

365 CLEC, LLC
Tariff NY PSC No. 1
Effective Date: Feb. 15, 2021

Leaf No. 1
Revision: 0
Superseding Revision:

365 CLEC, LLC

THIS TARIFF SUPERSEDES AND CANCELS IN ITS ENTIRETY
NY P.S.C. TARIFF NO.1
CURRENTLY FILED BY ATLANTIC METRO COMMUNICATINS II, INC.

REGULATIONS AND SCHEDULE OF
INTRASTATE CHARGES APPLYING TO COMMUNICATIONS SERVICES WITHIN THE
STATE OF NEW YORK

Applicable in
New York State

Issued by:
Steven Amelio, CFO
365 CLEC, LLC
200 Connecticut Ave, Suite 5A, Norwalk, CT 06854

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Contacting the Company with a Complaint

In the case of a dispute between the Customer and Company, please contact the Company by phone, email or mail.

1. By Phone: 1-561-869-3355
2. By eMail: samelio@365datacenters.com
3. By Mail: 365 CLEC, LLC
200 Connecticut Ave., Suite 5A
Norwalk, CT 06854

Contacting the Public Service Commission

In the case of a dispute between the Customer and the Company which cannot be resolved with mutual satisfaction, the Customer may file a complaint by contacting the New York State Department of Public Service by phone, online or by mail.

1. By Phone:

Helpline (for complaints/inquiries):
1-800-342-3377 for Continental United States or,
1-800-662-1220 for Hearing/Speech Impaired: TDD or,
518-472-8502 for fax
2. Online:

<http://www.dps.ny.gov/complaints.html> or,
3. By Mail:

NYS Department of Public Service
Office of Consumer Services
3 Empire State Plaza
Albany, NY 12223-1350

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Section 1 - GENERAL RULES AND REGULATIONS

EXPLANATION OF SYMBOLS

The following symbols shall be used in this tariff for the purpose indicated below:

C	To signify changed regulation.
D	To signify discontinued rate or regulation.
I	To signify increased rate.
M	To signify a move in the location of text.
N	To signify new rate or regulation.
R	To signify reduced rate.
T	To signify a change in text but no change in rate or regulation.

TARIFF FORMAT

- A. Leaf Numbering: Page or leaf numbers appear in the upper right corner of the page. Each leaf is numbered sequentially. However, a new leaf is occasionally added to the Tariff. When a new leaf is added between those already in effect, a decimal is added. For example, a new leaf added between page 15 and page 16 would be page 15.1.
- B. Leaf Revision Numbers: Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the New York Department of Public Services ("NYPSC"). For example, the 4th Revised Page 15 cancels the 3rd Revised Page 15.

PRELIMINARY STATEMENT

This Tariff sets forth the rates, rules and regulations of 365 CLEC, LLC ("Company") applicable to its provision of non-residential dedicated Private Line Service(s) within the State of New York to Customers throughout the State. This Tariff is also applicable to the Company's provision of non-residential collocation service at locations in the State of New York.

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The Company provides wholesale Private Line service via the means of leasing “dark” fiber optic cabling. The Company’s customers will lease point to point or ring fiber configurations and install and maintain their own electronics. The Company offers additional Private Line services, including but not limited to point to point or ring-based Ethernet service and wavelength division multiplexing service, IP transport and dedicated business internet access for non-residential customers, as well as collocation services in the State of New York.

The Company does not have an obligation to furnish facilities or services beyond the service offerings set forth in this Tariff. The Company will seek to secure and retain suitable facilities and rights for the construction and maintenance of the necessary fiber, Metro Ethernet, or wavelength service and backbone and co-location service. The Company will seek to secure and retain suitable space for its facilities on existing utility poles, or in conduits, rights of ways, and collocation points.

The Company reserves the right to: (i) provide Services requested by Customers which are not included in this Tariff, depending on equipment and facility availability and economic considerations, pricing for these Services will be on an Individual Case Basis (“ICB”) contract, (ii) refuse an application for service made by a present or former customer who is indebted to the Company for service previously rendered pursuant to this Tariff until the indebtedness is satisfied.

The Company shall not be deemed to have waived or impaired any right, power, requirement or option reserved by this Tariff (including, but not limited to, the right to demand exact compliance with every term and condition herein), by virtue of any custom or practice of the Company at variance with the terms hereof, or any failure, refusal or neglect of Company to exercise any right under this Tariff or to insist upon exact compliance with its terms, or any waiver, forbearance, delay, failure or omission by Company to exercise any right, power or option hereunder.

The rates, rules and regulations contained herein are subject to change pursuant to the rules and regulations of the NYPSC.

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APPLICATION OF TARIFF

This Tariff sets forth the service offerings, rates, terms, and conditions applicable to the furnishing of intrastate dedicated Private Line service(s) by the Company to non-residential Customers within the State of New York.

This Tariff applies only for the use of the Company's Service(s) for communications between points within the State of New York; this includes the use of the Company's network to complete an end-to-end intrastate communication. The Company will initially provide the services set forth in this Tariff and may offer additional services at a future time. The Company does not plan to offer switched voice Service(s).

In the event that terms and conditions of a Service Order shall be inconsistent with this Tariff, the terms and conditions of the individual case base ("ICB") arrangement set forth in the Service Order will control.

AVAILABILITY OF THE COMPANY'S TARIFF

A complete copy of the Company's current Tariff is maintained at the Company's business offices located at:

365 CLEC, LLC, 200 Connecticut Ave., Ste 5A, Norwalk, CT 06854. The Tariff is also available for public inspection at the NYPSC.

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DEFINITIONS

Authorized User: Any entity or individual authorized by the Customer to use the Service.

Customer: A person, firm or corporation authorized to utilize the Company's Services provided under this Tariff.

Customer Fibers: The specific fiber optic strands owned and designated by the Company for use by the Customer.

Dark Fiber: End-to-end optical fiber strand(s) made available to Customer for the purpose of attaching optical equipment to light the fiber and provide telecommunications over leased fiber strand(s).

Demarcation Point: Denotes the point of interconnection between the Company's Facilities and the wiring at the Customer's premises.

Facilities: Equipment, materials or other items used or utilized as part of or in connection with the Company's communications network.

Individual Case Basis ("ICB"): A Service arrangement in which regulations, rates and charges are developed based on the specific circumstances of the Customer.

LEC: An individual, firm or corporation engaged in providing communications within an exchange.

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Party: Either the Company or a Customer of the Company or, if appropriate in the context, both the Company and its Customers.

Point of presence or POP: The physical location associated with Company's communication system.

Service Commencement Date: The first day following the date on which the Company notified the Customer that the requested Service(s) or facilities is or are available for use, unless extended by the Customer's refusal to accept a Service that does not conform to standards set forth in the Service Order or this Tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

Service Order: The written agreement for the provision of Service(s) executed by the Customer and the Company in the format devised by the Company. The signing of the Service Order by the Customer and acceptance by the Company initiates the respective obligations of the Parties as set forth therein and pursuant to this Tariff, but the duration of the Service(s) is calculated from the Service Commencement Date. Service Orders may be a stand-alone document or a Service Order may be attached to various forms of Customer contract including but not limited to a Lease or an Indefeasible Right of Use ("IRU").

Services: The service(s) provided by the Company in accordance with a fully executed Service Order with a Customer.

Targeted Completion Date: The date set forth in a Service Order as the date anticipated by Company for completion of necessary work to enable Company to begin providing Service(s) to Customer.

Code: United States Internal Revenue Code of 1986, as amended from-time to time.

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Lease Term: The total period of time expressed in months under a Service Order, commencing on the date the Customer has use of the Service or Customer Fibers, and ending 11:59 p.m. (Eastern Standard Time) on the Service Order expiration date, unless the Service Order is earlier terminated in accordance with its terms or the applicable terms of this Tariff.

Lit Fiber Services: End-to-end fiber network services including fiber optic cable and the optical equipment to light the fiber, when the optical equipment is the single basic terminating component.

Rent: The amount of rent payable pursuant to a Service Order.

Rental Period: Each monthly period during the Lease Term, with the first Rental Period commencing on the date the Customer has use of the Service or Customer Fibers.

Treasury Regulations: The Treasury Regulations, as amended from time to time, promulgated under the United States Internal Revenue Code of 1986 by the United States Treasury Department.

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REGULATIONS

1.0 Dedicated Transport Service

1.1 General

A. Standard Pricing Plan Description

1. Recurring Charges

Recurring charges for Dedicated Transport Service are priced on an ICB arrangement and reflect the unique service needs of the Customer.

Recurring charges will vary based on the service location, capacity of service, distance of service and the Term selected.

Recurring charges are applied on a circuit basis and reflect complete end-to-end charges.

- C. All Services offered under this Tariff may be provided using several methods including but not limited to new construction or the use of an existing network, whether dependent or independent of the Incumbent Local Exchange Carrier and the assigned rights of way. This includes the leasing and/or IRUing of fiber, telecommunications services or network components and similar relationships with any and all other approved local carriers.

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- D. Orders; Changes in Orders; Order Cancellation Policy.
The Company will provide a Service Order for the placement and acceptance of Customer orders for Service. If the Customer changes the order, a change order charge will apply, based on the scope of the change. If the Customer cancels the order, the Customer must reimburse the Company for the amounts due for the entire Term of the Service Order. Additional credits, charges and/or costs may apply as set forth in an ICB arrangement included in or incorporated by the Service Order.

1.2. Term

Recurring charges for Service(s) purchased for a Term will be fixed for the life of the Term.

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2.0 Dark Fiber Service

2.1 Service Description – Dark Fiber Service

- A. Dark Fiber Service is a Private Line Service which is Customer monitored and provided on a multi-point basis between the following locations and can be provided with segments independent of the Incumbent Local Exchange Carrier's Local Network:
 - 1. Customer designated premises; and
 - 2. a Company designated POP and a Customer designated POP.
- B. The Company shall lease to the Customer and grant exclusive use of the Customer Fibers to Customer for the Service Order Term as more particularly described in the applicable Service Order, following the delivery and Acceptance of the Customer Fibers.

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- C. The delivery point of the fiber will survive the Term of the Service Order and is defined as the end of the fiber tested and delivered to the Customer at the designated point described in the Service Order.
- D. Warranties and Service Credits are maintained in Section 17 with the understanding that Customer will insure delivered fibers are protected and modifications to the fiber(s) that have been tested and accepted will result in default of any and all warranties and Service Credits.
- E. Dark Fiber is accepted by the Customer as a Customer Monitored service and is managed under Section 17 for the reporting of Service Outages and reimbursed according to Section 17 for Service Credits.

