



Internet, Data Transport and VPN Services - Terms and Conditions

1.0 AGREEMENT.

These Autophone of Laredo ("APL") Terms and Conditions ("**Terms and Conditions**"), and any Autophone of Laredo Service Orders (as described in Section 2.2 below) are hereby incorporated into the Autophone of Laredo Service Agreement or the Autophone of Laredo Service Agreement, as the case may be, ("**Service Agreement**") and constitute the "**Master Agreement**" by and between Customer and APL (collectively, the "**Parties**" or each individually a "**Party**") for the services specified on Service Orders ("**Services**"). The attachments to these Terms and Conditions ("**Attachments**") further describe APL's services and are hereby incorporated into, and made a part of, these Terms and Conditions by this reference. The Attachments set forth additional terms and conditions for the applicable Service. "**APL**" means any Autophone of Laredo affiliated entity that is providing the Services.

2.0 SERVICES AND SERVICE ORDERS.

2.1 Subject to the terms and conditions of the Master Agreement, APL shall provide Customer with the Services in accordance with any Service Order entered into by the Parties. Customer understands and agrees that certain Services may not be available in all APL service areas and that APL, upon entering into a Service Order with Customer may, at APL's discretion, utilize one or more of its affiliates or third parties to deliver the Services ("**Third Party Services**"). The Third Party Services may be subject to additional terms and conditions. Unless otherwise set forth, APL shall use commercially reasonable efforts to provide the Services seven (7) days a week, twenty four (24) hours a day, excluding scheduled maintenance, required repair and events beyond APL's reasonable control.

2.2 Customer shall request Services by issuing to APL one or more proposed service and/or work order(s) (in the form provided or approved by APL) or via a mutually agreed electronic order entry system. Upon APL's acceptance of a proposed service and/or work order(s), such proposed service and/or work order(s), shall be deemed a "**Service Order**" hereunder and shall be deemed incorporated into, and made a part of, the Master Agreement by this reference. A proposed service and/or work order shall be deemed accepted upon the earlier of (a) APL's acceptance of such proposed service and/or work order in writing; or (b) APL's commencement of delivery of the Service(s) set forth in such proposed service and/or work order.

3.0 SERVICE & EQUIPMENT INSTALLATION.

3.1 Customer shall obtain and maintain, or ensure that each Customer employee or branch office which uses the Service (each, an “**End User**”), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, APL personnel to install, deliver, operate and maintain the Services and APL Equipment (as defined in Section 4 below) at Customer's and any Customer End User's facilities. Customer shall permit APL reasonable access to the Customer and any End User facilities at any time as needed to install, configure, upgrade, maintain or remove the APL Equipment and other Service components collocated at Customer's or an End User's facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any APL Equipment as specified by APL and that is required to provide the Services. In addition, Customer shall provide APL with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of APL Equipment at the Customer locations identified in a Service Order. Customer shall not charge APL, and shall ensure that APL does not incur, any fees or expenses whatsoever in connection with Customer's provision of space, power or access as described in these Terms and Conditions, or otherwise in connection with Customer's performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by a Customer End User shall be borne solely by Customer.

3.2 Provided that Customer properly performs all necessary site preparation and provides APL with all required consents, APL shall use commercially reasonable efforts to install the Service in accordance with the requested Service start date indicated on a Service Order. APL shall provide Customer with a completion notice (“**Completion Notice**”) upon completion of the installation of a Service. In the event that APL is unable to install the Service in accordance with the agreed upon schedule as a result of (a) Customer's (or its End User's) failure to deliver any required materials, support or information to APL; or (b) APL not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer shall pay APL the standard installation fee as identified on the applicable Attachment hereto for any installation trip made by APL and an additional installation fee for each subsequent trip necessitated to perform the Service installation. Customer shall perform interconnection of the Services and APL Equipment with Customer's or an End User's equipment, unless otherwise set forth in an Attachment or agreed in writing between the Parties.

