in writing, by the Parties.

2.1.5 Each accepted Order shall constitute a separate contract, existing independently from this Agreement or any other Order and any default in relation to any one Order shall not automatically entitle either Party to invoke default procedures, as defined elsewhere herein, as to the entire Agreement, unless such default also constitutes a material breach of this Agreement. An Order shall be effective from the date of acceptance by InfoRelay through the Term stated therein, unless sooner terminated as may be otherwise permitted

2.2 Credit Approval and Deposits. Any acceptance by InfoRelay of a Customer Order is subject to credit approval by InfoRelay. Customer will complete a credit application, in the form provided by InfoRelay from time to time. Prior to implementation of any Customer Order, Customer shall be required to make a deposit equal to one month of estimated fees for the Service ordered ("Deposit"). In the event that Customer's monthly charges exceed the estimated Deposit amount, Customer shall make additional deposits, if requested by InfoRelay, within five (5) business days of InfoRelay's written request. The Deposit shall be held by InfoRelay as security for payment. When Service to Customer is terminated, the Deposit will be credited to Customer's account for payment of the last month's recurring fees for Service and any remaining balance will be refunded. Any balance due InfoRelay after application of the Deposit shall be invoiced to Customer and due and payable in accordance with the payment terms set forth herein.

2.3 Customer Premises. Where applicable to the Services to be provided by InfoRelay hereunder, Customer shall permit InfoRelay access to the Customer Premises to the extent reasonably determined by InfoRelay for the installation, inspection, and scheduled or emergency maintenance of the Service. InfoRelay shall notify Customer not less than two (2) business days prior to any scheduled maintenance that will require access to the Customer Premises. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse InfoRelay for the actual and reasonable cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer Premises.

2.4 InfoRelay Facilities. InfoRelay will provide and maintain the Facilities in good working order. Customer shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of InfoRelay. The Facilities shall not be used for any purpose other than that for which InfoRelay provides them and title to the Facilities shall remain with InfoRelay. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. InfoRelay shall not be liable to Customer or any other person for interruption of Service, or for any other loss, cost or damage caused or related to improper use or maintenance of the Facilities by Customer or third parties provided access to the Facilities by Customer, and Customer shall reimburse

InfoRelay for any damages incurred as a result thereof. InfoRelay shall be entitled to remove the Facilities from the Customer Premises upon (i) the expiration or other termination of the Order to which the Facilities relate; or (ii) for repair, replacement or otherwise as InfoRelay may determine is necessary or desirable, provided, that, InfoRelay will use reasonable efforts to minimize disruptions to the Service caused thereby.

- 2.5 CPE.** InfoRelay may install CPE upon installation of Service, but InfoRelay shall not be responsible for the operation or maintenance thereof. InfoRelay undertakes no obligations and accepts no liability for the configuration, management, performance or any other issue relating to CPE used in connection with the Service.
- 2.6 InfoRelay's Service Responsibilities Generally:** InfoRelay shall be responsible for the Service only up to the relevant demarcation point, as may be identified on the applicable Service Order, (or otherwise determined by the nature of the Services provided) and shall not be responsible for providing any connectivity on the other side of the demarcation point.

SECTION 3. BILLING AND PAYMENT

- 3.1 Commencement of Billing.** InfoRelay will issue Customer a written Connection Notice upon completion of installation and testing of the Service. Upon receipt of the Connection Notice, Customer shall have a period of three (3) days to confirm, in writing, that the Service has been installed and is properly functioning or to identify specific issues with functionality based on the specifications for the Service. Unless Customer delivers written notice to InfoRelay within said three (3) day period, the Service shall be deemed accepted by the Customer and charges shall be due and payable as of the date of the Connection Notice. No failure on Customer's part to (i) procure services from other carriers needed to operate the Service; or (ii) provide InfoRelay with information necessary to permit it to procure such third party services; or (iii) take any other action necessary to permit it to accept delivery of the Service, shall relieve Customer of its obligation to pay for the Services from the date of the Connection Notice. For the avoidance of doubt, InfoRelay may issue a Connection Notice and commence billing notwithstanding Customer's failure or refusal to take any action required hereunder.
- 3.2 Charges and Invoices.** The Customer Order will set forth the applicable one-time, non-recurring charges ("NRC") and monthly recurring charges ("MRC") for the Service, along with the Deposit requirements. MRCs may either be fixed or variable, depending on the Service. NRCs may include installation of cabling, electronics, or other materials, depending on the Service. Charges are invoiced and due as follows:
- NRCs, if any, are due within five (5) days of InfoRelay's written acceptance of the Customer Order. InfoRelay shall be entitled to suspend implementation of the Customer Order if payment for NRCs is not received when due and Customer shall be liable for any costs incurred by InfoRelay as a result of such suspension or any resulting delay in the RFS Date;
 - Fixed MRCs are payable monthly in advance and shall be due prior to the first day of the Service month to which they relate. Invoices for fixed MRCs are generally sent by the XXX of the month prior to the Service month. Invoices for fixed MRCs not received by the first of the month shall be deemed past due.
 - Variable MRCs are payable monthly in arrears and shall be due upon receipt. Invoices for variable MRCs that are not paid within fourteen (14) days of the invoice date shall be deemed past due.