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2.2 Dark Fiber Service - Rates

Rates for Monthly Recurring Charges and Non-Recurring Charges (“MRC” and “NRC,” respectively) for all Dark Fiber Services, including Direct Local Transport Service, Interoffice Local Transport Service and/or Dedicated Transport Service, where provided in Dark Fiber are as follows:

Dark Fiber	MRC	NRC
Point to Point - Per Pair	\$2,500.00	\$2,500.00
RING	ICB	ICB

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3.0 Direct and Interoffice Local Transport Services

3.1 Direct Local Transport Service

- A. Direct Local Transport Service is a Private Line Service provided on a two-point basis between the following locations:
 - 1. a Customer designated premises; and
 - 2. a Company designated POP and a Customer designated POP.
- B. Direct Local Transport Service is provided only where facilities are available. If equipment, new facilities or changes to existing facilities are required for the provision of this service, a special construction charge will apply in addition to the rates for Direct Local Transport Service.
- C. Direct Local Transport Service is furnished on a full-time basis, 24 hours a day, seven days a week.
- D. Direct Local Transport Service is available in Dark Fiber.

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3.2 Interoffice Local Transport Service

- A. Interoffice Local Transport Service is a Private Line Service provided on a multi-point basis under conditions including but not limited to the following:
1. Provided to locations and facilities designated by the Customer in the Service Order as Customer secured facilities.
 2. Interoffice Local Transport Service is provided only where facilities are available. If new facilities or changes to existing facilities are required for the provision of this service, a special construction charge will apply in addition to the rates for Interoffice Local Transport Service.
 3. Interoffice Local Transport Service is furnished on a full-time basis, 24 hours a day, seven days a week.
 4. Interoffice Local Transport Service is available in Dark Fiber.

3.3 Interoffice Point-to-Point Local Transport Service

- A. Interoffice Point-to-Point Local Transport Service is a Private Line Service provided on a point-to-point basis only between the following locations within an Incumbent Local Exchange Carrier's Local Service Area.

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1. Customer designated premises via a Company designated point of presence.
 2. A Customer designated premises and a Company designated point of presence.
 3. Company designated points of presence.
 4. Company designated points of presence and a Customer designated serving wire center.
- B. Interoffice Point-to-Point Local Transport Service is provided only where facilities are available. If new facilities or changes to existing facilities are required for the provision of this service, a special construction charge will apply in addition to the rates for Interoffice Point-to-Point Local Transport Service.
- C. Interoffice Point-to-Point Local Transport Service is furnished on a full-time basis, 24 hours a day, seven days a week.
- D. Interoffice Point-to-Point Local Transport Service is available in Dark Fiber.

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4.0 Ethernet Transport Service

- 4.1 Ethernet is a standard communications protocol that controls the fashion in which information is transported between two points, multiple points or in a Metro Ethernet hub configuration. The Company's Ethernet transport services provided within the State of New York range from point to point, multipoint and include Metro Ethernet hub service.
- 4.2 Ethernet transport service is provided on an individual case basis ("ICB").
- A. Non-recurring charges based on unique service requirements of the customer, including equipment, hardware, construction and provisioning requirements
- B. Recurring charges for:
- Services requiring additional construction;
 - Services requiring the Company to obtain all or a portion of the service from an underlying third-party service provider;
 - Services requiring unique network designs and/or provisioning to address specific customer needs;
 - Services requiring circuit protection and/or route diversity;

Non-Recurring Charges ("NRC") for Ethernet Service

ICB

Monthly Recurring Charges ("MRC") for Ethernet Service

ICB

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5.0 TDM/SONET Service

5.1 Time Division Multiplexing ("TDM") Service consist of a private line point to point transport service between terminal locations, by virtue of one-way and/or two-way information transmission between points within the State of New York. TDM Service is offered as follows:

T1 or DS-1
DS-3
OC-3
OC-12
OC-48
OC-192

5.2 TDM Service is provided on an individual case basis ("ICB").

- A. Non-recurring charges based on unique service requirements of the Customer, including equipment, hardware, construction and provisioning requirements
- B. Recurring charges for:
- Services requiring additional construction;
 - Services requiring the Company to obtain all or a portion of the service from an underlying third-party service provider;
 - Services requiring unique network designs and/or provisioning to address specific customer needs;
 - Services requiring circuit protection and/or route diversity;

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Non-Recurring Charges ("NRC") for TDM Service

ICB

Monthly Recurring Charges ("MRC") for TDM Service

ICB

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6.0 Wavelength Service

6.1 General

Wavelength-division multiplexing (“WDM”) is a private line transport service that multiplexes optical signals on a single fiber optical cable by using different wavelengths (light frequencies) to carry information between two points. WDM allows for the multiplication of transport capacity over one strand of fiber. WDM services include coarse wavelength division multiplexing (“CWDM”) and dense wavelength division multiplexing (“DWDM”). WDM service is available in the following speeds: 1 Gbps, 2.5 Gbps, 10 Gbps, 40 Gbps and 100 Gbps.

6.2 The following WDM pricing is made on an individual case basis (“ICB”):

- A. Non-recurring charges based on unique service requirements of the customer, including equipment, hardware, construction and provisioning requirements
- B. Recurring charges for:
 - Services requiring additional construction;
 - Services requiring the Company to obtain all or a portion of the service from an underlying third-party service provider;
 - Services requiring unique network designs and/or provisioning to address specific customer needs;
 - Services requiring circuit protection and/or route diversity;

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Monthly Recurring and Non-Recurring Charges (“MRC” and
“NRC,” respectively) for WDM Service

Wavelength		
Un-Protected	MRC	NRC
1 Gbps	\$1,500.00	\$1,000.00
2.5 Gbps	\$1,500.00	\$1,000.00
10 Gbps	\$1,750.00	\$1,000.00
40 Gbps	\$3,000.00	\$5,000.00
100 Gbps	\$7,000.00	\$15,000.00

Wavelength		
Protected	MRC	NRC
1 Gbps	\$2,000.00	\$2,000.00
2.5 Gbps	\$2,000.00	\$2,000.00
10 Gbps	\$2,500.00	\$2,000.00
40 Gbps	\$4,500.00	\$7,500.00
100 Gbps	\$14,000.00	\$30,000.00

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7.0 Collocation Service

7.1 General

Collocation Service allows a Customer to place Customer's telecommunications equipment in designated locations on the Company's premises, and in Company's collocation spaces in LEC and other offices, conditions permitting. Collocation Service is subject to the availability of appropriately sized and located space at such locations. The prices, terms and conditions of collocation shall be negotiated between the Company and Customer on a site-specific basis.

Consistent with the provisions of the Company's interconnection Tariffs with LECs and/or LEC's collocation tariffs, Customer may also place its equipment in the Company's collocation spaces and/or collocation arrangements provided by other third parties. Such collocation shall be subject to space availability, and to all the constraints and requirements imposed by the owner of the space at the location where the collocation occurs.

7.2 Rates, Terms and Conditions

Rates, Terms and Conditions for collocation service shall be provided pursuant to an ICB.

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8.0 Custom Network Engineering Designs and Special Construction.

8.1 General

Upon request by Customer and by determination that charges should apply by Company, Custom Network Engineering Designs, Construction or arrangement of facilities may be provided on a reasonable efforts basis. Custom Network Engineering Designs and Special Construction are provided:

- A. where facilities are not presently available and an extension of service is required;
 - 1. An extension of service means any construction or installation of plant and/or facilities to convey service from existing and/or new plant or facilities to a Customer. Plant and/or facilities consists of equipment, including wires, cable and poles.
- B. where type of service is of a type other than that which the Company would normally utilize in the furnishing of its service;
- C. where the service is requested over a route other than that which the Company would normally utilize in the furnishing of its Service(s);
- D. where the service is in a quantity greater than that which the Company would normally provide;

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(Custom Network Engineering Designs and Special Construction - Continued)

- E. where service is requested on an expedited basis;
- F. where service is requested on a temporary basis until permanent facilities are available;
- G. where the service requested involves abnormal costs; or
- H. where service is requested in advance of the Company's normal construction schedule.

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8.2 Rates, Terms and Conditions

A. Individual Case Basis (“ICB”) Arrangements

Rates for ICB Arrangement will be developed on a case-by case basis in response to a bona fide request from a Customer or prospective customer for service which vary from tariffed arrangements. ICB rates will be offered to Customers in writing and will be made available to similarly situated Customers. Once ICB Rates are established with an individual Customer, the Company and the Customer will enter into a written contract which will supersede the rates, charges and regulations set forth in this Tariff. The Company will maintain records of its ICB arrangements for Commission review as conditions or circumstances may require. ICB Rates may vary depending on a number of factors which may include the following: (i) length of circuits, (ii) volume and/or term commitments, (iii) varying equipment types and configurations, (iv) special construction, (v) types of Services, (vi) cost differences, (labor, taxes, fees paid to LEC for interconnection, co-location, etc.), (vii) other miscellaneous fees and charges (e.g. rights-of-way charges, franchise fees), (viii) market conditions and/or competitive considerations, (ix) availability of existing Facilities.

B. Rates, Terms and Conditions for custom network engineering designs and new construction shall be provided pursuant to an ICB as set forth in a Service Order. Rates and charges for special construction will be based on the costs incurred by the Company and may include (1) nonrecurring type charges, (2) recurring type charges, (3) termination liabilities, or (4) combinations thereof. The costs referred to in the preceding sentence may include one or more of the following items to the extent they are applicable:

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1. Costs to install the Facilities to be provided including estimated costs for the re-arrangement of existing facilities. These costs include: (i) equipment and materials provided or used; (ii) engineering, labor and supervision, (iii) transportation, (iv) rights-of-way and any required easements, (v) cost of maintenance, (vi) depreciation on the estimated cost installed of any Facilities provided, based upon the anticipated useful service life of the Facilities with an appropriate allowance for the estimated net salvage value, (vii) administration, taxes, and uncollectable revenue on the basis of a reasonable average cost for these items, (viii) Service Order preparation, processing and related fees, (ix) Tariff preparation, processing and related fees, (x) an amount for return and contingencies, (xi) any other identifiable costs related to the Facilities provided.

- C. The Lease Term shall be pursuant to an ICB as set forth in a Service Order.

9.0 Time and Materials Service

9.1 General

This service provides for the Time and Materials charges associated with the installation, maintenance, testing and repair of equipment and facilities not provided by the Company or deemed to be non-standard or non-routine.

The Company shall have no responsibility for maintenance and repair of any kind with respect to equipment and facilities not provided by the Company. The Company will charge the Customer time and materials plus charges described in Section 9.2 for any maintenance visits with respect to service problems that are determined to arise from equipment or facilities not provided by the Company.