3.3 APL is not responsible for any damages that may be caused by acts of nature, such as lightning, and or atmospheric surges. These acts of nature may cause damages to building, structure, and or persons. APL is not responsible for and any damages caused by electrical surges that may be received through the antenna, wiring, and or any of its components. These surges may and can cause equipment such as routers, switches, power strips, etc. to fail and or catch fire. APL will not replace any of type of equipment that is owned by the customer. Customer will be responsible to change or replace any of its owned equipment. Should customer request assistance in replacing their equipment, APL may assist in doing so at the regular labor cost and or equipment cost. APL will only replace antenna, wiring and any of its components, within 24 hours of the occurrence during regular business days. On non-business days may or can take up to 72 hours to replace equipment.

4.0 SUPPORT & MAINTENANCE.

APL shall use commercially reasonable efforts to maintain the APL-provided and installed equipment, including as applicable, any cabling, antennas, related splitters, routers or other items (collectively, "**APL Equipment**"), on APL's side of the demarcation points used by APL to provide the Service. Equipment and services on Customer's side of the demarcation points, as well as any other Customer-provided equipment, are the responsibility of Customer. APL shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by APL and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall APL be responsible for providing support for any network, equipment or software not provided and installed by APL or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, APL shall use commercially reasonable efforts to restore any failures on the APL network and shall keep Customer reasonably advised of such restoration progress. Customer shall provide routine operational Service support for APL Equipment and Service components collocated at Customer's or an End User's facility, including without limitation by performing reboots, as requested by APL.

5.0 CUSTOMER OBLIGATIONS.

5.1 Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of the Master Agreement. Customer shall not resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by APL. Customer shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and terms of the Master Agreement. APL may audit Customer's use of the Service remotely or otherwise, to ensure Customer's compliance with the Master Agreement.

5.2 Customer shall ensure that all APL Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances, and Customer shall be responsible for loss or damage to the APL Equipment while at Customer's or an End User's facilities. As between the Parties, Customer is solely responsible for: (a) all use (whether or not authorized) of the Service by Customer, an End User or any person or entity, which use shall be deemed Customer's use for purposes of the Master Agreement; (b) all content that is viewed, stored or transmitted via the Service; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer shall conform its equipment and software, and ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by APL.

6.0 TERM.

The Master Agreement shall commence on the earlier to occur of (a) the date of the last signature on the Service Agreement (the "**Effective Date**") or (b) APL's commencement of delivery of the Service(s) set forth in a Service Order, and shall remain in effect for the term specified in the Service Agreement, or if no term is specified, until the expiration or termination of all Service Orders (the "**Term**"). The term for the applicable Service shall be set forth in the Service Order ("**Initial Order Term**") and shall remain in effect until expiration as set forth in the Service Order.

Unless otherwise specified in the Service Agreement, if the Customer continues to receive Services after the expiration of the Initial Order Term, the Services shall renew on a month to month basis on the same terms and conditions (“**Renewal Order Term**”, collectively with Initial Order Term, “Order Term”). The fees for the Renewal Order Term shall be as set forth in Section 7.

7.0 PARMENT.

For each Service, Customer shall pay APL all recurring and non-recurring charges, fees and taxes, (which may include Service installation and activation charges, measured and usage-based charges, and equipment and facilities charges) (collectively the “**Service Charges**”) as set forth on the Service Order in accordance with the following payment terms: Service Charges shall be billed to Customer on a monthly basis commencing upon Service installation, and are payable within thirty (30) days after the date appearing on the invoice. Customer must bring any billing error to APL’s attention within thirty (30) days after the date appearing on the applicable invoice or Customer waives its right to a refund or credit associated with such billing error. APL shall not defer any charges while Customer awaits reimbursement, subsidy, discount or credit from any third party or government entity, and Customer shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. APL shall have the right to increase Service Charges for each Service after the Initial Order Term for such Service upon thirty (30) days written notice to Customer. APL may charge a late fee for any amounts which are not paid when due. The late fee shall be the lesser of one and one-half percent (1.5%) per month or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. If APL fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates, and Customer shall pay such invoice in accordance with these payment terms.

8.0 TAXES.

8.1 Customer shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Master Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. APL shall have the right to recover from Customer, and Customer shall pay, the amount of any state or local fees, charges or taxes arising as a result of the Master Agreement that are imposed on APL or APL’s Services, or measured on APL’s receipts, and any other costs or expenses that APL is entitled under applicable law to pass through to or otherwise charge Customer for Customer’s use or receipt of the Services. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer’s invoice. APL shall be responsible for and shall pay all taxes measured by APL’s net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under the Master Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon APL’s net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on APL’s net income. Customer shall provide APL any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under the Master Agreement.