Billing for partial months is prorated based on a calendar month. Past due amounts bear interest at a rate of 1.5% per month (or the highest rate allowed by law, whichever is less) beginning from the date first due until paid in full.

- 3.3 Taxes and Fees.** All charges for Service are net of applicable taxes. Except for taxes based on InfoRelay's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service.
- 3.4 Regulatory and Legal Changes.** In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Service, InfoRelay and Customer will negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the Parties are unable to reach agreement respecting new rates within thirty (30) days after InfoRelay's delivery of written notice requesting renegotiation, then (a) InfoRelay may pass such increased costs through to Customer, and (b) Customer may terminate the affected Customer Order without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase.
- 3.5 Disputed Invoices.** If Customer in good faith disputes any portion of a InfoRelay invoice, Customer must pay the full amount of the invoice and submit a written claim, including the basis of the dispute, prior to the issuance of the next regular invoice for those Services. Customer waives the right to dispute any charges not properly noticed to InfoRelay in accordance with this Section 3.5. The Parties will work together in good faith to resolve any such dispute within a period of thirty (30) days from the date on which InfoRelay receives Customer's notice of the dispute. In the absence of manifest error, InfoRelay's records shall prevail.
- 3.6 Revenue Commitment.** In the event that Customer makes a Revenue Commitment in any Customer Order, then Customer will be billed for and be responsible to pay the greater of (a) the recurring charges for Service ordered and delivered, or (b) the amount of the Revenue Commitment.
- 3.7 Termination Charges.** In the event that Customer terminates any Order prior to the end of the Minimum Term, or if InfoRelay terminates any Order due to a breach by Customer of the terms of this Agreement, then Customer shall pay InfoRelay, as liquidated damages and not as a penalty, a termination charge equal to the greater of:
- (i) any third party cancellation/termination charges and other InfoRelay out of pocket expenses related to the installation and/or termination of Service, including, without limitation, the costs of restoring collocation premises and removing CPE; or
 - (ii) the percentage of the MRCs for the terminated Service calculated from the effective date of termination as (1) 100% of the MRCs that would have been incurred for the Service for months 1-12 of the Term, plus (2) 50% of the MRCs that would have been incurred for the Service for months 13 through the end of the Term.
- 3.8 Fraudulent Use of Services.** Customer is responsible for all charges arising out of its use of the Service(s), even if incurred as the result of fraudulent or unauthorized use of Service.

SECTION 4. Term and Termination

- 4.1 Term.** This Agreement shall commence on the Effective Date and continue for an initial period of three (3) years. Thereafter, this Agreement shall renew automatically for successive periods of (1) year unless terminated upon not less than ninety (90) days prior written notice from one

Party to the other Party. Termination of this Agreement shall not operate to terminate any Customer Order accepted prior to the effective date of such termination. With respect to any such Order, the terms and conditions of this Agreement shall survive its termination and shall continue to govern the relationship of the Parties until the expiration of each such Order.

4.2 Termination by InfoRelay. InfoRelay may terminate this Agreement, or any Customer Order, immediately without liability if:

- (i) Customer fails to pay any undisputed charges for Services when due and has not remedied such failure within five (5) days of the date of InfoRelay's written demand therefor; or
- (ii) Customer violates any law, rule, regulation or policy of any government authority related to the Service or makes a material misrepresentation to InfoRelay in connection with the ordering or delivery of Service; or
- (iii) Customer breaches any of its obligations hereunder and fails to remedy such breach within thirty (30) days of InfoRelay's written notice thereof; or
- (iv)(iv) Customer files for bankruptcy, for reorganization, becomes insolvent, or otherwise fails to pay its debts as they come due, or, if in InfoRelay's reasonable commercial opinion, any of the foregoing is likely to occur; or
- (v) Customer's Service is delivered by InfoRelay within a third party collocation facility and InfoRelay's rights to provide Service therein is terminated or if a court or other government authority prohibits InfoRelay from furnishing Service;

4.3 Termination by Customer. Customer shall be entitled to terminate an Order without further liability to InfoRelay if:

- (i) InfoRelay has failed to deliver the Service to which the Order relates in accordance with the Service Levels over a period of three (3) consecutive months: or
- (ii) InfoRelay is in breach of any of its material obligations hereunder and shall have failed to remedy such breach within a reasonable period after receipt of Customer's written notice thereof.