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When a Customer submits a trouble report to the Company for clearance and no trouble is found in the Company's facilities, the Customer shall be responsible for payment of Time and Materials charges as listed in Section 9.2 for the period of time from when the Company personnel were dispatched to the Customer's premises to when the work is completed. Failure of Company personnel to find trouble in Company facilities will result in no charge if the trouble is actually in those facilities, but not discovered at the time. If the Customer, after being informed that the trouble is not in Company facilities, wishes to have the maintenance work performed by Company, and the Company agrees to perform the work, the Time and Materials charges listed herein shall apply.

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases Time and Materials charges will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

9.2 Time and Material Charges

Charges for Time and Materials Service shall be as set forth below.

Time:

For services performed during normal working hours (8:00 a.m. to 4:00 p.m. M-F): \$175.00 per hour per technician, with a four hour minimum charge.

For services performed at other times: \$350.00 per hour per technician.

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Materials:

Charges for materials used in connection with Time and Materials Services shall be based on Company's costs plus an administrative overhead of 15%.

10.0 Special Conditions Applicable to All Service(s)

10.1 Application of Rates

The regulations set forth in this Section 10 govern the application of rates contained in Sections 1.0 through 9.0 of this Tariff.

A. Rates Based on Distance

Where the charges for service are specified based upon distance, the following rule applies:

Distance between two points is measured as the fiber miles between the origination point and the termination point of the circuit.

B. Other Rates

Other rates shall be in accordance with ICB as set forth in a Service Order.

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10.2 Cancellation of Order

- A. A Customer may cancel an order within 24 hours of executing such a Service Order via email to the Company's e-mail address for cancellation notices:

Email: billing@365datacenters.com

Upon receipt by the Company of such cancellation, the order will be canceled and applicable charges will apply. If an order is canceled according to this Section 10.2(A), the Customer will be billed a flat cancellation fee of \$5,000 or the actual incurred costs by the Company, whichever is greater.

- B. Additional provisions and/or charges relating to cancellation of orders may apply and are set forth in Section 23 if cancellation notice is provided after the 24 hour cancellation period.

11.0 Contracts

Given the unique nature of Customer needs and Company offerings to meet those needs, the Company and Customers generally agree to ICB service offerings. The Company and Customers can enter into contracts for all Service(s) offered by the Company. The terms and conditions of each contract offering are subject to this Tariff, except that bills shall be rendered annually, monthly, bi-monthly, or quarterly and shall be pro-rated based upon the number of days in the billing period. The terms and conditions of each contract offering may differ from those of this Tariff. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances.

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12.0 Establishment and Re-establishment of Credit

The Company may require Customers or potential Customers to provide information pertaining to their financial ability to pay for service. In order to establish credit, the Company may require an applicant or Customer to demonstrate good paying habits by showing that the applicant or Customer:

Was a customer of a utility for at least twelve (12) months within the preceding two (2) years;

Does not currently owe any outstanding bills for utility service to a utility doing business in New York;

Did not have service disconnected for nonpayment of a utility bill during the last twelve (12) months that service was provided; and

Did not fail, on more than two occasions during the last twelve (12) months that service was provided, to pay a utility bill when it became due.

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13.0 Advance Payments, Deposits, and Guarantors

13.1 Advance Payments

At the time an application for service is made through a Service Order, an applicant may be required to pay an amount equal to one month's service charges and/or the service connection and/or equipment charges which may be applicable as well as any nonrecurring charges for any required special construction. The amount of the first month's service is accepted as a non-recurring installation cost and credited to the Customer's account on the first bill rendered.

13.2 Deposits

- A. Requirement: The Company may, at its sole discretion, require an applicant or an existing Customer to post a guarantee for the payment of charges as a condition to receiving service or additional Service(s). The Company reserves the right to review an applicant's or a Customer's credit history at any time to determine if a deposit is required.
- B. Nondiscrimination: Deposits will not be required by the Company based on race, sex, creed, national origin, marital status, age, number of dependents, condition of physical handicap, source of income, or geographical area of business.

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- C. Amount: The amount of a deposit shall be reasonably related to the probable charge for service during a billing period based upon the average monthly charge over an estimated twelve month service period increased by one month's average bill. If the amount of the deposit is insufficient, the Company may require an additional deposit.
- D. Interest: Deposits will accrue simple interest at a rate determined by the NYPSC. Interest payments on deposits shall be made at least once during each twelve-month period in which a deposit is held and shall take the form of credits on bills toward the service rendered or to be rendered.
- E. Refund upon Discontinuance: Upon discontinuance or termination of service, the Company will credit the deposit to the charges stated on the final bill. The balance, if any, will be returned to the Customer within 30 days of rendition of the final bill, and will not include any interest on the deposit.
- F. Refund after Satisfactory Payment: After prompt and timely payment of all charges for 12 consecutive billing periods, within 30 days, the Company will refund the deposit to the Customer by crediting the deposit to the Customer's bill or by issuing a separate check. The refund will not include interest. Payment of a charge is satisfactory if received prior to the date that the charge becomes delinquent provided that it is not returned for insufficient funds or closed account.

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G. Conditions under which a deposit shall not be required:

1. If the applicant provides a satisfactory credit history acceptable to the Company, a deposit shall not be required. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, 'can-be-reached' number, name of employer, employer's address, Customer's driver's license number or other acceptable personal identification, billing name, and location of current and previous Service. Credit cannot be denied for failure to provide a social security number.
2. A co-signer or guarantor may be used, provided the co-signer or guarantor has acceptable credit history with the Company or another acceptable local exchange carrier.
3. The Company cannot refuse a deposit to establish credit for service. However, it may request that the deposit be in cash or other acceptable form of payment (e.g., cashier's check, money order, bond, letter of credit, etc.).

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14.0 Notices and Communications

14.1 Notice by the Company:

Unless otherwise provided, any notice by the Company to the Customer or to the Customer's authorized representative will be given in writing, by facsimile or electronic mail or by written notice mailed or delivered via overnight courier to the Customer's or the authorized representative's last known address. The Company may provide verbal notice to a Customer or to an authorized representative thereof only in emergencies, where a delay may result in impaired service or a hazard to a Customer. All notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following the placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first. Notices delivered by facsimile, shall be deemed to have been delivered, upon receipt of confirmation of transmission.

14.2 Notice by the Company Regarding Change in Ownership:

The Company will notify Customer in writing of a change in ownership or identity of the Company on the Customer's next monthly billing cycle.

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14.3 Notice by Customer:

Unless otherwise provided in this Tariff or the rules or regulations of the NYPSC, any notice by the Customer or its authorized representative may be given verbally to the Company at the Company's business office or by written notice mailed to the Company's business office.

- 14.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the notice requirement set forth herein.

15.0 Rendering and Payment of Bills

- 15.1 Charges for Service(s) shall be set forth on the applicable Service Order.

- 15.2 Except as otherwise provided in the Service Order, recurring charges will be invoiced on a monthly basis in advance and non-recurring charges will be due upon acceptance of the Service Order. If the Service Commencement Date (as defined herein) for any Service falls on a date other than the first day of any month, the first invoice will consist of: (a) any non-recurring charges, (b) the pro-rata portion of the applicable recurring monthly charge covering the period from the Service Commencement Date to the first day of the following month, and (c) the recurring monthly charge for the following month.

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- 15.3 In the event an amended Service Order is executed by the Parties that affects monthly recurring charges, the new monthly recurring charges will become effective on the first date of the next billing cycle after full acceptance and execution of the amended Service Order.
- 15.4 Upon request, Customer agrees to provide credit references or other information reasonably required by the Company to determine credit worthiness and the ability to make the requisite payments when due in connection with the Service(s) provided under this Tariff. The Company reserves the right to impose a security deposit, where appropriate, in accordance with Section 13. In the event of a material adverse change in Customer's credit-worthiness, the Company shall have the right to demand a security deposit or additional security, in accordance with Section 13. Failure to provide such security deposit or additional security by the date set forth in a demand notice for such security shall be deemed an Event of Default under Section 23.

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- 15.5 Invoiced amounts are payable according the Service Order and are subject to a late payment charge of 1.5% per month or the highest rate legally permissible, whichever is less, calculated from the Due Date thereof, in addition to any other remedies Company may have available under this Tariff or by law or equity. Notwithstanding anything in this Tariff to the contrary, no payment due under this Tariff or in accordance with a Service Order shall be subject to reduction, set-off or adjustment of any nature by the Customer, except as is specifically provided in this Tariff or in the Service Order. In no event shall the malfunction or non-operation of Customer's interconnecting equipment (including local access when such Party is responsible therefore) relieve Customer of its obligation to pay for Service(s), unless such malfunction or non-operation is the direct result of Company's gross negligence or willful misconduct.

16.0 Billing Disputes

- 16.1 All disputes or requests for billing adjustments must be submitted in writing with reasonable detail to Company within thirty (30) days after the usage period for the applicable Service(s), or be deemed waived. If waived, Customer agrees to pay the disputed charges along with any late payment charges that may have accrued. The Company agrees to use reasonable best efforts to resolve the dispute within thirty (30) days of receipt of proper documentation, which at a minimum shall contain a detailed explanation as to the dispute or request for billing adjustment. Any amounts that are determined to be in error or not in compliance with this Tariff will be adjusted on the next month's invoice. Any disputed amounts that reasonably, in good faith and supported by reasonable documentation, are deemed to be correct as billed and in compliance with this Tariff, will be due and payable (if not previously paid), upon notification and demand by Company, along with late payment charges pursuant to Section 15.5. Disputes will not be cause for Customer to delay payment of any undisputed balance.

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- 16.2 The rates and charges set forth in this Tariff do not include any federal, state or local sales, use, value-added, or utility taxes, or third-party surcharges, however designated, which may be levied on the Service(s) provided hereunder. Any applicable federal, state, or local taxes, and all use, sales, value-added, commercial, gross receipts, privilege or other similar taxes or license fees, or third-party charges or surcharges, whether charged to or against Company or Customer, with respect to the Service(s) provided (except taxes on Company's income or gains), as well as any other imposition by any governmental authority that has the effect of increasing the cost of providing the Service(s), will be payable by Customer in addition to the other charges set forth in this Tariff.
- 16.3 The Company will make no refund of overpayments by a Customer unless the claim for such overpayment together with proper evidence is submitted within six (6) months from the date of alleged overpayment.
- 17.0 Service Level Agreement, Warranties, Service Credits and Restoration of Service/Limitations of Liability
- 17.1 Service Level Agreement ("SLA")
- "Service Outage" in the context of the services being proposed, is defined to include:
- i) Complete disruption of service.
 - ii) Conditions under which dropped packets exceed 20%
 - iii) Failure to meet the Service Level Objectives (as set forth in Section 17.2).