To the extent such documentation is held invalid for any reason, Customer shall reimburse APL for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

8.2 Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification and/or treatment of some of the Services APL provides and, consequently, uncertainty about what fees, taxes and surcharges are due from APL and/or its customers. Customer agrees that APL has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding APL's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that APL currently collects or passes through by writing to APL at the following address and requesting same: Autophone of Laredo, 1816 Pappas St. Laredo TX 78041 Attention: Subscriber Tax Inquiries.

9.0 PROPRIETARY RIGHTS AND CONFIDENTIALITY.

9.1 All materials including, but not limited to, any APL Equipment (including related firmware), software, data and information provided by APL, any identifiers or passwords used to access the Service or otherwise provided by APL, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by APL to provide the Service (collectively "**APL Materials**") shall remain the sole and exclusive property of APL or its suppliers. Nothing herein is intended to convey any right or ownership interest to Customer or any other person or entity in or to such APL Materials. Customer shall acquire no interest in the APL Materials by virtue of the payments provided for under the Master Agreement. Customer may use the APL Materials solely for Customer's use of the Service during any applicable Order Term and the same may not be transferred by Customer to any other person, corporation or entity. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the APL Materials, in whole or in part, or use them for the benefit of any third party. All rights in the APL Materials not expressly granted to Customer in the Master Agreement are reserved to APL. Customer shall not open, alter, misuse, tamper with or remove the APL Equipment as and where installed by APL, and shall not remove any markings or labels from the APL Equipment indicating APL (or its suppliers) ownership or serial numbers.

9.2 Customer shall maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted in the Master Agreement, the APL Materials and any other information and materials provided by APL in connection with the Master Agreement, that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the content of the Master Agreement.

9.3 If software is provided to Customer under the Master Agreement, APL grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

10.0 MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.

APL has the right, but not the obligation, to upgrade, modify and enhance the APL Equipment (including related firmware) and the Service and take any action that APL deems appropriate to protect the Service and its facilities. APL has the right to add to, modify or delete any provision of these Terms and Conditions. APL shall notify Customer of any material adverse change to these Terms and Conditions or Service descriptions by posting such modified Terms and Conditions or Service description on the APL web site or by email. Upon the effectiveness of any addition, modification or deletion, Customer's continued use of the Services shall constitute Customer's consent to such addition, modification or deletion, and agreement to continue to be bound by the Master Agreement. In any event, if APL modifies the Services or these Terms and Conditions and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate, without penalty, the Service Order relating to the affected Service.

11.0 TERMINATION.

11.1 Either Party may terminate a Service Order: (a) upon thirty (30) days written notice to the other Party of the other Party's material breach of the Master Agreement or the applicable Service Order, provided that such material breach is not cured within such thirty (30) day period; (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange (each a "**Bankruptcy Event**"); or (c) immediately, in the event that, after entering into such Service Order, APL conducts a site survey and learns that the construction costs shall require a material increase in the Service Charges. In the event that Customer fails to comply with any applicable laws or regulations or the terms of the Master Agreement, upon thirty (30) days written notice APL may suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, APL may immediately terminate or suspend Customer's or its End User's use of the Service if such use is determined by APL, in its sole discretion, to be resulting in a material degradation of the APL network, until such time as such degradation has been remedied. In the event of a suspension of Service, APL may require the payment of reconnect or other charges before restarting the suspended Service.

11.2 Upon the termination or expiration of the Master Agreement (including all Service Orders): (a) APL's obligations under the Master Agreement shall cease; (b) Customer shall promptly pay all amounts due and owing to APL for Service delivered prior to the date of termination or expiration, and any deinstallation fees, if any; (c) Customer shall promptly cease all use of any software provided by APL under the Master Agreement, and shall return such software to APL; and (d) Customer shall return to APL or permit APL to remove, in APL's discretion, the APL Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall reimburse APL for the reasonable and documented costs of the repair or replacement, at APL's discretion, of any APL Equipment not returned in accordance with this Section 11.