4.4 Suspension. InfoRelay may, in its sole discretion, elect to suspend Services in the event of any occurrence under 4.2 for which it is entitled to terminate this Agreement or a Customer Order. In the event that InfoRelay elects to suspend performance in lieu of terminating the Service, the affected Service shall be restored to Customer as soon as reasonably practical after the events leading to the suspension are rectified. InfoRelay's decision to suspend Services shall in no way affect its rights to invoke the remedies of Section 4.2 at a later date.

4.5 Effect of Termination or Suspension. Upon InfoRelay's termination of an Order or suspension of Service, InfoRelay may, in addition to all other remedies that may be available to InfoRelay at law or in equity, assess and collect from Customer any applicable termination charge.

SECTION 5. LIABILITIES

- 5.1 Service Interruptions and Delivery.** Where in relation to any Service the applicable Service Description provides for a system of rebates or credits against charges for interruptions or delays in delivery, such rebates or credits shall be the exclusive remedy of Customer in respect of such failure.
- 5.2 No Indirect Damages.** Neither Party shall be liable to the other, whether in contract, tort (including negligence) or otherwise for indirect or consequential damages, including lost profits, special damages, or loss of data, under any circumstances whatsoever.
- 5.3 Limit of Liability.** A Party's liability for any other claim under this Agreement, whether in contract, tort (including negligence) or otherwise shall be limited to direct, proven damages and shall not exceed (i) the amount paid by Customer to InfoRelay for the Service(s) to which the damages relate during the twelve month period immediately preceding the occurrence that led to or caused the damages, or (ii) ten percent (10%) of the value of the Order to which the damages relate, whichever is less.
- 5.4 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THE SERVICE DESCRIPTION, INFORELAY MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICE(S), EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

SECTION 6. GOVERNING LAW AND DISPUTE RESOLUTION

The Parties shall endeavor to resolve any dispute arising hereunder amicably, provided that, nothing contained in this Section 6 shall be construed as limiting either Party's rights under Section 4 of this Agreement. Any and all disputes, controversies, claims or differences that may arise out of, under, or in connection with this Agreement that cannot be amicably resolved shall be finally and exclusively settled by arbitration in Monmouth County, New Jersey, USA, pursuant to the Rules of Arbitration and Conciliation of the International Chamber of Commerce (the "ICC Rules") in effect as of the date of this Agreement. Unless otherwise agreed by the Parties in writing, the proceedings will be presided over by a single arbitrator, selected in accordance with the ICC Rules and conducted in the English language. The award rendered by the arbitrator shall be binding on the Parties and enforceable in any court of competent jurisdiction. Each Party shall bear its own costs in any such proceeding

SECTION 7. GENERAL TERMS

- 7.1 Force Majeure.** Except for the obligation to make payments when due, neither Party shall be liable to the other Party, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such Party's reasonable control. In the event InfoRelay is unable to deliver Service as a result of an event of force majeure, Customer shall not be obligated to pay InfoRelay for the affected Service for so long as InfoRelay is unable to deliver; provided, however, that the Term of such Service shall be extended for the period of time that Customer was not required to pay for the affected Service.
- 7.2 Assignment and Resale.** Customer may not assign its rights and obligations under a Customer Order without the express prior written consent of InfoRelay, which consent will not be unreasonably withheld. These Terms shall apply to any permitted transferees or assignees. Customer shall remain liable for the payment of all charges due under each Customer Order. Customer may resell the Service to third party "end users", provided that Customer shall indemnify, defend and hold InfoRelay harmless from any and all claims made against InfoRelay

by such end users. Customer shall be solely responsible for determining end user pricing and all risks of collection associated therewith.