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17.2 Service Level Objectives (“SLO”)

A. Availability Calculation

Availability is based on 24x7 Agreed Service Time (AST) is calculated as follows:

Availability

$$\text{Availability \%} = \frac{\text{AST} - \text{Downtime}}{\text{AST}} \times 100$$

B. Network Availability

1. Core Backbone & Upstream IP Connectivity - 100%
2. Unprotected Local Loops - 99.995%
3. Protected Local Loops - 100%

C. Network Latency

The Company guarantees that average transmission latency, calculated over any five (5) minute period, between two (2) endpoints in the State of New York on the Company’s IP Network, will be less than Round Trip Time (RTT) performance:

1. COS Class 6 - 90ms
2. COS Class 5 - 100ms
3. COS Class 4 - 100ms
4. COS Class 0 - 120ms

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D. Regional Network Latency

The Company guarantees that average transmission latency, calculated over any five (5) minute period, between two (2) endpoints within the Region on the Company's IP Network, will be less than Round Trip Time (RTT) performance:

1. COS for all Classes - 20ms

Regions are defined as a 200 mile radius around the following cities:

- i. New York, NY

E. Frame Delivery Rate

The Company guarantees that the average packet loss, calculated over any five (5) minute period, between two (2) endpoints on the Company's IP Network, will be less than 0.1%.

F. Frame Delay Variation (Jitter)

The Company guarantees that the average network jitter, calculated over any five (5) minute period, between two (2) endpoints on the Company's IP Network, will not exceed 10ms more than 0.1% of the time.

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G. Qualification of SLO

SLO's outlined in sections C - F, above, shall not apply in instances of oversubscribed customer's service capacity at any provided network connection.

H. Mean Time to Respond

1. Service Outage \leq 15 Minutes
2. Non-Service Affecting Issues \leq 1 Hour

I. Mean Time to Repair

MTTR interval is determined once the fault is verified and varies by service access type.

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1. Fiber-optic services have a MTTR of 5 hours for Service Outage.
2. Ethernet over Copper services have a MTTR of 6 hours for Service Outage.
3. Ethernet over DS1 services have a MTTR of 4 hours for Service Outage.
4. Ethernet over Microwave services have a MTTR of 4 hours for Service Outage.
5. Ethernet over Coax services have a MTTR of 24 hours for Service Outage.

17.3. Service Credit Structure (for all Service Level Objectives)

1. In the event that the Company fails to provide the levels of service set forth in Section 17.2, Customer will be eligible for a Service Credit of 5% of the monthly fees per 30 minutes of the affected services up to 100% of the monthly fees.

17.4. Service Credit Request Process

In order to initiate a claim for a Service Credit, Customer must contact the Company's customer support department within seven (7) business days after the end of the month for which credit is requested. The Service Credit request must include the following information (a) customer name and contact information (b) the date and time that the problem started and was resolved (c) a description of the characteristics of the claimed Service Outage or failed metric (d) ticket numbers or other documentation demonstrating that the customer notified Company of the claimed actionable issue Company will notify the customer via e-mail of the resolution of the request. If Company rejects the request for a Service Credit, a reason for the rejection will be detailed. If the request is approved, Company will issue all Service Credits to the Customer's account that will appear on the next invoice issued.

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Multiple Service Credits cannot be overlapped on the same service (i.e. Failure to meet multiple metrics during the same period of time cannot be stacked up). In no circumstances will the total monthly credit exceed the total monthly charge actually paid by the customer for service during the month in question. Service Credits will be credited against a Customer's account and may not be received in the form of a refund, except that if any Service Credits remain unused at the termination or expiration of the Agreement, Company will provide such credits to Customer in the form of a cash payment.

17.5 Limitations on Service Credits

Customer shall not receive any Service Credits in connection with any failure caused by:

- A. Service Outages due to circumstances or causes beyond the Company's reasonable control, including without limitation, acts of any governmental body, war, insurrection, sabotage, acts or omissions of a third party not engaged or authorized by the Company, embargo, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications outside of the Company's control, failure or delay of third party services or software; or Service Outages arising out of a Force Majeure Event;

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- B. Service Outages due to noncompliance with the provisions of this Tariff by the Customer, an Authorized User, joint user, and other common carrier providing service connected to the service of the Company;
- C. Service Outages due to the negligence of any person other than the Company, including but not limited to the Customer and other common carriers connected to the Company's facilities;
- D. Failure of customer provided access circuits to the Company's IP Network, unless such failure is caused by the Company;
- E. Service Outages due to the failure or malfunction of non-Company equipment, including but limited to failure of electric power;
- F. Service Outages during a period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- G. Service Outages during a period in which the Customer continues to use the service on an impaired basis;
- H. Service Outages that occur or continue due to the Customer's failure to authorize replacement of any element of special construction;
- I. Usage patterns or traffic that exceeds the reasonable performance parameters of Customers specific installation;

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- J. Downtime caused by scheduled maintenance, when at least 5 days prior notice is provided, is not eligible for Service Credit;
- K. Service Outages during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- L. Service Outages attributable to the installation of a new circuit;
- M. Downtime caused by emergency maintenance, when at least 48 hours' notice is provided, is eligible for 50% of normally calculated Service Credits;

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- N. DNS issues outside the direct control of the Company;
- O. False SLA breaches reported as a result of outages or errors of any Company measurement system;
- P. Customer's acts (or act of others engaged or authorized by Customer), including without limitation, any negligence, willful misconduct, or use of the Company's IP Network or Company services in breach of the Company's Master Services Agreement or Acceptable Use Policy;
- Q. Service Outages or downtime associated with Customers' designated non-production (staging, testing or development) infrastructure that is unrelated to hardware or network failures;
- R. Service Outages during a period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- S. Service Outages that are not reported to the Company within 30 days of the date that service was affected; or requests for Service Credits that are not made within 7 business days after the end of the month for which credit is requested;
- T. Service Credit is not available to Customer's deemed in "Poor Standing," as defined in the Company's Master Services Agreement;

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- U. Services deployed in a redundant manner that continue to perform without error or end user impact, are not eligible for Service Credit;
- V. Follow up instances of a reported issue the is being addressed by the Company through an open repair ticket.

17.5.1 Reduced Service Credits

Downtime caused by emergency maintenance, when at least 48 hours' notice is provided, is eligible for 50% of normally calculated Service Credits.

17.6. Chronic Outages

The Company defines a Chronic Outage to be a Service Outage or service performance degradation below SLO of the same nature that occurs more than 3 times in any 30 day period.

- A. Follow up instances of a reported issue that is being addressed by the Company through an open repair ticket are considered part of one instance.

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17.7. Customer's Rights for Chronic Outages

In the event that a Chronic Outage issues are reported by the Customer and verified by the Company, Customer will be entitled to:

- A. Suspend payment due to Service Outages for only the site with Chronic Outage problems;
- B. Terminate services pre-term without penalty at only the site with Chronic Outage problems as defined in Customer's Master Services Agreement with the Company;

17.8 Reporting

A. Network Performance Reporting

The Company's customers are provided access to real-time bandwidth monitoring & in-depth service monitoring tools. SLA reports can also be scheduled to be sent via email on a predetermined schedule that is agreeable with the customer.

B. SLA Measurement Tools

The Company utilizes internal monitoring and management tools to measure its network performance. In general, these metrics will be the basis for meeting network performance SLA's.

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C. Network Issues Reporting

1. Customer may report problems to the Company's Network Operations Center via the following methods: E-mail, Phone
 - i. Non Critical Support – service@365datacenters.com
 - ii. Critical Support – 866-365-6246 Option 1
 - iii. Phone – 561-869-6100 (general requests)
 - iv. Customers are provided a support escalation list
2. If the Company's Network Operations Center determines there is a network fault or other incident requiring the customer to be notified it is done via a support ticket to the Customer's authorized contact.
3. In the event of a un-planned network Service Outage of the backbone or a schedule maintenance the Company's notification system is used to communicate via email to all authorized contacts on the Customer's account. Customer can login to the portal and manage their notification preferences.

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- 17.9 Customer acknowledges the possibility of an unscheduled, continuous and/or interrupted period of time when the Service(s) or a portion of the Service(s) may not be 'available' or may fail to meet the Service Level Agreement (i.e. "Service Outage"). In such instance the Customer shall call an assigned toll free number with an authorization number and shall identify himself/herself as having the requisite authority to request assistance. Technicians will then be dispatched and shall arrive within four hours of the initial call. Fibers at the Customer's facility will be tested and a determination of fiber break/non-performance will be established as specified in the Service Order form. If fibers are determined to be operating at levels less than specified in the Service Order form, technicians will continue to work with the Customer to reestablish Service Order standards. The Customer understands and acknowledges that fiber break/non-performance can be due to an act of nature, which would prohibit Company technicians from accessing fiber for repair until deemed safe by fire, police or other safety officials. In the event fibers are deemed to be operational upon testing in accordance with the standards set forth on the Service Order form, the Customer will be permitted an allowance of one call free of charge during the Lease Term. Additional calls which result in fiber testing as specified in the Service Order will be charged to the Customer at the rate of \$3,500.00 per call. Each Service Outage shall be deemed to terminate upon restoration of the affected Service(s) as evidenced by appropriate network tests by Company. The Company shall give reasonable notice to Customer of any scheduled maintenance, and Customer acknowledges and agrees that any such scheduled maintenance shall under no circumstance be deemed a Service Outage hereunder.

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- 17.10 Service Credits shall not be granted if the Service Outage is due to a problem or defect in Customer's facilities or equipment, or its agents' or contractors' facilities or equipment, nor shall Service Credits be granted if a Service Outage is caused by Customer, its employees, agents or contractors.
- 17.11 Except as otherwise provided in the Service Order, all Service Credits shall be credited on the next monthly invoice for the affected Service(s) or portion thereof after receipt of Customer's request for credit. In no event shall the total of all Service Credits applicable to or accruing in any given month exceed the amount payable by Customer to Company for such monthly Service(s).
- 17.12 The Service Credit described in this Section 17 shall be the sole and exclusive remedy of Customer in the event of any Service Outage. Under no circumstance shall a Service Outage be deemed an Event of Default under this Tariff or a Service Order.
- 17.13 If a Service Outage continues for a consecutive period of thirty (30) days or more, following notice to the Company, Customer may, upon ten (10) days written notice, elect to terminate the affected Service(s) or portion thereof under the applicable Service Order without further liability to either Party, except for charges incurred by Customer prior to termination, provided that the Service Outage is not cured within such ten (10) day period.