11.3 In addition, notwithstanding anything to the contrary in the Master Agreement, in the event this Master Agreement or any Service Order hereunder terminates for any reason other than APL's material breach or a Bankruptcy Event impacting APL (as permitted in Sections 11.1(a) or (b)) or as permitted in Section 11.1(c) above, Customer shall, at APL's discretion: (a) promptly pay APL the full amount of the Service Charges that Customer would have been charged for the remainder of the Initial Term or the then-current renewal term; or (b) reimburse APL for all volume, term or other discounts and credits provided in anticipation of full performance of Customer's obligations and any unpaid portion of the installation fee set forth in the applicable Service Order(s).

11.4 The provisions of sections 7 - 9, 11 - 15, 17.1, 18, 19, 21 – 23, 25 and 26 and the Attachments shall survive the termination or expiration of the Master Agreement.

12.0 INDEMNIFICATION.

Customer shall defend, indemnify and hold harmless APL, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, losses, liabilities, damages, costs and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to: (a) the use of the Service, including but not limited to a breach of Section 5 of these Terms and Conditions; (b) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents; or (c) any fees, fines or penalties incurred by APL as a result of Customer's violation of the 10% Rule as set forth in Attachment B.

13.0 DISCLAIMER OF WARRANTY.

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. APL EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE, AND APL EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THE MASTER AGREEMENT, THE SERVICE, APL EQUIPMENT AND APL MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY APL, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. APL DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THE MASTER AGREEMENT, APL DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY APL SHALL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S

OWN DISCRETION AND RISK AND THAT CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USERS' USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S OR END USERS' SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT APL'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THE MASTER AGREEMENT AND APL DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THE MASTER AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

14.0 LIMITATION OF LIABILITY.

IN NO EVENT SHALL APL BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, AND SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT, REGARDLESS OF WHETHER APL HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APL'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY)) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL APL'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER UNDER THE MASTER AGREEMENT. APL SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES OR SERVICES. APL IS NOT RESPONSIBLE FOR, AND CUSTOMER HEREBY RELEASES APL FROM, ANY CLAIMS OR DAMAGES, AT LAW OR IN EQUITY, RESULTING FROM THE INSTALLATION OF EQUIPMENT, INCLUDING WITHOUT LIMITATION SUCH AS, ANTENNA, MAST AND/OR WIRING INCIDENT TO ANY INSTALLATION.

15.0 DISCLOSURE OF CUSTOMER INFORMATION.

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "**Telecommunications Act**"), the Federal Cable Communications Act (the "**Cable Act**"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws. The Subscriber Privacy Policy, which is incorporated into, and made a part of, the Master Agreement by this reference. The Subscriber Privacy Policy is available at www.autophone.net/legal. In addition to the foregoing, Customer hereby acknowledges and

agrees that APL may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers (“**ARIN**”) or any similar agency, or in accordance with APL’s Subscriber Privacy Policy. In addition, APL shall have the right (except where prohibited by law), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

16.0 FORCE MAJEURE.

Notwithstanding anything to the contrary in the Master Agreement, a Party shall have no liability to the other due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a “**Force Majeure Event**”). Notwithstanding anything to the contrary in the Master Agreement, Customer may terminate the affected Service Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents APL from delivering the Service under such Service Order(s).

17.0 REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.

17.1 In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in any government- or quasi-government-imposed fees or charges that increases the costs or other terms of APL’s delivery of Service to Customer, or, in the event of any increase or charges applicable to any facilities used by APL in providing the Service, Customer acknowledges and agrees that APL may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided APL notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer under the Master Agreement for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies APL at least fifteen (15) days in advance of Customer’s requested termination date. Further, in the event that APL is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and APL is required under applicable law to apply those rates to Customer’s purchase of Service under the Master Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern APL’s delivery of, and Customer’s use or consumption of the Service. In addition, if APL determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then APL may terminate the Master Agreement and any affected Service Orders without liability, by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

17.2 The Master Agreement, including the Attachments and the Service Order(s), are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which APL provides the Services. If any provision of the Master Agreement, the Attachments, or the Service Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of the Master Agreement, the Attachments, and/or the Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided under the Master Agreement, then such law or regulation shall take priority over the relevant provision of the Master Agreement, the

Attachments, and the Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in the Master Agreement, nothing contained in the Master Agreement shall constitute a waiver by APL of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

18.0 ENTIRE AGREEMENT

The Master Agreement, including without limitation all Attachments, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

19.0 ORDER OF PRECEDENCE

Each Service shall be provisioned pursuant to the terms and conditions of the Master Agreement. In the event that APL permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Service Agreement or Service Order are inconsistent with the terms of these Terms and Conditions, the terms of the Service Agreement then the terms of the Service Order shall control.