- 7.3 Notices.** Notices hereunder shall be deemed properly given when delivered, if delivered in person, or when sent via facsimile, overnight courier, electronic mail or when deposited with the U.S. Postal Service, (a) with respect to Customer, the address listed on any Customer Order, or (b) with respect to InfoRelay, to: Contract Administration, 4 Bridge Plaza Drive, Englishtown,, New Jersey 07726, USA, e-mail: admin@InfoRelay.com. Customer shall notify InfoRelay in writing of any changes to its addresses listed on any Customer Order.
- 7.4 Indemnification.** Each Party shall indemnify the other from any claims by third parties and expenses (including legal fees and court costs) respecting damage to tangible property, personal injury or death caused by the indemnifying Party's negligence or willful misconduct.
- 7.5 Application of Tariffs.** InfoRelay may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain Service. In the event that such tariffs are filed respecting Service ordered by Customer, then (to the extent such provisions are not inconsistent with the terms of a Customer Order) the terms set forth in the applicable tariff shall govern InfoRelay's delivery of, and Customer's consumption or use of, such Service. Notwithstanding the above, Customer shall be permitted to access a copy of InfoRelay's standard tariffs and terms and conditions which shall be made available for viewing at InfoRelay's corporate offices any time during normal business hours.
- 7.6 Contents of Communications.** InfoRelay shall have no liability or responsibility for the content of any communications transmitted via the Service, and Customer shall defend, indemnify and hold InfoRelay harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's use of Service. InfoRelay provides only access to the Internet; InfoRelay does not operate or control the information, services, opinions or other content of the Internet. Customer agrees that it shall make no claim whatsoever against InfoRelay relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet.
- 7.7 No Waiver.** No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s).
- 7.8 Acceptable Use Policy.** Customer's use of Service shall at all times comply with InfoRelay's then-current Acceptable Usage Policy and Privacy Policy, as amended by InfoRelay from time to time and which are available through InfoRelay's web site at www.InfoRelayInfoRelay.com. InfoRelay will notify Customer of complaints received by InfoRelay regarding each incident of alleged violation of InfoRelay's Acceptable Use Policy by Customer or third parties that have gained access to the Service through Customer. Customer agrees that it will promptly investigate all such complaints and take all necessary actions to remedy any actual violations of InfoRelay's Acceptable Use Policy. InfoRelay may identify to the complainant that Customer, or a third party that gained access to the Service through Customer, is investigating the complaint and may provide the complainant with the necessary information to contact Customer directly to resolve the complaint. Customer shall identify a representative for the purposes of receiving such communications. InfoRelay reserves the right to install and use, or to have Customer install and use, any appropriate devices to prevent violations of its Acceptable Use Policy, including devices designed to filter or terminate access to Service.
- 7.9 Waiver of Immunity.** The Parties acknowledge that this Agreement is commercial in nature, and each Party expressly and irrevocably waives any claim or right which it may have to immunity (whether sovereign immunity, act of state or otherwise) for itself, or with respect to

any of its assets, in connection with any proceeding to enforce this Agreement, including, without limitation, immunity from service of process, immunity of any of its assets from pre- or post-judgment attachment or execution, and immunity from the jurisdiction of any court or arbitral tribunal

SECTION 8. THIRD PARTY CIRCUITS OR SERVICES

8.1 Applicability. This Section is applicable to all Services ordered by Customer.

8.2 Services from Others. Where necessary for the interconnection of Customer provided local loop services with the Services, Customer will provide InfoRelay with circuit facility assignment information, firm order commitment information and the design layout records necessary to enable InfoRelay to make the necessary cross-connection between the InfoRelay network and Customer's designated carrier. Any delay by Customer in providing such information to InfoRelay may delay InfoRelay's provision of the necessary cross-connection. Notwithstanding any such delay in the provision of the cross-connection, billing for InfoRelay Services shall commence as provided in Section 3.1. InfoRelay may charge Customer non-recurring and monthly recurring cross-connect fees to make such connection.

SECTION 9. ENTIRE AGREEMENT

These Terms and Conditions, including any relevant Service Description or Customer Order submitted hereunder, constitute the entire understanding of the Parties with respect to the subject matter hereof. In the event of any conflict between this Agreement, an Exhibit, or any Customer Order, the Customer Order shall control.

Signature below indicates that customer has read and agreed to InfoRelay Online Systems, Inc.'s Service Level Agreement, Acceptable Use Policy, and Terms of Service.

By signing, customer binds him or herself to the terms and conditions of this agreement.

Customer Name:

Customer Company Name:

Customer Contact Information (Phone, E-mail, Full Address, Emergency Contact Info.):

Customer Signature:

Date:

**Please fax this page as well as page 1 of the TOS
(with customer name written in) to (703) 485-4600.**