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- 17.14 THE WARRANTIES CONTAINED IN THIS TARIFF ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT, COMPLETENESS, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY HEREBY SPECIFICALLY DISCLAIMS ANY LIABILITY TO CUSTOMER FOR INTERRUPTIONS AFFECTING THE SERVICE(S) OR FACILITIES FURNISHED UNDER THIS TARIFF THAT ARE ATTRIBUTABLE TO CUSTOMER'S INTERCONNECTION FACILITIES (AS DEFINED IN THE APPLICABLE SERVICE ORDER), CUSTOMER'S EQUIPMENT FAILURES, CUSTOMER'S BREACH OF THIS TARIFF, OR TO CUSTOMER'S CUSTOMERS, SUBCONTRACTORS OR VENDORS, OR ANY THIRD PARTY'S ACTS OR OMISSIONS.
- 17.15 IN NO EVENT WILL COMPANY OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, INVESTORS, PARENTS, SUBSIDIARIES OR AFFILIATES BE LIABLE TO THE CUSTOMER OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, SUBSIDIARY OR AFFILIATES, CUSTOMERS OR TO ANY THIRD PARTY FOR: (a) ANY LOSS OF PROFIT OR REVENUE, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, WHETHER INCURRED OR SUFFERED AS A RESULT OF UNAVAILABILITY OF SERVICE(S) OR FACILITIES, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THIS TARIFF, OR FOR ANY OTHER REASON, EVEN IF CUSTOMER ADVISES COMPANY OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (b) FOR ANY SERVICE OUTAGE OR INCORRECT OR DEFECTIVE TRANSMISSIONS, OR ANY DIRECT OR INDIRECT CONSEQUENCES THEREOF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 17 WITH REGARD TO SERVICE CREDITS.

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- 17.16 NOTWITHSTANDING ANYTHING IN THIS TARIFF TO THE CONTRARY: (a) CUSTOMER AGREES THAT ITS SOLE REMEDY IN THE EVENT OF ANY BREACH OF THE WARRANTIES DESCRIBED IN THIS TARIFF WILL BE THE SERVICE CREDITS IN THIS TARIFF AND, (b) IN NO EVENT WILL THE CUMULATIVE LIABILITY OF THE COMPANY UNDER A SERVICE ORDER, INCLUDING ANY SERVICE CREDITS, EXCEED THE TOTAL PAYMENTS PAID BY CUSTOMER TO COMPANY UNDER THE APPLICABLE SERVICE ORDER.
- 17.17 CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT COMPANY WILL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR: (a) ANY ACT OR OMISSION OF THE CUSTOMER, ITS CONTRACTORS, EMPLOYEES OR AGENTS (INCLUDING DELAYS FOR FAILURE TO OBTAIN CUSTOMER APPROVALS), ITS CUSTOMERS OR ANY CARRIER OTHER THAN COMPANY; (b) ANY CLAIMS OR ACTIONS RELATED TO DEFAMATION, COPYRIGHT OR TRADEMARK INFRINGEMENT, OR THE VIOLATION OF ANY THIRD PARTY RIGHTS, ARISING FROM USE OF THE SERVICE(S) OR FACILITIES; (c) INFRINGEMENT OF PATENTS ARISING FROM COMBINING OR USING CUSTOMER-PROVIDED FACILITIES WITH COMPANY'S SERVICE(S) OR FACILITIES WHERE COMPANY'S SERVICE(S) OR FACILITIES WOULD POSE NO INFRINGEMENT IN THE ABSENCE OF SUCH COMBINATION OR USE; OR (d) ANY UNAUTHORIZED USE OF THE SERVICE(S) OR FACILITIES. THE CUSTOMER AGREES TO INDEMNIFY AND HOLD COMPANY HARMLESS FROM ANY AND ALL COSTS, EXPENSES AND OR LIABILITY, INCLUDING LEGAL FEES, ARISING FROM ANY CLAIM, INCIDENT, OR LAWSUIT, THREATENED OR PURSUED, IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICE(S) PROVIDED BY COMPANY.

Issued by:
Steven Amelio, CFO
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200 Connecticut Ave, Suite 5A, Norwalk, CT 06854

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- 17.18 The provisions of this Section 17 shall survive the expiration or termination of the term of any Service Order.
- 17.19 The Company may disconnect Service(s) for non-payment, in accordance with the terms hereof, of the Customer's bill, provided that the Company has complied with any applicable NYPSC regulations regarding disconnection of service. Service shall be restored when the conditions under which Service(s) were disconnected are corrected and upon payment of all proper charges due from the Customer as provided in this Tariff or the applicable Service Order. The Customer may restore service by full payment in any reasonable manner, including by certified check. However, the Company may refuse to accept a personal check if a Customer's check for payment of service has been dishonored, except for reasons due to bank error, within the last twelve months. There shall be a three thousand dollar (\$3,000.00) charge for restoration of service after disconnection; if, however, the equipment necessary for service has been removed, a full installation/connection fee will apply. The Company reserves the right to refuse to re-establish service to the Customer if service was disconnected due to reasons of fraud, tampering with equipment, violations of rules and regulations, or similar reasons.
- 17.20 Notwithstanding any other provision of this Tariff, credit allowances for interruptions of service caused by or attributable to Unbundled Network Element Loops shall be limited to the allowance provided by the underlying LEC. The Company will pass through only such allowance as Company actually receives to Customer.

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18.0 Repairs and Changes to Facilities

- 18.1 The Company shall have the right to make necessary repairs or changes to its facilities at any time and will have the right to suspend or interrupt Service(s) temporarily for the purpose of making the necessary repairs or changes to its system. When such suspension or interruption of Service(s) for any appreciable period is necessary, the Company will give the Customers who may be affected reasonable notice thereof as circumstances will permit, and will prosecute the work with reasonable diligence, and, if practicable, at times that will cause the least inconvenience.
- 18.2 When the Company is repairing or changing its facilities, it shall take appropriate precautions to avoid unnecessary interruptions of Customers' Service(s).
- 18.3 The use and restoration of service in emergencies shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules and Regulations.

19.0 Service Connections and Facilities on Customer's Premises

- 19.1 Service(s) furnished by the Company may be interconnected with Service(s) or facilities of other authorized communications common carriers and with private systems, subject to the technical limitations established by the carrier. Service(s) furnished by the Company is not part of a joint undertaking with such carriers.

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- 19.2 Interconnection with the facilities or Service(s) of other carriers shall be under the applicable terms and conditions of the other carrier's tariffs. Customer is responsible for taking all necessary legal steps for interconnecting its Customer-provided terminal equipment or communications systems with the other carrier's facilities. Customer shall secure all licenses, permits, rights-of-way, building entrance agreements, co-location rights and other arrangements necessary for such interconnection.
- 19.3 The Company's facilities and Service(s) may be used with or terminated in Customer-provided terminal equipment or communications systems. Such terminal equipment shall be furnished and maintained at the expense of Customer, except as otherwise provided. Customer is responsible for all costs at its premises, including but not limited to personnel, wiring, electrical power, and the like, incurred in the use of the Company's service. When such terminal equipment is used, the equipment shall comply with the generally accepted minimum protective criteria standards of the telecommunications industry.

20.0 Limitations of Service

- 20.1 Service(s) is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this Tariff. The Company may decline applications for Service(s) to or from a location where the necessary facilities or equipment are not available. The Company may discontinue furnishing service in accordance with the terms of this Tariff, the Service Order or NYPSC regulations.

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- 20.2 The Company reserves the right to discontinue or limit Service(s) when necessitated by conditions beyond its control (examples of these conditions are more fully set forth elsewhere in this Tariff), or when Service(s) is used in violation of provisions of this Tariff, the law or a Service Order.
 - 20.3 The Company, as more fully set forth elsewhere in this Tariff, shall not be liable for errors in transmission or for failure to establish connections.
 - 20.4 The Company reserves the right to discontinue Service(s), limit Service(s), or to impose requirements as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have a material adverse effect on the business or economic feasibility of providing Service(s), as determined by the Company in its reasonable judgment.
 - 20.5 The Company reserves the right to refuse an application for service made by a present or former Customer who is indebted to the Company for Service(s) previously rendered pursuant to this Tariff or a Service Order until the indebtedness is satisfied.
- 21.0 Service(s) and Targeted Completion Date
- 21.1 The Company shall use its commercially reasonable efforts to provide Service(s) during the Term of the Service(s) identified in a Service Order, in accordance with the terms thereof, which may include but are not limited to Dark Fiber, dedicated leased lines and/or circuits and/or capacity, managed network Service(s), point to point Dark Fiber and ancillary Service(s), pursuant to the terms and conditions set forth herein or in a Service Order.

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- 21.2 Service(s) shall be ordered on Company's standard Service Order form and shall include, at a minimum, the charges, a Targeted Completion Date and any additional terms and conditions required to deliver the Service(s).
- 21.3 Customer shall have the right to use the Service(s) during the Term for any lawful purpose, consistent with the terms and conditions set forth in this Tariff and any applicable Service Order(s) and Exhibits.
- 21.4 Notwithstanding the delivery of the Service(s), Company retains exclusive legal title to the Service(s) and the rights to use, control, operate and maintain the Company's network for Customer's use during the Term.
- 21.5 Notwithstanding the delivery of the Customer Fibers for Customer's use during the Service Order Term, as between Customer and Company, Company retains the exclusive legal title to the Customer Fibers and the rights to use, control, operate and maintain the Company's Network, regardless of whether the Customer Fibers are owned, leased or IRUed by Company. The Company shall also retain and have the exclusive right and obligation to establish, administer and maintain any applicable rights-of-way agreements in accordance with their terms.

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- 21.6 Customer shall have the exclusive right to use the Customer Fibers solely for its own use during the Term for any lawful purpose, consistent with the terms and conditions set forth in this Tariff, any applicable Service Order, and any applicable Customer Approvals or required rights.
- 21.7 The Company shall not be responsible for any delay or failure to deliver the Customer Fibers under any Service Order or the provision of the Service(s) thereunder due to Customer's failure to obtain Customer Approvals or otherwise comply with the provisions of this Tariff or any applicable Service Order.
- 21.8 This Tariff, together with an executed Service Order, shall govern the provision of Service(s) by Company.
- 21.9 Customer shall obtain, at its sole cost and expense, all necessary Customer Approvals required to deliver the Customer Fibers to a fiber distribution panel, pull box or splice point or other termination point as agreed by the Parties and set forth in the Service Order, to the Customer Demarcation Point.