20.0 COMPLIANCE WITH LAWS

As between the Parties, APL shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to APL's operation and provision of the Services as contemplated in the Master Agreement, and Customer shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated in the Master Agreement. Unless specified otherwise in the Master Agreement, each Party shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified in the Master Agreement.

21.0 ARBITRATION

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT SHALL BE BROUGHT IN THE CITY OF LAREDO, TEXAS AND SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THE MASTER AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THE MASTER AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF

DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

22.0 GOVERNING LAW; JURISDICTION; CLAIMS

The interpretation, validity and enforcement of the Master Agreement, and all legal actions brought under or in connection with the subject matter of the Master Agreement, shall be governed by the law of the State of Texas (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). Any legal action brought under or in connection with the subject matter of the Master Agreement shall be brought only in Webb County, Texas or, if such court would not have jurisdiction over the matter, then only in An U.S. federal district court in Laredo, Texas. Each party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of the Master Agreement in any other court or forum. Each Party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of the Master Agreement in the Federal or state courts sitting in Laredo, Webb County, Texas, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum. Any claim that Customer wishes to assert under the Master Agreement must be initiated not later than one (1) year after the claim arose.

23.0 SEVERABILITY; WAIVER

In the event that any portion of the Master Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth in the Master Agreement and the remainder of the Master Agreement shall remain in full force and effect. No waiver of any breach or default under the Master Agreement shall be deemed to be a waiver of any preceding or subsequent breach or default. To be legally binding on APL, any waiver must be in writing.

24.0 ASSIGNMENT

Customer may not assign the Master Agreement without the prior written consent of APL, and any assignment in violation of this Section shall be null and void. APL may assign its rights and obligations under the Master Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment; the rights and obligations of APL in the Master Agreement may accrue to, or be fulfilled by, any affiliate, as well as by APL and/or its subcontractors.

25.0 PUBLICITY

Customer may not issue a press release, public announcement or other public statements regarding the Master Agreement without APL's prior written consent.

26.0 NO THIRD PARTY BENEFICIARIES; RELATIONSHIP OF THE PARTIES

There are no third party beneficiaries to the Master Agreement. The Parties to the Master Agreement are independent contractors.

27.0 AUTOPHONE.NET

Customer agrees that all of its use of the AUTOPHONE.NET website shall comply with the Term of Use available at www.autophone.net/legal, as the same may be updated by APL from time to time.

28.0 NOTICES

Any notice under the Master Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and APL at the respective addresses set forth above, or to such other address as is provided by one Party to the other in writing.

29.0 COUNTERPARTS

The Master Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Attachment A **Dedicated Internet Access** (collectively, "Data Services")

Dedicated Internet Access: APL shall provide Customer with a dedicated, scalable connection over a packet-based infrastructure with Internet service provider ("ISP") peering between Customer's data network identified on a Service Order and the APL facility identified on a Service Order.

Customer's use of the Data Services is subject to the following additional terms and conditions:

- APL's provision of any Data Service is subject to availability.
- APL shall allow Customer employees to use (however in no event shall APL be responsible for) a Virtual Private Network ("VPN") and to allow the VPN to pass through, of any Data Service, as applicable, provided that APL shall have the right to disconnect (or demand the immediate disconnection of) any such Data Service that degrades any service provided to other subscribers on the APL network.
- Customer shall not upload, post, transmit or otherwise make available on or via the Data Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. APL may remove content that in its judgment violates these standards.
- APL shall have the right, but not the obligation, to: (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by APL) as APL deems appropriate to efficiently manage its network. In the event that any APL audit reveals that Customer's usage of a Data Service exceeds

Customer's rights under the Master Agreement, Customer shall pay APL an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, APL shall have the right, but not the obligation, to: (i) review public content associated with the Data Services, including chat rooms, bulletin boards and forums, in order to determine compliance with the Master Agreement and any rules now or hereafter established by APL; and (ii) remove (or demand the removal of) any such content that APL determines to be unacceptable or to violate the terms of the Master Agreement or any bandwidth utilization limitations.

- Each tier or level of Data Services has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally shall not be sustained on a consistent basis. The throughput rate experienced by Customer at any time shall vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and APL network congestion, time of day and the accessed website servers, among other factors.

Attachment B

Business Class Data Transport Services: Ethernet Solutions

("Ethernet Service")

Ethernet: If Customer selects to receive the Ethernet Service, APL shall provide Customer with a dedicated circuit connection between Customer's data network and the APL facility identified on a Service Order. The Ethernet Services shall be limited to the capacity set forth on a Service Order.

Customer's use of Ethernet Service is subject to the following additional terms and conditions:

- APL's provision of Ethernet Services is subject to availability.
- APL shall have the right to disconnect (or demand the immediate disconnection of) any such Ethernet Service that degrades any service provided to other subscribers on the APL network.
- Customer shall not transmit or otherwise make available on or via the Ethernet Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law.
- APL shall have the right, but not the obligation, to (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by APL) as APL deems appropriate to efficiently manage its network. In the event that any APL audit reveals that

Customer's usage of the Ethernet Service exceeds Customer's rights under the Master Agreement, Customer shall pay APL an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

- Each tier or level of Ethernet Service has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally shall not be sustained on a consistent basis. The throughput rate experienced by Customer at any time shall vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and APL network congestion, time of day and the accessed servers, among other factors.
- Customer represents and warrants that Customer's use of Ethernet Services shall be such that the Ethernet Service shall be deemed jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed use "**10% Rule**" (47 C.F. R. 36.154, 4 FCC Red. 1352), and shall notify APL in the event of breach or threatened breach of the foregoing. If, as a result of Customer's use of Ethernet Services, the Ethernet Services are deemed not to be jurisdictionally interstate pursuant to the 10% Rule, then Customer shall be liable for any resulting fees, fines, penalties and costs incurred by APL. In addition, if APL determines that Customer's use of the Ethernet Services is likely to be deemed not to be jurisdictionally interstate, and therefore that APL's provision of the Ethernet Services is likely to put APL's franchises, licenses, permits or business at risk, or otherwise cause regulatory problems for APL, then APL may immediately suspend the provision of any or all Ethernet Service under any or all affected Service Orders until such time as either (a) Customer provides APL with satisfactory assurances that Customer's use of Ethernet Services shall be deemed to be jurisdictionally interstate or (b) APL is otherwise brought into full compliance with any applicable laws and regulations.

Attachment C
Managed IP VPN Services
("VPN Services")

VPN Services: VPN Services include either the IP VPN Service or the Managed IP VPN Service as described below. In order to be eligible to receive the VPN Services, Customer also must be a current Data Service customer. Subject to the foregoing, APL shall provide the following:

IP VPN Service: A virtual private network ("**VPN**") that connects Customer's site to other sites using IP Sec technology with encryption. The VPN is offered with APL-provided routers installed at Customer's premises.

Managed IP VPN Service: A "managed" VPN that connects Customer's site to other sites using IP Sec technology with encryption. The VPN is offered with APL-provided routers installed at Customer's premises.

Customer's use of the VPN Services is subject to the following additional terms and conditions:

• **Service Considerations**

(a) Customer shall take all reasonable precautions to prevent unauthorized access to the VPN Services.

(b) Neither APL nor any of its agents or third-party providers: (i) will be liable in any way for any content that is viewed, stored or transmitted via the VPN Services, including, but not limited to, any errors or omissions in any such content, or any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to, or delay, failure, interruption or corruption in the transmission of, such content; (ii) guarantee the accuracy of any information submitted by any user of the VPN Services, nor any identity information about any user of the VPN Services; or (iii) endorse or have any control over what Customer or other users post or submit via the VPN Services.

(c) Customer shall be solely responsible for obtaining, maintaining, and providing to APL all end user access rights, authorizations and permissions to establish each endpoint of the VPN Service, including without limitation all keys, IP addresses and any other information required to establish the VPN Services. Customer represents and warrants that it is authorized to provide to APL, and has lawfully and rightfully obtained, all information used or necessary to establish and maintain the VPN Services; in addition to Customer's foregoing representation and warranty, APL shall deem an established VPN as conclusive evidence that all parties connected to such VPN have authorized and consented to the VPN connection. Customer shall be solely responsible for all acts, omissions, and activities performed under, and the security and confidentiality of, such information, keys, and IP addresses used to establish the VPN Services. Customer agrees to defend, indemnify and hold harmless APL, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to end user access rights, authorizations and permissions, as well as all acts, omissions, and activities performed under, and the security and confidentiality of, such information, keys, and IP addresses used to establish the VPN Services.