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- 21.10 The Company will use its reasonable commercial efforts to deliver the Service on or before the Targeted Completion Date(s) but the failure to deliver the Service(s) by such date shall not be an Event of Default under this Tariff or a Service Order. The Targeted Completion Date(s) shall be extended for the appropriate period as may be necessary as a result of events of Force Majeure or any acts, omissions or delays by Customer, its employees, agents, or contractors, including but not limited to, delays in obtaining any necessary Customer Approvals.
- 21.11 Absent events of Force Majeure, events of Termination in accordance with Section 23 or an Event of Default pursuant to Section 23 or delays attributable to Customer, its employees, agents, servants or contractors, if Company fails to deliver the Service(s) on or before one hundred eighty (180) days after the Targeted Completion Date(s) set forth in a particular Service Order, Customer shall have the right, in Customer's sole discretion and as its sole and exclusive remedy, to terminate the Service Order in writing and such termination shall be Customer's sole remedy hereunder, with neither party having any obligation under such Service Order.

22.0 Term of Service Orders

- 22.1 The Term of any Service Order shall be effective between the Parties as of the Service Commencement Date and shall remain in effect until the expiration or earlier termination of any applicable Service Order, unless earlier terminated by either Party in accordance with the terms of the Service Order or this Tariff.

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- 22.2 The initial term of a Service Order shall be set forth therein (the “Initial Service Order Term”). Unless otherwise set forth in the Service Order, upon the expiration of the Initial Service Order Term, provided Customer is not in default, the Service Order will automatically be extended for a term equal to the length of the Initial Service Order Term with the rate being increased by 5% annually thereafter (the “Renewal Service Order Term”), unless Customer or Company notifies the other Party in writing of its intent to not renew the Service Order at least ninety (90) days before expiration of the Initial Service Order Term. The Initial Service Order Term and the Renewal Service Order Term are referred to hereafter as the “Service Order Term.”
- 22.3 The term for any Service Order and the Service Order Term are referred to as the “Term.”

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Superseding Revision:

23.0 Termination Rights

- 23.1 If the Federal Communications Commission, a state or Public Utility or Service Commission, or a court of competent jurisdiction or other governmental entity issues a rule, regulation, law or order that has the effect of canceling, changing or superseding any term or provision of this Tariff (collectively, "Regulatory Requirement"), then this Tariff will be deemed modified to the extent necessary to comply with the Regulatory Requirement, unless such Regulatory Requirement adversely and materially affects a Party's rights or obligations under this Tariff. In the event of an adverse and material change, the Parties agree to negotiate in good faith a mutually agreeable modification consistent with such Regulatory Requirement. If the Parties cannot agree to such modification within thirty (30) days after the Regulatory Requirement is effective, then upon written notice, either Party may, to the extent practicable, terminate that portion of a Service Order impacted by the Regulatory Requirement. For purposes of this Section 23.1, any Regulatory Requirement that results in substantial increased costs to provide the Service(s) shall be deemed to have an adverse and material effect.
- 23.2 Notwithstanding anything contained in this Tariff or any Service Order to the contrary, Company shall have the right to immediately suspend and/or terminate any or all Service(s) provided hereunder without notice to Customer if Customer uses or permits the use of the Service(s) for any unlawful purpose or in any unlawful manner, in a manner that threatens any person, or in a manner that interferes with or threatens the integrity of Company's telecommunications network or the networks of any third parties.

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- 23.3 Customer may terminate any Service Order prior to the expiration of the applicable Service Order Term. However, the Parties acknowledge that this Tariff and the prices set forth in the Service Order(s) are based on the provision of Service(s) for the entire Service Order Term. Accordingly, in the event Customer terminates a Service Order prior to expiration of the applicable Service Order Term for any reason except Company's breach of a material term of the Tariff or Service Order which is not cured within thirty (30) days of Customer's written notice of such breach, Customer agrees to pay to Company an Early Termination Fee equal to the remaining amount due under the Service Order through its full Term, payable in full within thirty (30) days of such termination, with interest to accrue at 1.5% monthly thereafter.
- 23.4 Either Party (the "Non-Defaulting Party") may terminate a Service Order, by written notice to the other Party (the "Defaulting Party"), immediately upon the Defaulting Party's receipt of such notice or such later date as specified in the notice, in any one of the circumstances listed in Section 23.5 (each an "Event of Default"), and may seek any other legal remedies it may have under applicable law or principles of equity relating to such Event of Default, which other remedies shall be in addition to the right of termination provided herein.

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23.5 The following shall constitute Events of Default:

- A. if a Defaulting Party fails to comply with any of the material terms and conditions of this Tariff or a Service Order, including any payment obligations; provided, however, that except for a failure to pay monies when due hereunder, a Party shall not be in default under any Service Order unless and until the Non-Defaulting Party provides the Defaulting Party written notice of such default and the Defaulting Party shall have failed to cure the same within thirty (30) days after receipt of such notice or such longer period as the Non-Defaulting Party may authorize in writing (the "Cure Period"); provided, further, that where such default cannot reasonably be cured within such Cure Period, the Cure Period shall automatically be extended for such period of time as may be required to complete such curing, provided that the Defaulting Party proceeds promptly to use reasonable commercial efforts to cure the default with due diligence and provides written progress reports to the Non-Defaulting Party during any extension of the Cure Period. Any Event of Default may be waived at the Non-Defaulting Party's option. Upon the failure of the Defaulting Party to timely cure any such default within the Cure Period, the Non-Defaulting Party may pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding anything to the contrary in this Section 23 or the Tariff generally, the Cure Period applicable to a failure to pay monies when due under any Service Order shall be ten (10) days; or

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- B. if a Defaulting Party (i) commences a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law, now or hereafter in effect, or (ii) seeks the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, or (iii) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (iv) makes a general assignment for the benefit of creditors, or (v) generally fails to pay its debts as they become due, or (vi) takes any corporate action to authorize any of the foregoing; or
- C. if an involuntary case or other proceeding is commenced against the Defaulting Party seeking liquidation, reorganization or other relief with respect to it or its debt under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary proceeding shall remain un-dismissed and un-stayed for a period of 60 days; or an order for relief is entered against the Defaulting Party.

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D. In the event of a bankruptcy, liquidation, reorganization, receivership or any other relief being sought under any bankruptcy, insolvency or other similar law or similar type of proceeding, the terms of this Tariff hereto shall remain in full force and effect between the parties and shall survive such proceeding, as all parties recognize the impact of such proceeding upon the Customer's business operations and practices. Thus, in the event of such proceeding, the Customer shall be entitled to obtain an Order For Specific Performance of the Tariff and it shall be accepted as an executory Contract by any Trustee in any such proceeding, including bankruptcy, receivership, reorganization or liquidation proceedings.

23.6 A waiver by a Non-Defaulting Party with respect to any particular Event of Default shall not be deemed a waiver of any other or subsequent Event of Default.

23.7 Notwithstanding the foregoing, delays caused by Force Majeure events pursuant to Section 27 (other than delays in connection with the payment of monies due) shall not constitute an Event of Default or provide a basis for termination under this Section 23.

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- 23.8 In the event an applicable Service Order is terminated, Customer shall have no further right to use the Service(s), the Equipment, or the Customer Fiber and all lease and/or contractual rights under the Service Order are terminated. If applicable, Customer shall within thirty (30) days remove all Customer equipment without damaging Company Facilities. If Customer has not removed its equipment within such thirty (30) day period, Company shall have the right, but not the obligation, to remove the Customer equipment. The Company retains the right to remove all Customer equipment and fiber in the facility upon termination. Customer shall permit Company access to all the necessary facilities to disconnect Service upon termination. Any costs incurred by Company in removing the Customer equipment shall be reimbursed by Customer within thirty (30) days after receipt of Company's invoice therefor. The foregoing remedy is in addition to any other remedy that may be available to Company under this Tariff, the applicable Service Order, at law or in equity. Nothing in this Tariff shall be construed or implied to authorize Customer to remove any equipment or other facilities belonging to Company.
- 23.9 Upon any material breach not cured after the expiration of all applicable notice and cure periods as set forth in Section 23.5(A), if any, the Non-Defaulting Party may at its sole option do any one or more of the following: (a) cease accepting or processing Service Orders and suspend any or all Service(s); (b) draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by the Defaulting Party; (c) terminate any Service(s) without further liability; (d) collect from the Defaulting Party an amount equal to any Early Termination Fee as set forth in this Tariff or an applicable Service Order; or (e) pursue any other legal or equitable remedy or relief as may be appropriate, including but not limited to recovery of legal costs and other expenses.

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24.0 Indemnification

- 24.1 To the fullest extent permitted by law, Company shall indemnify Customer and save it harmless from and against any and all causes of action, claims, actions, suits, charges, damages, liabilities, costs, taxes, penalties, interest, expenses, and losses in connection with personal and/or bodily injury or death of any person whomsoever (including employees of the Parties), or damage to any property, real and personal, including environmental damages, of the other Party (whether owned, leased or licensed), including all reasonable legal expenses incurred or sustained in enforcing this indemnification, caused by the willful or grossly negligent actions or willful or grossly negligent failure to act of Company, its agents, contractors, employees and servants, in connection with the provision of Service under this Tariff or any Service Order.
- 24.2 To the fullest extent permitted by law and subject to the limitations set forth in Section 24, Customer shall indemnify Company and save it harmless from and against any and all causes of action, claims, actions, suits, charges, damages, liabilities, costs, taxes, penalties, interest, expenses, and losses in connection with personal and/or bodily injury or death of any person whomsoever (including employees of the Parties), or damage to any property, real and personal, including environmental damages, of the other Party (whether owned, leased or licensed), including all reasonable legal expenses incurred or sustained in enforcing this indemnification, caused by the willful or negligent actions or willful or negligent failure to act of Customer, its agents, contractors, employees and servants, in connection with the use of the Service(s) or equipment or Customer Fiber or any lease or contract right provided under this Tariff or any Service Order.

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- 24.3 The indemnified Party shall have the right to defense, by counsel of the indemnitor's selection reasonably satisfactory to the indemnitee, with respect to any claims for which the indemnitor may be liable under the indemnification provisions hereof. The Parties shall give each other prompt notice of any asserted claims or actions that may be subject to an indemnity hereunder, shall cooperate with each other in the defense of any such claims or actions and shall not settle any such claims or actions without the prior consent of the indemnifying Party, which consent shall not be unreasonably withheld.
- 24.4 For purposes of this Section 24, Company agrees to look first at general commercial liability and excess or umbrella liability policies for recovery and agrees to maintain such policies in minimum coverage amounts of \$1 Million per occurrence and \$2 Million in the aggregate, respectively, throughout the Term of Service Orders.
- 24.5 The obligations of the respective Parties under the above provisions of this Section 24 shall survive the expiration or termination of Service Orders executed by the Company.

25.0 Insurance

- 25.1 The Company, during the Term of any Service Order, shall obtain and maintain insurance reasonably sufficient to meet its obligations under this Tariff and such Service Order.
- 25.2 Nothing in this Tariff shall be construed to prevent Company from satisfying its insurance obligations pursuant to this Tariff or Service Order under a blanket policy or policies of insurance that meet or exceed the requirements of this Section 25.

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26.0 Notices

- 26.1 Except as otherwise specified in this Tariff, all notices, demands, requests, instructions, approvals, proposals and claims shall be in writing and shall be sent as follows: (a) by registered or certified United States mail, return receipt requested and postage prepaid, to the applicable address below, or to such other addresses as the Parties may substitute by written notice given in the manner prescribed in this Section 26; (b) by hand delivery, including courier service delivery, to such address; or (c) by email transmission to the address provided below.

365 CLEC, LLC
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Norwalk, CT 06854
Attn: CFO

Email: samelio@365datacenters.com

27.0 Force Majeure

- 27.1 Except for payment of any monies due under this Tariff or any Service Order(s), neither Party shall be liable under this Tariff or any Service Order for delays, failure to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to any cause beyond its control including but not limited to acts of God; acts, or failures to act, of any utility, rights-of-way or required rights owners, or other third party providing access to the rights-of-way; governmental action, inaction or delays; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; general material shortages, transportation delays, or labor strikes or walkouts that could not reasonably be avoided by the Party claiming Force Majeure; or other similar events beyond such Party's control (a "Force Majeure Event"). The Party claiming the Force Majeure Event shall give the other Party prompt notice of the occurrence of such Force Majeure Event and such Party shall, with the cooperation of the other, exercise reasonable efforts to mitigate the extent of a delay or failure resulting from such Force Majeure Event.

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27.2 If performance of this Tariff is suspended for thirty (30) or more consecutive days as a result of a Force Majeure event, then either Party may, upon ten (10) days prior written notice, terminate so much of this Tariff or Service Order as is affected by the Force Majeure event, without further liability to either Party, except for unpaid charges for Service(s) provided prior to the date of termination set forth in the notice.

28.0 Miscellaneous Provisions

28.1 Representations: Except as otherwise provided, each of Company, prospective Customers and existing Customers, represents, warrants and covenants to the other that (i) it has full right and authority, including any requisite corporate and governmental approvals, to enter into and to perform its respective obligations under this Tariff and any applicable Service Order; (ii) the execution of any applicable Service Order is not violative of its charter, by-laws or any laws or regulation by which it is bound or to which it is subject; and (iii) no litigation or governmental proceeding is pending or threatened which might adversely affect this Tariff or any applicable Service Order, the transactions contemplated by this Tariff or any applicable Service Order, or the rights of the Parties hereunder or thereunder.

28.2 Compliance with Applicable Laws: The Company and prospective Customers and existing Customers shall comply with all material applicable federal, state, or local laws, ordinances, regulations, orders, permits, franchises, or requirements of any governmental body having jurisdiction, including, but not limited to, the Federal Communications Commission and the NYPSC or similar governmental body in the jurisdiction in which the Service is provided.

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- 28.3 Advertising and Publicity: Except as expressly permitted in this Tariff or upon the prior approval of the other Party, which approval shall not be unreasonably withheld, conditioned, or delayed, neither Customer nor Company shall make public reference to the existence or terms of any applicable Service Order, except as expressly provided herein.
- 28.4 Cumulative Remedies: The rights and remedies provided by this Tariff are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its right to sue on or pursue any or all other remedies. Said rights and remedies are in addition to any other rights such Party may have by law, statute, and ordinance or otherwise, except as such remedies are expressly limited in this Tariff.
- 28.5 Headings: The Section headings in this Tariff are for convenience of reference only and shall neither be deemed to be a part of this Tariff nor modify, define, expand or limit any of the terms or provisions hereof. All references to numbered or lettered Sections or sub-Sections are to Sections or sub-Sections of this Tariff.
- 28.6 Invalidity: Any provision of this Tariff which is held to be invalid, illegal or unenforceable in any manner in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such invalidity, illegality or unenforceability without in any way affecting the validity, legality or enforceability of the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or in any way affect the validity, legality or enforceability of such provision in any other jurisdiction.
- 28.7 Choice of Law: This Tariff and any applicable Service Order(s) shall be governed by and construed and enforced in accordance with the laws of the State of New York without regard to any conflicts of law principles that result in the application of the laws of another jurisdiction.

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28.8 Legal Fees: Each of Company and Customer shall each be responsible for its own costs, including legal fees, incurred in negotiating or finalizing any Service Order. If any legal proceeding is brought to enforce or interpret any part of a Service Order and/or this Tariff or any provision thereof, the prevailing Party in any such proceeding shall be entitled to recover from the other Party its reasonable attorneys' and paralegal fees and court costs in addition to any remedy or relief granted.

29.0 Construction

29.1 The Company shall design, engineer, construct and install the Customer Fibers to be delivered under this Tariff or any applicable Service Order in a workmanlike manner in compliance with current prevailing telecommunications industry standards using the skill and expertise appropriate for similar projects and Company's construction specifications.

30.0 Customer Approvals

30.1 Except as otherwise expressly provided in any applicable Service Order(s), Customer, at its cost and expense, shall obtain any approvals and authorizations necessary to deliver the Customer Fibers from the closest manhole along the Company's Network to the Customer Demarcation Point within any buildings as set forth on the Service Order(s), including but not limited to any required licenses, leases, easements, building entrance agreements, and house and riser permissions. Further, Customer shall comply with any building rules and regulations and any requirements imposed by third parties for providing approvals and authorizations under any such licenses, leases, easements, and any requirements for building entrance access and/or riser access for any buildings in which the Customer Fibers shall be delivered hereunder, and with all material applicable federal, state or local laws, ordinances, rules, regulations and orders in connection with the use of the Service(s). (All of the approvals and authorizations set forth in this Section 30 shall be referred to as "Customer Approvals.")

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30.2 Upon request, Customer shall provide Company with reasonable evidence of its right to authorize Company to enter and install the Customer Fibers in any buildings where the Customer Fibers will be delivered, as identified in the Service Order.

31.0 Testing and Acceptance

31.1 The Company shall deliver the Service(s) as soon as it is tested and accepted as provided in the standards set forth in the Service Order form. At such times that Company is ready to test the Service(s), the Company shall provide Customer three (3) days written notice that it is scheduling the testing. Customer shall be entitled to observe such testing; provided, however, that the Company shall not be required to delay such testing in order for Customer to attend. Upon completion of said testing, if Company believes that the Service is ready for delivery, Company shall provide notice thereof to Customer by delivering a written certificate (a "Completion Certificate"), which shall include:

- (a) the test results for the Service pursuant to the Service Order specifications; and
- (b) one copy of a map to be maintained as confidential information of the Company's network containing the Customer Fibers to provide the Service(s).

31.2 Customer will have three (3) business days from the date Company delivers the Completion Certificate to Customer (the "Inspection Period") to review the test results and obtain additional information from Company. During the Inspection Period, Company personnel shall be available each day during regular business hours to accompany Customer to inspect the Customer Fibers and address any reasonable questions posed by Customer.

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- 31.3 If Customer determines that the Service is ready for acceptance, it shall within the Inspection Period, issue a notice accepting delivery of such Service (an "Acceptance Notice"). If Customer reasonably determines that the Service is not ready for acceptance, it shall within the Inspection Period, provide written notice of any deficiencies in the Customer Fibers, identifying which particular requirements of the Service Order Specifications have not been met (a "Rejection Notice").
- 31.4 In the event Customer issues a Rejection Notice, Company shall take all commercially reasonable steps, at Company's sole expense, to rectify any such properly identified deficiency and re-test the Customer Fibers. Once Company believes the items specified in the Rejection Notice have been rectified and that the Service(s) is ready for acceptance, it shall provide Customer with another Completion Certificate and the procedure set forth in this Section 31 shall be repeated until the Service(s) is ready for acceptance. In the event the Parties cannot agree as to the propriety of the rejection, it shall be subject to an independent check by a third party and the prevailing party (Company or Customer) shall be entitled to recoup its fees for such testing from the other party (Company or Customer).
- 31.5 If Customer does not provide a Rejection Notice prior to the expiration of the Inspection Period, an Acceptance Notice shall be deemed to have been issued as of the date of the expiration of such Inspection Period.
- 31.6 Upon issuance of an Acceptance Notice (or the date such notice is deemed to have been issued as provided in Section 31.5) the Service(s) shall be deemed delivered to and accepted by Customer without any further act or document and the fees and charges for the lease of the Service or Customer Fibers shall commence (the "Acceptance Date").

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32.0 Use of Customer Fibers

32.1 Subject to all applicable Collocation Specifications and obtaining and complying with all Customer Approvals, Customer shall be entitled to request Collocation Space and/or equipment or Service(s) from Company at the Company's POPs or Transmission Sites in accordance with the Company's rates, terms and conditions governing such Collocation. Customer shall notify Company in writing in the event that it desires Collocation Space, including the address and number of racks required and any special power or other requirements. If such space is available, Customer shall execute Company's standard Collocation Agreement and comply with the Collocation Specifications. Notwithstanding anything to the contrary, (i) Customer's right to obtain and continue to utilize any Collocation Space shall be expressly subject to Customer obtaining and complying with all Customer Approvals, and (ii) any Customer Collocation Space obtained pursuant to this Tariff may be used by Customer only for purposes of interconnection of an optical device or other basis with the communication systems of Customer, Company, or Company's Customers, that are located in the same Company POPs or Transmission Sites as Customer and only if Customer has arrangements with such Customers of Company. Customer shall be responsible for all costs of interconnecting the Customer Fibers with the rest of Customer's transmission network as well as any costs to connect the Customer Fibers to other Customers of Company or to other carriers outside the Company's POPs or Transmission Sites. In addition, Customer may be entitled to interconnect with third parties that are not Company's Customers in a Company POP by purchasing a cross connection from Company on Company's then-standard terms and conditions, including rates, for such cross connections.

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- 32.2 In connection with the provision of Dark Fiber hereunder, Customer shall, at its sole cost and expense, acquire, install, operate and maintain all electronic and optronic equipment necessary for Customer to light the Customer Fibers or for Customer's transmission of information over the Customer Fibers consistent with the terms of this Tariff and any applicable Service Order(s).
- 32.3 Except as otherwise expressly provided in any applicable Service Order(s), Customer may not sell, assign, transfer, convey or swap ("Transfer") any of its rights to, in or with respect to the Service or the Customer Fibers to any third party during the Term, unless Company grants, in its sole discretion, express advance written approval.
- 32.4 Notwithstanding any permitted Transfer, Customer shall remain liable for all Customer obligations under this Tariff for the Term and, prior to any permitted Transfer, shall also require any assignee to abide by and be bound by the terms and conditions of this Tariff and any applicable Service Order(s) in its or their entirety.
- 32.5 Without the prior written approval of Company, Customer shall not undertake any installation, connection, upgrade or modification to the Customer Fibers or the Service.