(d) Although APL and its agents and third-party providers do not monitor the content transmitted via the VPN Services, APL or its agents or third-party providers may reject, refuse to post, or remove any profile, posting or other data, or to restrict, suspend, or terminate Customer's or any user's access to all or any part of the VPN Services if a profile, posting or data includes material that is unlawful, harassing, libelous, threatening or obscene or in violation of this Attachment, the Terms and Conditions, or a third party's intellectual property rights. APL and its agents and third-party providers also reserve the right not to take any action, but will provide prompt notice of the exercise of any of the above-referenced remedies.

(e) Customer will not use the VPN Services to send unsolicited mass mailings outside Customer's company. Customer further agrees not to use the VPN Services to communicate any message or material that is harassing, libelous, threatening, obscene, would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Although APL and its agents and third-party providers are not responsible for any such communications, they may delete any such communications of which they become aware, at any time without notice.

- **Support**

Customer shall contact Customer Support at the telephone number set forth on Customer's invoice if Customer becomes aware of misuse of the VPN Services by any person.

- **Equipment and Software Considerations; Disclaimer of Liability**

(a) ROUTERS AND OTHER HARDWARE AND ANY OTHER SOFTWARE OR PRODUCTS SOLD, LEASED OR OTHERWISE PROVIDED BY APL OR ITS AGENTS OR THIRD-PARTY PROVIDERS IN CONNECTION WITH THE VPN SERVICES, ARE PROVIDED ON AN "AS IS" BASIS. APL MAKES NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER WITH RESPECT TO ANY SUCH ITEMS SO PROVIDED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

(b) For the avoidance of doubt, the warranty disclaimers and limitations of liability set forth in Section 13 and Section 14 of the Terms and Conditions shall apply in favor of APL's third-party providers and partners and each of their affiliates, suppliers and resellers.

- **VPN Services for Healthcare Customers**

(a) APL is not a Business Associate. APL has no status under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology and Clinical Health Act of 2009 ("HITECH"). APL does not obtain any access to protected health information ("PHI") when providing the VPN Services, other than on an infrequent basis as necessary for the performance of the VPN Services, or as otherwise required by law.

Therefore, APL is not a "business associate" or otherwise subject to HIPAA or HITECH in connection with such VPN Services.

(b) CUSTOMER SHALL BE SOLELY LIABLE FOR, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS APL AND ITS SUPPLIERS FROM AND AGAINST, ANY CLAIMS, DAMAGES, LOSSES AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OR RECEIPT OF MEDICAL ADVICE, MEDICAL TREATMENT, AND ANY SIMILAR SERVICES USING THE VPN SERVICES, OR ANY FAILURE IN THE PROVISION OF SUCH SERVICES OR ANY FAILURE OF THE VPN SERVICES. CUSTOMER SHALL OBTAIN THE WRITTEN AGREEMENT OF ANY END USER OF THE VPN SERVICES (E.G., ANOTHER OFFICE, CUSTOMER, PATIENT, ETC.) FULLY DISCLAIMING ON BEHALF OF APL AND ITS SUPPLIERS ANY LIABILITY ARISING OUT OF OR RELATING TO SUCH MEDICAL ADVICE, MEDICAL TREATMENT, OR SIMILAR SERVICES, OR ANY FAILURE IN THE PROVISION OF SUCH SERVICES OR ANY FAILURE OF THE VPN SERVICES, PROTECTING THE RIGHTS OF APL AND ITS SUPPLIERS, AND DISCLAIMING WARRANTIES AND LIMITING LIABILITIES ON BEHALF OF APL AND ITS SUPPLIERS TO AT LEAST AS GREAT AN EXTENT AS THIS ATTACHMENT AND THE TERMS AND CONDITIONS. CUSTOMER WILL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY WAIVERS AND PATIENT CONSENTS.