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- 32.6 Customer shall indemnify Company against and hold Company and the Company Facilities and Customer Fibers free and clear of and from all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of any work done by or on behalf of Customer in connection with the Customer Fibers and the Service. Nothing contained in this Tariff or any applicable Service Order(s) shall be deemed to constitute consent of Company to subject the Company or Customer Fibers to liability under any mechanics' or other lien law. If Customer receives notice that a lien has been or is about to be filed against the Company Facilities or Customer Fibers, or any action affecting title to the Company Facilities or Customer Fibers has been commenced on account of work done by or on behalf of Customer, or materials furnished to or for Customer by such lienors, Customer will immediately give Company notice of such occurrence, and if the lien is not removed within a reasonable time, as determined in Company's sole discretion, the same will constitute a material default by Customer under this Tariff.

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33.0 Characterization of Rent under an Indefeasible Right of Use (“IRU”) for United States Federal Income Tax Purposes; Reporting.

33.1 A Service Order will be treated as a true lease for United States federal income tax purposes, and the Service Order will constitute a Section 467 rental agreement as defined in Section 467(d) of the Code.

33.2 The Parties to a Service Order shall report Rent to the Internal Revenue Service in accordance with Section 33.3 of this Tariff.

33.3 Allocation of Rent: Rent represents total rent for the Lease Term and is to be allocated on a pro-rata basis to each Rental Period. Such allocation is intended to constitute an allocation of fixed rent within the meaning of Treasury Regulation Section 1.467-1(c)(2)(ii)(A).

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34.0 Emergency/ Crisis/ Disaster Restoration And Provisioning - Telecommunications Service Priority

34.1 General

- a. The Telecommunications Service Priority (TSP) Program is a federal program used to identify and prioritize telecommunications services that support national security or emergency preparedness (NS/EP) missions.

NS/EP services are defined as those telecommunications services which are used to maintain a state of readiness or respond to and manage any event or crisis which causes or could cause injury or harm to the population, damage or loss to property, or degrades or threatens the NS/EP posture of the United States.

TSP restoration and/or provisioning shall be provided in accordance with Part 64, Appendix A of the Federal Communications Commission's Rules and Regulations (47 C.F.R.), and the "Service Vendor Handbook For The Telecommunications Service Priority (TSP) Program" and the "Service User Manual for the Telecommunications Service Priority (TSP) System" (NCS Manual 3-1-1) (Service User Manual) issued and updated as necessary by the Office of Priority Telecommunications (OPT) of the National Communications System. Any changes to or reissuance of these regulations or manuals supersede tariff language contained herein.

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- b. The TSP program has two components, restoration and provisioning.
 - i. A restoration priority is applied to new or existing telecommunications services to ensure restoration before any other services during a Service Outage. TSP restoration priorities must be requested and assigned before a Service Outage occurs.
 - ii. A provisioning priority is obtained to facilitate priority installation of new telecommunications services during a Service Outage. Provisioning on a priority basis becomes necessary when an end-user has an urgent requirement for a new NS/EP service that must be installed immediately or by a specific due date that can be met only by a shorter than standard or expedited Company provisioning time frame. As a matter of general practice, existing TSP services will be restored before provisioning new TSP services.

34.2 TSP Request Process – Restoration

To request a TSP restoration priority assignment, a prospective TSP user must:

- a. determine that the user's telecommunications service supports an NS/EP function under one of the following four TSP categories.
 - 1. National Security Leadership
 - 2. National Security Posture and U.S. Population Attack Warning
 - 3. Public Health, Safety, and Maintenance of Law and Order
 - 4. Public Welfare and Maintenance of National Economic Posture

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- b. Identify the priority level to be requested for the telecommunications service. The priority level is determined by the end-user's TSP category and service profile. The service profile defines the user's level of support to the portion of the telecommunications service that the user owns and operates, such as customer premises equipment or wiring. The five levels of priority and seven element groups that define the service profile are contained in the Service User Manual.
- c. Complete the TSP Request for Service Users form (SF 315) available on the National Communications System (NCS) website (<http://tsp.ncs.gov/>).
- d. For non-federal users, have their TSP requests approved by a federal agency sponsor. Non-federal users should contact the OPT, at the NCS website (<http://tsp.ncs.gov/>), for information on identifying a sponsor for TSP requests.
- e. Submit the SF 315 to the OPT.
- f. Upon receipt of the TSP Authorization Code from the OPT, notify the Company, and include the TSP Authorization Code in any service order to the Company requesting restoration of NS/EP services.

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34.3 TSP Request Process – Provisioning

To request a TSP provisioning priority assignment, a prospective TSP user must follow the same steps listed in 30.2(a) through (f) above for restoration priority assignment except for the following differences. The user should:

- a. Certify that its telecommunications service is an Emergency service. Emergency services are those that support one of the NS/EP functions listed in 30.2(a) above and are so critical that they must be provisioned at the earliest possible time, without regard to cost to the user.
- b. Verify that the Company cannot meet the service due date without a TSP assignment.
- c. Obtain approval from the end-user's invocation official to request a provisioning priority. Invocation officials are designated individuals with the authority to request TSP provisioning for a telecommunications service, and include the head or director of a federal agency, commander of a unified/specified military command, chief of a military service, commander of a major military command, or state governor.

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34.4 Responsibilities of the End-User

End-users or entities acting on their behalf must perform the following:

- a. Identify telecommunications services requiring priority.
- b. Request, justify, and revalidate all priority level assignments. Revalidation must be completed every 2 years, and must be done before expiration of the end-user's TSP Authorization Code(s).
- c. Accept TSP services by the service due dates.
- d. Have Customer Premises Equipment (CPE) and Customer Premises Wiring (CPW) available by the requested service due date and ensure (through contractual means or otherwise) priority treatment for CPE and CPW necessary for end-to-end service continuity.
- e. Pay the Company any authorized costs associated with priority services.
- f. Report to the Company any failed or unusable services with priority levels.
- g. Designate a 24-hour point of contact for each TSP request and apprise the OPT.
- h. Cooperate with the OPT during reconciliation (comparison of NS/EP service information and resolution of any identified discrepancies) and revalidation.

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34.5 Responsibilities of the Company

The Company will perform the following:

- a. Provide TSP service only after receipt of a TSP authorization code.
- b. Revoke TSP services at the direction of the end-user or OPT.
- c. Ensure that TSP Program priorities supersede any other telecommunications priority that may be provided (other than control services and order wires).
- d. Designate a 24-hour point of contact to receive reports of TSP Service Outages from TSP service users.
- e. Designate a 24-hour point of contact to coordinate TSP processes with the OPT.
- f. Confirm completion of TSP service order activity to the OPT.
- g. Participate in reconciliation of TSP information at the request of the OPT.
- h. Ensure that all subcontractors complete reconciliation of TSP information with the service vendor.

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- i. Ensure that other carriers supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NS/EP services.
- j. Assist in ensuring that priority level assignments of NS/EP services are accurately identified “end-to-end” by providing to subcontractors and interconnecting carriers the restoration priority level assigned to a service.
- k. Disclose content of the NS/EP TSP database only as may be required by law.
- l. Comply with regulations and procedures supplemental to and consistent with guidelines issued by the OPT.

34.6. Preemption

When spare facilities are not available, it may be necessary for the Company to preempt the facilities required to provision or restore a TSP service. When preemption is necessary, non-TSP services may be preempted based on the Company’s best judgment. If no suitable spare or non-TSP services are available, the Company may preempt an existing TSP service to restore a TSP service with a higher restoration priority assignment. When preemption is necessary, prior consent of the service user whose service will be preempted is not required; however, the Company will make every reasonable effort to notify the preempted customer of the action to be taken.

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35.0 Critical Facilities Administration Service

General:

- a. Facilities-based carriers are responsible to provide data on the physical path of qualified circuits to customers who request such information. Such carriers are required to maintain facilities associated with qualified circuits in such a manner as to ensure that notification of a change in the physical routing of a qualifying circuit is communicated quickly to the affected customer, and the physical path data promptly updated. Such carriers will maintain the data and establish appropriate methods of identification and authentication to secure the data and restrict access by each customer to information relative to that customer's qualifying circuits.
- b. Customers are required to demonstrate for each qualifying circuit that the circuit has been registered under the federal Telecommunications Service Priority program in order to participate.

35.1 Customer Obligations

Customers participating under the Critical Facilities Administration program will be required to:

- a. Identify critical facilities by enrolling circuits in the federal Telecommunications Service Priority program, and demonstrating the sponsorship of a federal agency supporting the designation of those circuits as qualifying under the federal Telecommunications Service Priority program. Such circuits will be referred to as "qualifying circuits."

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- b. Subscribe to the Critical Facilities Administration service offered by their carrier, and identify which qualifying circuits it wishes to enroll in the service. Such circuits will be referred to as “subscribed circuits.”

35.2 Carrier Obligations

Facilities-based carriers will be obligated to identify the physical path of each subscribed circuit as follows:

- a. Physical path information will be provided by reference to the latitude and longitude coordinates of suitable points along the circuit’s path (e.g., cable entrances to buildings, manholes, riser poles, crossboxes, carrier equipment cabinets, and other circuit access points in the outside plant of the carrier) so as to allow the customer to ascertain with a reasonable degree of accuracy the actual physical path of each subscribed circuit.
- b. Physical path information for newly provisioned subscribed circuits is to be available to the customer within 5 business days after the circuit has been installed, and within 15 business days for existing, in-place subscribed circuits.
- c. Any planned moves, changes, or rearrangements that affect the physical path of a subscribed circuit are to be communicated at least 24 hours in advance to the customer, and information related to a move, change, or rearrangement that was as a result of unplanned activity is to be provided within 24 hours of the change.
- d. Updated information regarding the revised physical path of subscribed circuits would be available to the customer within 5 business days for planned actions, and within 15 business days for unplanned activities.

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- e. Provision of the service would be suspended altogether in the instance of a major telephone outage. Once restored to service, current physical path information for a subscribed circuit would be developed and made available to the customer within ninety days of the restoration of service.
- f. The carrier must establish a secure database or other means that would allow the customer to obtain information of the physical path for only its subscribed circuits, subject to appropriate authentication and authorization. Where practicable, the information should be made available on a 24 hour by seven day basis.

35.3 Rates

Rates for CFA are based upon the time required to collect the circuit path data. The company will give the customer a good faith estimate of the time period needed to perform the requested service. The customer will be billed those charges, along with the tariff charges established by any connecting carrier for the service.

	Minimum	Maximum
Per Hour	\$150.00	\$300.00

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